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(HANSARD)

Wednesday, April 4, 2001

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, April 4, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

INTERNATIONAL TRADE

UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT

Hon. Ross Fitzpatrick: Honourable senators, I wish to complete my statement of yesterday on the softwood lumber issue with the United States.

First, I feel it is appropriate to reiterate that I am pleased to see the Minister of International Trade respond forcefully in defending the interests of our softwood lumber industry and aggressively fighting for free trade against unfounded allegations by the U.S. lumber coalition.

Further, I am pleased to emphasize that this government is continuing to consult industry and all provincial governments in defending the interests of Canada's softwood lumber industry for the whole country. It is of paramount importance that all regions of Canada unite behind the government in what is to be one of the most serious trade disputes this country has ever faced.

UNITED STATES—PROTECTIONIST MEASURES TOWARD PRINCE EDWARD ISLAND POTATOES

Hon. Catherine S. Callbeck: Honourable senators, I have in my hand a resolution, dated March 30, that was carried unanimously by the Legislative Assembly of Prince Edward Island. It addresses the ongoing problem of United States' trade protectionism and that country's refusal to allow tested and cleared Prince Edward Island potatoes across the border.

Honourable senators, we are all aware of the history behind the situation. A few potatoes affected by potato wart were discovered in one small sector of one potato field on October 20, 2000. As a result of this discovery, the United States Department of Agriculture closed the border to shipments of Prince Edward Island potatoes on October 31, over five months ago.

Close to 10 per cent of the total Prince Edward Island crop is normally shipped to the United States. The border closure has caused millions of potatoes to be squandered, either rotting in warehouses or spread for fertilizer, and has hampered efforts to ship potatoes to other markets. The potato industry has suffered a $50-million loss and the overall Island economy has been severely impacted. Compounding the problem is the current dilemma faced by potato growers as to whether or not to put in a crop in the coming season, which traditionally starts in mid- to late April.

Honourable senators, there is no point in many of the farmers investing in a new crop when much of their old crop is rotting in the warehouse. This resolution accurately states the importance of the potato to my home province. The agricultural industry is the single biggest economic generator in Prince Edward Island. The potato sector generates more revenue than any other agricultural component of the province's economy.

Obviously unconcerned about these facts, the United States has maintained its heavy-handed border control despite overwhelming scientific evidence suggesting that the potato wart is isolated to one small area of one potato field. To date, the federal government has had limited success in opening up the border. Therefore, this resolution urges the federal government to increase its efforts to resolve the unjustifiably prolonged closure of the U.S. border to Prince Edward Island potatoes.

Honourable senators, I now ask leave to table this important, unanimous resolution by the Legislative Assembly of Prince Edward Island.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

YUKON

WHITEHORSE—OPENING OF NEW FRANCOPHONE COMMUNITY CENTRE

Hon. Ione J. Christensen: Honourable senators, this past Friday, I had the pleasure of participating in the opening of a new francophone community centre in Whitehorse, Yukon. The francophone community in the Yukon has been working on this project for the past 15 years and it was indeed a day of celebration. Whitehorse is the only French-speaking community outside of the province of Quebec that has grown in size. The total number of Yukoners who speak French has doubled in the past 20 years.

The new centre will provide space for the newspaper *L'Aurore boréale*; the women's group les Essentielles; Espoir Jeunesse, the youth group; Évasion Nordik, a tour operator; APEF, the association of francophone parents; AFY, the Association franco-yukonnaise; and SOFA, an adult orientation and training service. In addition, the francophone community has l'école Émilie-Tremblay, which offers grades K to 12.

We are proud of our French-speaking community in the Yukon and the cultural diversity that it offers all Yukoners. My heartiest congratulations to them on this accomplishment.

[*Translation*]

ROUTINE PROCEEDINGS

ADJOURNMENT

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*h*), I move:

> That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, April 5, 2001, at 1:30 p.m.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

[*English*]

• (1340)

QUESTION PERIOD

INTERNATIONAL TRADE

WORLD TRADE ORGANIZATION—WIN/LOSS RECORD OF GOVERNMENT IN DISPUTES

Hon. James F. Kelleher: Honourable senators, my question is directed to the Leader of the Government in the Senate. As honourable senators are well aware, the federal government has recently lost six World Trade Organization cases regarding the stockpiling of pharmaceutical products, split-run periodicals, Canada's term of patent protection, dairy supply management, asbestos and the Auto Pact. We also know that the Canada-United States Softwood Lumber Agreement expired on March 31, and already many of the provinces are concerned about how the federal government is managing this dispute.

The *National Post* has reported that federal trade lawyers say their advice is routinely ignored in favour of political considerations when Canada decides what cases to take before international bodies. The *National Post* quoted a senior official in the Trade Law Division of the Department of Foreign Affairs and International Trade who said:

> Having a friend in the Prime Minister's Office is far more important than having a good legal case.

As a former Minister of International Trade, I am concerned that this string of losses is causing Canada to lose credibility with our trading partners and forcing the Canadian public to lose faith in trade negotiations, including the upcoming Free Trade Area of the Americas meetings in Quebec City.

I believe it was on September 19, 2000 that I asked the former Leader of the Government in the Senate to table a full report on all cases Canada has launched and defended since the WTO treaties came into force in 1995. Over six months later, we still have no response.

Will the leader therefore table in the Senate a full report on all the cases Canada has launched and defended since the WTO treaties came into force in 1995 so that the Canadian public can assess this government's win-loss record?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. I am surprised, however, that he makes reference to the string of losses and then immediately moves into the subject of softwood lumber, because in terms of softwood lumber we have won, won, won. The United States, because of its own particular agenda, has chosen to continue to challenge what the trade tribunals have said are perfectly reasonable and acceptable practices in Canada.

The honourable senator requests a full report. I was unaware of the senator's former request. I was a bit surprised when, as the new Leader of the Government in the Senate, I asked for the briefing books of the previous government leader, only to be told that I could not have access to them because they were not my briefing books. However, now that the senator has made that request of me, I will do everything I can to obtain a full report for him.

Senator Kelleher: Honourable senators, with respect to the leader's comments on recent victories in the softwood lumber dispute, the agreement has come to an end and cases have now been filed by the United States against Canada. Therefore, I do not think those victories were of much benefit to us.

UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT—EXPORT TAX

Hon. James F. Kelleher: Honourable senators, as I just said, the Canada-United States Softwood Lumber Agreement expired on March 31, and already Canadians, including the premiers of the Atlantic provinces, are concerned about how the federal government is managing this dispute.

On March 29, the Minister of International Trade, Pierre Pettigrew, announced that Canada would monitor softwood lumber exports to the United States by requiring all exporters to obtain a permit under the Export and Import Permits Act.

Will the Leader of the Government in the Senate advise whether this is the first step toward imposing another export tax on Canada's softwood lumber exports to the United States?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I will be very clear. There was a specific reason for Mr. Pettigrew acting the way in which he did, and that was to ensure that false information could not be laid at the feet of the Canadian government with the Americans trying to prove a case. By keeping export permits and detailed records, the Canadian government has clear knowledge. Therefore, should the United States choose to put false information on the record, we will know that it is indeed false. That was the reason for putting the export permit in place.

As to the pyrrhic victories, the victory was clear. It is pyrrhic only in that, unfortunately, the Americans did not recognize it.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, on a supplementary question, is the government considering an export tax?

Senators Carstairs: I thank the honourable Leader of the Opposition for that question. It has been clearly indicated by the minister responsible for softwood lumber that that is not under consideration.

UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT—EXPORT/IMPORT OF LOGS

Hon. Gerry St. Germain: Honourable senators, my question is directed to the Leader of the Government in the Senate. Was the honourable leader able to get a response to my query of yesterday about the export of logs from Canada to the U.S. and from the U.S. to Canada?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his follow-up to yesterday's question. No, between 2:15 yesterday and 1:50 today I have not been able to get that answer, but I am working on it.

PRIME MINISTER'S OFFICE

DUTIES OF MR. DAVID MILLER AS SENIOR ADVISER—INVOLVEMENT IN MARITIME HELICOPTER PROJECT

Hon. Michael J. Forrestall: Honourable senators, my question is directed to the Leader of the Government in the Senate. Yesterday, the Prime Minister stated that Mr. David Miller would absent himself from discussions about the Maritime Helicopter Project — and this is very important — once bids were received. Does this mean that Mr. Miller is free to discuss the Sea King replacement until such time as bids for its replacement are received?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I certainly do not interpret the Prime Minister's answer in that way. As I indicated yesterday, David Miller has signed a conflict of interest document. He has met with the Ethics Counsellor. I have faith in his integrity. I do not think he will engage in any step with respect to the Maritime Helicopter Project.

