Honourable senators, we can trace our treaties and covenants to the *Sparrow* case and to section 35 of the Constitution Act, 1982. I will point out a number of areas in the *Sparrow* decision because I think it is something that we all should have read, or should read before we vote today.

The Supreme Court in the *Sparrow* decision stated the following:

> For many years, the rights of Indians to their aboriginal lands — certainly legal rights — were virtually ignored.

The Supreme Court went on to say that, to the credit of the Honourable Jean Chrétien, Minster of Indian Affairs, there was an expression of acknowledged responsibility, but by no means a legal right. Then we, the people of Canada, incorporated section 35 into the Constitution Act, 1982.

The court went on to state:

> It is clear, then, that s. 35(1) of the *Constitution Act, 1982*, represents the culmination of a long and difficult struggle in both the political forum and the courts for the constitutional recognition of aboriginal rights.

The judgment states further that the following principle that should govern the interpretation of Indian treaties and statutes was set out in a number of decisions before the 1982 constitutional changes, but that nothing has changed before 1982 or after in this principle. The principle is that, when it comes to governing the interpretation of Indian treaties and statutes, "treaties and statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indians."

Another principle enunciated in these cases was the emphasis on the importance of Indian history and traditions as well as the perceived effect of a treaty at the time of execution.

• (1530)

The judge also cautioned against determining Indian rights "in a vacuum." The honour of the Crown is involved in the interpretation of Indian treaties and, as a consequence, fairness to the Indians is the governing consideration. The principles to be applied to the interpretation of treaties have been canvassed over the years. However, in approaching the terms of a treaty, quite apart from the other considerations already noted, as the decision in fact states:

> ...the honour of the Crown is always involved, and no appearance of 'sharp dealing' should be sanctioned.
>
> This view is reflected in recent judicial decisions which have emphasized the responsibility of Government to protect the rights of Indians arising from the special trust relationship created by history, treaties and legislation.

Further on in the *Sparrow* decision, it is stated that the government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples.

I believe that every senator must understand that that fiduciary relationship, as laid out in the British North America Act, is on your shoulders. The decision goes on:

> The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship.

I believe we have a duty to act on a trust basis with the aboriginal people, and not on an adversarial basis. The minister pointed out to the Legal and Constitution Affairs Committee that the onus is on the aboriginal peoples to prove the infringement of their rights. That is true, if we go to court. It is true that they must prove a *prima facie* case that this act infringes their rights. It is also true that the rights of the aboriginals are not absolute. In other words, national interest and public interest can overrule these aboriginal rights. However, the power to legislate must be read together with these two comments.

In other words, the minister is saying, "I am putting legislation into place. Let the aboriginal people prove that they are being infringed upon." Is that not adversarial? Is that really trust?

Section 35 quite properly points out that we cannot avoid our duties. The inclusion of clause 2(3) into Bill C-68 does not help our fiduciary responsibility. In fact, the constitutional experts have indicated that this clause does not take away or, indeed, add to aboriginal rights.

In my opinion, consultation only occurred after the bill was tabled. In fact, by letter, the minister advised that there would be some gun control legislation, and I respect that that effort was made. However, I do not accept that that is proper and adequate consultation, nor is the fact that the minister then met with a number of groups in a general way. I do not believe that that is adequate consultation. At that point, the aboriginal community had already been forced into an adversarial role. There was the bill. They had not sat down at the table to discuss it. What else could they do but start talking to the minister about what they liked and disliked and to express their fears?

Someone asked why they had not raised this issue with regard to Bill C-17. If I had been here when Bill C-17 was being considered, I would have raised the same questions, because I think they may have applied. However, the wrongs of the past cannot be brought forward as justification for the wrongs being committed today.