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OFFICIAL REPORT
(HANSARD)

Wednesday, May 9, 2001

THE HONOURABLE ROSE-MARIE LOSIER-COOL
SPEAKER *PRO TEMPORE*

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THE SENATE

Wednesday, May 9, 2001

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

Prayers.

SENATORS' STATEMENTS

EMERGENCY PREPAREDNESS WEEK

Hon. Terry Stratton: Honourable senators, I rise to remind you that this week, May 7 to 13, is Emergency Preparedness Week in Canada. The theme this year is "Reducing the Risk — Toward Safer Communities in the 21st Century." It focuses on the concept of mitigation, or understanding the risks of where we live and taking action to reduce those risks.

Today, simply preparing to respond to and recover from disasters is no longer acceptable. Efforts are underway to limit the frequency and severity of disasters. These efforts can be seen with the ongoing mitigation research on flooding in the Red River Basin in Manitoba. We must come up with long-term solutions.

This year, an effort is being made to reach out to one of the most valuable and vulnerable in our society — our youth — as well as focusing on our community leaders. We all know about floods, ice storms, earthquakes and hail as disasters; but do you know how to prepare and protect your family from disasters that can occur in your area?

How about the long overdue pandemic flu or the West Nile virus that we are hearing may invade Canada? What about the drinking water crisis?

To help safeguard your family, prepare a basic emergency preparedness kit and a home evacuation plan, including a rendezvous place; learn where to get information during an emergency, and collect and post emergency numbers by the telephone.

In your community, join a volunteer social services or emergency response organization; help others in your community become better prepared during Emergency Preparedness Week; review the community's emergency plan and participate in emergency exercises to test the community's emergency plan.

In the country, understand how plans must integrate with the provincial emergency plan; learn how Canada's emergency preparedness system works and support national volunteer organizations.

Honourable senators, it is up to each and every one of us to reach out and inform Canadians of the importance of putting in place a plan of action for all, for we must never again suffer the impact of an ice storm, and we must limit the damages from flooding and other disasters.

[*Translation*]

NATIONAL NURSING WEEK

Hon. Yves Morin: Honourable senators, this week is National Nursing Week. As the Honourable Allan Rock said last year:

> As the largest group of caregivers in Canada, nurses are the backbone of our health care system.

This being said, our country is currently experiencing a crisis in the nursing sector.

[*English*]

As a matter of fact, honourable senators, a study published yesterday in the prestigious journal *Health Affairs* has shown that the working conditions of frontline nurses have become so poor that health care is suffering, medical errors are increasing and nurses are leaving the profession in droves.

As an example, among younger nurses, nearly one third are thinking of leaving nursing. As Dr. Judith Shamian, Director of Nursing Policy at Health Canada, has stated, "The challenge is clear. Fix the workplace or we will not have sufficient nurses to provide health care."

[*Translation*]

Honourable senators, as you know, your Standing Senate Committee on Social Affairs, Science and Technology is beginning a study on the state of the health care system in Canada. We intend to take a close look at this thorny issue.

[*English*]

NOVA SCOTIA

VISIT TO OTTAWA OF MAPLE GROVE AND YARMOUTH HIGH SCHOOL MEMORIAL CLUB OF NOVA SCOTIA

Hon. Wilfred P. Moore: Honourable senators, last evening I participated in a ceremony of remembrance and thanks at the Tomb of the Unknown Soldier. That ceremony was organized and attended by the Maple Grove and Yarmouth High School Memorial Club of Nova Scotia, whose motto is "Proud Canadians do proud things."

That moving ceremony concluded a three-day visit to Ottawa by these 160 students and the 40 parents and teachers who accompanied them. Wearing their red and white jackets and shirts, and carrying flags of Canada as well as of all our provinces and territories, these teenage girls and boys were a shining example to the youth of our country. They uphold good family values. They stand with respect and strong voice during the playing of our national anthem. They pledge to serve our country and keep Canada one nation. They promote equality for all people. They serve and respect our veterans and senior citizens. They remember those who made the ultimate sacrifice in the cause of freedom. They pledge to keep Remembrance Day a day of honour.

• (1340)

These young men and women under the leadership of their adviser, Joe Bishara, a teacher, have called upon our federal government to declare Remembrance Day a full national holiday. I believe that their mission deserves our support.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker *pro tempore***:** Honourable senators, I should like to welcome pages from the House of Commons who are with us today.

Fiona Story is studying journalism in the Faculty of Public Affairs and Management at Carleton University. Fiona is from Godmanchester, Quebec. Welcome, Fiona.

John McAndrews, of Toronto, Ontario, is enrolled in the Faculty of Public Affairs and Management at Carleton University. He is majoring in public affairs and policy management. Welcome, John.

Gareth Bate, of Oakville, Ontario, is enrolled in the Faculty of Arts at the University of Ottawa. He is majoring in visual arts. Welcome to the Senate.

[*Translation*]

ROUTINE PROCEEDINGS

ADJOURNMENT

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

> That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, May 10, 2001, at 1:30 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

[Senator Moore]

FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-18, to amend the Federal-Provincial Fiscal Arrangements Act, to which they desire the concurrence of the Senate.

Bill read first time.

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

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

[*English*]

QUESTION PERIOD

OFFICES OF PRIME MINISTER AND PRIVY COUNCIL

GOVERNOR IN COUNCIL APPOINTMENTS—
UNDER-REPRESENTATION OF VISIBLE MINORITIES—
RESPONSE TO ORDER PAPER QUESTION

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate arising from a response that I received to a question on the Order Paper. My question is about the fact that the response has not been very descriptive. The question was as follows:

> In 1995-96, Dr. John Samuel uncovered troubling facts related to the under-representation of visible minorities in the Canadian Public Service, especially at the executive level.

In response to a great number of those questions, I received answers such as:

> Until November 1, 1999, no information of this nature was available.

Then later on it says:

> This information can only be released in aggregate statistical form...

Question No. 4 was:

> What are the names and the number of visible minority lawyers appointed to the superior court bench in all the provinces and territories in Canada since 1993?

The answer is:

This information is not being collected.

Honourable senators, it is respectfully submitted that those are not adequate answers. My question to the Leader of the Government is: What, if anything, is she prepared to do to try to get more descriptive answers to important questions?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, Senator Oliver asks a very interesting question. I am somewhat disturbed that he has not received the fulsome response that he wished to his particular intervention.

I will commit to Senator Oliver to bring forward the issues he raised in his original question to the minister, not only to elicit perhaps a more fulsome response, but also to make sure there is a more fulsome policy.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—PROCUREMENT PROCESS—LIST OF MAJORITY-OWNED CANADIAN COMPANIES INVOLVED

Hon. J. Michael Forrestall: Honourable senators, my question is for the Leader of the Government in the Senate. I ask the minister a question based on one I put forward yesterday.

Will the minister give us a list of majority Canadian owned and controlled companies that the government wanted to aid by splitting the Maritime Helicopter Project?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, before I begin my answer to today's question from Senator Forrestall, I want to make it very clear that I made an error regarding Senator Forrestall's original question on April 25 with respect to the Maritime Helicopter Project. I believe I compounded that error yesterday.

I want honourable senators to be aware that the Government of Canada did not retain independent legal counsel in regard to the EH Industries' complaint regarding the Maritime Helicopter Project. The government did, however, retain independent legal counsel in regard to the Search and Rescue Helicopter Project. Yes, that counsel was retired Justice Charles Dubin. I erred in putting the two files together. I apologize to Senator Forrestall for a clear confusion on my part, which led to a confusion on his part about the role that retired Justice Charles Dubin has played in all of this.

