

## **Senate Debate – Tuesday, February 15, 2005**

**15:40**

### **First Nations Fiscal and Statistical Management Bill**

#### **Second Reading—Debate Adjourned**

**Hon. Ross Fitzpatrick** moved second reading of Bill C-20, to provide for real property taxation powers of First Nations, to create a First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute and to make consequential amendments to other Acts.

He said: Honourable senators, I rise to address the Senate at second reading of Bill C-20, the First Nations fiscal and statistical management bill. I am very pleased to be bringing such an important and long-awaited bill before the Senate. The proposed legislation was initiated by First Nations and its development has been led by First Nations.

Bill C-20 builds on 15 years of experience acquired by those First Nations who have developed real property taxation laws pursuant to section 83 of the Indian Act. Today, more than 100 First Nations have made such laws and 30 more are preparing to do so.

This initiative will strengthen the First Nation real property tax regime so it may better serve as a vehicle for economic growth. It will provide the transparency and certainty sought by potential investors. It will streamline tax administration and improve the return on tax dollars.

Honourable senators, I believe that we all agree that we want to improve the quality of life in First Nations communities. A number of steps have been taken over the past few years to begin removing barriers to First Nations' economic progress, self-reliance, and self-government but much more is needed. The Indian Act does not provide First Nations with sufficient opportunities to help their economies grow. First Nations communities lack the legal and institutional frameworks that other governments in Canada take for granted. Such frameworks underpin the building of economic relationships. They help communities to work with the financial and commercial sectors and to build the infrastructure that supports business development and improves the quality of life. Such infrastructure includes improved roads, water distribution systems, and sewage systems to support residential subdivisions, commercial development and industrial parks. This legislation would provide First Nations with the tools necessary for attracting investment, developing needed infrastructure and improving employment opportunities, all of which will lead to a better quality of life on the reserve.

Honourable senators, rather than wait for government, certain First Nation leaders looked toward the future and took it upon themselves to develop and propose solutions to

strengthen their economies. They did so for their economies and their communities to pave the way for other First Nations that might wish to participate.

The First Nation proponents of this bill have invested significant time and energy to advance their vision of a new future for their communities. They have consulted with the financial and commercial sectors to better understand what steps must be taken and, as a result, several years ago they came to the federal government seeking the necessary legislative changes.

Bill C-20 is a lengthy and technically complex bill, and I cannot hope to address all of its provisions in the time I have today. However, I would like to review the key elements.

First Nations will have the opportunity to implement property tax systems under the provisions of Bill C-20 or, if they are already taxing under the Indian Act, the opportunity to move these existing property tax regimes under the bill. However, First Nations may decide to continue or commence taxing under the Indian Act. It is their choice. This bill, however, provides for a more transparent property tax system than that which exists in the Indian Act, with specific provisions dealing with property assessment and the development of rate-setting and expenditure laws, all of which provide clarity and consistency while reconciling the interests of First Nations governments with those of their taxpayers.

Under Bill C-20, taxpayers will be able to play a larger role in policy development through the appointment of three taxpayers to the 10-member tax commission. They will also benefit from an improved system for hearing appeals and resolving disputes. Bill C-20 provides for the evolution of the existing Indian Taxation Advisory Board into the First Nations tax commission. The commission will build on the work of the board, which has helped First Nations enter the field of property taxation since 1989. I should note that those First Nations are now collectively raising more than \$44 million annually in tax revenue.

This proposed legislation will create a First Nations finance authority. Through the work of this institution, First Nations, like other local governments in Canada, will have access to private capital raised through the bond markets. It is anticipated that this access will allow participating First Nation governments to raise \$125 million of long-term private capital over the first five bond issues at rates of 30 per cent to 50 per cent lower than at present. This will enable the construction or improvement of roads, sewers, water and other types of infrastructure.

First Nations access to private capital through the bond market will enable them to more effectively participate in the economic mainstream and realize a better return on tax dollars. The First Nations finance authority is modelled on, and was developed with, the assistance of the Municipal Finance Authority of British Columbia, which has 30 years experience and a Triple-A credit rating.

The third institution, the First Nations financial management board, will offer a full range of services to support the financial management capacity of First Nations. These services are available not only to those First Nations whose names appear in the schedule to the bill but also to any First Nation that wishes to use them. Not only will the financial management board support the financial dimensions of the property taxation and borrowing regimes established by the bill, it will be able to assist any First Nation in the development of financial administration laws to ensure that rigorous financial management systems and procedures are in place to inspire and maintain investor confidence.

