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(HANSARD)

Wednesday, February 7, 2001

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, February 7, 2001

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

Prayers.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before calling Senators' Statements, I have been asked by some honourable senators and the Table to remind all of my colleagues of the provisions of rule 19(3), which states:

> If Senators have occasion to have private conversations in the Senate Chamber, they shall go below the Bar, otherwise the Speaker shall order them so to do;

The admonition to me is to pay more attention to this rule. It is to be hoped that by drawing the rule to the attention of all honourable senators, it will not be necessary for me to make that request.

SENATORS' STATEMENTS

INTERNATIONAL TRADE

PRINCE EDWARD ISLAND—UNITED STATES EMBARGO ON POTATOES DUE TO FUNGUS

Hon. Catherine S. Callbeck: I rise today to inform honourable senators about a serious situation currently unfolding in my home province, one which is leading to dire economic consequences. As senators may be aware, a fungus discovered in October in one small corner of one small Prince Edward Island field has resulted in the closure of the United States border to all Island potatoes. For four months, world-famous Prince Edward Island potatoes have been left to rot in warehouses across the province, denied entry to the lucrative U.S. market. Since this discovery, my home province's number one industry has been in a state of chaos and is in desperate need of federal help.

There is overwhelming scientific evidence that this fungus was isolated to that one small area. However, it is obviously of no concern to the United States Department of Agriculture and, despite thousands upon thousands of clean soil samples, the border remains closed.

It has become quite apparent to those working toward a solution in this crisis that the issue is no longer one of protecting the United States domestic potato industry in the potato wars; rather, this has become entirely a trade issue. Island potatoes have been unjustifiably turned away at the border, missing the lucrative Thanksgiving and Christmas markets, to the great benefit of U.S. potato producers.

Honourable senators, this oppressive action by the United States has caused a tremendous amount of concern in Prince Edward Island, not only about the future of the province's number one industry, an industry that generates many millions of dollars every year, but about the serious economic implications to the province as a whole. Already the damage is starting to spread throughout the economy. The trucking industry has been devastated, as have potato-packaging operations. In a small province, the ripples quickly extend beyond what one would normally expect. Businesses of all kinds throughout Prince Edward Island are starting to feel the effects of this crisis in the agricultural community, and there is no doubt that action must be taken immediately.

This is certainly not to diminish the efforts to date of those attempting to negotiate a settlement. Negotiating officials — representatives from the Federation of Agriculture, the Prince Edward Island Potato Board, four Island Liberal MPs and many others — have been working hard to bring about a resolution to this situation. However, at this time the situation only will grow worse for Prince Edward Island farmers and the entire Island economy.

Today, I urge the Minister of Agriculture to do whatever is necessary to come to the table as quickly as possible with a significant financial package to assist potato producers in Prince Edward Island. I also ask honourable senators to do whatever they can to assist in this regard.

THE LATE DAVID IFTODY

TRIBUTE

Hon. Mira Spivak: Honourable senators, I wish to say a few words about the late David Iftody, the former Member of Parliament for Provencher. I have spent many hours travelling between Winnipeg and Ottawa with David Iftody. He was a bright, intelligent and warm spirit, full of life and vitality, hopes and dreams. His perspective of human relations, politics and life in general was pervaded by a lovely sense of humour that, while gentle, was wickedly keen. He was struck down in his prime — too soon. I extend my sympathy and condolences to his family. We will all miss him.

[*Translation*]

THE LATE FULGENCE CHARPENTIER

TRIBUTES

Hon. Jean-Robert Gauthier: Honourable senators, I should like to pay tribute to Fulgence Charpentier. His death yesterday marked the end of a very full life that bridged three centuries, from 1897 to 2001. Is that not fantastic? Three centuries: the 19th, the 20th and the 21st.

• (1410)

We are all saddened by the passing of this great Franco-Ontarian journalist, diplomat and committed family man. Mr. Charpentier's life and career were extraordinary.

Born in Ste. Anne de Prescott, Ontario, in 1897, Mr. Charpentier pursued his studies in Quebec and Ontario, Toronto in particular, where he studied law.

His journalistic career began at *Le Droit* in 1913, from whence he moved to *Le Devoir*. After returning to *Le Droit* in 1922, he served as parliamentary correspondent for *Le Canada*, *La Presse* and *Le Soleil*.

He adored parliamentary debate, but eventually moved from journalism to the federal public service, where he had a long career as a diplomat to a number of countries.

When his diplomatic career came to an end, he returned to *Le Droit* in 1968, as a freelancer, editorial writer and commentator on international affairs, an area in which he had a great deal of knowledge.

I can tell you that he sometimes gave me excellent advice in that area. I remember 1994 in particular, when he provided some excellent advice relating to the foreign policy review conducted by Parliament.

He stopped writing for *Le Droit* only very recently, in 1999, when he was 101! Mr. Charpentier was the dean of journalists in Canada, probably in the whole world.

Canada has lost a great citizen. This was a man of great intelligence, a man with a phenomenal memory and great kindness. He has left a great heritage by which he will be remembered.

Mr. Charpentier was a great French Canadian, passionate about national and international politics. His writings show that passion, and will be a source of inspiration for coming generations. We extend our most sincere sympathies to the family — Claire, Louise, Jean, Jacques, and his 15 grandchildren. The name of Fulgence Charpentier will remain in our collective memory for centuries to come, three at least.

[*Later*]

Hon. Gérald-A. Beaudoin: Honourable senators, I frequently had occasion to meet Fulgence Charpentier, who has just passed away.

I have always had the greatest respect and the highest esteem for him. This journalist lived through the entire 20th century, from beginning to end, an exceedingly rare occurrence. He was indefatigable and well versed in Canadian history.

I consulted him on a number of occasions on the lives and works of our great statesmen, and it was a pleasure to listen to him. We have lost a great journalist and a great Canadian.

[*English*]

BLACK HISTORY MONTH

Hon. Donald H. Oliver: Honourable senators, we are in the month of February — the month in which we celebrate the struggles, accomplishments and contributions of the people of African heritage in North America. Dr. Carter Woodson, who initiated Black History Month, was keenly aware of the psychological effects the month of February would have on the American psyche. February is the anniversary of the birth of Frederick Douglass, who fiercely campaigned against slavery. It also coincides with the birthday of the great abolitionist Abraham Lincoln.

In Canadian terms, February is the month when Canada honours the life of Mathew Da Costa. He was the first recorded African-American to settle in Canada, in the year 1605. The Honourable Dr. Hedy Fry, Canada's Secretary of State for Multiculturalism, acknowledged that:

> Mathew Da Costa, a former slave of the Portuguese, came to Nova Scotia in 1605, as a navigator and interpreter for the French colonists. He helped found Port Royal and worked with explorers Pierre de Monts and Samuel de Champlain to communicate between the Micmac and French peoples. The diversity of our country is what defines us as Canadians... We all need to understand more about each other, and learn to work together, just as Mathew Da Costa did with the early settlers and the Aboriginal peoples.

Honourable senators, Black History Month is the month when Canadians learn more about the historically suppressed background of the people of African origin. North American history is replete with examples of bigotry and discrimination against blacks.

In 1997, Professor James L. Torczyner of McGill University conducted a study of the major problems affecting the black communities of Canada. He concluded that even though black workers had almost comparable levels of educational attainment as non-blacks, they tended to have higher percentages of unemployment than other people in the Canadian population as a whole — 15 per cent to 10 per cent. Their average income was 15 per cent less than those of the average Canadian, and more than 30 per cent of black communities lived below the poverty line as opposed to 16 per cent of other Canadians.

In conclusion, honourable senators, although Canadians often romanticize the assistance they extended to the underground runaway slaves, black Canadians still suffer from racist policies and systemic discrimination. Perhaps the mission of the Canadian Race Relations Foundation should be expanded to include enhanced involvement in the activities of black communities.

In addition to taking part in the month-long celebrations, I would also encourage honourable senators to support educational conferences, cultural exhibits and the inclusion of more material on black history in school curricula.

RHEANNA COULTER-SAND
JANICE BOLEN

TRIBUTE ON RECEIVING PERSONS CASE SCHOLARSHIPS

Hon. Thelma J. Chalifoux: Honourable senators, I rise today to recognize the Persons Case Scholarships, which were established in 1979 to mark the fiftieth anniversary of Alberta's Famous Five. The Persons Case declared women as persons under the law. The scholarships are awarded to women and men whose studies are in a field where members of their gender are traditionally under-represented.

Wendy Joy, co-chair of the selection process, stated that "The two women that were chosen exemplified the qualities that we were looking for."

Rheanna Coulter-Sand, a third-year animal biology student at the University of Alberta, became one of two University of Alberta students to earn an Alberta Persons Case Scholarship. Janice Bolen, a fourth-year chemical engineering student at the University of Alberta, was the other student to receive financial assistance through this program.