With regard to the honourable senator's specific request today for a list of the majority-owned Canadian companies that will now be able to afford themselves the opportunity to perhaps apply for contracts should they so wish, I will obtain that information for the senator as quickly as I can.

Senator Forrestall: Thank you. I appreciate very much the minister coming forward with that particular correction. I had a feeling that something was a little askew and that it would catch up with her.

Honourable senators, I am not terribly interested in every Canadian-owned company that may benefit from commercial spinoffs from the project but, rather, those firms that are large enough to bid for the divided contract.

REPLACEMENT OF SEA KING HELICOPTERS—PROCUREMENT PROCESS—PRIME CONTRACTOR

Hon. J. Michael Forrestall: Honourable senators, I appreciate the minister's answer and will look forward to hearing more. I am satisfied that the government in fact now knows that we will have a split procurement process for the Maritime Helicopter Project — that is, one contract for the air frame or basic vehicle and one for the mission system. When a project of this magnitude is divided, someone has to be in charge. Webster's dictionary says the "prime" means, "primary, first in rank or authority."

• (1350)

Who in this context will be the prime contractor in the Maritime Helicopter Project? If it is not a successful bidder, would the prime contractor not then be the Government of Canada itself?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator continues to ask interesting questions. Let me begin with a number of stages. I am glad we have been able to clarify the original answer I gave this afternoon because it was certainly my mistake. I think he and I are equally delighted that $34.5 million has been added to the pension fund for the Merchant Navy. It seems that I am able to get the good news out a little bit faster.

Hon. Senators: Hear, hear!

Senator Carstairs: Honourable senators, in terms of who will be the prime contractor, that has not yet been determined.

Senator Forrestall: I thank the leader for that announcement. As to the prematurity of it, I can only say, "Thank God for Aunt Elsie."

HELICOPTER ACQUISITION PROJECTS—RETENTION OF LEGAL COUNSEL

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): The minister has indicated that the government chose outside counsel for one project and internal counsel for the other. Could the minister explain the government's reasoning for choosing two different sets of counsel?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I appreciate the concern that the senator has with respect to why one and not the other, but I cannot give him an answer on that today. I will try to elicit that information for him.

UNITED STATES—MISSILE DEFENCE SYSTEM—COMMENTS BY SECRETARY OF DEFENCE ON "WEAPONIZATION" OF SPACE

Hon. Douglas Roche: Honourable senators, my question is directed to the Leader of the Government in the Senate. Can the minister inform the Senate what the government's response is to the speech yesterday by U.S. Secretary of Defence Donald H. Rumsfeld, who called for the United States to put weapons in space and who clearly tied their National Missile Defence System to the "weaponization" of space? Bear in mind that for at least the past 30 years, Canadian government policy, under governments of different political parties, has been to vigorously oppose the weaponization of space.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Canadian Minister of Defence was very clear. First, he was not consulted with respect to Mr. Rumsfeld's announcement of yesterday. Minister Eggleton said: "We are against the weaponization of space, but as far as where you draw the line, I would like to see what his proposal is."

There has been literally no communication between the Secretary of Defence in the United States and the Minister of Defence nor, I would assume, the Minister of Foreign Affairs with respect to what was announced yesterday in the United States.

Senator Roche: Honourable senators, the United States is sending a team of official representatives to speak with the Government of Canada next Tuesday. Can the Senate be informed as to whether the Government of Canada will seek clarification of the full meaning of Secretary of Defence Rumsfeld's speech and communicate that information to the Senate before the meetings occur next week?

Senator Carstairs: Honourable senators, the American delegation of officials is coming to Canada on May 15 strictly for initial contact. There are no political-level exchanges planned on this occasion, and the objective from our perspective is to obtain clarification on United States proposals. I think that should remain the focus of that particular meeting.

VISITORS IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, I should like to draw your attention to the presence in the gallery of two clerks from the Northern Ireland Assembly. Tom Evans and Stephen Graham are spending two weeks here on attachment to our Committees Directorate. On behalf all honourable senators I welcome you to the Senate of Canada and trust that your stay will be a profitable one.

[*Translation*]

ANSWERS TO ORDER PAPER QUESTIONS TABLED

HEALTH—FOOD AND DRUG REGULATIONS

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answer to Question No. 14 on the Order Paper—by Senator Spivak.

GREATER TORONTO AIRPORT AUTHORITY—REDEVELOPMENT OF PEARSON AIRPORT

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answer to Question No. 10 on the Order Paper—by Senator Lynch-Staunton.

[*English*]

ORDERS OF THE DAY

JUDGES ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Cook, for the second reading of Bill C-12, to amend the Judges Act and to amend another Act in consequence.

Hon. Anne C. Cools: Honourable senators, at the outset, I wish to state definitively that I do not take issue with either the actual quantum or the fact of salary increases for section 96 judges in this bill. Judges should be well remunerated. My concerns are the process and the persistent alienation of Parliament from this process of fixing judges' salaries, which is contrary to our notion of judicial independence, that constitutional convention that supports the proper exercise of power within proper constitutional relations between cabinet, the judiciary and Parliament. Canada never had the American separation of powers doctrine. Instead, we had responsible government, meaning that powers are not separated but are fused in responsible ministers of the Crown. Our Constitution chose to separate the personalities exercising the powers and not the actual powers. In my speeches on Bill C-37 on September 22, October 27 and 28, 1998, I spoke against a permanent Judicial Compensation and Benefits Commission. Judicial access to and judicial control of the public purse is unparliamentary and even hostile to Parliament.

Honourable senators, on February 15, 2000, a *National Post* article about the commission's work by Luiza Chwialkowska was entitled, "Judges press for 26 per cent raise: Government resists: 'Shocked' and 'disappointed' by refusal to ante up." It reported that:

> In sharply worded comments to a hearing of the Judicial Compensation and Benefits Commission yesterday, a representative of the 1,016 federally appointed judges in Canada described the current salary level of the judiciary as "grossly inadequate."
>
> The judiciary is "shocked" and "disappointed" by the government's refusal to increase judges' pay, said Yves Fortier, a Montreal lawyer.

> "The government has let its frugality cloud its objectivity," Mr. Fortier said. "The judges of Canada were very disappointed with the government's manifest venality in rejecting out of hand the substance of the conference's recommendations."

The *National Post* quoted the judges' lawyer, Mr. Fortier, again, saying:

> What might be adequate to ensure financial security of the judiciary is quite inadequate to attract outstanding candidates to the bench...

and concluded:

> In addition, judges complain that their salaries are far out of line with those of senior lawyers. According to the judges' figures, the top-paid third of lawyers in Ontario earned on average $381, 239, with some earning more than $700,000.

This jolted the public's sensibilities. Needless to say, Parliament's interests or opinions were never considered even though the British North America Act, 1867, section 100 states:

> The Salaries, Allowances, and Pensions of the Judges of the Superior... courts... shall be fixed and provided by the Parliament of Canada.

The judges and their lawyer spoke as though the government is Parliament.

Honourable senators, Bill C-12's contents are not a parliamentary proposition. Also, Bill C-12's proposed salaries are not open to any input whatsoever from members of Parliament. These salaries before us have not been fixed by Parliament, and it is unparliamentary to say that they are. This bill is contrary to the principles of judicial independence and contrary to the principles of responsible government. Its proposals are an executive action from judges in their executive capacity, executive in content, in form and in substance. They defeat and oust Parliament's constitutional role in the BNA Act's section 100 in determining the salaries of judges. This overthrow of Parliament with the Attorney General's support is a grievous matter. It overthrows 400 years of constitutionalism and reinstates the old mischief, that fraternity between the executive and the judges. I shall review the legal, constitutional and parliamentary history of the words "fixed and provided" by the parliament.