Many First Nations, particularly from among the 100 or so that already have property taxation systems in place, may be quick to opt into the borrowing regime and other services provided through Bill C-20. However, honourable senators, other First Nations may take more time to take up these opportunities and still others may decline them outright. Participation in the taxing and borrowing regimes of the bill is completely optional.

The fourth institute established by Bill C-20 is the First Nations statistical institute. One of the main roles of the institute will be to provide the statistics necessary to support debentures and greater investment on reserve lands. Another key role is to address the current gap in reliable data targeted toward analysis of the social and economic well-being of First Nations and their populations. Good quality information is needed to support First Nation decision-making and the development of effective policies and programs for First Nations. To this end, the statistical institute will work with First Nations, federal departments, Statistics Canada and provincial statistical agencies to help First Nations meet their information needs while, at the same time, supporting the coordinated collection and analysis of the data required to support effective Canada-First Nations relationships.

As you can see, honourable senators, each of these institutions — the tax commission, the finance authority, the financial management board, and the statistical institute — has a unique, independent and professional role.

(1550)

Honourable senators, it was almost a year ago that I had the privilege to speak at second reading of Bill C-11, the Westbank First Nations Self-government agreement. At that time, I was proud to support a bill to help a First Nation move closer to realizing its potential and fulfilling its dreams of economic self-sufficiency and stability. Today, I am equally privileged and proud to proclaim the merits of Bill C-20, which I view as another step along the path to achieving a model of economic independence for First Nations.

I would like to say how pleased I am — and I am sure my honourable colleague, Senator St. Germain, agrees — that the initiative for this bill came from our home province of British Columbia. In particular, I would like to recognize the contribution of Manny Jewels, a former chief of the Kamloops Indian Band, who is with us today in the gallery,

and who is an active life-long advocate of First Nations' economic self-sufficiency. Manny has dedicated over 30 years of his life to public service in support of Aboriginal causes. He follows in the footsteps of his father and father's father, who together devoted more than 50 years of their lives to advance Aboriginal issues.

Honourable senators, I want to conclude my remarks with this thought. Economic development is an important element in the road to self-sufficiency. This is a path that must be travelled by First Nations to improve their quality of life. Many First Nations have begun this journey, but have encountered obstacles that we can help them to remove. First Nations cannot succeed with their hands tied. Together, we can change the future.

Honourable senators, this is an important piece of legislation for First Nations. It will put the practical tools needed to foster a business-friendly environment, investor confidence and economic growth in the hands of First Nations. It will permit them to follow their own path in their own time and in their own way. I urge all honourable senators to support this important bill.

**Hon. Gerry St. Germain:** I have a question, honourable senators.

I would like to compliment the honourable senator. We have taken it upon ourselves to jointly work together on some of these initiatives, parking our partisanship, if you can believe that, Manny. We parked it, although it will be only on these files, I think.

My honourable friend said that the bill is optional. Is it fully optional to our Aboriginal peoples? I ask this question for a particular reason. We may have to find this answer to it in committee. I am not trying to stump the senator.

I was told that certain First Nations oppose this legislation. Have there been changes in the other place, amendments to the legislation, that would have changed that dynamic? I understand there were First Nations from Ontario and Quebec that were opposed. All senators should be aware of that opposition. Perhaps my friend can clarify that matter.

**Senator Fitzpatrick:** This bill was introduced on three different occasions in the other place. The previous bills did not provide the opportunity for First Nations bands to opt in or out. This bill, which was amended from the previous bills, does provide that opportunity. I think there was some opposition to the previous bills because it was not optional, but I understand that this bill cures that problem.

On motion of Senator St. Germain, debate adjourned.

# Senate Debate – Wednesday, February 16, 2005

**14:30**

## First Nations Fiscal and Statistical Management Bill

### Second Reading

On the Order:

Resuming debate on the motion of the Honourable Senator Fitzpatrick, seconded by the Honourable Senator Bacon, for second reading of Bill C-20, to provide for real property taxation powers of first nations, to create a First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute and to make consequential amendments to other Acts.

**Hon. Gerry St. Germain:** Honourable senators, I rise today to speak to Bill C-20, the First Nations Fiscal and Statistical Management bill.

Bill C-20 will create three national financial institutions and one new national statistical institute, as was so adeptly pointed out yesterday by my colleague and friend from British Columbia, Senator Fitzpatrick. Collectively, they are the First Nations Finance Authority, the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Statistical Institute.

