CANADA

Debates of the Senate

2nd SESSION • 37th PARLIAMENT • VOLUME 140 • NUMBER 76

OFFICIAL REPORT
(HANSARD)

Tuesday, September 23, 2003

THE HONOURABLE DAN HAYS
SPEAKER

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(Daily index of proceedings appears at back of this issue).

Debates and Publications: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate
Available from Communication Canada – Canadian Government Publishing, Ottawa, Ontario K1A 0S9.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Tuesday, September 23, 2003

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

Prayers.

NEW SENATOR

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that the Clerk has received a certificate from the Registrar General of Canada showing that the Honourable Mac Harb has been summoned to the Senate:

INTRODUCTION

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

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

Hon. Mac Harb, of Ottawa, Ontario, introduced between Hon. Sharon Carstairs, P.C., and Hon. Jean-Robert Gauthier.

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

• (1410)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, today we welcome with pleasure our newest member of the Senate chamber, the Honourable Mac Harb. Many senators know Mac from his work on behalf of his constituents in the Ottawa area. Before his election to Parliament, he worked in the private sector and served for a time as Deputy Mayor of the City of Ottawa.

While Senator Harb has earned the respect and admiration of the Lebanese community here, he is perhaps better known for his enthusiastic admiration of Canada as his adopted country. We are happy to have a member of such spirited patriotism among our ranks, and we welcome you, Senator Harb.

Hon. Senators: Hear, hear!

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, on behalf of my caucus colleagues and myself, I too welcome our new colleague and wish him well in his new responsibilities. The arrival of another former member of the House of Commons — in this case who also has some municipal experience — led me to do a little research, which I believe will be of interest to honourable senators and to members of the other place, too.

Out of 101 sitting senators in this place today, 24 were elected to the House of Commons, while two were unsuccessful candidates. Thirteen senators have served provincially and territorially, while one was unsuccessful provincially; and 11 senators have been elected at the municipal level, including Senator Harb. Is it any wonder, then, that the Senate has more legislative experience than any elected body in Canada?

There is a continuity of experience here that is unique and constant because rare are those who are tempted to leave this place voluntarily. Of the 855 senators named since Confederation, only 12 resigned to run for election and only four were successful. Senator Carstairs will remember that one of those unsuccessful senators happened to be her predecessor.

Many conclusions can be drawn from this, and mine is a simple one: Participation in the Senate is unique and enriching. Particularly, despite all the naysayers, the Senate is a place where one can individually make direct and recognizable contributions to the legislative process, something which the stifling atmosphere in the other place seldom allows and which Senator Harb will no longer have to put up with. I wish him well in his new responsibilities.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, as they put it so well in Quebec, "Je me souviens." I remember the time I spent in the House of Commons with Senator Harb. It was my final term there, and his first. I wish to add to what Senators Carstairs and Lynch-Staunton have said.

[*English*]

We have among ourselves not only senators with great experience, but the only woman ever elected leader of a party and who went on to be elected as premier of her province. I am talking about Senator Callbeck. We also have among us the former Leader of the Liberal Party of Manitoba, Senator Carstairs.

We are quite a bunch of unique people. What Senator Lynch-Staunton has said should be repeated all the time because there is a lot of experience in this place, experience that is unfortunately not always well used. Honourable senators will see in my speech on parliamentary associations, pertaining to Russia and other places, that our experience is not always well used. However, given the sagacity and experience of Senator Harb, we may see a change marked by more aggressiveness. We must use the talent of every senator to serve one thing only.

[*Translation*]

He will serve Canada, that country which — to quote someone who is soon going to be leaving us — is one of the best countries in the world, and he will serve it well.

[*English*]

SENATORS' STATEMENTS

THE LATE RIGHT HONOURABLE LORD WILLIAMS OF MOSTYN

TRIBUTES

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise to remember and pay tribute to the Right Honourable Lord Williams of Mostyn, Leader of the House of Lords, Lord Privy Seal and a recent visitor to this house.

Lord Williams will be remembered for his many accomplishments as a successful barrister, Attorney-General, and then as the Leader of the House of Lords. He was heralded as the reformer of the House of Lords and will be remembered, as Tony Blair said, as a fine politician with excellent judgment.

Many in that place will remember him for his wisdom and excellent advice. However, I also recall him as the teacher. Indeed, his father was a teacher at the local village church school and later started the first Welsh-speaking state school.

Lord Williams followed in his father's footsteps. He went to public schools and won a scholarship to Queens' College, Cambridge, where he read history. He returned to North Wales and taught secondary school before going on to law.

Last year, I was honoured to organize a visit for his Lordship to my province of New Brunswick so that Lord Williams could see firsthand how Canada's only official bilingual province worked. He met with the Speaker of the New Brunswick legislature, as well as representatives of the school system and people in general, about living with two languages. The purpose of his mission was to see what information and technology could be brought back and applied in his native homeland, Wales. It was a genuine demonstration of his dedication to his first language.

Throughout his life, Lord Williams retained strong links with Wales. He became Pro-Chancellor at the University of Wales, Fellow of the University College of Wales in Aberystwyth, an Honorary Professor of the University College of North Wales, and was also President of the Welsh College of Music and Drama.

Over and above these accomplishments, Lord Williams was most noted for his strength of character. In tributes made by members of the British Parliament, including comments made by Prime Minister Tony Blair, words such as "spark, twinkle, witty and warmth" were consistently used. His contributions were plentiful, both in word and in deed, and I am sure that his presence will be greatly missed and mourned as he now surely rests with St. David, the patron of his beloved Wales.

There is an expression in Welsh which means good night, but it is also used when saying your final goodbyes when someone is dead or dying. I use it now in honour of a man who believed with all his heart in the viability of the Welsh language and promoted it throughout his life: "nos da."

Hon. Dan Hays: Honourable senators, I should like to join my colleague in paying tribute to the late Lord Williams of Mostyn, who left us suddenly on Saturday of an apparent heart attack at his Gloucestershire home.

[*Translation*]

Held by many to be a brilliant lawyer, whose logic and radical views were tempered by his quick wit, he was appointed leader of the House of Lords in June 2001. He quickly won the respect of colleagues in all parties with his congeniality, keen intellect and concern for the public good.

[*English*]

I, too, had the good fortune of meeting Lord Williams several times — both here in Ottawa and in his office at Westminster, on which occasion I was with the Honourable Peter Milliken. I was with him, as well, for the inauguration of Argentinean President Néstor Kirchner.

In my view, Lord Williams personified the ideal parliamentarian. He was intelligent, informed, persuasive and was possessed of a manner and a sense of humour that put one at ease while, at the same time, requiring the highest level of attention to matters at hand. Committed to reforming the House of Lords, he was also a man of great principle who believed in the need for reinforcing parliamentary review mechanisms, eradicating child abuse, promoting the Welsh language — as has been observed — and helping women achieve more equal representation in Parliament.

[*Translation*]

A man of great vigour and life-long enthusiasm, his passing came as a shock to those who knew and admired him. We can take comfort in remembering his remarkable and lasting contribution to his party, to his country, and particularly to Parliament.

[*English*]

Honourable senators, in joining with Senator Kinsella and perhaps others, I know I speak for us all in expressing heartfelt condolences to Lord Williams' wife, children, friends and parliamentary colleagues.

• (1420)

Hon. Lorna Milne: Honourable senators, I also rise to note the passing of a true friend of the Senate of Canada. Lord Williams of Mostyn, Leader of the Government in the British House of Lords, was only 62 when he died on Saturday. He spent a great deal of time with our Rules Committee this past spring as he tried to help us build a new code of conduct for senators.

In April, he appeared before our committee via teleconference from Westminster. There were many votes that day in the House of Lords, and all of us will remember the numerous times Lord Williams had to jump up in the middle of our teleconference and run the several hundreds yards to the other side of Westminster to cast his vote and then run back again to give us a few more minutes of his time. He left several times during the few hours that teleconference entailed, but he always returned genuinely interested in providing us with whatever help he could.

Lord Williams enjoyed his appearance in April so much that he insisted on coming to Canada in June to help us some more. We were more than happy to receive him. I was fortunate to have the opportunity to host him for dinner when he arrived. In those informal hours that we shared over the dinner table, he showed himself to be a remarkable man. He was absolutely insistent on finding the most Canadian dish on the menu, and if memory serves me, he ordered wild bison that night.

The discussion ranged from the inability of George W. Bush to communicate with Cuba, despite the fact that it was Nixon who first opened U.S. communications in China, to Lord Williams' off-the-cuff impersonation of Michael Jackson, which I will never forget.

His personal appearance before our committee was equally impressive. As the architect of the new ethics scheme in the House of Lords, he was able to provide a wealth of knowledge and insight, both of which had a great impact on our study.

He was also extremely well versed in what goes on here in Canada and was able to easily discuss how the differences in our two chambers would lead to different regimes. Indeed, it was a masterful performance.

In his remarks on the death of Lord Williams of Mostyn, British Prime Minister Tony Blair described him as "A superb and entertaining speaker, he used his wit and general humour time and time again to diffuse difficult situations in the Lords."

Those of us who met him this spring saw a great deal of that sharp wit and humour and are not at all surprised by the respect that he was able to command in Westminster. He will be truly missed by his Canadian friends as well.

THE RIGHTS OF THE METIS AS DISTINCT ABORIGINAL PEOPLE

SUPREME COURT JUDGMENT

Hon. Serge Joyal: Honourable senators, last Friday, September 19, will remain a landmark day in the history of Aboriginal peoples of Canada. The Supreme Court, in a unanimous decision of nine judges, recognized that the Metis people are a distinct Aboriginal nation with the constitutional right to hunt for food.

For the first time, 21 years after the proclamation of the new Constitution in 1982, the 250 Metis communities that exist in Ontario, the Prairies, British Columbia and the Northwest Territories, representing approximately 300,000 Metis, were recognized as being on par with the other Aboriginal people. In other words, there is no hierarchy of Aboriginal rights. Native Indian people, Metis people and Inuit people stand together at par.

While the judgment recognized specifically the Metis constitutional hunting rights for food near Sault Ste. Marie, the unanimous court decision does not impose any limits on future rights Metis can claim, be it on lands, natural resources or self-government.

This is a major breakthrough that will change Canadian history. Indeed, the court established three criteria to define who has the right to claim to be recognized as a Metis.

[*Translation*]

Relegated so long to historical limbo, and seen as neither wholly Aboriginal nor wholly European in ancestry, the Metis were in a way the pariahs of our founding peoples.

Rejected by both groups, and condemned to cultural anonymity, their rebellion against the government in the 19th century, under Louis Riel, in order to obtain recognition of their right to land on which to live and to hunt, could not be resolved by an appeal to ancestral rights or by sheer force.

[*English*]

Today, Metis people, those descendents of mixed blood — Indians and French explorers or Scottish fur traders or others — are full, distinctive, rights-bearing people. Their integral practices are entitled to constitutional protection. When we included the Metis in 1982 in the Constitution as a distinctive Aboriginal people, we were looking to set the framework for bringing back to them their identity and pride and the opportunity to play a significant role in the diverse Canadian society.

Let us hail Mr. Steve Powley, a Metis from Sault Ste. Marie, who fought in court for 10 years for the rights of his people against the Governments of Canada, Ontario, Quebec, Manitoba, Saskatchewan, Alberta, British Columbia, and Newfoundland and Labrador. All these governments intervened in the Supreme Court case to deny the Metis their full constitutional protection, even though section 35 of the Constitution gave them full recognition as Aboriginal people.

This decision opens a new chapter in Canadian history — a positive one — that should be characterized, let us hope, by negotiation in good faith, resolution of legitimate claims and the full exercise by the federal government of its fiduciary role of the constitutional rights of the Metis in Canada.

Hon. Thelma J. Chalifoux: Honourable senators, Friday was a day for great celebration for the Metis nation of Canada. Our past leaders have been negotiating, fighting and struggling for over 100 years to have our nation and our people recognized by all Canadians as a separate, distinct nation of Aboriginal peoples.

Thanks to Louis Riel's provisional government, the Manitoba Act was passed. If honourable senators read that act, they will find that it is a treaty between Canada and the Metis nation of Western Canada.

In 1982, Harry Daniels, past president of the Native Council of Canada, won the fight to have the Metis included in the Constitution as an Aboriginal nation distinct to Canada. On March 2, 1992, Yvon Dumont, the leader of the Metis, won a Supreme Court of Canada judgment wherein they recognized that the Metis nation is a legitimate Aboriginal nation of Canada.

Mr. Steve Powley now joins the ranks of all these past great Metis leaders in successfully winning the case that our people do have the right to hunt and fish. My family no longer has to hide the food it has obtained for our family's well-being.

It truly is a great day. The Metis team that fought this case are among the best and most talented of our nation and of Canada. Congratulations to all of them. Another battle has been won for the Metis nation. It is only too bad that it has to be fought in the courts rather than in Parliament.

[*Translation*]

ROUTINE PROCEEDINGS

THE ESTIMATES 2003-04

SUPPLEMENTARY ESTIMATES (A) TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table in both official languages the Supplementary Estimates (A) 2003-04, for the fiscal year ending March 31, 2004.

NOTICE OF MOTION TO AUTHORIZE NATIONAL FINANCE COMMITTEE TO STUDY SUPPLEMENTARY ESTIMATES (A)

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2004.

• (1430)

[*English*]

QUESTION PERIOD

AGRICULTURE AND AGRI-FOOD

BOVINE SPONGIFORM ENCEPHALOPATHY— EFFECT ON PRICING OF OLDER SLAUGHTER COWS

Hon. Donald H. Oliver: Honourable senators, my question is to the Leader of the Government in the Senate and it is about BSE. I have a few questions that relate to topics raised at Monday's meeting between the federal and the provincial agricultural ministers.

First, there is the issue of the reduced price that cattle producers are getting for older breeding or slaughter cows, which generally make up approximately 10 per cent of a producer's total herd. The value of these animals has dropped even further than the value of the finished animals or the feeder animals that go into the feedlots. This has caused more difficulties for producers than for those with other classes of cattle. Such animals would normally go for slaughter and fetch anywhere between $700 to $1,000 a head. However, these cows are now bringing in about $200, if a producer can find a market for them. In fact, there are some reports that such animals are fetching as little as $50.

Can the Leader of the Government in the Senate address this issue of older slaughter cows from the perspective of whether any additional compensation will be provided to cattle producers? If not, could she please give us her government's rationale?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator has asked a question that, of course, the government is pleased to address this afternoon. The BSE Recovery Program that was provided to producers across Canada has paid out some $500 million in assistance since June. Since that compensation program was announced, we now know that the U.S. border has been opened to boneless beef. Additional assistance for cattle producers is available through transitional funding and business risk management programming under the new agricultural policy framework, and we hope that shortly all provinces will be on board.

BOVINE SPONGIFORM ENCEPHALOPATHY— COMPENSATION TO MANITOBA FARMERS

Hon. Donald H. Oliver: Honourable senators, I thank the honourable minister for the response. In her response, she referred to the $500 million paid out in compensation. The minister hails from the province of Manitoba. I wonder if she can address one complaint that the Manitoba government has with respect to the distribution of the federal BSE-related compensation. According to the Manitoba government, there has been an unfair distribution of federal dollars designed and addressed to the BSE crisis. Manitoba's agriculture minister makes the claim that "Manitoba got less than 2 per cent" of the BSE-related funds "even though it represents about 11 per cent of this industry."