• (1400)

Honourable senators, for this we must look to the Stuart kings, the United Kingdom's civil wars, and to the role of the judges therein, particularly to the consequences for judges who angered the king and the consequences to society when judges curried the king's favour, his pleasure. The need for judicial independence stems from judges seeking the royal pleasure, be it the governor's or the cabinet's approval, from judges being the pawns or the partisans of the ruling elite. The most notorious case was Judge George Jeffreys. He presided over the "Bloody Assizes" of 1685. King James II's royal pleasure included appointing him Lord Chancellor in 1685. Judge Jeffreys' judicial activities were ruthless and murderous. His ordered executions of the king's enemies numbered hundreds, his convictions thousands. Upon King James II's forced abdication in 1688 by the Glorious Revolution, Judge Jeffreys was arrested and died four months later in the Tower of London. The new King William of Orange and Queen Mary immediately re-established judicial appointments "during good behaviour," the tradition prior to the Stuart kings' peculiar use of "at pleasure" appointments. William and Mary, however, declined to include "during good behaviour" and the judges' salaries in their settling bill, the Bill of Rights, 1689, lest the actual payment of judges' salaries would fall to them or be left to their charge. However, in 1701 the Act of Settlement did. It stated:

> ...Judges Commissioners be made Q*uamdiu se bene gesserint*, —

— which means during good behaviour —

> — and their Salaries ascertained and established; but upon the Address of both Houses of Parliament it may be lawful to remove them.

The constitutional resolution of the judges' position was to place the judges under the protection and the superintendence of Parliament.

Honourable senators, judges' salaries were not ascertained or established by Parliament for 100 years. In the United Kingdom, the Consolidated Revenue Fund was only established in 1787 by Prime Minister William Pitt the Younger, advised by Adam Smith, author of *The Wealth of Nations*. No total salary of a judge was charged upon the Consolidated Revenue Fund until 1830. After the Act of Settlement 1701, the independence of judges was viewed as sufficiently secured by the good behaviour clause in their patents, resting on statutory authority fortified by the statutory fact that any attempt by the king, the prime minister, or the cabinet to remove a judge would subject the removing minister or king to Parliament. Further, only by the Supreme Court of Judicature Act in 1873 were the salaries of judges ascertained and established in the true sense.

Honourable senators, I turn now to the political history of the judges in Canada, their relationship to Parliament, politics, and judicial independence. The problems were large. Judges and their oligarchies dominated politics in both Upper and Lower Canada. Judges were closely involved in politics, and sat as members in legislatures. In 1792, when Lieutenant-Governor John Graves Simcoe delivered the Throne Speech to the first sitting of Upper Canada's Parliament, the then Speaker of the Legislative Council was Upper Canada's Chief Justice William Osgoode, who was also a member of the Executive Council. In Lower Canada from about 1809 to 1830, Jonathan Sewell was simultaneously the Chief Justice of Lower Canada, the President of the Executive Council, and the Speaker of the Legislative Council. Lower Canada's Assembly even impeached him for his political involvement. Judges' role in politics was a live and difficult political question in the Canadas, even in the rebellions.

Honourable senators, in pre-Confederation Canada, separating the judges from politics was a major political task. In Upper Canada, it was undertaken by Legislative Assembly members, William Warren Baldwin, his son Robert Baldwin, William Lyon Mackenzie, and other emerging Liberals then known as the Reformers. These men braved — and brave it was — the Tory Family Compact with its peculiar legal and judicial oppression, often supported by the magistracy and the Attorney General. In Upper Canada, the movement for responsible government was closely intertwined with that to separate judges from politics. William Baldwin was the first to propose that, to remedy Upper Canada's evils, the judiciary must be excluded from the councils. Reformers endeavoured to get the judges out of politics, off executive councils, and out of legislative chambers, and simultaneously to uphold the political notion of judicial independence in a political and parliamentary way. These emerging principles of Liberalism by antecedent Liberals, then named Reformers, prevailed in our Constitution.

Honourable senators, Reformer William Lyon Mackenzie, York's member of the Assembly**,** grandfather of Liberal Prime Minister William Lyon Mackenzie King, in a petition and address to His Majesty, King William IV, adopted unanimously on July 16, 1831, in describing the ills said:

> ...for there is not now, neither has there ever been in this province, any real constitutional check upon the natural disposition of men in the possession of power, to promote their own partial views and interests at the expense of the interests of the great body of the people.

The address continued:

> The undue advantages thus possessed by persons in authority, open a door to the practice of bribery and corruption in every department of the state....

The address' recommendation 9 stated:

> That none of Your Majesty's Judges...be enabled to hold seats either in the executive or legislative councils, or in any way to interfere and concern themselves in the executive or legislative business of the province.

This was a huge problem. This address was published in Margaret Fairley's 1960 book, *The Selected Writings of William Lyon Mackenzie 1824-1837*. In 1832, in England, William Mackenzie met Whig Secretary of State for the Colonies, Lord Goderich. For this, the Tory Family Compact increased their attacks on Mackenzie.

Honourable senators, sympathy for the Canadian Reformers' constitutional positions had grown among British Whigs. Gerald Craig, in his 1963 book *Upper Canada: The Formative Years 1784-1841*, wrote:

> The reformers also complained of the presence of the Chief Justice in the executive council, and of his role as Speaker of the legislative council, and of the presence of other judges in the latter body. Sir Peregrine Maitland vigorously combatted reform accusations, but by 1831 Lord Goderich was prepared to concede the point.

The same problems pertained in Lower Canada, but it was the Upper Canadians who upheld judicial independence and responsible government. On February 8, 1831, the same Whig Secretary of State, Lord Goderich, in his instructions to the Governor in Quebec, stated:

> I am to signify to your lordship his Majesty's commands to communicate to the legislative council and assembly, his Majesty's settled purpose to nominate on no future occasion a judge either as a member of the executive, or legislative council of the province. Whatever reliance might be placed on the personal integrity of the judge, it is desirable that they should be exempted from all temptation to interfere in political controversies, and even from a suspicion of any such interference.
>
> The single exception to this general rule will be that, the chief justice of Quebec...

In Upper Canada, by 1834, Reformers were carrying public opinion and had begun to dominate the legislative assembly.

Honourable senators, the tragic rebellions in both Upper and Lower Canada unfolded in 1837. Whig Prime Minister Lord Melbourne sent Whig Lord Durham to investigate these affairs. The Baldwins, William and Robert, personally met with Lord Durham here in Canada and had a positive effect. In 1839, in Lord Durham's "Report on the Affairs of British North America," he recommended that:

> The independence of the Judges should be secured, by giving them the same tenure of office and security of income as exist in England.

Months later, December 7, 1839, and before the Union Act 1840 passed in Britain, Lord John Russell, the Colonial Secretary, instructed the new Governor General of British North America, Charles Poulett Thomson, later Lord Sydenham, to conduct affairs according to the constitutional principles of the not-yet-passed Union Act, saying:

> In our anxiety thus to consult, and as far as may be possible, to defer to public opinion in the Canadas on the subject of constitutional changes...

—- and —

> ...the settlement of a permanent civil list for securing the independence of the judges, and to the executive government that freedom of action which is necessary for the public good...

• (1410)

Honourable senators, a year later the Union Act 1840, uniting Upper and Lower Canada as the United Province of Canada, was enacted. Its clause L said:

> And be it enacted, That...all Duties and Revenues...shall form one Consolidated Revenue Fund...

