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OFFICIAL REPORT
(HANSARD)

Wednesday, April 25, 2001

THE HONOURABLE ROSE-MARIE LOSIER-COOL
SPEAKER *PRO TEMPORE*

CONTENTS

(Daily index of proceedings appears at back of this issue.)

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THE SENATE

Wednesday, April 25, 2001

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

Prayers.

SENATORS' STATEMENTS

HEALTH

PROTECTION OF INTEGRITY OF SYSTEM IN TRADE LIBERALIZATION INITIATIVES

Hon. Wilbert J. Keon: Honourable senators, the Canadian Medical Association is the national voice of Canadian physicians. Founded in 1867, the CMA's mission is to provide leadership for physicians and to promote the highest standard of health and health care for Canadians. Many senators had the opportunity to meet some of its members during a parliamentarians' and physicians' breakfast at the beginning of this month.

I wish to take this opportunity to bring to your attention, honourable senators, a letter that the CMA recently sent to the Prime Minister. All of you have received a copy. The objective of the letter is to underline the importance of protecting the integrity of Canada's health care system during the Quebec City Summit of the Americas and in any future negotiations.

Dr. Peter Barrett, President of the CMA, encourages the Prime Minister and the government to ensure that all necessary safeguards are put in place to shelter our health care system, including all its component parts, from the encroachment of trade liberalization. Hence, Canada's health care system should remain outside of the trade liberalization talks.

Dr. Barrett reiterates, as previously exposed in the CMA's December 2000 brief to the Minister of International Trade, that while trade liberalization has positive and economic development implications, its goals, if applied to the health care system, may undermine the type of health care system that Canadians want for the future.

The CMA's recommendation on the GATS and any trade negotiations, including those related to the FTAA, is:

> ...That the Federal government undertake extensive consultative sessions with the Canadian public and health care providers. Such a consultation process would help answer questions as to the implications of trade liberalization and would provide feedback as to what level of trade liberalization in health care services is consistent with Canadian values.

I would hope that all honourable senators can support this position.

COMMEMORATION OF THE HOLOCAUST

Hon. Jerahmiel S. Grafstein: Honourable senators, history never lies; history just takes time to tell the truth. This week commemorates the Shoah, the Holocaust. What should we commemorate? What should we remember? The *Concise Oxford Dictionary* defines the word "remember" as to keep in memory, not to forget; to bring back into one's thoughts, to know by heart. What, then, is the purpose of memory? If history serves lessons, are such lessons really learned?

Two recently published books offer lessons from history that nourish the insidious roots of the Holocaust. The first is a small book that cannot be put aside until finished called simply *Neighbours*, written by Jan T. Gross, a Polish-born professor of politics, now at NYU. This short book is destined to become a classic of Shoah literature. The author retells a concise, chilling story of investigatory history.

One warm summer day in 1941, almost 50 years ago, in the small Polish town of Jedwabne in northeast Poland, half the town's population, 1,600 Christians in number, massacred the other half, 1,600 Jewish men, women and children. Only seven of the Jews of that town, whose families resided side by side as neighbours for centuries, survived. The story was told by these neighbours themselves, in their own words in depositions, remembered still by the locals but forgotten by history until recently.

The German occupation did not compel that massacre. Until the war started in 1939, Christian and Jewish Polish neighbours had by all accounts very cordial relations. Yet one Christian family that hid three Jews who survived was jeered, derided and then driven from the area after the war. The single Jew offered mercy by the townspeople declined; so the Jedwabne Jews were clubbed or drowned, decapitated or dismembered. The remainder, mostly women and children, were herded into a barn, already doused with kerosene, and torched, not by faceless German soldiers but by the people they knew — former schoolmates and neighbours. This happened while the local priest and townspeople stood by and watched the flames and listened to the repeated screams that one said she could never, ever forget.

Last week, on April 19, 2001, the *New York Times* reported a nearly identical massacre took place a month earlier in the nearby Polish town of Radzilow. The *Times* now reports:

> The country awaits almost breathlessly, the conclusions of a team of historians, from the Institute of National Remembrance, charged with getting to the bottom of the events in north-east Poland in 1941.

• (1340)

The second book, honourable senators, is entitled *Constantine's Sword*. It is a 700-odd page work by James Carroll, a Catholic scholar and former priest. It chronicles the history of the Church and the Jews through the ages.

Carroll recounts the Church's role in the ongoing systemic anti-Semitism. While blunted by the Vatican statements, "Memory, Reflections on the Shoah" and Pope John II's statements on the Holocaust, all of which, according to Carroll, still fall short, the Vatican statement makes no mention of the Inquisition and praises the diplomacy of Pope Pius XII. The Vatican statement places responsibility on the "children of the Church" but not the Church itself. Pope John Paul's visit to the Wailing Wall in Jerusalem was replete with great symbolism. His Holiness said:

> The Shoah may yet enable memory to play its necessary part in the process of shaping the future in which the unspeakable inequity of the Shoah will never again be possible.

Repentance, honourable senators, is more than an individual act. All depends on future conduct. Each of us must ask ourselves whether the deadly virus of anti-Semitism continues to seep through the Catechism —

The Hon. the Speaker *pro tempore***:** I regret to interrupt the Honourable Senator Grafstein, but his time has expired.

Some Hon. Senators: Continue.

Senator Grafstein: Thank you, honourable senators.

The Hon. the Speaker *pro tempore***:** I am sorry, but according to our rules the Honourable Senator Grafstein cannot continue.

ROUTINE PROCEEDINGS

STUDY ON EMERGING DEVELOPMENTS IN RUSSIA AND UKRAINE

BUDGET—REPORT OF FOREIGN AFFAIRS COMMITTEE PRESENTED

Hon. Peter A. Stollery, Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

[Senator Grafstein]

Wednesday, April 25, 2001

The Standing Senate Committee on Foreign Affairs has the honour to present its

SECOND REPORT

Your Committee, which was authorized by the Senate on Thursday, March 1, 2001, in accordance with rule 86(1)(*h*) to examine and report on emerging political, social, economic and security developments in Russia and Ukraine; Canada's policy and interests in the region; and other related matters, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place within and outside Canada 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,

PETER A. STOLLERY
Chairman

(*For text of appendix, see today's* Journals of the Senate, *Appendix "A", p. 381.*)

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

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

STUDY ON EUROPEAN UNION

BUDGET—REPORT OF FOREIGN AFFAIRS COMMITTEE PRESENTED

Hon. Peter A. Stollery, Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

Wednesday, April 25, 2001

The Standing Senate Committee on Foreign Affairs has the honour to present its

THIRD REPORT

Your Committee, which was authorized by the Senate on Thursday, March 1, 2001, in accordance with rule 86(1)(*h*) to examine and report on the consequences for Canada of the evolving European Union and on other related political, economic and security matters, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary.

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,

PETER A. STOLLERY
Chairman

(*For text of appendix, see today's* Journals of the Senate, *Appendix "B", p. 389.*)

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

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

STUDY ON ISSUES RELATED TO FOREIGN RELATIONS

BUDGET—REPORT OF FOREIGN AFFAIRS COMMITTEE PRESENTED

Hon. Peter A. Stollery, Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

Wednesday, April 25, 2001

The Standing Senate Committee on Foreign Affairs has the honour to present its

FOURTH REPORT

Your Committee, which was authorized by the Senate on Thursday, March 1, 2001, in accordance with rule 86(1)(*h*) to examine such issues as may arise from time to time relating to Foreign relations generally, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary.