Put in other terms, of the $500 million that the minister just spoke about in terms of emergency aid, Manitoba received only $6 million. According to the Manitoba government, the province's share should have been closer to $33 million. What response does the Leader of the Government in the Senate have for this apparent inappropriate amount of money?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as I explained last week in this chamber, Manitoba and, to some degree, Saskatchewan work at a real disadvantage with respect to cattle and the unfortunate BSE experience because most of the farmers do not ship cattle that has been slaughtered. They ship primarily live cattle across the border. As the honourable senator well knows, live cattle has still not been allowed entry. The agreement signed by the federal government and all of the provinces, including the Province of Manitoba, leaves the administration of this program in the hands of cattle producers. They administer the program, and I think the producers in Manitoba and Saskatchewan have rightful claim against their association for not adequately representing them.

VETERANS AFFAIRS

EXPENSES OF MEMBER OF VETERANS REVIEW AND APPEAL BOARD

Hon. Marjory LeBreton: Honourable senators, my question is for the Leader of the Government in the Senate. Last Wednesday, two of my colleagues in the other place asked questions concerning veterans. The first, from Ms. Elsie Wayne, concerned cutbacks to the Veterans Independence Program, where the widows of those who have served our country so well will be abandoned in an effort to save $13 million. Even though this government routinely wastes money on such things as the gun registry fiasco, the HRDC boondoggle and the sponsorship scandal, fiscal restraint was the reason given for the cutbacks.

The second question, from Gerald Keddy, MP for South Shore, concerned the expenses of Denise Tremblay, a member of the Veterans Review and Appeal Board and the Prime Minister's former constituency secretary in Saint-Maurice, Quebec. She has spent more than $158,000 on personal expences. Mr. Keddy asked:

> How does the Prime Minister justify these extravagant expenses when widows are refused less than $100 a month?

The parliamentary secretary to the Minister of Veterans replied:

> Mr. Speaker, that is an excellent question. I am afraid I do not have an excellent answer, but I will get back to the member as soon as I possibly can.

As the government leader is usually briefed on questions that have been asked in the other place, could she advise the Senate as to whether the government has come up with an answer that would justify these extravagant expenses by a member of the Veterans Review and Appeal Board at the same time as widows are refused less than $100 per month, money that would typically keep them living within the confines of their own homes?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am pleased to answer both questions by the honourable senator, but let me begin by indicating that her information is not correct. Rather than introducing cutbacks, the Government of Canada has committed some $65 million over the next five years to more than 10,000 survivors who will retain lifetime housekeeping and ground maintenance services after the veteran's death. There has not been a cutback; there has been a massive increase.

With respect to Madam Tremblay, she was first appointed to the Veterans Review and Appeal Board effective July 2, 2001. The nature of her work requires her to conduct review level hearings at various locations across the country to hear appeals for disability pension benefits from active regular force members. The expenses cited by the member reflect the total travel expenses incurred byMadam Tremblay for the period from her initial appointment until August 2003, a period of 26 months. Like all members of the board, she is required to conduct those hearings where the hearing is slated to be held.

HERITAGE

EXPENSES OF EXECUTIVE ASSISTANT TO MINISTER

Hon. Marjory LeBreton: Honourable senators, I have a supplementary question along the same lines about excessive expenses. Last week, we also learned about the dining habits of Charles Boyer, former executive assistant to Minister Sheila Copps. He managed to spend $31,000 over two years on dining and hospitality, all of it approved by the minister. Contrary to Treasury Board guidelines, these expenses were reimbursed, even though Mr. Boyer had not given the names of those he was entertaining. Since she obviously has these prepared answers, could the Leader of the Government advise the Senate as to how it came to pass that this individual could be allowed to run up $31,000 in restaurant bills over a two-year period, all with the blessing and the knowledge of a minister of the Crown, in a manner contrary to Treasury Board guidelines?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, an investigation is going on in the department to ensure Mr. Boyer's expenses were appropriate, and he himself has indicated that if there are any expenses deemed to be inappropriate, he will pay them back with interest.

Senator LeBreton: Honourable senators, since the leader is offering to get this information, one of the bills was incurred at 10:30 p.m. on New Year's Eve in the amount of $209. This story has been in the news since last week, so presumably the government leader has been well briefed on this matter. Could the leader advise the Senate as to exactly what government business Mr. Boyer was conducting at 10:30 on New Year's Eve, and will the government insist that he either provide the names of his guests and an explanation for the business conducted, or repay, as she says he will do, the money to the taxpayers?

Senator Carstairs: Honourable senators, I already answered that question. All of his expenses are being reviewed and, if any of them are considered to be inappropriate, he has agreed to pay them back with interest.

• (1440)

TREASURY BOARD

REVIEW OF EXPENSE ACCOUNTS

Hon. Marcel Prud'homme: Honourable senators, I have a supplementary question. I have known Mr. Boyer for quite some time. He started as an intern in my office when he was young. I also know Ms. Tremblay. I do not disagree with an examination of expenses as of today, but to be fair, there must be a balance. The problem is that if we start a witch hunt, there will be no end to it. Why not go back to the late 1980s and 1990s and investigate everyone who had an expense account so that we have a better understanding of the accounts and not just mention two or three people? The press is happy to go hunting for information of this sort, but there should also be an examination of other people in other governments at other times who may have had expense accounts. If we do not stop this process now, there will be no end to analyzing expenses accounts.

Honourable senators, I want to be clear that I am not apologizing for any extravagant expenses of today. However, if there is to be a balance, we must consider doing a study over the last 10 years or 15 years.

Hon. Sharon Carstairs (Leader of the Government): The honourable senator raises an important point in that witch hunts are rarely a valuable exercise in political democracies. Having said that, it is incumbent upon anyone who spends from the public purse to spend both appropriately and wisely.

PRIME MINISTER

BILL ON ELECTORAL FINANCING— SOLICITING OF BANKS TO FUND GOODBYE PARTY

Hon. W. David Angus: Honourable senators, my question to the Leader of the Government in the Senate arises from the unseemly pitch that her party recently made to Canada's chartered banks to donate $25,000 each to fund a goodbye party for the Prime Minister. The banks, to their credit, apparently refused. Is this not the classic double standard, given that this same Prime Minister threatened to call an election unless Bill C-24 was passed?

Could the government leader explain why, on the one hand, the Prime Minister felt it so necessary to abolish corporate donations while, on the other hand, his party felt it was quite acceptable to approach the banks for $25,000 each to fund his bon voyage party?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, this chamber has said, with overwhelming enthusiasm, that the bill on electoral finances introduced by the Prime Minister was a step in the right direction about funding political parties in this great country of ours.

In terms of individuals wishing to contribute to a goodbye party for the Prime Minister, I personally see it as a celebration of 40 years of distinction and of distinguished service to the people of Canada.

Some Hon. Senators: Hear, hear!

Senator Angus: Honourable senators, the proof is in the pudding. My research indicates that Bill C-24 is replete with loopholes, just as the government leader has acknowledged. Could she confirm that should the Liberal Party again attempt to raise this kind of corporate money for a major Chrétien sendoff in Shawinigan in early January, at a time when Bill C-24 will then be in force, it would still be legal to approach the banks for such contributions and that it would still be legal for the banks or, for that matter, any other corporation to keep making such contributions?

Senator Carstairs: Honourable senators, I totally disagree with the honourable senator's assertion that I believe there are loopholes in this legislation. To the contrary, I do not believe there are loopholes in the legislation. I think it is very good legislation. However, the honourable senator is correct to some degree in saying that it does not cover every single eventuality in the operation of political parties. For example, large sums of money to be spent on nomination meetings are still allowed within this legislation. Therefore, is it good legislation? Is it absolutely perfect? Will we find reasons to make it better in the future? Time will tell.

Senator Angus: Honourable senators, with the ink hardly dry on this apparently important piece of legislation — with which many of my colleagues and I were in disagreement — the government is already looking for ways to circumnavigate the bill that was so dear to the heart of the PM, as it would give greater transparency to political fundraising. With all the loopholes, this bill is about as transparent as the Shawinigate affair.

SOLICITOR GENERAL

FIREARMS REGISTRY PROGRAM—REQUEST FOR FUNDS IN SUPPLEMENTARY ESTIMATES (A)

Hon. Gerald J. Comeau: Honourable senators, my question is to the minister and concerns Supplementary Estimates (A), whereby the government is asking for yet another $10 million for the firearms program, bringing this year's running total to $111 million. Could the leader advise why this program, which was originally supposed to cost a grand total of $2 million, cannot live within the $100 million that we voted for just last June, a scant three months ago?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, either the information I have is incorrect or the information my honourable friend has is incorrect, because I specifically put that question and was informed there was no new money. There is a transfer of money from one department to another department, but there is no new money in Supplementary Estimates (A).

Senator Comeau: Honourable senators, once the Supplementary Estimates reach the committee, we will find out how the redistribution will be done. We will be looking at whether a department is reducing its budget in order to transfer $10 million to this program.

I should like to ask a question that revolves around the gun registry as well. Speaking in Whitehorse on May 10 about the cost of the gun registry and the way it treats the people in the North, Paul Martin said, "I do not believe that the review has gone nearly far enough. I do not think the solutions in terms of the complexity of the issue are where they should be at all. Nor do I believe that the program put down to control the costs has gone far enough."

Could the Leader of the Government in the Senate advise as to whether the Solicitor General and the Department of Justice are developing policy options that would allow the new Leader of the Liberal Party, Mr. Martin, to move quickly to control costs and to improve the way the firearms program treats northerners?

Senator Carstairs: Honourable senators, I indicated a transfer from one department to another. The honourable senator knows that the administration of this program was moved from the Department of Justice to the Solicitor General. That $10-million transfer is as a result of the transfer of responsibility from one department to the other department.

At the present time, the Prime Minister of Canada is the Right Honourable Jean Chrétien.

FOREIGN AFFAIRS

UNITED STATES—PARTICIPATION IN MISSILE DEFENCE SYSTEM—REQUEST FOR UPDATE

Hon. Douglas Roche: Honourable senators, my question is to the Leader of the Government in the Senate. The talks between Canada and the United States concerning Canada's possible participation in the U.S.-planned ballistic missile defence system have been underway for several months with no information coming forth to enable the Canadian people to understand what is going on.

Can the minister state precisely what Canada's possible involvement will be? The minister will undoubtedly say that she cannot because the U.S. has not made a formal request, but the Canadian people, not to mention the taxpayers, are entitled to know what is now being talked of — military involvement, political support, financial costs. Will the government provide a progress report on these talks so that senators can make a judgment as to their efficacy?

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator knows, the United States government is going ahead with its missile defence project with or without Canadian participation. The goal of our discussion with the United States is to see if there is any basis upon which Canadian participation might take place, while at the same time ensuring that our goal of protecting Canadians and preserving the essential role of NORAD in North American defence and security can be maintained. We also have taken the clear position that if this program is to lead to weaponization in space, we will not support it.

UNITED STATES—PARTICIPATION IN MISSILE DEFENCE SYSTEM

Hon. Douglas Roche: Honourable senators, does the minister not think that the Canadian people are owed at least a progress report on what is being talked about in these discussions that have gone on for several months?

In 1987, the Canadian government of the day said no to Canada's participation in what was then called the Strategic Defence Initiative Program, SDI. There were no repercussions on Canada as a result. If Canada could say no during the Cold War, why can it not say no today? What precisely would be the retributive action that the U.S. would take on Canada if Canada decided not to join the current missile defence program.

• (1450)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not think it is a matter of retributory action. I do not think the United States will take any retributory action. It is an issue of whether NORAD, which has served both countries well, will continue to serve both of us well if one country goes in one direction and the other country goes in another. That is the very basis and reason for these discussions taking place.

JUSTICE

SUPREME COURT JUDGMENT ON THE METIS—CULTURAL DEFINITION TO DETERMINE ELIGIBILITY FOR ABORIGINAL CLAIMS

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate.

On Friday, the Supreme Court unanimously ruled in favour of allowing a small Metis band in Ontario the right to hunt for food without licences and out of season. This ruling is expected to open the door for similar Aboriginal rights to be extended to the Metis, rights respecting federal funding, fishing and access to other natural resources, as examples.

My question is this: For the federal government's purposes, what is the current definition of "Metis"? Is "Metis" culturally defined?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is appropriate for the Government of Canada to study very carefully the decision made by the Supreme Court of Canada just last week. We have already heard today some enthusiastic support for that decision. However, it is a very complex decision, one that needs time to be appropriately evaluated by the Department of Justice.

The definition of the Metis people, to some degree, is up to the Metis people. However, within that judgment, there are some very clear guidelines as to what the Supreme Court thinks a Metis person is.

Senator Stratton: Honourable senators, the Supreme Court has given, as the honourable minister is aware, a rather narrow definition of "Metis." It defines it by community, which is rather interesting, vis-à-vis the effect of that on Bill C-6, for example.

In 2002, the Metis National Council, for example, passed a resolution stating that persons must prove their lineage to the Prairie Metis in order to be a member of the council. If that particular definition were used to determine entitlement, it would exclude the East Coast Metis and those in the North.

Could the Leader of the Government in the Senate tell us who will provide the definition of Metis that will be used to determine eligibility for Aboriginal claims?

Senator Carstairs: Honourable senators, I will not delve any more deeply into this because this decision is so very new, coming down just at the end of last week. The Department of Justice has not yet had time to thoroughly analyze it; as such, it would be premature to answer that kind of detailed question at this time.

Senator Stratton: Honourable senators, I appreciate that. However, the impact of the Supreme Court decision in question must be examined against Bill C-6, the proposed Specific Claims Resolution Act. I would hope and expect that the government will do that and consider removing Bill C-6 or supporting substantive amendments that deal with its flaws, specifically in the area of delay.

Senator Carstairs: Honourable senators, the Senate of Canada has already agreed to four amendments with respect to Bill C-6, amendments that, I believe, make substantial improvements to the bill.

HEALTH

CANADIAN INSTITUTES FOR HEALTH RESEARCH— FUNDING PROGRAM FOR MIDDLE LEVEL AND SENIOR RESEARCHERS

Hon. Wilbert J. Keon: Honourable senators, the Canadian Institutes of Health Research have recently decided to end a program that provides salary support for mid-level and senior researchers. The Canadian Medical Association Journal warns that this may fuel Canada's brain drain and sends a negative message about research funding in this country.

Our recent experiences with SARS, West Nile and mad cow disease illustrate the necessity for supporting scientific research in Canada. Could the Leader of the Government in the Senate tell us whether the federal government is concerned about the consequences of the end of this program and whether it intends to do something to ensure that research funding in Canada receives strong support, at least on a short-term basis, until the government can make some adjustments?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, the budget of this year gave substantial new money to the Canadian Institutes for Health Research, CIHR. The Canadian Institutes for Health Research acts as an arm's-length body. It has made a determination in this case, and the government does not think it appropriate for it to interfere.

Senator Keon: Honourable senators, it is true, and the actions of the government have certainly been welcomed by the research community, without question.

However, there are some problems with the way the funding rolls out, with lapsing annual appropriations. If some of these things could be adjusted, the kind of rather drastic action the CIHR has had to take could be avoided. One suggested alternative is for more funding to be made available to the Canada Research Chairs, so that the investigators involved could be carried for a while, until another adjustment of some kind is made.

Could the minister tell us if she thinks that may be possible?

Senator Carstairs: Honourable senators, I do not know whether it will be possible, but I will certainly raise with the Minister of Health the honourable senator's interesting suggestion.

I also wish to say that I am pleased to have learned today that the CIHR has committed $12 million over five years to the area of palliative care research.