Senator Forrestall: Honourable senators, the Ethics Counsellor, Mr. Wilson, was quoted in a Canadian Press report last Friday evening as stating:

> We would require that the person not become involved in any file on which they had been making representations.

• (1350)

Clearly, the Ethics Counsellor has a different view from that of the Prime Minister. Will Mr. Miller absent himself from these discussions in their entirety with the Prime Minister, the Deputy Prime Minister and cabinet, or will government find itself in direct violation of its own Ethics Counsellor's guidelines?

Senator Carstairs: Honourable senators, I thought I answered that question in response to the honourable senator's first question. Mr. Miller will not involve himself in the discussion of the Maritime Helicopter Project in any of its various stages. That means now, in the short term and in the long term. It means he will not engage himself in such discussions.

Senator Forrestall: Then I assume that that involves any discussions he might have outside working hours with former colleagues.

DUTIES OF MR. DAVID MILLER AS SENIOR ADVISER—MEETING WITH OFFICE OF ETHICS COUNSELLOR

Hon. J. Michael Forrestall: Honourable senators, Mr. Wilson is reported to have said that he had not yet met with Mr. Miller. Yesterday, the Leader of the Government suggested to me that such a meeting had already taken place. There was some conflict in language as to whether or not Mr. Miller had met with Mr. Wilson, or whether Mr. Miller had simply had conversations with Mr. Wilson's staff. Could the Leader of the Government in the Senate enlighten us as to which was the actual situation?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I hope I read from my notes. My notes say very clearly that Mr. Miller has already met with officials of the Office of the Ethics Counsellor. I did not, I do not think, say that he had met with Mr. Wilson. If I did, then it was inadvertent on my part.

Senator Forrestall: Honourable senators, I accept that. However, it does lead to a bit of a conflict there.

REQUEST FOR CONFLICT OF INTEREST GUIDELINES

Hon. J. Michael Forrestall: Honourable senators, does the minister know whether she can table here in this chamber the guidelines that require signatures by the Prime Minister's staff in this regard?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not have that document to table today. However, as I have indicated in the past, I will try to get it at the first available opportunity.

I think perhaps the Honourable Leader of the Opposition said it best: "Just watch me."

HEALTH

STUDY OF NATIONAL PROGRAM—INVOLVEMENT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE

Hon. Douglas Roche: Honourable senators, my question is addressed to the Leader of the Government in the Senate. Today, at noon, the Prime Minister announced the appointment of a royal commission headed by Roy Romanow, former Premier of Saskatchewan, to study Canada's health care needs in all aspects of health care. As honourable senators in this chamber are well aware, about a year ago the Senate, through its Standing Senate Committee on Social Affairs, Science and Technology, started an in-depth study on all aspects of Canada's health care system. That committee study is headed by Senators Kirby and LeBreton. Among others, I have the honour to serve on that committee.

Last week, the first of the intended five reports was presented by Senator Kirby's committee. That set the stage for very important recommendations that will be coming down the line. In fact, yesterday, the Leader of the Government in the Senate called this work first-class. Senator Carstairs added that the report was greeted with great public interest.

Today, we read from Jeffrey Simpson in *The Globe and Mail*:

> The Kirby committee's first of five reports arrived last week, and it raised a series of the important issues facing the system. The committee will offer recommendations in due course, but the early questions illustrated that it's on the right track and that, given time, it will help Canadians think through necessary health-care changes for the 21st century.

The duplication caused by the appointment of a royal commission on top of a Senate committee doing the same work is astounding. It is unbelievable. Is this a case of Peter not knowing what Paul is doing? Or is it a case of Peter not caring what Paul is doing? Has any thought been given by the government to the duplication of costs involved in summoning witnesses, travel expenses and everything that goes into a national report of this scope? What is going on here today?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his question. He is quite right: At around noon today, the Prime Minister announced the establishment of a commission. However, it is a uniquely different commission from commissions that have acted in the past. There is only one commissioner. There is not a group of individuals, which would require the meshing of schedules and times when they can sit and that type of thing. There is only one commissioner who, at the time of the landmark agreement signed last September between all of the first ministers, was one of those first ministers.

His primary task will be to take the agreement signed by all first ministers in September, to build on that agreement and to work with Canadians and with their government leaders toward ensuring that that agreement comes to its full potential and full reality.

Having said that, honourable senators, there is nothing here that is inconsistent with the work that is presently being done by the Standing Senate Committee on Social Affairs, Science and Technology which, just a few short days ago, tabled their volume report entitled, "The Health of Canadians: The Federal Role." As the honourable senator knows, until January of this year I was a member of that committee and had input into the development of this report. Perhaps that is one of the reasons that I think it is a particularly good report. However, there are many others. In that regard, I refer to the other members of the committee who made such remarkable contributions in setting forth the myths and the realities of Canada's health care system as it exists.

The Senate committee will continue to do its good work. It will be in addition to the work done by the former Premier of Saskatchewan, the Honourable Roy Romanow. Together, I think the two will chart a path for the 21st century in the evolution of health care in this country.

Senator Roche: Honourable senators, I say with respect that the minister has done the best she can with a brief that is hard to defend. First, I want to pay Roy Romanow my deepest respects and highest regards as an individual. For one person, even one with an eminent background, to be put in the position of making recommendations of such a serious character that will, in the long run, affect the health of every single Canadian, and to do that over the views of 12 senators on a duly appointed committee, seems to me to be a flagrant disregard for the rights, if not the abilities and potential, of the Senate.

• (1400)

Speaking of Michael Kirby's distinguished work over the years, Jeffrey Simpson writes:

> This activism is rare for a member of the Canadian Senate, an institution better known for somnolence than activity.

Honourable senators, I have been in this place for only two and a half years. However, I have been deeply impressed with the work done by committees of the Senate.

Hon. Senators: Hear, hear!

Senator Roche: There are several chairmen sitting in this chamber at this very moment who have been responsible for work of benefit to Canadians. How is the Senate supposed to keep doing its work with the respect and dignity it deserves if it is to be trumped for some reason — I am not quite sure what the real reason is — by the appointment of a unilateral Royal Commission which, in effect, is trumping a Senate committee?

Senator Carstairs: Honourable senators, if we can enter into a little bridge analogy here, we are playing no trump in the sense that no one will trump. No one is a spade over a heart; no one is a diamond over a club. No one will play a game of bridge with this particular issue.

My honourable colleague Senator Kirby and I go back a very long way; in fact, longer than any of you in the chamber. We were classmates together for four years at Dalhousie University. No one here has better respect for the work of Senator Kirby than yours truly, who saw it at a very early stage in his life. I remember one particular incident when he was the editor of the *Dalhousie Gazette.* However, I will not tell the side opposite about that because they would not necessarily be flattered about that particular front page story about a former prime minister of this country.

The reality is these two groups are doing very good work. The former Premier of Saskatchewan has a knowledge that is shared to some degree, I must say, by members of the Senate committee. Senator Callbeck has been a former premier and I believe she is still sitting on that committee. Certainly the Honourable Senator Robertson has wonderful knowledge and expertise about the provincial workings of the health care system. There is also their collective additional knowledge of the federal workings of that system.

Mr. Romanow has a particular skill set and knowledge set that can contribute to the debate and discussion of how to prepare Canada for the 21st century. He is not in competition with the Standing Senate Committee on Social Affairs, Science and Technology. It will be a cooperative partnership of those two bodies.

The Hon. the Speaker: Honourable senators, the half hour set aside for Question Period is running out. Perhaps Senator Roche can wind up and I will then go to Senator Lynch-Staunton with his supplementary question.

Senator Roche: Honourable senators, I immediately defer to Senator Lynch-Staunton.

Hon. John Lynch-Staunton (Leader of the Opposition): Will the Leader of the Government in the Senate not agree that Senator Roche's apprehensions, which are shared by many, would not have been raised had former Premier Romanow been named a member of this place? In that event he could have joined the Social Affairs Committee and we could have had the benefit of his views and he could benefit from the committee's work so far. Perhaps it is not too late for that to happen.