Janice Bolen is pursuing her career in chemical, environmental or alternative energy engineering. She works at the EPCOR Environmental Affairs and Sustainable Development Department as a co-op student. She focuses on wind framing and landfill gas reclamation projects and hopes to be a role model for other women entering the field of engineering.

Rheanna Coulter-Sand, although majoring in animal biology, is also considering entering the biotechnology research field upon her graduation. She is also an aboriginal student, a Métis, who is proving to the world that aboriginal youth are taking their rightful place in Canada's scientific forum.

Janice Bolen, who sees her role as encouraging more women to enter her chosen field, has said, "I hope to be a role model for other women coming into engineering and to go beyond the stereotype that only men are engineers."

Thanks to the Famous Five and the struggles that they endured, I am also very proud today that my family has been honoured, for Rheanna Coulter-Sand is my granddaughter.

Honourable senators, please join me in congratulating both of these young women, who are important role models and who are part of our life and our culture in Canada.

[*Translation*]

ROUTINE PROCEEDINGS

COMMITTEE OF SELECTION

FIRST REPORT OF COMMITTEE PRESENTED

Hon. Léonce Mercier, Chairman of the Committee of Selection, presented the following report:

Wednesday, February 7, 2001

The Committee of Selection has the honour to present its

FIRST REPORT

Pursuant to Rule 85(1)(a) and 85(2) of the *Rules of the Senate*, your Committee wishes to inform the Senate that it nominates the Honourable Senator Losier-Cool as Speaker *pro tempore*.

Respectfully submitted,

LÉONCE MERCIER
Chairman

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

Hon. Fernand Robichaud (Deputy Leader of the Government): At the next sitting of the Senate.

The Hon. the Speaker: It is moved by the Honourable Senator Robichaud, seconded by the Honourable Senator Kinsella, that this report be taken into consideration at the next sitting of the Senate.

Senator Robichaud: Honourable senators, I should like to withdraw this motion, because there would be consent to consider the report now. Perhaps Senator Kinsella could make his intentions known.

[*English*]

• (1420)

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

Hon. Gerry St. Germain: Honourable senators, we at this end would like to be advised as to what is going on.

The Hon. the Speaker: Let me review where we are, honourable senators, so that neither you nor I is confused. A report from the Committee of Selection has been tabled. I thought it was to be taken into consideration at the next sitting. However, I believe there is a request for leave to consider the matter now. Is leave granted, honourable senators?

An Hon. Senator: No.

The Hon. the Speaker: I hear a dissenting voice. The report will be taken into consideration tomorrow.

STATISTICS ACT
NATIONAL ARCHIVES OF CANADA ACT

BILL TO AMEND—FIRST READING

Hon. Lorna Milne presented Bill S-12, to amend the Statistics Act and the National Archives of Canada Act (Census Records).

Bill read first time.

The Hon. the Speaker: When shall this bill be read the second time?

On motion of Senator Milne, bill placed on the Orders of the Day for second reading Tuesday next.

ROYAL ASSENT BILL

FIRST READING

Hon. John Lynch-Staunton (Leader of the Opposition) presented Bill S-13, respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament.

Bill read first time.

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

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

[*Translation*]

SIR JOHN A. MACDONALD DAY AND SIR WILFRID LAURIER DAY BILL

FIRST READING

Hon. John Lynch-Staunton (Leader of the Opposition) presented Bill S-14, respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day.

Bill read the first time.

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

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

[*English*]

TOBACCO YOUTH PROTECTION BILL

FIRST READING

Hon. Colin Kenny presented Bill S-15, to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada.

Bill read first time.

The Hon. the Speaker: When shall this bill be read the second time?

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

QUESTION PERIOD

INTERNATIONAL TRADE

TRADE MISSION TO CHINA—REQUEST FOR NAMES OF PEOPLE ACCOMPANYING PRIME MINISTER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my question is to the Leader of the Government in the Senate. Could the minister advise this house as to the names of those persons who shall be accompanying the Prime Minister on his visit to China?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not know who will be accompanying the Prime Minister. It is a very interesting question. I am sure we are all very curious about it. I will try to get the list and provide it not only to Senator Kinsella but to all members of this chamber.

FINANCE

AUDITOR GENERAL'S REPORT—
LACK OF BUDGETARY PLANNING ON POSSIBLE
COMPLICATIONS RESULTING FROM AGEING POPULATION

Hon. Brenda M. Robertson: Honourable senators, my question is for the Leader of the Government in the Senate.

The concept of sustainable longevity is very much an important issue in many countries. Sustainable longevity means, of course, more than increased life expectancy. It means added years of quality life, in other words, added years free of poverty, crime, disease and disability.

In this regard, the Auditor General's report caught my attention. The Auditor General notes that, by 2030, those over the age of 65 will make up about 22 per cent of the population, compared with 12 per cent now. Of course, those demographics we have known for some time. The ageing population, however, will put tremendous pressure on government finances down the road, particularly in terms of health care and pension costs. The Auditor General warns that the Department of Finance's budgetary planning is not sufficiently taking into account the long-term implications of the ageing population.

Can the Leader of the Government in the Senate inform the chamber why this is the case?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for her question, particularly because it is of concern to each and every one of us that the demographics in this nation are clearly indicating the trend referenced by the Auditor General. We have an ageing population. Those of us who worked on the special Senate report entitled "Quality End-of-life Care," which deals with the rights of every Canadian in that regard, learned that the pressure will only increase.

As to the specific question on the government's current strategies, I cannot give a reply. I will seek that information and will bring it to the senator as quickly as possible.

Senator Robertson: Honourable senators, if I might be a bit more specific, the projections of the Department of Finance run from two to five years in these matters. The Auditor General feels that those projections are very shortsighted. Certainly a two-to-five-year projection will not give us the help we will need when we get into the years 2015, 2020. If the department keeps moving in that direction, there will not be time to catch up. That is the question I should like the Leader of the Government to ask the Minister of Finance: Why the short-term planning on this very important problem?

Senator Carstairs: As honourable senators know well, there was a day when finance departments projected only year to year. Certainly in the province where I lived, that was very much the process until about the beginning of the 1990s when people began to realize that a broader sense of reference was needed for the direction of a province's or a nation's finances. Clearly, on the issue of massive demographic changes, we need a broader examination of the future impacts on society. I will take the honourable senator's question to the Minister of Finance.

INDUSTRY

COMMITTEE ON INTERNAL TRADE—
REQUEST FOR 1999 AND 2000 ANNUAL REPORTS

Hon. James F. Kelleher: Honourable senators, my question is for the Leader of the Government in the Senate. Chapter 16 of the Agreement on Internal Trade created a ministerial committee that is supposed to supervise the implementation of the agreement. This Committee on Internal Trade is co-chaired by the federal Minister of Industry. Article 1601 requires the committee to prepare an annual report.

Although the Prime Minister and his provincial and territorial colleagues signed the agreement over six years ago, in July of 1994, only three annual reports have been released. The first annual report was issued on February 20, 1998, and it covered the 18-month period of July 1994 to March 31, 1996. The second annual report covered the March 31, 1997 fiscal year and was only released after I raised this matter in the Senate on May 26, 1998. The third annual report covering the March 31, 1998 fiscal year was issued on October 2, 1999. This failure to honour Article 1601's reporting requirement is depriving Canadians of their right to know about this issue, and it cannot continue. Over two years have now elapsed since the last annual report for the March 31, 1998 fiscal year.

Therefore, I should like to ask the Leader of the Government the following: First, will she advise when we will receive the annual report that covers the two fiscal years ending on March 31, 1999 and 2000? Second, will her government undertake that henceforth these annual reports will be issued each and every year and tabled on a timely basis in Parliament?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his questions. I can advise the honourable senator that I will seek to discover, as quickly as I can, the whereabouts of the report for March 31, 1999 and the report for March 31, 2000. I will try to make those reports available to members of this chamber in a timely fashion.

I will ask the second question as well, which is: Can we be assured of the timely distribution of the report that should be coming out in March 2001?

INTERNATIONAL TRADE

EFFECT OF INTERPROVINCIAL TRADE BARRIERS
ON ATTRACTING FOREIGN INVESTMENT

Hon. James F. Kelleher: Honourable senators, again my question is to the Leader of the Government in the Senate. The fact that this government has failed to deal with Canada's interprovincial trade barriers has not gone unnoticed by our trading partners and foreign investors. Last May, the ambassador and head of the delegation of the European Commission in Canada appeared before the House of Commons Subcommittee on International Trade, Trade Disputes and Investment. The European ambassador took this opportunity to remind investors that it is easier to trade within Europe than it is to trade within Canada. Here is what she said, in part:

> ...trade within the European market is facing fewer internal barriers than trade within the provinces of Canada. Any Canadian exporter or operator has only to face one external EU border and thereafter can move its business around our single market without further complications.