PHARMACEUTICAL SALES TO PEOPLE IN UNITED STATES

Hon. Brenda M. Robertson: Honourable senators, in light of the prohibitive prices in their own country, Americans are increasingly buying prescription drugs from Canadian pharmacists. While it is understandable that Americans would want to purchase drugs at a cheaper price, it is important to realize that pharmacies do not have the resources to support both Canada and the United States. The Canadian Pharmacists Association warns that providing drugs to American buyers as well as Canadians may put our system under great strain and may even lead to drug and pharmacist shortages.

Could the Leader of the Government in the Senate tell us whether Health Canada is concerned about the pace at which Americans are buying pharmaceuticals from Canada and the possible effect upon our system?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, pharmacies are controlled under the legislation of provincial authorities. In my own province, for example, there has been a great deal of activity in launching more and more Web sites to encourage Americans to buy their pharmaceuticals in Canada, and it has become a significant business in the province of Manitoba.

I will raise the honourable senator's concerns that there may be drug shortages in Canada. That issue has not been identified before to me, but the reality is that pharmacies that are engaging in this activity are under the jurisdiction of provinces.

Senator Robertson: Honourable senators, the cross-border purchase of Canadian pharmaceuticals raises a number of other issues, one of the most important being the reaction of drug manufacturers. One of the world's largest drug makers, Pfizer, notified 50 Canadian pharmacies it believes are exporting to the U.S. that they will have to order drugs directly from the company and not wholesalers. Pharmacies that buy in order to resell into the U.S. will be cut off.

Although what you say about the provinces is relative and true, the federal government has a role here. Is the federal government concerned that drug manufacturers will try to slow the number of American purchases by reducing the amount of pharmaceuticals available to Canadian pharmacies and raising their prices?

Senator Carstairs: Honourable senators, clearly, there is a concern that some drug companies are not going to deal directly with wholesalers in Canada. Having said that, the drugs still appear to be readily accessible to Canadians, and, sadly, it is a reflection of how good a system we have and perhaps the lack of a system south of the border that so many Americans are looking to us to obtain drugs at apparently substantially less cost than they would pay for those drugs if purchased in the United States.

The honourable senator has raised an important concern, and along with the concern she raised about drug shortages, I will raise that matter with the honourable Minister of Health.

• (1500)

[*Translation*]

ANSWERS TO ORDER PAPER QUESTIONS TABLED

VETERANS AFFAIRS AND SECRETARY OF STATE (SCIENCE, RESEARCH AND DEVELOPMENT)—ALTERNATIVE FUELS ACT

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answers to Questions Nos. 76 and 77 on the Order Paper—by Senator Kenny.

MINISTER OF STATE AND LEADER OF THE GOVERNMENT IN THE HOUSE OF COMMONS—CORPORATE GOVERNANCE

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answer to Question No. 117 on the Order Paper—by Senator Stratton.

[*English*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I should like to draw to your attention the presence in the gallery of Donald Maracle, Chief of the Mohawks of the Bay of Quinte; Roberta Jamieson, Chief of the Six Nations of the Grand River; Sharon Stinson-Henry, Chief of the Mnjikaning; and Greg Cowie, Chief of the Hiawatha of Scugog. They are the guests of the Honourable Senator Watt.

Honourable senators, please welcome them to the Senate of Canada.

Hon. Senators: Hear, hear!

[*Translation*]

ORDERS OF THE DAY

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—DEBATE ADJOURNED

Hon. Joseph A. Day moved the third reading of Bill C-25, 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.

He said: Honourable senators, it is my great pleasure to speak today during the third reading of Bill C-25, to modernize the public service.

As you know, this bill concerns one of this country's most precious resources, our public service. Whether they work in communities at home or abroad, public servants strive to protect the health of Canadians, improve the quality of their environment, ensure their safety and security and add to their well-being. Moreover, the public service is composed of a diverse and competent workforce, able to serve the public in both official languages. For these reasons, I am proud that the nation's lawmakers have shown remarkable leadership in their desire to ensure that this noble institution can continue to meet the changing needs of Canadians.

The last major reform of public service legislation undertaken by the Government of Canada goes back more than 35 years. Therefore, I congratulate the men and women who worked to make this legislation a reality. I know, for a fact, that the minister, the Honourable Lucienne Robillard, the former deputy minister, Ran Quail, the assistant deputy minister, Monique Boudrias, and their whole team of legal and policy experts have not spared any effort to give substance to this far-reaching bill.

[*English*]

Honourable senators, we have before us a bill that maintains the best of our current system and improves that which no longer serves us well. For example, the Treasury Board continues to be the principal employer of the public service. It has a new reporting responsibility to Parliament regarding human resources management in the public service. It will be reporting on an annual basis with respect to human resources.

The Public Service Commission retains its authority to appoint to and within the public service. It is contemplated that some or all of that authority will be delegated to the deputy heads, which is the term used in the legislation, or deputy ministers. The commission maintains its power to set the terms and conditions for staffing delegation to the deputy heads. In addition, the Public Service Commission retains the power to rescind that delegation if it is not being properly used.

Moreover, the Public Service Commission will have new powers to audit and monitor the public service.

Bill C-25 was developed after significant consultation with stakeholders, including deputy heads, employees, managers, federal-regional councils, youth organizations, human resource professionals, as well as bargaining agents.

Bill C-25 is balanced. It is enabling legislation. This public service modernization bill is composed —

POINT OF ORDER

Hon. Anne C. Cools: Honourable senators, I have been listening very closely to —

The Hon. the Speaker: Is the honourable senator rising on a point of order?

Senator Cools: Yes, Your Honour.

I have been listening with care to every single word that my colleague has been uttering, every single word that has been falling from his mouth. That is because Bill C-25 is quite a substantial bill and quite a substantial undertaking on the part of the minister.

I was listening with particular care because it seems that a significant consultation has been overlooked. I refer in particular to Senator Day's words a few moments ago that, in the development of Bill C-25, extensive consultations have taken place with just about everyone in the country who has an interest in the bill or its subject matter.

Honourable senators, my point of order is on a very specific point. A very important person's interests are involved in this proposed bill. From what I can see, that person has not been consulted at all. I am speaking of none other than Her Majesty the Queen and her representative in Canada, the Governor General of Canada, Her Excellency Adrienne Clarkson. In particular, the interest of which I am speaking is Her Majesty's Royal Prerogative. The peculiar interest relates to her entitlement to allegiance from her citizens and her subjects.

I propose to reacquaint honourable senators with the fact that procedurally, in this chamber, it is out of order to have a matter in debate before us that touches or affects Her Majesty's Royal Prerogative without consultation and without the permission of Her Majesty.

Two years ago, in this chamber, a number of us raised this very question with regard to Bill C-20, which as we all know was called the clarity bill. After several days, Senator Boudreau, who was then the Leader of the Government, finally rose in this chamber and gave the Royal Consent. I am speaking of the Royal Consent as distinct from the Royal Assent.

• (1510)

I have looked at Bill C-25. I observe, for example, in the first edition that we received, Bill C-25 prints very carefully the Royal Recommendation, which represents all the financial initiatives of the Crown and essentially shows that the ministers of the Crown and the Crown itself take the initiative in bringing forth a proposal for an appropriation at some point in time. However, I have nowhere heard of the other consideration, which is called the Royal Consent, in which Her Majesty, through her representative, must grant permission or give leave to the chamber to debate and to consider her interest in the matter.

To buttress what I am saying, I cite section 9 of the BNA Act, 1867. I refer in particular to Part III of the BNA Act, headed "Executive Power." Section 9 states as follows:

> The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

We must remember, honourable senators, that the BNA Act did not create the Queen's authority over Canada and did not enact it. It merely declared it to be continuing because it had been in a state of existence pre-Confederation.

I am attempting to prove that the question of the allegiance that is owed by Canadians to Her Majesty also predates the BNA Act. I would submit that it predates any modern statute. I would also submit that it is a well established principle in the *lex parliamenti*, the law of Parliament, that no matter should proceed for debate in this chamber without having first secured the authority, the permission, the leave, of Her Majesty's representative in Canada.

Honourable senators must understand that Bill C-25 is attempting to change the Constitution of Canada. The Constitution of Canada is in many acts and it is quite a collection of doctrines as well. It states very clearly and upholds the principle of allegiance to the Queen. We will remember that the newest senator, Senator Harb — I will get used to calling him "senator" soon; I almost said Mr. Harb, famous member of the House of Commons for Ottawa Centre — came into this chamber barely an hour ago. He was escorted to the Table and took his oath of allegiance, as did all of us.

I submit that this is no simple matter; the oath of allegiance is no ornament. It is a profound commitment and a profound moral structure that gives us guidance as to how to conduct our affairs as parliamentarians.

Honourable senators, I have spoken on this matter many times in this chamber. To further support it, I would like to cite several statements from the *lex parliamenti* on the question of the Royal Consent. I shall cite Beauchesne's sixth edition, subparagraph 726(1):

> The consent of the Sovereign (to be distinguished from the Royal Assent to Bills) is given by a Minister to bills (and occasionally amendments) affecting the prerogative...

Subparagraph 726(2) reads:

> The Royal Consent is generally given at the earliest stage of debate. Its omission, when it is required, renders the proceedings on the passage of a bill null and void.

These citations refer to the earliest stage of debate. We are now at third reading. As a bill goes, that is getting pretty late in debate.

Paragraph 727(1) states:

> The consent of the Crown is always necessary in matters involving the prerogatives of the Crown. This consent may be given at any stage of a bill before final passage; though in the House it is generally signified on the motion for second reading. This consent may be given by a special message or by a verbal statement by a Minister, the latter being the usual procedure in such cases. It will also be seen that a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown but if it is not given at the last stage, the Speaker will refuse to put the question.

Honourable senators, there are many references, whether one cites Bourinot, Todd, Erskine May or whomever, or even if one looks to the real parliamentary authorities, who are always members of Parliament, by the way. In Canada, the great parliamentary authorities were people such as Prime Ministers Sir John A. Macdonald and R.B. Bennett, to name a few.

Honourable senators, it is very important that we understand any attempt by this chamber or by any minister to alter the relationship between the sovereign and his or her public service needs Her Majesty's consent. We used to call it "civil service." Terms such as "civil service" and "civil list" were all parliamentary terms. Many of these words get changed and lose their parliamentary meaning and significance, but it used to be "civil service." Any attempt to alter that very fundamental relationship between the public servants and sovereigns is no simple matter and cannot be done by a simple bill. It must involve Her Excellency the Governor General of Canada.

The business of oath is a blended notion in that the oath of allegiance is buttressed on the other side by the sovereign's oath, which is the coronation oath, which is made and —

The Hon. the Speaker: Senator Cools, I am sorry to interrupt, but I wish to draw to the attention of honourable senators that we have no rule in terms of the length of time for making a point of order or for deliberating a point of order.

Senator Cools: I would like to say —

The Hon. the Speaker: Let me interrupt because —

Senator Cools: With all due respect, I have the floor. He is out of order.

Some Hon. Senators: Order, order!

Senator Cools: You cannot use your office or position just to cut off a senator at whim like that.

Some Hon. Senators: Order, order!

Senator Cools: It is out of order. You do not do that.

The Hon. the Speaker: Under our rules, the discretion is left to the Speaker as to when he or she has heard sufficient information to feel that he or she understands the point of order. The tradition, however, is that one would not only hear from the senator raising the point of order but also from other senators who may wish to comment on it as well.

I point out that we are approaching the 14-minute mark in the point of order that Senator Cools is making. Listening carefully, some of the information she is giving me — because it is my discretion on whether there is a point of order — is repetitive. I would simply ask that she come to the conclusion of her explanation of the point of order. I will give other senators an opportunity to comment and then determine what action the Chair should take.

Senator Cools: Honourable senators, the rules are known by most of us. There is absolutely no rule that supports what just transpired. The rule is that no limit is set. A senator makes his or her point and then other senators join in the debate. I must remind honourable senators that the role of the Speaker of the Senate is different from that of the Speaker of the House of Commons.

Some Hon. Senators: Order!

• (1520)

Senator Cools: I am speaking about this place. Rule 18(1) does not convey that kind of authority. I was here when rule 18(1) was put into place. I am very well acquainted with the purposes for its initiation.

In any event, as I was saying, honourable senators, there is something very wrong in how Bill C-25 has endeavoured to remove and repeal the oath of allegiance. One simply cannot just obliterate the oath of allegiance as a requirement of public service for Canadians. As far as I am concerned, the bill should not move forward another inch without the government indicating to us that this matter of allegiance — which is an extremely important matter — has been discussed with Her Majesty's representative and that Her Majesty's representative has signified Royal Consent.

Honourable senators, I have also been very disturbed by what has been happening and by what I have been reading in the newspapers about Governor General Clarkson. I am a great believer, honourable senators, in this thing called our constitutional monarchy. I submit to you that one of the reasons this kind of treatment is being accorded to Her Excellency is that in the public and in the world of journalism the entire system has been diminished and those roles have been diminished. In today's community, frankly, it is safe in their minds to attack Her Excellency. In my mind, however, that is quite unacceptable.

I wanted to raise this, honourable senators, so that we understand the impact of what we are doing every time we take away a brick to dismantle what I would call the edifice of our Canadian constitutional system.

The Hon. the Speaker: Senator Cools, I am sorry to interrupt again, but you quoted correctly rule 18(1). I should like, for the record, to add the text of rule 18(3) to your reference, for honourable senators.

> When the Speaker has been asked to decide any question of privilege or point of order he or she shall determine when sufficient argument has been adduced to decide the matter, whereupon the Speaker shall so indicate to the Senate, and continue with the item of business which had been interrupted or proceed to the next item of business, as the case may be.

I should like to do that now, honourable senators. I think I understand your point of order very well, Senator Cools, and I will give you a brief right of response.

However, if other senators wish to make a comment on this, I would invite them to do so now.

Hon. Sharon Carstairs (Leader of the Government): I thank honourable senators for my right to intervene in this matter.

The honourable senator clearly has concerns about the right of consent, which is an important aspect of our parliamentary system. Senator Cools raised this matter in committee as a point of order. At that time, it was not ruled in order. She is raising it again today, and it is her right to do so.

However, I think it is important to point out that Bill C-25 contains two new acts, the Public Service Labour Relations Act and the Public Service Employment Act. It also amends two other existing pieces of legislation, the Financial Administration Act and the Canadian Centre for Management Development Act.

The bill recognizes the need for the modernization of staffing and labour relations and brings practices up to date. The bill also provides for the establishment of conflict management through grievance provisions and establishes the Public Service Labour Relations Board. The Public Service Employment Act of Bill C-25 has the effect of repealing the oath of allegiance, an oath of allegiance that, for example, is not taken in the United Kingdom. It is not taken in Australia. This is the first bill in this country that would repeal it for the purpose of members of the public service.

The oath of allegiance is an area well covered by statute — not by prerogative but by statute. We have at least two examples, the Oaths of Allegiance Act and the Public Service Employment Act, which currently contains an oath requirement. There is no Royal Prerogative relating to oaths of allegiance since, quite frankly, honourable senators, earlier statutes extinguished that prerogative some time ago. Therefore, the Royal Consent is not required because Bill C-25 does not affect any Royal Prerogative.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, because a number of important procedural issues have come up in the debate so far on the point of order raised by Senator Cools, on behalf of the opposition I want to put on the record that we concur in His Honour's interpretation of rule 18(3). It is quite right in our view. We are particularly appreciative of the procedure that the Speaker has adopted that, when a point of order is raised, although he may have heard enough on the matter, he does allow the opportunity for the opposition or other senators to be heard.