Bill C-20 is basically enabling legislation. Those communities that wish to come under its provisions can do so. There was opposition to this initiative when the concept was first tabled because many thought it forced mandatory participation. The government has said that this is not the case. I believe there has long been a need to create bodies to assist Aboriginal communities in achieving control over their futures.

Canada must take those steps to ensure the revitalization and the continuation of Aboriginal peoples' cultures. However, there are some fundamental ingredients that must be recognized, respected and put into place.

One evening last December, the Standing Senate Committee on Aboriginal Peoples had the pleasure of having an exchange with Professor Steven Cornell, a co-director on the Harvard Project on American Indian Economic Development. This was in relation to a study that the Aboriginal Peoples Committee, under the chairmanship of Senator Sibbeston, had undertaken on the involvement of Aboriginal communities and businesses in economic development activities in Canada.

Professor Cornell and his colleagues had been trying to understand why some indigenous nations in the U.S. are more successful at producing sustainable, productive economies than others. They found that education — something that I have spoken of many times in

this place — location, natural resources, access to capital, and so forth, are essential ingredients to success. However, these ingredients on their own are incapable of producing sustainable development on indigenous lands unless a prior set of factors is in place; factors that are largely political.

Professor Cornell told us that three things emerged from his research as being critically important to sustainable development on indigenous lands. The first is jurisdiction. In essence, where the decision-making power of the indigenous nation itself has risen, the possibilities for development have risen as well. They believe there are several reasons for that, but the most important one is accountability. Professor Cornell said:

As decision-making power moves into indigenous hands, they reap the benefits of good decisions and pay the price of bad decisions, and the consequence, over time, is that the quality of the decisions improves.... ..jurisdiction is important is that it moves the development agenda into indigenous hands.... As decision-making power moved into indigenous hands, their ideas about development moved to the forefront of the development effort.

The second finding of their research was that jurisdiction has to be backed up by capable governance. Professor Cornell said:

...decision-making power alone is not enough. Decisions have to be made intelligently. The environment has to be one that invites citizens and non-citizens of these nations to invest time, energy and ideas in the future of those nations. This is a common finding around the world.

He also noted that investors look to what the quality of governance is — Is there a rule of law? Will I be treated fairly in the courts, et cetera? — before they invest. Jurisdiction has to be combined with capable governing institutions.

The third finding, however, was that those institutions have to match indigenous conceptions of how authority should be organized and exercised; because if they are to be successful, indigenous governments must have legitimacy with the people being governed. Where these three elements of jurisdiction, capable governance and culturally appropriate institutions are working together, the research found that the chances of development appear to increase dramatically. When these are in place, the other assets such as education, natural resources, access to capital and the community's location begin to pay off. Where those things are not in place, those assets are likely to be wasted.

Honourable senators, Bill C-20 appears to provide some of those things that Professor Cornell and his group have uncovered as necessary elements to achieving successful economies in Aboriginal communities.

Part of the job as opposition in Parliament is to raise the questions and concerns that, in this case, several Aboriginal communities and their leaderships have raised independently

and/ or with the AFN in the public forum, and during the bill's earlier incarnations, as Bill C-19 and Bill C-23, in the other place.

(1440)

Honourable senators will recall that the government first introduced this legislation as part of a suite of legislation dealing with First Nations governance. The governance legislation caused a furor across the country and ultimately died on the Order Paper. Today, Bill C-20 is the third version of this legislative initiative. While the government has made a few minor changes to the legislation as a result of concerns raised in the other place, some concerns linger on, such as with respect to the First Nations Statistical Institute. Why is it not voluntary or an opt-in scheme, just as the other three fiscal institutes are in enabling bodies? The fear from some Aboriginal communities is that INAC, or Indian and Northern Affairs Canada, may coerce communities to participate under threat of stalling or reducing their federal-fiscal transfers.

The concern that the government seems to be bypassing Canada's privacy rule to collect information has also been raised. Is creating this statistical institute in this manner just more convenient for the government? Why would the institute not be enhanced by way of separate legislation?

The statistical institute is not optional. It can collect and use sensitive data about all First Nations without their consent. That is section 105. Some have said that Bill C-20 will ultimately affect the rights and interests of all First Nations in Canada, whether or not they opt in.

While a community can easily opt into the fiscal institute by way of a band council resolution, it appears to be difficult to get out of it. Should this be the case, the band council must get governor-in council-permission — in other words, an Order in Council. If this is true, the Senate committee should question whether it would be better, perhaps, to have a First Nations referendum to get in or out. Give them more control of their own destiny, rather than the paternalistic hammer from Ottawa. Let the people and their governments be the true determiners of their future and their successes.