Investors are also aware that it is often easier to sell goods and services across Canada if they locate in the United States than if they locate in Canada. As a result, Canada is losing jobs.

Last year, the government's Internal Trade Secretariat published a list of outstanding obligations that is 14 pages long. Will the Leader of the Government explain to the Senate why, after seven years in office, this government continues to allow interprovincial trade barriers to discourage investment and job creation in Canada? I would also ask that the Leader of the Government table in the Senate an action plan to provide Canadians with detailed information on how the government intends to deal with this 14-page list of outstanding obligations.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, once again, I thank the honourable senator for his question. Of course, he knows well the principal problem with the elimination of interprovincial trade barriers. It is the provinces themselves that have been most reluctant to make any progress on the removal of such barriers.

The honourable senator is correct in his statement that it is easier to trade in Europe because European countries, amongst themselves, have chosen to reduce those trade barriers. It may be easier to take one's professional skills from country to country in Europe than it is to take one's professional skills across this great dominion of ours.

The reality is, I regret to say, that until the provinces are serious about negotiating the removal of those barriers, it is unlikely those barriers will come down. However, I will take the honourable senator's message that we should, as a federal government, be doing our part to negotiate the removal of those interprovincial trade barriers.

To answer the second question, if such an action plan exists with respect to the 14 obstacles, I will try to get a copy of that. If one does not exist, I will ask why.

HEALTH

DECISION ON ADDITION OF CAFFEINE TO BEVERAGES— REQUEST FOR PUBLIC INPUT

Hon. Mira Spivak: Honourable senators, officials of Health Canada say they are very close to deciding whether to allow soft drink manufacturers to add caffeine to such citrus-flavoured beverages as Mountain Dew. A decision could come in the next several weeks. For many months, Pepsi has been advertising its Mountain Dew product in Canada as if it were the same high-caffeine drink as in the United States. Young Canadians are invited to "Do the Dew," suggesting that they will get a jolt of caffeine from it.

As senators will recall, in June 1999, this chamber passed a motion urging the government to maintain its current regulation on caffeine until there was evidence that any change would not be detrimental to the health of Canadians, in particular young people. The government promised a scientific review of caffeine. A draft report of that review was made available through the Access to Information Act in November 1999, but no final paper has been published or publicly released by the department while the department searches for a peer-reviewed journal that will accept it. Health Canada says that the publishing of the findings of the review and the decision are not linked. I beg to differ.

My question to the Leader of the Government in the Senate is: Can she guarantee or can she ask the minister to guarantee that the decision will be delayed until the report is published and there is a chance for the public to comment on it? My fervent hope is to delay this thing altogether. I would ask the minister if she could guarantee that.

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for her question. Let me begin by saying that the submission requesting the extension of the use of caffeine is still under review, and no immediate action is to be taken. I can assure the senator that the process is ongoing.

I think we all know the background of this particular situation. Pepsi-Cola Canada has asked for the elimination of the restriction because they want to add caffeine to a number of their products. The present restriction clearly does not meet with their express satisfaction, but it has not been lifted. Until we have all of the scientific evidence at our disposal, it will not be lifted. If the evidence indicates that it should not be lifted, then my information is that it will not be lifted.

Senator Spivak: I simply want to add that —

The Hon. the Speaker: Do you have a follow-up question, Senator Spivak?

Senator Spivak: No, just a short comment. I would hope that in view of the child-based agenda —

The Hon. the Speaker: You cannot make a speach, Senator Spivak; it must be a question.

[*Translation*]

HERITAGE

AUDITOR GENERAL'S REPORT— EFFICACY OF ALLOCATION PROCESS FOR GRANTS— ROLE OF MINISTER WITH REGARD TO APPROVAL

Hon. Pierre Claude Nolin: Honourable senators, yesterday, I told the Leader of the Government in the Senate about the Auditor General's report and its findings on the Department of Canadian Heritage, particularly as regards the Canadian multiculturalism program. A closer look at the report reveals that the departmental internal audit to which I referred yesterday covered a fairly short period, that is from January 2000 to May 2000. The audit showed that three of the projects that were approved were inconsistent with the objectives of the department's program.

• (1440)

Worse still, four of the projects reviewed received grants and contributions, even though public tenders should have been called.

Could the minister please provide details on these seven projects?

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am sure Senator Nolin knows that I do not have that kind of detail at my fingertips, but I will try to obtain such detail for him.

I do wish to tell the honourable senator, though, that I did make inquiries with respect to his question yesterday, and the information that I was given at that time was that the minister signs everything.

Senator Nolin: Honourable senators, this means, therefore, that the minister is at the end of the process, and the minister, of course, is responsible for signing all grants from her department, which includes the multiculturalism program. That is the honourable leader's answer.

REQUEST FOR DETAILS ON ACTION PLAN

Hon. Pierre Claude Nolin: Honourable senators, the response of the Minister of Heritage printed in the Auditor General's report makes a strong promise, and I shall read from page 69 of the French version of the report.

[*Translation*]

> When the internal audit revealed that the results of departmental due diligence initiatives were not sufficiently reflected in audited files, a Management Improvement Action Plan was established. This Management Improvement Action Plan completes the Performance Management Framework (implementation through a national workshop in November 2000), the revision of management controls and structures, and an exhaustive centralized monitoring of project files for National Review Committee recommendation. A set of directives addresses specific deficiencies identified during the audit.

My question for the Honourable Leader of the Government in the Senate is simple. Would it be possible for her to obtain from the Minister of Canadian Heritage the Management Improvement Action Plan that she established following the internal audit, as well as the set of directives addressing specific deficiencies identified during the audit? Can the Leader of the Government in the Senate obtain details of these promises by the Minister of Canadian Heritage?

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the Honourable Senator Nolin for his question. First, let me concur with the senator's original statement that the minister signs all grants for her department.

Second, with respect to the action plan and the directives based on that action plan, which were announced in November 2000, I will attempt to obtain all the details that I can for the honourable senator.

PUBLIC SERVICE COMMISSION

AUDITOR GENERAL'S REPORT—
ADEQUACY OF POST-SECONDARY RECRUITMENT PROGRAM

Hon. Donald H. Oliver: Honourable senators, my questions are for the Leader of the Government in the Senate and they, too, relate to the Auditor General's report respecting the Post-Secondary Recruitment Program of the Public Service of Canada.

In one of the critical chapters of this report, as the Honourable Leader of the Government will know, the Auditor General castigates the federal government for failing to recruit qualified candidates to the public service. Given that 70 per cent of the government's executives are eligible for retirement in 2008, and it takes an average of 10 years of experience to move up the executive level, Canada is facing a major shortage of qualified public servants.

What message is the Leader of the Government in the Senate prepared to deliver to her cabinet colleagues and the President of the Public Service Commission to renew the ranks of the public service? Does the minister accept the Auditor General's observation that the government has failed in its efforts to attract our best and brightest to work in the federal bureaucracy?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the Honourable Senator Oliver for his question. However, it was not the Auditor General who first brought this particular problem to the attention of the Canadian public. In fact, several years ago, the former head of the Privy Council Office clearly outlined to a Senate committee — I believe it was the Social Affairs, Science and Technology Committee, but it may well have been the National Finance Committee — the recruitment problems that existed and laid down a program as to how those problems were to be addressed. There is no question, therefore, like every other business and company throughout Canada, that recruitment of young, talented people is essential. We have a particular problem with the group in the middle years, those between the ages of 35 and 45 who will move into the more senior positions, but there is a strategy in place. I would be prepared to provide that strategy to the honourable senator.

Senator Oliver: Honourable senators, the Auditor General notes that the Post-Secondary Recruitment Program has not recruited post-secondary students to the federal government. Few departments participate in the program and students really only have one chance a year to be recruited, although the Public Service Employment Act includes some 20 departments and 60 agencies. Will the Leader of the Government in the Senate tell us why the federal government only turns to post-secondary recruitment once a year and why prospective students are not courted on a year-round, regular basis?

Senator Carstairs: The honourable senator has brought me information that I must say I did not have, which is that the recruitment policy is only acted upon once a year. I will make inquiries as to why, and whether there is an intention to broaden that search for potentially excellent candidates.

Senator Oliver: Honourable senators, while the minister is making that inquiry, perhaps she could also find out why the Public Service Commission states that in 1999-2000, there were almost 17,000 student applications for some 1,100 jobs, and the Auditor General points out that only 62 per cent of available jobs were filled in the previous year. What accounts for that disparity? Why did they not fill the jobs if they had all those applications?

Senator Carstairs: Honourable senators, I believe we would all not want the government to fill positions identified as unnecessary. However, if they are identified as necessary positions, then there is a legitimate question as to why they have not all been filled. I will attempt to retrieve that information for the honourable senator.