On the point of order, per se, I looked at the Royal Consent topic as outlined in *Beauchesne's*, in the sixth edition, at page 213, paragraph 729, which has not been read. It states:

> The Royal Consent to a bill is not required unless it affects the personal property of the Sovereign as distinguished from property the Sovereign may hold for her Subjects.

Perhaps the first one to be answered by His Honour is whether the civil service belongs to the Sovereign. Does the civil service belong to the Sovereign, in the sense of it being a personal property, or what indeed is the relationship of the civil service to the Sovereign? Once that question is answered, the answer will be much clearer as to whether a Royal Consent would be required.

This is an interesting question. It may be helpful for His Honour to look at pages 604, 605 of the 22nd edition of *Erskine May*. That reference contains a number of interesting points from procedural literature dealing with the Queen's consent on bills that affect the prerogative. Of course, one must first answer whether this bill affects the property or the prerogative of the Crown. If it does, then the Queen's consent is as outlined here. Also to be considered are the decisions made earlier in this House on that question.

This is a serious point of order. It does require answering some preambular questions before a decision could be rendered on whether the process is out of order. As I understand *Erskine May*, the point can be made at any time, including at third reading. There can be amendments in committee affecting the Crown or amendments at later stages affecting the Crown.

If that is helpful, we would be pleased.

The Hon. the Speaker: Before going to Senator Cools for final comment, do any other senators wish to make a comment on this matter?

I will give the floor to Senator Cools for a final comment.

Senator Cools: I thank the honourable senators for their interventions. I would clarify that the question of the Royal Prerogative that I have raised has nothing to do with the personal properties of the sovereign. Those references to property, with all due respect, are relevant to other prerogatives.

The law of the prerogative is probably the most complex of all laws; it is the least understood and the least known. That is with good reason — because the government likes to keep it all a big secret. These matters are greater secrets here, probably, than in any other Commonwealth country, and visitors from the Commonwealth are always amazed at how these instruments operate in this country.

• (1530)

I am talking about the entitlement of the sovereign Queen to allegiance. Allegiance, after all, is the tie that connects the subject to the supreme magistrate, the Queen. It is that phenomenon that allows the sovereign the prerogative to tax a person, to send them to war, to make appointments on their behalf, to confer commissions and to appoint senators. I am talking about those prerogatives and, in particular, about allegiance.

This allegiance predates statute. Senator Carstairs is totally wrong on that matter because it predates statute. Allegiance in Canada was born as a Royal grant. Remember, the Canada that we know was born by conquest. If you were to read the Articles of Capitulation, which occurred between the Marquis de Vaudreuil and Major-General Amherst, you would see that they address the issues and state clearly that these people shall become subjects of the King. Thereafter, these questions were put into statute but the statute is confirming, declaring and repeating that this was the law.

Honourable senators, I would like to address a small point. I do not know what Senator Carstairs was talking about when she said that I raised a point of order in committee. For the information of honourable senators, I raised no point of order; the chairman did not make a ruling; I did not ask for one; and I do not know what Senator Carstairs was talking about when she made such a misleading statement about my raising a point of order. I would like to make it clear that I did not raise any point of order in committee.

The fact of the matter is that we have a Constitutional monarch. In our system, the monarch is the actuating power of the Constitution. The monarch is the source from which all power is derived. One may not simply repeal the sovereign's entitlement to that allegiance or fidelity by a simple bill. If it is to be done by a bill then, as with the Royal Recommendation, under rules governing how Her Majesty relates to her Parliament, Her Majesty's representative has to be involved and has to give leave for the debate to occur. I say only that it is a part of the prerogative that sets the entire tone, the entire nature and the entire character of the cast of the public mind.

The Hon. the Speaker: Honourable senators, it is an important matter to be correct on and I will take it under consideration. Senator Kinsella quoted from *Erskine May* and I will quote from *Beauchesne's* sixth edition, page 213, section 727, which states:

> It will also be seen that a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown but if it is not given at the last stage, the Speaker will refuse to put the question.

This is also the subject matter of a rather lengthy ruling given on the then Bill S-20 on October 25, 2001, found at page 1487 of *Hansard*. It is clear that debate can proceed because the giving of Royal Consent is not required until the last stage. Therefore, I must deal with it before the last stage, and I will do so.

Continuing debate, Senator Day.

Hon. Joseph A. Day: Honourable senators, we were talking about Bill C-25, and I was just about to explain to you the various aspects of Bill C-25, which are primarily human resources related for the public service. During our hearings, various witnesses had an inclination to try to include other items within the bill. However, the decision has been made to try to keep this package of proposed legislation focused on human resource management within the public service. Bill C-25 is, however, a shell bill that includes several aspects and four major acts within it, as my colleague Senator Carstairs mentioned a short while ago. The proposed Public Service Labour Relations Act is one major aspect of the bill. It contains a proposed transition period when the old Public Service Staff Relations Act will be phased out. The proposed legislation will enable more constructive, cooperative labour-management relations and a healthier, more productive workplace.

The proposed new Public Service Employment Act will replace the existing Public Service Employment Act, which will be phased out. The new act will enable increased flexibility in staffing and managing the public service, with reinforced safeguards to sustain a merit-based, non-partisan public service. The new act will cover that part of the public service for which the Public Service Commission has the exclusive authority to appoint. The concept is the delegation of power from the Public Service Commission to managers so that they may manage and to ensure accountability in managing the public service.

There will also be amendments to the Financial Administration Act, if you see fit to pass this bill. Financial Administration Act amendments will clarify roles and strengthen accountability for the institutions and individuals responsible for managing the public service. There are amendments to the Canadian Centre for Management Development Act, which will create a new area for continuing education for the public service to be called the Canada School of Public Service. It will support a more coherent training and learning atmosphere to help public servants pursue professional development and meet corporate needs. We learned just last week that second-language training would also be administered through that particular initiative.

Honourable senators, there are many clauses that deal with the transition of these four areas, to which I just referred, into the new regime.

Both Houses have studied Bill C-25 extensively. In the House of Commons, the Operations and Estimates Committee heard testimony from 54 witnesses. The Standing Senate Committee on National Finance heard testimony from 39 witnesses. We discussed all of the concerns that were brought forward.

I would now like to compliment our Chairman, Senator Murray, and all of the members of the Finance Committee.

• (1540)

During the deliberations of the Standing Senate Committee on National Finance, Minister Robillard made herself available at our first hearing. As well, after she listened to and read all of the testimony that had been given by the various witnesses, she came back again to try and direct her attention to those issues that were outstanding. That indicates the level of importance Minister Robillard has placed on this government legislation.

During her appearance last week, Minister Robillard dealt with many of the issues raised by committee members and witnesses. I would like to discuss some of those issues, specifically the protection of merit, employment equity, official languages, national area of selection, workplace-related human rights issues and the disclosure of wrongdoing in the workplace — or as it is sometimes referred to, whistle-blowing. These were the issues raised during our hearings and in the discussions I have had with honourable senators. It is important that we discuss the issues that may leave us ill at ease.

Honourable senators, merit continues to be the cornerstone of the Public Service Employment Act. Indeed, clause 30 on page 126 of the bill states that:

> Appointments by the Commission to or from within the public service shall be made on the basis of merit and must be free from political influence.

As Minister Robillard stated before the National Finance Committee last week:

> By clearly defining a new approach to merit, we will be able to move away from the rigid and prescriptive procedural processes —

— processes that have developed by virtue of various court decisions in the past —

> — and move towards a regime that is more supportive of our operational realities. Defining merit is not watering down merit. We are not in any way compromising on important values like non-partisanship...

Minister Robillard made it clear that in providing more flexibility to managers to hire, there was no compromising on the principle of merit. Canadians will still benefit from a competent, professional, non-partisan public service which is able to serve them in both official languages.

As regards to employment equity, honourable senators, Canadians also expect that their public service should reflect the diversity of the people it serves. Bill C-25 contains provisions to enhance the capacity of the public service to attract and hire a representative workforce. Subclause 34(1) on page 127 of the bill before us states:

> For purposes of eligibility in any appointment process, other than an incumbent-based process, the Commission may determine an area of selection by establishing geographic, organizational or occupational criteria or by establishing, as a criterion, belonging to any of the designated groups within the meaning of section 3 of the *Employment Equity Act*.

That specifically provides that right to the manager in the hiring process and to the Public Service Commission.

With respect to a national area of selection, I know that this has been a matter of discussion among honourable senators and has been an issue in both Houses of Parliament for some time. Our public service must also draw on the expertise and experience of Canadians from every part of the country. We believe that all Canadians, regardless of where they live, should have access to employment in the public service. As the minister said in her appearance before the National Finance Committee:

[*Translation*]

> We agree that this idea is very good in theory. The problem lies not in the principle but in its application.

[*English*]

We find ourselves in the position of having to balance the competing issues of accessibility, the responsible use of public funds and the speed of staffing. As we make these difficult choices, excellent progress has been made.

The concept of a national area of selection — that is, the whole country — is already being used for the purpose of hiring and staffing senior officer-level jobs, including executive positions. The national area of selection is also used for post-secondary recruitment and student recruitment programs. This is a good start on which to build.

Minister Robillard also stated her support for the Public Service Commission's four-year plan to expand the role of national area selection. On behalf of all Canadians who want to make a professional contribution to the public service of Canada, I, too, welcome this approach.

The Public Service Commission will report, on an annual basis, the progress that it is making with respect to expanding the use of national area selection. It will use computers and high technology to assist with respect to national area selection so that all Canadians will have a chance for all positions within the public service. Good progress is being made, and there is a commitment from the minister and from the Public Service Commission to continue in that direction.

[*Translation*]

In terms of official languages, there is another principle that is dear to Canadians and that is linguistic duality. In the preamble to the Public Service Employment Act in Bill C-25, the government reiterates its commitment to official languages. In addition to the rights granted to Canadians and public service employees under the Official Languages Act, the bill would make failure to assess a candidate in the official language of their choice a ground for complaint.

Section 16 of the Official Languages Act also provides that, regardless of the official language chosen by the employee, the tribunal must be able to understand that language without the assistance of an interpreter. I would like to reassure those who were concerned about this that the Official Languages Act will indeed apply to the new Public Service Staffing Tribunal.

[*English*]

Having regard to human rights, Bill C-25 accomplishes another very worthy goal in the workplace of employees. It will permit employees to have their workplace-related human rights issues dealt with in the same fashion and as efficiently as disputes over discipline, terms and conditions of employment, or staffing matters. This will make managers and bargaining agents more sensitive to human rights issues in the workplace.

Concerns have been raised in regard to the responsibility of the Canadian Human Rights Commission in relation to Bill C-25. It has been suggested that the Public Service Commission could not play the role envisaged in the bill, and only the Human Rights Commission possesses the required expertise to deal with human rights.

• (1550)

I recognize that these concerns are motivated by our common desire to preserve human rights protections for public servants. However, granting adjudicators and members of the public service staffing tribunal the authority to enforce human rights will bolster human rights protections in the workplace.

Honourable senators, Bill C-25 provides the Canadian Human Rights Commission the opportunity to play a similar role as it does now when it participates in proceedings before the court. It provides its expertise and does not get involved in the merits.

In addition, Bill C-25 does not affect the right of the Canadian Human Rights Commission to initiate proceedings on any workplace-related human rights dispute, whether it is the subject of a grievance or a complaint under Bill C-25. It will also provide the employee his or her choice of recourse. The employee would have the choice to use the right of recourse within the established workplace or to go to the Human Rights Commission.

In regard to the expertise to deal with human rights, the Supreme Court of Canada's decision in *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U, Local 324* was reported only last week. The court stated that any concerns that the Human Rights Commission may have better expertise than a labour arbitration board are outweighed by the accessible, informal and prompt nature of the resolution of human rights disputes in the workplace. Moreover, expertise is not static and develops over time.

Labour arbitration boards have constituted a significant amount of sophisticated human rights jurisprudence over the years. A prominent example is the groundbreaking decision of the Meiorin case — indexed as *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* from the Supreme Court of Canada in 1999, which originated from a labour arbitration board.

It must also be said that Bill C-25 would provide to employees of the public service the same recourse for human rights matters as those currently enjoyed by the federally regulated private-sector employees under the Canada Labour Code.

Honourable senators, another subject that has caused concern to some honourable senators is that of whistle-blowing. Public servants should also have the right to step forward to disclose wrongdoing in the workplace and to be protected from reprisal.

I agree with Dr. Edward Keyserlingk's opinion that whistle-bowing should be removed from the context of human resources management because the kind of wrongdoing it would address is "far broader than that, far more serious than that." In his appearance before the Standing Senate Committee on National Finance, Dr. Keyserlingk recommended that whistle-blowing legislation "be stand-alone, be a statute specifically, exclusively directed to the issue of the disclosure of wrong-doing — and not attached to any other statute."

Dr. Keyserlingk was not the only witness who stated that whistle-blowing legislation should not be part of Bill C-25. The previous Auditor General, Denis Desautels, and the current Auditor General, Sheila Fraser, both expressed this view before the committee. I am satisfied that their testimony recommends a course of action that will benefit Canadians in the long run.

In her testimony before the National Finance Committee last week, Minister Robillard announced the creation of a working group to examine disclosure of wrongdoing in the workplace and to propose concrete solutions. The Public Service Integrity Officer, Dr. Keyserlingk, has agreed to sit on that working group and will be joined by other prominent Canadians. The group will deliver its report to the minister by the end of January 2004. The minister will then give the report to parliamentarians for review and recommendations, including legislative options. I believe that by taking this course of action the government can develop a uniquely Canadian model to ensure that whistle-blowers are protected. It is also my belief that the fact that the minister acted on this issue in the manner in which she has is an example of the good work that is being done by the committee in bringing forward these issues of concern.

[*Translation*]

That having been said, I would like to acknowledge Senator Kinsella's work on disclosure of wrongdoing. Minister Robillard also acknowledged the legislator's valuable input and pointed out that she would like the newly formed working group to take into account the work done so far.

In conclusion, honourable senators, I would like to remind you of what Senator Carstairs said in her speech at second reading. She said it was a balanced bill that will have profound and lasting effects on the public service and its ability to meet the needs of Canadians. She also said she was convinced that the talented and dedicated men and women of the Public Service would be up to the task.

[*English*]

I also wish to share with honourable senators the words of the Auditor General of Canada when she appeared before the Standing Senate Committee on National Finance last week. She sees the bill as "an improvement to the existing system," and said that "if Bill C-25 was passed, it would contribute to reforming human resources management." The Auditor General went on to state:

> We are also pleased to see that the proposed legislation calls for a legislative review after a fixed period of five years. This would allow Parliament the opportunity to assess the impact of the new legislation on the public service and to propose any necessary changes or improvements. It will be critical for the government to have effective monitoring mechanisms to ensure that issues are well understood and dealt with accordingly and that sufficient data is collected for analysis in support of the five-year review.

Honourable senators will recall that the Auditor General, just a year ago, stated that the mechanism of the public service was broken and required immediate attention. She is now stating that she is pleased to see that the government has taken action with Bill C-25.

Honourable senators, Bill C-25 provides for a review in five years. This bill is an attempt at a cultural change that does require monitoring and probably will require some change in the future, once we have had an opportunity to see how it functions.