Its clause LIII said:

> And be it enacted, That, until altered by any Act of the Legislature of the Province of Canada, the Salaries of the Governor and of the Judges shall be those respectively set against their several Offices in the said Schedule A;

The Schedule A listed the judges and the salaries. These events — the Union Act, plus Upper Canada's 1834 Act entitled An Act to render the Judges of the Court of King's Bench in this Province independent of the Crown, about appointing judges during good behaviour plus the Reformers ascendancy, epitomized in the Reform co-premiership of Robert Baldwin and Louis-Hippolyte LaFontaine's actions — founded the Judicature sections of Confederation's British North America Act, 1867, being Part VII, sections 96 to 101.

Upon Confederation, honourable senators, Prime Minister John A. Macdonald made himself the Attorney General and Minister of Justice, knowing well their importance and the difficulties. In fact, he himself drafted the 1868 Department of Justice Act.

Honourable senators, the first dominion act about judges' salaries was the 1868 Act respecting the Governor General, the Civil List, and the Salaries of certain Public Functionaries. From 1868 to 1906, judges' salaries were enacted by varied, disconnected and sundry individual statutes. Some of them even named the individual judges who were being remunerated. In 1906, the first comprehensive act was enacted as the Judges Act. Its long title was an Act respecting the Judges of Dominion and Provincial Courts.

Honourable senators, the post-Confederation Dominion Parliament chose to implement from section 100 the words "fixed and provided financially," not by Parliament's usual financial annual process, the Supply and Estimates process, but rather by direct charge against the Consolidated Revenue Fund; that is, by a statutory charge. Parliament's reason for this exceptional statutory charge versus the annual Estimates Supply practice was obvious. It was to avoid judges' salaries being motions for non-confidence votes, which could defeat a government or cause a ministry's resignation and force an election on the ever-thorny issue of judges' salaries. In short, it was to avoid a confidence vote by a member moving a reduction to the government's Estimates to reduce some judge's salary, perhaps because of a ruling that some particular member simply did not fancy. I would ask honourable senators to think about that: an election forced on the question as to whether or not judges should be paid $700,000 per year, plus pensions, plus cars and plus expenses.

The Hon. the Speaker: Senator Cools, I regret to advise you that your 15 minutes have expired. Are you requesting leave to continue?

Senator Cools: Yes, I am.

The Hon. the Speaker: Is leave granted, honourable senators, for a further period of five minutes?

Hon Senators: Agreed.

Senator Cools: Honourable senators, I had opposed a permanent Judicial Compensation and Benefits Commission. This commission is an unaccountable agency with quick access for certain chief judges to the Deputy Ministers of Justice, to the machinery of government and to the Consolidated Revenue Fund. This defeats the historical, moral and political purity of judicial independence and ousts the true parliamentary role in the fixing of judges' salaries. It deprives Canadians of their undoubted constitutional right to their representative parliament's control over the public purse in respect of judicial salaries.

Again, honourable senators, I shall cite a legal opinion by York University Law Professor Peter Hogg that is found in Martin Friedland's 1995 book *A Place Apart: Judicial Independence and Accountability in Canada*, which he wrote for the Judicial Council. This 1989 legal opinion was given to and paid for by the Canadian Judicial Council. It was about judges' attempts to bind Parliament to the judicial commission's recommendations by negative resolution and about the words "fixed and provided" contained is section 100 of the BNA Act. Professor Hogg wrote:

> ...the inaction by Parliament is insufficient participation in the process to enable one to say that the salaries have been fixed by the Parliament. It seems more natural to say that the salaries have been fixed by the tribunal, and left undisturbed by the Parliament.

Honourable senators, in conclusion, the current scheme of fixing judges' salaries excludes Parliament. It is unparliamentary and it is a constitutional vandalism. Proper respect for the justices is time honoured, grounded in constitutional comity and the proper constitutional relations amongst cabinet, the justices and Parliament, all fortified by judicial independence. Judicial independence is a constitutional convention, a political rule of political morality to guide the exercise of power by the constituent parts of the Constitution.

Proper respect and proper protection of the judges is best achieved by upholding the representative role of Parliament and its rights and duties in the protection of judges. Judges have made themselves judges in their own cause and in their own cases; mainly their salaries. It is unhealthy to any nation's Constitution that judges should determine their own limits and boundaries in law, as they have in their judgments on their own salaries.

Honourable senators, thank you for your attention. As I have said, I take no issue with the quantum or the fact of salary increases to judges in Bill C-12, but I do take strong issue with this very flagrant violation and exclusion of Parliament.

The Hon. the Speaker: Honourable senators, Senator Grafstein has requested the floor. I must advise honourable senators that if Senator Grafstein speaks now, his speech will have the effect of closing the debate on the motion for second reading of the bill.

Hon. Jerahmiel S. Grafstein: Honourable senators, I do not intend to deal seriatim with all the issues raised by the various speakers. It is my intention that we refer this matter to committee as soon as possible. At third reading, I hope to respond to some of the issues raised by my honourable friends that I think are contrary to the intent of the bill.

The Hon. the Speaker: Senator Grafstein having spoken, the debate is now concluded.

It was moved by the Honourable Senator Grafstein, seconded by the Honourable Senator Cook, that this bill be read the second time.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Grafstein, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

CANADA ELECTIONS ACT
ELECTORAL BOUNDARIES READJUSTMENT ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Banks, for the second reading of Bill C-9, to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act.

Hon. Donald H. Oliver: Honourable senators, I rise today to speak to the second reading of Bill C-9, to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act. At the outset, I wish to commend Senator Moore for his excellent exposition yesterday.

[Senator Cools]

Election law is an area in which I have had some experience over the last years. In six consecutive general elections starting in 1972, I acted as legal counsel for the federal Progressive Conservative Party, liaising with the Chief Electoral Officer, should problems arise over interpretations of various sections of the Canada Elections Act.

Prior to my appointment to the Senate, I was a member of what became known as the Lortie Commission on Electoral Reform and Party Financing, which was established after the 1988 general election to carry out a thorough review of the Canada Elections Act.

I mention that background only to illustrate that I do not come late to this subject and that I have witnessed changes to the Canada Elections Act being made in previous Parliaments. That is why this bill and its predecessor, Bill C-2 in the last session of the last Parliament, are so disappointing.

There was a time under the previous government and, indeed, under previous Liberal administrations when changes to the Canada Elections Act would not reach the floor of the other place for first reading unless the contents of the bill were unanimously agreed to by all recognized political parties. For that reason, when changes came to that vitally important act, they were usually far-reaching and implemented broad designs of public policy.

• (1420)

This, however, is not the practice of this government, which views the Canada Elections Act as a statute like any other; that is, amendments are brought to it without prior consultation and certainly without agreement of the parties most affected by the proposed changes.

I mention this only because I would have thought that the first piece of electoral legislation we would see in this Parliament would address the chaos caused by the use of the permanent electoral list in the 2000 general election.

The bill before us is today is fairly simple, designed primarily to address the decision of the Ontario Court of Appeal in what is known as the *Figueroa* case that yesterday was discussed in detail by Senator Moore. In that case, the Ontario Court of Appeal overturned the provisions of the Canada Elections Act, which required a party to have at least 50 candidates running in a general election before the party could be identified on that election ballot.

In the *Figueroa* case, the Communist Party of Canada argued that this provision benefited larger political parties and, by virtue of the same reasoning, discriminated against the smaller political groupings. The court felt that this contravened the Charter and could not be justified in a free and democratic society and thus failed what has become known as the *Oakes* test. The court, in making its ruling, decided that 50 was too high a figure, but did not indicate what the appropriate threshold should be in order for political parties to be identified on a ballot.

The Lortie commission addressed this matter in its report and recommended that the 50-candidate threshold be reduced to 15. This recommendation is quoted in the judgment of the Court of Appeal. The government has seen fit to reduce the figure of 15 to 12. Therefore, political parties are able to have their names printed under the name of their nominated candidate if the Chief Electoral Officer confirms the nomination of 12 candidates for that party at the close of nominations.