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,

PETER A. STOLLERY
Chairman

(*For text of appendix, see today's* Journals of the Senate, *Appendix "C", p. 395.*)

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

On motion of Senator Stollery, 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): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*h*), I move:

> That, when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, April 26, 2001, at 1:30 p.m.

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

Hon. Senators: Agreed**.**

Motion agreed to.

[*English*]

QUESTION PERIOD

HERITAGE

STATE CEREMONIES—CONFLICT BETWEEN PARLIAMENTARY SCHEDULES AND SCHEDULES OF VISITING DIGNITARIES

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my question is directed to the Leader of the Government in the Senate. It is my understanding that the Minister of Canadian Heritage is the minister responsible for state ceremonies, which includes responsibility for members of the Royal Family to Canada.

Honourable senators are finding, as are our colleagues in the other place, that it is rather difficult this afternoon when both Houses are sitting to have been extended a very generous invitation to meet with His Royal Highness the Prince of Wales at three o'clock. As honourable senators know, in the other place the highly interesting Question Period takes place around 2:15 until three o'clock. As well, I am sure the other place has other business. Of course, we have a full agenda today that I predict we will not finish, even though we will sit until 3:30.

Would the government leader ask her colleague the Minister of Canadian Heritage to give instructions to the state ceremonial branch in the Department of Canadian Heritage that when plans are being made and discussions are going on with the palace that this kind of very unfortunate circumstance not be repeated?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Kinsella for his question. As I hope senators know, buses will be leaving from outside the Senate door at 3 p.m. and again at 3:15 p.m. to make it possible for those senators who wish to attend the function to do so.

Having said that, senators are also under an obligation to continue to do their work here. Committees will be sitting at 3:30. Obviously, there will be a process that goes on in this chamber, at least one would think, until 3:30 this afternoon, given the nature of the items on the Order Paper.

It is my understanding that the ceremony was planned without invitations being extended to all members of Parliament and senators. The minister insisted that all members of Parliament and senators be invited to attend. Unfortunately, at that time it was too late to actually effect a time change. However, I am pleased to take to the minister the message asking her to establish a blanket order that when activities of this nature take place, it is also possible for members of Parliament to attend without sacrificing their other important duties.

• (1350)

FINANCE

POSSIBLE APPEARANCE OF MINISTER ON BILL TO ESTABLISH FINANCIAL CONSUMER AGENCY OF CANADA

Hon. David Tkachuk: Honourable senators, yesterday in my speech on Bill C-8, I said that the Minister of Finance would be coming to testify before us. I made that statement because my leadership had informed me that the Liberal leadership had said that the Minister of Finance was coming.

I had not heard anything recently about the minister's appearance so, of course, I went to see the chairman. He had not heard anything about it either. I thought: Well, if the leadership believes he is coming, then we are out of the loop. However, I was looking for assurances because this is an important bill and I had said in my speech that the minister would be attending.

Today I was told that the Parliamentary Secretary would be attending, and I suppose that is fine but I really want the minister to attend. I also want to know how this all happened. This is an important piece of legislation. If the minister makes a decision not to attend, then it cannot be a high priority to him, and therefore, it need not be a high priority of ours. If he is attending, then it is a high priority.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, there was some conflict in the information here. The minister responsible for this bill is not the Minister of Finance. The minister responsible for this bill is the Secretary of State for International Financial Institutions which is the Honourable Jim Peterson. Unfortunately, as many of you know, Jim Peterson is in recovery from prostate cancer surgery. It is his parliamentary secretary who will be appearing. It is certainly our hope that Minister Peterson will be able to attend when he appears back in the House of Commons.

Senator Tkachuk: I would ask the honourable senator then about the bill itself. Who has the power in the bill, the Secretary of State for International Financial Institutions?

Senator Carstairs: Honourable senators, my understanding is that the minister introducing the bill is the one responsible for that bill and that is the Honourable Jim Peterson.

INTERNATIONAL TRADE

PRINCE EDWARD ISLAND—DISPUTE OVER POTATOES

Hon. Jack Austin: Honourable senators, I should like to ask the Leader of the Government in the Senate whether problems in negotiations over P.E.I. potatoes have been resolved? Can exports be expected to resume soon?

Hon. Sharon Carstairs (Leader of the Government: Honourable senators, I understand that the news media is now reporting that the whole issue has been solved. The Minister of Agriculture certainly hopes that is the case. However, as of this moment, I do not have copies of the letters that were purportedly exchanged between the American government and the Canadian government to hopefully bring this issue to a final and positive end.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—SPLITTING OF PROCUREMENT PROCESS

Hon. J. Michael Forrestall: Honourable senators, my question is directed to the Leader of the Government in the Senate. First I want to thank her for her raft of delayed replies. However, I suggest that she ask her staff to read carefully the reply that goes in the briefing book, the reply she gives me and the reply that is posted on the Web site. There is gross inaccuracy here with respect to due diligence. I am talking about the delayed answer on the absence of a risk analysis in the splitting of the procurement process. I will let it sit there and the minister can review it.

Turning to my question for the Leader of the Government, I have been told that the following documents were sent forward from the Maritime Helicopter Project Office and were returned for redraft: basic vehicle requirement specification, integrated mission system requirement, requirement specification, and the interface control requirement specification. Apparently, those documents could not be separated into stand-alone documents.

Does the minister have an explanation for this? Is she now prepared to admit that the program to replace the Sea Kings was split for no other reasons than political ones?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not have a specific answer to that very detailed question which Senator Forrestall has put before the chamber. Frankly, the reason for splitting the contract was to make it possible for Canadian companies to participate. With only one contract, there would have been no possibility for Canadian corporations to compete for any of that work in a fair and open bid process because no one company has the capacity to do all of the work.

Splitting the contract in two still does not guarantee that a Canadian company will be accepted, but at least the Canadian companies will have an opportunity to make application to use their skills.

Senator Forrestall: Honourable senators, the minister at least has admitted that there is some area of concern. The fact is that splitting the contract was the only way the government could become the prime contractor. No matter what the honourable senator has to say from now on, the written documents simply bear that out.

REPLACEMENT OF SEA KING HELICOPTERS—INDEPENDENT LEGAL ADVICE ON DISPUTE BETWEEN EH INDUSTRIES AND GOVERNMENT

Hon. J. Michael Forrestall: Can the government leader tell me if the Government of Canada has retained independent legal advice on the recent Federal Court of Appeal decision between EH Industries and the Government of Canada from any former justice of the Federal Court of Appeal or the Supreme Court regarding the Maritime Helicopter Project?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the government did receive independent legal advice and it was indeed from a former justice of the Supreme Court. He was asked whether the process being undertaken was, in his legal judgment, a fair process.

Senator Forrestall: Honourable senators, I am not talking about the search and rescue project. I am talking about the Maritime Helicopter Project.

PUBLIC WORKS AND GOVERNMENT SERVICES

REPLACEMENT OF SEA KING HELICOPTERS—DEPARTURE OF DEPUTY MINISTER

Hon. J. Michael Forrestall: Honourable senators, can the Leader of the Government enlighten the chamber as to the reasons for the somewhat premature departure from the Department of Public Works and Government Services of Deputy Minister Ran Quail. Mr. Quail is a well-known and highly respected public servant, as the minister is aware, who has demonstrated constancy in the right. Was it because he disagreed with the government's policy decision to split the procurement process in the Maritime Helicopter Project, leaving the government — as I have suggested time and time again here — as the prime contractor? Of course, as the prime contractor, the government can do whatever it pleases.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the individual to whom the senator refers, Mr. Quail, is a highly respected member of the public service. The honourable senator is correct in that. Mr. Quail remains a highly respected member of the public service, and he has just been charged with conducting a review of the Public Service Commission and its ongoing reform. There is no question that the government has complete confidence in Mr. Quail.

