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(HANSARD)

Tuesday, April 24, 2001

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Tuesday, April 24, 2001

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I draw to your attention visitors in our gallery. His Excellency Jozef Migas, President of the National Council of the Slovak Republic, accompanied by a delegation of parliamentarians, is present. Please welcome our guests.

You are most welcome here in the Senate of Canada.

SENATORS' STATEMENTS

WORLD WOMEN'S CURLING CHAMPIONSHIP

NOVA SCOTIA—CONGRATULATIONS TO WINNING RINK

Hon. Wilfred P. Moore: Honourable senators, last month, I spoke in recognition of the Canadian Women's Curling Championship victory of Colleen Jones and her rink from the Mayflower Curling Club in Halifax, Nova Scotia. I am delighted to report that these Canadian champions also won the World Women's Curling Championship in a 5-2 victory over Sweden at Lausanne, Switzerland, on April 7, 2001.

In speaking to this superb effort, I find it noteworthy that *The Globe and Mail*, which proclaims itself to be Canada's national newspaper, gave markedly more coverage to the losing men's rink than it did to our victorious women's rink. Such unbalanced reporting, regardless of the medium, does a disservice to our female athletes. Only with equal coverage can we recognize with honour the efforts of our female champions. Only with equal coverage can we encourage our young female athletes to work to attain championship levels of performance. A female Canadian champion is a Canadian champion. A female world champion from Canada is a world champion.

I am sure that all honourable senators join me in congratulating Skip Colleen Jones and her teammates: lead Nancy Delahunt, second Mary-Anne Waye, third Kim Kelly, alternate Laine Peters and coach Ken Bagnell. We extend to them our thanks for the honour they brought to Canada.

ORGAN AND TISSUE DONATION AWARENESS WEEK

Hon. Mabel M. DeWare: Honourable senators, I rise today to commemorate Canada's National Organ and Tissue Donation Awareness Week, which runs from April 23 to 29 this year.

Organ and tissue donation is a very important issue, one that can be a matter of life and death for many Canadians. It is becoming more important every day. Canada's population is not only getting bigger; it is getting older, so the need for organ and tissue donations is growing. Unfortunately, the number of donors has not been keeping pace. There are still many more people who need organ and tissue donations than there are donors. People are waiting for donors to help them enhance the quality of their lives, to lengthen their lives and to save their lives. Those people could be family members, friends or even ourselves.

Many die each year because of a shortage of donors. Canadians are starting to realize that their help is needed to meet the need for more organ and tissue donations. For that, we can thank events such as the National Organ and Tissue Donation Awareness Week, the efforts of many organizations and individuals, and the media coverage given to certain cases involving organ and tissue donations.

Honourable senators, governments in Canada are starting to listen. I was pleased by the federal government's announcement earlier this month that it is contributing to a plan to help increase and coordinate safe organ and tissue donation in Canada. That is certainly a step in the right direction, but governments cannot do it alone. It is important for individual Canadians and their families to talk about organ and tissue donation, to consider becoming donors. National Organ and Tissue Donation Awareness Week gives us a good opportunity to do that. Once one decides to become a donor, one must be sure to register this decision according to the procedure established in each province or territory.

Honourable senators, I am proud to be wearing a green ribbon pin in support of National Organ and Tissue Donation Awareness Week. The colour green symbolizes life for many people in Canada who need organ and tissue donations or who will need them in the future.

• (1410)

It represents a chance for them to be healthy again and to once more enjoy the simple pleasures in life that many of us take for granted. I urge colleagues in this chamber and all Canadians to do what they can to help give them a second chance.

GENOCIDE OF ARMENIAN PEOPLE

Hon. Shirley Maheu: In 1957, one of our great ministers of foreign affairs was awarded the Nobel Peace Price. I refer to the Right Honourable Lester B. Pearson.

Today our peacekeeping forces are coming home traumatized. They have seen ethnic cleansing, crimes against humanity, human tragedy and, yes, genocide, in East Timor, Rwanda, Croatia and Kosovo.

How can we accept these situations that our citizen soldiers are facing and have faced and deny the first genocide of the 20th century, when 1.5 million Armenian lives were taken?

I should like to read into the record, in honour of the Armenian Canadians on the Hill today, a poem written by Allan Whitehorn.

How Do We Remember the Dead?

How do we remember the so many dead?
How do we cope, if at all, with the awful dread?
Do we deny the existence of past genocidal deeds?
For to do so, a growing ignorance feeds.
Tragically, for many of my kin, there is no marked grave.
The surviving few endured so much and were ever so brave.
The only memorial marker is our collective memory.
Why this important fact do some not seem to see?
To refuse to say the "genocide" word denies some form of closure.
A moral lapse for trade and commerce sadly comes to exposure.
I do not appreciate a bureaucratic memo or decree.
Why this important existential fact can't they see?
I reflect on the painful memory of my family and kin,
and wonder why some cannot acknowledge this dreadful sin.

FOREIGN AFFAIRS

RUSSIA—INVESTIGATION INTO AUTOMOBILE ACCIDENT INVOLVING DIPLOMAT

Hon. Marjory LeBreton: Honourable senators, it has been three months since Catherine MacLean was killed and Catherine Doré was seriously injured at the hands of Russian diplomat Andrei Knyazev. Mrs. Doré was in hospital until just last week. The alleged impaired diplomat's escape from Canadian justice under the veil of diplomatic immunity has been well covered in the media.

The time is now for the federal government to make a clear statement on the serious nature of the crime of impaired driving and how this particular incident is, like all other impaired driving fatalities and injuries across the country, intolerable. For over two months, MADD Canada has been calling on the Prime Minister and the Justice Minister to speak out on the severity of this particular incident and the crime of impaired driving.

Honourable senators, this is not an issue of diplomacy. How the government deals with this issue goes to the very heart of this government's commitment to fight impaired driving. It is not just a Foreign Affairs matter. The Prime Minister and the Justice Minister should be speaking out forcefully on the need to take a tough stand on this crime.

I call on the Prime Minister and the Minister of Justice to demonstrate the government's seriousness by publicly calling for Russia to lay charges and have Andrei Knyazev brought to justice.

Honourable senators, recent statements by the Minister of Foreign Affairs regarding diplomatic immunity are but a first small step to dealing with potential future cases. The sad fact is that this crime should have been dealt with in Canada. What is required is direct and swift action, as was the case in Washington when then President Bill Clinton acted immediately and intervened to assure a Georgian diplomat face American justice for impaired driving causing the death of young teenage girl. Because of the President's personal intervention, the man is now serving seven to 21 years in an American prison. Surely it is not too much to ask that our Prime Minister and this government take similar measures to protect innocent Canadians from criminal acts at the hands of drunk drivers, whether they be diplomats or residents of Canada.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, I should like to draw your attention to the fact that we have three pages visiting us from the House of Commons.

[*Translation*]

First, allow me to introduce Christiane Hacault of Ile des Chênes, Manitoba. She is studying journalism in the Faculty of Arts at the University of Ottawa.

Pierre-Alexandre Davignon is studying in the Faculty of Administration at the University of Ottawa and comes from Gatineau, Quebec.

[*English*]

Jonathan Kuzub, of Saskatoon, Saskatchewan, is enrolled in the Faculty of Social Science at the University of Ottawa. His major is political science.

ROUTINE PROCEEDINGS

STATE OF HEALTH CARE SYSTEM

BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES—REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE PRESENTED

Hon. Michael Kirby, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, April 24, 2001

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

THIRD REPORT

Your Committee, which was authorized by the Senate on March 1st, 2001, to examine and report upon the state of the health care system in Canada, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of such study.

Pursuant to section 2:07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

MICHAEL KIRBY
Chair

(*For text of appendix, see today's* Journals of the Senate, *Appendix, p. 367.)*

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

On motion of Senator Kirby, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[*Translation*]

ADJOURNMENT

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

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, April 25, 2001, at 1:30 p.m.

Motion agreed to.

[*English*]

JUDGES ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-12, to amend the Judges Act and to amend another Act in consequence.

Bill read first time.

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

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

• (1420)

SALES TAX AND EXCISE TAX AMENDMENTS BILL, 2001

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-13, to amend the Excise Tax Act.

Bill read first time.

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

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

[*Translation*]

CANADA FOUNDATION FOR SUSTAINABLE DEVELOPMENT TECHNOLOGY BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-4, to establish a foundation to fund sustainable development technology.

Bill read first time.

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

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

[*English*]

ACCESS TO CENSUS INFORMATION

PRESENTATION OF PETITION

Hon. Lorna Milne: Honourable senators, I have the honour to present the signatures of 2,016 Canadians from all 10 provinces, as well as the signatures of 220 people from the United States and signatures of people from the United Kingdom, all of whom are researching their Canadian ancestry. In total, 2,239 people petition as follows:

> Your petitioners call upon Parliament to take whatever steps necessary to retroactively amend Confidentiality/Privacy clauses of Statistics Acts since 1906, to allow release to the Public, after a reasonable period of time, of Post 1901 Census reports starting with the 1906 Census.

Honourable senators, these signatures are in addition to the 3,853 I have presented in this calendar year. I have now presented petitions with 6,092 signatures to the Thirty-seventh Parliament and petitions with over 6,000 signatures to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.

Next week, we will hear from Alberta.

QUESTION PERIOD

NATIONAL DEFENCE

UNITED NATIONS EMBARGO ON IRAQ—NAVAL SHIPS ASSIGNED TO PERSIAN GULF—ORDERS NOT TO PARTICIPATE IN NON-COOPERATIVE BOARDINGS.

Hon. J. Michael Forrestall: Honourable senators, many questions arise during a two-week break from the chamber.

The Leader of the Government in the Senate undertook to respond in some depth to a number of questions that I consider to be pertinent and important, as do many other Canadians. Is the leader now in a position to respond to those questions?

While she is considering that, I have a further question. We have seen in the press reports that Canadian navy ships enforcing the appropriate United Nations resolutions in the Persian Gulf have been ordered not to board and search ships that show signs of resistance. Is this a change in Canadian foreign policy? Have we departed from the requirement of the United Nations resolution, or is this an operational problem associated with the difficulty the Sea Kings have had? I think particularly of the boarding of the GTS *Katie*.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Forrestall for his question and also for his opening comment, with which I shall begin. I was concerned on April 5 when Senator Forrestall indicated that there seemed to be a disproportionate number of questions outstanding from him. Our records show that he has asked 19 questions, some of which were answered directly. A total of 12 delayed answers have already been received or will be received later this week. There are currently only three outstanding questions raised by the Honourable Senator Forrestall.

I thank my staff for keeping such wonderful statistics.

However, Senator Forrestall has asked a very serious question that is deserving of an equally serious response this afternoon. It is true that Canadian naval forces operating in the Persian Gulf were not permitted to participate in non-cooperative boardings along with our allies. We know that our navy is highly capable, professional and able to perform the full range of their duties. However, as to the particular circumstances of the HMCS *Calgary* and the HMCS *Charlottetown*, those issues are decided on a case-by-case basis.

Senator Forrestall: Honourable senators, I am sure that many others will be wondering what precisely is meant by "issues are decided on a case-by-case basis." Are we to assume that the appropriate commander in the area has the authority to make those decisions? Does the ship's captain have that authority, or must that authority come from Ottawa on each case?

Senator Carstairs: Honourable senators, as we all understand, multinational operations are a team effort. Apparently, it is common for various participants to be assigned different roles and tasks within the overall mission. With respect to this overall mission, that was not one of the tasks assigned to the Canadian ships.

Senator Forrestall: Honourable senators, can the minister tell us whether, at the start of the United Nations mission, Canada was authorized to interdict and board where there was cause to do so? If so, who has withdrawn that authority? Was that done under the authority of the United Nations, the Canadian government, foreign policy or the commander in the field?

Senator Carstairs: Honourable senators, I understand that this is a joint decision made by all the participants in the team that is providing support. If there is a different or broader explanation, I will obtain that for the honourable senator.

• (1430)

Senator Forrestall: Honourable senators, I am left with the impression now that our allies have some doubt with respect to the professionalism of Canada's Armed Forces serving in that particular area with respect to this United Nations resolution. I would not want that kind of question mark hanging too long over their heads because our Armed Forces are, as the minister suggested, the most professional in the world.

Senator Carstairs: Honourable senators, I do not think there is any question mark here. It is clearly a decision that is made jointly, as to which particular ships will do which particular activities. However, as I indicated to the senator, if there is any further information, I will get it for him as soon as I possibly can.

FOREIGN AFFAIRS

RUSSIA— INVESTIGATION INTO AUTOMOBILE ACCIDENT INVOLVING DIPLOMAT

Hon. Marjory LeBreton: Honourable senators, with regard to my earlier statement, I should like to ask a question of the Leader of the Government in the Senate. Could she ascertain what steps the Prime Minister, the Minister of Foreign Affairs and the Minister of Justice have taken to ensure that the Russian diplomat who killed Catherine MacLean and injured Catherine Doré is charged and tried for the alleged crime of driving while impaired, causing death and injury?

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator knows, the case is in the hands of the Russian justice authorities. It is up to them to determine whether the evidence, as it has evolved and developed, warrants the laying of charges. It is no longer, if I may be so bold, a Canadian authority issue. It is a Russian authority issue.

What is more significant is the action taken by the Minister of Foreign Affairs with respect to all diplomats located in Canada — clearly a definitive statement that such an incident will not be allowed to happen in the future.

Senator LeBreton: Honourable senators, I believe the minister talked about a second charge of impaired driving, which was a minimalist solution. I want to know whether the government is considering following the precedent set in the United States of waiving diplomatic immunity on all drunk-driving charges in order that future offenders face the justice system in Canada rather than escaping to their own countries where the penalties may be less severe.

Senator Carstairs: The Vienna Convention lays out the terms. Our Minister of Foreign Affairs has said very clearly that such activity will not be tolerated in Canada and that action will be taken very quickly.

THE SENATE

FREE TRADE AREA OF THE AMERICAS—EXAMINATION OF AGREEMENTS TO ENSURE EQUITABLENESS OF CLAUSES ON CIVIL SOCIETY

Hon. Douglas Roche: Honourable senators, I have two questions for the Leader of the Government in the Senate, flowing out of the Summit of the Americas in Quebec City last weekend.

My first question focuses on the role of the Senate. In what way can the Senate examine the text of the Free Trade Area of the Americas Agreements in order to ensure that the negotiations for such agreements as they take place will support and not worsen efforts to improve human rights, labour standards, health, education and the rights of indigenous peoples in all the countries of the Americas, the majority of which are developing countries with great economic and social suffering?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. Let me begin by saying that I think the Summit of the Americas was a great success with respect to the manner in which the police forces behaved and with respect to the way in which those individuals who were peaceful demonstrators — and they were by far the vast majority of participants in Quebec City — behaved. One very poignant moment for me was when one young student, who clearly was there for peaceful activism, waved his hand to gain the attention of violent protestors and said, "Don't you understand? You are ruining it for the rest of us." Having been a teacher for many years, I thought that poignant, as he was there for the best possible motives.

In terms of the specific question of Senator Roche, the negotiated agreements, of course, will be debated and discussed on many fronts. To my knowledge, there is no specific way in which we can hold a discussion until we have the final text, at which point it will be debated, because, of course, it will need to be passed in this chamber. However, I take great pleasure from the democracy clauses that came out of the Summit of the Americas. I wish the media had paid as much attention to that aspect of the meeting as they did to the violent activities of so very few.

Senator Roche: Honourable senators, my second question deals with the civil society element to which the minister has referred.

I should like, first, to commend the government for financing the parallel Summit for Civil Society. As we know, there were up to 30,000 people in Quebec City, who held important discussions. Many of them represented churches, unions and so on. The fact that a very small number of protestors used violence, which I condemn, drew virtually all the media attention. Thus,

the people of Canada — I do not know about the government — do not understand the positive contribution that the Summit for Civil Society made to the Summit of the Americas. I am looking down the line and asking in what way the government can stimulate an ongoing dialogue between those important elements of civil society that have a lot to say about educational and health standards, and to have that dialogue in a non-confrontational setting. Further, when the negotiated settlements reach this chamber, in what way can those agreements benefit from the combined thinking of the best of civil society and the best of government in the non-confrontational setting?

Senator Carstairs: I thank the honourable senator for his question. Quite frankly, I find it somewhat offensive to refer to the members of civil society as being only those people who are not members of government. I believe we are members of civil society, and I think all of the leaders who were at the Summit of the Americas are members of civil society. The media — and I do not wish to impart this view to the senator — seem to make a fallacious distinction between government and civil society. There are many of us who participate in government. In fact, the great majority of the participants in the Summit of the Americas, if not all of the participants, were legitimate members of civil society.

In terms of the ongoing dialogue about issues with respect to employment, labour standards and democracy, that debate will take place now on an ongoing basis between parliamentarians in this chamber and the other chamber. The Government of Canada has indicated by its frank championship of the democracy clauses that it will support such dialogue.

Senator Roche: Honourable senators, I wish to clear up this inadvertent misunderstanding of my reference to civil society. "Civil society" has become an alternate term — a synonym, if you will — for NGOs, or non-governmental organizations. We in this chamber are officials, in one manner or another, of the governmental process. The term "civil society" is meant to refer to those NGOs in important areas of society — education and health being two — who have something to say and who need to be able to work with governments in the production of agreements that will benefit the whole of society.

Senator Carstairs: The honourable senator and I will have to agree to disagree. I believe the term is a misnomer and offensive.

• (1440)

ENVIRONMENT

WINNIPEG FLOODWAY—FEDERAL GOVERNMENT INVOLVEMENT IN FURTHER DEVELOPMENT

Hon. Terry Stratton: Honourable senators, this question is addressed to the Leader of the Government. I will ask a mundane question about events in Manitoba.

[Senator Roche]

As you know spring has arrived, and with spring in Manitoba, flooding occurs. I should like to refresh the minister's memory as to a letter to the Honourable David A. Anderson, Minister of the Environment, dated April 9, 2001. A copy was sent to the minister as well. The Leader of the Government may not be able to respond to this today. I am not certain.

Minister Anderson is quoted in the letter from the North Richot Action Committee. This committee's members live south of where I live.

Minister Anderson had assured them that the basis for developing the rules of operation for the floodway would also take into account the protection of the city of Winnipeg and upstream communities. I bring this to the attention of the minister because the perception is that the city of Winnipeg is being protected and the area south is being sacrificed in times of severe flood, such as in 1997.

How is the federal government addressing this issue? It requires the approval of the federal government to change or modify the rules of the operation of that floodway. The community itself is not satisfied as to the actions of the federal government. Could the leader respond to that question at this time?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, to my knowledge, I have not received that particular letter from the North Richot Action Committee, but it may well be on its way to my office at the present time. In terms of the specific question, I will be in touch with the Minister of the Environment and find out his response to this issue.

Regarding the broader question, as the honourable senator knows, major discussions are currently underway between the Province of Manitoba and the federal government about flood proofing for the city as well as the surrounding areas, including those upstream. The issue is one that we almost needed to address again this year. Fortunately, the rains subsided, and we did not need to address it. However, the issue cannot be allowed to linger for too long.

Senator Stratton: I would agree with the leader on the basis that during the past six years, the floodway has been used significantly in three of those years — 1996, 1997 and again this year.

Honourable senators, two solutions to the flooding problem in southern Manitoba were recommended in an International Joint Commission report released recently. One solution was to expand the existing floodway. The second was the construction of a dike at Ste. Agathe, south of the city. The floodway expansion protects the city to a 500-year flood level while the construction of the dike at Ste. Agathe would protect to a 1000-year level.

It would appear that Premier Doer is supporting the expansion. It was stated in the *Winnipeg Free Press* this morning that it is maintained that —

> ...there is a high degree of consensus that the expanded floodway is the best option. He has the support of some key players, including Manitoba's top Liberal MP, Ron Duhamel, provincial Opposition Leader Stuart Murray and the International Joint Commission...

In my view it is premature to start pushing because the expansion to the floodway would leave those residents upstream virtually defenceless. The Ste. Agathe solution protects those people between Ste. Agathe and the floodway, as well as the citizens of Winnipeg. It is at the 1,000-year flood level, which is critical.

Honourable senators, my question is whether it is not premature on the part of anyone in the federal government to come out pushing for a certain solution?

Senator Carstairs: I thank the honourable senator for his question. My understanding is that the Honourable Ron Duhamel favours projects that will provide flood protection. No decision has been made as to which of the two projects — the expansion of the floodway or the dike in Ste. Agathe — is the preferred option.