Senator Carstairs: Honourable senators, I have no idea whether Premier Romanow, who has been a dedicated member of the New Democratic Party for many years and whose official party stance is in opposition to this chamber, would want to sit in this venerable hall. However, it is clear that we will benefit from his knowledge and expertise here, working in partnership with the Senate standing committee.

Senator Lynch-Staunton: Does that mean if he were called before Senator Kirby's committee as a witness, he would refuse to appear because of his feelings about the Senate?

Senator Carstairs: I refuse to answer what is essentially a hypothetical question.

[Senator Carstairs]

STUDY OF NATIONAL PROGRAM—MANDATE OF COMMISSIONER

Hon. Marjory LeBreton: Honourable senators, great minds think alike. I was about to ask the same question about appointing Mr. Romanow to the Senate and putting him on our committee.

I have not seen the mandate for Mr. Romanow. There are certainly different views around the country about his success in the field of health care and medicare. People in Saskatchewan have their own views on that topic. The one thing I have been told about the mandate is that this particular position reports directly to the Prime Minister. I think we have examples showing that that is not a wise course to follow. Can the mandate be changed so that he reports to Parliament?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is the Prime Minister who has appointed Premier Romanow, and he will report to the Prime Minister. I do not think it appropriate at this point to cast any aspersions on Premier Romanow, either as the former Premier of the Province of Saskatchewan or for his health care initiatives in that province. Clearly the people of Saskatchewan have returned him to public office on more than one occasion, and his success speaks to some degree for itself.

Hon. Brenda M. Robertson: Honourable senators, what bothers me most of all in what has been said this afternoon is that Mr. Romanow will be responsible for pursuing — I am paraphrasing now — this landmark decision of the premiers and the federal government that was agreed to a year or eight months ago. There are some provinces in this country that do not consider that agreement to be a landmark agreement. The provinces had to sign, otherwise they would not get anything.

In my province, that landmark agreement made it possible for the federal government to pay for health care for two weeks. That is not very much money when you consider the population of that small province.

If the purpose is to develop more of these landmark agreements, then some of us have to be a bit apprehensive. We must be apprehensive about this.

Senator LeBreton asked half of my next question. I should very much like to have the complete terms of reference for Mr. Romanow. I should like to have those terms of reference tabled as quickly as possible so that we may know what we are dealing with. Certainly, as a member of the Senate, I am not interested in doing the work for Mr. Romanow. I do not mind being cooperative in some things, but until we see those terms of reference, we will not know what we are dealing with.

• (1410)

Senator Carstairs: Honourable senators, my understanding is that the terms of reference were in the press release. I understand the press release will be delivered to everyone's office, if it has not already arrived. It certainly has arrived in my office.

If there are more detailed terms of reference, I will seek to obtain them for the honourable senator.

A press conference will be held at 3:30 p.m. with Mr. Romanow and the Minister of Health, Mr. Rock, during which I am sure more detail will be given as to exactly what will transpire through this royal commission or task force that is to be headed by former Premier Romanow.

The agreement that was signed in September 2000 was certainly heralded by all premiers at that time as being a significant step forward. It was not heralded as the last piece of the puzzle, by any stretch of the imagination. That is what the Kirby report, or the Kirby-LeBreton report as I call it, said so clearly: that the medicare of the 1960s is different from medicare in the 21st century. In the 1960s, we thought only in terms of hospitals and payment for physicians. Those were the two main ingredients. Since that time, a far more complex system has evolved. Therefore, the relationships between those who deliver the care — the provinces — and those who contribute funds to provide that care — the federal government — have become much more complex as well.

The Hon. the Speaker: Honourable senators, unfortunately we have used up our time for Question Period. However, a senator might ask for leave to extend it.

Hon. David Tkachuk: Honourable senators, I ask for leave to extend it.

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

Hon. Senators: Agreed.

MULTICULTURALISM

COMMENTS BY MINISTER

Hon. David Tkachuk: Honourable senators, I have a question for the Leader of the Government in the Senate.

Let us suppose that the Minister of Multiculturalism, Hedy Fry, had said the following: "We can just go to Winnipeg, Manitoba, where crosses are being burned on lawns as we speak. It is very important we recognize that race, religion and culture in this country are part of our strengths and that we must keep every day to ensure that we will —"

Suppose that she was then cut off, but later came back to the House and said: "Mr. Speaker, today in question period I made reference in my answer to an incident in Winnipeg, Manitoba. I would like to clarify it because I had to leave the House early and was not here for the discussion. I am responding to the point of order. In Manitoba, there have been incidents of hate crime, including cross burnings. I know of this because I was contacted immediately when these incidents occurred, by the mayor of Winnipeg."

Suppose she then said this about Winnipeg: "In my position as Secretary of State for Multiculturalism I funded the mayor to set up a task force right away. The task force met and came out with some remarkable and courageous recommendations which the mayor is implementing."

If it were later determined that she made these points, and that she knew none of them to be true, would the honourable leader have accepted her apology?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the tenor of this question really does disturb me, I must be clear. We have had an incident where two communities have had aspersions cast on them, which are not true. For people listening to what Senator Tkachuk has had to say today, that would indicate that there had been a third community so named.

Honourable senators, we need to be careful. We talked the other day about being careful of our language. There are people in the gallery. I hope they do not have any misapprehension that the minister had made reference to Winnipeg, because, in fact, she had not, under any circumstances, made reference to Winnipeg. However, had she done so, I would have been equally concerned as I was about her references to the other communities.

I was pleased that she apologized, and I have accepted that apology. Perhaps the honourable senator is not quite so forgiving. However, I do believe that she has made an apology for statements that she made which were clearly in error.

Senator Tkachuk: I was very clear in what I was trying to do here. I was quoting the words used by Ms Hedy Fry in making comments about a particular community in Canada. I thought to myself, and I believe it to be true, that if she can say this about Prince George, British Columbia, she could say the same about Saskatoon, Saskatchewan. She could say that about any community in this country.

Honourable senators, I am only asking a question. I want to know how members opposite feel about statements like this. I want to know whether, if this had been said about Winnipeg, Manitoba — and here I am quoting Ms Hedy Fry; this is what she said about Prince George. I am using her words, not mine — would you have accepted her apology?

Senator Carstairs: I answered that clearly. Yes, I would have accepted it.

Senator Tkachuk: Thank you very much.

ANSWERS TO ORDER PAPER QUESTIONS TABLED

TREASURY BOARD—
EMPLOYMENT EQUITY AND VISIBLE MINORITIES

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answer to Question No. 2 on the Order Paper—by Senator Oliver.

TREASURY BOARD SECRETARIAT REPORT
ON EMPLOYMENT EQUITY

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answer to Question No. 4 on the Order Paper—by Senator Oliver.

ORDERS OF THE DAY

PROCEEDS OF CRIME (MONEY LAUNDERING) ACT

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Furey, seconded by the Honourable Senator Gauthier, for the third reading of Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

Hon. James F. Kelleher: Honourable senators, I rise today to speak on third reading of Bill S-16, to amend the Proceeds of Crime Act or, as it is more widely known, the Money Laundering Act. The amendments contained in this bill are based upon an undertaking made by the government to the Senate Banking Committee last June.

As honourable senators will know, every June the Liberals are anxious to pass every bill that they can before the summer recess. Last June was no exception.

In the case of the money laundering bill, rather than agreeing to make the amendments that all agreed were necessary, the Secretary of State responsible for Financial Institutions instead undertook to make the changes at a later date. I suppose anything can be fixed later, but I question the point of conducting a thorough study of any bill when needed amendments are simply put off until a later date.

Honourable senators, in addition to the undertakings made by the minister last June, the Standing Senate Committee on Banking, Trade and Commerce also unanimously made three other recommendations for the minister to consider and, hopefully, implement. When this bill was introduced, we were dismayed to discover that the Liberal government had chosen to ignore our recommendations.

Nonetheless, the Progressive Conservative members of the committee were intent on again pursuing the proposed amendments when the bill was referred to the committee for its consideration. After hearing more testimony on the issues, we decided that we would reintroduce only one amendment, that of reducing the time periods for the ongoing review of the act itself and the new money laundering agency in particular.

I should note that this new agency is called the Financial Transactions and Reports Analysis Centre, or FINTRAC for short.

Our members of the committee believed that we had heard enough testimony from various witnesses, including FINTRAC, to justify our concerns about exactly what information was to be collected from whom, and what was to be done with it. We were surprised, therefore, when Liberal members of the committee questioned whether our amendment was in order. After some debate, the decision was made to rule it out of order. The end result is that the committee rejected an amendment that was almost identical to the one that was supported by the committee just nine months ago.