HEALTH

NEW BRUNSWICK—FUNDING OF ABORTION SERVICES

Hon. Lowell Murray: Honourable senators, yesterday the Leader of the Government and I had an exchange concerning funding of abortion services in the province of New Brunswick. The Leader of the Government kindly agreed to obtain a formal statement from her cabinet colleague, the Minister of Health, on this matter. My purpose in rising now is that I had the opportunity today to read Senator Carstairs' final comment to me yesterday, in which she suggests the following:

> ...that, perhaps, up to three of the principles...

— of the Canada Health Act —

> ...are being violated, namely, universality, accessibility and, in cases involving women in Prince Edward Island, portability.

I believe we all wish to know and need to know whether this is indeed the position of the federal government. I ask the assurance of the Leader of the Government in the Senate that she will refer not only my questions but her answers to Mr. Rock so that we may have clarity on this important issue.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the Senator Murray for his question. Just so he knows that I am doing my best to facilitate information as quickly as possible, I have already posed that question to the Minister of Health and I have a response.

The Minister of Health does not agree entirely with me on the portability issue, but he totally agrees with me on the accessibility and universality issues. However, the information we received from Mr. Rock's department is that nothing formal has taken place. There has been no formal correspondence on this issue. There are discussions. It is hoped that a conciliatory form of behaviour is acceptable to both and that this can be resolved in a positive way.

• (1450)

Senator Murray: Honourable senators, I take it that a written reply will be tabled by the deputy leader today on that matter. In particular, I am interested in the view as reported by the Leader of the Government that New Brunswick is, indeed, violating the principles of universality and accessibility in respect to its regulation of abortions in that province.

Senator Carstairs: Honourable senators, there is no formal letter to me from the Minister of Health. There were conversations between my staff and the staff of the Department of Health, and that was the answer I received in reply to Senator Murray's question.

NATIONAL DEFENCE

PROPOSED OFFICE OF CRITICAL INFRASTRUCTURE PROTECTION AND EMERGENCY PREPAREDNESS—REQUEST FOR INFORMATION

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate. I refer her to Senator Oliver's question regarding shortages in the civil service. Several years ago, the Standing Senate Committee on National Finance reported on the severe shortages that were about to happen in the civil service. At that time, I believe Jocelyne Bourgon, who was Clerk of the Privy Council, brought the severity of the issue to our attention.

I wish to refer to a press release from the PMO dated Monday, February 5, wherein the Prime Minister announced a new Office of Critical Infrastructure Protection and Emergency Preparedness, which is to encompass the existing functions of Emergency Preparedness Canada. It is to be chaired by Margaret Purdy, who is currently Deputy Secretary to the Cabinet (Security and Intelligence), Privy Council Office.

What is the meaning of this new office? Is it a coordinating office? Is it a type of new bureaucracy? What is the real intent of this office? I happen to believe that Emergency Preparedness Canada is doing an excellent job, particularly with respect to the natural catastrophes that occur regularly. Perhaps the minister can find out for me just what this office will do.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, like the Honourable Senator Stratton, I read the press release. I must say that it did not tweak my curiosity as it obviously did the honourable senator's. As a result, I did not inquire as to the details of this new office and official representation. I will, however, make that inquiry and get back to the senator as quickly as possible.

Senator Stratton: Honourable senators, I appreciate very much the answer of the minister. Being a resident of Manitoba, she is well aware that the likelihood of a flood in Manitoba this spring is fairly high. Right now, a flood equivalent to 1950 levels with moderate to middle precipitation is being forecast. Honourable senators need not worry because we are now protected from such an occurrence being repeated.

My concern is how all of this will knit together. I ask the Leader of the Government to pursue this matter with a certain urgency. If another couple of Colorado lows happen to come into Manitoba in late March or early April, we could see a repeat of the problem we saw in 1997.

Senator Carstairs: I thank the honourable senator for his question. Although the Honourable Senator Duff Roblin and I may have had different political affiliations, I, like every other Manitoban, is grateful to Senator Roblin for Duff's Ditch. Without Duff's Ditch, the flooding in our province would be far greater.

The Honourable Senator Stratton raises a very interesting question. I had not heard of the forecasts of moderate to middle precipitation that might result in another flood equal to the 1950 flood, from which the honourable senator has agreed we are protected in the province of Manitoba. Clearly, we must know what this particular institution will do and how it will impact on such natural disasters.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like the bills to be called in the following order: resuming debate on Bill S-3, No. 1 on the Order Paper; second reading of Bill S-4, No. 3 on the Order Paper; and resuming debate on Bill S-5, No. 2 on the Order Paper.

[*English*]

MOTOR VEHICLE TRANSPORT ACT, 1987

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Poulin, seconded by the Honourable Senator Cook, for the second reading of Bill S-3, to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts.

Hon. Mira Spivak: Honourable senators, I welcome the opportunity to speak to Bill S-3. I thank my colleague Senator Poulin for her very explicatory remarks yesterday.

The safety of our highways, which is the issue at the heart of this bill, has been one of my longstanding interests as a member of the Standing Senate Committee on Transport and Communications, the Subcommittee on Transportation Safety in which I have been a supporter of Senator Forrestall, and in this chamber on other related bills.

We on this side — and I believe I speak for this side — concur with the fact that the last decade has brought an enormous increase in the tonnage of freight carried on our highways and the distance it travels. Between 1991 and 1998, it increased on average 7 per cent per year. Meanwhile, in the same period, shipments to and from the United States saw a 15 per cent annual increase.

Free trade, just-in-time delivery and the booming North American economy are the major reasons that there are more trucks and buses on our roads. There are clearly economic benefits of all this new activity.

We also welcome the fact that the death toll on our highways has steadily declined, from almost 3,700 at the start of the last decade to less than 3,000 eight years later.

That is not the whole picture, honourable senators. While the absolute numbers are declining, the percentage of deaths in accidents involving large trucks has increased slightly. In 1998, it stood at 17.4 per cent. Overall, in the last decade, Canada's highway death rate from trucking accidents was higher than that of the United States, which indicates there is room for improvement.

Bill S-3 tells us that the government's national transportation policy for the safe operation of commercial vehicles will have a new key instrument and a key principle. The new instrument will be safety performance assessments of carriers by provinces based on the National Safety Code for Motor Carriers. A safety assessment and the resulting safety fitness certificate issued in Manitoba, Yukon or Quebec, for example, will be valid everywhere in Canada and, perhaps, affect the rules of carrier operation in the United States and Mexico.

We are told that the bill establishes a framework for consistent safety ratings. The prime principle will be consistency of standards throughout the country.

I respectfully suggest that this may be wishful thinking, unless a great deal of work has been done, or will be done, to alter the situation since last August. At that time, Mr. David Bradley, head of the Canadian Trucking Alliance, the industry's chief association, said:

> The National Safety Code upon which the ratings system would be based, is neither national, nor is it a code. Indeed, not one of the 16 national safety code standards, agreed to by the provinces in 1988...has been uniformly adopted across the country.

As we heard yesterday, in 1987, federal, provincial and territorial governments signed a memorandum of understanding to implement the national code by 1990 to protect safety in the wake of the deregulation of commercial trucking. The minister was required under section 35 of the Motor Vehicle Transport Act to report to Parliament on the status of that implementation. There were five such reports.

The most recent status report, however, was in 1998. At that time, no province had implemented all of the 15 mandatory standards and 1 voluntary standard — standards ranging from driver testing, driver training, hours of work and vehicle maintenance, to roadside inspections and safety ratings. Only 2 of the 16 standards — the voluntary first-aid provisions and roadside inspections — were in place across the country. In Mr. Bradley's view, not even those were uniformly applied.

Bill S-3 eliminates the minister's obligation to report to Parliament on the status of the code. One must wonder why. If the code standard 14 on safety ratings is to be the foundation of provincially administered safety assessments and those safety assessments are to be a key element of national policy, then why is the reporting requirement no longer important?

The Hon. the Speaker: Honourable Senator Spivak, I must interrupt at this point. I again wish to draw the attention of honourable senators to the provisions of rule 19(3) of the *Rules of the Senate of Canada*. If honourable senators wish to have conversations, they should do so outside the Bar. To do so here disturbs the proceedings in the chamber and interferes with the attention that honourable senators wish to give to a speech being made by our colleagues.

I am sorry to have interrupted you, Honourable Senator Spivak. Please continue.

Senator Spivak: Thank you, Your Honour. Of course, I want all honourable senators to listen to every word that I am saying.

Both the status of the code's overall implementation and the elimination of its reporting are matters that deserve attention in committee.

On the proposed safety assessments, it has been suggested to this chamber that there has been a major effort to develop an umbrella standard based on real on-road safety performance. We are told that the new National Safety Code Standard 14 safety rating has been developed in consultation with industry and public interest groups.

I wish to refer to a news item of February 1, 2001, from the Ontario Trucking Association, headlined, "Safety Rating Systems Lack Consistency Across the Country." The item speaks of past efforts by the Canadian Trucking Alliance to point out the lack of consistency among current safety rating systems. It suggests that there has been some minor movement on the part of governments.