Senator Forrestall: Why did you fire him?

Senator Carstairs: In terms of the particular question the honourable senator has brought before the house this afternoon, I will find out any additional information I can for the honourable senator.

Senator Forrestall: Find it out for the Canadian people and for the men and women who have to fly this equipment.

INTERNATIONAL TRADE

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

Hon. Douglas Roche: Honourable senators, my question is directed to the Leader of the Government. Yesterday I asked the minister about the prospects for an ongoing dialogue between civil society groups and the government in the context of the Americas free trade negotiations. The minister said that she found the term "civil society" offensive. Not wanting to use offensive language in the chamber, I went searching for the roots of the term. I found it in the Government of Canada's Web site which says that the term "civil society," which has entered common usage in recent years, refers to all citizen groups outside the state including action groups, volunteer organizations, academics, non-government organizations, non-profit organizations, unions and the business community.

• (1400)

Then the government said on this same Web site that the Government of Canada favours a policy of openness and transparency toward civil society groups and is playing a leading role in the Americas in this respect.

I should like to once more repeat my commendation of the government for funding the people's summit of civil society groups at the Quebec City summit. However, in what manner can an ongoing dialogue between civil society groups and the government in the negotiation process for the Americas agreement be conducted in a non-confrontational atmosphere so that we can be sure that the agreements will indeed contribute to improving human rights, labour standards, health, education and the rights of indigenous peoples in all the countries of the Americas?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Roche for his question. I do not wish to be repetitious, but I think we are all members of civil society. Frankly, although I may not be an NGO or a member of a particular environmental group, I and others who are outside of those narrow groups also have a right to transparency, openness and dialogue on what is to happen with a future free trade agreement of the Americas. It would be my recommendation to the government, and I think this is where the government wishes to go, that such a discussion take place with the broadest number of Canadians, whether they have put themselves into a specific group or not.

Senator Roche: Honourable senators, now the minister and I are absolutely on the same wavelength. I am asking this: In what manner can the government foster such a dialogue so that the broadest section of our society, as represented in the many groups that make up society, can participate in the dialogue process leading to the Americas agreement?

Senator Carstairs: Honourable senators, frankly, that dialogue is ongoing and has been ongoing for some time. One of the best vehicles available to any Canadian is that of working through their elected members of Parliament and the senators who sit in this chamber. That is a very effective way of getting the message to the government. However, there are clearly other ways to do it as well. Members of Parliament — indeed, some senators — hold town hall meetings on a regular basis. There are also means of contact directly between various ministries, NGOs and other organizations in this country. I would be very uncomfortable with a formal process that only allowed the government to contact some people in this country about these issues. I think there needs to be the broadest possible dialogue with Canadians.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have four delayed answers. The first is in response to the question of Senator Robertson, raised on March 27, regarding the privatization of Moncton airport; the second is in response to a question raised by Senator Roche, on March 20, regarding Official Development Assistance to foreign countries; the third is in response to a question raised by Senator Forrestall, on March 22, regarding the replacement of Sea King helicopters; and the fourth is in response to a question raised by Senator Corbin, on March 22, regarding Russia and the services at the Moscow Embassy.

TRANSPORT

PRIVATIZATION OF MONCTON AIRPORT

(Response to question raised by Hon. Brenda M. Robertson on March 27, 2001)

Airport authorities (AA) are para-public entities charged with the operation, management and maintenance of federally-owned public facilities. The Moncton Airport Authority has signed a 60-year lease with a 20-year renewal option with the federal government. The Moncton Airport Authority has also signed a management contract with Vancouver Airport Services Limited, a subsidiary company of the Vancouver International Airport Authority, to operate and manage the Moncton Airport.

The government is considering its options with respect to a separate rent policy review and its mandate.

The Greater Moncton Airport Authority will receive the same treatment as all other National Airport System (NAS) Airports. Moncton Airport, like other airports, is free to make whatever interventions it wishes to Transport Canada officials.

FOREIGN AFFAIRS

OFFICIAL DEVELOPMENT ASSISTANCE TO FOREIGN COUNTRIES

(Response to question raised by Hon. Douglas Roche on March 20, 2001)

I am very pleased to be able to respond more fully to the honourable senator's question of March 20 concerning Official Development Assistance (ODA) to developing countries.

As the senator is aware, the government announced, in its budget statement last year, increases to Canada's ODA budget for three years, including for this year, totalling $435 million and an additional funding of $100 million over four year to address global environmental problems in developing countries. This is a significant increase and reflects the importance the government attaches to international development.

Canada, along with other developed countries, is committed to working towards the 0.7 per cent of GNP target that was established by the 1969 *Pearson Report: Partners in Development*, as fiscal conditions permit.

In the first mandate of this government, it was necessary to reduce spending on international assistance, as well as many other important government programs, as part of our efforts to restore economic health to the country and fiscal responsibility to government. In the last few years, as economic and fiscal health was restored, the government increased spending on ODA, but with the strong recovery of the economy, the ODA/GNP ratio decreased.

As the senator pointed out, the Speech from the Throne provided a signal of a return to growth in ODA resources. The government remains committed to moving towards the 0.7 per cent target as conditions permit.

NATIONAL DEFENCE

REMPLACEMENT OF SEA KING HELICOPTERS—CONCERNS OF AEROSPACE INDUSTRIES ASSOCIATION OF CANADA

(Response to question raised by Hon. J. Michael Forrestall on March 22, 2001)

The government has developed a procurement strategy for the Maritime Helicopter Project that will ensure the Canadian Forces acquire the equipment it really needs at the lowest possible price for Canadians. Concerning the responsibilities of the prime contractors, the letter of interest released by the government in August 2000 states that the contractor of the mission system will be responsible for modifying the helicopter selected by the government to produce a fully integrated maritime helicopter. That said, it will be essential that the prime contractors for both the basic vehicle and the mission system cooperate in the integration of the two procurement contracts, and interface agreements will be established to this effect between the prime contractors to formalize this arrangement.

FOREIGN AFFAIRS

RUSSIA—SERVICES AT MOSCOW EMBASSY

Hon. Eymard G. Corbin: Honourable senators, as provided by the rules, could I ask the Deputy Leader of the Government to give me the answer verbally?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, as Senator Corbin has asked, this is the answer:

Due to privacy laws, the details of individual cases cannot be publicly discussed. Visa officers in the Moscow office offer competent, quality service under sometimes trying circumstances, serving a large geographic area.

The visa section in Moscow is currently the only office providing visa services for a very large territory, namely, Russia, Armenia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.

Our Moscow office has a significant workload. The number of visitor applications received has increased from 14,433 in 1997 to 15,906 in 2000. Immigrant applications rose from 2,459 in 1997 to 3,242 in 2000.

Another very complicating factor is complex case processing due to potential fraud. For instance, in January and February 2001, our Moscow office quality controlled the documents submitted by applicants and found that 28 per cent were fraudulent.

Five support staff have been hired for years 2000/2001. For years 2001/2002, we have also assigned an extra Canadian officer, plus five support staff to offer even better service to clients.

A temporary annex to the embassy is under construction, until a new permanent building is built. This extra space will provide a better quality of service to our clients (waiting room, et cetera). Given that Russia is a highly populated country, a new visa office in St. Petersburg will open in August 2001, with one Canadian officer and two support staff. The new office will alleviate some of Moscow's workload.