One of the great strengths of this institution, honourable senators, is that we have a long memory. Within five years, we will have before us a series of reports on human resources management, including those from the Public Service Commission and the President of the Treasury Board. From these reports, we will be able to monitor the progress of implementing the public service modernization bill and be in a position to recommend any revisions, if needed. We will be able to deal with any matters that arise from the legislation that we cannot foresee at this time.

Honourable senators, this is sound proposed legislation, which is long overdue. I ask respectfully for your support of this important bill.

• (1600)

Hon. Willie Adams: Will the honourable senator take a question?

Senator Day: I would be pleased to attempt to answer your question, senator.

Senator Adams: You have given a very interesting speech. However, I did not hear anything about the future of the public service, especially for Aboriginal people. During the last few years, the government has been looking to hire more native people in the public service. Currently, it sounds like they are saying that the only requirement is that employees speak English and French. If you are not bilingual, you are not hired in the public service, especially in Ottawa.

Aboriginal people have a different culture, but we are Canadian. These kinds of regulations make it very difficult for us. Perhaps the honourable senator could explain how this bill would affect Aboriginal people.

Senator Day: I thank the honourable senator for that question. The question of employment equity is one of the issues that was dealt with during our committee hearings and is one of the issues that I decided to deal with head on. I did speak about it in my remarks.

Clause 34 of the proposed public service modernization bill allows and provides for the commission, and therefore, by delegation, the deputy minister or the department, to apply principles of employment equity. It allows the appointment process to be opened only to members of certain designated groups in order to ensure that there is proper employment equity.

[*Translation*]

Hon. Gerald J. Comeau: Honourable senators, would Senator Day allow a question? Will the tribunal proposed in this bill have bilingual members?

Senator Day: Yes, section 16 of the Official Languages Act applies. That section stipulates that a court must be capable of understanding directly — not through an interpreter — the language of the person appearing before it. The tribunal will be bound by this act.

Senator Comeau: Each member will be a person meeting the requirements of the Official Languages Act? A person who is actually bilingual?

Senator Day: You asked Ms. Robillard the same question. The act says that the court and those making it up must have this capability, not each member, but the court.

Senator Comeau: So, if it is in the Maritimes, where members of the tribunal are likely not bilingual, what happens? What happens if I come before it as a francophone, demanding to present my case to the members in French, but they are quite simply not bilingual? Will I have to move to a region where services are available?

Senator Day: No. If I understand the law correctly, the tribunal in your region will have to be capable of hearing you and following the process in the language of the person before it.

Senator Comeau: My last question concerns the language school, which will now be subject to the bill. If I understand correctly, this school will train and upgrade the bilingual capacity of public servants. Have you given any thought to not having a training school exclusively governed by the bill, and instead using schools already in place in the communities? Public servants could attend them instead of starting a school. That way, use could be made of the expertise of teachers already in place, and public servants would also have an opportunity to speak with others from outside the public service. In other words, why send public servants to a special school when the general population goes to public schools?

Senator Day: That is a good idea. It is a management issue. It is not in the legislation. Ms. Robillard was asked this question in committee. She said that there are now private schools and individuals offering official language courses. Even if there are specific schools for this purpose, we are using private sector resources.

According to government members, this formula can continue but not as it currently is set out in the act. It is a management issue.

Hon. Jean-Robert Gauthier: Will the tribunal be bilingual? Everyone knows the governor in council receives suggestions from senior officials regarding the appointment of judges. Senator Comeau and I are asking the same question: Will the tribunal, as a group, be able to hear cases in both official languages? We asked this question in committee. There is nothing in the bill to justify an affirmative answer. It tells us nothing.

It is an honest question: Will the government be careful and will it remain vigilant to ensure that the members of the tribunal, as a group, can hear complainants in both official languages?

Senator Day: This bill concerns the public service, which is subject to section 16 of the Official Languages Act. This section stipulates, in particular, that every federal court must be able to understand the language of the parties who appear before it.

Senator Gauthier: We have five senior Officers of Parliament: the Auditor General of Canada, the Commissioner of Official Languages, the Human Rights Commissioner, the Privacy Commissioner and the Chief Electoral Officer. When one of these officers speaks, Parliament should listen. The Commissioner of Official Languages told us in committee, and she repeated her words to the House of Commons: "Note that there is no guarantee that the tribunal, as a group, can hear cases in English and in French."

• (1610)

That is why I proposed the amendment, which was defeated, of course, to the committee. What will the tribunal say to Canadians?

[*English*]

"Sorry. Today we do not have a bilingual capacity." Come on!

[*Translation*]

I want the legislation to be clear and precise. I want a commitment from the government stating clearly that it intends to appoint to this tribunal judges who will be able to hear witnesses, complaints or grievances, without interpretation, in both official languages of our country. That is not so very complicated.

Senator Day: That is in the Official Languages Act. There is no need to repeat it in Bill C-25. That is the government's position.

Senator Gauthier: Honourable senators, the Official Languages Act does not say that a court "must." Section 16 that you have quoted is clear and precise. It deals with the right of Canadians to be heard by a judge who understands and speaks their language. Nothing in section 16 says that the court as a group must be able to do so. In the Charter of Rights and Freedoms the individual is mentioned. Section 16 of the Charter deals with individual rights. There is no guarantee in Bill C-25.

[*English*]

Senator Cools: Honourable senators, I was listening with care to the honourable senator's description of the substantial upgrading of the Canadian Centre for Management Development.

Senator Day: It is called the Canada School for Public Service.

Senator Cools: That is the new name. The old name was the Canadian Centre for Management Development. I have not looked at these segments of the bill and I am not that well acquainted in a current way with some of the subject matter, but as I was listening, I recalled our Liberal colleagues' here strong objection to the setting up of that school. Many of us recall that Senator MacEachen and others, especially former ministers, put up an elaborate opposition to that proposal when Mr. Mulroney was Prime Minister. Based on what I have heard the honourable senator say, it now seems that Liberals have embraced everything that they had rejected previously. It may be that this has happened in stages and I have not noticed it, but I wonder about the old record here of debates and proceedings, when those issues were before us and were properly canvassed. I also wonder if I could have an indication of roughly how and when Liberals changed their minds.

Senator Day: Honourable senators, I am not certain that I could answer that question with any degree of precision. I was not here when Senator MacEachen was here, so I am not sure of what he said. However, I can tell you that Bill C-25 contains the current position, after extensive consultation, of the Government of Canada.

Senator Carstairs: Honourable senators, I am rising to make a correction. Earlier today, in response to Senator Cools' point of order, I indicated that she had raised the matter of the Royal Consent as a point of order before the committee and that she had been ruled out of order. She did not. The honourable senator went on to say that she had not done that. It is true that she raised a number of questions in the committee. I was given the wrong information and I want to apologize and correct the record.

[*Translation*]

Hon. Lowell Murray: Honourable senators, I will start where Senator Day and Senator Gauthier left off, that is, with the changes to Bill C-25 proposed by the Commissioner of Official Languages. I would like to point out that Ms. Adam proposed the change regarding tribunals for the very reason that a study conducted by her office in 1999 found that members of these federal tribunals, who are appointed by the Governor in Council, did not always have the required language skills. That is why she is concerned about the future and concerned that this type of provision was left out of Bill C-25. She asked the committee to make this change to Bill C-25.

She also noticed that, in the current legislation, there is a provision that requires the government to post competition notices in both official languages. This provision is also missing from the bill. She is asking us to reinstate this provision in Bill C-25.

I know that Senator Gauthier tried unsuccessfully to make these changes. I would simply say that if he or another senator returned to the charge, I would support him. There is no need to remind you of the importance of ensuring respect for bilingualism in the public service. I can appreciate the point of view expressed by the minister and by Senator Day today that these changes are not strictly necessary. We have section 16 of the Official Languages Act and we also have the Canadian Charter of Rights and Freedoms. However, honourable senators, as Senator Gauthier just reminded us, the Commissioner of Official Languages is an officer of Parliament. If she asks us to exercise an abundance of caution and to make certain changes to the bill, I do not see how we could turn down her requests. There is no political reason to refuse her request.

[*English*]

Let me first thank Senator Day for having given us such a good outline of this bill. I thank him also for having reported, as he did, on the activities of the Standing Senate Committee on National Finance, of which he is the Deputy Chairman. It remains for me only to thank, first, the witnesses who came forward. We had former and presently serving public servants, the representatives of the employee unions, employee associations, eminent scholars in public administration, the present and former Auditor Generals of Canada, the present Commissioner of Official Languages, and so on. They were of enormous assistance to the committee in the study of this bill in a historical context from various perspectives and in-depth. I thank the senators who took part in our study. At every meeting we held, we had not only a full complement of committee members on hand but also a number of other senators who, although not members of the committee, attended, out of a keen interest and concern for these issues, to take part in our deliberations. I want to thank them for that because I sincerely say that they made a substantive and substantial contribution to our consideration of the bill.

• (1620)

Honourable senators, we all want a legal regime for the public service that enshrines, ensures, protects and enforces certain transcendent principles: integrity, transparency, non-partisanship and, most of all, the merit principle as the ultimate standard for hiring and promotion in the Canadian public service. At the same time, we all want a public service so constructed that the Government of Canada, in all its emanations, is able to serve Canadians efficiently and well. The objective is to strike the right balance between those two objectives of equity, on the one hand, and efficiency, on the other, as our old friend Senator Bolduc put it.

The question before us is this: Does this bill strike the right balance? The bad news is that there are elements in this bill — and now I am not speaking as chairman of the committee but as one senator, a member of the opposition — that tip the balance away from equity and too heavily in favour of the search for efficiency. There are elements in this bill that could compromise and even endanger the transcendent principles that I spoke of a minute ago: integrity, transparency, non-partisanship and the merit principle.

The good news is that we, as senators, can build into the bill further protection for those values and substantially lessen the possibilities of abuse that are opened by this bill without in any way compromising the important objective of efficiency and effectiveness.

My honourable friend and spokesman for the government continued to repeat: "While this bill may not be perfect, please do not consider amending it. Why, there is a review in five-years' time." My friend just promoted the review to the status of a "legislative review."

Honourable senators, a legislative review it ain't. It is a review by the government. The same bureaucracy and the same machinery that brought the bill to us will review it in five-years' time. The Government of Canada, as an institution, will review it in five years' time. What is Parliament's involvement? The government will table its report in Parliament.

It is not a legislative or parliamentary review at all. With the help of my learned friend Senator Oliver, I confirmed that point in the provisions of the bill. It is an executive review, and we will be vouchsafed a copy of the report when it is finished.

We must get this right, honourable senators. As Senator Day pointed out in his opening remarks, the last time there was a thorough overhaul of public service legislation was in 1967, 36 years ago. Prior to that, the country and the government had lived for about half a century under the legislative framework that the government of Sir Robert Borden put in place in 1918-1919. We do not get many opportunities to tackle this issue in a comprehensive way. It is important to emphasize that point if we think we will get another opportunity to correct some of the deficiencies in this bill.

For example — and it is a large matter — the core public service in recent years has been reduced by about 100,000 people. How was that done? Well, we have enough institutional memory in this place to remember it. We passed the bill that made the Department of National Revenue a non-departmental agency, likewise with Parks Canada, NAV CANADA and so forth. It has been going on for some considerable time. The core public service has been reduced.

When Professor Peter Aucoin from Dalhousie University was before us, he wondered what "Jesuitcal" line of reasoning he could possibly use to explain to his students and others who may be interested that the tax collectors in the federal government are not part of the core public service. How does one explain that?

Something must be done here. The Honourable Lloyd Francis, who fits into more categories than almost anyone — a former public servant, former head of the Public Service Union, former member of Parliament, Deputy Speaker, Speaker of the House of Commons, a Ph.D. in economics and a Canadian ambassador overseas — said to us that it is a "heroic assumption" to assume that the merit principle is being protected in all these "structural heretics," as Professor Hodgetts called them.

We must find a way to bring these people back into the fold that they departed, precisely because they wanted to get out from under the constraints of the existing public service legislation.

The important thing, it seems to me, is to rebalance this legislation, to redress the balance a bit in favour of those principles and values that I was talking about. One way to do that, of course, is through incorporating into this bill whistle-blowing provisions and proper protection for whistle-blowers. Proper protection for whistle-blowers is intimately related to the values of integrity, transparency, non-partisanship and even respect for the merit principle. I do not want to exaggerate the importance of whistle-blowing provisions. I know that to a great extent the whistle is blown after the fact of wrongdoing. It is not a preventive measure, although it is fair to say that proper whistle-blowing legislation could act as a deterrent.

My honourable friend today indicated that he shares the view expressed by Dr. Keyserlingk on the basis of his experience that a policy document, even one that is supervised by an eminent ethicist such as Dr. Keyserlingk, is not enough. Legislation is needed.

Senator Day, spokesman for the government on this bill, says that he agrees with that. However, the government refuses to commit to legislation. Madam Robillard says, "I want another study." Dr. Keyserlingk — and Senator Day has quoted him accurately — is willing to wait. I say in Dr. Keyserlingk's defence that he has not had as much experience with bureaucratic stalling, political stalling and stonewalling as some of us have had.

Honourable senators, there is quite a history to this matter. It goes back to 1993, we were reminded at committee, when Mr. Chrétien promised in a letter to Daryl Bean of the Public Service Alliance of Canada that a Liberal Chrétien government would bring in legislation to protect whistle-blowers. It has never happened.

Senator Kinsella introduced Bill S-11 here. It got first and second reading in the Senate, was approved by committee, came back to the Senate and was awaiting third reading when it was overtaken by prorogation.

Senator Kinsella has the letter that Mr. Chrétien wrote to Mr. Bean. He read it into the record. I think he can probably be persuaded to share it with all honourable senators later in this debate. Perhaps he will even try his amendment again.

• (1630)

Notwithstanding what I am sure is the minister's sincere interest and concern in finding a solution, she will not commit, because her cabinet colleagues will not let her commit, to a legislated solution. That is the reality. Who knows where she will be in a matter of a few months? Who knows whether she will be in that portfolio, some other portfolio or, indeed, in politics at all?

If you believe that whistle-blowing legislation is important to these values and principles, then we must act now. Senator Kinsella moved to have his Bill S-11, in essence, incorporated into Bill C-25. That is the way to go. If it had been done by the committee, those values would have substantially more protection than they have now and this would be a better bill. I invite Senator Kinsella to try again at third reading. I say that because we may not get a chance for a long while to deal with this matter. Bureaucratic and political stalling and stonewalling will do its work as it always does.

The same holds true for the question of human rights. Senator Day referred to it today. What is the situation here? If we want to protect the transcendent values that we think are important, if we want to ensure there is an effective recourse in case of abuse, then we have to act now. The committee received a letter from Mary Gusella, the Chairman of the Canadian Human Rights Commission. She is concerned that Bill C-25 transfers human rights adjudication in relation to the public service to a process which, to put it mildly, is limited in its capacity to fulfil that role.

She had an analysis of the bill done by Professor Ed Ratushny, one of the country's leading experts in this field. Professor Ratushny appeared before our committee. He told us that if this bill goes through without amendment we are letting ourselves in for a mess of litigation. That was his testimony. Just as we cannot simply turn a blind eye or the back of our hand, to mix metaphors, to the Commissioner of Official Languages, nor should we reject out of hand an important corrective amendment brought in by our Canadian Human Rights Commission.

The government argues it is not necessary. Perhaps Ms. Gusella and Professor Ratushny are making their proposal out of an abundance of caution. In any case, we in Parliament have to take these representations with the utmost seriousness.