Our colleagues in the House will now have an opportunity to study this bill further. We hope that they will get somewhat more consideration for their efforts than we received.

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

Hon. Senators: Agreed.

An Hon. Senator: On division.

Motion agreed to and bill read third time and passed, on division.

• (1420)

FEDERAL LAW-CIVIL LAW HARMONIZATION BILL, NO. 1

THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Poulin, for the third reading of 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.

Hon. Jerahmiel S. Grafstein: Honourable senators, I intend to speak to this bill and to move an amendment. Perhaps I should do that at the outset and then provide my reasons of justification.

MOTION IN AMENDMENT

Hon. Jerahmiel S. Grafstein: Honourable senators, I move, seconded by Senator Joyal:

> That Bill S-4 be not now read a third time but that it be amended,
>
> (*a*) on page 1, by deleting the preamble; and
>
> (*b*) in the English version of the enacting clause, on page 2, by replacing line 1 with the following:
>
> "Her Majesty, by and".

Honourable senators, this is the same motion that I tabled before the committee.

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

Senator Grafstein: Honourable senators, those who were at the committee meeting will recall this motion in amendment, and I was delighted that three others of my Liberal colleagues, Senator Joyal, Senator Moore and Senator Cools, supported the resolution. Senator Gustafson abstained on the resolution. The motion was defeated.

Honourable senators, I will restate more precisely the reasons for the motion. Based on the testimony before the committee, as amplified by the debate yesterday in this chamber, the preamble is unclear, unintelligible in parts, and inconsistent with the essence of the legislation.

That is, honourable senators, tantamount to being deemed out of order; had I moved a motion yesterday that the Speaker opine as to whether the preamble was inconsistent, the entire piece of legislation could have been in jeopardy. That is not my intent, nor is it the intent of those who have serious questions about Bill S-4.

Honourable senators, I agree with the essence of the harmony of the bill. I agree with the statements made yesterday by those who support the bill that it is long overdue. I also agree that it is a brilliant piece of legal craftsmanship to harmonize two outstanding legal traditions in Canada — the civil law and the common law — as it applies most particularly under this legislation to federal legislation in Quebec. It is a bill that unites and harmonizes.

Therefore, honourable senators, it is more appropriate to deal with this issue in the context of a motion to delete the preamble rather than on a point of order. It would be folly if a good bill such as this, on which so much work of great legal excellence has been done, and to which little or no objection has been raised, were to be lost. Hence, this motion is a clinical, surgical amendment to remove the gratuitous, and possibly deleterious, preamble. If, in fact, the Senate concludes that the portions of the preamble are unintelligible and inconsistent with the legislation, and perhaps unconstitutional, this would pollute the legislation itself.

Honourable senators, it is useful, for new senators in particular, to consider the primary duty of a senator, which is to opine on legislation — not only the constitutionality and effectiveness of the legislation but the appropriateness of the language used in the drafting of that legislation. All these issues, honourable senators, arise in this bill.

I will begin with a precedent set by former Speaker Macnaughton, of the other place, who ruled that a statute was out of order, in part, because of the preamble. Bill C-17 had first reading on February 20, 1964 in the other place. It was a private member's bill; the preamble was long, convoluted and raised serious questions. I quote from page 1717:

> For different reasons, which I will try to summarize this briefly as possible, I must regretfully rule the motion for second reading of this bill to be out of order...
>
> The argument made by the hon. member to justify the passage of the measure is found at great length in the preamble thereto, to which I will refer later on.

Speaker Macnaughton went on to speak to the preamble. Bear in mind that this is the rationale, in part, for ruling that the entire piece of legislation — a private member's bill, not a government bill — was out of order.

Speaker Macnaughton went on to say:

> As stated by the conference of commissioners on uniformity of legislation in Canada in 1942, 'Preambles should be avoided. An act should explain itself and if reference to a preamble is necessary in construing any provisions of an act, it would indicate that the draft requires revision.'

Honourable senators, that was said by the uniform law reform commissioner. That was the standard, although there have been exceptions.

Hon. Lowell Murray: What does the honourable senator mean by "standard?" It was the commission's view, but that does not make it a standard.

Senator Grafstein: Honourable senators, I will deal with the exceptions to the rule in a moment. Speaker Macnaughton continues:

> Sir Allison Russell, K.C., expresses the same opinion in his book on legislative drafting when he further states, "It is only in exceptional cases, usually those where Constitutional changes are being enacted, that a preamble is now used to explain the object of an act. A preamble cannot restrict or extend the enacting part, when the language and scope of the act are not open to doubt."
>
> However, it is not mainly on account of the preamble that I have to declare this bill out of order, but for the reasons given previously.

In other words, it was in part because of the preamble that he declared the entire bill out of order.

Honourable senators, I bring that to your attention because I want to put the drafting of this bill in that drafting context.

This is a rather unusual bill. I refer to a general point, not a substantive point — a question of policy. This government bill was introduced as a Senate bill before receiving approval in the other place. This is not a normal practice. However, from time to time in the past, the Senate has undertaken to be the legislative chamber of first consideration.

Honourable senators, I ask you: What then is the Senate's duty when the government chooses to introduce legislation in the Senate? What test should guide us? What happens to the Senate's statutory and constitutional responsibility as a chamber of sober second thought?

It strikes me, honourable senators, that we have a higher duty to ensure care of legislation so that the legislation is beyond question or reproach. If we have a reasonable question of doubt about the efficacy of any portion of the legislation, we should proceed with caution. We must doubly distill legislation that appears in this chamber, because we will not have an opportunity to give it a sober second thought. As a general statement, to which other senators may or may not agree, the Senate has a higher duty when we discover, prima facie, legislation with uncertainities and inconsistencies. We should impose upon ourselves a higher standard than normal when it comes to this practice of legislation of first proof.

• (1430)

In any event, honourable senators, if you do not accept that standard, there is no substitute for careful and precise drafting, most especially when it comes to a legal bill. Why? Because this legal bill, as it applies to federal legislation, will have a day-to-day impact on ordinary life affecting every resident and citizen of the province of Quebec. We have a higher duty to be satisfied that legal legislation, as opposed to policy legislation, is precise because every word counts.

Some senators have opined that these are simple statements. These are not simple statements. Every word counts, particularly in a legal bill.

On first reading this legislation, it seemed to me that warring draftsmen were at work. There were those who carefully prepared the legislation to harmonize the civil and the common law as it applies to federal legislation. It was brilliantly done and brilliantly executed. Then there were other minds at work, I believe, who prepared the preamble almost as a confusing afterthought. As Speaker Macnaughton indicated, preambles are, on their face, bad practice for exactly this reason. Yes, we can have preambles; yes, as Senator Murray said, this is a current practice; yes, the Multicultural Act does have a preamble; yes, the Broadcasting Act does have a preamble; and, yes, the Transportation Act has a preamble.

Senator Murray: All of which you voted for, senator.

Senator Grafstein: Agreed, but let me tell honourable senators the difference between those bills and this bill. In each one of those bills, without exception, the government was seeking to give policy directives and set priorities to delegated authority. In other words, in the Broadcasting Act it was the CRTC; in the Transportation Act it was the commission; in the Multiculturalism Act it was the Multicultural Council; in the Official Languages Act it was the commissioner.

I see Senator Murray disagreeing with me.

By the way, there are other exceptions, but at the heart of those exceptions is the fact that the modern government, which is not able to draft legislation precisely in the heart of legislation, gives policy directives to give discretion under delegated authority. That is the substantive difference, but not when it comes to legal drafting.

We do not have a preamble to the Criminal Code, for good reason. The Charter has a very simple preamble — God and the rule of law. Senator Joyal, Senator Murray and others in this chamber will remember that every word counted in the Charter. Every word was debatable.

Honourable senators, I think we owe it to ourselves, if we can, to avoid a bad practice that might have the deleterious effect of playing to judges' uncertainty, that allows them to roam freely and substitute their opinion for the opinion of Parliament. If we believe, as many of us do, that the supremacy of Parliament is still an important element in the life of Canada and an essential characteristic of Canada, then I think we owe it to ourselves to be absolutely satisfied beyond a reasonable doubt, particularly in legal-like legislation, that these words are correct and will not have an inconsistent impact.