ANSWER TO ORDER PAPER QUESTION TABLED

HERITAGE—CANADA MILLENNIUM SCHOLARSHIP FOUNDATION

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the response to Question No. 12 on the Order Paper—by Senator Lynch-Staunton.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would like to start with Item No. 4, namely, second reading of Bill C-8, then revert to Orders of the Day as they stand, namely, Items Nos. 1, 2, 3 and 5.

[*English*]

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. W. David Angus: Honourable senators, I should like to add a few words to those spoken yesterday by Senators Tkachuk, Oliver and Bolduc on Bill C-8, the so-called revised financial reform legislation, before it goes on to committee. This bill, by the way, is colloquially referred to as "Paul Martin's legislation" or "Paul Martin's financial services legislation."

Whilst I grudgingly approve of this bill in principle, I am perplexed, indeed troubled, by this massive, complex and disjointed tome of proposed legislation and the awkward situation in which I believe it places us all with respect to our capacity as legislators. I submit that we may be faced here with a veritable Hobson's choice whereby we will be damned if we do and damned if we do not pass Bill C-8.

I say this, honourable senators, because the bill appears to be substantially flawed in many respects, even though it does indeed contain a number of sound and key provisions that are urgently needed and anxiously awaited by many Canadians, particularly those engaged in the financial services sector. This sector has experienced a sustained period of turbulence characterized by vastly increased competition, rapid and fundamental change, and the advent of new paradigms in financial markets around the world.

This legislation, in essentially identical terms except for several hundred technical changes, was before the last Parliament as Bill C-38. It was introduced following a long and arduous revision process spanning some five or more years. Bill C-38 died on the Order Paper when Parliament was prematurely dissolved for last year's election, having undergone only a *de minimis* amount of parliamentary scrutiny and none here in the Senate. A number of financial service sector observers are now wondering out loud whether this legislation has been so long in coming that it is no longer relevant to a globalized and borderless marketplace. I am asking the same question myself.

• (1410)

Honourable senators, the point is that this bill needs and deserves a focused and thorough study by the Senate's Banking Committee to address, *inter alia,* those concerns mentioned yesterday by Senator Tkachuk, Senator Oliver and Senator Bolduc, together with those that I will outline in a moment and those that I know many witnesses will be describing to the committee when the bill goes there. Should we forego such a study or simply go through the motions in a cursory way, I submit we would be seriously remiss in our duty to Canadians.

The basic questions we must ask ourselves are twofold. First, can constructive, useful and practical amendments be developed within a reasonable time frame, say six weeks, beyond which further delay will, we are told, cause serious prejudice to major transactions currently on the drawing boards, and/or diminish or obliterate any potential benefits to be derived from such amendments? Second, is the bill in its present form beyond remediation such that we should pass it as drafted for its good points and hope this government will come back to us soon, perhaps in September, with a new, better, more relevant and effective package of financial reform legislation?

I am personally hopeful that serious and concentrated study in committee can and will produce a positive result in the short term.

My primordial concern about Bill C-8 is its total lack of strategic vision. When introduced in the other place on February 7, Bill C-8 was trumpeted by the government — and I might say again to the Leader of the Government in the Senate that the press release issued that day was a joint one from the Secretary of State for International Financial Institutions and the Minister of Finance — as being legislation "designed to create a new policy framework for Canada's financial services sector, which includes domestic and foreign banks, trust companies, insurance companies, credit unions and other financial institutions."

I respectfully submit, honourable senators, that as so-called "framework legislation" this bill is sorely wanting. Simply put, it is totally devoid of any coherent vision or far-sightedness and fails miserably to establish a modern, contemporary and workable blueprint for Canada's financial services industry evolving in a manner that is compatible with what we see happening in the financial sectors of our major trading partners. Instead of boldly unshackling Canada's financial institutions and those foreign entities which choose to operate here from burdensome and outdated regulatory restrictions to enable them to compete more freely in today's global environment, as recommended in most of the studies that preceded Bill C-38, Bill C-8 at best takes only a timid step forward.

Just when the Canadian government should be going the extra mile with inspired and creative legislation designed strategically to preserve the once renowned high quality of our banking and life insurance industries, and to nurture and help our major players compete and flourish in the global marketplace, it has instead come up with an intimidating hodgepodge of 900 pages of technical ad hoc measures and enabling provisions that will lead to increased rather than reduced rule by regulation. The bill also proposes the creation of costly and unnecessary bureaucratic agencies in the name of social policy and alleged consumer protection.

This is all very disappointing, in that the MacKay Task Force on the Future of the Financial Services Sector in Canada reported in the fall of 1998 and provided the government with a well thought out, long-term visionary plan for the financial services sector. The MacKay report was supplemented by thoughtful and approving reports from the Senate Banking Committee. Rather than adopt MacKay's visionary, integrated and well-balanced plan as such, the government appears to have "cherry-picked" certain politically attractive but often unrelated measures or recommendations, thus destroying the balance, the cohesiveness and the potential benefits of the MacKay vision.

The result has been poor indeed, honourable senators. In Bill C-8 the government has missed an enormous opportunity to create a comprehensive and balanced framework that would enable Canadian financial institutions to thrive in the new environment — to expand, to innovate and to generate real benefits for all Canadians, especially those who consume financial service products.

Quite frankly, honourable senators, the members of the Banking Committee were dismayed and disappointed, as were members on both sides of this chamber, at the evident lack of a bold and visionary plan for the future of Canada's financial services industry when Bill C-38 was introduced on June 13, 2000. The committee's chairman, Senator Leo Kolber, echoed these sentiments when he took the unusual step of publicly criticizing his government's proposed legislation.

Some Hon. Senators: Hear, hear!

Senator Angus: A great Canadian, I might add.

Shortly after its introduction, honourable senators, in a most candid speech to the Canadian Bankers' Association in Montreal on June 19, 2000, Senator Kolber's remarks were chronicled in the national press, in particular in the *National Post* of June 22, 2000. The article stated:

> Leo Kolber, a senior Liberal and Chairman of the Senate Banking Committee, has slammed the federal government's new financial services legislation, saying it could prevent Canada's banks from becoming competitive at the global stage.

Some Hon. Senators: Oh, oh.

Senator Angus: Honourable senators, we have driven Senator Kolber from the chamber in embarrassment. The article continues:

> The new bill will deter bank mergers and is inadequate in setting out a broad vision or blueprint for the unfolding financial services industry, he told a meeting of bankers earlier this week.
>
> In addition to criticisms about the general bill, he also raised concerns about specific policy decisions such as denying the banks the right to retail insurance in their branches... He raised the issue of vision for the industry by asking if Canada wanted to have a "national champion" policy in which large institutions carry the Canadian flag in the global marketplace. He also raised concerns about the Senate being cut out of the Merger Review Process the new legislation outlined. Under the new bill, any big bank merger will need to be reviewed by the House of Commons Finance Committee to determine if the merger is in the public interest. However, the Senate Banking Committee is left out of the review process. "That's not really acceptable and I will have a lot of trouble dealing with that," Senator Kolber said. "If they are going to politicize mergers by bringing it into the political arena (the House of Commons Finance Committee) we, the Senate Banking Committee, sure as hell are part of the political arena," he said.