Last August, the CTA cited a Transport Canada study that found that, after seven years of consultation on the issue, there was little consistency in the way the provinces and territories were approaching implementation of the code that would introduce safety ratings. Mr. Bradley said that it underscored a chronic weakness in the made-in-Canada approach to developing national standards through the Canadian Council of Motor Transport Administrators — the CCMTA. He described the situation as a source of enormous frustration for the trucking industry.

What has been the recent minor movement? The federal Deputy Minister of Transport agreed to discuss the matter with other deputies at a recent meeting of the CCMTA. The CCMTA agreed to give it high priority and has struck a committee to prepare a memorandum of understanding for all jurisdictions. This was where the governments stood earlier this month.

A 1987 memorandum of understanding on all the code's standards has not brought consistency in the areas of hours of work, driver certification, driver testing or the many other safety-related standards. It is not unreasonable to suggest that this bill, which promises consistency based on another, still unsigned, memorandum of understanding, is, in fact, premature.

Unless the situation has changed radically, it would be reasonable to suggest that these amendments not proceed until there is some evidence of consistency.

Why is consistency important? It is important to carriers because the safety ratings are to be a matter of public record. Shippers and insurance companies will be encouraged to use them in choosing a carrier and setting insurance rates. Consistency is also important to the drivers, the majority of whom cross borders when making their runs. It is not difficult to imagine the added burden placed on drivers by inconsistent rules for load security, vehicle maintenance or hours of work.

That brings me to an ancillary matter — which is not so ancillary. While proposed changes to the hours-of-service standard are not part of this bill, per se, the act this bill is amending does set out provisions for changing the code on hours of service, the only remaining federally regulated matter.

Last fall, I was invited to speak to a conference in Toronto dealing with that key change under the code that eventually will translate into federal regulation. What is being proposed, quite simply — and I do not know how to label it, because it is incredible and, perhaps, outrageous — would give Canada the least safety-minded regulations in the western world. Sleep-impaired drivers could be required to work a maximum of 84 to 96 hours a week, be denied two consecutive nights of rest and not be required to have onboard recorders — or black boxes — although a recent U.S. proposal would make them mandatory. In fact, the Canadian proposal would require Canadian drivers to drive 17 per cent more hours per shift and up to 60 per cent more hours in a week than U.S. drivers under a proposed reform of work hours in that country.

Speaker after speaker at that conference — fatigue experts, former truckers and an official of the Ontario branch of the CAA — spoke against the proposal. There is no evidence that their opposition has been heard. An Angus Reid poll found that 84 per cent of Canadians surveyed favoured a maximum 60-hour work week for truckers, and 78 per cent wanted the truckers to carry electronic recording devices to monitor their hours of work. There is still no movement on the part of Transport Canada.

It is more than curious that our regulation of the industry is consistently lagging behind countries elsewhere. The government has denied our federal accident investigators the mandate to examine and learn from major highway accidents — in the name of good federal-provincial relations — in spite of the fact that one of the government's own commissions recommended that change. The government has proposed hours of service on bus and truck drivers that are nothing short of punishing, and, while giving lip service to the need for consistent regulation across the country, it stands by while provinces fail to implement the national code.

As Mr. Bradley said last August, "The federal government has the constitutional authority to introduce federal regulations and standards, to show national leadership, but it does not appear prepared to wade in."

On a final point, we are told that the bill provides for, and Transport Canada is working towards, an agreement with the United States and Mexico to give safe motor carriers seamless regulatory treatment across North America. What will the seamless regulatory treatment bring us if the "safe" designation issued by the provinces is based on inconsistent treatment of records of collisions, traffic offences and violations of safety standards? There has been the suggestion that a "safe carrier" will be allowed to require their drivers to work beyond the punishing hours permitted in the hours-of-service proposal.

Yesterday, President Bush said he would reverse the Clinton administration's policy on Mexican trucks. Notwithstanding that 41 per cent of these trucks failed American inspections at the border, Mexican trucks will be allowed to haul goods throughout the United States. The announcement came hours before an arbitration panel ruled that the U.S. would be in violation of NAFTA if it did not begin considering applications from Mexican trucking companies. There are transboundary impacts with this bill and the committee should determine whether the course it sets out is a wise one.

This evening, honourable senators, the CBC is airing a program entitled *Dangerous Roads*. Let us hope that that title is not prophetic.

Honourable senators, there is work to do in committee. We look forward to examining Bill S-3 in more detail.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Transport and Communications, if and when the committee is established.

[*Translation*]

• (1510)

FEDERAL LAW-CIVIL LAW HARMONIZATION BILL, NO. 1

SECOND READING

Hon. Pierre De Bané moved that Bill S-4, to harmonize federal law with the civil law of the Province of Quebec and to amend certain acts in order to ensure that each language version takes into account the common law and the civil law, be read the second time.

He said: Honourable senators, I have the honour to speak to Bill S-4, the Federal Law-Civil Law Harmonization Bill, No. 1. I shall begin by briefly giving you the context underlying the proposal to harmonize federal law with the civil law of the Province of Quebec and to ensure that each language version takes into account the civil law and the common law. I will then examine the contents of the various parts of the bill. Finally, I shall speak about the benefits of this initiative.

[*English*]

First, in the legal and political context, the process that led to the introduction of Bill S-4 is rooted in the Policy on the Application of the Civil Code of Quebec to the Federal Government of 1993 and the Policy on Legislative Bijuralism of 1995, both developed and implemented by the Department of Justice.

Bill S-4 also forms part of a series of actions designed to implement the commitments made in the resolutions on the distinct character of Quebec society, adopted by both Houses of Parliament in December 1995 under the initiative of the Right Honourable Prime Minister Jean Chrétien. Those resolutions along with the Calgary Declaration recognized that Quebec is distinct because of, among other things, its civil law tradition.

[*Translation*]

The government made a commitment to harmonization on the eve of the coming into force of the new Civil Code of Quebec on January 1, 1994. Because of the major changes to the notions, concepts and institutions of civil law resulting from this reform, changes to federal legislative texts — laws and regulations — relating to concepts of private law under provincial jurisdiction became necessary.

Harmonization is a way to bring into effect the Canadian reality of bijuralism by formally recognizing the coexistence of the traditions of common law and civil, which supplement and complement federal legislation.

To meet the challenge of harmonization, the Government of Canada established a program for the Harmonization of Federal Legislation with the Civil Law of the Province of Quebec. The purpose of the program is to ensure that each language version of the federal acts and regulations takes into account the tradition of both civil and common law. The program is administered by the Civil Code Section of the Department of Justice.

[*English*]

I am sure that Senator Beaudoin, who is so familiar with the challenge that this project implies, will give us his own learned comments about this bill.

[*Translation*]

Of the 700-odd public statutes, about 350 have been identified as using the Civil Code of Quebec supplementally.

[*English*]

Pilot studies were conducted to provide a concrete indication of the nature, variety and breadth of the problems caused by interaction between federal law and civil law. The areas requiring more meaningful reform were noted. It was also necessary to determine the most suitable methodology for undertaking this task.

[*Translation*]

After consultation with the representatives of the Quebec legal community, law practitioners and professors, it was decided to give priority to federal statutes that applied to assets, securities and public liability. In all, the aim was to harmonize some fifty federal statutes, in part or totally, in an initial bill, which was introduced in the Senate on May 11, 2000.

Honourable senators will recall Bill S-22, which is the predecessor to present bill, and which died on the Order Paper when Parliament was dissolved last fall.

Bill S-4 is almost identical to Bill S-22, except with respect to eight technical adjustments intended essentially to reflect changes in legislation since May 2000.

[*English*]

Second, I turn to the substance of Bill S-4. Given that Bill S-4 is the first of a series of harmonization bills, it was found necessary to clearly state, in a preamble, the political and legal context of this initiative. The preamble clearly recognizes that all Canadians are entitled to federal legislation that reflects both legal traditions. It also clearly states that the civil law tradition of the Province of Quebec reflects the unique character of Quebec. It is also forward-looking, in that it recognizes that the full development of our two legal traditions gives Canadians a window on the world and facilitates international exchanges.

[*Translation*]

Part 1 of the bill creates a new law, the Federal Law and Civil Law of the Province of Quebec Act, which repeals the provisions of the Civil Code of Lower Canada enacted in 1866 that fall within the legislative competence of the Canadian Parliament subsequent to the division of powers in 1867. Among other things, these provisions address the Crown, the effects of trade, bankruptcy, interest and marriage.