Honourable senators, the premier is correct in saying that he has support for flood protection. I do not think that he is entirely accurate in saying that he has support for one particular project. I agree that it is premature.

HUMAN RESOURCES DEVELOPMENT

EMPLOYMENT INSURANCE ACT—RULING ON CONTRAVENTION OF CHARTER OF RIGHTS AND FREEDOMS

Hon. Lowell Murray: Honourable senators, I believe that we may be debating Bill C-2 later this afternoon. That bill is to amend the Employment Insurance Act. By way of preparing us for this exercise, could the Leader of the Government in the Senate tell us the position of the government with regard to the findings of a tribunal in her own city of Winnipeg a couple of weeks ago to the effect that Canada's employment insurance laws contravene the equality provision under the Charter of Rights? They are considered to be constitutionally unfair to women because it is harder for the primary caregiver to work the hours needed to qualify.

Does the minister know if it is the intention of the government to appeal this judgment to the Federal Court of Appeal, or, does the government intend to bring in further amendments to the Employment Insurance Act?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. I cannot give him an answer as to whether it is the position of the government to appeal, or to not appeal or to make amendments based on the tribunal's judgment. However, it is an excellent set of questions for the committee hearing process.

AGRICULTURE AND AGRI-FOOD

DOWNTURN IN INDUSTRY—GOVERNMENT SUPPORT

Hon. Leonard J. Gustafson: Honourable senators, Canadians are privileged to have the upcoming visit by Prince Charles to our country. I am sure that we are all looking forward to it.

In an article in *The Globe and Mail* today I was pleased to see someone of his status recognize the importance of agriculture in Canada in light of what is happening to the rural areas of Canada.

During the last two weeks, I have attended auction sales with farmers selling out. My boys are in the moving business, as well as farming. They moved two homes. In one situation in which the farm was sold, they did not get even enough money from the sale to buy a double-wide house trailer. In another situation three farmers who had been working an area sold the farm and moved the house to another farm. It is a sad situation out there.

When will the government get serious about what is happening to the farm industry in Canada, as the Prince indicated in the article? I recommend that the Leader of the Government read that article, and I hope that the Prime Minister reads it. It is a serious situation.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I did indeed read the article because, like the honourable senator, I come from an agricultural province. I was pleased to see the Prince refer not only to agricultural, but also the rural way of life. He has a positive contribution to make to both aspects.

Honourable senators, the federal government has been serious about aid to farmers. The total aid package to help farmers out of an extremely difficult situation has reached $1.6 billion. In addition, the Prime Minister has convened a task force on future opportunities in farming. We look forward to examining such issues as the effectiveness and future direction of safety net programs, how farm products can attract a premium price, and what kind of rural economic opportunities must be made available, particularly with respect to added agri-food activities.

• (1450)

SUMMIT OF THE AMERICAS

FORMULATION OF THE NORTH AMERICAN ENERGY WORKING GROUP—REQUEST FOR INFORMATION

Hon. Pat Carney: Honourable senators, my question is for the Leader of the Government in the Senate. There has been an announcement at the Summit of the Americas about the creation of a North American Energy Working Group. Can the leader provide information about the terms of reference and what the working group will address?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for her question. With respect to the announcement of an energy working group, only three leaders participated: President Fox of Mexico, President Bush of the United States and Prime Minister Chrétien of Canada. I cannot give the honourable senator any specific details other than that which was contained in the press release, which I know she has received. However, I will endeavour to generate further details for her.

Senator Carney: I ask the question because there is much reference in the media and in ministerial speeches, or statements, about the desire of the Liberal government to develop, in conjunction with the President of the United States, a continental energy policy. Since the Americans already have the right of access to Canada's energy supplies and we have the right of access to the U.S. markets in oil, gas and hydro under agreements negotiated by the Conservative government, what, exactly, is there left to share? There is also unrestricted access to investment opportunities in the tar sands and other energy resources in Canada. Other Canadians and I are genuinely interested in knowing the details of the goals of the Chrétien government in respect of a continental energy policy when we have already achieved that.

Senator Carstairs: As I indicated, I will try to obtain additional information for the honourable senator.

[*Translation*]

COVERAGE BY RADIO-CANADA

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate. What is her opinion on what she was able to see on television during the Summit of the Americas? I may be biased, but I mostly saw people trying to jump over a fence. I saw that scene at least one hundred times during coverage of the event by Radio-Canada, but I did not see and hear much of the speeches made by participants during the summit. It seems to me that this does not make sense.

I am giving my point of view. However, I should like to hear your opinion and the government's opinion. Analysis by the CBC television network, at least its French-language component Radio-Canada, was poor. It was not as good as it used to be in the 1950s.

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I suppose one has to say that the price of democracy is a free media. The free media is free, therefore, to take their preferred angles on the stories. I would defend that right, just as I would defend other democratic freedoms.

Is the honourable senator asking if I would like to have seen more analytical debate as to the substance of what was taking place in the meetings and more coverage of the meetings themselves, those not behind closed doors? I may even have liked to see the President of the United States eating P.E.I. potatoes, but, unfortunately, those things were not given to us by our media.

[*Translation*]

Senator Bolduc: I have nothing against that when the coverage comes from New York or elsewhere, but when it comes from Radio-Canada, we are the ones footing the bill. We are paying for this. We subsidize this network. I did some calculations and it costs me $1,000 per year for the CBC alone. Do you think this is normal? Come on! If I want to watch wrestling, I will go to a wrestling or boxing match.

[*English*]

Senator Carstairs: I thank the honourable senator, but although on occasion CBC annoys me, and it obviously annoys him, I admire and respect, for the most part, the work of the CBC.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have five delayed answers: two in answer to Senator Forrestall's questions of March 21 and 29, 2001, concerning replacement of the Sea King helicopters; one in answer to Senator Kinsella's question of March 1 regarding ratification of the Inter-American Convention on Human Rights; one in answer to Senator Stratton's question of March 13 regarding the cost of gun control registration; and one in answer to Senator Spivak's question of March 13 regarding emissions from Ontario Power Generation Inc. plants.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—
ADEQUACY OF EUROCOPTER COUGAR MARK II

(Response to question raised by Hon. J. Michael Forrestall on March 21, 2001)

The Government has developed a procurement strategy that will ensure that we acquire the right equipment for the Canadian Forces at the lowest price for Canadians. As with any project of this size, a number of issues and options must be carefully examined in consultation with industry and other Government Departments.

The Government's Maritime Helicopter procurement strategy is not designed to favor any particular competitor. Each interested competitor will be required to respond to the Requests for Proposals when they are published, and they will be evaluated based on their ability to meet the stated requirements.

Most importantly, the Government will ensure that the new helicopter meets the Canadian Forces' operational requirements. This imperative will not be compromised.

I can confirm that the Minister of National Defence met with Mr. Peter Smith, President of the Aerospace Industry Association of Canada, on Thursday 15 March 2001 to discuss various topics of interest related to Canadian aerospace industry manufacturers.

REPLACEMENT OF SEA KING HELICOPTERS—RISK ANALYSIS PRIOR TO SPLITTING PROCUREMENT PROCESS

(Response to question raised by Hon. J. Michael Forrestall on March 29, 2001)

QUESTION:

Why did the splitting of the procurement contract for the Maritime Helicopter Project occur without risk analysis, discussion papers or standard operating procedures?

ANSWER:

— All decisions regarding the procurement strategy for the Maritime Helicopter Project, including the decision to proceed with a "split" or "unbundled" contract included a thorough assessment of risks and benefits.

QUESTION:

Did the government split the program without warning the departments involved to exclude the EH-101 from the competition and direct the contract through one means or another to Eurocopter?

ANSWER:

— The departments involved in the Maritime Helicopter Project were responsible for developing the various options presented to government for all aspects of the procurement strategy, including the choice between proceeding with one versus two competitions.

— The acquisition of the new Maritime Helicopter is based on a fair, open and transparent competitive process.

— The procurement strategy is designed to acquire a helicopter that meets the needs of the Canadian Forces, within a tight time frame and at the lowest possible cost to taxpayers.

HUMAN RIGHTS

RATIFICATION OF INTER-AMERICAN CONVENTION ON HUMAN RIGHTS

(Response to question raised by Hon. Noël A. Kinsella on March 1, 2001)

We appreciate the comments from the Honourable Senator on the American Convention on Human Rights. The Government of Canada is committed to human rights and Canada does play an important role as a member of the Organization of American States. Our acceptance of the American Declaration on the Rights and Duties of Man clearly demonstrates this commitment. Canada takes adherence to international conventions seriously and wishes to ensure that all provinces, territories and the federal government are in agreement. There have been a number of consultations between officials from different jurisdictions and an examination of the issues raised is ongoing.

JUSTICE

COST OF GUN CONTROL REGISTRATION

(Response to question raised by Hon. Terry Stratton on March 13, 2001)

The Minister of Justice has recently indicated that the total costs for the Canadian Firearms Program, over the six year period from 1995-96 through 2000-01, are approximately $489 million. This figure includes those costs related to the RCMP's responsibilities under the Program. This figure also includes all costs incurred by each provincial jurisdiction that directly administers the program.

The licensing component of the Program is almost complete and the Minister is moving to ensure that the registration component is done in the most efficient manner possible, not only with respect to cost but also with respect to client service to Canadians. In this regard it is the Minister's intent to simplify the Program's compliance requirements and to streamline and modernize both the administrative and systems processes with a view toward ensuring higher rates of public compliance, continued public support and enhanced public safety.

ENVIRONMENT

EMISSIONS FROM ONTARIO POWER GENERATION INC. PLANTS—RESPONSE TO LETTER FROM ATTORNEYS GENERAL OF NEW YORK AND CONNECTICUT

(Response to question raised by Hon. Mira Spivak on March 13, 2001)

The Department of the Environment deems that the attached letters answer Senator Spivak's questions.

Mr. Eliot Spitzer
Attorney General
State of New York
120 Broadway
New York NY 10271
USA
Dear Mr. Spitzer:

Thank you for your letter of January 31, which was co-signed by Mr. Richard Blumenthal, Attorney General for the State of Connecticut, concerning Ontario Power Generation's proposal to install selective catalytic reduction units at its Lambton, Nanticoke and Lakeview coal-fired power plants.

The issue of transboundary air pollution is a major concern in Canada and I consider clean air to be a top priority. As you know, under the Ozone Annex to the Canada-United States Air Quality Agreement, Canada committed to an annual 39 kilotonne nitrogen dioxide emission cap to be in place by 2007 in the Ontario portion of the Pollutant Emission Management Area. Such a cap would mean that fossil fuel-fired power plants will meet an average nitrogen oxide (NOx) emission rate of 0.15lb/MMBtu throughout the year, not just during the May to September ozone season as U.S. power plants would be required to do under the NOx SIP Call program. This will result in a 50% reduction in NOx emissions. Similar commitments by the U.S. to annual NOx reductions will be important to Canada in terms of acid rain, smog and particulate matter (PM) issues .

Ontario Power Generation has proposed some initial steps to reduce air pollution. I recognize that the project does not, by itself, achieve the reductions required to meet the commitments in the Ozone Annex or the Canada-Wide Standards. Further efforts will be required to meet these standards, as well as standards for particulate matter, mercury, acid rain and climate change. I understand that Ontario Power Generation and the provincial government are working to address these issues.

The federal government is determined to meet Canada's commitments under the Ozone Annex and is taking concrete steps to that end. Attached is an information kit on measures I will be announcing on February 19.

As you know, your letter is a formal request under section 47 of the *Canadian Environmental Assessment Act*, which requires a response from both the Minister of Foreign Affairs and me. You request that we refer Ontario Power Generation's project to a review panel for an environmental assessment. I have asked the Canadian Environmental Assessment Agency to advise me on the applicability of the Act in these circumstances, and to obtain advice on the potential for adverse transboundary environmental effects as a result of the company's project. These are the key matters for Minister Manley and me to consider before deciding whether it is appropriate to refer the project to a mediator or a review panel in accordance with section 47. We will proceed on this matter as quickly as possible.

I very much appreciate your interest and support on this issue. It is important that we maintain the strong links that have been forged in the context of the Ozone Annex negotiations, and continue to work together on improving the quality of the air that crosses our mutual boundaries.

Yours sincerely,
David Anderson, P.C., M.P.
c.c.: The Honourable John Manley, P.C., M.P.
The Honourable Elizabeth Witmer, M.P.P.

Mr. Richard Blumenthal
Attorney General
State of Connecticut
P.O. Box 120
Hartford CT 06141-0120
USA
Dear Mr. Blumenthal:

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Yours sincerely,
David Anderson, P.C., M.P.
c.c.: The Honourable John Manley, P.C., M.P.
The Honourable Elizabeth Witmer, M.P.P.

[*Translation*]

ORDERS OF THE DAY

CANADIAN HUMAN RIGHTS COMMISSION

APPEARANCE OF COMMISSIONER
BEFORE COMMITTEE OF THE WHOLE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, pursuant to the motion proposed by the Honourable Senator Kinsella and passed in this house to the effect that the Senate do resolve itself into Committee of the Whole to hear the Commissioner of the Canadian Human Rights Commission, I should like to inform the Senate that the date and time agreed upon with the Commissioner of the Canadian Human Rights Commission is May 1, 2001, at 4 p.m.

FEDERAL LAW-CIVIL LAW HARMONIZATION BILL, NO. 1

THIRD READING—MOTION IN AMENDMENT—
DEBATE CONTINUED—AGREEMENT TO ALLOT TIME

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;

And on the motion in amendment by Senator Grafstein, seconded by the Honourable Senator Joyal, P.C., that the Bill 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".

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, following discussions held with opposition senators, agreement has been reached. Pursuant to rule 38, I move, seconded by the Honourable Senator De Bané:

That, in relation to Bill S-4, 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, no later than 3:15 p.m. Thursday, April 26, 2001, any proceedings before the Senate shall be interrupted and all questions necessary to dispose of third reading of the Bill shall be put forthwith without further debate or amendment, and that any votes on any of those questions be not further deferred, and

That if a standing vote is requested, the bells to call in the Senators be sounded for fifteen minutes, so that the vote takes place at 3:30 p.m.

[*English*]

The Hon. the Speaker: Before putting the question, honourable senators, I refer honourable senators to rule 38, which deals with this type of motion. The motion does not require notice and it is not debatable. A senator has risen to ask a question. That could be done only if there is leave granted for a question to be put.

Is the Honourable Senator Prud'homme requesting such leave?

Hon. Marcel Prud'homme: Yes, Your Honour.

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

Hon. Senators: Agreed.

• (1500)

Senator Prud'homme: Honourable senators, the question is simple. Since the Deputy Leader of the Government is a good friend, I do not want to add more embarrassment than necessary. However, he mentioned rule 38, et cetera, and said, in part, "after discussion with the opposition, we came to the agreement that..."

A call would have been sufficient. Regardless of public opinion, I am not a member of the opposition. I am an independent senator, and I am not alone. When he says "after discussion with the opposition," I feel either left out or part of the opposition. I am not part of the opposition; nor was I part of the deliberations.

I know that the honourable senator has enough problems. He does not need to consult with me all the time. However, on this issue, a phone call would have been sufficient. I would not have opposed or even objected to what he had to say. I hope that in the future those of us who are independent will not be lumped in with those members of the opposition who have been consulted. Although I may be sitting where I sit, there are many Liberals sitting opposite me who, I am sure, do not claim to be members of the opposition.

I hope my point is clear. I know Senator Robichaud will take it under advisement.

The Hon. the Speaker: Honourable senators, I take Senator Prud'homme's remarks as a comment. Does the Honourable Senator Robichaud wish to comment?

[*Translation*]

Senator Robichaud: Honourable senators, the remarks by Senator Prud'homme are duly noted.

Hon. Pierre Claude Nolin: I request leave to ask Senator Robichaud a few questions.

[*English*]

The Hon. the Speaker: Is leave granted for the Honourable Senator Nolin to ask another question, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

Senator Nolin: I understand Senator Robichaud's motion. We are now debating a motion in amendment and the senator who wishes to speak to this amendment may do so.

Between now and Thursday at 3:30 p.m., it is possible that another motion in amendment may be moved. Will a senator who has already spoken to the motion in amendment be permitted to speak a second time? Will all votes be held at the same time, at 3:30 p.m. next Thursday? If so, what will be the order of speeches?

For example, if I wish to speak to Senator Grafstein's amendment, it is possible that I may also wish to speak during the debate on the main motion. This would be a second speech for me. Will I be permitted to make it?

Senator Robichaud: Honourable senators, without wishing to direct the debate and say how we should proceed, I will simply say that we have many hours between now and Thursday to debate motions in amendment.

As Senator Nolin said, a senator may speak to one or the other of the amendments, and to the main motion. Since this bill has been on the Orders of the Day for some time now, since it has been considered in committee, and since senators present have been able to express their views on the amendments and on the bill itself, we think that those who wish to speak to the amendments, if they are moved, will have sufficient time to do so.

Senator Nolin: Honourable senators, if I understand Senator Robichaud correctly, a senator may speak once to the amendment and once — if he or she wishes — to the main motion.

[*English*]

The Hon. the Speaker: If there is time, Senator Nolin.

[*Translation*]

Senator Robichaud: Honourable senators, perhaps the Honourable the Speaker is able to answer this question much better than I, but I believe that a senator is entitled to speak to the main motion and to the amendments moved.

[*English*]

The Hon. the Speaker: Honourable senators, is it your pleasure to adopt the motion?

Some Hon. Senators: Agreed.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): On division.

Motion agreed to, on division.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would like to begin with Item No. 4, that is second reading of Bill C-2, and then to revert to the order as set out, that is Nos. 1, 2, 3 and 5.

[*English*]

EMPLOYMENT INSURANCE ACT EMPLOYMENT INSURANCE (FISHING) REGULATIONS

BILL TO AMEND—SECOND READING

Hon. Jane Cordy moved the second reading of Bill C-2, to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations.

She said: Honourable senators, it is my great pleasure to speak in favour of Bill C-2, to amend the Employment Insurance Act.

I am very proud to be in the Senate as a representative from Nova Scotia. I am always quick to identify myself as a Maritimer because of the joy that I take in living there. There are many different perceptions of Atlantic Canada. Where you come from would probably have much to do with how you see Atlantic Canada. Atlantic Canada has faced many economic challenges over the years, but this was not always the case.

At the time of Confederation, Nova Scotia had a strong economy, a robust manufacturing sector, and was home to some of the pre-eminent financial institutions in this country. Consolidations and takeovers transferred the ownership of these industries to Central Canada. Later, much of the production and the associated jobs shifted as well, leaving behind an economy more dependent on seasonal industries.

Honourable senators, thanks to the work of this federal government, as well as local governments and numerous community groups in Atlantic Canada, many people in this region have moved away from seasonal employment. For the last number of years, Newfoundland and Nova Scotia have been leading the country in economic growth. It looks as though Newfoundland will be at the top again this year.

In Nova Scotia, the percentage of people working in seasonal jobs has been declining steadily over the last number of years while the number of jobs created in information technology continues to rise. Silicon Island has been developed with some help from the federal government and is home to many high-tech employers in Cape Breton.

For example, MediaSpark is a software development and multimedia production company. Their products include a broad selection of business, education and consumer software titles and tools. MediaSpark software can be found in tens of thousands of homes, schools and offices in over 100 countries worldwide.

Also, Virtual Media Productions Limited, East Quest Communications and many other world-class companies work out of Silicon Island in Sydney.

• (1520)

The Liberal government of John Chrétien deserves much of the credit for helping Atlantic Canada's economy develop to better reflect the changing world economy. Yet many Atlantic Canadians still depend on seasonal industries to provide them with work, and many Canadians still depend on seasonal workers to provide them with essential natural resources.

That is why, honourable senators, the Liberal government will not turn its back on seasonal workers, or any one else, for that matter.

The changes proposed in Bill C-2 will further strengthen Canada's social safety net. I do not wish to give you the impression that this bill is just a Maritime bill. Indeed, it is not. Many of the changes reflect a need to provide support for people in other areas of Canada, both urban and rural.

This dedication by the federal government to all Canadians, from coast to coast to coast, is a record of which everyone should be proud. As well, one of the lasting legacies of this government and the two Liberal governments before it will be the performance of Canada's economy. There are 2.1 million more jobs in Canada today than when Jean Chrétien took office in 1993. We know that all Canadians benefit from this economic growth in one way or another. Canadians are experiencing a much higher standard of living, with a greater emphasis on healthy living.