Honourable senators, what can I say? Our colleague, Leo Kolber, our dear colleague, our wonderful, astute, intelligent Chairman Kolber, has already accomplished at least one thing with those remarks, for on February 2, 2001, the Minister of Finance, that same Paul Martin, wrote a letter to Senator Kolber, in which he said:

> ...I wish to inform you that the Merger Review Guidelines will be amended to provide an explicit role for the Senate Banking Committee. Specifically the Banking Committee will be asked to conduct public hearings into the broad public interest issues raised by a merger proposal, as part of the examination phase of the review process and to report to the Minister of Finance.

• (1140)

Honourable senators, the Finance Minister was as good as his word, as he always is, for the merger review guidelines which accompanied Bill C-8 when it was introduced on February 7, 2001 contained a specific provision setting up the promised role for the Banking Committee.

I should like to add my congratulations to Senator Kolber, who is sitting over there behind the curtains, to those of Senator Tkachuk of yesterday afternoon. The other criticisms of the legislation articulated by Senator Kolber are valid and I support them wholeheartedly. Honourable senators, I believe we should all support them, because they are valid criticisms.

Honourable senators, the challenge for us is to further improve the bill when it is referred to the Banking Committee, hopefully, this afternoon. I will be carefully examining the verbal and written submissions we receive at our hearings, and I will be actively seeking constructive ways and means to improve Bill C-8. I trust we can count on all senators to support this important and urgent process.

A few examples of the specific concerns which I respectfully suggest should be addressed in the committee are as follows: First, the government is either in favour of bank mergers or it is not. This legislation is unnecessarily and perhaps unfairly ambiguous on the subject, to say the least. Whereas, on the one hand, Bill C-8 appears to recognize mergers of banks and other financial institutions as legitimate business initiatives, on the other hand, the process for review appears to be so onerous and political that the result may actually inhibit mergers. The proposed regime falls far short of what is taking place today in the U.S. under the Gramm-Leach-Bliley Act, and in other jurisdictions that we consider to be our most friendly trading partners.

Second, Bill C-8 appears to not permit large bank and large insurance company mergers. Is this the correct policy for Canada? I do not know. It runs counter to current global trends, though, as evidenced by the Citicorp-Travelers deal in the U.S. and the Allianz-Dresdner deal in Germany. While I recognize that Senator Bolduc does not wish to follow the German model, we must ask these questions to see if we are on the right track.

Third, counter to the MacKay report recommendations, Bill C-8 does not provide new business powers for banks, such as the right to sell property and casualty and other insurance products such as annuities in their branches or to engage in auto leasing. The bill does, however, impose costly burdens on the banks in the name of consumer protection. Under MacKay, such social burdens were supposed to be a quid pro quo for the said new powers. Why has this balance been taken away? I think we deserve an answer.

Fourth, under Bill C-8, there is the potential for extensive legislation by regulation, something that I think is anathema to us all. This creates uncertainty in the financial services area, an area where certainty or clarity is critical. This should be questioned. In like manner, the bill provides for excessive ministerial discretion and involvement. This will inevitably lead to slower and more complicated approvals in a world where transactions are, perforce, happening at an increasingly more rapid pace. Here again, the proposed Canadian model appears to be totally out of sync with those of our trading partners. For this and many other reasons, it is particularly important that the Minister of Finance, the Honourable Paul Martin, appear before the Banking Committee to answer questions and provide such explanations as are clearly appropriate in the circumstances.

The Hon. the Speaker *pro tempore***:** Order!

The time for the Honourable Senator Angus to speak has expired.

[Senator Angus]

Senator Angus: I would ask for leave to continue.

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

Hon. Senators: Agreed.

Senator Cools: I hope we give Senator Kolber even more time, too.

Senator Angus: Honourable senators, fifth, Bill C-8 would seem to discourage foreign banks from getting more involved in retail business in Canada. Is this what we want? It is not what the various studies found. We need to question why foreign institutions wishing to do business in Canada would be subjected to restrictions they do not have in their own jurisdictions and harder restrictions than those they will be asked to compete with will be facing.

Sixth, provisions or mechanisms are contained in Bill C-8 which may well result in or perpetuate a non-level playing field as between regulated and unregulated institutions which, in the normal course, will be in competition with each other. Even under the proposed holding company structure, there appears to be a need for more flexible powers for regulated institutions in Canada competing with non-regulated ones, particularly non-Canadian non-regulated institutions. This, too, should be looked into.

Seventh, and finally, there is a clear need for a streamlining of the legislative process and procedures in areas where both OSFI, the Office of the Superintendent of Financial Institutions, and ministerial involvement and approval are required in a parallel way. As it is set up now, it is absolutely cumbersome. There needs to be a streamlining of this process.

Honourable senators, I hope these comments have sensitized you in some small way to the issues and important questions facing us with Bill C-8. Hopefully, the legislation will now go to committee and receive the attention and study it deserves.

In this spirit, I would expect that the Minister of Finance, the Honourable Paul Martin, will be among the very first witnesses to appear.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I take it that the Honourable Senator Angus, who is also a member of the Standing Senate Committee on Banking, Trade and Commerce, would like the Minister of Finance, Paul Martin, to appear before the Banking Committee when it examines this bill, which encompasses only 911 pages. I take note that the House of Commons received the bill in early February and it was adopted on April 2.

I would submit that, when the bill is referred to our Banking Committee, the committee be given sufficient time to examine this important draft legislation.

My first question to Senator Angus is whether he noticed that there are several references to not only the Minister of Finance in the bill, but also, for example, in clause 955 on page 343 of the bill, to the Deputy Minister of Finance who is given authorization. Clearly, the Minister of Finance would have to be available to the committee so that we may determine the authority that will be given to his deputy.

Does Senator Angus have any assurance from the chairman of the committee that the Minister of Finance will be called to testify?

Senator Angus: Honourable senators, we are told that the deputy minister will come to the first hearing, but that is the extent of the assurance we have been given.

Hon. David Tkachuk: Honourable senators, since I rarely see Senator Angus I will take this opportunity to ask a question. Honourable senators will no doubt note he takes as well as he gives.

I was present when Senator Kolber expressed his views on Bill C-38, which is now Bill C-8. I enjoyed that speech. The next morning, my office phoned Senator Kolber's office and requested a copy of the speech. Surprisingly, and to my dismay, no copies were available because Senator Kolber had given them all to the members of the media who had attended the meeting. I am now curious as to whether Senator Angus was fortunate enough to obtain a copy of that speech.

Senator Angus: I must admit that my good fortune ran out. It was on its way to me in a sealed envelope, I am told, when a messenger from the minister's office intercepted it, and I was told that all copies were then destroyed. This would have been on or about June 24, 2000.

VISITORS IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, before continuing the debate, I should draw the attention of honourable senators to the presence in the gallery of the recipients of the Governor General's Caring Canadian Award.

[*Translation*]

• (1430)

They received this award this morning from Her Excellency the Governor General during a ceremony held at Rideau Hall. The Governor General's Caring Canadian Award honours the unsung heroes of our country who so generously give of their time and energy to help others.

[*English*]

On behalf of all senators, I thank you for your caring work. I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

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. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, it is clear from the situation in which the opposition finds itself with this bill that the Minister of Finance must be available to the committee for its examination of the bill. I am reticent about taking the adjournment of the debate. Can the Leader of the Government in the Senate advise whether the Minister of Finance will appear before the committee?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I cannot guarantee that the Minister of Finance will be at a meeting that I understand has been called for tomorrow. I understand that the Deputy Minister of Finance will be there, as will the Parliamentary Secretary.

I must clarify something I said earlier today. Secretaries of State do not have parliamentary secretaries. Thus, Mr. Roy Cullen, the Parliamentary Secretary to the Minister of Finance, will attend.