Bill C-20 is primarily an omnibus bill of fiscal measures to assist First Nations to develop their economies. If everything works well with this legislation, then everything should be okay. However, there is a concern that the first time a community misses a payment, then the matter slides into third-party control, so that other bands may seize the assets and even pass resolutions on behalf of the community, and that external controls will trump the community's own decisions, so the community could lose control over its own assets. The institute's rules do not allow a community to adopt its own development policies, such as tax free terms, because the institutes have one common set of rules and each institute is tied to the next one.

Perhaps the committee should recommend that a feasibility study should be done to see if this new scheme will really work. This bill appears to call for the appointment of six full-

time and upwards of 45 part-time positions. This bill is not yet law, honourable senators, and yet the government has already appointed board people with offices. If this is true, this is the height of sheer arrogance, and this is why the Liberals, with respect, were defeated in the other place last night.

This is pure arrogance, if this allegation and what I am saying here is correct.

**Senator Robichaud:** Are you not sure?

**Senator St. Germain:** No, I am not sure, because how do we know what is going on over there? That is a clandestine operation, with your buying golf balls and paying huge commissions to your Liberal buddies in so doing. This is what they have been doing for some time. Why is this legislation needed if nothing changes except partisanship replacement of public service staffing positions? Why is the government spending more tax dollars on new offices? The wholly-appointed government boards perpetuate federal government control, and furthermore, INAC will likely hire more people to oversee these new Crown agencies.

Regarding the appointment process to these proposed boards, the Auditor General of Canada said the following in a report released yesterday:

The changes in the process for appointing directors of Crown corporations, announced in March 2004, have not yet been fully defined or implemented. These changes were put forward by the government to enhance transparency and increase Canadians' confidence that the best people are being appointed to public institutions.

Why are you not listening to her?

**Senator Smith:** I am listening.

**Senator St. Germain:** What about the former premier of New Brunswick? He gets the appointment.

**Senator Robichaud:** Pretty good man.

**Senator St. Germain:** On an additional matter of transparency and accountability, the AG said that, in her view, the Crown corporations could usefully emulate private sector practices including:

...ensuring that the board plays a key role in its own renewal and in selecting the chair and CEO; strengthening the independence of boards and audit committees; requiring that the mandate and operations of the board be defined; strengthening corporate values and ethics practices; and improving the quality of reporting and disclosure.

Will these new agencies be fully subject to the AG's audits? That, honourable senators, is a good question. Canadians, in particular the Aboriginal communities that come under

this legislation, need to know that they are getting good value for their money. In short, perhaps the committee should consider asking for an assessment from the Auditor General's office.

Honourable senators, I think we all agree that one of the responsibilities of Senate committees is to ensure that, during the examination of a bill, all of those groups with different concerns have the opportunity to express themselves. I hope the committee will hear all of the different positions raised in respect of this bill. I believe the Senate committee should send out notices, invite submissions, hold hearings and, after analysis, if the bill has merit, then adopt it. The Senate ought not to push this one through rapidly.

I do believe that these types of institutes would provide Aboriginal communities with appropriate mechanisms to pursue the preservation of their culture within Canada, and that Aboriginal communities will one day be net contributors — not that some are not already — to the country and to our way of life. I also believe that implementing those changes that get Aboriginal communities out from under the paternalistic and archaic Indian Act would be welcomed not just by Aboriginal peoples themselves but by Canadians as a whole.

Honourable senators, thank you for your kind patience. I intend to work very closely with Senator Sibbeston and other members of the Aboriginal Peoples Committee, if the wisdom of this place is to recommend this bill to that committee.

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

**Senator St. Germain:** Very well.

**Senator Banks:** Is the honourable senator representing the Conservative Party when he is recommending that this bill be sent to study by a committee?

**Senator Kinsella:** Do not be partisan.

**Senator St. Germain:** I want it to go to the Standing Senate Committee on Aboriginal Peoples, as a senator. I do not speak on behalf of all these people. If you want to ask them, ask them individually. I am sure they will give you an answer.

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

**Some Hon. Senators:** Question!

**The Hon. the Speaker *pro tempore*:** It was moved by the Honourable Senator Fitzpatrick, seconded by the Honourable Senator Bacon, that this bill be read the second time.

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

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

**Referred to Committee**

**The Hon. the Speaker** *pro tempore*: When shall this bill be read the third time?

On motion of Senator Fitzpatrick, bill referred to the Standing Senate Committee on Aboriginal Peoples.

(1450)