Concerning this whole question of diversity, the idea that the Canadian public service ought to represent the Canadian mosaic, as one witness called it, is not provided for effectively in this legislation. When Mr. Serson was before us in June, he said the requirement to build a more representative public service should have been included in a definition of merit "because then it becomes a qualification for all positions in the public service." One of our colleagues tried an amendment in that sense at the committee. It failed. There is no reason why it should not be tried again. We may not get another opportunity for many years to deal with this point.

National area of selection is another matter that our friend Senator Day dealt with. I think he dismissed it too casually or, at least, he dismissed it too optimistically. He relies on the undoubted sincerity of the minister and the President of the Public Service Commission. I do not doubt their sincerity. However, this question of a national area of selection is intimately related to the values and principles I was talking about.

Many Canadians are frustrated because they cannot compete for public service jobs because they live in the wrong area of the country. Senator Ringuette, and others here and in the House of Commons, have been on top of this issue for some time. I cannot but express my admiration for the persistence with which they have pursued this matter. It is an important matter.

At the committee, Senator Callbeck told us that of the jobs in the Ottawa region, 27 per cent of them are filled from a national area of selection and 77 per cent are restricted to local applicants. That is the reality. We know, because we have been told by experts, including the President of the Public Service Commission, that the way to correct this problem is through communications technology.

Last June, Mr. Serson told us that he went to the government looking for $37.7 million to get the Public Service Commission and its activities completely integrated into what is called Government On-Line. He asked for $37.7 million, which is a lot of money. The public service is a big organization and it is very complex. What they gave him was $500,000, to be shared with HRDC. HRDC spills $500,000 at the water cooler every week. This is nuts.

Honourable senators, again, I do not doubt the sincerity of the minister, the president of the commission and those other spokespersons for the government, but national area of selection will not happen unless we give it legislative force in this bill. Otherwise, bureaucratic and political inertia will see to it and the idea will be more honoured in the breach than the observance.

Finally, I wish to say a word on the question of merit. Senator Day correctly states that merit is not defined in the present legislation. In the present legislation there is to be selection according to merit as "defined by the Public Service Commission," supposedly on the basis of competition. However, there are provisions for exceptions to competition in the present law as prescribed by regulations of the Public Service Commission.

One of our witnesses — I believe it was Mr. Krause from the Social Science Employees Association — told us that even with that regime 42 per cent of the appointments are now made without competition. What do honourable senators think it will be in the much more flexible regime that is being introduced by Bill C-25?

We have a bill that delegates staffing authority to deputy ministers and down to the lowest management level. I do not object to that. I believe most people see the necessity of that. Merit is to be assessed by managers, according to the "essential qualifications" of the job. It is not all the qualifications but the "essential qualifications," plus a number of other more subjective considerations that the manager presumably will make up as he goes along. The manager will decide whether there will be a competition, and there is a self-reporting mechanism for him or her to own up to it.

Mr. Steve Hindle got it right. He made the obvious point that this bill is providing a wider discretion to managers to abuse the merit principle. Former Senator Bolduc told us that these provisions are an invitation for managers to adapt the job requirements to the person the manager wants to hire. That is where we are.

• (1640)

The response of the government is that it is only the requirement for competition that is being removed from the law, not the capacity for competition.

Second, they remind us, and it is correct, that the Public Service Commission will have, under Bill C-25, a more robust authority to monitor and to investigate, to impose sanctions, including, of course, the right to withdraw or to rescind a delegation they have made to a deputy head. For example, the failure to hold a competition could be interpreted in some cases as an abuse of authority and, therefore, subject to recourse and to the whole recourse process.

The House of Commons, to its great credit, put in an amendment specifically to authorize the Public Service Commission to audit the exercise by deputy ministers of their delegated authority. In other words, they do not have to wait for a complaint to do so.

Third, the government reminds us that we have this new Public Service Staffing Tribunal, which is set to be separate from the Public Service Commission, and to which public servants can have recourse. Again, of course, this is after the fact.

Honourable senators, some of us have come to the conclusion — and our friend Senator Bolduc was very pervasive in this regard — that the way to reinforce the merit principle and to ensure some proper protection for it is to re-establish in the law relative merit as the rule. Obviously, regulatory power would be required to make exceptions, but it is important in the law to re-establish relative merit as the rule.

Second, I point out that while the government speaks of powers and the added powers that will be granted to the Public Service Commission, we have to look at that undertaking; we have to look at those powers, too, on the basis of the record. The president of the Public Service Commission, Mr. Serson, told the committee that 10 years ago the Public Service Commission had 100 auditors to do the work of auditing, investigating and monitoring what was going on in all the departments of government. There were 100 auditors a decade ago; today, because of government cutbacks and budgetary restraints, the Public Service Commission has seven or eight auditors.

When you talk about the added powers and the increased ability of the commission to audit, monitor and so forth, it amounts to nothing without the resources to do the job adequately. In parentheses, I say that that brings up a whole other question that we cannot address in this bill but that we should address soon, that is, the budgetary process involving all these agents of Parliament. As of now, they go cap in hand to Treasury Board. He who pays the piper calls the tune. The government is in a position to seriously control the activities of these agents of Parliament simply by holding on tightly to the purse strings. I should like to see a budgetary process somewhat analogous to the ones we have for our Senate budget and House of Commons budget. At least, we need a process in which the two Houses of Parliament are involved up front at the beginning rather than at the end of the process.

Then we have the commission, which presently has three full-time commissioners. Under Bill C-25, there will be a full-time president and an unstated number of part-timers. Let me say that a system of part-time members of the Public Service Commission is the wrong way to go. If they are part-time by definition, they are doing something else full time. There is a great possibility of conflict of interest. At worst, there will be political partisanship and patronage involved. At best, every interest group and subgroup in the country will be demanding that they be represented on the Public Service Commission. This is not the way to go. I was struck by the fact that Minister Robillard, in explaining why we were going to one full-time commissioner and a pile of part-timers, told us that we removed some functions from the Public Service Commission, that they do not need so many commissioners. That was in one breath. In the next breath, she boasted of the added powers for monitoring and supervision that we are giving to the commission.

We must return to a situation in which we have three full-time commissioners. Again, let me applaud the House of Commons. They passed an amendment to the effect that the appointment of the president of the Public Service Commission must be made after a resolution of both Houses of Parliament. I think that is very important. It is extremely important that we restore a good and tight relationship between Parliament and the Public Service Commission. Minister Robillard let us know at the committee that the PSC is not really an agent of Parliament at all, that it is a hybrid. She is right, to the extent that it is involved in certain executive functions and I suppose is an agent of government in that sense, but we have to make clear that when it comes to the merit principle the Public Service Commission is Parliament's agent and as such must be accountable to Parliament for the respect of the merit principle in the public service. This is extremely important.

We have to put an end to the situation, which has been going on too long, in which the Public Service Commission has become part of the government apparatus. For many years now there has been a revolving door there. Commissioners who are supposed to be appointed for 10 years come from jobs in the federal bureaucracy over to the Public Service Commission, spend a few years there, and come out again and take jobs as assistant deputy ministers and deputy ministers. They are regarded as part of the deputy minister community. There ought to be a real separation or distance between that commission and the government. I think it is up to us in Parliament to see that that happens.

The legislation sets up another organization to which we are referring, the public service staffing tribunal, again to provide recourse. They are taking those functions away from the Public Service Commission and putting them with this new tribunal.

Someone was incautious enough to refer to this proposed new tribunal as an agent of Parliament. I looked up the provisions in the bill. Let me assure honourable senators that it is in no way to be an agent of Parliament. It is to be totally government-run. It allows for the appointment of part-timers and so forth. It does not have the structure that one would want to give a tribunal, which I think could be described as quasi-judicial.

We want to see an amendment that would make this truly an agent of Parliament. I have an amendment, which I will propose now, that would stipulate that the chair and the vice-chair would be appointed after a resolution of both Houses of Parliament, that they would report not through a minister but to Parliament directly, the way any proper agent of Parliament does, and that they would be held accountable by Parliament for their important activities.

MOTION IN AMENDMENT

Hon. Lowell Murray: I will conclude, honourable senators, by moving, seconded by Senator Oliver:

> That Bill C-25 be not now read a third time but that it be amended in clause 12,
>
> (*a*) on page 145, by replacing line 20, with the following:
>
> "(5) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,"; and
>
> (*b*) on page 151, by replacing lines 20 to 31, with the following:
>
> "110. (1) The Chairperson shall, as soon as possible after the end of each fiscal year, submit an annual report to Parliament on the activities of the Tribunal during that fiscal year.

(2) The Chairperson may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers and functions of the Tribunal where, in the opinion of the Chairperson, the matter is of such urgency or importance that a report on it should not be deferred until the time provided for transmission of the next annual report of the Tribunal."; and

(*c*) on page 168, by replacing line 11, with the following:

"(4) the Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,".

• (1650)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, it would be helpful if copies of this motion in amendment were circulated. I do know that a number of senators will want to speak to this amendment, but I also know that some honourable senators, including Senator Poy, want to continue the debate. I think that would be in order.

The Hon. the Speaker: Senator Gauthier has a question.

[*Translation*]

Hon. Jean-Robert Gauthier: Honourable senators, when the interpreters have no copy of the motion in amendment in French, we get only the English version. Since I work mainly in French, I appreciated your reading the French.

We are no longer debating the main motion but the motion in amendment moved by Senator Murray — is that correct? The debate will be on the amendment?

[*English*]

Senator Kinsella: Honourable senators, our rules provide that we can actually have up to two amendments to a main motion at any one time. We have now one motion in amendment. Senator Poy may speak on this amendment or on the main motion. She may even advance a second amendment, which would be in order. We can have up to two amendments before we have to dispose of them.

The Hon. the Speaker: In response to Senator Gauthier's question, I agree that we are now debating the amendment proposed by Senator Murray and seconded by Senator Oliver. Our practice is fairly liberal in this respect in terms of content of speeches. I am not sure whether Senator Poy has an amendment. If it were a sub-amendment, that would be in order. Another amendment would not be in order until we have disposed of the one we have before us.

I now look to the chamber to see who wishes to speak, if anyone.

Hon. Vivienne Poy: Honourable senators, I wish to speak on the main motion. Is that all right?

The Hon. the Speaker: We are on the amendment, Senator Poy, but as I said in my comment, we have been fairly liberal in our understanding when we are in this situation. If a speech has been prepared, the Senate is usually patient in hearing all comments relevant to the bill.

Hon. Marcel Prud'homme: Honourable senators, things may become very confusing. Some senators will speak on the main motion not knowing if the amendment will carry or not. Some may speak on the amendment, as they see fit, not knowing if the sub-amendment will pass and not knowing what the outcome will be on the main motion. Even though we are liberal in our approach to each other, I wonder if we are not about to lead some of us into confusion. A speech could change according to the decision. That is why I have always been under the impression that we should stick to the rule that says we should dispose first of the sub-amendment. When we are satisfied one way or the other, we go to the amendment. When we are satisfied with that, one way or the other, we reach the main motion, which is still amendable. I am in your hands, as you see fit.

The Hon. the Speaker: To deal with Senator Prud'homme's point, there is no sub-amendment before us. There is only an amendment. I was trying to restate Senator Kinsella's point. I wanted to put it in my own words so that I would feel I had the understanding of senators in the chamber.

Hon. Anne C. Cools: Honourable senators, I want to speak to the issues that Senator Prud'homme has raised. We should be speaking to the matter that is before us. If Senator Poy wants to speak on the main motion, she should wait until the main motion comes back rather than speaking on the amendment.

In addition, there is already confusion because an amendment has been moved and none of us have copies of it. Would it be possible to have copies distributed so that when we do wrap our minds around it, we could do so with some intelligence? It would seem that that should be the first item of the day, rather than encouraging people to speak on the different questions.

The Hon. the Speaker: Senator Cools' point about distribution of the amendment is a good one. I believe the distribution is in progress; I am looking to the Table for a nod of agreement.

Yes, that should be done shortly.

In terms of the honourable senator's point about Senator Poy speaking, it has been my practice to be as liberal and as generous as I can in allowing senators to say what they want to say. The Honourable Senator Cools has been the beneficiary of that practice, according to me. We have many examples in this chamber of rather generous interpretation of what a senator may raise for the purposes of their speeches.

I will leave that with honourable senators. We will see what Senator Poy has to say.

Senator Poy: Honourable senators, I am very happy to speak to the third reading of Bill C-25, to modernize employment and labour relations in the public service. I congratulate everyone who has worked so hard on this bill. Over the years, there have been many attempts to reform and modernize the public service, but this legislation is the most comprehensive effort so far.

This bill has the potential to fulfil the commitment of the Liberal government in the 2001 Throne Speech to ensure that the public service is innovative, dynamic and reflective of the diversity of the country, as well as attracting and developing the talent needed to serve Canadians in the 21st century.

• (1700)

As the largest employer in the country, the federal public service has a significant role to play in shaping Canada's future. In order to serve the Canadian public, our public service needs to reflect the diversity of the society that it is mandated to serve. It should contribute to the cohesiveness of Canada by reflecting the diversity embodied in the three pillars of Canadian society — linguistic duality, recognition of Aboriginal peoples' rights and multiculturalism. In addition, it needs to draw on the representation from the different regions of Canada. Finding the balance in reflecting and upholding these ideals remains the ongoing challenge of the federal public service.

The importance of a diverse public service grows in significance when we consider that immigration has transformed the face of Canada, as reflected in the 2001 census, in which Canada emerged as one of the most multicultural countries in the world, where more than 100 languages are spoken and more than 100 religions are represented. Underlying the Canadian understanding of multiculturalism is the concept of shared citizenship where our differences enrich rather than threaten our national identity.

According to HRDC studies, diversity is not only our current reality but also our future, because all of Canada's net labour growth will be accounted for by immigrants by the year 2011. As such, the public service needs to work towards fulfilling the government's responsibility to achieve workplace equity as explicitly laid out in Canada's Employment Equity Act of 1995. While progress has been made with respect to the hiring of women, Aboriginals and persons with disabilities, there remains a significant underrepresentation with respect to visible minorities. For example, according to the most recent statistics, only 3.8 per cent of executives in the public service are members of a visible minority, compared to the representation of 13.4 per cent in the general population. As a result of this slow progress, the Task Force on the Participation of Visible Minorities in the Federal Public Service was established. Three years ago, that task force produced a report entitled "Embracing Change in the Federal Public Service."

That report laid out an action plan with benchmarks for the percentage of new hires to be made up of visible minority employees within the next three to five years. Considering that 47 per cent of the public service workforce will retire in the next 10 years, and that by 2010 more than one half of the population of our major urban centres will be first-generation immigrants, this report comes at an optimal time. Immigrants and visible minorities are key components of the ongoing process of public service renewal.

There is no suggestion in the above that quotas should be applied nor that those with lesser qualifications should be hired. After all, the goal of increasing diversity is ensuring excellence in the delivery of services by increasing creativity and productivity through the widening of perspectives and by reflecting our diverse country. Instead, benchmarks provide for the hiring of a portion of the population that may be better educated than the non-immigrant population against which it is competing.

Consider that, in the year 2000, 58 per cent of working-age immigrants had a post-secondary degree at landing, compared to 43 per cent of the existing Canadian population. Therefore, benchmarks encourage the positive use of human resources that are, at present, not being fully utilized, with a great loss to Canada's productivity.

Since the task force report, there have been some very positive results. For example, since April 2000, the number of visible minorities in the public service has increased by 3,000, representing an increase of just under 40 per cent. As a result, as of March 2002, 6.8 per cent of positions were filled by visible minorities. Honourable senators will realize from those figures that we still have a long way to go towards adequate representation.