Honourable senators, that is why the government introduced and extended parental leave in December of 2000. The most important time in a child's development is from birth to age three. The government identified the need and the benefits of allowing a parent to stay home with a newborn child for the first year after birth. The government also wanted to remove anything that may discourage a parent from taking advantage of this wonderful program. Therefore, the regulations governing re-entrance eligibility for regular benefits will be amended to ensure that parents of young children who return to the labour market are not unduly burdened.

As well, the government is changing regulations governing self-employed fishers so that similar parental benefits can also be extended to them. This bill will make these amendments retroactive to December 31, 2000 so that fishers can have access to the same types of benefits as other Canadians. This is the fair thing to do.

Honourable senators, in 1996, the government made changes to what was then the Unemployment Insurance Act and created a system of employment insurance. This new system placed an emphasis not only on providing financial support for those workers who were unemployed but also to more actively help them prepare for, to find and to keep work.

At that time, approximately 40 per cent of people who used EI were not doing so for the first time. The government introduced the intensity rule, and the idea was that for every 20 weeks of benefits claimed in the last five years, the claimant would drop 1 per cent of their benefit, which was 55 per cent of their average income. This process would continue each year, reducing the claim to a minimum of 50 per cent. This was supposed to give workers a disincentive to going back on employment insurance.

Unfortunately, that change was not effective. Last year, the number of claimants who were repeat users of EI was approximately 40 per cent, the same as in 1996. The rule was not having the desired effect. In fact, it was causing great hardship to many Canadians who depended on employment insurance benefits. The government has evaluated the program and is making the appropriate changes in this legislation.

Despite the phenomenal performance of the Canadian economy and the record number of jobs created, some Canadians are only making enough money to make ends meet. For instance, the average income in Metro Toronto, one of Canada's most expensive cities in which to life, is only $28,980. By the time you pay for rent, food and clothing, there is not a whole lot left. These people are by no means rich, and I dare say the people in these areas making $39,000 could not be considered high income either. That is why this legislation is increasing the high-income clawback threshold from $39,000 to $48,750.

The government has recognized that if you live in Vancouver or Calgary and make $39,000 per year, you are by no means high income. For those Canadians who do earn more than the high-income threshold, the 30 per cent claw back will only apply to the person's income over and above the $48,750.

This is a measure aimed at helping those Canadians who are working hard to make a living in urban centres where a dollar may not go as far as it might in a rural community.

Honourable senators, when the clawback was initiated, it was intended for high-income Canadians who were repeat users of the EI system. If a Canadian is receiving EI benefits for the first time, by definition that person is not a repeat offender. For that reason, the clawback will not affect people receiving benefits for the very first time. The government has recognized these situations and has improved the legislation.

The Canadian government has been fortunate, and thanks to sound financial decision making by the government, we find ourselves with a budget surplus — an amazing feat if you think back a very short 10 years ago. We must not allow this run of prosperity to distract us from the reality that the economy does naturally slow down from time to time. When this happens, a surplus like we see in the Employment Insurance Fund evaporates quickly, and the government is responsible to ensure the fund has enough money to meet the demands of the system.

The government also understands that entrepreneurs and small business owners can work wonders if more of their money is left in their pockets at the end of the day. The Government of Canada has, for this very reason, reduced the EI premium rate from $3.07 in 1994 to $2.25 in 2001, a saving of approximately $6.4 billion for employers and employees.

In December 1999, the Finance Committee of the other place concluded that the rate-setting process needed to be revised. In September 2000, the government announced that it would undertake a thorough review of the EI rate-setting mechanism. In the meantime, the Governor in Council would set the rate for two years and two years only. This will allow employers and employees to know that the EI premium will be predicable and stable while this important review takes place.

Honourable senators, employment insurance is a dynamic program. It is like a dory on the ocean, constantly changing, reeling and rolling to offset the changes taking place around it. The economy of yesterday is not the same as the economy of today. The jobs that are important today may become obsolete tomorrow. No one knows. It would be wrong of a government to think that it could put into effect an insurance system and walk away from it, never having to worry whether it is doing what it was intended to do. For this reason, this legislation includes an annual evaluation mechanism that allows parliamentarians to evaluate the effectiveness of any changes made to the program.

Honourable senators, the purpose of employment insurance is to provide additional help to those workers who are looking for work. The new approach to employment insurance introduced by the government in 1996 has proven to be effective. The adjustments made by Bill C-2 will ensure that we stay on the right track.

• (1520)

Honourable senators, the changes made in this bill will strengthen the EI program and help many Canadians who find themselves out of work get back to work quickly and easily.

The Government of Canada is fulfilling a promise it made to Canadians during the last election. It has introduced Bill C-2 because that is one of the things it was elected to do. I look forward to your comments, and I hope that you can support this bill because it will help to further support many Canadians when they need it the most.

Hon. Lowell Murray: Honourable senators, I cannot forbear to wonder aloud how many thousands of Senator Cordy's fellow Nova Scotians who have had to avail themselves of employment insurance will feel being described by her and the government more than once as repeat offenders. What in the name of God are they offending or whom are they offending, besides the economists in the Department of Finance? I think that is an unfortunate turn of phrase.

In her defence, I will say it does not originate with her. I have read in the transcripts of the House of Commons committee the same phrase, dropping easily from the lips of officials and even politicians in the other place.

Putting that aside, it did occur to me, listening to Senator Cordy, that it was a prudent choice on the part of the government to have selected her as sponsor of this bill. As a relatively new senator, her credibility is not strained by virtue of having denounced the rather modest reforms to unemployment insurance brought in by the Tory government in 1989-90, nor is she compromised by virtue of having lavished praise on the draconian new EI bill brought in by the Chrétien government in 1996. However, I do observe that she made a brave effort to put the best face on those changes in her remarks today. She glossed over the essence of this bill, which is to recant and repent some of the major provisions of the 1996 bill.

The essence of the bill was and is to repair some of the political damage done by the 1996 changes. Nothing is wrong with that. It had, apparently, the desired effect. The bill started last fall as Bill C-41. It was debated in the House of Commons, but the parliamentary process was overtaken by dissolution of the Thirty-sixth Parliament, and the bill died on the Order Paper. However, it was very much a part of the Liberal Party campaign during the election, notably in the Atlantic provinces and Quebec, and, as I say, had the desired effect, apparently. The Liberal Party was able to recoup some of the losses it had sustained in the previous election. There is nothing wrong with that as a motivation. This is a parliamentary democracy. While the results were not totally to the satisfaction of some of us on this side of the house, it is an ill wind that does not blow someone some good, and I am glad some of the people in the Atlantic provinces and Quebec will have some marginal improvements in their fortunes as a result of this bill.

I wish to say a word about the bill and describe the immediate background to it, and then if I may impose on honourable senators to that extent, make some observations about the state of employment insurance today. I will talk about how a simple and sound unemployment insurance program has now become, over a period of 60 years, so overloaded with sometimes conflicting roles for which, in many respects, it is inadequate and has become a program, in my humble opinion, that has lost its way.

As I said, the bill is intended to and has had the effect of repairing some of the political damage done by the 1996 changes. Repairing the social and economic damage, however, will take much longer. If you look at what the bill does, and I thank Senator Cordy for giving a good account of the provisions, it does raise the income level at which the clawback of benefits begins, from $39,000 to $48,750. It sets a single rate of clawback at 30 per cent. This will placate those whom one might call the middle class of victims. Some more articulate and better organized people are being placated by this bill.

As Senator Cordy pointed out, it also eliminates the infamous intensity rule. The minister herself has described the intensity rule as having proved to be, I think I am quoting her directly, "punitive and ineffective." Senator Cordy was kind enough not to use those words, but we all got the point. The intensity rule is gone.

The victims of the government's policy in this area since 1994 are in the tens of thousands. In the 1994 budget, the government reduced employment insurance benefits by $2.4 billion. In 1996, the changes in Bill C-12 reduced EI benefits by a further $2.1 billion. Thus the unemployed became the first conscripts in the battle against the deficit, just as so often in the past when the unemployed and those on low incomes were the first conscripts in the battles against inflation.

UI benefits in 1992-93 were $18 billion, and by 1996-97 they were down to $12 billion, and there is no way a drop of 2 percentage points in the unemployment rate over the same period could have accounted for such a sharp decline in benefits.

The EI changes or UI changes, and I will use the terms interchangeably, between 1994 and 1996 increased the number of people below the poverty line in this country, and they reduced the incomes of recipients who were already below the poverty line, driving them deeper into poverty.

My authority for that statement is a study that was put out by Statistics Canada in March 2000, entitled: "Social Transfers, Earnings and Low-Income Intensity Among Canadian Children, 1981-96: Highlighting Recent Developments in Low-Income Measurement." The study was authored by Professor John Myles of Florida State University and Statistics Canada, and Mr. Garnett Picot of Statistics Canada.

Honourable senators know that the famous low-income cut-off is really a head count of the poor in Canada. It determines the poverty rate in the country. These scholars are getting at low income intensity, the gap between the low income cut-off and the depth of poverty below that cut-off, the depth of low income.

• (1530)

They make the point in their study that during the recessions of the early 1980s and early 1990s, when employment earnings were declining among low-income Canadians, the Canadian tax transfer system offset this and prevented income inequality from widening and, with regard to the most recent recession, they said:

> Rising transfers between 1989 and 1993 considerably muted the impact of recession.

What do we find since then? Thanks to a table they published in their document, we find that for all families with children, average UI benefits between 1993 and 1996 declined by 44 per cent. For two-parent families, average UI benefits over that period, 1993 to 1996, declined by 43 per cent. For single-parent families over the same period, UI benefits declined by 47 per cent.

They conclude:

> Low-income intensity in 1996 based on the LICO-IAT —

— low income cut off-income after taxes —

> — was 20% above the highest level observed during the 1990s recession, and fully 50% above the last level observed at the peak of the last business cycle.

Honourable senators, we should not underestimate the damage done to low-income families by the government's rather arbitrary slashing of UI benefits in the interests of fighting the deficit.

The result of the 1996 bill is that fewer people are being covered and those people are working longer hours for smaller benefits paid out over a shorter period. That is the reality of what the 1996 bill accomplished and, honourable senators, Bill C-2, the measure before us today, will not significantly change that situation.

Honourable senators, allow me to put two more numbers before you. The first number I want to place on the record is pretty well known to everyone. It is the size of the cumulative surplus in the Employment Insurance Fund. As of March 31, the end of the fiscal year, it was $36 billion in round figures. In one year from now, the cumulative surplus will have reached $43 billion. In other words, in the fiscal year that started just this month the EI Fund will register a surplus on an annual basis of $7 billion.

The Chief Actuary of the Employment Insurance Commission has said repeatedly that this surplus is between three and four times what would be needed in a surplus as a prudent reserve against a downturn in the economy. It follows that the premiums being collected from employers and employees are of the same order of magnitude. They are far higher than is necessary.

Honourable senators, there is a $36-billion surplus in the EI Fund, heading for $43 billion. Against that background, I ask you to consider that 37 per cent of unemployed Canadians actually receive EI benefits. Thirty-two per cent of unemployed Canadian women actually receive EI benefits. The surplus in the fund is heading toward $43 billion, and 37 per cent of unemployed Canadians are collecting benefits. How do you explain that? How can you justify that? Surely there is a disconnect between policy and reality. Surely there is a disconnect between the program and the need that it is supposed to fill.

I know that explanations will be offered by Senator Cordy's friends in the Department of Finance and elsewhere. They will tell us, as she alluded to in her speech, that the nature of employment has changed and therefore the nature of unemployment has changed; that there is more part-time employment, more self-employment and all the rest of it. If that is the case, surely it is incumbent on the government and us, who have some role of political leadership in the country, to be turning our attention to the need for an employment insurance program that is in fact targeted to the new circumstances in the labour market.

Again for the record, in 1990, 73 per cent of unemployed Canadians received benefits. In 1993, that number was down to 56 per cent. In 1999, as I said, 37 per cent of unemployed Canadians and 32 per cent of unemployed women received benefits.

Parenthetically, there are those who find this state of affairs more than acceptable and in fact desirable. When I read the transcripts of the House of Commons committee that studied this bill, I was rather astonished to learn that Professor Pierre Fortin, who I think is widely regarded as a progressive economist, seems to think that because the situation of only 37 per cent of unemployed receiving benefits is becoming comparable to the situation in the United States, Canada is moving in the right direction. I find that puzzling. I hope I did not misunderstand and that I am not misrepresenting what he said.

As we all know, the EI Fund is totally financed by the premiums paid by employers and employees. Not a penny of government money goes into that fund. Yet the surplus is being used to pad the government's revenue figures and make the government's budget look better.

To illustrate what I mean, in the fiscal year 1997-98, had it not been for the EI annual surplus of $7.2 billion, Mr. Martin's budgetary surplus of $3.5 billion would have been a deficit of $3.7 billion. In 1998-1999, had it not been for the EI annual surplus of $6.6 billion, Mr. Martin's budget surplus of $2.9 billion would have been a $3.7-billion deficit. In 1999-2000 and in 2000-2001, the fiscal year that just ended last month, Mr. Martin's budget surpluses, which are somewhere between $12 billion and $15 billion, would have been cut in half or more were it not for the $7.2 billion and the $7.7 billion surpluses achieved in those years in the EI Fund. The fund is being used to pad the government's revenue figures.

What do we say about the spending purposes for which the EI Fund is used? The fact is that it is being used for an array of programs, some of which are only indirectly, if at all, related to the unemployed. In the fiscal year that just began at the beginning of this month, $10 billion is listed for what are called income benefits. Of that, $7.5 billion will go to what are called regular benefits, and $2.5 billion will go for fishermen's benefits, sickness, maternity, parental leave, et cetera, some of the purposes to which Senator Cordy referred.

A further $2.2 billion is scooped up from EI for labour market and retraining programs. Of that, $900 million goes in transfers to the provincial governments and $1.3 billion goes for a variety of HRDC programs, wage supplements, grants, loans and loan guarantees, earning supplements and infrastructure.

• (1540)

EI premiums, paid for totally by employers and employees, are simply being scooped up by the government, in effect to finance the Department of Human Resources Development.

Now, I will provide a bit of history. The UI Fund was integrated into the government's accounts in 1985-86, as a result of comments that had been made in previous years and, indeed, a reservation that had been attached to the public accounts by the Auditor General of the day, Mr. Kenneth Dye. In a nutshell, the Auditor General's position was that if the government was going to be responsible for any deficit, as it was, and if the government was able to lay hands at will on any surplus, as it is, then the funds should be consolidated into the government's accounts.

The present Auditor General, Mr. Denis Desautels, agrees with his predecessor and thinks this is a proper accounting procedure. However, he appeared before the House of Commons committee on this bill on March 21. He used expressions such as "notional fund, "notional account" and "tracking account" to explain that the $35 billion sitting in the EI account is not really cash in a separate account. It is there consolidated in the government's accounts. As he says, there is no separate bank account.

Then he pointed out that the Employment Insurance Act requires that an accounting of EI revenues and expenditures be kept. Over time, he says, if the account were to break even, as contemplated by the act, its inclusion in the government's accounts would have little effect.

He reminded the committee that the act requires that EI premium rates be set to ensure enough revenue to cover program costs while keeping rates relatively stable over a business cycle.

Then he referred to the growing annual surplus, and to the constantly growing cumulative surplus in the fund. He quoted the Chief Actuary on the smaller surplus, and the reduction in premiums that will be indicated by virtue of the law as it stands, and by virtue of the unnecessarily large surplus that is there now. I quote Mr. Desautels directly from the transcript of the committee on March 21:

> In the meantime, the balance of the EI Account has continued to grow and will likely exceed $35 billion by the end of the month. At that level, I would be hard pressed to conclude that the intent of the law has been respected.

One of the things I always liked about Mr. Desautels is his gift for understatement.

To make matters worse, Bill C-2 — and my friend Senator Cordy did not mention this — cuts out the EI Commission from the premium-setting process for the years 2002 and 2003. It delivers this process totally into the hands of — Senator Comeau says the PMO — what Donald Savoie calls the "focus group," the cabinet, which I am sure will have some say. Actually, it is the Governor in Council.

I just want to read a sentence or two from Mr. Desautels' testimony before the House of Commons committee that considered this bill:

> Clause 9 of Bill C-2 proposes to suspend the existing process for setting rates and have the Governor in Council set the rates for 2002 and 2003. The introduction of Bill C-2 has not alleviated our concern. There is no requirement in the bill for the interim-rate-setting process to be more transparent. There's also no reference to any due process that needs to be followed, one that may include receiving advice from the chief actuary and consulting the commission.
>
> Furthermore, unlike with the introduction of Bill C-44, there's no information on or commitment to review the rate-setting process while section 66 is suspended. In other words, the scope and nature of the review, if any, are unclear.

Honourable senators, it does not take a particularly suspicious mind to surmise that the legal advisers to the government are becoming increasingly edgy about the obvious non-compliance of the government with the law so far as the premiums and the surplus are concerned. It does not take a very suspicious mind to surmise that what the government has in mind is to bring, at some later date, an amendment to the law that will, in fact, deliver the premium-setting process totally into the hands of the cabinet. We will then have in law, as we practically have in fact today, a payroll tax on employers and employees that will incidentally have something to do with employment insurance —

Some Hon. Senators: Shame!

Senator Murray: — but really have a lot to do with financing the general spending programs of the government. If this happens, there will be an unholy row with employers and employees in this country, and probably in Parliament as well. However that may be, going in this direction, from an economic and social point of view, is to perpetuate an approach that is dubious and counterproductive.

Let me trace briefly some of the history in this area.

Unemployment insurance began in 1942. One of the things I was surprised to learn in my readings on this matter in preparing for this debate was that Canada was the last of the western industrialized countries to bring in a program of unemployment insurance. In my naivety and perhaps smugness, believing that we were always to the forefront in these matters, I should have thought we would have been one of the first. We were actually, according to the government's documents, the last western industrialized country to bring in a program of unemployment insurance.

It had been talked about for many years. It had been talked about from the end of the First World War. An abortive attempt had been made in 1935 by the Bennett government to bring in an unemployment insurance program. It was opposed in Parliament by Mr. King and the Liberals on the basis — correctly, as it turns out — that such an initiative was *ultra vires* the Dominion Parliament. When Mr. King and the Liberals returned to office in 1935, they referred the Bennett bill to the Supreme Court of Canada and on to the Judicial Committee of the Privy Council, who found that, yes, it was *ultra vires*.

Prime Minister King went about the business of obtaining the unanimous agreement of the provinces for a constitutional amendment in 1940. He obtained it, and the amendment added unemployment insurance to section 91 among the exclusive powers of the federal Parliament.

I recite this bit of constitutional history because my hunch is that it is significant in this sense. Over the years, governments and Parliaments have used our exclusive jurisdiction over unemployment insurance as a cover to add all kinds of programs and parts of programs that ordinarily would be questionable from a constitutional point of view. They lump it in with unemployment insurance and, voila, it is within our constitutional competence.

Anyway, they got going in 1942 with the program, which was intended, as I said, to provide insurance to those "willing and able to work but temporarily unemployed for reasons beyond their control."

A large number of people were not covered by the original employment insurance regime, people like teachers and civil servants who would not normally expect to be unemployed, or who, because of the seasonal nature of their work, were not considered eligible for coverage.

It functioned as an insurance program pretty well until the 1950s. At that point, supplemental benefits were introduced to take care of people who had fallen just short of qualifying for UI. Seasonal benefits were then introduced. The major departure from the so-called "insurance principles" was in 1956, when the coverage was extended to fishermen. In 1971, the Honourable Bryce Mackasey brought in reforms, including regionally extended benefits. To give you an idea of what these reforms wrought, the unemployment rate in 1971 was 6.4 per cent. In 1972, the unemployment rate had dropped to 6.3 per cent and yet benefit payments under UI more than doubled, from $891 million in 1971 to $1.8 billion in 1972.

• (1550)

By the end of 1972, I believe the fund was in deficit for the first time. We can confirm that, however. Notwithstanding more people paying premiums, the premiums themselves had been increased and there had been a drop in the unemployment rate, yet the payments going out had more than doubled in the course of a year. The year 1975 saw the beginning of what are called developmental uses of the fund, training allowances and the like. In 1976, job creation programs were introduced, subsidization of community projects, work-sharing, sickness and maternity benefits, and all the rest.