The minister and those supporting this legislation suggested that the rationale for incorporating the preamble was the resolution of this house in the aftermath of the referendum. I see Senator Beaudoin nodding in agreement. Yes, that is true, but let us again look to what the authorities say about a resolution.

A resolution of this chamber is entirely different than an order of this chamber. A resolution of this chamber based on authorities such as Driedger — and honourable senators can look at them — all say the same thing. They say that a resolution of this chamber is an opinion at a moment in time of those who support that particular resolution. In effect, the resolution disappears at the end of that session.

An order is different, honourable senators. Why? An order may last as long as that particular session or, by the very nature of it, continue on into a further session.

The authorities are clear that a resolution is different. Senator Stewart, a former colleague of ours, said in his text enitled *The Canadian House of Commons Procedure and Reform* that it is an opinion at a moment in time.

> The result of a decision by the House is either a *resolution* or an *order*. The House expresses its opinion by resolutions. It expresses its will by orders.
>
> Taken alone, resolutions bind nobody;

I will not belabour the point, honourable senators, because the authorities are there for those of you who are interested to satisfy yourselves that this is the intent and the practice with regard to resolutions both under English law and Canadian law. The authorities are agreed that a resolution is an opinion at a moment in time.

What did that resolution say, honourable senators? Let us take it as if it should have some weight for us with respect to this legislation. The heart of that resolution was the phrase "distinctive society." There was a great debate in this chamber during the Meech Lake deliberations and on the resolution itself about those words. Those are potent political words, whether one agrees or not.

I see my colleague Senator Bacon giving me a harsh look, which I understand because she and I disagree. We are friends but we disagree on this matter. That only indicates how good friends can disagree on a fundamental political point. It is an explosive question, explosive words and everyone knows that. This is accepted by all.

The word "distinctive" was used in that resolution, which means different. The word "unique" was adopted in the second rationale that the minister gave us for this legislation. The Calgary Declaration uses the word "unique," which is entirely different than the worth "distinctive." According to the Oxford Dictionary, "unique" means one of a kind, unparalleled, unequalled and superior. That is what the dictionary says.

Senator Joyal made an excellent point yesterday when he said that if one uses those words, one had better amplify them to make sure they are understood so that portions of Quebec society are not excluded. If we look at the words in the Oxford Dictionary and the plain meaning that judges will apply, this is a serious question.

Senator Murray: Which of the two formulations does my honourable friend accept?

Senator Grafstein: Neither, but, having said that, I want to make my point very clear. It is important that any definition be clear, and those two definitions are not.

The Hon. the Speaker: Honourable senators, I regret to advise that Senator Grafstein's 15 minutes have expired. Does he wish leave to continue?

Senator Grafstein: Yes.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Grafstein: Honourable senators, let me turn to the resolutions one at a time. I ask each senator to read each one of these resolutions from start to finish before they vote.

Senator Kinsella wondered about the meaning of the phrase "access to federal legislation." Does it mean benefits? Does it mean equal access or access to the rule of law? It is not clear. It does not mean anything.

Then we read the words "all Canadians." On a plain reading of the first resolution of an important bill that seeks to equalize the two traditions in our country, we exclude everyone as opposed to those who are Canadian citizens. That is contrary to the large debate that went on across the country with respect to the definition of how the Charter applies. It is not restricted to Canadians alone.

• (1440)

Honourable senators, this preamble is unconstitutional. Imagine that we are about to pass a preamble that, on its face, is inconsistent with the Charter. There is no further argument. I do not care what the minister says, or what the proponents say. On its face, the preamble says "all Canadians." Does this mean that some judge in the future will say that if someone is a Canadian citizen, the Civil Code applies, but if someone else happens to be a landed immigrant or a refugee, it does not apply? How can we let this pass?

Honourable senators, I could go through each preamble, and each one is more confusing than the one before. I should like us to read one of them together. It is an exercise in mutual education. Perhaps honourable senators would turn to the fifth recital, please. This will be my final argument.

I will read the recital. If you have the statute, read it for yourselves. I have read it six times, and still do not understand it. I asked several legislative counsel what it meant, and they do not understand. Perhaps there are greater minds here than mine. The recital states:

> WHEREAS the provincial law, in relation to property and civil rights, is the law that completes federal legislation when applied in a province, unless otherwise provided by law;

I will read it again:

> WHEREAS the provincial law, in relation to property and civil rights, is the law that completes federal legislation when applied in a province, unless otherwise provided by law;

That is incorrect. On the face of it, it is incorrect. It is unintelligible. It is meaningless. It is deleterious. This is just a soft notion. This was not meant to be harmful. When you read it, it does not make any sense.

Honourable senators, I urge you to support this motion to delete the preamble. Remove the uncertainty. Support the legislation. If the other chamber chooses to turn it back, perhaps they will get a big, cautionary bell to warn them not to do things that are inconsistent on the face of it. Do not do things that force us to pass legislation that is inconsistent with the legislation or with the Charter. Do not force us to do things that are inconsistent with legislation or with strong, potent political issues that are unnecessary and that will inflame rather than equivocate and modify passion and feelings.

Honourable senators, I urge your support to delete this horrendous and sloppy preamble.

Hon. Gérald-A. Beaudoin: Unless there is a question, I ask for the adjournment of the debate.

Hon. Anne C. Cools: I thank Senator Grafstein for an excellent presentation. I should like to assure Senator Grafstein that his statements about the resolution of December 7, 1995 in respect of the distinct society are absolutely accurate. At the end of the session of Parliament, that resolution would have been washed off the Order Paper when Parliament dissolved.

The honourable senator has said that the preamble should be deleted. He has moved a motion in amendment so to do because the preamble itself is inconsistent with the substance and content of the bill. In addition, the honourable senator has said that that inconsistency between the preamble and the substance of the bill is of such a nature as to render the whole legislative proposal, the bill, defective.

I am assuring honourable senators that I understand clearly, because I feel quite strongly about this point. The honourable senator has also said that this preamble is a pretender because it makes pretense at being a mini-Constitution or a pseudo-Constitution.

The Minister of Justice told us that this particular bill is the first bill of many. There will be subsequent bills coming before us, effecting this enormous task of harmonizing two sets of law. I am sure the minister has not told the honourable senator the direction that she intends taking. At the committee, I had said that it was an act of faith to vote on this bill without knowing the full direction of the minister. I wonder if honourable senators have wrapped their minds around the impact of this flawed preamble on future legislation that will be coming to us, of which we have no knowledge as to content. It is an important point.

Senator Grafstein: I thank the honourable senator for that question because it was interesting. Senator Beaudoin, members of the committee and I had a discussion about the word "harmonization." I tried for legislative purposes to trace the history of the word "harmony." Although I have not rechecked it myself, I have been told that it comes from Dreidger in his textbook entitled: *The Construction of Statutes*, which is well known. He was a deputy attorney general and one of the great draftsmen and teachers of legislation in this country. He was considered the outstanding authority.

Dreidger, on page 29 of his textbook, deals with the word "disharmony." In that, he refers to an English case and talks about the preamble. This is related to Senator Cools' point. He uses this at the end of an expression when quoting from an English case. It states, in part:

> ...unless by such exposition a *contradiction* or *inconsistency* would arise in the act by reason of some subsequent clause, from whence it might be inferred the intent of the parliament was otherwise.

In other words, the entire question of harmonization came with respect to bringing harmonization within and to legislation. Senator Beaudoin and I had this discussion. It was a good discussion because he improved my nuance and my understanding. This is not to bring the two pieces of tradition together as a hybrid. It is not to harmonize it in that sense. It is to bring the two legal traditions together and give them equal weight to coexist.

The harmonization lies in the fact that they are being brought together to coexist and be rational, one with the other, not to "interact" with one another as the preamble indicates. It is not an "interaction", but each in its own domain to be consistent one with the other. I thank the honourable senator for bringing that nuance to my attention.

The bill at the outset talks about harmonization of two coexistent, equal traditions under federal law as it applies to the Province of Quebec, which we should have done back in 1867. To say, on the one hand, that one tradition is unequalled, unparalleled, even superior or more precise than the other is inconsistent; that is where the word "harmony" comes in. Senator Cools is quite correct that the danger is that if we do not correct it now and make clear the manner in which we are proceeding, we will run into deeper and more difficult waters later. To my mind, proceeding with the legislation alone without the preamble makes it abundantly clear. Thank you for that clarification.