How does Bill C-25 address the need for diversity in the public service? I believe it sets the stage to further the transformation of the composition of the public service and its corporate culture. I note that the preamble to Part III makes a commitment towards the public service being representative of Canada's diversity and that several references indicate that employment equity legislation may be taken into account in hiring. These inclusions suggest that the legislation places some importance on diversity.

Bill C-25 also contains a more effective means of managing labour relations through the establishment of the public service labour relations board, which will provide mediation services. The new room for flexibility in hiring provided to deputy heads also bodes well for achieving the goals of employment equity because managers will be required to meet the goals laid out in the Employment Equity Act and in Bill C-25.

In addition, the Canadian Human Rights Commission and the Public Service Commission will have important independent roles in monitoring and evaluating progress to ensure diversity and equity in the public service. Therefore, diversity will be integrated into departmental human resources and business planning, and departments will be held accountable.

However, the overseeing of compliance with both the Employment Equity Act and Bill C-25 will be dependent on providing adequate resources to the independent commissions. It is also imperative that appointments to the Public Service Commission, with its importance in shaping the future public service, be representative of the population of Canada. The provision for part-time commissioners affords an ideal opportunity for expanding the representativeness of the commission.

In reference to what Senators Day, Murray and Gauthier said a little while ago, I should like to suggest one way of ensuring that Bill C-25 lives up to its promise. Five years from now, there will be a parliamentary review of this proposed legislation; however, no committee is equipped to consider how it has impacted diversity in the public service. The Senate could establish a standing committee on diversity and equity that would examine these issues in the public service as well as in the broader Canadian society. I think, given that immigrants are Canada's future and that there are many unresolved issues, such as the integration of immigrants into the workforce, long-term human resource management, accreditation and the recognition of foreign credentials, it is imperative that such a committee be established.

Hon. Donald H. Oliver: Would the honourable senator permit a question?

Senator Poy: Yes.

Senator Oliver: I listened with great interest to the remarks that the honourable senator made about the concept of diversity and the lack thereof in this proposed legislation, Bill C-25. As she knows, when various witnesses, including the Public Service Commission and the minister appeared before the committee, direct questions were put to them about the lack of support for visible minority initiatives in this bill. I noted in the honourable senator's remarks that she referred to a report called "Embracing Change in the Federal Public Service." The honourable senator would know that that report talked about "the one in five." In other words, in terms of new hires, one in five would be a visible minority. As the honourable senator is well aware, every federal department has failed miserably in meeting that target and has now run out of money, and nothing is currently being done to achieve that goal.

Could she first comment on that gross failure on the part of the public service?

Second, the honourable senator said that departments would have to be held accountable to ensure that there would be equality for visible minorities in hiring. Could she explain where that accountability is going to come from, and how it will take place in the public service?

• (1710)

Finally, she quoted with great approval statistics she presumably received from a department, probably Treasury Board, indicating that visible minorities increased by 3,000 people — an increase of 40 per cent. Could she tell us what percentage of that increase in visible minority hiring in the public service of Canada was in the Ex category — "Ex" being executive at the rank of deputy minister or ADM? What percentage, if any?

Senator Poy: I do not have the numbers for the executive level. The number that I quoted comes from the Public Service Commission. This is the general number that I have. I do not have any updated information in that regard.

To go back to the first question, the report — I cannot remember what it is called.

Senator Oliver: "Embracing Change."

Senator Poy: They were very concerned with the legislation. Although I was not part of the committee and I did not attend any of the hearings, I had meetings with people who were witnesses and they put forward their concerns to me. They feel that they can use this legislation as a base to move on. It is very important to start with something. The concept of diversity is in the legislation, even though it is not repeated throughout the legislation. Therefore, it is up to the people who are in the commission, who are in the public service, to move forward. It was presented to me that it is actually a positive step to have part-time commissioners, because it means that more people could be involved and that we could have more diversity in the public service.

As far as the audit is concerned, I questioned whether it would be a little too late if it comes afterwards and not up front. I was told, no, because it depends on who is at the top.

Honourable senators, this legislation is very important. It is not perfect, but we can never have legislation that is perfect. However, this bill is one step forward, a step in the right direction.

Senator Oliver: I thank the honourable senator for that response. However, where in Bill C-25 is there the mechanism to hold departments accountable to ensure that they do fulfil her wishes with respect to diversity, that is, the hiring and the promotion of visible minorities in the public service? Where in Bill C-25 is it stated that departments can be held accountable? What is the mechanism for accountability?

Senator Poy: I am sure the Honourable Senator Oliver knows that in a department or any organization that involves human beings, we all have failures. That is why I suggested that a standing Senate committee keep an eye on what is going on. There will always be good people and people who are not so good in any organization; it is important that someone keeps an eye on them.

It is important that Parliament keeps an eye on them, and I would like a standing Senate committee to ensure that everything is done correctly.

Senator Cools: I heard Senator Poy say that a Senate committee should examine these questions. However, it is my understanding that this bill just came from a Senate committee. Does that mean that the committee's examination of Bill C-25 is inadequate, or is Senator Poy suggesting that we should send the bill back to committee for more study?

Senator Poy: No, that is not what I meant. I think that we should establish a committee to ensure on an ongoing basis that the Public Service Commission and the public service is doing what they are supposed to do.

Hon. Gerald J. Comeau: Honourable senators, I should like to move the adjournment of debate, but I think I saw Senator Gauthier try to get up to ask a question. I am willing to wait for him to ask his question.

The Hon. the Speaker: Do you have a question, Senator Gauthier?

Senator Gauthier: Honourable senators, I can speak to this amendment, but I want to protect my right to speak on the main motion also. Which is it? Do I speak now or on the main motion?

The Hon. the Speaker: The point made earlier is a good one, and that is that the proper, strict procedure to follow is to deal with the item on the floor and only the item on the floor. I have made reference to past practice in this chamber, and that has been to be generous in allowing senators to address questions that are on the floor generally, as opposed to specifically.

That is where we are, honourable senators. It may be that this matter should be referred to the Speaker's advisory committee to see if we want a more strict interpretation of the rules. However, I do not think we should change the practice of the Senate at this moment, and that is why I said what I have said and why we have proceeded as we have.

In answer to the honourable senator's question as to whether he is entitled to speak to the amendment and the main motion, the answer is yes.

Senator Cools: I could take the adjournment on the motion in amendment, and perhaps Senator Comeau could take the adjournment on the main motion.

Senator Comeau: No, we are on the amendment.

The Hon. the Speaker: A matter of order — we are on the amendment of Senator Murray, seconded by Senator Oliver.

Senator Comeau: I move adjournment on the motion in amendment.

On motion of Senator Comeau, debate adjourned.

SPECIFIC CLAIMS RESOLUTION BILL

THIRD READING—MOTION IN AMENDMENT— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Rompkey, 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 Watt, seconded by the Honourable Senator Gill, that the Bill, as amended, be not now read a third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Hon. Terry Stratton: Honourable senators, I would like to speak with respect to the amendment put forward regarding Bill C-6. First, to clarify my interpretation of why this amendment was put forward, in my view it was not the intention of Senator Watt to impugn the capability of the Aboriginal Committee at all. That was not his point. Rather, he believed that there were legal implications with respect to the bill that he thought should and could be dealt with by the Standing Senate Committee on Legal and Constitutional Affairs. Having observed that committee at work on Bill C-10A and Bill C-10B, I think he saw that how they worked and dealt with things from a legal and constitutional point of view would enhance the debate on Bill C-6. I do not think it had anything to do with impugning the reputation of the Standing Senate Committee on Aboriginal Peoples whatsoever.

• (1720)

With respect to the amendment to Bill C-6, I should like to go back to the *Debates of the Senate* of Tuesday, September 16, 2002. Senator Austin rose and spoke. I asked him a question with respect to time. I said:

> The honourable senator made a statement that the minister had to respond every six months. Is there an amendment that speaks to that assertion? My understanding was that the minister had to respond in the first six months but, thereafter, there was no end date as to when the decision had to come down. Could the honourable senator expand on that?

Senator Austin replied as follows:

> Honourable senators, there is no end date as to when the minister has to decide whether to negotiate. I agree with that.
>
> It is my impression, and I may be wrong, that every six months he would have to make some statement that he has the matter under review or consideration. I will check. If I am wrong, I will certainly come back and say so.

Senator Austin sent me a note referring me to clause 30(3) of the bill, which I will quote:

> The Minister shall, at least every six months after the completion of the preparatory meetings, report to the Commission on the status of the review, the expected date of the Minister's decision and, if applicable, the reasons why more time is required than previously expected.

Honourable senators, that is with respect to the status of the review only. Thereafter, once the review has been completed and the process has started, there is no end date. In my interpretation, there is no end date. Perhaps Senator Austin disagrees, but that is my interpretation. It would be an interesting debate in the Standing Senate Committee on Legal and Constitutional Affairs to clarify this matter in that aspect.

Hon. Jack Austin: The honourable senator has just read my answer that there is no end date as to when the minister has to decide.

Senator Stratton: Honourable senators, I shall be pleased to take the honourable senator's questions at the end.

With respect to the amendment to Bill C-6, there was a decision late last week from the Supreme Court of Canada regarding the Metis — *R. v. Powley*. That Supreme Court of Canada decision will have a severe impact on this bill; as such, it should be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The bill deals with special claims. Let us look now at what the Supreme Court of Canada said in its decision. It gives an interpretation of the definition of "Metis."

> The term "Métis" in s. 35 of the *Constitution Act, 1982* does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, and recognizable group identity separate from their Indian or Inuit and European forebears. A Métis community is a group of Métis with a distinctive collective identity, living together in the same geographical area and sharing a common way of life.

Ergo, that definition has an impact on Bill C-6. The decision, in a later paragraph, goes on to read:

> The verification of a claimant's membership in the relevant contemporary community is crucial, since individuals are only entitled to exercise Métis aboriginal rights by virtue of their ancestral connection to and current membership in a Métis community. Self-identification, ancestral connection, and community acceptance are factors which define Métis identity for the purpose of claiming Métis rights under s. 35. Absent formal identification, courts will have to ascertain Métis identity on a case-by-case basis taking into account the value of the community self-definition, the need for the process of identification to be objectively verifiable and the purpose of the constitutional guarantee.

Honourable senators, we are talking about communities based on history. We now have the impact of all the Metis communities across the land, including Norway House and St. Laurent, both in Manitoba, rushing to say that they have a legitimate claim under Bill C-6 and the decision of the court.

That has had, and will have, an impact on this bill because it talks about community. The Metis people have the right to come forward and try to define the Metis community. They could tie the Metis community, as they did in the Sault Ste. Marie case, back to 1850 when they had settled the community and hunted and fished from that community. It works by that definition in Manitoba.

I would argue that this decision of the Supreme Court of Canada has a severe impact on the interpretation of Bill C-6. Consequently, the amendment as put forward by Senator Watt should be approved, and the bill should be sent back to the Standing Senate Committee on Legal and Constitutional Affairs to examine the impact of the decision.

Senator Austin: Honourable senators, would Senator Stratton accept a question?

Senator Stratton: Yes, I will.

Senator Austin: Honourable senators, I listened with care to Senator Stratton's argument that the decision with respect to hunting rights for Metis in Ontario has some impact on Bill C-6. However, with the greatest of respect, I cannot understand the connection.

That decision is based on section 35 of the Constitution Act. Bill C-6 is based on status communities that have a land base and have entered into treaties and/or agreements with the Crown. The question with respect to the specific claims is whether the Crown is in derogation of some legal obligation.

The case of the Metis and the question of what is their constitutional right have nothing to do with specific claims whatever. Perhaps Senator Stratton could link the two more clearly, because I missed the connection.

Senator Stratton: Honourable senators, it is for that exact reason that I should like the bill to go to the Standing Senate Committee on Legal and Constitutional Affairs. I do not think that the honourable senator is necessarily right. The impact on Bill C-6 is severe as a result of the decision of the Supreme Court of Canada. Send the bill to the Standing Senate Committee on Legal and Constitutional Affairs. The committee will look at the issue and decide whether the Supreme Court decision has any impact at all on the bill.

• (1730)

Senator Austin: Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs certainly is there to deal with issues within its mandate, which includes constitutional affairs. However, when it comes to legal advice, every standing Senate committee has legal advice in terms of legislation that is in front of it. In the case of the Aboriginal Committee, we had the advice of lawyers and constitutional experts, and the issues were debated and fully settled. Quite frankly, we may disagree, and we obviously do, but as I have said in the Senate before regarding the effect of moving this bill for some unstated legal advice from the Standing Senate Committee on Legal and Constitutional Affairs, what is the legal question? I have not had the legal question framed. In any event, the consequence would be to vote non-confidence in the work of the Standing Senate Committee on Aboriginal Peoples, and I do not believe that the report of that committee justifies that vote of non-confidence or even the amendment by Senator Watt. I believe it is entirely lacking in respect for the work of the committee.

Senator Stratton: I believe, honourable senators, that that is an inappropriate comment. I attended that committee and saw the work that was done. I made comments at the beginning of my statement on what I felt Senator Watt's interpretation was, and he did not mean or intend to demean the work of the committee at all. The honourable senator knows that. To deign to demean your own member is rather reprehensible.

I am not a lawyer, but I suggest that this question as to the result of the *Powley* decision should go to the Legal and Constitutional Affairs Committee, where we should hear from the Aboriginal lawyers what their position is, not yours.

Senator Austin: On the contrary. I am the sponsor of this bill and I have every right to defend this legislation. I am not demeaning Senator Watt; I am demeaning the impact of the amendment. I believe, contrary to my honourable friend, that the amendment is a gratuitous criticism of the work of the standing committee. I would be very interested to hear the legal question that would be put to the Standing Senate Committee on Legal and Constitutional Affairs. I have yet to know what that question is.

Senator Stratton: The Supreme Court decision.

Senator Austin: There is no linkage whatever in law between the two and, if there is a linkage, I would like to hear an argument for it.

Senator Stratton: That is your opinion, and I disagree with your opinion.

Senator Austin: I would ask our colleagues now to decide which of the two opinions they would like to follow.

Hon. Eymard G. Corbin: Honourable senators, if there are other questions, we will listen to them.

Honourable senators, I have no fight with anyone. I will not pull personalities into this issue. I do not think this is the place for it.

This whole matter is fundamentally important.

[*Translation*]

When I see my three Aboriginal colleagues, Senators Watt, Adams and Gill, vigorously oppose the adoption at third reading of the bill, I think that these senators, who represent their people, are sending us a message.

It is not appropriate to attempt to establish a purely legal linkage with regard to this amendment. There is a much deeper problem here. I have experienced this dilemma in the past. I belong to a linguistic minority in this country. I must say that any progress we have achieved under the Official Languages Act was achieved with great difficulty and still is.

In order to prove the merits of our arguments, we are constantly forced to go before the courts. We waste a great deal of our time, we pay extremely high lawyers' fees and things drag on forever. On an issue that has been debated for 400 years, we are asked to compromise and accept delays. We are told that progress is being made — but it is barely perceptible — and that we should still be happy with the way things are. I am not.

When I hear three of my colleagues, Aboriginals who represent their nation, tell us that there is a problem with this bill, I am inclined to support them. I believe that they are not being unreasonable. No matter what precedents there may or may not be to send this bill to another committee to reconsider another aspect, constitutional or otherwise, if they feel strongly that this must be done, I will stand to support them when it comes time to vote.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I trust this continues to be a house of debate. I had not intended participating, but I was touched by what my colleague Senator Corbin has just said. He has brought very sage counsel to this debate. I listened to the intervention by my colleague Senator Stratton. He has brought new material to the debate, in addition to the comments made by Senator Corbin.