I shall undertake personally to do everything I can to ensure as soon as possible in the study being undertaken by the Banking Committee the appearance of the Minister of Finance.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, perhaps between now and tomorrow the Leader of the Government could inform us whether the minister is available. Meanwhile, I wish to adjourn the debate.

On motion of Senator Lynch-Staunton, debate adjourned.

[*Translation*]

FEDERAL LAW-CIVIL LAW HARMONIZATION BILL, NO. 1

THIRD READING—MOTIONS 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, 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,
>
> 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",
>
> And on the motion in amendment of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Moore, that the Bill 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 Québec*;".

Hon. Pierre Claude Nolin: Honourable senators, I rise today to speak against the amendments moved by Senators Grafstein and Joyal and strongly support Bill S-4.

To start with, Senator Grafstein is proposing that the preamble of Bill S-4 be deleted. To convince us of the merit of his amendment, he said on April 4, and I quote:

> Based on the testimony before the committee, as amplified by the debate yesterday in this chamber, the preamble is unclear, unintelligible in parts, and inconsistent with the essence of the legislation.

In this connection, he voiced reservations on the validity of Parts 1, 2 and 5 of the preamble or declaration of principle contained in this legislation.

Senator Joyal goes on to propose an amendment aimed at eliminating any reference to the unique character of Quebec and to Quebec society from the wording of the second "whereas" in the preamble.

Honourable senators, I should like to start by reminding Senator Grafstein that not all those who came before the committee criticized the declaration in principle contained in the preamble to Bill S-4. On the contrary, the only ones opposed to the second "whereas" were Professors Max Nemni of Laval University and Michael Behiels of the University of Ottawa.

Senator Grafstein reminded us of the importance of each word in legislation. Being a lawyer myself by training, I cannot disagree with him on that. On April 4, he made the following statement:

> Because this legal bill, as it applies to federal legislation, will have a day-to-day impact on ordinary life affecting every resident and citizen of the province of Quebec. We have a higher duty to be satisfied that legal legislation, as opposed to policy legislation, is precise because every word counts.

Honourable senators, this principle also applies to the respective speeches by Senators Grafstein and Joyal. Every word counts. As a Senator for Quebec, I have a duty to ensure that the legislation we enact does not threaten the fundamental rights of Quebecers and their specific interests. The mandate of the Senate is to defend the interests of every region of Canada, and that is what I propose to do again today.

As I have said, Senator Grafstein used the terms "unclear" "unintelligible" and "inconsistent." These were translated as "incompatible," "inintelligible" and "manque de clarté."

In order to better grasp the reasoning used by my colleague in his speech following introduction of his amendment, I consulted the *Oxford English Dictionary* in order to find the precise meaning of each of these terms.

[*English*]

"Inconsistent" means not consistent, not agreeing in substance, spirit or form, not in accordance, incompatible, incongruous, self-contradictory.

"Unintelligible" means incapable of being understood.

"Unclear" means not clear or distinct, not easy to understand, obscure, uncertain.

[*Translation*]

Honourable senators, having said that, I will divide my speech into three parts. First, I will refute the arguments advanced by Senator Grafstein and show that the preamble to Bill S-4 is clear, intelligible and consistent with these provisions. I will also address the concerns raised by Senator Joyal when I examine the preamble's second "whereas."

Next, I will discuss the validity of the resolution passed by the Senate in December 1995 recognizing the people of Quebec as a distinct society. Finally, I will present a real-life example, which will show beyond all doubt the complementarity of federal law with the Civil Code of Quebec.

Before going any further, I wish to point out that throughout my speech I will be referring to the French-language version of Bill S-4. I would politely remind you that, under section 18 of the Constitution Act, 1982, the statutes of Canada are printed and published in French and in English, both language versions being equally authoritative.

As for the preamble, honourable senators, I believe that it is important to place the preamble's declaration of principle in the context of this historic legislation. Its primary purpose is to harmonize federal law with the civil law of Quebec and to amend several federal acts to ensure that each language version takes the common law and the civil law equally into account, nothing more.

I wish to congratulate the Minister of Justice for seizing the opportunity to take advantage of the tabling of this harmonization bill to set out and better explain the characteristics of Canadian bijuralism by means of the preamble.

The first whereas of the bill's preamble provides that:

> ...all Canadians are entitled to access to federal legislation in keeping with the common law and civil law traditions.

First, Senator Grafstein wonders about the meaning of the expression "access to federal legislation."

• (1440)

In his opinion, this expression is not clear and is meaningless. In order to better understand the meaning of that expression, we must look at the term "accès." In the context of Bill S-4, the *Petit Robert de la langue française* defines that term as the "possibilité de connaître, de participer." Contrary to what Senator Grafstein seems to think, there is no reference to the notion of physical access to the legislation. Rather, the first whereas in Bill S-4 is based on the principle that follows.

A number of federal acts currently include private law notions that are not clearly defined. In that context, the civil law is used in Quebec by the courts and by the public to interpret certain provisions of federal acts. We are alluding here to the concept of suppletive law. Later on in my speech, I will explain what it means. Since these acts do not take into account the new provisions found in the 1994 Quebec Civil Code, access to federal legislation is thus jeopardized for Quebecers.

The harmonization process proposed in Bill S-4 seeks to correct that situation. I must point out to Senator Grafstein that the harmonization of federal acts with the common law was achieved several years ago already.

Given that context, the first whereas is very important. As shown by the evidence given by Department of Justice officials during committee proceedings, the purpose of Bill S-4 was to guarantee to all Canadians equal access to a federal legislation that reflects both the civil law and common law traditions.

However, the Department expects additional measures will be taken following passage of this legislation, to better guarantee Quebecers' access to federal legislation by making reference to private law notions. Alain Bisson, General Counsel at the Civil Code section of the Department of Justice, told the committee that his department will propose the creation of a special Internet site that will provide, free of charge, a specialized glossary of Civil Code and common law terms. This glossary will be translated in both official languages and will include over 200 terms that will be harmonized through Bill S-4.

Honourable senators, there is no doubt that these initiatives will increase the knowledge and participation of Quebecers in Canadian bijuralism.

Second, Senator Grafstein says that the word "Canadians" in the first whereas of the preamble excludes people who do not have Canadian citizenship. This would thus be contrary to the Canadian Charter of Rights and Freedoms and, consequently, unconstitutional. According to my colleague's reasoning, a judge could say that, if someone is a Canadian national, he can be covered by the provisions of the Civil Code, but if he is a landed immigrant, a refugee or an Aboriginal, it is a totally different story.

I want to remind Senator Grafstein that Quebec's Civil Code, as well as the common law, are subject to the Canadian Charter of Rights and Freedoms. Even though the code applies only to Quebec, it is no exception to the rule. Furthermore, the preamble of Bill S-4 is no pioneer in terms of the Canadian citizenship concept, residency requirements or Aboriginal rights. It does not create any new right. When a judge or a lawyer has doubts about the interpretation of a word in legislation, what does he or she do? Like most people, he or she refers to the dictionary. Thus, the *Petit Robert* defines "Canadiens" as "du Canada, les habitants du Canada." So it would be very surprising if a judge were to refer only to the preamble of Bill S-4 to say that using the expression "all Canadians" makes the rest of the preamble and the legislative provisions unconstitutional.

In this regard, Jean-François Gaudreault-DesBiens, a professor at the Faculty of Law of McGill University, in Montreal, said, in his evidence before the committee:

> We also have to know that the preamble of a law has no normative scope and grants no new individual or collective right. In a way, it is a simple statement.