I look forward to discussions in committee on this subject so that we may hear from the government and the Chief Electoral Officer as to why the number 12 was chosen as the appropriate figure to be contained in Bill C-9.

Honourable senators should know that the level of 50 candidates was lowered to 12 in relation to putting the name of a political party on the ballot. There are many other matters in the Canadian Elections Act for which the requirement of 50 nominated candidates still applies.

The Supreme Court of Canada has agreed to hear an appeal by the Communist Party of Canada. In this appeal, this party will argue that the continuation of the 50-candidate threshold is contrary to the Charter of Rights and Freedoms in relation to other matters, such as the issuing of federal tax receipts for fundraising. Hence, we may see other amendments to the 50-candidate rule before the end of this particular Parliament.

Honourable senators, this bill also deals with a number of issues that could be termed housekeeping matters and therefore of a non-controversial nature. There is, however, one housekeeping item that I wish to highlight now, and I will wait until we get to committee stage to discuss it in more detail. This is also an issue that was raised in the other place by the Progressive Conservative member from Pictou—Antigonish—Guysborough.

This bill purports to amend the Canada Elections Act to reflect the fact that the courts have held that the blackout period, in which broadcasters are expressly excluded from making free and paid time available to candidates and registered parties, must be reduced to polling day only. In other words, the blackout period is to be restricted to polling day — the day of the election.

I believe, as did my colleague in the other place, that the wording of clauses 17, 18 and 19 could be interpreted as including the day before polling day as part of the blackout period. If this interpretation is correct, the changes proposed in this bill will not be accomplished as planned. I hope this matter can be clarified in committee. If not, we may bring an amendment in an attempt to make these clauses crystal clear.

Returning to my opening theme, it is unfortunate that changes to the Canada Elections Act are developed and introduced without prior consultation. Perhaps if the government employed a different strategy, it might find agreement on changes to the act that would require full financial reporting by riding associations. Honourable senators will recall that I raised this issue the last time the Elections Act came before this chamber. There might be an agreement on changes to the definition of election expenses, changes that would reflect the reality of spending during an election campaign.

Honourable senators, I look forward to discussions in committee in relation to what is in this bill and what has been omitted from this bill. I especially look forward to receiving an explanation as to why the permanent elections list failed us so badly in the last general election.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Moore, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

[*Translation*]

MOTOR VEHICLE TRANSPORT ACT, 1987

BILL TO AMEND—COMMITTEE REPORT ADOPTED AS AMENDED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Transport and Communications (Bill S-3, to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts, with amendments) presented in the Senate on May 3, 2001.

Hon. Lise Bacon: Honourable senators, as part of its study of Bill S-3, the Standing Senate Committee on Transport and Communications heard several witnesses, including the Minister of Transport, representatives of several organizations with a direct interest in motor vehicle transport, shipping groups, Transport Canada officials, and even an individual who had worked as a trucker.

The purpose of Bill S-3 is to substitute safety for economic regulatory aspects as the central theme in the Motor Vehicle Transport Act. Generally speaking, responsibility for extra-provincial motor vehicle transport continues to lie with the provinces, but the issuing of safety certificates required by the carriers in question will depend on an appropriate level of compliance with the National Safety Code, a standard with 15 parts covering certain aspects of the operation of commercial vehicles and developed jointly by the provinces and territories and the federal government.

[*English*]

Committee members proposed three amendments. The first amendment concerns proposed section 16, which is the authority to make regulations for the attainment of the objectives of this bill. The proposed change restores the language used in the existing act. This change adds to section 16(1)(*d*) of the act the words "and the provision of information." The government should be able to have access to the information. It makes clear in the regulatory powers that information related to safety is under the purview of those powers. That is why the amendment was proposed.

The second amendment was made following two committee concerns that the time frame for the implementation of the standards of the National Safety Code is falling short of what some provinces have promised to do. Although the bill contains measures to encourage provinces to be vigilant in this matter, things are clearly falling behind schedule. This concern is reflected in the amendment the committee has made to the bill by adding proposed section 25, which calls for annual reports of commercial vehicle accident statistics to be made by the minister to Parliament.

The final amendment to Bill S-3 is that a comprehensive review be tabled in Parliament prior to the expiry of the fifth year after the enactment of the legislation. Already included in the bill is the provision that the minister shall make the report available to the ministers responsible for transportation and highway safety.

• (1430)

Further to Senate committee discussions, it seemed desirable that the report be tabled in both Houses of Parliament, which is why we amended the report in this regard and added a third paragraph to clause 26.

[*Translation*]

I should like to thank sincerely the members of the Standing Senate Committee on Transport and Communications for the serious work they did during consideration of Bill S-3. The observations and comments bear witness to the seriousness of our work.

Senator Spivak had sought another amendment with respect to clause 9, which the other members of the committee rejected.

Clause 9 provides that the minister may withdraw the provinces' power to issue safety fitness certificates, if he or she is satisfied after consultation with the provinces that a provincial authority is not acting in accordance with the law.

The Council of Ministers for Transport, both federal and provincial, meets and has a mandate to ensure that the provinces comply with the code's standards, in clause 9. In this context, how can the amendment be justified?

[Senator Bacon]

The provinces have already agreed on establishing a national safety code and realize they have to apply it in their own territory.

The intent of Senator Spivak's amendment would perhaps be interpreted by them as federal government interference in provincial jurisdictions, and we know how sensitive the provincial ministers are in this regard.

[*English*]

It has been brought to my attention that a clerical mistake was made in the English version of the report that was presented last week; namely, a word is missing. That word is "separately."

With leave of the Senate, I ask that the report be amended in the English version of the second amendment by adding in paragraph 25(2)(*a*) the word "separately" after the word "reported." This is the amendment that was adopted by the committee, as correctly reflected in the French version of the report. It should read as follows:

> ...reported separately for bus undertakings and truck undertakings; and

MOTION IN AMENDMENT

Hon. Lise Bacon: Therefore, honourable senators, with leave of the Senate, I move, seconded by Senator Maheu:

> That the Report be not now adopted, but that it be amended, in the English version, in amendment No. 2, by adding, in paragraph 25(2)*(a)*, the word "separately" after the word "reported".

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion agreed to.

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

Hon. Senators: Agreed.

Motion agreed to and report, as amended, adopted.

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

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

PERSONAL WATERCRAFT BILL

SECOND READING—DEBATE ADJOURNED

Hon. Mira Spivak moved the second reading of Bill S-26, concerning personal watercraft in navigable waters.

She said: Honourable senators, Bill S-26, which was placed before you last week, is about personal watercraft, or PWCs, more commonly known by their trade names as Jet Skis or Sea-Doos. For those not familiar with them, they are small, high-powered jet-driven machines that people ride like a snowmobile on the water.

In brief, the bill would allow municipalities, cottage associations and other bodies to place restrictions on PWCs on designated lakes, rivers or portions of coastal waterways. It would also allow local authorities to ban them entirely where they pose an inordinate hazard to safety, to the environment or to the peaceful enjoyment of federal waterways, which is any navigable water.

The bill would not ban personal watercraft everywhere, as Switzerland has done. It would not ban them from all national parks and recreational areas, as the U.S. National Park Service has agreed to do. The bill is, in effect, a compromise, something more amenable to the Canadian way of approaching problems.

At the heart of it are two principles: the principle of choice and the principle of local control. It would allow owners or renters of personal watercraft to continue to use them in areas where they are welcome. It would give local authorities, the people who best know their area, the control to decide where restrictions are needed.