In order to avoid any legal uncertainty in the Province of Quebec as far as marriage is concerned, new provisions governing the basic conditions are proposed in Bill S-4. These integrate perfectly with the Civil Code of Quebec and respect the values of contemporary society. Quebec not being a jurisdiction with a customary law like the common law jurisdictions, but rather with a written law, one of the replacement provisions confirms that, for Quebec, marriage is an institution that is heterosexual in nature. This dovetails with the approach of the Modernization of Benefits and Obligations Act, formerly Bill C-23, which was enacted on June 29, 2000.

The other parts of Bill S-4 are intended to harmonize some 50 existing federal statutes.

[*English*]

Bill S-4 adds two provisions to the Interpretation Act. The first recognizes the reality of Canadian bijuralism in relation to property and civil rights and the fact that provincial law complements federal law.

The second sets out rules to facilitate the interpretation of federal statutes and regulations using common law and civil law terminology. These rules will also assist in understanding the techniques used to draft federal bijural legislation.

• (1520)

Bijuralism is a fact of life in Canada.

[*Translation*]

If I am not mistaken, Senator Beaudoin has taken part in international conventions at which the issue of bijuralism has been discussed.

[*English*]

Stating this principle expressly in legislation has an important symbolic value. The Interpretation Act was therefore the appropriate statute in which to state this principle.

[*Translation*]

Parts 3 to 6 of Bill S-4 amend three different acts, namely the Federal Real Property Act, the Bankruptcy and Insolvency Act and the Crown Liability and Proceedings Act. Forty-five other acts dealing with property, security and civil liability are also amended.

A review of the Federal Real Property Act showed that the English version of certain terms did not reflect Quebec's civil law system. Similarly, appropriate common law terms that were not included in the French version have been added.

[*English*]

For its part, the Bankruptcy and Insolvency Act posed a special challenge in the harmonization initiative, given the important changes with respect to the security regime in the Civil Code of Quebec. Many of the different security mechanisms were combined under the concept of "hypothèque," which may be taken, since 1994, on specific property or on a universality of property, movable or immovable, present or future.

Veteran civil law lawyers and notaries will recall that, prior to 1994, "hypothèque" could only encumber immovable property. These are some of the important changes that are reflected in the modifications proposed to the definition of "secured creditor" in the Bankruptcy Act.

[*Translation*]

The Crown Liability and Proceedings Act is a public right act dealing with the private right of the provinces in the area of civil liability. It is not a bijural act and it uses a civil terminology that is now obsolete. The act has been amended to reflect the changes made to the Quebec law. For example, the concepts of "delict" and "quasi-delict" have been replaced, in civil law, by the notion of "extracontractual civil liability."

[*English*]

Parts 7 to 9 are purely technical in nature and respectively deal with consequential amendments, coordinating amendments, transitional rules and the coming into force.

[*Translation*]

The amendments proposed in the bill reflect a desire to deal with Canada's four legal audiences: francophone and anglophone users of the civil law and anglophone and francophone users of the common law. Of course, when I refer to francophone users of the common law, I cannot forget our fellow citizens in New Brunswick, where, I believe, they have the world's only French-language common law faculty.

The drafting of bijural acts and regulations, which will thus be easier to understand for all Canadians, is an important element in the modernization and readability of federal legislation.

[*English*]

The beneficial effects of Bill S-4 and, by extension, the whole harmonization program will be felt at several levels. It goes without saying that the primary purpose of the process is to adapt federal acts and regulations dealing with or using concepts from private law to the new concepts, new institutions and new terminology of the Civil Code of Quebec.

The harmonization program is accordingly designed to ensure a better implementation of federal legislative policies in the province of Quebec and to prevent problems in the application of federal statutes and regulations that could arise from the coming into force of the new Civil Code of Quebec. The upshot will be a reduced risk of dispute and better access to justice for all persons residing in the province of Quebec.

This initiative will also have a beneficial, albeit indirect, impact on a national scale. As I noted earlier, the formal recognition of bijuralism in both official language versions of our statutes will enshrine legal terminology that is easily understood by the minority-language communities, namely the common law in French for francophones — this is why I spoke about my fellow citizens of New Brunswick — outside the province of Quebec and civil law in English for anglophones within the province of Quebec.

The presence in Canadian legislation of elements taken from each of the two systems will enrich federal law, since it will be possible to improve the law in Canada by comparing and including rules from both systems of law.

[*Translation*]

Harmonization will also benefit Canada internationally. The bijural nature of Canada requires respect for two great contemporary legal systems: the civil law and the common law. Globalization of markets and Canada's ever-growing openness to some very diversified countries continue to have an impact on Canadians. Bijuralism, honourable senators, gives us a better understanding of the laws of countries operating under one or the other of these systems, and such countries account for almost 80 per cent of the countries in the world. It gives Canada a leg up when developing and negotiating international rules embodying concepts from either of these systems and makes it easier to adapt to these rules.

In addition, other countries with a dual system will be able to follow Canada's lead, which has no equal or precedent. We are becoming a model for the entire world.

The harmonization program is therefore singularly important both for the legal community and for members of the Canadian public, as well as for the entire international community. Let us not forget that the bill introduced by the Prime Minister to recognize the unique character of Quebec is one of the reasons we introduced this bill.

Bijuralism is a unique characteristic of which Canada should be proud. In a spirit of respect for the harmony that should reign within our modern and bijural system of justice and with the hope that these objectives will be attained, I urge all senators to support Bill S-4.

• (1530)

Hon. Gérald-A. Beaudoin: Honourable senators, Bill S-4 revives the former Bill S-22, which died on the Order Paper as the result of the federal elections last year. Bill S-4 is identical to Bill S-22 in principle, as my colleague Senator De Bané has pointed out, and as I had already spoken at second reading on the same subject on May 18, 2000, I will keep to the broad lines of Bill S-4.

This bill aims to harmonize federal law and Quebec civil law. It is a first bill and will be followed, at an appropriate time, by other similar bills.

This bill has the happy task of giving expression to the principle and advantage of bijuralism in Canada. This initiative, which is bearing fruit today, is not new. Indeed, a program of joint drafting was instituted at the Department of Justice so that our legislative drafters could write the original texts of bills in English and French, without one being the translation of the other.

The reform of the Quebec Civil Code in 1994 had a significant effect on federal legislation such that, after establishing the Civil Code Section in 1993 and adopting the policy to apply the Quebec Civil Code to the federal public administration, the Department of Justice created, in 1997, a program for the Harmonization of Federal Legislation with the Civil Law of the Province of Quebec.

Section 92(13) of the Constitution Act, 1867, gives provincial legislatures exclusive legislative jurisdiction over "property and civil rights." This section enabled Quebec to keep a system of private law based on the French system. This matter was of the highest importance to George Étienne Cartier, one of the Fathers of Confederation.

Section 94 of the Constitution Act, 1867, enables the Parliament of Canada under certain conditions to make provision for the uniformity of laws relating to property and "civil rights." This general rule does not apply to Quebec for obvious reasons. This is one of the rare instances in which, constitutionally, the status of Quebec differs from that of the other provinces.

The *Parsons* decision ([1881-1882] 7 A.C. 96) is important. The judicial committee of the Privy Council noted that the expression "property and civil rights" in subsection 92(13) of the Constitution Act, 1867, had the same meaning as in section 94. If the central Parliament could legislate contractual matters in the province, section 94 would no longer offer any protection for Quebec. The Privy Council added that the expression "civil rights" in subsection 92(13) had as broad a scope as the expression "civil rights" used in the Quebec Act, 1774. Section VIII of the Quebec Act provided that His Majesty's Canadian subjects would enjoy their property, customs and other civil rights as in the past. In the Quebec Act, 1774, the words "property and civil rights" were used in their broadest meaning. There was no reason, according to the Privy Council, for these words to have a different and more restricted meaning in the Constitution Act, 1867.

Bill S-4 gives us an overview of the importance of bijuralism in Canada and of its benefits to us. In this era of globalization of markets and internationalization of individual rights and freedoms, our two legal traditions — the common law and the civil law — give us a leg up on the international scene. For let us not forget, as Senator De Bané has pointed out, that 80 per cent of the planet's population is governed by either the common law or the civil law.

Bill S-4 contains a preamble which acknowledges that the unique character of Quebec society is in part the result of its civil law tradition. This is an undeniable fact. Thus our actions are in keeping with the motion we passed on December 7, 1995 recognizing Quebec as a distinct society.

The preamble to Bill S-4 also states the main objectives of this legislation: harmonious interaction of federal and provincial legislation; respect of the traditions of common law and civil law; full development of our two major legal traditions which give Canadians a window on the world; easier access to federal legislation that takes into account the common law and civil law traditions, in both their English and French versions.

It needs to be pointed out that such a bill was not drafted in a vacuum. Law professors, the Barreau du Québec, the Chambre des Notaires du Québec, and the Minister of Justice of Quebec all collaborated in Bill S-4. In this connection, I would particularly recommend the reading of a masterly 1,062-page work entitled "The harmonization of federal legislation with Quebec civil law and Canadian bijuralism: collection of studies," published by the Department of Justice in 1997.