Let us move on now to the arguments raised by Senators Grafstein and Joyal in opposition to the text of the second whereas of the preamble. It reads as follows:

> ...the civil law tradition of the Province of Quebec, which finds its principal expression in the Civil Code of Quebec, reflects the unique character of Quebec society;

Honourable senators, it is not my intention to discuss the history of the tradition of civil law in Quebec or the concept of distinct society. A number of you have already done so in the past few weeks. Essentially, the arguments used by Senators Grafstein and Joyal to criticize the inclusion of the second whereas of the preamble may be summarized in three points. First, the use of the expressions "unique character" and "Quebec society" make this clause a threat to Canadian unity, since these words, powerful in the political arena, have been taken up by the Quebec sovereignist movement. Second, mere reference to Quebec's unique character arising from its Civil Code gives the impression that the Quebec tradition in civil law is superior to the tradition in the rest of Canada.

Third, the inclusion of this whereas spoils the federal government's harmonization objective of Bill S-4, because the legislator wants to introduce a highly political concept into the preamble of federal legislation. To do so is incompatible with the provisions of Bill S-4.

Honourable senators, before I respond to their arguments, I should like once again to define the terms that seem to pose a problem in the eyes of my two colleagues. According to the *Petit Robert*, the word "caractère" means "trait propre à une personne, à une chose, et qui permet de la distinguer d'une autre, élément propre qui permet de reconnaître, de juger." The word "unique" means, again according to the *Petit Robert*, "qui est le seul dans son espèce ou qui dans son espèce présente des caractères qu'aucun autre ne possède, qui n'a pas son semblable." The definition provided by the *Petit Robert* is much more subtle and in keeping with the objectives of Bill S-4 than that used yesterday by Senator Joyal.

In order to have a proper understanding of the use of these words in the second whereas in the preamble, it is important, I believe, to once again remind ourselves that they need to be interpreted within the context of the preamble and the provisions of the bill.

As the honourable senators are already aware, the 1994 Quebec Civil Code constitutes a structured legislative whole. Its role is to establish rules that can be adapted to the diversity of human and social situations and to integrate scientific or social developments.

Thus when the second whereas in the preamble states that the civil law tradition of the Province of Quebec finds its principal expression in the *Civil Code of Quebec*, it confirms the existence of a reality that was present long before 1994. In fact, as long ago as 1866, the Civil Code of Lower Canada became the legal standard in this province of the colonies of British North America as far as civil proceedings were concerned. Its provisions were in line with the provisions of the 1804 French Civil Code.

The Hon. the Speaker *pro tempore***:** I regret to advise that Senator Nolin's time has expired. Does he wish leave to continue?

Senator Nolin: Yes.

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

Hon. Senators: Agreed.

Senator Nolin: A year later, the coming into effect of subsection 92.13 of the Constitution Act, 1867, confirmed that property and civil rights were a provincial area of jurisdiction.

• (1450)

The point of including this provision was so that the Government of Quebec could fully enforce the provisions of the former Civil Code, the 1866 version, in its territory.

Since 1867, the practice of civil law in Quebec has continued to evolve. In 1955, the Government of Quebec of the day began a reform of the 1866 Civil Code, by passing the Loi sur la révision du Code civil. Subsequently, an administrative structure was gradually put in place to carry out this project. In 1980, after several years of consultations, the National Assembly of Quebec passed a reform of the book on family law. Later, a number of other amendments were made to the Civil Code books on persons, successions, property, and arbitration. Between 1986 and 1988, other projects to amend certain provisions of the code made clear the importance of reviewing the code in its entirety so that it would reflect the values of contemporary Quebec society.

Thus it was that, in 1990, Quebec's former justice minister, Gil Rémillard, introduced a bill to reform the Civil Code of Lower Canada. On December 18, 1991, after several months of consultations, the National Assembly passed the new *Civil Code of Quebec*. This code took effect in 1994. As Gil Rémillard said in the introduction to the book entitled *Commentaires du ministre, le Code civil du Québec, Un mouvement de société*:

> The purpose of the reform of the Civil Code was to convey, at the dawn of the 21st century, the profound changes that have taken place in Quebec society with respect to social and family relationship, values, knowledge, the economic context, and the new perspective of human relationships in society since the adoption in 1866 of the Civil Code of Lower Canada, and to bring the legislation into line with the present reality. But this reform does not abandon the previous legislation: it extends, improves and consolidates it.

Honourable senators, I believe that the long process of over 35 years undertaken by the Quebec government to reform the Civil Code clearly reflects the importance of that code in Quebec society.

In that sense, the use of the expression "unique character" makes reference to the civil law tradition that exists in Quebec and that is unique in Canada and in North America.

This specific situation is not only acknowledged in subsection 92.13 of the Constitution Act, 1867, but also in section 94 of the same act. That section provides that Parliament may adopt measures to ensure the uniformity of all the laws or parts of laws relating to property and civil rights in the other Canadian provinces.

Honourable senators, it is in this context that we must interpret the second whereas in the preamble of Bill S-4. Contrary to what Senator Joyal said yesterday, even though the expression "unique character" comes from the Calgary declaration, it does not seek to indirectly recognize Quebec's distinct character. The third paragraph of that declaration recognized that, in Canada's federal system, the unique character of Quebec society includes its French-speaking majority, its culture and its tradition of civil law. This is fundamental to the well-being of Canada.

If we read the second whereas carefully, we can see that there is absolutely no question of recognizing Quebec's unique character on the basis of its French speaking-majority or its culture. The only reference made in Bill S-4 is to the civil law tradition.

The Civil Code is only in effect in Quebec. The term "unique" does not give precedence to Quebec's civil law over the common law. Therefore, the preamble merely acknowledges the particular legal status of the Province of Quebec.

If my two colleagues are still not convinced that the second whereas in the preamble does not give precedence to Quebec's civil law tradition, they should know that clause 8 of Bill S-4 seeks to amend the Interpretation Act to state that, and I quote:

> Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada.

When she testified before the committee, on March 14, the Minister of Justice, Anne McLellan, agreed with that interpretation. She said, and I quote:

[*English*]

> What is it that is different and unique in terms of the Province of Quebec in relation to other jurisdictions? We have all been taught from our first law school class, wherever we went to law school, that one of the things that makes Quebec unique is its civil law tradition, primarily expressed in the code. Every law student in this country has been taught that for a long time.

[*Translation*]

Later on, the minister stated, and again I quote:

[*English*]

> However, I believe that the second paragraph of the preamble reflects that which is self-evident.

[*Translation*]

This explanation does not appear to have reassured Senator Joyal. According to him, "Quebec society" coupled with the concept of unique character poses a danger to Canadian unity. In order to convince us, he does not hesitate to refer to the terms "distinct society," "people" and "nation" in speaking of the second whereas of the preamble to Bill S-4. Yet these words appear nowhere in the statement of principle or in the law.

I agree with Senator Joyal in saying that the term "society" in the context that concerns us is not neutral. However, it is much less powerful than the word "people," which appears in the first paragraph of the resolution passed by the Senate in 1995 in recognition of Quebec's distinct society.

Let us see how the *Petit Robert* defines these two words. "Society" or "société" means:

[*French*]

> Ensemble des individus entre lesquels existent des rapports durables et organisés, le plus souvent établis en institution et garantis par des sanctions; milieu humain par rapport aux individus, ensemble des forces du milieu agissant sur les individus.