When my office began contacting local authorities last fall to determine their thoughts about this approach, the response was one of overwhelming support. Municipalities and cottage associations from British Columbia to Newfoundland said they wanted and needed this action by Parliament to deal with local problems caused by PWCs.

The bill is supported in principle by all 141 municipalities in British Columbia; by half the rural municipalities in Alberta; by the Union of Nova Scotia Municipalities; by the Newfoundland and Labrador Federation of Municipalities; by the Manitoba Association of Cottage Owners, with its 60 member associations that represent more than 9,000 cottagers in my province; by FAPEL, a Quebec federation of cottage associations; by the Alberta Summer Village Association; by the Prospect Lake and District Community Association on Vancouver Island, which has already put a PWC ban in place; by the Sierra Club of Canada; and by scores of individuals who sent letters and e-mails when they read about the bill in their community newspapers.

In February, before we had the final draft of the bill, we received a letter from the Township of Archipelago in Parry Sound, the heart of Ontario cottage country. Attached was Resolution No. 01-018, which states:

> Whereas it is of concern to the township that there is a growing inability to manage users of water resources and it recognizes that certain water use issues may fall outside the jurisdiction of local municipalities but are not presently appropriately regulated by the federal or provincial governments;
>
> And whereas a number of Canadians nation-wide have voiced their concerns with respect to the increasing problems of noise pollution, nuisance levels, environmental pollution and harm to wildlife caused by personal watercraft on Canadian waters;
>
> And whereas Senator Mira Spivak is proposing to introduce legislation in the next session of Parliament which, if passed, would give elected local authorities the means to place restrictions on the use of personal watercraft on lakes, rivers or portions of coastal waters;
>
> Now therefore be it resolved that Council supports Senator Mira Spivak's proposed legislation.

I am tempted to rest my case. Resolution number 01-018 says it all in the words of people who have to deal with problems summer after summer. Among the individuals in support are boating safety officers of the Canadian Coast Guard and a marine enforcement officer of the Ontario Provincial Police. They cannot speak for their organizations, but they know firsthand what the problems are and favour this solution.

• (1440)

Not everyone we contacted favoured this approach. As expected, personal watercraft manufacturers are not in support. They believe that it is untrained drivers, not their machines, that cause the problems and that education can solve everything. That was the approach adopted by a cabinet committee in 1994. In fact, the Canadian Coast Guard had drafted regulations that would have made this bill redundant. Communities in Quebec and British Columbia wanted the right to restrict PWCs; the Coast Guard responded with new proposed regulations. The cabinet committee, however, rejected the option. It was rejected in good faith, I believe, but on the erroneous assumption that boating education could solve all the problems. Cabinet told the Coast Guard to go back to the drawing board to devise new safety regulations for all types of pleasure craft in respect of equipment, boating safety training and the age of boat and PWC operators. Now, no one under 16 years of age can drive these powerful machines.

This approach was advanced by the personal watercraft manufacturers, who, to their credit, contributed financially to boating programs. It was also an approach that held that personal watercraft were not unique, and that it was somehow discriminatory to allow local committees to restrict them, while allowing larger power boats on lakes and rivers.

Three things can be said at this juncture. First, the educational approach has not worked; the problems have not gone away. Second, personal watercraft are unique, both in their design and the way in which they are used as a "thrill craft." Third, it is no more discriminatory to regulate the activity of PWCs than it is to regulate the activity of waterskiing or boardsurfing, which are currently allowable through the Boating Restriction Regulations.

Some municipalities said that PWCs were not a problem in their areas, and some took no position. A few organizations feared that we would be setting a precedent by allowing restrictions on one type of activity. I submit that what we would be doing is no different from the more than 2,000 Boating Restriction Regulations in place across the country that have allowed communities and cottage associations to restrict all power boats, set speed limits or restrict the hours of waterskiing.

Local authorities that strongly favour this approach want it because they know that boating safety courses and age restrictions have not been sufficient. They want the choice to restrict personal watercraft where residents agree that they are clearly hazards to safety, to the environment, or to the peaceful enjoyment of their lakes.

Restrictions could take the form of limiting the hours of use to allow people who have PWCs to use them, for example, in the early afternoon on a lake, but to disallow the use of them in the early hours of a peaceful Sunday morning. They may agree to allow them on a portion of a large lake or river, but to disallow them near swimming and picnic areas, or where waterfowl nest. They may set speed limits, or define the distance that PWCs must maintain from shore, from canoes or from other boats. These are all reasonable measures that this bill contemplates.

I have referred to the problems of PWCs repeatedly. I want to briefly outline them. First and foremost are the deaths, injuries and rescue operations that result when these high-powered machines collide with others on the water or with rocks, or they become stranded offshore. Four years ago, in Quebec, a four-year-old child and an eight-year-old child died in a PWC collision. They were with their grandfather in an inflatable dinghy on Chambly Basin when a rented PWC ran right over them. The driver was a 20-year old woman, and her boyfriend had rented the machine. The rental operator was very cautious in that he refused to rent to anyone under 21 years of age; he set distance limits from shorelines and from other boats; and he forbade passengers to take turns driving. The young woman was driving this powerful machine that, at half-throttle, travelled 44 kilometres per hour. The result was the death of two children.

In Manitoba, on a lake where I vacation, a young man was decapitated in a PWC collision. A letter from Barrie, Ontario, told us of a six-year-old boy who had both legs broken, and I have others. These are not isolated incidents. An extensive review of PWCs in the United States found that several years ago they made up 9 per cent of all registered boats, but were involved in 26 per cent of all boating accidents and 46 per cent of all boating injuries.

Boating safety training will go some way to reducing this toll, but it is important to remember that PWCs are primarily "thrill craft." People ride them for the fun and the thrill of speed. There will always be thrill seekers whose courage is greater than their skill or judgment. It makes sense to keep them away from swimming areas, shorelines or other areas frequented by canoes, dinghies or other vulnerable craft. Education can no more curb the impulse of some people to go for the thrill of dangerous manoeuvres than driver education can stop drag racing on country back roads. Too often the tragic result is that the thrill seeker on the PWC is not injured or killed, but others, who happen to be in the water, are.

The pollution from PWCs is nothing short of astounding. The majority are powered by two-stroke engines. The U.S. Environmental Protection Agency estimates that up to 30 per cent of the fuel in these engines is discharged unburned directly into the water. With fuel consumption rates of up to 10 U.S. gallons per hour, one PWC can discharge 50 to 60 gallons per year, based on less than one hour of use per week.

The exhaust emissions also cause air pollution. The emissions from one 100 horsepower PWC, driven for just seven hours, is equivalent to the emissions from a passenger car driven 160,000 kilometres. Just one hour of PWC use generates as much smog-forming pollution as a passenger car generates in one year.

These facts have been recognized by governments in Canada and the U.S. and by the manufacturers of marine engines for PWCs. All have agreed to reduce emissions over time, but that is small consolation for people living on shallow lakes or in other areas where pollution is an increasing problem. They have to live with the PWCs that people now own. Lake Tahoe, in the United States, has banned all PWCs because of the amount of pollution in water.

The threat to birds that nest on the shore or lake, to marine mammals and to loons has also been well documented. In fact, loon chasing is something of a sport for some PWC drivers.

Similarly, noise is a well-recognized problem. Wildlife or people just 100 feet away from a PWC will be exposed to approximately 75 decibels, which, because of rapid changes in acceleration and direction, may be more disturbing than a constant sound of 90 decibels.