The key aspects of Bill S-4 concern amendments to the Interpretation Act in order to insert provisions aimed at acknowledging the coexistence of the two Canadian legal traditions and confirming the necessity of recourse to provincial legislation when enforcing federal legislation involving aspects of private law; the repeal of pre-Confederation provisions of the Civil Code of Lower Canada that address matters that have fallen within federal jurisdiction since 1867; the replacement of pre-Confederation provisions of the Civil Code of Lower Canada in connection with marriage.

Essentially, the rest of the bill is of a technical nature.

It amends 48 federal acts in order to harmonize definitions, expressions and other words, with a view to ensuring that federal law reflects both civil and common law. The legislation amended by Bill S-4 addresses property law, civil liability and securities.

I am, of course, very much in favour of Bill S-4, but with the obvious condition of a more detailed examination of it in committee.

• (1540)

Hon. Serge Joyal: Honourable senators, I would echo the words of my colleagues the Honourable Senators De Bané and Beaudoin, who spoke this afternoon in support of Bill S-4.

I support the aims of the bill absolutely. It strikes me, however, that with respect to certain provisions, particularly those pertaining to the definition of marriage, we ought to recognize that the definition is currently the focus of debate in both the common law and civil law systems. My honourable colleagues know that, in a number of provinces, this matter is the subject of legal debate and that, sooner or later, this Parliament will have occasion to reopen the debate.

However, I must remind honourable senators that during the debate on the passage of Bill C-23, I had occasion to express my perceptions and convictions on how marriage should be defined in a contemporary context and, accordingly, to revive a definition such as is found at clause 5 of the bill does not appear useful at this stage.

If the courts, the highest tribunals in the land, were to confirm the definition in clause 5, it might be appropriate to reconfirm the nature of the definition in that clause. However, since this matter is currently subject to two legal systems, both civil and common law, I believe it would be appropriate to await a later stage of harmonization, as Senators De Bané and Beaudoin have said so well, in order to proceed further with this provision of the bill.

This, however, is not the thrust of my remarks. When the bill was considered in committee on June 13, 2000, with Senator Milne in the Chair, I had the opportunity to express to the Minister of Justice of Canada, who was appearing at the hearing, my concerns about the preamble to the bill. There are two points in it I think must be drawn to honorable senators' attention.

First, the fundamental issue this bill attempts to cover is recognizing the unique fact that we have a bijural system in Canada. If this bill is to recognize one particular element in the first point of the preamble, it is the fact that Canada has two legal systems that are autonomous but mutually influential in federal legislation. This is the singularly distinctive and unique nature of Canada.

The term "society," in the second "WHEREAS," leads to a political debate. The term "society" is a trap because, just recently, Quebec's premier designate, Bernard Landry, said that Quebec was not a distinct society but a nation. As such, all nations are entitled to their state and Quebec is no exception.

A few days earlier, the Quebec Liberal Party released its new constitutional platform. How do you think they defined Quebec under that constitutional platform? As a distinct national community within Canada. There is only a fine line between being an independent nation and a national community.

Honourable senators, the expression "distinct society" is a political concept that emerged in the 1980s following the endless constitutional debates that had taken place. To resuscitate a political concept in the "WHEREAS" of a bill whose only objective is to define legal principles does not strike me as being a good idea, which is not to say that we should not recognize the place made for Quebec under section 92(14), as my colleagues pointed out earlier. When Quebec joined the Canadian federation, it had already codified its civil law. Sir George Étienne Cartier was associated with that effort. That reality, which dates back to 1774, survived all the constitutional systems that we have had in Canada, whether in 1791 or even in 1841, with the Union Act.

There is, as is pointed out in the bill's preamble, a Canadian tradition. I insist on the fact that this is a Canadian tradition, not a tradition making Quebec an entity separate from Canada from a legal standpoint. I reject the insinuation in that "WHEREAS" that, from a legal point of view, Quebec is separate from Canada. This is the subliminal message that we get from the expression "distinct society." If Quebec is a distinct society, then it is a people which has a right to self-determination, and if it has a right to self-determination, then it has a right to separate from Canada. We are all aware of the confusion that the use of these words generates in our political debates.

On June 13, when the Attorney General of Canada appeared before the Standing Senate Committee on Legal and Constitutional Affairs, I drew the minister's attention to this element, which to my mind is dubious.

The minister emphasized that she was open to discussions and to improvements to the bill that acknowledge the historic reality of a centuries-long legal tradition of civil law in Canada but in a Canadian context. The conflict in the bill's second "WHEREAS" lies in not recognizing the country's unity legally. Since the Canadian government is taking the initiative of harmonizing both traditions in the wording of its own legislation, that is, in my opinion, the unique factor that needs to be recognized in a federal legislative enactment. That is the point, honourable senators.

This is the first time that we have recognized this concept of distinct society in a federal enactment. The text to which Senators De Bané and Beaudoin referred is a constitutional resolution. It is not a legislative enactment. It is a resolution, an expression, an observation that was made, at a point in time, but it is not a legislative enactment. This text, which was approved in an earlier Parliament, cannot be used to support a legal interpretation. However, the enactment before us will do so for the first time. I am of the view that, before definitively enshrining a political concept which has been the downfall of all the constitutional debates for the past 20 years, this matter should be considered in greater detail by the Standing Senate Committee on Legal and Constitutional Affairs, which will certainly be chaired by one of our distinguished colleagues with an ability to conduct these discussions effectively and fairly.

I will therefore, honourable senators, take part in these debates with much interest. I hope that those of my colleagues who took part in the debates on this issue in this chamber when Prime Minister Trudeau appeared here, in March 1988, will reread the debates and discussions we had on this notion. It would be too easy to shut our eyes and pass this bill, although I am entirely in favour of the move to harmonize federal legislation with the two legal traditions that have been part of our country from its earliest days.

[*English*]

• (1550)

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator De Bané, seconded by the Honourable Senator Watt, that this bill be read the second time.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs, if and when the committee is established.

BLUE WATER BRIDGE AUTHORITY ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Chalifoux, for the second reading of Bill S-5, to amend the Blue Water Bridge Authority Act.

Hon. James F. Kelleher: Honourable senators, I rise today to speak on second reading of Bill S-5, proposed legislation to amend the Blue Water Bridge Authority. I can speak on bridge authorities with some authority since I served for a number of years on the Sault Ste. Marie Bridge Authority, which just paid off all of its indebtedness.

As we understand it, these amendments will serve to allow the Blue Water Bridge Authority to borrow funds that they believe are necessary to expand their facilities and provide for a safer and smoother flow of bridge traffic. These seem like admirable goals, given that this bridge is the second busiest Canada-U.S. gateway in terms of trucking traffic, as well as being the second largest Canada-U.S. gateway for our exports.

[Senator Joyal]

I should also note that we were pleased to hear from the government side the other day that the Government of Canada will not, as a result of these amendments, assume any liability for past or future debts incurred by the authority.

However, we shall want to examine this bill in more detail in committee. In particular, we shall want to ensure that the new borrowing limit is indeed a necessary amount and that the authority has a sound financial plan in place to repay the additional debt they wish to incur.

Honourable senators, we look forward to your support of this bill and look forward to seeing this bill in committee.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Robichaud, bill referred to Standing Senate Committee on Transport and Communications, if and when the committee is established.

[*Translation*]

BROADCASTING ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Hervieux-Payette, for the second reading of Bill S-7, to amend the Broadcasting Act

Hon. Jean-Robert Gauthier: Honourable senators, the purpose of Bill S-7 is to amend the Broadcasting Act. I would like to begin my remarks by congratulating the Honourable Senator Sheila Finestone, the sponsor of this bill, and thanking Senator Kinsella for his highly positive and constructive words during yesterday's debate.

In short, Bill S-7 amends the Broadcasting Act in order to enable the Canadian Radio-Television and Telecommunications Commission to make regulations establishing criteria for the awarding of costs, and to give the commission the power to award and tax costs between the parties that appear before it.

At the present time, the CRTC has the power to award costs to organizations or individuals who appear before it on matters relating to the Telecommunications Act, but not the Broadcasting Act.

The present legislation authorizes the CRTC to set criteria for reimbursing costs and for determining to whom and by whom costs will be reimbursed. The Broadcasting Act, however, does not allow such a procedure. As for the CRTC, it does not have the power at this time to award costs or to determine the criteria for awarding them.

This creates serious problems for consumers and the situation must be corrected. This amendment to the Broadcasting Act therefore gives it the same right to award costs as presently exists in the Telecommunications Act, thus making them compatible with each other, so that actions brought by consumers under one or the other of these laws receive equal treatment.

This amendment is highly advantageous for Canadians. Awarding costs will enable consumers and public interest advocacy groups as well as individuals to carry out the necessary research and to gather the substantive evidence they require in order to defend the public interest in connection with broadcasting, cable television and regulatory matters.