Honourable senators, I believe that the fund has become overloaded in a policy sense, being funded entirely by employers and employees, paying premiums and supporting a surplus at levels that clearly violate the intent of the law. The employment insurance program has become a fund under which only 37 per cent of unemployed Canadians are receiving benefits; a fund that has been bent out of shape to serve the purposes for which it was not suited — purposes that it is not achieving. I believe that is the key point.

In regard to seasonal and fishermen's benefits, one commission after another has told us that these should be part of a separate income support plan. When Mr. Mackasey brought in his reforms in 1971, he told Parliament that the fishermen would continue to be part of EI only for the time being until the government had put the finishing touches on a special program for them. That was 30 years ago, and we are still waiting for the special program for fishermen and the special program for seasonal workers.

In its own way the fund tries to achieve the goal of income redistribution, but is manifestly unsuited because it is inequitable and inefficient in that regard. There is not the kind of income test that would be needed for a proper program of income redistribution.

The government is trying to administer maternity benefits and parental leave through an employment insurance program that most countries administer through their social security systems. Today I asked the Leader of the Government in the Senate about the finding of a tribunal in Winnipeg a couple of weeks ago, which ruled that Canada's employment insurance laws are constitutionally unfair to women because as primary caregivers it is harder for them to work the hours needed to qualify. The tribunal found that when a mother works part-time, because of her unpaid parental responsibilities, she should not receive inferior employment insurance coverage. The rules were said to violate the equality provision under the Charter of Rights and Freedoms.

The government may choose to appeal this decision to the Federal Court of Appeal. They may lose. They may decide that the thing to do is add another series of amendments to try to patch the thing up, but it really has not worked well in that sense. One commission after another, as I have said, has told us that we need more comprehensive reform.

We have regional benefits and regional job creation programs through the EI fund. Senator Cordy said in her opening remarks that many Nova Scotians had moved away from seasonal industries. I thought she would have been more correct to say that many Nova Scotians moved away, period. That is not so much a personal comment as it is a comment on another document that has been put out within the last few weeks by Statistics Canada, which sets out the population projections for Canada, the provinces and the territories. If you take a look at the document, EI is not helping much to stop the hemorrhaging of population from the Atlantic provinces and Quebec. Nor does it appear it will do so in the future.

Statistics Canada did projections based on low-growth, medium-growth and high-growth scenarios. The projections are for the 25-year period up to 2026. Just to take the medium-growth scenario, according to these projections the population in Newfoundland will decline in absolute numbers year after year. Every year there will be net out-migration and, over the period, an average annual decline of 0.3 per cent. As I read these tables, Nova Scotia, which has had net out-migration more years than not since 1980, will have continued net out-migration for each of the next five years, then an overall population growth over the 25-year period at an average annual rate of one-tenth of 1 per cent. There is your population growth in Nova Scotia.

According to these projections New Brunswick — and this is the median-growth scenario — will have net out-migration every year, without exception, to the year 2026, and an overall population decline at an average annual rate of 0.1 per cent. Quebec will have interprovincial out-migration every year without exception for the next 25 years, and an average annual growth rate of one-tenth of 1 per cent.

Honourable senators, I put these figures on the record to reinforce my view that employment insurance, and all the billions of dollars that are being spent on various programs and initiatives under its umbrella, is really no substitute for a proper regional development program for those parts of the country that need it. We must stop using EI as a substitute or even a significant supplement for a regional development program. It just does not work.

As I have stated, honourable senators, the problems of the employment insurance system have been amply documented and some alternatives suggested. Prime Minister Diefenbaker appointed the Gill Royal Commission in 1961, and it reported, I believe, in 1962. Prime Minister Trudeau appointed the Macdonald Royal Commission on our economic future in 1983, which dealt with this and related matters. Prime Minister Mulroney appointed the Forget Commission in 1985 on the unemployment insurance system.

Just for your entertainment, honourable senators, I wish to point out to you that the problems we have had were certainly foreseen. I will quote you a description put out by Employment and Immigration Canada of the Gill Royal Commission report in 1962. Employment and Immigration Canada said:

> The Committee's report said there was no insurance scheme that could cope with the whole unemployment problem. It felt that any attempt to make it do so merely forced distortions so that the basic principles could not be maintained and the plan would be pushed from amendment to amendment with no sound guiding principles on which to base decisions.

That was 1962. By 1986, we had this comment from the Forget Royal Commission:

> The program has grown like a weed. New elements have been added to meet emerging needs, with complex adjustments to control undesirable side effects. The result, we were told, is a program that tries to meet diverse and sometimes contradictory objectives and that has become almost impossible to administer.

• (1600)

Honourable senators, I do not know that this bill need detain the Senate or its committee overlong. I presume that it will be referred to the Social Affairs Committee and, while I am not a member, I may join for the duration of the committee's study of this bill. It will be up to the committee to decide what it will do with the bill.

Most of the witnesses, and there were over 60, who appeared before the House of Commons committee had very little to say about the bill but they did have an awful lot to say about the employment insurance regime in general. That is understandable because this bill can only be understood and "appreciated," if that is the word, in the context of the history of employment insurance. This is only the latest chapter in a long, complex and involved story.

An attempt was made in the House of Commons to split the bill in such a way that the first part would have dealt with the corrections to be made to the 1996 reforms and the matter of the surplus, the role of the commissioner and of the Governor in Council, and so forth would have been considered separately. Whatever we do with the bill, if we want to do a real service to the people affected and to all Canadians, one of our committees should take up this challenge of studying the employment insurance system. I am the first to concede that it is a difficult, involved and sensitive matter.

Honourable senators, much depends on the timing. The former government swallowed the deficit in the UI Fund for a number of years instead of increasing premiums. We felt — as has Paul Martin until recently acknowledged — that payroll taxes were the killers of jobs. Therefore, we swallowed the deficit for some years because of the high unemployment.

The Forget Commission did a comprehensive examination of this subject in 1986. There is a legend — and I cannot vouch for it directly but, knowing some of the players I think that it has the air of plausibility — wherein it is said that, when the recommendations were received, Prime Minister Mulroney asked someone to do some number crunching to determine the impact of the recommendations in his own constituency of Manicouagan because there was high unemployment there. When the results were in, it appeared that the immediate impact would be quite adverse. Thus ended the Forget report.

The watchword in government circles on these issues was expressed in the more or less bilingual pun, "forget Forget."

A politician in the United States said that all politics is local. There is nothing wrong with that. People must be sensitive to the effects of these things on individuals, families and communities. This government was quite insensitive in 1996 with the reforms that it introduced.

Honourable senators, we must deal with this issue sooner or later. Much money is being spent to pursue objectives that are not being achieved by this fund. There are some built-in inequities, including the fact that, essentially, a payroll tax is being exacted from employers and employees under the guise of the employment insurance scheme that, as I say, is paying benefits to only 37 per cent of the unemployed people.

If we wish to do a real service, one of our committees should take this subject on. The issues raised on the general subject are as profound and as important to the future as those health care issues that are now under study by the Standing Senate Committee on Social Affairs, Science and Technology.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

[Senator Murray]

On motion of Senator Cordy, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

FEDERAL LAW-CIVIL LAW HARMONIZATION BILL, NO. 1

THIRD READING—MOTION IN AMENDMENT—
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,
>
> And on the motion in amendment of the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal, P.C., that the Bill 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".

Hon. Serge Joyal: Honourable senators, let us pretend, as Shakespeare wrote in his play *Julius Caesar*, that we are men and women of free minds. We are not simply persons of pre-determined partisan allegiance or veterans of past political struggles, but free men and women with minds open to receive and reflect upon proposals that may appear bold to some and iconoclastic to others.

At this point my concern with Bill S-4 focuses primarily on the second "whereas" of the preamble. This is where there is a bone of contention. The inclusion of the political concept of the unique character of Quebec society is wrong in a bill that deals exclusively with harmonization of our two legal systems — the common law and the Civil Code.

Let me submit four proposals to you. The first proposal is that any reference in law to the unique character of Quebec society runs contrary to the objective of Bill S-4, which seeks to strengthen our shared entity as one nation and as one country.

My second proposal is that this concept runs contrary to the very legal philosophy enshrined in the new Civil Code of Quebec.

Third, this clause runs contrary to what Quebec is today.

Fourth, it is a distortion of the resolution of 1995 and of the Calgary declaration of 1997.

Honourable senators, let us not be bound by the arguments of the past, by the old formulae that no longer resonate either here or in Quebec, and that have tended to alienate our fellow citizens in other parts of the country. By insisting that Quebec is a unique society, we are tying ourselves to ideas that may condemn any attempt in the future to achieve constitutional reform. To enshrine in Canadian statute law the concept that Quebec is a unique society is inconsistent with the very objective of Bill S-4. In the long term, it may be a trap that will prevent meaningful attempts to achieve a lasting constitutional reform.

[*Translation*]

Let us therefore address the first proposal, namely, that any reference to the unique character of Quebec society runs contrary to the very objectives of Bill S-4, which are to strengthen our common identity as a nation and a country.

Bill S-4, to harmonize federal law with the civil law of the Province of Quebec, is an initiative that involves the very way we perceive our country.

The objectives of the bill are fundamentally linked to the nature of the Canadian federation itself, in that one of the purposes for its original creation was to facilitate the coexistence of two linguistic communities and the development of two legal traditions, that is, the codified civil law and the common law.

• (1610)

That reality is at the heart of our nationality. This bill therefore has a definite constitutional dimension to it. It translates, in actual fact, the obligation acknowledged by the federal Parliament to equally reflect in its legislation the concepts contained in each of the country's two legal traditions. In fact, Bill S-4 expresses the equality of status of the two legal traditions in the federal system and its legislative language.

In this sense, Bill S-4 is perfectly federative. It reconciles, brings together in harmonious cohabitation, two of the greatest legal traditions in the contemporary world. Neither one takes precedence over the other in federal legislation. The precise purpose of harmonization of the legislation is to faithfully respect the integrity of each of the two legal systems as well as each of the country's two official languages. It is, in fact, the role of the Canadian Parliament to ensure that each legal tradition develops in both of the country's official languages according to its own spirit.

This objective, I point out, is eminently federal. Only the Government of Canada and the Parliament of Canada can assume it in order to maintain the two legal traditions that have coexisted since the middle of the 18th century. This is clearly expressed in the substance of Bill S-4, with the exception of clauses 4 to 7, which contain a definition of marriage that is currently being challenged before the civil law courts in Canada and before the common law courts in Ontario and British Columbia. In my opinion, this definition of marriage should not have been formally included in this bill until the higher courts of the land have dealt with it. Apart from this reservation I have just mentioned, the provisions of Bill S-4 are the first step in a remarkable effort to harmonize federal legislation.

If this undertaking is so praiseworthy and deserving of such support, why is its fundamental nature not expressed in the preamble to the bill? In other words, is the preamble in keeping with the federative principles of coexistence we should try to express as a national Parliament?

I submit, honourable senators, that the preamble fails to recognize the following.

First, that the two legal systems may now coexist in harmony in federal legislation because, far from being separated or opposed, the two legal systems are based on the recognition of humanist values they now share in the Canadian whole.

Second, that the assertion that the Civil Code testifies to the unique character of Quebec society expands and nurtures a socio-political concept justifying future claim to additional powers or special status.

Third, that by doing this, the Canadian Parliament lessens its constitutional responsibility to have the two legal traditions evolve and develop by keeping one within the borders of Quebec and the jurisdiction of the Quebec legislature.

Fourth, that this political concept of the unique character of Quebec society is an ambiguous concept, because it turns Canada into a country comprising various distinct societies and because it accentuates the territorial fragmentation of the country and promotes provincial patriotism.

Fifth, this concept also results, in Quebec, in a split that is based on one's language. It affirms the dominance of the French-language majority in Quebec's social structure. It emphasizes the "we" while stigmatizing "the others." This is a concept that is exclusive. It singles out the other minorities, namely anglophones, Aboriginals and other cultural groups.

Sixth, this concept ends the cultural unity of what is called and has always been called the "French Canadians." It puts Quebec francophones in a unique society, while cutting Francophones living outside Quebec off from their common origin. This concept tends to split francophones in Canada into two and even three distinct societies: Quebecers, Acadians and those living in other parts of the country.

Seventh, this concept makes it more difficult to strengthen a shared Canadian identity and puts the emphasis on building Quebec society, while leaving it to others to develop the Canadian nationality.

Eighth, this concepts eclipses the national responsibility of the Canadian government and Parliament toward the French language and culture in the country.

Ninth, this concept is pernicious, since it asks us to define another society and another citizenship, when the rights and freedoms promoted by Canada are philosophically universal and based on the most challenging ideal of respect of human values.

In fact, back in 1977, over 24 years ago, the Quebec Human Rights Commission pointed out the consequences of a societal split based on the language of the majority, when it said:

> We believe that this confusion between belonging to a cultural group and a civil society is indefensible and, more importantly, eminently dangerous. It carries the seeds of a discriminatory attitude toward those who have the misfortune of not having been born in the cultural group that has proclaimed itself as the national group.

The question that we must answer is: When we, as lawmakers in the Canadian Parliament, want to promote the coexistence of two legal traditions in the country, what essential values must we try to affirm? That the country can reconcile two legal traditions in its national legislation or, rather, that it can formalize its splitting into multiple distinct societies with a unique character?

I maintain, honourable senators, that it is not appropriate for the federal legislator to consecrate the division of Canadian society for the first time in an enactment of the Parliament of Canada. Does this mean we cannot recognize the existence of the Civil Code of Quebec? Certainly not. How did a past legislator recognize the existence of Quebec's legal system? The obligatory reference to this issue can be found in the very provisions of sections 92(13), 94 and 98 of the Constitution Act, 1867.

Section 98 on the selection of judges expresses very clearly how the legal reality which exists in my province is to be recognized. I quote section 98:

> The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

Period. There is no mention of special status, unique character or distinct society. This is the neutral, constitutional way of recognizing Quebec's authority to maintain its traditions of codified civil law and a competent judiciary to interpret it. There is no socio-political qualification of distinct society or unique character in any of these provisions of the 1867 Constitution. Yet Quebec has maintained and adapted its civil law tradition for 136 years.

• (1620)

Why would we now introduce a political concept that has divided the country for 20 years in the very bill which, for the first time, harmonizes both systems in a common Canadian legislation?

Why argue for and against? Must we cut off Quebec within the borders of a distinct or unique society because we recognize the equality of two legal traditions, in both languages, in Canadian legislation?

Many of the arguments that have been advanced in support of this reference in the preamble are to the effect that the Civil Code is so different from the common law that it alone would justify Quebec's unique social identity.

I submit to you, honourable senators, that this is a superficial historical reading of the current legal reality in Quebec.

I now turn to the second proposal: the reference to the unique character of Quebec society in Canada runs counter to the legal philosophy enshrined in the Civil Code itself and the legal system of Quebec.

Before the reform, completed in 1994, the Civil Code of Quebec was the expression of a fundamentally inegalitarian society in which the man ruled the family and told his wife what to do, and in which land values structured the economy. Those are just a few examples.

[*English*]

The Hon. the Speaker: Senator Joyal, I am sorry to interrupt, but your time has expired. Are you requesting leave to continue?

Senator Joyal: Yes.

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

Hon. Senators: Agreed.

[*Translation*]

Senator Joyal: Those were the characteristic elements of the "society" of the time, inherited from another era.

However, the Civil Code of Lower Canada, adopted in 1865, did not even then contain anything more than the old prescriptions of the French legal tradition; the Civil Code of 1865 codified as well the practices of common law as far as bills of exchange, instruments and property rights were concerned, replacing the old seignorial regime in Quebec. In fact, common law in Quebec also governed insolvency, commercial practice and criminal law. It is incorrect to imply that the Civil Code was exclusively a translation of the French legal tradition. Even back then, certain significant borrowings from the common law had been codified.

This was also recognized by lawyer Louise Vadnais in an article in yesterday's *Le Devoir,* in which she wrote:

> If Canadian law — both private and public components thereof — is essentially a system of common law, Quebec law is a mixed system. It takes its sources from two systems: the civil law, rooted in French law, which governs relationships between individuals, also called private law, and the common law, born in England, which governs the functioning of the State, its relationships with its citizens or with other states, which are areas falling under public law.

As for the new code, adopted in 1991 and taking effect in 1994, it brought the two legal systems together far more than it accentuated their differences. For example, among the additions to the new code were the concept of chattel mortgages and the recognition of true trusts, both borrowings from the common law.

The government expert witnesses who appeared before the Standing Committee on Legal and Constitutional Affairs provided good explanations of the convergence, to use their term, which now characterizes the two legal traditions.

According to Dean Claude Fabien of the Université de Montréal:

> Fundamentally, Quebec's civil law must recognize what it owes to common law and to its influence.

Dean Louis Perret of the University of Ottawa added:

> It has been influenced by a variety of sources, including common law, which has been incorporated into and adjusted within the Civil Code...
>
> ...from international organizations. For example, the Vienna Convention...

Professor Nicolas Kasirer of McGill University contended, and I quote:

> However, in the modernization of civil law and the convergence of the values that are more or less markedly present ... one can find these same values throughout western law, be it common law, civil law or whatever else.

It was left to Professor Jean Pineau of the University of Montreal to conclude, in an article that appeared in 1992 in the *Canadian Bar Review*, when the new code was being adopted, that profound values underlay the convergence of the systems of civil and common law, and I quote:

> This code means consolidation and improvement. It is being consolidated by bringing provisions into line with the Charter of Human Rights and Freedoms ... New values concerning respect for the individual, the primacy of the individual and a better balance between individuals.

We see, therefore, that as the two systems come to share common values, practices and fundamental principles based on the primacy of individuals, equality of relationships, the obligation to recognize the rights and freedoms of the Charter, values that protect all Canadians and singularly Quebecers, introduced into the preamble is the socio-political concept, the unique character of Quebec society, which runs counter to the objective of the new code: on the one hand to rid itself of concepts of inegalitarian relationships, of an outdated view of authoritarianism but, on the other hand, to incorporate concepts of equality and freedom, modern, practical notions, conveyed by what Mr. Justice Antonio Lamer called the culture of rights.

Honourable senators, in my opinion, it is truly to take a step backwards to try to muddle things up by bringing back the concept that Quebec is legally separate from Canada, that its values of legal philosophy are different from those of common law and that it therefore constitutes a distinct entity.

This is what the Right Honourable Pierre Elliott Trudeau recognized in a different way in an article published in the magazine *L'Actualité*, in October 1992:

> ...We make a big deal, for example, of the fact that Quebec uses the civil law, while the other provinces use the common law. But no matter how important our Civil Code may be, it has a very minimal impact on Quebec's provincial legislation. Just like all the other provinces, Quebec has passed a huge number of statutory laws, which apply to all facets of our life in society and which are based on a culture that has much more to do with the culture of the other provinces than with the culture under French Rule and the First Empire.

Honourable senators, I do not contend that the Civil Code does not exist in its own right. I do contend, in a broader sense, that both systems share liberal values that are the foundations of Canadian society and that unite us all as Canadians.

This is why I am submitting my third proposal: the mention of Quebec's unique character does not reflect the identity of modern Quebec.

Words do mean something. Some have contended here that this mention of "the unique character of Quebec society" is neutral, that it reflects the context and the facts, that it is in fact of no consequence and that it has no legal effect. Why then is it so important to include it?

[*English*]

A former prime minister said, "If it must be there, what does it mean? If it means nothing, why have it at all?"

[*Translation*]

Some believe that the use of words or political concepts is of no consequence and that we can, regardless of the notion of clarity, use the terms "society," "people" or "nation" interchangeably.

In my opinion, it is wrong to make such a claim in the Canadian political context. The terms "society," "people" and "nation" are all used as a justification for demanding greater powers. Let us take a look at them.

• (1630)

The concept of "distinct society" was coined in February 1965 by André Laurendeau of the Commission on Bilingualism and Biculturalism as a justification for recognizing the special status of Quebec, and since then it has been invoked to interpret the Constitution in such a way as to limit the application of the Charter and claim greater powers in such areas as social and cultural affairs.

As for the word "people," it serves to justify Quebec's supposed right to self-determination, which the Supreme Court obviously refused to recognize in August 1998. As for the term "nation," it serves to justify what any so-called normal nation is trying to do, according to Premier Landry, which is:

> ...to manage its own affairs and not allow itself to be governed by another nation.