I simply wish to add that no harm is done. I can see no harm being done by having the Senate adopt this motion in amendment and having the matter referred to the Standing Senate Committee on Legal and Constitutional Affairs. What possible harm can be done? What is the rush? This is a very serious bill affecting real people.

I was convinced by the report that was initially presented by the Aboriginal Committee. It made sense to me. However, during the debate, we have learned more. A very important circumstance has been brought to bear by the decision of the Supreme Court at the end of last week. I know there was an exchange between Senator Austin and Senator Stratton as to what in that decision bears directly on Bill C-6. Quite frankly, I do not know, but if an argument is being made that it might have direct bearing, I feel it is my obligation to hear the argument, not only the argument that is made but an analysis of what is being advanced.

The Standing Senate Committee on Legal and Constitutional Affairs, like the Aboriginal Committee, has access to legal counsel. All committees of the house have access to legal counsel, but in light of the Supreme Court's unanimous 9-0 decision, perhaps we should hear the legal reflections of those who will be arguing from the point of view of the Aboriginal peoples.

• (1740)

I was impressed by the position of the Six Nations Council, from whom I received a letter. They are very concerned with this issue. I will read part of that letter, as they think it very important that the significant questions implicit in Senator Watt's resolution should receive favourable consideration. They write:

> The amendments only partially address the issues raised in the hearings both by witnesses and senators themselves —

— that is to say, the hearings of the Aboriginal Peoples Committee.

> We believe the Committee is the appropriate forum to address the issues, rather than through debate in the Senate on the amendments.

To their thinking, these new questions should be canvassed by the Standing Senate Committee on Legal and Constitutional Affairs.

They further state:

> The Assembly of First Nations' most recent resolutions on the subject maintain the Bill cannot be salvaged by amendments.

I assume that is in reference to the annual meeting, and, as we know, the AFN recently elected a new head.

Therefore, honourable senators, the reasonable thing to do, unless there is a time schedule to which we are not privy, is to adopt this amendment, let the Standing Senate Committee on Legal and Constitutional Affairs look at the questions that have been raised, and, very importantly, let it hear witnesses from the Assembly of First Nations, the Six Nations Council and others. We would be doing the appropriate service in our assessment of this bill. I am not talking about this bill being delayed. I say that we should let the committee get at it.

Quite frankly, honourable senators, in the amount of time we have been debating a process amendment to have another committee look at the bill, the committee could have studied it and concluded its work. We would then have a second report to help us adjudicate upon the appropriateness of Bill C-6.

I would therefore encourage honourable senators to support this motion in amendment, let the committee look at the bill and hear from the witnesses, which would, I hope, include the legal advisers of the AFN and the Six Nations Council. What harm would be done?

Perhaps Senator Austin is privy to a timeline of the parliamentary agenda. I carry, as do other honourable senators, a copy of our schedule. Our schedule has us sitting well into December. There is a great deal of parliamentary time between now and December to have the Standing Senate Committee on Legal and Constitutional Affairs do the appropriate thing, get back to us and, if there are amendments, deal with them. I could see that all being done by the third week of October, following which the bill could be sent to the House of Commons. They have the same basic calendar as we have. They could examine the bill. I know they will take a few days off, which is appropriate, for the Liberal leadership convention. We have lots of time to continue with this matter.

The rumour is that the present government is concerned that it may be facing a non-confidence vote should it come back after the Liberal leadership convention because there will be a new leader. If the present Prime Minister does not visit the Governor General at Rideau Hall after the Liberal leadership convention, some of us would find that quite inappropriate. Our tradition is that the leader of the party with the greatest number of seats in the House of Commons is the one that the Governor General calls upon to form a government. The leader of that party, by my assessment of what happened over the weekend, will be Mr. Paul Martin, a distinguished parliamentarian and former Minister of Finance. I am sure some of my colleagues on the other side will go to that convention as ex-officios. Quite frankly, if they all vote for Ms. Copps, Mr. Martin will still win. The reality is that the Leader of the Liberal Party, after the leadership convention in November, will be Mr. Martin. Mr. Martin can form a new government and keep this session of Parliament. There is no need for prorogation. We can continue this session.

Perhaps the Prime Minister will not go to Rideau Hall right after the leadership convention but try to stay on until February. That would mean one of two things. Prime Minister Chrétien would need all of the leaders in the other place to agree to change the parliamentary schedule, which has us sitting until December, because they have a fixed calendar unlike ours in the Senate. If they do not have that agreement, and I am not sure they would get that agreement, then the present Prime Minister would have only the option of prorogation of Parliament — the dissolution of Parliament — to avoid coming back to face the House of Commons. Why would he not want to do that? Any member of that House could rise and say: "Let us look at the reality. The party with the most seats in the House of Commons has chosen a new leader by an enormous landslide, and by our tradition, that is the person who should be asked by the Governor General to form the government. Therefore, we move a motion of non-confidence in the present government of Prime Minister Chrétien."

I should think that any influence I have with the Progressive Conservative members in the other place would gain 15 votes, at least, in support of that motion of non-confidence. However, I suspect that many of the Liberal members of Parliament who are keen, excited and enthusiastic supporters of Mr. Martin might also support that motion of non-confidence in the current Prime Minister. If that happens and should that motion pass, under our tradition, the Governor General would be obliged to do what? The Governor General would be obliged to dismiss Mr. Chrétien as the Prime Minister.

Clearly, honourable senators, some of our colleagues opposite are fearful that the House of Commons will rise in late October, and, because of that, they want to ram legislation through both Houses. I do not think we should buy into that situation. I will support my colleagues opposite, who are supporting Mr. Martin, and if he becomes leader, he should be Prime Minister when he comes back to Ottawa.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator opposite for outlining the future of the Liberal Party of Canada, but since he does not choose to be a member of our great party, I will not pay much attention to what he had to say.

In terms, however, of what we are dealing with in Bill C-6, this bill passed the House of Commons on March 18, 2003. We have had March, April, May, June and September to deal with this legislation.

• (1750)

Anyone who discusses the concept of ramming is clearly not dealing with the facts of this situation. There has been no ramming of this bill. In fact, I think we all owe a great debt of gratitude to the chair and members on both sides of the Standing Senate Committee on Aboriginal Peoples for the extremely hard work they have done on this particular piece of legislation. All of the witnesses that Senator Kinsella indicates we should hear from have been heard from. They have given their opinion on this particular matter.

We have a situation in which he indicates now and through his whip that, somehow or other, the decision that was made by the Supreme Court last week will change the whole nature of this piece of legislation. Let us read what the bill says in its title. It reads: "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."

How can we, by any stretch of the imagination, think that the decision made by the Supreme Court of Canada last week will have any impact on this particular piece of legislation, other than perhaps Metis claims might also be at some time in the future part of this legitimate process? That is the extent of it. There are no points of law here that need to be resolved. The Supreme Court resolved the point of law. It made some powerful statements last week, statements that I think will have an impact on our Metis people.

Honourable senators, I think it is time to vote on this bill. The committee came up with five excellent amendments to this piece of legislation. That is as a result of the hard work of the members of the committee. To send the bill to yet another committee would negate several things. The first is that we have an Aboriginal Peoples Committee, and the Senate of Canada in its wisdom chose that committee to study this particular piece of legislation. This chamber made a decision that that committee should study it. The committee did that, and did an excellent job. To "committee-shop," which I think we are trying to do here, would be unfair to the Standing Senate Committee on Aboriginal Peoples. The committee should be congratulated for its hard work, and we should defeat this amendment.

[*Translation*]

Hon. Aurélien Gill: Honourable senators, I would like to ask a question of our leader and ask her opinion on this comparison.

She mentioned that Bill C-6 had been studied by a committee of this chamber for five or six months. I would like to ask her to compare this to the Aboriginal people who have been waiting for centuries to have a say in their own country. What is six months in comparison to that?

This bill directly affects the First Nations. The First Nations have been waiting a very long time to have their say. Now there is an opportunity to hear the First Nations' concerns and complaints. Most of the witnesses who appeared before us wanted this bill abolished or significantly amended. No members of the committee can deny that. What is six months in comparison to what the Aboriginal peoples have been through? It is very little.

Honourable senators, for over 30 years in this country, Aboriginal issues have been settled by the courts. When will the politicians in both Houses of Parliament assume their responsibilities and come up with suitable solutions so that, finally, the issues will be resolved on a political and not a legal basis? We ask that this bill be referred to the Legal Affairs Committee.

What can be preventing the leadership and the honourable senators from wanting to improve Bill C-6? What is so urgent that we cannot take two weeks more to try to clarify this issue? Why not?

I ask the leader what difference it makes to wait a little longer when comparing that to the long wait endured by the First Nations.

[*English*]

Senator Carstairs: There is no question, Senator Gill, that Aboriginal people have been working very hard on a number of issues, including how to make it easier to settle specific claims. The answer to your question is that no Aboriginal group has to use this procedure if they do not want to. This is an alternative procedure. If they do not wish to use it, they will not use it.

Hon. Charlie Watt: Honourable senators, as the mover of the motion, I do believe I understand my limitation.

The Hon. the Speaker: You can ask a question.

Senator Watt: I want to ask questions. That is the only avenue I believe I have.

Honourable senators, Senator Stratton made points containing new elements that have to be taken into consideration because of the ruling with regard to the hunting rights of the Metis people.

There is another issue that has been bothering me for some time, but I thought I was satisfied with the answer I received from the committee itself. This particular bill is related only to matters that have arrangements, if you want to call it that, an old treaty. This legislation is geared to that particular purpose. The senator who sponsored this particular bill made a pretty scary statement a minute ago with regard to agreements that have been signed with the Crown, treaties and things of that nature. I asked questions in the committee as to whether this applies to the modern treaty agreements, of which I am a signatory. I know from time to time when there is an absence of legal interpretation of a modern treaty, the legal people — the court, the lawyers or the politicians — tend to look for a precedent. I am worried that in this particular instance they will be looking for the precedent.

My question is to Senator Stratton. Is he satisfied, as a member of the committee, that this does not correctly apply to modern treaties? If not, this is another issue that I feel has legal and constitutional ramifications. Therefore, it only makes sense to take it to the Standing Senate Committee on Legal and Constitutional Affairs to have it fully examined. This is all I am asking for. I am not questioning the Aboriginal Committee. I am trying to go beyond that, to exhaust myself and exhaust ourselves as Aboriginal people of the resources that are available to us. Why are you denying us that opportunity? You should have that responsibility.

The Hon. the Speaker: I am sorry to interrupt, honourable senators, but I wish to point out that Senator Watt's question or comment is on Senator Carstairs' time and only a question to her is in order.

It is six o'clock, honourable senators, and it is my obligation to leave the Chair and return at eight o'clock, unless there is agreement, as there sometimes is, not to see the clock.

Is it your wish, honourable senators, that we not see the clock?

• (1800)

Hon. Anne C. Cools: That is my understanding as well. I know that the agenda is pressing and so on, but it seems to me that this motion has been on the Order Paper for quite some time. It could have been referred to committee and the committee could have reported back a long time ago. I find the whole situation very odd. Maybe I should have paid more attention to it, but I did not.

I am under the impression that we are to have a reception for an outgoing senator as well as for a new senator.

The Hon. the Speaker: It is six o'clock. The rule is fairly clear. I may either leave the Chair and senators will return at eight o'clock, or we could have unanimous agreement not to see the clock. I am now obliged to put the question, and I will put it only once.

Honourable senators, is it unanimously agreed that we not see the clock?

Senator Kinsella: Honourable senators, on behalf of the opposition, we are prepared not to see the clock if it is understood that we will complete this intervention, adjourn the matter, and ask that all other orders stand.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we should finish the discussion on this item. All other items on the Orders of the Day could be deferred until the next sitting of the Senate.

[*English*]

Senator Kinsella: My understanding is that Senator Carstairs will finish her speech. I know that Senator Tkachuk is ready to speak, but he will take the adjournment of the debate. Is that agreed?

Senator Carstairs: Agreed.

The Hon. the Speaker: I believe I hear agreement between the house leaders but, of course, this requires unanimous consent. Are we in agreement that Senator Carstairs will complete her speech, following which Senator Tkachuk will adjourn the debate and that all remaining items on the Order Paper shall stand? Is that agreed?

Hon. Senators: Agreed.

The Hon. the Speaker: I believe you have the floor, Senator Watt.

Senator Watt: Honourable senators, I was about to ask Senator Stratton a question.

Senator Carstairs: The honourable senator may only ask me a question at this time.

Senator Watt: Perhaps I do not want to ask Senator Carstairs this question because I may not like the answer she will give.

Senator Carstairs: Then Senator Watt must sit down.

Senator Watt: On reflection, I will ask Senator Carstairs the question.

Honourable senators, I believe I am correct in saying that, when there is an option to have a legal interpretation, the lawyers, the politicians and the courts tend to consider any precedent-setting cases.

I have certainly been involved in negotiations and litigation for practically all my life.

Senator Austin has told us that this particular bill applies to those Aboriginal people who have dealings with the Crown, that is, those who have land titles that have been recognized by law, and applied to the treaties. Would the provisions of this bill, if enacted, also apply to modern treaties? I have not seen anything written in this particular bill that states it would not apply to modern treaties.

Could the honourable senator enlighten me in that area?

Senator Carstairs: Honourable senators, I do not really think it matters whether it applies to old treaties or modern treaties. Treaties are treaties and they must be respected. Each Aboriginal community, whether it is governed by an old treaty or by a new treaty has the option to use this process or not use this process. The choice is with the Aboriginal people and, of course, the choice belongs with the Aboriginal people.

Senator Watt: Honourable senators, we as Aboriginal peoples are looking for an avenue other than the legal avenue that is available, that is, going through the court system. Is this the only avenue we will have left? If we cannot sit down and try to find a peaceful solution to our grievances, where is this country headed, economically, socially and politically? I think it is very wrong for this government to try to force this option down the throats of the people. The government is saying, "You can go through the courts. If you do not want to go through the courts, you can take this one avenue." Unfortunately, honourable senators, I think our government is basically saying: "Stop bothering us." I think that is the reason they are passing this law — so it will not work.

Every witness we heard in committee told us that it will not work, and they gave their reasons for saying that. They asked us to reject the bill.

Senator Carstairs: Honourable senators, let me try one more time. I understand that the Aboriginal people themselves asked for another process. Negotiations took place. The result of the negotiations is this bill. The Aboriginal people themselves, I think it is fair to say, would never have given up their alternate right to go to the courts if that is what they wish to do. Through passage of this bill, Aboriginal peoples will now have two choices, whereas up until now they only had one. With the passage of this bill, they will now have two choices and I think that is a good position for the Aboriginal people to be in.

Senator Watt: Honourable senators, once again, we always have had two choices. One of our colleagues, Senator Gill, has, for quite a number of years, been a member of commissions that have looked at these matters. He is not being heard. He is not being listened to. He tells us that the passage of this bill will not improve the present provisions found in the act. We were also told that by the committee members.

On motion of Senator Tkachuk, debate adjourned.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I move that the Senate do now adjourn and that all remaining items on the Order Paper stand in the order in which they are today.

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

Motion agreed to.

The Senate adjourned until Wednesday, September 24, 2003, at 1:30 p.m.

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