The American Hospital Association recommends hearing protection for occasional sounds above 85 decibels. When they travel in packs, as they often do, the noise from PWCs is multiplied. Here too, PWC manufacturers know that they have a problem, and they have begun to put less noisy models on the market. Again, people will have to live with the noise that older models produce — machines that were purchased years ago for several thousand dollars. In some cases, people have moved to escape the noise. Among the many letters that I received, was this story:

> The best times of my life were the quiet times in a canoe at dawn or at dusk in a bay. Just like the atomic bomb put an end to the way we see the world, so did the advent of the PWC change our way of finding relaxation. Three neighbours' teens playing tag on PWCs for hours on end with their parents looking on was for us the signal. Times had changed. We moved away from the water and found peace once again in a clearing in a forest.

Here is another letter from a man living in the Manotick area.

> I am a victim of these insidious machines. For twenty years or so, I was the happy owner of a cottage (in Quebec) which I considered the closest thing to paradise on earth. A week would rarely pass without a trip to the cottage. However, for the past 7 years or so, we rarely go there. The sole reason why we no longer go to the cottage is the noise and danger from Sea-Doos.

I mentioned at the outset that one community, Prospect Lake on Vancouver Island, has already banned PWCs through a noise bylaw that has been in place since 1996. The District of Saanich that approved it received the opinion from the Canadian Coast Guard and from a representative of Bombardier, the manufacturer of PWCs, that municipalities do not have the legal right to impose restrictions on PWCs. They agreed to disagree.

• (1450)

The solicitor for Saanich relied on a B.C. Court of Appeal decision, but admits that that bylaw has always been on shaky ground. It has not been tested in the courts. However, many other municipalities that want to act have been dissuaded by the legal opinions to the effect that only the federal government can restrict activity on navigable waters. As a result, they have done nothing.

When residents of Prospect Lake, which is a very small lake, approached their council they were asked to provide evidence of consensus. A telephone survey of 185 residents showed that more than 80 per cent opposed PWCs on that small lake. The Saanich council heard from witnesses and received a letter from the association president, which stated:

> Since we do not tolerate motorcycles speeding around the beach or picnic tables in our parks why is anyone surprised when the general public views Jet-Skis, or "personal watercraft" speeding around in the water as intolerable?

Another witness runs a PWC rental operation on a neighbouring lake, Elk Lake, which is three times as large as Prospect Lake. It has few permanent residents. The national rowing team trains on Elk Lake. Saanich council has not received a request to restrict them on Elk Lake, so there are differences.

This bill would follow the Saanich model. It would sort out at the local level where PWCs are welcome. The bill would require the local authorities to submit proof of consultation when they forward their resolutions for restrictions to the Minister of Fisheries and Oceans. Bill S-26 would allow the minister to deny those resolutions when they impede important considerations of navigation, and it would also exempt law enforcement officials.

In short, Bill S-26 is a reasonable solution. The Saanich bylaw allows for a ticket to be issued to anyone who uses a PWC on Prospect Lake. None has ever been issued. Residents distributed literature and politely talked to people offloading PWCs at the boating ramp. In those cases, individuals left quietly. On occasion police have been called when PWC drivers were on the lake. Warnings have sufficed to prevent them from returning.

Boating safety education has not solved the problem. It is time for Parliament to give communities the choice and the local control that they need to deal with PWCs. I hope that honourable senators will support this bill.

Hon. Tommy Banks: Will the honourable senator entertain a question?

Senator Spivak: Certainly.

Senator Banks: The honourable senator gave a long list of people who have subscribed to this bill and support the banning of PWCs. I should like to suggest another national organization that I know would be happy to sign on, and that is the Alliance Party of Canada. I am certain that they would be delighted to support the PWC ban. Would the honourable senator entertain the idea of an amendment that would preclude and disallow leaders of all political parties from using them?

Senator Spivak: I thank the honourable senator for his question. There could be a connection here. It might well be that the reason for the current difficulties encountered by one political leader is his support of the use of Jet Skis.

Hon. Bill Rompkey: Honourable senators, I have a brief question as well. I noticed that Senator Banks did not want to ban the wetsuits because, of course, some people use those for other purposes. However, I concur with the honourable senator.

I wish to ask another question. Although I support the principle, I wondered about enforcement. I missed some of Senator Spivak's speech and I apologize for that. I understand that the federal government has some rights here, but I know of cases where local associations on lakes have tried to impose these bylaws and, apart from the question of jurisdiction, there is the question of enforcement. How do you enforce a law like that once it is in place? The real difficulty is getting someone with a police presence to actually do something about the problem.

Senator Spivak: Honourable senators, all navigable waters are under federal jurisdiction, but I believe the way it works is that enforcement is put in the hands of the local police or the RCMP. I am not sure whether that is true in every province, but I believe that is the way it is handled.

The question of enforcement is a question for all laws. They are difficult to enforce. Experience has shown that once these laws are in place — and the same with boating regulations — people tend to follow the law. The question of increased boating activity is a serious one for PWCs, particularly in places like Ontario. Bill S-26 would do the most good on small and shallow lakes, where there are already many restrictions. I know of a lake called Hunt Lake, where no motors are allowed because it is a very tiny lake. Only canoes and rowboats are permitted there. I believe the question of enforcement is a provincial matter.

Hon. Roch Bolduc: Did the honourable senator contact Bombardier to find out whether there is any technological possibility for something less noisy?

Senator Spivak: Honourable senators, all the personal watercraft manufacturers are trying to make a less noisy machine. I have not talked to Bombardier, but I am on deck to speak with them. As well, Hill and Knowlton is very interested in talking to me. I hope there will be an occasion, if this bill goes to committee, as I hope it will, for their representatives to come before the committee.

Senator Bolduc: Do you have another project for motorbikes?

Senator Spivak: Not right now.

On motion of Senator Finnerty, debate adjourned.

[*Translation*]

BILL TO MAINTAIN THE PRINCIPLES RELATING TO THE ROLE OF THE SENATE AS ESTABLISHED BY THE CONSTITUTION OF CANADA

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Corbin, for the second reading of Bill S-8, to maintain the principles relating to the role of the Senate as established by the Constitution of Canada.—(*Honourable Senator Prud'homme, P.C.*).

Hon. Marcel Prud'homme: Honourable senators, I will vote in favour of this bill without any hesitation. I spent part of last weekend examining four bills on which I should like to speak, one of them being Bill S-8.

Senator Joyal and other senators who have spoken to this bill have been very clear in their presentation. I have read the bill carefully and understood it, I hope, and have nothing specific to point out.

When I agreed to sit in the Senate, I knew that I would be in a Chamber equal to the one I was leaving, with a few rare exceptions such as amendments to the Constitution, where our power had a six-month limitation, as well as the two other examples Senator Joyal has been so kind as to present.

[Senator Spivak]

The main reason I wanted to speak now was not out of any ill will, but to give a historical overview of the debates on the clarity bill.

I find it extraordinary to reread what various senators have said, Senators Grafstein and Joyal in particular, because they will recall I was an enthusiastic supporter of their amendment to Bill C-20.

• (1500)

Why would I continue to sit in the Senate if only the House of Commons can make laws as it sees fit?

Since I will probably be the last speaker — I know that you wish to proceed fairly quickly — I will skip all my annotations on the speeches already given on this topic.

I find it strange that senators praised Senators Joyal and Grafstein. People probably did so out of friendship, because we live in a sort of monastery. We have to live together until the age of 75, so we should not be too hard on each other. The compliments paid Senators Joyal and Grafstein — and deservedly so — on Bill S-8 reminded me of the debate on Bill C-20, when these same senators moved an amendment to protect the Senate. You will recall that I have no notes.