Prime Minister Trudeau sensed this when he wrote in 1964:

> ...when a strongly united minority in a state begins to define itself forcefully and relentlessly as a nation, it unleashes a mechanism which tends to lead it to sovereignty.

That was in 1964, honourable senators.

More recently, on March 15, journalist Lysiane Gagnon wrote the following in her column in *La Presse*:

> The same goes for the concept of "Quebec nation," which the PLQ has decided to adopt, even if it puts it on a collision course with the PQ. It will not win at this game, because the whole sovereignist argument is based on the idea that Quebecers form a nation and that the logical and natural destiny of nations is to evolve towards independence.
>
> The concept of "Quebec nation," far from being obvious, is a recent invention, which allows sovereignists to modernize the ideological base of their movement (which was initially based on the existence of a French-Canadian nation), to resolve the issue of borders conceptually, and to eliminate the existence of French-speaking minorities outside Quebec, while annexing minorities within Quebec who, although they are attached to Quebec, do not consider themselves members of a "Quebec nation." And with good reason, because in everyday English, the word "nation" has only one meaning: that of state or country.

Anyone following the political debate in Quebec, honourable senators, knows very well that the concepts of distinct society or unique character do not correspond to where today's political leaders in Quebec have raised the bar. What is more, today's young generation of Quebecers is more self-assured, more educated, more in touch with the whole world, more in tune with cultural diversity and not in need of being kept within distinct or unique borders. These are the Quebecers who are opening up the future.

That is the reason behind my fourth proposal. This reference to the unique character of Quebec society is a distortion of the resolution of 1995 and of the Calgary declaration of 1997.

The vocabulary of politics is fraught with consequences and it cannot be used without thought to its consequences. We, as legislators, cannot ignore this in the debate on such a bill.

Much reference has been made to the fact that both Houses passed a resolution in December 1995 recognizing "the distinct character of Quebec society," and that the Calgary declaration in turn recognized "the unique character of Quebec society." The text of the preamble does nothing more than build on these two texts.

I would submit first that it is intellectual laziness to treat the two terms as one in each of these texts.

Second, if the words have a meaning in a text of law, the term "distinct" is not the equivalent of "unique." The Montreal *Gazette* editorial of last March 13 clearly acknowledged this by stating "Words do have meanings."

Third, distinct means "different", whereas unique means, according to the dictionary, "one of a kind, infinitely above the others, incomparable, exceptional."

Claiming that it is a matter of "Six of one, half a dozen of the other" is tantamount to ignoring the fact that on two occasions, one of them a referendum, Canadians have refused to support a constitutional amendment implementing the first proposal, and the provincial governments acted accordingly. That is why the concept was omitted from the Calgary declaration. It simply would not fly, and the behind-the-scenes history of the Calgary declaration confirms it.

Fifth, the Calgary declaration itself represents the agreement of nine provincial premiers and two territorial leaders, entered into in September 1997. Eight of these premiers are no longer there. It was not submitted in a referendum to all Canadians, and rightly so, because Canadians do not want to see their political leaders committed to a constitutional reform with no way out.

Sixth, the Calgary declaration is a whole. We cannot take out some of its parts and not recognize, for example, Aboriginal peoples and the multicultural heritage of Canadian society.

Seventh, the idea that was recently revived and that suggests including an interpretative clause in the Canadian Constitution to the effect that the Canadian Charter of Rights and Freedoms, among other documents, be interpreted based on the "unique character of Quebec society" is a proposal which, in my opinion, undermines the credibility of the charter by suggesting that, for the past 20 years, it has been interpreted in a manner that goes against the rights and freedoms of Quebecers or, more generally, the interests of Quebec.

Eighth, in fact, the rulings of the Supreme Court and of the other courts, whether on the language of advertising, educational rights or the Referendum Act, for example, have always been largely accepted by Quebecers, who saw them as balanced checks of nationalistic views that have more to do with fuelling resentment toward anglophones than ensuring a balanced use of the power enjoyed by the majority.

In a country like ours, with its increasing diversity, it would be ill-advised for us lawmakers, who are responsible for strengthening the principles, values and common aspirations of Canadians, to weaken the moral authority of the Canadian Charter of Rights and Freedoms, which is the foundation of the rights and freedoms that unite us, regardless of any difference based on our origin, sex, colour, religion or race.

To defend the need for a clause that would weaken the common Canadian heritage and formalize Quebec's withdrawal from that common heritage, or to contend, as some witnesses did, that the mention of the unique character of Quebec society in the preamble of Bill S-4 is "neutral" or "states the obvious" has no legal basis. It would be the first time that a bill designed specifically to strengthen the notion of federation included wording that would result in Quebec's socio-political exclusion from the Canadian society, which is one, which is real and which is based on the sharing of rights and freedoms.

It is a huge contradiction to amend federal legislation to take into account Quebec's civil law tradition, while at the same time formalizing the province's socio-political split. Once this wording becomes law, will this precedent be used to suggest that a similar amendment to the Canadian constitution would guarantee the success of some future constitutional talks?

I contend, honourable senators, that to try to open the way to constitutional reform by reviving a concept that symbolizes past failures condemns the undertaking to the same fate. This is why the amendment I put to you today is intended to commit us to new bases.

MOTION IN AMENDMENT

Hon. Serge Joyal: Honourable senators, I move, seconded by the Honourable Senator Moore:

> That Bill S-4 be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 5 to 7 with the following:
>
> "Province of Quebec finds its principal expression in the *Civil Code of Quebec*;".

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

Some Hon. Senators: No.

• (1640)

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

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore***:** Is this a debate on the amendments?

Hon. Marcel Prud'homme: Honourable senators, I am not at my seat and I did not ask to speak. I simply point out to honourable senators that there should be a debate on this. We are not ready for the question.

Hon. Pierre Claude Nolin: Honourable senators, we have before us a motion to have all decisions respecting Bill S-4 taken Thursday afternoon at about 3:30 p.m as well as two motions in amendment and a main motion.

That was the purpose of my questions to Senator Robichaud. I want to take part in the debate on Senator Grafstein's amendment and on Senator Joyal's, as well. Things most certainly cannot be left as they are. I understand that we have a lot of powers, but we cannot rewrite the history of Canada. If there is a debate, I propose we adjourn it and continue it tomorrow.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, this afternoon's motion indicated that all questions were to be settled by Thursday afternoon at 3:15 p.m. at the latest.

The response to Senator Nolin's question as to whether a senator could speak to both the amendments and the main question is yes. At the risk of repeating myself, I believe there is still enough time to let honourable senators who wish to do so take part in this debate.

If no one wants to speak to the amendment we have before us at the present time, the question can be put, but everything must be settled by Thursday at 3:15 p.m. at the latest.

Senator Nolin: I move that the debate be adjourned.

[*English*]

Hon. Jerahmiel S. Grafstein: Honourable senators, I intended to speak on this amendment. I have spoken already on my amendment. As I understand the rules, each senator is entitled to speak once on each amendment. If Senator Nolin adjourns the debate, then I intend to speak on this amendment.

[*Translation*]

Senator Prud'homme: Honourable senators, when Senator Robichaud proposed this afternoon's motion, my understanding was that there would be a final vote on Thursday, but that in the meantime an honourable senator could speak to the motion in amendment or on future motions in amendment, which is precisely the case at this time with Senator Joyal's motion in amendment.

It was my understanding that it was not a matter of voting on each amendment as they came up, but rather that on Thursday we would be voting on all of the amendments. As an exception the debate should be exclusively limited to the last amendment by Senator Joyal, in keeping with the Rules. Now we ought to all focus on the "Joyal amendment" until another senator rises with a sub-amendment.

We have agreed to tie this all up on Thursday, but in the meantime, any senator may express his or her views on the main motion or any amendment, even on future amendments. That is what I believe to be the case. Have I understood correctly?

The Hon. the Speaker *pro tempore***:** Honourable senators, that is exactly what is said in Senator Robichaud's motion, which is that by 3:15 p.m. on Thursday, this debate would be over. I now accept the adjournment motion by Senator Nolin.

[*English*]

Hon. Anne C. Cools: Honourable senators, perhaps we can have some clarification. I was under the impression that the motion earlier today essentially said that the Senate had agreed to complete everything on this bill Thursday afternoon by whatever time was indicated. The Senate however has not agreed that it would vote on everything en masse at that time. If that was in the motion, then it would be good and useful to get some clarification. Was Senator Robichaud's motion that we would vote en masse, together?

[Senator Robichaud]

Senator Nolin: Not en masse.

Senator Cools: Or everything would be completed?

[*Translation*]

Senator Robichaud: Honourable senators, I simply proposed a motion to the effect that we wanted to dispose of all matters relating to the amendments, sub-amendments or the main question with respect to Bill S-4 before 3:15 p.m. on Thursday of this week.

I said we were open to debate, but that if no one rose to continue the debate, the debate would have to stand or the question be put. I would have no objection to anyone proposing an amendment or speaking to the amendments.

We must get on with the business of the house. Either we continue the debate or we adjourn it.

[*English*]

Senator Cools: Then we are free to vote right now, if Senator Joyal wishes a vote on his amendment.

Senator Nolin: Maybe my honourable friend is free to vote, but I am not. I wish to adjourn the debate.

On motion of Senator Nolin, debate adjourned.

PATENT ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Hon. Jack Wiebe moved the third reading of Bill S-17, to amend the Patent Act.

He said: Honourable senators, I am pleased to rise again today to undertake the third reading of Bill S-17. As you know, the purpose of Bill S-17 is to bring Canada's Patent Act into compliance with our international obligations. Bill S-17 will not in any way undermine the balance of our patent regime but will send a strong signal that we take our international obligations seriously. It is gratifying for me as the sponsor of this bill to know that honourable colleagues on both sides of the chamber have expressed their support for the purpose and scope of Bill S-17, and I trust that all honourable senators will join me in adopting it.

Hon. Jerahmiel S. Grafstein: Honourable senators, I was not able to review all of the testimony before the committee on this bill. However, the rationale for this bill, as I understand it, is that we are trying to bring the Patent Act legislation into conformity with our international trade obligations. Have European countries or has the United States, for example, adopted parallel legislation so that our patent legislation is consistent with theirs in terms of the length of the patents?

• (1650)

Senator Wiebe: Honourable senators, that question would be more properly directed to the minister. However, it is my understanding we are in compliance with the World Trade Organization in respect of the patent legislation, as are the United States and the other countries that belong to the World Trade Organization. Our patent legislation is not any less effective than that of the other countries of the World Trade Organization.

Senator Grafstein: Did the minister undertake to examine the cost structure of patents in Canada at an early date? I understood from the chairman of the committee that this is a minor piece of legislation to achieve conformity. However, the question of the cost of drugs that arises from the patent legislation was not really examined. Has the minister undertaken or will the minister undertake shortly to bring forward legislation so that senators may have the opportunity to explore the infrastructure cost of drugs? Everyone knows that those costs are rising rapidly.

Senator Wiebe: Honourable senators, a number of concerns were raised in respect of the entire patent legislation. My honourable friend will understand our restricted area in terms of Bill S-17. However, the minister in charge provided assurance to the committee that, before this fall, he would look seriously at some of the suggestions raised, not only by the committee, but by other members of the public as well.

On motion of Senator Tkachuk, debate adjourned.

FINANCIAL CONSUMER AGENCY OF CANADA BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill C-8, to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions.

Hon. David Tkachuk: Honourable senators, Bill C-8 is a bill to establish the Financial Consumer Agency of Canada and to amend certain acts in relation to certain financial institutions. It is an innocuous name for a 1,000-page act in both official languages. However, its name greatly understates the importance of the bill.

Bill C-8 affects the economic health of everyone: domestic loans, mortgages, leases, casualty insurance, life insurance, investments and pensions. It affects the very operation of commerce in this country.

The bill has a heart and soul. Even though we may not think that banks and other such financial institutions have hearts, hundreds of thousands of people work for these organizations. Those people have children, families, savings and investments; they buy cars, homes and toys for their children. If we remove the individual business interests of the banks, the insurance companies, the brokers, the casualty insurance companies and the car lessors, it all boils down to what is important for all of us — the public interest. It is important to all Canadians and to the very lifeblood of the country.

Honourable senators, I urge those of you with an interest in economic issues to take the time to read and study portions of Bill C-8 that may affect you or that you may be interested in because it will affect all of us.

The process that led to this legislation really began in 1992 when the federal government under then Prime Minister Mulroney released a new legislative framework for federally regulated financial institutions that included banks, trust companies, insurance companies and national organizations of the credit union movement. New powers were introduced, changes were made to ownership regimes and safeguards were put in place.

On December 18, 1996, the Minister of Finance announced the mandate and composition of the Task Force on the Future of the Canadian Financial Services Sector. The task force was to advise the government on what needed to be done in the competitive Canadian financial system. The task force was ably headed by Mr. Harold MacKay, who, by the way, is a current front-runner in the Saskatchewan Senate sweepstakes, as is Mr. Bernie Collins.

The task force released its report in September of 1998, making 124 recommendations on four major themes: enhancing competition and competitiveness, improving the regulatory framework, meeting Canada's expectations, and empowering consumers.

Two parliamentary committees were also created: the House of Commons Standing Committee on Finance and the Standing Senate Committee on Banking, Trade and Commerce. As well, the Liberal Caucus Task Force was established, which was comprised of 50 Liberal MPs, to study the report. The task force focused on bank mergers, and the result was 89 recommendations. Many of the recommendations were upheld by different committees. Many had different opinions, and there were numerous divisions.

The Minister of Finance then tabled a federal government white paper in June 1999 entitled "Reforming Canada's Financial Services Sector: A Framework for the Future." The white paper was tabled seven years after the original reforms were brought about. It outlined the current government's vision for the future of the financial services sector.

Honourable senators, it is important to provide both Canadian business and consumers the tools that they require to compete in an ever-changing dynamic financial services landscape. This is not an easy task amidst competitive interests, changes in technology — which affect all of us — lower barriers to international business and trade, and, of course, changing world politics. Progress in this regard has taken many years and extensive consultations. It is a challenge to make changes now, the impacts of which may only be visible in the future.

At the same time, it is important to make changes that are not just for today but for the future as well. I believe that the committee will focus on that.

Bill C-8 is meant to provide an overhaul of the financial services sector, but I somehow feel that it is more a collection of many items that were thrown into this omnibus bill. That seems to be a characteristic action by the government opposite. I am not concerned about this.

As the committee studies the changes affecting the landscape, I am certain that it will bring a measure of consistency and cohesiveness to the matter that will benefit Canadian consumers first and foremost.

The Canadian Payments System, which is opening up, has long been advocated by the Standing Senate Committee on Banking, Trade and Commerce. The MacKay task force recommended that the payments system be opened up to life insurance companies, security dealers and others to create competition and greater access for all.

• (1700)

It is important. Opening up access will achieve greater competition, which I see as providing a greater end result for Canadian consumers.

The ownership regime establishes a new set of ownership rules that should help increase the viability of financial institutions. This is a big change in our marketplace. We have always been very safety oriented in our banking system. We are introducing an element of risk into the banking system.

A small bank with equity under $1 billion would have no ownership restriction. It would require only $5 million in equity to open a bank in Canada. An individual could own a bank.

Honourable senators, this, of course, increases risk. However, at the same time, we must run this risk if we are to allow competition and allow our small communities all across Canada to have financial institutions to replace the large institutions. Once this bill is passed, large institutions will merge, and they will close banks across the country.

The ownership régime for large banks has been raised to 20 per cent of any class of voting shares from 10 per cent. At one time our Banking Committee was in favour of this, but I know some members of our committee will reflect on thisas we proceed with our study of this bill. Effectively, 20 per cent ownership amounts to control. A Pittsburgh bank could controlthe Toronto Dominion Bank if it bought 20 per cent of that banks voting shares.In a public company, 20 per cent ownership effectively gives control. I know a number of senators will be concerned about this matter. I am one of them.

The Financial Consumer Agency of Canada would be a new agency set up to establish and coordinate consumer protection measures through one agency. I have heard of this type of agency before as have many of my colleagues. It will be interesting to see whether this agency will be be a watchdog on financial institutions, as well as ensuring that they comply with federal regulations, or whether it will be a bureaucratic watchdog that neither watches nor dogs the financial services industry on behalf of the consuming public.

Honourable senators, this bill also proposes that an ombudsman be appointed, which ombudsman will be paid by the taxpayers of Canada. Presently, the banks pay the ombudsman. The government believed that people did not have faith in an ombudsman who is remunerated by the banks. He who pays the piper calls the tune. An ombudsman is to be appointed by the government, even though senators were of the opinion that the ombudsman, as he or she is currently selected, was doing a good job. We recommended that they continue the current practice, but the government has taken a different position and proposes to appoint a Canadian financial services ombudsman.

As was stated in the other place, it is important to understand how increasingly competitive the financial services sector has become over the last 10 years. Changes over the last 10 years are far greater than those that took place during the previous 150 years.

Yet, in the face of this dynamic and ever-changing sector, this government has dragged its feet on necessary reforms and updates. It seems like forever, but it is only five years ago that the task force was established in 1996. In 2001, we are only now dealing with the legislation. Even though many people tell us that they are unhappy with the bill, they believe it should be passed because it will be the only measure they will have. We must consider this carefully as we go forward.

Bill C-38, the bill prior to the election, differed from Bill C-8 regarding the merger review process. The merger guidelines now include approval by the Senate Banking Committee. This is a testament to the good works of our chairman. We all felt that it was important that Parliament be involved in the merger process. Honourable senators, I must congratulate Senator Kolber, who lobbied hard to have this clause included in Bill C-8.

Some Hon. Senators: Hear, hear!

Senator Tkachuk: That is the nicest remark I have made to a Liberal in weeks, perhaps years.

Co-ops and credit unions still have obstacles to growth in Canada. Bill C-8 does address some concerns of credit unions regarding irregularities. I have met with a number of members of co-ops and I recognize their need to grow and their wish to be included in the legislation. However, co-ops are governed by different rules from those that govern banks. They are subject to provincial regulation. The nature of membership in a co-op prohibits members from residing outside of the province of business of the co-op. Yet it is apparent that they could benefit from membership in a national organization of sorts. It would be preferable if co-ops could offer services outside their home province and thereby benefit from economies of scale by centralizing some operations and avoiding duplication.

I do not think that Bill C-8 adequately responds to the concerns of the co-ops. I know that co-ops have been petitioning ministers for at least 20 years in this direction, but surely omnibus legislation such as Bill C-8 would be the right vehicle to address these concerns and issues.

Bank assurance is an issue that we have all grappled with and debated at length. The banks, of course, want to provide leasing services for automobiles. They also want to sell property and casualty insurance from their branches.

Currently, banks in Quebec may sell property and casualty insurance, but it has affected the brokerage business quite dramatically. In the rest of Canada, credit unions, which are large banking institutions, may sell such insurance. This practice, however, has not had a great effect in Saskatchewan because credit unions there are not as large a factor in the economy, so they do not affect the brokerage community as much as they would if all the banks were allowed to sell insurance. This is a politically contested area, and I recognize that we will not have unanimity on one side or the other. This will cross party lines.

I am in favour of what the government has done. I think we should leave that alone. I am speaking for myself because I know that some senators on my side disagree with that. They would like to see leases being offered by banks in competition with the automobile and small companies that offer leases. They also support the selling of insurance through bank branches. The banks already have insurance companies that can sell insurance like any insurance company.

Insurance is one of the most competitive financial industries in this country. Hundreds of insurance companies offer property and casualty insurance. How many banks do we have? We have six, and a few credit unions. Yet, the banks say that they must be allowed to sell insurance. I know why they want to do this. A little bit of the populist comes out in me here. The banks know that when I come to them for a mortgage, if they are allowed to sell insurance, they will offer me coverage. They might also tell me that if I draw my insurance from them I will get a break on my interest rate. That is exactly what they do. They cross-sell, of course. Barriers and walls cannot be put up against that. Otherwise, why would they care if that insurance broker was selling it out of that bank outlet or not? They could have an office next door and sell insurance; but, no, they want to sell it in the branch. We all know why they want to do that.