Senator Murray: Honourable senators, as to the idea of preambles generally, I may be more in agreement with the honourable senator than he thinks. Nevertheless, we have a preamble here. The question is whether the house ought to take it upon itself, all things considered, to delete it. I certainly would not support that idea because I see nothing objectionable to the preamble.

In view of the statements that Senator Grafstein has made about the preambles in previous laws, for example, the Official Languages Act, the Multiculturalism Act, the Environmental Protection Act, the National Transportation Act, the Telecommunications Act, surely the honourable senator is not arguing that the preambles were strictly speaking necessary in those cases, any more than the preamble is strictly speaking necessary in this case. We are agreed that the laws in those cases would stand on their own, are we not?

Senator Grafstein: Before becoming a senator, I practised before the National Transportation Commission and before the CRTC. The difficulty is that if you delegate authority to a quasi-independent tribunal — and this goes back to Lord Hewart and the danger of too much delegated authority, resulting in Parliament losing all control, and they have to opine on individual issues — it is preferable to set out clearly what the objectives and priorities should be as opposed to saying, for example, where does the CBC fit in the Canadian Broadcasting System. In the first example, under the Broadcasting Act — this is all recall, as I have not looked at this legislation for years — the priority, first and foremost, was to have a national broadcasting system, to give the CBC priority, CBC-1. That clarified the discretion of the CRTC.

• (1450)

Absent that, it would be very hard to draft legislation, in my view, to direct quasi-independent tribunals or bodies without those objectives. It would be much more difficult than doing it in a preambulatory way. Those are the cases that I think are acceptable. Indeed, administrative tribunals still get into trouble with that approach. There is still difficulty there, but in this legislation, there is no such excuse. We do have an explanatory note in this bill that should satisfy the senator. It is on the face of the bill and it is brilliantly drafted. I will read it for you.

> A First Act 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

It is brilliant, concise, accurate and unassailable. Why tamper with something that is good? Why should the imperfect drive out the good?

Senator Murray: I think it is a real stretch to suggest that a preamble was necessary, for example, to the Multiculturalism Act in order to give direction to the Multiculturalism Council or, in the case of the Official Languages Act, to give direction to the commissioner. My friend can read those preambles and acts for himself and he will see what I mean.

Let me ask the honourable senator about resolutions. He has made clear his view that a resolution passed in one Parliament — in this case the resolution affirming Quebec's distinct society — has no consequence beyond that Parliament. Surely he would agree that until such time as it is revoked, it does have some political and moral weight. I ask the senator that question in view of the fact that the present Prime Minister of Canada hung his hat on a resolution more than a half-century old and passed not by two Houses but by one when it came time to objecting to Conrad Black's elevation to the House of Lords.

Senator Grafstein: How do I deal with that? My good friend Conrad Black is a great Canadian citizen and should remain such. He has made a great contribution to the country and I hope he continues to do so, even though I fundamentally disagree with his editorials almost every day.

Having said that, it is interesting, and the senator raises an important point, but those are not the words encapsulated in this preamble.

Senator Murray: Would the honourable senator accept those words?

Senator Grafstein: That is not the issue before the Senate. The Honourable Senator Murray knows my position on this. I have made clear to this house in debates, over and over again, where I stand on that issue. I do not want to return to that debate, although we may, later on this month. I would prefer not to.

I think the Province of Quebec has moved beyond that debate. Therefore, why should we try, in fact, by legislation that will have a far-reaching impact, to bring it back into common currency when, by the way, this house has never opined on the word "unique" characteristic? We have never opined on that word. Therefore, I beg to disagree on the essence of the point.

This preamble is gratuitous, inconsistent and unnecessary. Therefore, if we can agree that it is good legislation, we can let the legislation go forward without the preamble, which only adds doubt, not clarily.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, reference has been made a few times this afternoon to the Multiculturalism Act, which honourable senators may recall was before this house in 1989, I believe, under Bill C-68. When we drafted that bill, speaking from my vantage point of the day as a bureaucrat, my recollection is that we saw the preamble to that act as being an inspirational statement, not as giving direction for interpretation. Senator Murray is quite right that the act, by its very nature, is not enforcing anything. There is a statement of cross-government commitment and there is a counsellor, et cetera.

That preamble was inspirational. Some other preambles are more directive in terms of interpretation and guidance for administrative or other tribunals to interpret.

My question to the honourable senator is this: If I have understood Senator Grafstein correctly, he agrees with the content of the nine substantive parts of the bill, from pages 2 to 78.

If there is a desire that there be a preamble, what kind of a preamble would the honourable senator look for, one to give guidance or one to be inspirational?

Senator Grafstein: Honourable senators, when it comes to a legal bill as opposed to a policy bill — I am trying to make that distinction, not as a term of art but as a term of discussion — every word counts in a way that it does not count in a general bill with a preamble of inspiration. I think the explanatory words on the face of the bill are clear-cut and inspirational. I am inspired by these brilliant words to harmonize under federal law in the Province of Quebec in French and English the civil and common law. We should have done it in 1867, as senators suggested. No one quarrels with that. It is a great idea. It brings into play a bijural notion, a question of equality of interpretation, which is excellent, supreme, great.

However, why go beyond that? Why spoil something with political foliage? If the government wishes to congratulate itself, as it should, let it congratulate itself in a minister's speech, not in legislation that may be inconsistent. Certainly, the first "whereas" in the preamble on its face is inconsistent with the Charter. There is no question about that. Why do it?

Here we have brilliant, precise explanatory notes. Obviously, Mind No. 1, in drafting the legislation, drafted that explanatory note, and Mind No. 2 drafted the preamble. For further example, what does the expression "window on the world" mean?

Senator Murray: To be fair, all those questions were canvassed at the committee, and the official did answer.

Senator Moore: He said it was unnecessary.

Senator Kinsella: I have two short further questions.

Honourable senators, Senator Grafstein mentioned preambular paragraphs 1 and 2, and just now 4. As far as paragraphs 1 and 4 are concerned, the Charter will take care of them because the Charter overrides them. How does the honourable senator answer that? He says that we should not worry about it. The Charter guarantees in section 15 "everyone," and that will obviate any harm done by putting in the word "Canadian."

Senator Grafstein: Honourable senators, in day-to-day commercial law, private law, should we give anyone in the province of Quebec or, indeed, any Canadian or anyone in Canada an opportunity to launch an appeal on the basis that the recital is restrictive as it applies to the act?

• (1500)

Why give anyone a hint of an opportunity to do that? Why allow someone to pose a legal question and possibly take a court action based on that? Why give anyone an opportunity to do that? It is not good practice, it is not good legislation and it is not good law.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am pleased to participate in the debate on Bill S-4, and more particularly on the amendment that has been proposed by my colleague the Honourable Senator Grafstein.

I want to be clear that I do not, and neither does the government, support the honourable senator's desire to repeal the preamble. I should like to set it in context. Bill S-4 is the first in what will be a series of initiatives to harmonize the laws of Canada with the civil law in the Province of Quebec.

Every witness who appeared before the committee, and every senator who has intervened in the deliberations to date, either in committee or in this place, so far has signalled their support for the objectives of the bill and every one of the 178 substantive provisions and clauses in the bill. This includes the honourable senator who has just made this motion. He does not object to any of the provisions of the bill.

There were two exceptions, and it is important to put those on the record. Apparently there was an exception raised in the committee about the provisions relating to marriage, on which one senator expressed some reservation and another senator abstained, but that was the end of the discussion.

In 1994, the Province of Quebec modernized its civil code. As Senator De Bané has mentioned, this development led to two important initiatives of the Federal Department of Justice: The first, in 1993, was the Policy for applying the Civil Code of Quebec to Federal Government Activities, and the second was the Policy on Legislative Bijuralism of 1995. Bill S-4 is the continuation of that work.

I think all honourable senators, and people right across the country, agree that Canada has two legal traditions and two official languages. These are essential characteristics of our federation, and Bill S-4 does them justice by facilitating the coexistence of both legal traditions, each of which is fully developed and utilized in both official languages.

Bill S-4 is also consistent with commitments made in the resolutions on the distinct character of Quebec society adopted by both Houses of Parliament in December 1995. Those resolutions, and the Calgary Declaration, recognize the distinctiveness of Quebec and identify its civil law tradition as the key element of that distinctiveness.

