> The extent of legislative or regulatory impact on an existing aboriginal right may be scrutinized so as to ensure recognition and affirmation. Section 35(1) does not promise immunity from government regulation in contemporary society but it does hold the Crown to a substantive promise. The government is required to bear the burden of justifying any legislation that has some negative effect on any aboriginal right protected under Section 35(1).

This is a very forceful message from the Justices of the highest court of this land to each and every member of Parliament in the House. All of us have a responsibility to examine every piece of legislation that comes before this House to ensure that it does not infringe or deny an aboriginal right in a manner which cannot be justified.

• (1030)

Some of us carry out this type of examination as a matter of course, out of personal conviction or interest. But I suggest that this responsibility is incumbent on every member of this House, and most particularly on members of the government.

What is required first is an answer to the question of whether the legislation under consideration has the effect of interfering with an existing aboriginal right. If so, other questions must be asked. The Supreme Court has suggested what these other questions ought to be. Is the limitation unreasonable? Does the regulation impose undue hardships? Does the regulation deny to the holders of the right their preferred means of exercising that right?

If a case of interference with an aboriginal right is found, there must be a test of justification. The justification test involves two steps. First, is there a valid legislative objective? The second has to do with the honour of the Crown in dealings with aboriginal people. The special trust relationship and the responsibility of the government *vis-à-vis* aboriginal people must be the first consideration in determining whether the legislation or action in question can be justified.

The bill we are debating today will rectify an oversight, a negligence on the part of the government that has had the effect of clearly interfering with the rights of the aboriginal people represented by the Kluane Tribal Council.

We in the Official Opposition are supporting the corrective acts contained in Bill C-68 so that the rights of other Yukon Indian people are not interfered with. But we caution the government that it must take its trust responsibility with respect to aboriginal peoples far more seriously than it has to date.

Whether it is the re-examination of past legislation, current proposals or future initiatives, or whether it is in the conduct of current land claims negotiations, the federal government has been served notice. The meaning of Section 35 of the Canadian Constitution is to affirm aboriginal rights. It is to be construed in a purposive way. The government is in breach of trust if it does not protect aboriginal rights from unjustified interference.

It is of no small significance that the Supreme Court found the justification of "public interest" to be so vague as to provide no meaningful guidance and so broad as to be unworkable as a test for the justification of a limitation on constitutional rights.

It may well be that much current and proposed activity or development in aboriginal lands which does not have the consent of the aboriginal peoples affected, and which infringes upon their aboriginal rights could be found unconstitutional.

I take this opportunity to urge the government to conduct itself according to the guidelines established by the Supreme Court. The recognition and affirmation of aboriginal rights in our Constitution imposes an obligation on the government. As the Supreme Court has said, "recognition and affirmation requires sensitivity to and respect for the rights of aboriginal peoples on behalf of the government, courts and, indeed, all Canadians".

I want to draw to the attention of the government and this House a communication from the Council for Yukon Indians which I received in my office this morning. It has some recommendations for us which I support. It recommends:

> 1. Legislation be retroactive to September 30, 1987, when the first interim land protection agreement was initiated by the parties to the land claims negotiations for Yukon.
>
> 2. Lands that are identified for selection and interim protection are being alienated due to the lack of adequate protection by the Minister. There must be justification for such action and equitable remedies for each incident.
>
> 3. Legislation must take into full consideration the recent Supreme Court decision, R. vs. Sparrow, May 31, 1990. Specifically, the Minister's fiduciary responsibility.
>
> 4. Bill C-68 to be taken to the Committee for full review.