• (1710)

The banks will say, as they have before, "Gee whiz, all your leasing is done by all those big American automobile companies. I cannot understand what kind of Canadian senators you are when you will not offer Canadian banks the opportunity to sell leases in competition with the American automobile companies." What they do not say is that as soon as this legislation passes they will be selling their 20 per cent to Americans as fast as they can. In that way, they can make their millions in options and increased asset value. The only reason bank shares have not gone down as much as other companies in the last while is because the marketplace knows this legislation is coming through. The Chase Manhattan and all the rest of them are waiting in the wings to grab up a piece of our banks.

These banks are only Canadian and nationalist until the dollar is put in front of them. They are in business. I do not blame them. I do not think they are bad for doing this. They must argue for what they want and for the benefit of their shareholders. However, in the end, they will all make deals with American banks and they will become multinational banks. They will no longer be only Canadian institutions. They will be world institutions which, frankly, is what we want them to be. If we in Canada have a good piece of that action, then it is good for us and good for the shareholders. Do not let them try to use nationalist arguments on you, honourable senators, as to why they should have the right to lease automobiles.

I will end by commenting on something that seems rampant in the bill. I refer to ministerial discretion. Ministerial discretion is mentioned all through this bill. It is definitely extending the concept of the king to the hands of the Minister of Finance, in this case Paul Martin. What appears, over and over again, is that the minister ultimately approves or disapproves of mergers. He can decide on who should sit on the board of the Interac Association. He can decide whether or not a viable business merger will take place. He can decide who of Canada's millionaires can establish a new bank. Independent of all organizations that are set up to protect and monitor Canada's service sector, this minister can decide the future direction of Canadian business.

That is too much power. It is certainly a topic about which we will probably have some interesting discussions when Minister Martin appears before the committee. We know this is an important bill because we will actually have the Minister of Finance in front of us and not his parliamentary secretary, who usually appears before us on all other bills. We know he is very interested in this bill and he wants it passed by the end of June.

In all of these discussions about banks, insurance companies, leasing and brokers, the question that we should all ask, and will ask in committee, is: Does the bill serve the public interest? That should be our concern.

Honourable senators, when the banks phone you, which they will surely be doing since this bill is still before the House of Commons, tell them to take a walk. What we are interested in is whether this bill serves the public interest, the people of Canada — not the banks, not the insurance companies, not the co-ops, not the credit unions, but the public interest. Does it serve our children, our neighbours and our friends?

I am not interested in forcing banks to do good works. I am not interested in community relationships and to whom they have given money. What the government should be doing is creating an environment in which citizens can prosper so that good works by others become less necessary. That should be our goal and our intent.

This is an opportunity to follow up on the MacKay Task Force Report on the Future of the Canadian Financial Services and subsequent studies which present a fragmented vision of Canada's financial services sector. Hopefully, it will provide a unified and future plan for Canada's financial services sector.

In a few places the bill is interesting. In the face of foreign competition, it offers a landscape of international mergers and acquisitions. It offers a hesitant and tentative step toward the future. If you review it, honourable senators, you will see that there is no clear vision in it. That is why the financial institutions are somewhat unhappy about it. However, they want it because that is all they will have.

We must attend to our duty to serve the public interest and to ensure that Bill C-8 is a bill of which we can all be proud when we are done with it, whether that is in early May or early June.

Hon. Donald H. Oliver: Honourable senators, I, too, would like to join this important debate on Bill C-8. This bill is a massive piece of legislation, as my learned colleague Senator Tkachuk has just told you. It contains a number of measures that have the potential to reshape the financial services sector in ways that could benefit consumers and create opportunities for Canadian financial institutions to succeed in the Canadian and global financial areas.

Today, however, I would like to touch briefly on only four policy areas. These are areas that I hope the Banking Committee, when it gets the bill, will focus on and discuss because they are areas in which I think there are concerns. The four areas are: the widely held rule that was discussed by Senator Tkachuk, insurance retailing, the prohibition on the merger of big banks and insurance companies, and the regulations to be made under the new act.

[Senator Tkachuk]

The so-called widely held rule has been a cornerstone of Canadian banking legislation. Schedule I banks have had wide ownership since 1967 when the 10-25 rule was introduced to prevent the takeover of a Canadian bank by a U.S. financial institution. Under this rule, a single shareholder could own up to 10 per cent of a bank's shares, and total foreign ownership could not exceed 25, hence 10-25.

As honourable senators are aware, the 25 per cent restriction on foreign ownership was removed to meet our obligations under the Free Trade Agreement with the United States and with the WTO. However, the 10 per cent limitation on single shareholdings remains.

The widely held rule has important policy objectives. It fosters Canadian ownership, facilitates the maintenance of Canadian-based financial institutions and ensures the separation of financial and commercial activity.

In its 1998 report, the Task Force on the Future of the Canadian Financial Services Sector, the MacKay task force, recommended a continuation of the 10 per cent rule for financial institutions with shareholder equity in excess of $5 billion. The task force would have applied this rule to all large federally regulated financial institutions, not just banks.

• (1720)

However, the task force also recognized the need to introduce a measure of flexibility into the 10 per cent rule. It, therefore, proposed that the Minister of Finance would have authority to authorize single shareholdings of up to 20 per cent of any class of shares, as long as all shareholders holding more than 10 per cent of the shares did not collectively own more than 45 per cent of the equity.

The task force saw this 20 per cent limit as a way to accommodate strategic transactions that would be constrained by the present 10 per cent rule, and it could facilitate acquisitions by Canadian financial institutions where shares are used as acquisition currency and enhance corporate governance.

When the Standing Senate Committee on Banking, Trade and Commerce reviewed the MacKay task force recommendations, however, it took a different approach to the widely held rule. The committee agreed that the largest financial institutions should be widely held, but it went on to recommend that no individual or group should control more than 20 per cent of the voting shares and own more than 30 per cent of the equity of a financial institution. Among other things, the Banking Committee felt that a general 20 per cent limit as opposed to a 10 per cent limit on share ownership would provide added flexibility for mergers and acquisitions, allow for closer monitoring of management and eliminate excessive use of ministerial discretion. Furthermore, a 30 per cent limit on equity would allow non-voting shares to be used if a merger or acquisition required more than 20 per cent to be completed.

Bill C-8 reflects much of the Senate Banking Committee's position. A single shareholder under the bill would be able to own up to 20 per cent of a widely held bank's voting shares and 30 per cent of any class of non-voting shares. Acquisitions of bank shares above the present 10 per cent limit would be subject to approval by the Minister of Finance based on a "fit and proper" test that focuses on the character and integrity of the applicant.

During a transition period ending December 31, 2001, the 20-30 ownership rule would also apply to demutualized life insurance companies with equity exceeding $5 billion.

Honourable senators, I agree that it is important for the ownership regime to have a measure of flexibility. However, I am concerned that the proposed new regime may not strike the right balance between flexibility and the need to preserve Canadian ownership of our largest financial institutions. The new regime would allow a bank to be owned by, say, five shareholders, all of whom could be situated outside of Canada.

The MacKay task force received very few submissions supporting the removal of the 10 per cent rule and, after an in-depth analysis, recommended its preservation. However, it also recognized that in today's globally competitive financial markets, it was necessary to develop an ownership framework that gives Canadian financial institutions the ability to restructure and form strategic alliances without compromising the two critical aspects of the present system — Canadian control, and safety and soundness. This is why the task force chose to retain the 10 per cent ownership rule for passive investors, but allowed the Minister of Finance to approve shareholdings of up to 20 per cent as long as the shareholders who owned more than 10 per cent did not collectively own more than 45 per cent of the shares.

The MacKay task force also noted that "there is no authoritative or precise calculation" of the ownership level that would best balance the improvements in corporate governance that can come through allowing shareholders to have a bigger stake in a bank and the risk associated with the possibility that a shareholder could exercise de facto control over an institution and compromise the interests of depositors. The task force felt that the 20-45 rule would strike the right balance between enhancing governance and ensuring that control would not rest with a small group of shareholders.

Second, I will refer to insurance retailing. Whether banks should be able to sell insurance in their branches has been hotly debated, as Senator Tkachuk has just said. This has been so for a number of years. At present, banks can sell a specified range of insurance products through their branches, such as credit card insurance, creditor life insurance, mortgage insurance and travel insurance. Many of these products are distributed under networking agreements between a bank and insurance companies that are unaffiliated with the bank. Furthermore, the Bank Act allows banks to own insurance companies that can sell any type of insurance using other distribution channels. Banks and their subsidiary insurance companies, however, cannot share customer information or target-market insurance to their customers. This restriction essentially prohibits banks from mining their customer data to promote the sale of insurance products.

After spending a considerable amount of time examining the insurance retailing question, the task force recommended that federally regulated deposit-taking institutions be allowed to sell insurance through their branches, once appropriate tied selling and privacy protection regimes were in place.

The House of Commons Finance Committee did not support the task force recommendations in this regard, and the Senate Banking Committee recommended that deposit-taking institutions should continue to be prohibited from selling property and casualty insurance in their branches. However, the Senate Banking Committee said that these institutions should be able to sell life annuities to their RRSP customers immediately and retail other life insurance products after a transition period. That was the compromise that the Banking Committee came to.

Bill C-8 stays the course on insurance retailing. Banks will continue to be prohibited from selling insurance in their branches and from using customer information to market insurance.

I believe this decision is ill-founded, honourable senators, and I hope that the Senate Banking Committee will recanvass it. The facts simply do not support the position.

First, polls show that Canadian consumers want more choice as to where they can buy insurance.

Second, there is a worldwide trend towards closer ties between banking and insurance, and in many jurisdictions banks are able to sell insurance through their branches.

Third, international experience suggests that banks and insurance companies can successfully compete against each other and, as markets continue to converge, that these institutions will be competing head to head across a wide range of financial services.

Fourth, large Canadian insurance companies are actively involved in supplying insurance products that are distributed through banks in the United States. It, therefore, seems rather contradictory for insurance companies to continue to oppose the sale of insurance products in bank branches in Canada.

Fifth, in Quebec, as Senator Tkachuk pointed out, where insurance can be sold through the caisses populaires, insurance agents, companies and brokers continue to be significant market competitors.

Sixth, the task force found no evidence of predatory or loss-leader pricing when deposit-taking institutions entered the insurance market.

Seventh, more competition will allow insurance products to be available to lower income Canadians, thereby giving underinsured groups wider access to insurance products.

Finally, the current restrictions are anti-competitive and create artificial market barriers.

Honourable senators, the task force was on the right track. Banks should be able to sell insurance in their branches. The evidence simply does not support the continuation of artificial barriers in the retailing of insurance products. The government should resolve this issue once and for all by allowing banks to sell insurance in their branches through trained and accredited individuals provided the appropriate consumer protection and coercive tied selling regimes have been established.

Next, I refer to the prohibition on the merger of big banks and big insurance companies. I should like to say a few words about the government's policy decision to prohibit mergers between large banks and large demutualized life insurance companies.

There are a number of forces working to change the face of the financial services sector. Worldwide, financial institutions are becoming larger as they consolidate to achieve economies of scale and scope necessary to make large investments in information technology and remain competitive. Financial institutions are also facing pressure from competitors engaged in specific lines of business, such as credit cards and discount brokerage. Furthermore, as consolidation takes place in other industrial sectors, it is becoming increasingly necessary for financial institutions to merge in order to marshal the financial resources needed to serve the credit needs of large multinational corporations. Recognizing these forces, the MacKay task force recommended that there be no general policy to prevent Canadian financial institutions from merging.

Bill C-8 acknowledges that mergers are a viable business strategy, but as a matter of policy, the government will prohibit mergers between large banks and large demutualized life insurance companies. The government never gave strong reasons for why this public policy decision was taken. I personally have a number of concerns about this policy.

First, it appears to run counter to global trends in the financial services sector, where new financial institutions are being created from mergers of banks, insurance companies and other financial services entities. Indeed, legislation in countries such as the United States, Australia, the United Kingdom and the Netherlands does not restrict such mergers.

[Senator Oliver]

• (1730)

Second, it would appear to put unnecessary constraints on the competitiveness of the Canadian financial services sector. If Canadian financial institutions are to compete in the global financial services market and continue to be strong, viable institutions at home, cross-pillar mergers among the biggest institutions may be necessary.

Third, insurance companies such as Sun Life and Manulife Financial are becoming significant forces in the financial services sector. As the industry converges, banks are becoming more insurance-like and insurance companies are becoming more bank-like. If mergers are a viable business strategy in the banking sector, why are they not a viable strategy for large banks and large insurance companies? There would appear to be little justification for maintaining cross-pillar restrictions when competitive forces are working to bring the sectors closer together in any event. Mergers among these institutions should be judged solely on their merits.

Honourable senators, I believe the government should reconsider this policy restriction. The merger process outlined in the merger of large banks should apply to cross-pillar mergers between large banks and large insurance companies. This process, which examines the impact of mergers on competition, safety and soundness, also looks at mergers from a public interest perspective. Merger proponents will need to demonstrate that the proposed merger will not unduly concentrate economic power or significantly reduce competition or restrict the government's ability to deal with prudential concerns. If a proposed merger between a large bank and a large insurance company can meet these tests, I see no reason for it not to proceed.

The Hon. the Speaker *pro tempore***:** I wish to advise the Honourable Senator Oliver that his time has expired. Is there a request for leave to continue?

Senator Oliver: Yes, honourable senators, I should like to make that request.

The Hon. the Speaker *pro tempore***:** Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Oliver: The final point I will address is the regulation-making authority under the bill. While I understand the need for flexibility to allow the government to respond quickly to new developments in the financial services sector, I am concerned that some of the key elements in the financial services framework will be developed in the regulations. This essentially excludes the House of Commons and the Senate from scrutinizing many serious and important aspects of the financial services sector framework.

Bill C-8, for example, would allow banks to establish regulated, non-operating holding companies. Holding companies will give banks more flexibility to compete with both specialized and regulated firms. The Governor in Council will have the authority to make regulations in relation to a number of aspects of the bank holding company regime. Because many facets of this regime fall under the regulation-making power, they will not be scrutinized by Parliament before they are finalized. Similarly, banks with equity of $1 billion or more will be required to file annual statements describing their contribution to the Canadian economy and society. Among other things, the contents and form of the statements are to be set out in the regulations. Will the regulations provide for meaningful statements or will they simply authorize what one of my colleagues aptly described as an "annual corporate boast"?

Honourable senators, I believe that Parliament should have an ongoing role in the financial institutions regulatory process. At a minimum, the Minister of Finance should be required to table draft regulations in both Houses of Parliament for a referral to the appropriate parliamentary committees, where they would be reviewed in a timely manner and amended if necessary. This would accomplish two objectives. First, parliamentarians would continue to participate in the development of the financial services sector framework. Second, hearings before a parliamentary committee would ensure that draft regulations would receive greater public scrutiny than is now the case, where the regulatory process tends to attract only those who have a direct stake in the outcome.

[*Translation*]

Hon. Roch Bolduc: Honourable senators, I am not a member of the Standing Senate Committee on Banking, Trade and Commerce, but I have a question perhaps the members of this committee could answer.

When an investor cannot hold more than 20 per cent of the shares of a bank, does that apply only to people in the banking sector or does it apply in the manufacturing sector where a company could not hold more than 20 per cent of the shares? There is quite a difference.

If that concerns the banks, that is fine, but if it applies to another type of business, this means a change to the very nature of our North American system. This concerns me considerably. This is all I have to say for the time being, because I am not well enough informed on this issue. However, it is important to realize the distinction between an investor already in the banking system and another outside the system. This considerably changes the nature of things. It would bring us back to a system like the German system, for example.

Honourable senators, I give you notice that I totally oppose this for a whole series of reasons I could explain to you at another time.

[*English*]

Senator Oliver: As the honourable senator will know, some of the largest holders of shares in banks, trust companies and life insurance companies now would be pension funds. Pension funds are large, and they can hold 5, 6, 7, 8 and 9 per cent of these institutions. We could have 15 pension funds all owing 5 per cent. Would that worry the honourable senator?

Senator Bolduc: No.

Senator Oliver: A number of Canadian individuals and corporations now own 2, 3 and 4 per cent. There are certain bank directors who now own $300,000 or $400,000 worth of bank shares.

Senator Bolduc: That does not bother me at all. If businesses such as General Motors or Nortel are able to acquire up to 20 per cent of a banking concern, I would not agree because that changes the system into another economic system.

Senator Oliver: Under the bill, that must be approved by the Minister of Finance.

Senator Bolduc: I have worked for 18 ministers, so I am not impressed by that statement. Over the course of 35 years, I worked for a new minister every two years. I have more confidence in a regulatory body, which would provide a more independent way of looking at the issue. I believe Senator Kolber is well aware of that.

We should not move in the direction of the German system. The North American banking system is the best in the world. I am not sure that we should, by that increase from 10 to 20 per cent, change the nature of the system. We would have conflicts of interest of all kinds.

The banking industry is not like other industries. The banks distribute credit throughout the whole system. Therefore, they must be objective about managing the risk. I would not like to see a company like Nortel or any other acquire 20 per cent of the Royal Bank. How could the Royal Bank refuse Nortel when they ask for a loan of $100 million or $500 million?

I raise that point because it is fundamental to the nature of our economic system in North America.

Senator Tkachuk: Honourable senators, I would answer by saying that this issue concerns not only members on our side but members on the other side as well.

On motion of Senator Kinsella, for Senator Angus, debate adjourned.

CANADA BUSINESS CORPORATIONS ACT
CANADA COOPERATIVES ACT

BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill S-11, to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence, with amendments) presented in the Senate on April 5, 2001.

Hon. E. Leo Kolber: Honourable senators, I move the adoption of this report.

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

Some Hon. Senators: Explain!

Senator Kolber: Honourable senators, I am pleased to speak to the report of the Standing Senate Committee on Banking, Trade and Commerce on Bill S-11. The bill benefitted from the thorough scrutiny of honourable senators and the technical amendments that the committee adopted. Passage of this bill will result in sound and needed legislation. It is an example of a bill that is now immeasurably stronger as a result of the attention devoted to it by the Senate of Canada before it is sent to the other place.

This bill is a product of extensive review and analysis extending over seven years, nine discussion papers, coast-to-coast meetings by Industry Canada, and parallel consultations and well-reasoned reports by your committee.

Since Bill S-19 was introduced in the previous Parliament, the government has given further consideration to representations made to the Standing Senate Committee on Banking, Trade and Commerce. The bill incorporates these resulting improvements. We now have a final set of amendments from the committee which will fine-tune some areas of the bill. The majority of these amendments were recommended by the government and do not involve a policy issue. In general, these amendments improve inconsistent language, clarify some phrasing, reduce the possibility of legal confusion and harmonize the bill's application to the Canada Cooperatives Act and the Canada Business Corporations Act.

The committee also approved four amendments introduced by Senator Kirby, the sponsor of Bill S-11. These amendments will harmonize certain aspects of the acts that govern Air Canada, the Canadian National Railways, the Canada Development Corporation, Nordion International Limited and Theratronics International Limited with the CBCA.

During our proceedings last month, your committee heard from officials from Industry Canada and the Department of Justice. We also heard evidence from the Task Force on Churches and Corporate Responsibility, the Shareholders' Association for Research and Education, and the Social Investment Organization, among others. We received submissions from the Barreau du Québec and the Coalition for CBCA Reform.

I am sure my colleagues join me in thanking the hundreds of stakeholders who have offered advice and information during the wide-ranging series of consultations and committee hearings.

I especially want to recognize the countless hours and days of study, research and reflection devoted to this bill by members of the Standing Senate Committee on Banking, Trade and Commerce. Our work is responsible not just for improving corporate governance in Canada but also for helping to shape a model of corporate law in Canada. As noted by Senator Hervieux-Payette at second reading, this bill will give corporations and cooperatives greater flexibility in pursuing marketplace opportunities and in serving their shareholders better. They respond to the new ways that Canadian companies are doing business. They encourage corporate governance practices that are related to long-term growth, and they provide a sound framework for prospering in the global marketplace.

Honourable senators, the level of agreement on this bill is exceptionally high. The witnesses who appeared before the committee were all but unanimous in their support for the principles of the bill as it now appears before you.

I am confident that honourable senators will agree that we should approve the recommendations of the Standing Senate Committee on Banking, Trade and Commerce and then approve Bill S-11 as amended. We can send it forward to the other place secure in the knowledge that the Senate has done its work and that this is a solid piece of legislation that will guide the conduct of Canadian business and be of immense benefit well into this new century.