I wish to congratulate honourable senators on both sides who are members of the Legal and Constitutional Affairs Committee for their hard work and careful deliberations on this bill. The committee, when it was discussing this bill, dealt with six proposals from individual senators for changes to the bill, one of which is before us now. It is interesting to note, however, that none of those changes were to the substantive portions of the bill. No one sought to amend one of the 178 provisions of the bill. However, they did raise concerns about the preamble.

We have had some discussion this afternoon about what exactly is the purpose of a preamble. There are those in the legal fraternity who would argue that a preamble has no meaning. There are others who believe, however — and certainly Senator Kinsella argued eloquently this afternoon — that a preamble can be inspiration. In other instances, a preamble simply sets the tone. That, I believe, is what is important about the preamble to this particular bill.

Honourable senators, there is no question that the honourable senators raised interesting issues in their discussion of the preamble. Senator Grafstein, as he did again this afternoon, proposed the deletion of the preamble in its entirety. Senator Joyal, on the other hand, proposed one motion containing four elements. He wanted a new paragraph to acknowledge Canada's enrichment due to bijuralism. He wanted to replace the second paragraph with text that avoids the expression "unique character of Quebec society." He wanted a third change in the introduction of a new paragraph to acknowledge that each legal system has developed in both official languages, and he wanted a fourth change, which also created a new paragraph, to acknowledge the particular role of the federal government in relation to the continuing use and development of both official languages in both legal traditions insofar as federal statutes are concerned. Senator Moore proposed to replace the words "a window on the world" with the words "enhanced opportunities worldwide."

The government has taken an interest in the suggestions of honourable senators and has reviewed each idea carefully. They have indicated to me that they are comfortable with four of the six proposals. However, they are not prepared, clearly, to make those amendments themselves, but if honourable senators made those amendments in this chamber, they would find those amendments acceptable. Let me, therefore, return to the specific motion of Senator Grafstein.

The government feels that Bill S-4 is a most important initiative. As in past initiatives in which the bill has begun with a preamble, they believe that we should not miss the opportunity to include a preamble in this particular bill. They believe that it gives us the opportunity to recite some of the context and the rationalization for harmonizing federal laws with the civil law of the Province of Quebec. For that reason, the government is unable to support Senator Grafstein's proposal to delete the preamble altogether.

Of the four ideas contained in Senator Joyal's amendment, the government looks with favour on three of them. The acknowledgement of Canada's enrichment due to bijuralism, the acknowledgement that each legal system has developed in both official languages, and the acknowledgement of the particular role of the federal government, would all be factual and constructive ideas and additions to the preamble and would do justice to the spirit of the preamble as presently drafted. However, Senator Joyal's objection in committee to the expression "unique character of Quebec society" is not shared by the government. In the view of the government, the second paragraph of the preamble in the bill is both descriptive of the context and factual.

The Senate itself used similar language in 1995 to express itself in a resolution concerning the distinctiveness of Quebec. The expression we are dealing with today is, in my view, synonymous. Moreover, the government does not share the concern that some senators have raised about the concept of preambles, that we are introducing socio-political concepts into a statute that do not belong there. As Senator Murray pointed out in the debate yesterday, many federal statutes have long preambles that describe the context of the initiative in question, and those preambles contain descriptive language that could not be described as precise legal language.

Let me refer to the Official Languages Act, for example, which says in its preamble, in the second paragraph:

> AND WHEREAS the Constitution of Canada provides for full and equal access to Parliament, to the laws of Canada and to courts established by Parliament in both official languages...

Then, in the seventh paragraph, it reads:

> AND WHEREAS the Government of Canada is committed to enhancing the vitality and supporting the development of English and French linguistic minority communities, as an integral part of the two official language communities of Canada, and to fostering full recognition and use of English and French in Canadian society...

• (1510)

The eighth paragraph of the Canadian Multiculturalism Act reads:

> AND WHEREAS the Government of Canada recognizes diversity of Canadians as regards race, national or ethnic origin, colour and religion as a fundamental characteristic of Canadian society and is committed to a policy of multiculturalism designed to preserve and enhance the multicultural heritage of Canadians while working to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada...

It is very inspirational.

Honourable senators, these preambles contain important statements of the ideas behind the legislative initiatives in question. They do not contain, strictly speaking, precise legal language. That the preamble in Bill S-4 may contain socio-political concepts is quite consistent with the practice of the Parliament of Canada in giving descriptive preambles to important legislative initiatives. For this reason, while the government is prepared to support, if senators desire, three of Senator Joyal's ideas, the government does not share his concern about the second paragraph.

As to Senator Moore's amendment in committee, which was defeated, if on the floor of this chamber we think that his language is better than the language offered by the drafters in the Department of Justice, then so be it — the Senate will decide to change that language.

Honourable senators, everyone agrees that this legislative initiative is important. There is overwhelming support for its substance. Insofar as the preamble is concerned, the government has listened to the concerns raised and has indicated its desire to be responsive and flexible, if that is what the Senate desires.

This bill was introduced in the last two sessions and unfortunately did not pass before either session ended. It is our hope that we who have been given the responsibility of first introduction of this bill — we are the first, if I may put it this way, second sober thought with respect to this piece of legislation — can move it forward to the other place so that it finds its way into force and effect.

I do understand that honourable senators, as Senator Grafstein did today, will move amendments during this debate. Let us deal with them in a thoughtful and timely fashion, but let us not in an inadvertent way derail the first important step to the harmonization of the federal law with the civil law of the province of Quebec.

Senator Grafstein: Honourable senators, the Leader of the Government in the Senate indicated that the preamble is really not legal so much as it is inspirational. Does she agree or disagree that the preamble is strictly related to this particular statute, or does it have a legal life beyond the statute?

Senator Carstairs: The preamble is part of this statute and lives with this statute.

Senator Grafstein: Honourable senators, I would point out that in his committee evidence, Mr. DeMontigny of the Department of Justice responded to a question from Senator Joyal by saying:

> First, I absolutely agree with you that a preamble in one statute could, theoretically, be used for interpretation of another statute, although no example comes to mind. Usually, you would take the preamble of that statute and not adopt another preamble for another purpose in another context. In theory, you are correct. I will accept that.

Senator Kinsella: Honourable senators, I have a question for the minister. Is the government open to amending the first preambular paragraph by deleting the words "all Canadians are" and substituting the words "everyone is?" That first paragraph would then read, "WHEREAS everyone is entitled to..." In this way, we would be using the same language as in section 15 of the Charter to allay the fears of Quebec's multicultural communities, in which we find many landed immigrants who are not Canadian citizens and who we accept as having equal access to the law. I think that would assuage the concerns of some people.

Senator Carstairs: I thank the honourable senator for that question. I will take his suggestion immediately to the ministers involved in the drafting of this legislation and get a reflection back from them.

Let me be clear as to what I see as my role in this chamber. I want to reiterate what I said before. I not only see myself as bringing messages from cabinet to honourable senators, but bringing messages from this chamber back to the cabinet table. I will do that with pleasure.

Senator Cools: Honourable senators, I should like to ask Senator Carstairs a question. I thank her for her remarks.

In *Debates of the Senate* of December 7, 1995, Senator Fairbairn introduced a resolution for the consideration of this chamber. It was the famous resolution on Quebec's distinct society. The first sentence of that resolution, which appears at page 2452, stated:

> Whereas the people of Quebec have expressed the desire for recognition of Quebec's distinct society;

Could Senator Carstairs share with us where and when it was that the people of Quebec ever expressed a desire for the recognition of Quebec's distinct society?

Senator Carstairs: Honourable senators, I am not sure exactly how this question relates to Bill S-4, but I think that the view expressed by the Government of Quebec throughout the entire Meech Lake debate was an example that they desired to be recognized as a distinct society.

Senator Cools: Senator Grafstein and other senators made reference to this resolution when they spoke. After all, this resolution took its life in the aftermath of the referendum in Quebec some years ago. My recollection is that the people of Quebec voted on the Charlottetown accord in 1992. If anything, the people of Quebec at that time voted very clearly against a distinct society clause.

Senator Carstairs: I think that is a bit like saying the people of British Columbia voted against an elected Senate.

On motion of Senator Beaudoin, debate adjourned.

CONFERENCE OF MENNONITES IN CANADA

PRIVATE BILL TO AMEND ACT OF INCORPORATION—
SECOND READING

Hon. Richard H. Kroft moved the second reading of Bill S-25, to amend the Act of incorporation of the Conference of Mennonites in Canada.