[*English*]

I say that for the new senators. We are 105 senators. Without any notes, I can tell honourable senators that the vote on that amendment was 50 against, 46 in favour and 3 abstentions. That makes 99. The Speaker did not see fit to vote, so that is 100. There were two vacancies, so that is 102. One senator was on standby in his office, a very charming man, Senator Ruck. I think he would have come to vote if need be, but he was in his office. Two senators missed their planes — Senator Sparrow and Senator Carney. That would have made 105. One can see the division in the Senate.

Of course, the masters of the political institution who happen to not sit here had decided that this bill had to pass without amendment. It was a sad day in my life. I recovered, of course, as I always do, but it was a sad day. We refused ourselves what we so enthusiastically are ready to accept today. I just wanted to remind senators about that.

I will have a longer speech at third reading, point by point on everything that has been said. At least Senator Christensen had logic. She abstained on the bill because she did not like certain aspects of it. The other issue was the protection of the First Nations.

[*Translation*]

What we call — and I do not like this expression — francophones outside Quebec voting against their own interests... I am still talking about Bill C-20, because I hope that Senator Joyal, who is listening to me, will agree that I am on the same wavelength as he is on this issue. In fact, they have already won. If memory serves me right, I even think that the Supreme Court sided with them on another issue.

I find it strange that, all of a sudden, some senators are so enthusiastic. I regret that. I will not name these senators for reasons of charity and friendship, but I find everything I read — and I read everything — strange.

Today I am joining those who support this bill. It will be considered carefully in committee. We may have some additional comments to make at third reading. I regret that we did not seize the opportunity, when it was given to us by Senators Joyal and Grafstein, to take a stand to protect the Senate.

In their remarks, Senators Joyal, Grafstein, Christensen, Beaudoin and Cools clearly said that, here in the Senate, we should not hesitate to protect this great institution, Parliament.

[*English*]

Imagine. Last night I attended a Baltic meeting. A minister of the Crown was in attendance, whose name I will not mention because it is not necessary. The minister said, "I am very pleased to see again tonight so many members of Parliament and a few senators." I will continue to object.

Some honourable senators belong to parliamentary associations. This weekend, I know that Senator Grafstein will be participating in the Canada-U.S. group. You see what happens when I do not talk about a certain subject? I happen to be in agreement most of the time with Senator Grafstein. The only matter is the other question that is troubling Mr. Day these days. I will come back to that in a special debate.

Senator Grafstein is going with the Canada-U.S. group, and he will remember that I wrote two reports at the request of the two Speakers. I said that if we were to abolish all parliamentary associations, there is one that should remain, and it is Canada-U.S., even though I have only been with the group once. Keep me in mind if someone drops out. I am interested in Canada-U.S. relations because they are the most important for our own interests.

Another group is chaired very ably by Senator Finestone, so she can also enter the debate. We have other chairmen of committees here. They should pass the word around that Parliament is not members of Parliament and senators. All of us here — and I look at Senator Kinsella and other senators — are members of Parliament, but senators. I would repeat for the benefit of new senators that we should correct people when they say things like what I heard last night.

Mr. Clerk, please tell your staff that when they make reports — and I am not blaming you; you are an excellent clerk — they should not say that five members of Parliament attended the meeting plus three senators. They should say that eight members of Parliament attended the meeting last night, five members of the House of Commons and three senators.

The Baltic meeting last night was presided over very ably by Senator Andreychuk, but now I am getting away from speaking to Bill S-8. I see His Honour smiling, and he is about to call me to order.

I am very pleased that Senator Joyal and Senator Grafstein saw fit to prepare a very serious bill so that members of the Senate will remember that at times it is not wrong to show a little more independence. That is what Canadians expect from us. They do not expect the Senate to be a rubber stamp. They want more independence from us. As Senator Joyal and others have said, the Fathers of Confederation created two Houses of Parliament because they were afraid of the domination of one.

• (1510)

I remind honourable senators that when Canada was created, as we know it, there were 72 senators.

There were 24 for Quebec — and forget Quebec if it makes you dizzy. There were 24 for Ontario and 24 for the Atlantic. Divided in two, that means 12 for Nova Scotia and 12 for New Brunswick. Not many people remember that. When P.E.I. joined, they did not add senators, they took off two from Nova Scotia and two from New Brunswick. In that way, it became 24, always having in mind the equilibrium.

When the four Western provinces were created, they were given 24 seats, always keeping in mind equilibrium. Then we started losing sight when Newfoundland joined. That is when we totally lost the balance. Instead of taking some seats away from the 24 existing seats in the Atlantic, they added six. After that, one was added for the Northwest Territories and eventually one for Yukon, which brings us to today's 105.

We have a mission. All senators, very strangely now after the sad debate we had on Bill C-20, agree, and rightfully so, with what Senators Grafstein and Joyal are trying to put to us today. How can I disagree? I have lived with them in difficult circumstances. I am certainly in favour of sending this bill for further study. I thank them for having put the matter before us. I thank all senators who have participated in the debate because, very strangely, they were all in favour of the bill. I will now watch to see if, unanimously, we will send this bill to committee for further study. I hope that I can find the time to go and listen, not to participate, but listen to the views of the very excellent members of the Standing Senate Committee on Legal and Constitutional Affairs so ably chaired by Senator Milne.

Today is my day to be nice. I must have something else in the back of my mind. I am very happy to have participated in the debate. I do not wish to take questions. I am supposed to be the last speaker on this bill. I thank honourable senators. I look forward to seeing you in committee.

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question!

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Joyal, bill referred to the Standing Committee on Privileges, Standing Rules and Orders.

EMPLOYMENT INSURANCE ACT EMPLOYMENT INSURANCE (FISHING) REGULATIONS

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Cordy, seconded by the Honourable Senator Chalifoux, for the third reading of Bill C-2, to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations,
>
> And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Stratton, that the Bill be not now read a third time but that it be amended in clause 9, on page 4, by deleting lines 14 to 20.

The Hon. the Speaker: Honourable senators, it being 3:15 p.m., pursuant to the order adopted by the Senate on Tuesday, May 8, 2001, it is my duty to interrupt the proceedings for the purpose of putting the deferred vote on the motion in amendment of Senator Murray, seconded by the Honourable Senator Stratton.

Pursuant to rule 66(3), the bells to call in the senators will be sounded for 15 minutes.

Call in the senators.

• (1530)

Motion in amendment of Senator Murray negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Andreychuk	Kinsella
Angus	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Buchanan	Nolin
Cohen	Oliver
Comeau	Rivest
Di Nino	Rossiter
Doody	Spivak
Forrestall	Stratton
Johnson	Tkachuk— 25
Kelleher	

NAYS

THE HONOURABLE SENATORS

Austin	Kenny
Bacon	Kirby
Banks	Kolber
Bryden	Kroft
Carstairs	Losier-Cool
Chalifoux	Maheu
Cook	Mercier
Cools	Milne
Corbin	Moore
Cordy	Morin
De Bané	Pearson
Fairbairn	Pépin
Ferretti Barth	Poulin
Finestone	Poy
Finnerty	Prud'homme
Fitzpatrick	Robichaud
Fraser	Roche
Furey	Rompkey
Gauthier	Setlakwe
Gill	Stollery
Grafstein	Taylor
Graham	Tunney
Hervieux-Payette	Watt
Hubley	Wilson — 49
Joyal	

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: The question, honourable senators, is on the motion of Senator Cordy, seconded by the Honourable Senator Chalifoux, for third reading of Bill C-2, to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations.

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

Some Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate, I move that all items on the Order Paper stand in their place until the next sitting of the Senate.

[*English*]

The Hon. the Speaker: Is that agreed, honourable senators?

Hon. Senators: Agreed.

The Senate adjourned until Thursday, May 10, 2001, at 1:30 p.m.

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