Hon. Donald H. Oliver: Honourable senators, I thank Senator Kolber for his commentary on the report. I will add a few words of my own to the report. In particular I raise two main issues. First, measures are needed to ensure that the Canadian Business Corporations Act, as a major component of Canada's business framework legislation, remains a modern statute that reflects and accommodates ongoing developments in corporate law and practice. Second, I will reference measures to promote shareholder activism.

The Canadian Business Corporation Act became law in 1975. The introduction of the CBCA dramatically changed the way corporations were regulated in Canada. The law included many innovations and became the model for change to provincial corporate law.

Aside from a number of technical amendments made in 1994, the CBCA, however, has been largely unchanged since its inception in 1975. Bill S-11 represents the first substantive amendments to the CBCA in over 25 years. While the amendments were important and I commend the government for both their introduction and the wide-ranging consultative process leading up to Bill S-11, I was struck by the fact that it has been 25 years since the last major overhaul of a very important business framework law.

In a 1997 report, Industry Canada stated:

> A well-managed corporate law framework is a fundamental ingredient in increasing Canadian economic prosperity.

I agree with that statement but, in my view, it does not go far enough. A corporate law framework must not only be well managed but it must also be modern. In other words, it must reflect recent legal and corporate practice developments.

We live in a global economy. Indeed, Industry Canada noted that Canadian businesses compete in a global marketplace and will:

> ...seek the corporate law and administration that most reduces their hard- and soft-transaction costs.

The department has also stated that it is important for Canada to:

> ...provide excellent corporate law and corporate law administration to help businesses compete in this environment while, at the same time, inspiring investor confidence so that the necessary business capital can be raised.

Clearly then, corporate law must be regularly updated so that corporations can perform effectively and in an increasingly competitive and dynamic global marketplace.

With the passage of the CBCA in 1975, the federal government assumed the role of providing leading-edge corporate law and of establishing the model for other Canadian jurisdictions. Many provincial corporate laws were amended to reflect the CBCA. However, since 1975, a number of these provincial laws have been modernized while the CBCA has languished unchanged on the statute books. Bill S-11 is therefore long overdue.

While I applaud many of the amendments contained in the bill, I am extremely concerned that the government has not put forward a plan to ensure that the CBCA retains its status as Canada's "leading edge corporate law."

In the 1996 report on corporate governance, the Standing Senate Committee on Banking, Trade and Commerce recommended that the CBCA be reviewed by Parliament within 10 years. Industry Canada rejected this recommendation on the grounds that:

> ...the increased recognition of corporate law and corporate governance issues as factors affecting the competitiveness of corporations will likely ensure the continued improvement of corporate laws.

These words are hardly reassuring. If the government were seriously committed to ensuring that our principal corporations' law provides the framework necessary for Canadian companies to compete in the global economy, it would have enshrined in the bill a mechanism to allow for periodic reviews of the law. In the absence of any plan to regularly review the CBCA, I fear another 25 years may pass before the act is again amended.

I note with great interest that the State of Delaware, long known as an important jurisdiction for incorporating companies, touts the role of its state legislature in keeping Delaware's corporate and other business laws current as one of the reasons for Delaware's leading role in U.S. corporate law.

I am concerned that, once Bill S-11 becomes law, the CBCA will be forgotten. I strongly believe that there should be a periodic review of the act by Parliament. We need a commitment by the government to keep Canada's business framework laws up to date and a commitment to provide the necessary foundation for Canadian businesses to compete in a rapidly changing global economy.

• (1750)

Periodic reviews of the CBCA by Parliament would accomplish three objectives. First, the CBCA would be kept abreast of new developments in legal and corporate practice. Second, periodic reviews would bring the CBCA to a wider audience and heightened awareness of the CBCA among the public. Third, such reviews would allow Parliament to play an important role in the development of business law and policy. I therefore propose that the government add a parliamentary review clause to Bill S-11.

The second and final point I wish to discuss briefly is the proposed amendments to the shareholder proposal provisions of the CBCA. Shareholder proposals are an important vehicle for shareholders to monitor a corporation's performance and influence corporate behaviour. They allow shareholders to circumvent a corporation's management and bring an issue directly before other shareholders. In fact, one commentator rightly noted that the shareholder proposal is one of the few corporate legal tools that shareholders have at their disposal to initiate action and speak directly to other shareholders. The shareholder proposal process provides a formal communication channel between shareholders, management and the board of directors, and with other shareholders on issues such as corporate governance and social responsibility. In many cases, shareholder

advocates do not need to even formally introduce a proposal for their concerns to have an impact. Most often this occurs because management, aware that investors have access to the shareholder proposal process, will agree to discuss issues with shareholders in order to avoid a formal shareholder proposal.

Using shareholder proposals is a right and a responsibility of shareholders, and, in my view, the existence of the shareholder proposal process lays the foundation for a useful dialogue between shareholders and management. Indeed, I would argue that all shareholders have an important financial and moral stake in a vibrant shareholder proposal process.

Traditionally, shareholder proposals have been classified into two categories — corporate governance and corporate social responsibility. Corporate governance proposals address issues such as confidential voting, board of director qualifications, compensation of directors and executives, and board composition. Social responsibility proposals address issues such as company policies and practices on the environment, health and safety, race and gender, working conditions and other human rights issues.

The CBCA's existing shareholder proposal provisions in section 137 give registered shareholders entitled to vote at an annual meeting the right to vote subject to a number of statutory exclusions to have the corporation hold a vote of shareholders on issues that the shareholder making the proposal has brought forward for consideration. Management, however, can refuse to circulate a proposal to other shareholders if it believes that any of the statutory exclusions set out in the CBCA applies. For example, a proposal can be refused if management believes that it is submitted by a shareholder primarily for the purpose of promoting general economic, political, religious, social or other causes. From time to time, religious, environmental and other groups have attempted to circulate shareholder proposals, and corporations have relied upon this exclusion to reject proposals.

Bill S-11 contains a number of amendments to section 137. These amendments to the shareholder proposal would, among other things, allow beneficial shareholders to submit proposals; set minimum share ownership and length of ownership requirements as a prerequisite for submitting a proposal; and, finally, remove from the CBCA the provision that allows management to refuse to circulate a shareholder proposal that it believes is to promote general economic, political, racial, religious, social or similar causes and replace it with a new provision that would allow management to refuse to circulate a shareholder proposal "if it clearly appears that the proposal does not relate in a significant way to the business or affairs of the corporation." I think that this is a very important change and improvement.

Honourable senators, the shareholder proposal provisions have been one of the most contentious areas of CBCA reform. Witnesses before the Standing Senate Committee on Banking, Trade and Commerce argue that the public dimension of a corporation's influence and impact is as legitimate a concern to shareholders as its private dimension. The Task Force on the Churches and Corporate Responsibility, for example, maintained that it is increasingly difficult to separate the business and social implications of corporate decisions. Indeed, one of the most recent and public shareholder proposal battles surrounded attempts by the Task Force on the Churches and Corporate Responsibility to circulate a proposal to the shareholders of Talisman Energy Inc. asking for a report on the impact and risks of investing in Sudan.

Institutional investors are also using shareholder proposals as a way to influence corporate governance practices. More recently, institutional shareholders have been taking a closer look at executive compensation packages. Studies are now beginning to cast doubts on the effectiveness of the huge compensation packages received by corporate CEOs. They do not ensure executive loyalty. Stock options can be ineffective, and the fact that executives continue to receive significant salary increases and stock options in the face of poor corporate performance weakens the justification for skyrocketing compensation packages.

Honourable senators, I believe it is important to strike the appropriate balance between the right of shareholders to engage in direct democracy and the need to ensure that shareholder proposals are relevant to a corporation's business. Furthermore, I believe that we are about to enter a new era in shareholder democracy where institutional investors, financial advisers, faith-based groups, social justice, labour and environmental organizations, and a broad number of individuals and groups will use their investing power to encourage corporate responsibility. This, I believe, will have a positive impact on corporations. Indeed, data collected in the U.S. and European companies suggests that effective shareholder involvement adds value to companies.

The Internet is likely to have an important impact on shareholder activism as well. The proliferation of Web sites dealing with shareholder activism gives both institutional and individual shareholders opportunities to monitor corporate performance, discuss corporate issues and obtain information about shareholder initiatives. In this regard, the Internet has the potential to become a very important tool for shareholder democracy.

Honourable senators, the proposed amendments to the shareholder provisions of the CBCA will go some way toward enhancing democracy at the shareholder level. Allowing beneficial shareholders to put forward proposals and taking away a corporation's ability to reject the proposal because management is of the view that it relates primarily to general economic, political, racial, religious, social or similar causes are important steps forward.

In conclusion, we are already witnessing an increase in socially responsible investing and concern among shareholders about corporate governance issues. As corporate social responsibility and corporate governance issues become of greater importance, and as increasing numbers of shareholders believe that social responsibility and corporate governance measures relate to long-term shareholder value, shareholder proposals are likely to have a greater impact on corporations.

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

Motion agreed to and report adopted.

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

On motion of Senator Robichaud, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[*Translation*]

FOOD AND DRUGS ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Corbin, for the second reading of Bill S-18, to amend the Food and Drugs Act (clean drinking water).—*Honourable Senator Robichaud, P.C.)*

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I asked for the adjournment of the debate on this bill to allow those senators who wish to address this bill to do so. It goes without saying that drinking water is a very important issue that should be carefully examined.

The Hon. the Speaker *pro tempore***:** Honourable senators, if no other senator wishes to speak, the debate will be deemed to have ended.

Is it your pleasure, honourable senators, to adopt this 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 Grafstein, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

[*English*]

• (1800)

The Hon. the Speaker *pro tempore***:** Honourable senators, I wish to inform you that it is now six o'clock. Is it agreed that we not see the clock?

Hon. Senators: Agreed.

BILL TO REMOVE CERTAIN DOUBTS REGARDING THE MEANING OF MARRIAGE

SECOND READING—DEBATE ADJOURNED

Hon. Anne C. Cools moved the second reading of Bill S-9, to remove certain doubts regarding the meaning of marriage.

She said: Honourable senators, I move the adjournment of the debate.

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

Hon. Marcel Prud'homme: Honourable senators, might I ask for some clarification? What I am about to ask, honourable senators, is not only on my behalf but on the behalf of some new senators who have asked me what the word "fifteen" means beside the No. 9 under Other Business on the Order Paper. Does this "fifteen" mean that after today it will fall off the Order Paper?

It has been my understanding that if, after 15 days, no senator has spoken to the item it is dropped from the Order Paper. Honourable senators, am I right in that regard or not?

The Hon. the Speaker *pro tempore***:** I would inform Senator Prud'homme that my understanding is that the item is restored and goes to number one.

Senator Prud'homme: I thank Her Honour.

On motion of Senator Cools, debate adjourned.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

FOURTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Committee on Internal Economy, Budgets and Administration (budgets of certain Committees) presented in the Senate on April 5, 2001.—(*Honourable Senator Kroft*).

Hon. Richard H. Kroft moved the adoption of the report.

Motion agreed to and report adopted.

[*Translation*]

SCRUTINY OF REGULATIONS

BUDGET—REPORT "B" OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report "B" of the Standing Joint Committee for the Scrutiny of Regulations (Budget 2001-2002), presented in the Senate on April 5, 2001.—(*Honourable Senator Hervieux-Payette, P.C.*).

Hon. Céline Hervieux-Payette moved the adoption of the report.

Motion agreed to and report adopted.

[*English*]

STUDY ON AGRICULTURE AND AGRI-FOOD INDUSTRY

BUDGET AND REQUEST FOR AUTHORITY TO TRAVEL AND ENGAGE SERVICES—REPORT OF AGRICULTURE AND FORESTRY COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Agriculture and Forestry (budget—special study on agricultural health) presented in the Senate on April 5, 2001.—(*Honourable Senator Gustafson*).

Hon. Leonard J. Gustafson moved the adoption of the report.

Motion agreed to and report adopted.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

COMMITTEE AUTHORIZED TO STUDY STATE OF FEDERAL GOVERNMENT POLICY ON PRESERVATION AND PROMOTION OF CANADIAN DISTINCTIVENESS

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Poulin:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report upon the state of federal government policy relating to the preservation and promotion of a sense of community and national belonging in Canada. In particular, the Committee shall be authorized to examine:

(a) the effectiveness of the policies, programs, symbols and institutions that have been used in the past to promote and protect Canadian distinctiveness or which have fostered an element of Canadian distinctiveness merely by their existence;

(b) the effects of globalization and rapid technological change on Canada's ability to preserve and promote its distinctiveness at home and abroad;

(c) the options that exist to modernize federal policies with respect to preserving, creating and promoting the uniqueness of Canada in a changing national and international context;

(d) the opportunities that exist to use new technologies to market our unique qualities to the world and to engender pride in Canadians about themselves and their country.

That the Committee submit its final report no later than December 20, 2002; and

That the Committee be permitted, notwithstanding usual practices, to deposit any report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.—(*Honourable Senator Lynch-Staunton*).

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, this item is standing in my name. I am satisfied with it and am willing to have it voted on now.

The Hon. the Speaker *pro tempore***:** Honourable senators, is the house ready for the question?

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion agreed to.

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 Meighen*).

Hon. Michael A. Meighen: Honourable senators, it is with great pleasure that I rise to speak to Senator Moore's inquiry respecting the issue of deferred maintenance costs of Canada's post-secondary institutions.

As honourable senators may be aware, Senators DeWare and Callbeck have already spoken to this important inquiry. Just as they focused their words on the provinces they represent, I will direct at least some of my attention to the situation in the province of Ontario.

Honourable senators, anyone who has lived in a house for any length of time knows about maintenance. Roofs eventually need new shingles. Driveways need repaving. Windows need replacing. The longer one lives in the house, the longer the list gets. Some of this maintenance requires immediate attention; some of it can be delayed for a year or two. Just as the list of maintenance projects for a family home increases with the age of the house — even the best constructed roof will eventually leak — so maintenance requirements of Canadian universities are increasing for buildings that are 40 or 50 years old or older.

Moreover, for universities, maintenance and renewal requirements are geared to more than just minimum safety requirements such as repairing leaky roofs. University buildings must also be able to meet changing curriculum needs and advances in equipment and technology. Today, we find older buildings that lack the wiring necessary for computer-intensive tasks.

Buildings on campuses must also meet new building codes, such as accessibility for handicapped students, and they must meet new environmental regulations. Unfortunately, honourable senators, maintenance and infrastructure spending at Canadian universities has suffered dramatically in the last two decades. As enrolment rose and funding decreased, there was less and less money to maintain and improve the existing infrastructure.

From 1981 to 1998, the number of full-time students at universities jumped by over 44 per cent, increasing from 402,900 to 580,400. In the meantime, government funding was dropping almost as dramatically. In the period from 1993-94 to 1998-99, for example, federal government grants and contracts to universities in real dollars fell by 9.4 per cent, while provincial government grants and contracts fell by 10.2 per cent.

• (1810)

Faced with falling government funding, universities responded by cutting costs and relying on other sources of funding. Unfortunately, some of the cost-cutting meant delays in needed maintenance. Re-establishing this spending implies the search for increased government funding or increases in alternative funding.

A recent study by the Canadian Association of University Business Officers estimated that our institutions have accumulated deferred maintenance costs of $3.6 billion. There is some evidence to suggest that the amount may indeed be considerably higher. Approximately one third of deferred maintenance costs — $1.2 billion — are considered to be urgently needed.

Accumulated deferred maintenance is, to use the terminology of the report, "a backlog of unfounded major maintenance and renewal projects that have been deferred to future budgets." Comparing accumulated deferred maintenance — or ADM as it is commonly known — to the current replacement value of university infrastructure provides a measure of the problem of delayed maintenance.

When one compares ADM costs to the replacement value of an institution, the result is an internationally recognized and accepted ratio known as the facility condition index. The facility condition index in Canada for all universities is estimated to be 11.3 per cent. An acceptable level would be in the 2 per cent to 5 per cent range. In the United States, for example, the facility condition index for universities now stands at approximately 7 per cent.

By some measures, honourable senators, universities in Ontario are the best place among Canadian universities with respect to accumulated deferred maintenance costs. The facility index in this province is estimated to be 9 per cent — the lowest of the four regions in the university report. At 9 per cent, the facility condition index for Ontario is still above the 7 per cent of the United States and well above the comfort range of 2 per cent to 5 per cent.

Also disconcerting is the infrastructure age of Ontario universities. Greater than one half — 57 per cent — of campus space in Ontario comes from the 1960s or earlier. Only 18 per cent of Ontario campus space was built in the 1980s or 1990s.

In terms of ADM per student, Ontario is also considered to have the lowest of the four regions. However, the size of Ontario means that a fairly small problem vis-à-vis other regions or provinces can be a large problem in absolute terms. The ADM in Ontario is now estimated to be as high has $2 billion, representing a significant portion of the maintenance requirements for all Canadian universities.

Given the demand for billions of dollars to cover the accumulated deferred maintenance costs at Canadian post-secondary institutions, it is tempting to simply look to governments, whether federal or provincial, for the money.

[*Translation*]

Governments hesitate to take on new obligations for several reasons. The first is that the high government deficits of the past were due in part to the tendency of governments to want to do too much or, at least, to try to do too much with available resources.

People are not interested in reliving the budgetary highs and lows, with deficits inevitably followed by budget cuts and serious consequences for social programs.

The government could consider the possibility of earmarking a portion of fiscal surpluses for programs such as improving the infrastructure of university institutions. Unfortunately, anticipated fiscal surpluses are not always a sure thing, particularly when one considers the present government's inactivity. It would therefore be a good idea for Canadian universities to examine all possible sources of funding.

In 1997-98, spending on post-secondary education in Canada climbed to $16.9 billion. The federal government contributed approximately 10 per cent of necessary funding. Provincial governments contributed 60 per cent, and 30 per cent of funding came from fees and various sources. These various sources include not just tuition fees, but also investment income, sales of products and services, donations, and non-government grants and contracts.

I believe that it is towards these other sources of revenue that universities must turn in order to determine whether they are doing everything in their power to maximize their available resources.

[*English*]

In particular, honourable senators, I believe that there may be a real opportunity here for universities to further attract donations and bequests, not only from their alumni but also from the corporate community and others. Gifts to universities can help to cover current expenditures or they can be put into endowment funds to produce investment income over time. In the U.S., endowments are an important source of income for many universities, especially for those with world-class status.

Honourable senators should note that a gift that bears a specific intent, such as the construction of a new building, may free up funds for other operating requirements, such as needed maintenance. In Canada, the University of Toronto appears to have taken a lead in this area, and it may provide a model for other universities.

The University of Toronto, in its National Report 2000, states that it is the "largest higher education enterprise in Canada and the fifth largest in North America." The word "enterprise" is certainly an apt choice of words to describe an institution with an enrolment of over 50,000 students and several campuses spread across the city of Toronto.

The market value of the University of Toronto's endowment is about $1.3 billion, which outstrips by about $500 million the endowment of the Canadian university with the second largest endowment. Income from endowment investments now provides about 10 per cent of the University of Toronto's funds.

For the 12-month period of May 1, 1998 to April 30, 1999, the University of Toronto raised the staggering amount of $135 million. Alumni provided 27 per cent; corporations provided 25 per cent; and the largest portion was provided by friends of the university. Other Canadian universities need such friends.

Honourable senators, the University of Toronto has not simply waited for such friends to appear. It has been active and innovative in searching for donations. Recently, the university announced its latest fundraising campaign. The press release accompanying the announcement said:

> Having surpassed our goal to raise a minimum of $575 million in private support, we are working with our alumni and friends to raise $1 billion and to extend the campaign by an additional two years, through 2004. The objective of our $1 billion vision: to attract top students and faculty, and provide the facilities they need to meet their potential.

The University of Toronto's work in obtaining donations has been recognized across the continent. Recently, Professor John Dellandrea, Vice-President and Chief Development Officer, was awarded the Laureate Award from the Institute of Charitable Giving, North America's leading training centre for major gift fundraising. Professor Dellandrea serves as the President of the University of Toronto Foundation and is the first Canadian to receive this honour.

Honourable senators, the University of Toronto's excellence in raising funds to support its quest for academic excellence should be an inspiration, if not a challenge, to other Canadian universities.

An alternative that both universities and governments may wish to consider is the use of tax-exempt bonds. These bonds are tools that have been used extensively at the municipal level in the United States. As the terminology implies, interest earned on a tax-exempt bond is not taxable to the extent of the exemption. This tax-exempt status allows municipalities to issue bonds that pay less interest than other bonds, while ensuring that bond purchasers receive a fair return on their investment.