As I have said, the CRTC is able to award costs only under the Telecommunications Act, not the Broadcasting Act, even if the information provided under each of these acts has proven pertinent and has added value.

The funds available to the media organizations are in sharp contrast to the limited funds available to consumers and consumer groups. This creates imbalances and injustices incompatible with our democratic system. The limited funding available to consumer defence organizations often prevents them from defending the public's rights effectively and substantively, since research and detailed studies are very costly, and it is also very expensive to enlist the assistance of experts.

[*English*]

At this time the CRTC does not have the authority under the Broadcasting Act to retain experts with technical or special knowledge, and, accordingly, the commission is unable to undertake its own research. For that reason, it must be, of necessity, heavily reliant on submissions by knowledgeable third-party intervenors.

As a supporter of Bill S-7, I would argue that in a field as technically specialized as broadcasting, which has so profound an impact on all Canadians, sound policy requires that the commission have the most complete and accurate information available. The approach set out in Bill S-7 would appear to present a reasonable way of ensuring that the commission is given the resources to inform itself, despite the absence of statutory authority to engage technical advisors on a project-specific basis.

• (1600)

Why does the commission not have the same authority under the Broadcasting Act as it has under the Telecommunications Act? The reason for this probably lies in the different principles under which the two systems were established and under which they continue to operate. When the current legislative scheme was established, as we all know, the telecommunications industry was dominated by a few major players with very "deep pockets." Hearings before the commission on telecommunications involved only a few parties, and fewer intervenors, such as consumer groups with broad mandates. When the commission was of the view that the intervenors had been of particular assistance, it could compensate them for their costs. The system worked well in situations where there were few intervenors. That is not always the case with the Broadcasting Act under which, routinely, hundreds, if not thousands, of interventions are attracted, most as form letters merely signed by individuals.

This difference gives rise to at least two problems with assessing costs. Of those thousands of interventions, how does the commission decide which ones merit being compensated? What if 20 or 30 interventions say essentially the same thing but are uniformly excellent and costly to produce? Can all be compensated? If so, are all uniformly excellent and costly to produce? Not necessarily so. Can a few be compensated and not others? That is a decision for the commission to make. It has the power to do that under the Telecommunications Act now. We are trying to make it so that the commission has that same power under the Broadcasting Act.

Honourable senators, I believe the purpose of this bill is to encourage high-quality interventions and to encourage interested parties to spend the money necessary to produce good information that will assist the commission.

The following questions should be addressed. Will Bill S-7 result in more high-quality interventions? I do not know, but I sure hope so. I had a personal experience on that basis last year. It is very costly to go before the CRTC. I tell honourable senators that Bill S-7 may help us as consumers to present our case.

I wish to raise two points about Bill S-7. Numbering the proposed amendment clause 9.1 places it among the commission's "general powers." Since the proposed power is to grant the commission the authority to grant costs specifically in the context of the hearing, the clause would be better placed, in my opinion, near those that set out the powers of the commission having to do specifically with the commission's power over hearings.

Second, Bill S-7 gives the right to the commission to grant costs, but not to panels established by the commission. Under the Telecommunications Act, panels are not established. Under the Broadcasting Act, they are. Why not extend the same right to those panels that we do to the commission? I think it would make sense. It probably was overlooked in the drafting of the bill since the commission does not appoint panels under the Telecommunications Act. This substantive omission should be addressed in committee, otherwise there will exist an incongruity in the amended Broadcasting Act — that is, the panel may exercise all the powers and may perform all the duties of the commission. That is what the bill says. Let us be consistent. Let us give them the power to do that, but also include the panels.

[*Translation*]

Honourable senators, this amendment to Bill S-7 is necessary. It strikes, in my opinion, a balance between the two laws. Consumers will thus be treated equally and fairly as the result of proceedings brought before the commission, whether it is under the Broadcasting Act or the Telecommunications Act.

Consumer involvement is limited at the moment. Although consumers and consumer advocacy groups are able to present short briefs setting out general principles and their expectations, they cannot do extensive research and gather large numbers of witnesses. Their meagre efforts are obliterated by the evidence presented by the industry.

Coming back to my personal experience, an individual with his or her own means cannot stand up to big companies such as Cogeco, Vidéotron or other companies with substantial financial resources. It is impossible for individuals or groups to take on these companies. With this amendment, the commission may adjudicate or award costs to groups of consumers or individuals demonstrating to the commission the merit of their comments and their research.

In closing, honourable senators, I would simply like to say that Bill S-7 re-establishes a degree of fairness and accords the testimony the CRTC hears before taking its decision its rightful value. I support this bill with pleasure.

Hon. Pierre Claude Nolin: Honourable senators, may I put a question or two to Senator Gauthier?

Senator Gauthier: Yes.

Senator Nolin: In clause 1(2) of the bill, it says that the commission may establish a scale for the taxation of costs — perhaps I should have directed my question to Senator Finestone yesterday — do you want to allow the CRTC to establish a schedule of costs?

Senator Gauthier: Currently, under the Broadcasting Act, the CRTC cannot award costs. Under the Telecommunications Act, a panel or tribunal appointed by the commission may, based on its established criteria, refund or repay the costs relating to testimony or a submission. I personally think it is justified to compensate a witness for his costs, given the existing competition. I cannot understand why they forgot to include in the Broadcasting Act the same right as the one found in the Telecommunications Act. It is difficult to explain how this will work. If the conditions under the Telecommunications Act and those under the Broadcasting Act are merged, there will not be any problem. There will be strict but reasonable criteria. If witnesses or applicants meet the required criteria, their costs will be refunded. There may be problems, but I do not anticipate any.

• (1610)

Senator Nolin: We can consider this in committee. My question is very specific. I do not have any problem with the fact that we repay the costs incurred by individuals who appear or testify before a quasi-judicial tribunal. However, I notice that, in clause 9.1(2), the term "barème," or scale, is used, instead of the word "tarif," or rate. Is this to allow the commission to determine the amount of the costs that it would be prepared to pay back? I suppose it would be more appropriate to ask my question in committee.

Senator Gauthier: It is a matter of judgment and I do not know what the commission will decide in terms of the criteria. If I were there, I think the commission should use the quality of the testimony heard and try to be as reasonable as possible with the awarding of costs.

I cannot answer for the commission, since I do not know which criteria it will set. What Senator Nolin is proposing should be seriously considered in committee, so that a solution can be found.

[*English*]

Hon. George J. Furey (The Hon. the Acting Speaker): Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Kinsella, bill referred to Standing Senate Committee on Transport and Communications, if and when the committee is established.

[*Translation*]

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

SECOND READING—DEBATE ADJOURNED

On the Order:

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

Hon. Gérald-A. Beaudoin: Honourable senators, I should like to say a few words about Bill S-8, to maintain the principles relating to the role of the Senate as established by the Constitution of Canada.

According to the Constitution of Canada, the Parliament of Canada is composed of three elements: the Crown, the Senate and the House of Commons. A number of the clauses in our founding legislation of 1867 set out the role and powers of the Senate. It is clearly evident from these articles of the Constitution that the Senate is first and foremost a legislative chamber.

Bicameralism is part and parcel of the Canadian Constitution. Such was the intention of the Fathers of Confederation. The Confederation debates indicate that clearly. In other words, for legislation to be passed, the process set out in the Constitution must be followed. I am therefore in agreement with the principle of Bill S-8 introduced by Senator Joyal. Exclusion of the Senate must stop. On the contrary, it must be included more than it is.

We had some very important debates, debates that took a hard look at the role of the Senate, last May and June, in connection with the Clarity Bill. The debates in the special committee were also highly instructive.

The Senate and the House of Commons, as we know, have the same powers in all but three areas. First, money bills must originate in the House of Commons; second, a vote of confidence may only be held in the House of Commons, not in the Senate; and, third, for certain constitutional amendments, the Senate has a six-month suspensive veto. In every other respect, both chambers are on an equal footing.

In a bicameral system enshrined in the Constitution, both chambers must therefore be treated equally. Bill S-8 goes in this direction and helps to restore the equality of both chambers.

Therefore, I agree in principle with this bill. The Senate is in a position to devote greater attention and sometimes greater expertise to legislative matters.

In addition, the Senate has distinguished itself on a number of occasions in special committees on some very difficult issues: the Constitution, poverty, euthanasia, assisted suicide and so forth.

Most federations have a second chamber, a chamber of sober second thought which, let us not forget, is a legislative chamber.

The preamble to Bill S-8 is highly evocative. It quite rightly points out that the Senate constitutes an essential element of the constitutional settlement. However, many federal laws deny the Senate an equal role and prevent it from exercising its duties because they fail to include it.

This state of affairs must be changed. That is what Bill S-8 will do. I give my support to this bill.

On motion of Senator Grafstein, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

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