He said: Honourable senators, this bill, except for some technical changes in its presentation, is substantially the same as a bill introduced in the last session of Parliament by the Honourable Sharon Carstairs. In that session, it was known as Bill S-28. That bill, however, did not progress beyond the second reading stage. It died on the Order Paper when Parliament was dissolved on October 22, 2000.

In her speech on September 19, 2000, in support of second reading of Bill S-28, Senator Carstairs explained who the petitioner was, described the bill and said a few words about each of the bill's various clauses. Her comments can be found on pages 1939 and 1940 of the *Debates of the Senate* of that date.

It is, therefore, not my intention to repeat everything that Senator Carstairs said. However, for the benefit of those senators who are new to this chamber and to refresh the memory of other senators, I wish to draw your attention to a few pertinent facts regarding the petitioner and the bill.

The Conference of Mennonites in Canada was founded in 1902 and was incorporated by a private act of Parliament in 1947. It was composed largely of Mennonites who immigrated to Canada in the 1870s and again in the 1920s and the 1940s. Today, it is composed of approximately 260 congregations working in partnership with provincial and regional conferences in Canada. It consists of over 35,000 individual members from a wide range of ethnic groups, such as Chinese, Vietnamese, Laotian, Cambodian, Taiwanese, French, Spanish and German.

Honourable senators, the purpose of this bill, like its predecessor in the last Parliament, is to update and revise the corporation's original 1947 act of incorporation. It proposes to do this in four ways: first, by changing the corporation's name to that of the "Mennonite Church Canada"; second, by making certain revisions to the corporation's constitution, including its objects and powers; third, by removing certain restrictions on the holding and disposition of real property; and, fourth, by permitting the corporation to carry out its objects and exercise its powers outside Canada.

Honourable senators, I am pleased to be sponsoring this bill. The Mennonite community has a long history in Manitoba and has a proud and distinguished place in the religious, educational, cultural and business life of our province. Their contribution to the industrial development of Manitoba has been outstanding and continues to grow. Their commitment to fundamental values is a positive force at home, across Canada and around the world. The Mennonite community is an outstanding example of how immigrants bring their distinct qualities, character and beliefs to the building of our nation.

Honourable senators, I have moved this bill on second reading and now propose that it be sent to the Standing Senate Committee on Legal and Constitutional Affairs for detailed consideration.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, we will not oppose this bill, but I think that for the record it is important, particularly for new senators, to understand why a bill such as this is before this house.

This is a petition, now presented in the form of a bill, for a federal act of incorporation making an organization a corporation sole. It is generally done at the administrative level in the provinces rather than by an act of Parliament. Under the Companies Act of most provinces, an administrative office would be dealing with this issue.

It might fall under a historical category of years past, similar to when decrees for divorce in Canada required an act, which was dealt with by the Senate. This process is of that same vintage. I know that some honourable senators have raised in the past, when bills like this have been brought forward, that we should change this process. However, this is our process, and we feel that this particular group, as other groups, ought not be penalized because some of us think that there should be an administrative process to deal with matters of this kind. We would encourage honourable senators to reflect upon the need to make that kind of change and to do so in due course.

In the meantime, honourable senators, we will support the bill being adopted at second reading and referred to the Standing Senate Committee on Legal and Constitutional Affairs for examination.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Kroft, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

DEFERRED MAINTENANCE COSTS IN CANADIAN POST-SECONDARY INSTITUTIONS

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Moore calling the attention of the Senate to the emerging issue of deferred maintenance costs in Canada's post-secondary institutions.—(*Honourable Senator Callbeck*).

Hon. Catherine S. Callbeck: Honourable senators, I rise today to participate in this important inquiry brought forward by Senator Moore. I want to thank the honourable senator for bringing this serious matter to the attention of the Senate.

Our universities are in trouble. Recently studies have confirmed fears that on a Canada-wide basis, the physical plant and infrastructure of our universities are crumbling. Accumulated and deferred maintenance, or ADM, has been a growing problem for years but now has reached a point where it can no longer be ignored.

I do not wish to repeat all the facts and figures earlier provided by Senator Moore and Senator DeWare, but I do wish to remind senators of the seriousness of the situation.

The sum of $3.6 billion is needed to eliminate the accumulated deferred maintenance in post-secondary institutions in this country. That works out to over $5,500 per full-time student. Of the total amount, over $1 billion of the ADM is considered urgent. That means that if these conditions are not immediately attended to, further deterioration and increased costs will result.

Honourable senators, these figures are reported in the latest study on deteriorating university infrastructure entitled "A Point of No Return: the Urgent Need for Infrastructure Renewal at Canadian Universities."

• (1530)

The report was complied last year by the Canadian Association of University Business Officers and is considered to accurately reflect the ADM problem. As the report states, the average university building in Canada is 32 years old, while the average life cycle of its components and systems is about 23 years. Therefore, as most buildings and physical systems have now surpassed their life span by 10 years, we see the need for major repairs.

The following contribute to the infrastructure problem: decreasing government funding; demands for new space due to growth in university programs, research and enrolment; the need to comply with new codes and regulations; the need to keep pace with advancing technology; and the lack of attention given to maintenance and renewal in comparison to new building projects. Enrolment is expected to dramatically increase over the next decade and place further demands on existing physical plants.

The result is a serious national problem. Graduate level research cannot be carried out optimally in deteriorating facilities. Breakdowns in the physical plant can be seriously disruptive and can ruin entire experiments.

Though the government has been quite committed to funding research across Canada, the cart should not be put before the horse; in other words, we need to ensure that safe, modern facilities exist to allow researchers to make the best possible use of the research dollars.

Further, the problem is not limited to laboratories and researchers. Daily classroom activity and lecturing can be seriously disrupted by institutional breakdowns such as problems with heating and ventilation, and the resulting disturbance from frequent maintenance and temporary repairs. With classroom space at a premium, it is often difficult to find suitable rooms to relocate classes.

Though accumulated deferred maintenance is a problem that plagues the entire country, I can speak most knowingly about the University of Prince Edward Island — the only university in my home province. UPEI, represented by Vice-President of Finance Neil Henry, was an active participant in the formulating of the accumulated deferred maintenance study. I was startled to learn that the situation at the University of Prince Edward Island is among the worst in the country. Of the 22 buildings that comprise the campus, three have been revealed to be at the end of their useful lives. They are at a stage where only major building restoration can make them safe and adequate for use. The small Island university, with a student body of 2,500, is saddled with $20 million of deferred maintenance costs.

The provincial government assists UPEI with capital grants, but the university must still borrow money. However, the school's borrowing capacity is limited because any debt must be funded out of its operating budget. Current annual maintenance expenditures do not keep up with the annual deterioration.

Related to the problem of deteriorating infrastructure is the need for increased space. The pressures of rising enrolment and rising levels of research funding have put classrooms and laboratories at a premium. Providers of research funding, whether federal or private sector, often assume that the university has the lab space to carry out the contemplated research. However, the University of Prince Edward Island and many other institutions have effectively run out of lab space altogether.

The University of Prince Edward Island has estimated that it will require approximately 43,000 square feet of new laboratory space. As the recent Speech from the Throne reveals, the government is committed to enhancing research to better situate the country in the global knowledge-based economy. If this aim is to be fulfilled, there can be no overlooking the fact that adequate infrastructure is a necessary prerequisite to putting these research dollars to good use.

Honourable senators, the situation at the University of Prince Edward Island is just a snapshot of the bigger problem that is plaguing virtually every university in this country. Though the situation is most serious in Atlantic Canada, the entire country is feeling the pressure of a decaying university infrastructure.

The problem will not disappear on its own. If left unaddressed, we will soon see increasing numbers of students choosing their schools outside the country, where they might be better able to obtain academic needs. It is not a matter of "if" we can come up with the funding; it is a matter of "when."

A federal-provincial infrastructure program must be started now with a view to eliminating deferred maintenance over the next number of years. Subsequent to the eradication of accumulated deferred maintenance, annual programs should be put in place to ensure that we do not find ourselves in this situation again.

I encourage all honourable senators to embrace this issue and familiarize themselves with the status of their local universities.

On motion of Senator DeWare, for Senator Meighen, debate adjourned.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, on Wednesdays, we try to finish the business of the Senate as close to 3:30 p.m. as possible to allow our committees to sit. I ask that all items in the Orders of the Day and on the Order Paper stand in their present order.

The Senate adjourned until Thursday, April 5, 2001, at 1:30 p.m.

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