There would be, of course, a cost to government in the form of lost tax revenue. However, this cost could be lessened if the federal and provincial governments worked together to share the burden. I am no expert in matters of municipal bonds, but it seems to me that this innovative approach merits some consideration. Indeed, a well-known hospital in Toronto has had its new construction completely financed by a bond issue that has no tax-exempt status. Nevertheless, it was able to float the bond issue to provide the funds for the construction that was so desperately required today.

• (1820)

Honourable senators, in closing, we can all acknowledge the importance of human capital if Canada is to succeed in the knowledge-based world economy. We can appreciate the role of our schools and universities in improving our stock of human capital. Just as students need books and, these days, state-of-the-art computers, they also need adequate buildings on campus. Canada and its universities simply cannot afford to put off the needed maintenance of our infrastructure at our post-secondary institutions. Together, we must work to find ways to address the problem of accumulated deferred maintenance.

I congratulate Senator Moore for initiating this inquiry, and I support him and his work.

On motion of Senator Andreychuk, debate adjourned.

FOREIGN AFFAIRS REPORT ENTITLED "THE NEW NATO AND THE EVOLUTION OF PEACEKEEPING: IMPLICATIONS FOR CANADA"

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Andreychuk calling the attention of the Senate to the seventh report of the Standing Senate Committee on Foreign Affairs: *The New NATO and the Evolution of Peacekeeping: Implications for Canada*.—(*Honourable Senator Roche*).

Hon. Douglas Roche: Honourable senators, about one year ago, the Standing Senate Committee on Foreign Affairs, after extensive study, tabled a report: "The New NATO and the Evolution of Peacekeeping: Implications for Canada."

On April 3, 2001, Senator Andreychuk, in an important address, reviewed this report from the perspective of a year's experience. Senator Andreychuk's timely action has opened anew the debate on Canada's role and responsibilities in the complicated intertwined agenda of peacekeeping, peacemaking and peace-building.

In short, we now know that the international community must find a way to reconcile respect for the sovereign rights of states with the need to act in the face of massive violations of human rights and humanitarian law. Decisions about military intervention are extremely difficult. Canada, in order to uphold our basic tenet of respect for international law, must be very careful in how it proceeds in its efforts to diffuse or help resolve conflicts abroad.

A fundamental question in this debate is the establishment of a credible force for peace in the 21st century and the application of the rule of law. The thrust of my thinking is to ask: How will international law be imposed in years ahead? By the militarily powerful determining what the law will be, or by a collective world effort reposing the seat of law in the United Nations system?

I ask this question at the outset because of the 1999 Kosovo experience when Canada put its allegiance to NATO ahead of its obligations to international law as enshrined in the United Nations Charter. With many others, I maintain that NATO's bombing operation over Kosovo and Serbia, considered a humanitarian intervention by many, was illegal and a massive miscalculation. I will not restate my opposition here because I have already done so in many forums, including this chamber, at the time of the bombing. However, I cannot ignore the costs of NATO's miscalculation.

NATO countries engaged in the Kosovo campaign admitted to spending more than $4 billion in 78 days of bombing, dropping more than 23,000 bombs and missiles. On the first night of the war, NATO launched more than $71 million worth of weapons with just 30 flights. By the last week of the air campaign, the alliance had 36,300 personnel in the Balkans and across Europe, playing a part in up to 700 sorties every day.

A Human Rights Watch Report from February 2000 concluded that as many as 527 Yugoslav civilians were killed in 90 separate incidents as a result of NATO bombing.

We must learn from the mistakes of the Kosovo war. Canada must be brave enough to never turn its back on the principles that have served us so well in the past. It must abide by the rules of the UN Charter, while striving to further reform that body and its institutions. Canada must refuse to intervene militarily in the domestic affairs of a sovereign state without Security Council or General Assembly approval.

What Kosovo and later East Timor and before them Rwanda and Bosnia demonstrate is the dire need for an effective international interventionist force with a sense of purpose and cohesion, particularly in the cause of restoring order and establishing the foundations for peace-building.

The UN Security Council remains the paramount global instrument to safeguard peace and security. A strong, effective and purposeful council is, therefore, imperative for the maintenance of international stability. But what of its credibility? As nations flout their responsibilities to it and alliances ignore it, many perceive the Security Council as falling short of its responsibilities. The UN is chronically hampered by lack of resolve, yet it is difficult to escape one great irony of our age: the powers reluctant to support the UN on the grounds that it is inefficient or incompetent are the very ones that render it so.

Expectations of the UN's ability to keep and enforce the peace have exploded in the decade that followed the end of the Cold War. There have been 54 United Nations-mandated peace, humanitarian and observer missions through December 31, 2000. Thirty-five of these were initiated in the 1990s alone. Most remarkable, however, is that many of these missions have involved unprecedented responsibilities and conflicts within states rather than between them, and where there was no peace to keep but to be imposed.

The UN has continually found itself poorly equipped to address the reality that 90 per cent of today's wars are internal and 90 per cent of the victims are civilian. Such developments have fundamentally changed the nature of the security problem that we face. The traditional one still exists, but it is now being complicated by a much different set of security issues and, therefore, we must change our ability to respond.

Throughout the 1990s, NATO became stronger and the UN became weaker, just the reverse of what was needed to build a foundation for peace supportable by all the regions of the world following the Cold War.

Canada, for its part, has worked diligently at the UN for the establishment of a rapid deployment capacity that could effectively respond to complex humanitarian emergencies such as those faced by peacekeepers throughout the 1990s. Canada tabled a study towards a rapid reaction capability for the United Nations at the fiftieth session of the General Assembly. This groundbreaking study offered a number of concrete recommendations to enhance the UN's capacity to respond rapidly and deploy more effectively in crisis situations.

Canadian efforts within the Secretary-General's special committee on peacekeeping operations, appointed in March, 2000, have underlined that a rapid deployment capability for the UN is a comprehensive concept that requires cooperation across the UN system, as well as action and commitment by member states.

Fortunately, the UN is moving forward on a peacekeeping agenda that has been considerably influenced by Canadian efforts. An important UN report on UN peace operations, known as the Brahimi report, was issued a few months after the Senate report on NATO. The Brahimi report, listing 56 recommendations to improve planning, preparation and execution of peace operations, should be studied extensively by all NATO members. The report provides the international community with a blueprint for developing the kind of effective response to complex humanitarian emergencies so desperately needed in every region of the world.

This valuable and comprehensive report gives substance to the high hopes expressed both in the Secretary-General's Millennium Report and at the Millennium Summit for developing a pragmatic and practical framework to improve the effectiveness of peacekeeping operations. Many of the report's recommendations are consistent with longstanding Canadian concerns and initiatives in peacekeeping, including the requirement for clear and achievable mandates, matching mandates with appropriate resources and the development of rapid deployment capacities.

The report's recommendations focused not only on politics and strategy but perhaps even more importantly on operational and organizational areas of need. These include, and I will list just a few, honourable senators:

First, mandates that provide peacekeepers with robust rules of engagement and defining peacekeeping as a core function of the UN rather than a temporary necessity by substantially increasing resources in UN headquarters devoted to supporting peacekeeping field operations.

Second, doctrines that call for more effective conflict prevention strategies, pointing out that prevention is far more preferable for those who would otherwise suffer the consequences of war and a less costly option of the international community than military action, emergency humanitarian relief, or reconstruction after a war has run its course.

• (1830)

Third, developing peace-building strategies in which peacekeepers and peace builders are inseparable partners, creating a self-sustaining peace that allows a ready exit for peacekeepers. Such efforts would include the deployment of a panel of legal experts facilitating the transition to civil administration in post-conflict environments pending the re-establishment of local rule of law and law enforcement capacity.

Fourth, personnel must be provided by member states in order to work together to form a coherent, multinational brigade-type force that is ready for effective deployment within a set of full deployment time line standards of 30 days for traditional, and 90 days for complex peacekeeping operations following passage of a Security Council resolution.

We should note that this report does not call for a standing UN army, but it does call for the establishment of on-call lists of about 100 military and about 100 police officers and experts from national armies and police forces who would be available on seven days' notice to establish new mission headquarters.

On October 20, 2000, Secretary-General Annan submitted his own report on implementing the Brahimi report. He stressed that the 56 recommendations applied to armed UN missions deployed with the consent of all factions, rather than as a series of steps to create a UN army. He also cautioned that peacekeeping operations should not be used as a substitute for addressing the root causes of conflict, which can only be remedied by coordinated political, social and developmental efforts.

Many key components of the report, particularly the resolve to give UN peacekeeping missions clear, credible and achievable mandates, were unanimously adopted on November 13, 2000 in UN Security Council resolution 1327. This is encouraging, but a great deal more work needs to be done, both by individual member states and at the international level.

In short, the world especially needs to find a way to reconcile seemingly irreconcilable notions of intervention and state sovereignty. Canada is currently making an important contribution in this area through its sponsorship of the International Commission on Intervention and State Sovereignty. Originated by Canada's former foreign minister, Lloyd Axworthy, the commission, headed by Gareth Evans of Australia and Mohammed Sahoun of Nigeria, will try to advise the UN on when intervention is justified, taking into account all the key issues — political, ethical, legal and operational.

There are times when the use of force may be legitimate in the pursuit of peace, but unless the UN Security Council is restored to its pre-eminent position as the sole source of legitimacy on the use of force, the world is perilously foregoing law for anarchy. NATO cannot be permitted to determine by itself when force will be used. We would do well to reflect upon UN Secretary-General Kofi Annan's words to the UN General Assembly on September 20, 1999. He said:

> ...in the event that forceful intervention becomes necessary, we must ensure that the Security Council, the body charged with authorizing force under international law, is able to rise to the challenge... intervention must be based on legitimate and universal principles if it is to enjoy the sustained support of the world's peoples.

Honourable senators, the Brahimi report embodies much of Canada's yearning for peace. However, the elements of the UN secretariat responsible for peacekeeping remain underfunded, understaffed and unprepared to administer a country in a post-conflict environment. However, the assumptions that the UN cannot be called upon to undertake complex peace missions and that regional organizations such as NATO should handle all elements of them are not credible. Better that the UN be prepared for such missions because force alone cannot create peace. Peace can only be built by sustained political support, an integrated and rapidly deployable force and a sound peace-building capacity of the United Nations. Strengthening the abilities and the credibility of the UN must be Canada's prime foreign policy goal.

On motion of Senator Prud'homme, debate adjourned.

RECOGNITION AND COMMEMORATION OF ARMENIAN GENOCIDE

MOTION—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Maheu, seconded by the Honourable Senator Setlakwe:
>
> That this House:
>
> (a) Calls upon the Government of Canada to recognize the genocide of the Armenians and to condemn any attempt to deny or distort a historical truth as being anything less than genocide, a crime against humanity.
>
> (b) Designates April 24th of every year hereafter throughout Canada as a day of remembrance of the 1.5 million Armenians who fell victim to the first genocide of the twentieth century.—(*Honourable Senator Di Nino*).

Hon. Marcel Prud'homme: Honourable senators, 35 years ago, I was in the House of Commons. I organized the first visit of the Armenian community to Parliament. Thirty-five years is a long time. I have been close to the Armenian community during that time. The able Deputy Prime Minister of Quebec, who is now in the Senate, the member from Îsle-Saint-Laurent who was a municipal councillor, and many other members of the House of Commons, the Senate and the National Assembly of Quebec have all been close to the Armenian community. I am the oldest.

I recall all the speeches that I made in the House of Commons over the years that are simply in favour of the Armenian cause. I did not speak out against any other country. I know the sensitivity of our friend from Turkey on this issue. I am not part of any cabal against one country in favour of another.

I have been carrying on my work of dealing with many diverse issues at international gatherings. I recently returned from Cuba with the Honourable Senator Finestone, who acted as presiding officer of the International Parliamentary Union.

Had today's date not been April 24, I would not have spoken. Senator Maheu's motion makes specific reference to April 24. Perhaps a miracle will happen on this day and we will find ourselves in total agreement.

When I sit down, senators will be asked if anyone else wishes to speak. If nobody wishes to speak, perhaps someone will ask to adjourn the debate in his or her name. I do not know what will happen.

The motion is clear. It does not require that I make a speech. My views on this issue are on record in the House of Commons and in Montreal, Quebec, and I have expressed them for over 35 years. I even studied this issue with the late Honourable Jean-Luc Pépin, who was my professor of political science. He dealt with this issue at the University of Ottawa in the 1950s when studying the Treaty of Sèvre, which everyone signed and forgot thereafter.

I wanted to be on record. My friends in the Armenian community will understand that I could have spoken much longer on this issue. However, they know where I stand. I hope that our friends, good Canadians of Turkish origin, will not take this as an insult to them. I know how strongly they feel. However, this is a historical event. I know other senators will want to participate in this debate,

Usually I attend all the commemorative events on April 24. However, this year I was unable to do so.

• (1840)

However, I wanted to be on record as having stood up today to say that I do support this clear motion by Senator Maheu and by our new friend, Honourable Senator Setlakwe. I thought Senator Setlakwe was of Lebanese origin, but he is of Armenian origin. It is good that I also put that on record today. Senator Setlakwe did so in his own speech.

Honourable senators, I am on record. I have spoken. I support this great motion, especially today, April 24.

The Hon. the Speaker: Honourable senators, before I put the motion of Senator Bacon, I observe that the item on the inquiry is standing in the name of Senator Di Nino, who I assume wishes to speak. Perhaps I could ask honourable senators whether they wish this matter to continue to stand in the name of Senator Di Nino.

Senator Kinsella: No.

Some Hon. Senators: No.

On motion of Senator Bacon, debate adjourned.

THE NATIONAL ANTHEM

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Poy calling the attention of the Senate to the national anthem.—(*Honourable Senator Pépin*).

[Senator Prud'homme]

Hon. Shirley Maheu: Honourable senators, our colleague Senator Poy has asked me to look at the English translation of our national anthem. I wonder how many of us have found the time to think just a little about that request. I wonder how many of us have asked ourselves whether it is a cultural concern or perhaps a feminist concern or, more likely, whether some honourable senators think, "Here we go again, women wanting to change things."

Personally, I had not been overly preoccupied with the words "all our sons command." However, when I stopped to think about them, I could not overlook the preceding words "true patriot love."

[*Translation*]

Honourable senators, have we forgotten that, in both world wars, huge numbers of women worked in manufacturing plants turning out such things as bombs, parachutes and planes? They were found to be conscientious, meticulous, patient and highly motivated — in a word, patriotic.

More than 50 years later, it is perhaps high time certain things were corrected. Perhaps I might raise certain points. Thanks to our Prime Minister, women make up more than one-third of our Senate at this time. Often, change starts with ideas that originate with the Senate and the senators. Why then not review our national anthem? Let us at least put forth the idea!

Great changes have taken place since the two great wars and they have transformed us forever. The arrival of women in the work force has brought great changes to who we are. We communicate differently; our motivations are different; we no longer think in the same way.

[*English*]

Honourable senators, the immersion of women in the working environment proposed new ways of doing things. For example, Faith Popcorn published a reference work entitled "Clicking." The author mentioned that there are numerous differences between men and women — thank God for differences. For example, while men work habitually through hierarchy, women use teamwork. While men demand answers, women ask questions, and they ask the right questions. While men identify to a role, women adapt to many roles. While men resist change, women seek change. While men are goal driven, women are process aware. While men want to reach a destination, women enjoy the travel. While men manage, women develop relationships. Are these differences the new political way of doing business?

[*Translation*]

All these changes for women notwithstanding, we must not believe that the principles of equity and equality have been achieved in all spheres of our society.

[*English*]

Again, according to author Faith Popcorn, women have had enough of being spectators in the decision-making process. Women are tremendous pools of resources that we cannot neglect, even if many stereotypes continue to haunt the scene.

[*Translation*]

We know that rites and rituals help forge Canadian culture and a common identity. It is very important, especially in a time of globalization, to build a shared identity to compensate for the fragmentation resulting from the various identities. This can be seen from East to West in our country. It is certainly for a reason that so many Canadian minority groups form alliances with one another in order to form a tighter bond, because they feel alienated.

We are responsible for this situation, and we must do our best to rebuild a feeling of belonging in Canada. We can ask ourselves what the purpose is of having a strong national culture. In truth, it helps counter the uncertainty arising from the globalization of markets. In this way, we will be able to harmonize individual and collective interests. In this sense, the provinces form a federation.

A strong culture promotes debate across the country, and if we neglect it, great tensions arise and slow down all forms of change. It is very important that our country present a realistic portrait of what we were, what we are and what we are becoming. The national anthem must reflect not only our history, but who we are and, of course, the image we want to project.

Obviously, culture includes one of the most important elements, such as communication. In all forms of communication, there is a sender and a receiver. Between the two of them, the phenomenon of interpretation and decoding can create distortion. Too often, someone sends a message, and the receiver decodes the message differently. Effective communication means that the message understood is what the sender intended.

[*English*]

Do you really feel that the words "all our sons command" reflect the message that we wish to leave to our young Canadians? We all see the reality through our rose-coloured glasses. With that, we interpret reality as we would like to see it or as our background permits us to see it.

• (1850)

I ask honourable senators: How do you think we feel when we hear the national anthem address a masculine reality? How do you think we can identify ourselves, or even want to contribute, if we feel left out of our own national anthem?

Last year, the sculpture of the Famous Five by Barbara Paterson was unveiled. At the breakfast on the eve of the unveiling, the guest speakers were the Right Honourable Beverley McLachlin, Chief Justice of the Supreme Court of Canada; the Honourable Anne McLellan, Minister of Justice and Attorney General of Canada; and Daphne Dumont, President of the Canadian Bar Association.

In 1929, women were declared persons, but was the political will to accept that declaration really there? Did anyone think of women when the English version of the national anthem was accepted? Was the political will there then?

Senator Poy has drawn the national anthem to our attention and is suggesting a change to non-sexist language. Is the political will there now?

Our Chief Justice spoke of many important and impressive achievements of the Famous Five, saying they provide an enduring example of how the law can be employed as an instrument of social change. Chief Justice McLachlin also left us with a quotation from the speech of Her Majesty Queen Elizabeth on the laying of the cornerstone of the Supreme Court in May 1939, when she said:

> Perhaps it is not inappropriate that this task should be performed by a woman; for woman's position in civil society has depended upon the growth of the law.

Is today's society ready to accept a law reforming our English version of the national anthem? Is the political will there now? Our Minister of Justice, Anne McLellan, spoke about remembering, even as we celebrated. We must acknowledge that the struggle for equal opportunity is not yet won.

We were also reminded that there are thousands of unsung heroes, no less treasured than Nellie McClung of the Famous Five, for their daily contributions to the betterment of our society.

Honourable senators, think about the wording of the English version of our national anthem. What about recognizing the contribution of our women of today and those in the future?

Last October, Daphne Dumont reminded us of the Famous Five and their legacy — the recognition of women as persons. She spoke about the positions of the Chief Justice, the Minister of Justice and the President of the Canadian Bar Association, all women in leadership positions in the legal profession. This is a first for our country.

I refer in some detail to last October's Famous Five celebrations because, as the President of the Canadian Bar Association pointed out, this event recognizes the role of one of Canada's most successful voluntary women's groups in leading change in our country. To measure their success, we need only look at today's many different forums for advocacy.

We also heard that there are two types of history: the kind we look back on and the kind we make ourselves. The Famous Five were not content with the status quo. They believed that they could change the world, and they did. The lesson for us today is that the power to make history is always in our hands.

Honourable senators, do not Canadian women of the past and Canadian women of the future deserve recognition in the English version of our national anthem?

Hon. Vivienne Poy: Honourable senators, I move adjournment of this inquiry in the name of Senator Beaudoin.

The Hon. the Speaker: Honourable senators, I note that this inquiry stood in the name of Senator Pépin. Our custom is that if someone wishes to speak, then we go ahead with that. I simply observe that this inquiry was standing in the name of Senator Pépin.

Senator Poy: Honourable senators, it is fine to leave it standing in the name of Senator Pépin.

The Hon. the Speaker: Is it agreed, honourable senators, that this inquiry stand in the name of Senator Pépin?

Hon. Senators: Agreed.

On motion of Senator Poy, for Senator Pépin, debate adjourned.

The Senate adjourned until Wednesday, April 25, 2001, at 1:30 p.m.

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ORDERS OF THE DAY

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