[*Translation*]

"People" or "peuple" means:

[*French*]

> Ensemble d'êtres humains vivant en société, habitant un territoire défini et ayant en commun un certain nombre de coutumes, d'institutions. Ensemble des personnes, des citoyens qui constituent une communauté.

[*Translation*]

Although at first glance these two terms appear more or less identical, it is clear that the meaning of the word "society" is much less politically charged than that of "people," since there is no reference to the concepts of territoriality, mores, institutions and communities.

It is therefore wrong to believe that the second whereas of the preamble extends beyond the framework of Bill S-4, as Senator Joyal is claiming. It does not involve a constitutional resolution intended to officially recognize the distinct nature of Quebec or the existence of a Quebec people. It does not open the door to including an interpretative clause on the distinct character of Quebec in the Constitution. The concept of "unique character" in the preamble of Bill S-4 gives no new powers to Quebec and, finally, does not recognize any right of this province to self-determination.

As Jean-François Gaudreault-DesBiens put it before the committee, and I quote:

> ... by applying normal rules of interpretation, a judge could not extend the meaning to the second whereas clause of the preamble to the point of seeing a recognition of any nation or people. In addition, this whereas clause must be placed in the context of the entire preamble. ... Essentially, we are talking about the harmonization of two legal traditions in the framework of the development of federal laws.

• (1500)

This statement was supported in committee by Yves de Montigny, a lawyer with the Department of Justice. In response to a question from Senator Joyal, he replied as follows:

[*English*]

> If a court were to refer to this preamble, as I said previously, they would refer to it as a whole and not only to this particular "whereas" clause. If we were to imply from this preamble anything more than a statement of fact, and if it concerned the status of Quebec as you have stated, then I think the court would pay attention to the fact that both the Meech Lake accord and the Charlottetown accord would not be enshrined in the Constitution. That is of much more relevance and weight than this preamble, which is innocuous in this respect.

[*Translation*]

Clause 13 of the Interpretation Act, I would remind honourable senators, stipulates that the preamble of an enactment is to be used only to interpret its provisions in case of ambiguity.

[Senator Nolin]

Honourable senators, the late lamented former Prime Minister of Canada, Pierre Elliott Trudeau, would probably not have been opposed to the second whereas in Bill S-4. Here is the reason why.

[*English*]

In *Meech Lake: Conflicting Views of the 1987 Constitutional Accord*, he wrote:

> Of course Quebec is a distinct society with its own language and its civil law, which it has a right under section 92.13... Nobody would probably even deny that; if you want, we can put it into a preamble somewhere.

[*Translation*]

I would remind honourable senators that Bill S-4 is not a bill that is constitutional in character, far from it! Honourable senators, it is clear from this statement that the Right Honourable Pierre Elliott Trudeau did not, in 1989, share the concerns of Senators Grafstein and Joyal on the recognition of Quebec as a distinct society in the preamble to the Canadian Constitution.

In *Ford*, the Supreme Court referred to Canadian duality and to unique character. Without necessarily using those terms, it recognized under section 1 of the Canadian Charter of Rights and Freedoms that, given the demographic situation and the French fact in North America, the predominant use of French in advertising was legitimate. Paragraph 73 of the judgment states as follows:

> ...the aim of the language policy underlying the Charter of the French Language was a serious and legitimate one. They indicate the concern about the survival of the French language and the perceived need for an adequate legislative response to the problem. Moreover, they —

— the Quebec documents —

> — indicate a rational connection between protecting the French language and assuring that the reality of Quebec society is communicated through the "visage linguistique."

Whether Senators Grafstein and Joyal like it or not, the highest court in the land did not hesitate to use the expression "Quebec society."

In 1996, the late Brian Dickson, former Chief Justice of the Supreme Court of Canada, took a stand on the concept of Quebec's distinct character. At a conference organized by the Military and Hospitaller Order of Saint Lazarus of Jerusalem, Grand Priory of Canada, in Winnipeg, he said:

> I should say right from the start that I am very comfortable with this concept. The courts are already interpreting the Charter and the Constitution with an eye to the distinctive role of Quebec in protecting and promoting its French-speaking character. In practice, therefore, enshrining formal recognition of the distinct character of Quebec in the Constitution would not be a great departure from what our courts are already doing.

In 1997 the second Red Book of the Liberal Party of Canada said that a Liberal government would work towards the constitutional recognition of the "distinctiveness of Quebec society, which includes a French-speaking majority, a unique culture, and a tradition of civil law."

Finally, in 1979, the report of the Task Force on Canadian Unity, better known as the Pepin-Robarts task force — one of whose members we are honoured to have among us — tackled the concept of the distinct character of Quebec. In connection with the equality of the provinces and the distinct status of Quebec, the report says, and I quote:

> Quebec's unique position as the province within which a linguistic minority within the country as a whole is in a majority...

Further on, the report's authors mention that recognizing the distinctiveness of this province within Canada is in no way inconsistent with our traditions, and I quote:

> Indeed, in the years since 1867 we have learned to live with the fact that Quebec has a considerable degree of what we think should be labelled a distinct status: in its civil law, in the recognition of French as an official language, and in the fact that three of the nine judges of the Supreme Court must come from that province.

As can be seen, the concepts of unique character, distinct character, distinct society and Quebec society are not used only by Quebec sovereignists. The preamble does not introduce any new concept. It does not rewrite history. I would like to remind honourable senators that the Leader of the Government in the Senate, Senator Carstairs, showed on April 4 that the preambles of the Official Languages Act and the Canadian Multiculturalism Act also contain fairly significant political statements.

I would like to conclude my remarks on this issue by answering Senator Joyal's argument that Canadians were never asked in a referendum to vote on the "unique character of Quebec society." As far as I know, all nine provinces that signed the Calgary declaration in 1997 carried out public consultations in the community. Then, their respective legislatures tabled or passed a resolution supporting the Calgary declaration. If I remember correctly, it is the duly elected representatives of the people who voted on this issue. In whose name are these elected representatives speaking when they rise in their respective Parliaments? Their electors', of course! Are we forgetting the principle of popular representation, which is the cornerstone of our Canadian parliamentary system? Canadians and Quebecers did not have the opportunity to vote in a referendum on a matter just as important, namely, the patriation of the Constitution in 1982. Initially, the Right Honourable Pierre Elliott Trudeau wanted to unilaterally go ahead with this patriation.

I would now like to deal with the problems raised by Senator Grafstein regarding the fifth whereas of the preamble to Bill S-4. It says, and I quote:

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

According to my colleague, this statement is incorrect, unintelligible, meaningless and deleterious. To support his statement he mentioned that the legislative counsels he had consulted could not understand the meaning of the fifth whereas of the bill.

• (1510)

Honourable senators, I should like to remind you that this whereas is the very acknowledgement of a basic principle in constitutional law. The concept of suppletive law — droit supplétif in French — is at the heart of Canadian bijuralism. It is a complex principle I will try to quickly explain within the next few minutes.

Again according to the *Petit Robert*, the word "supplétif" means "qui supplée, complète" — not that which replaces. Canada is a country where two systems of law coexist: public law and private law. Public law comes under federal jurisdiction. Better known as "civil law" in Quebec and "common law" in the rest of Canada, private law in Canada is supposed to be a provincial responsibility, as I said earlier.

In Quebec, those notions are traditionally included in the *Civil Code of Quebec*. The following jurisdictions are contained in the code: estates, management of real property, mortgages, securities, property right, consumer protection, civil incapacity and guardianship, wedding celebrations, contracts and civil responsibility, and regulation of professions and occupations, which are exclusively a jurisdiction of Quebec. In other provinces, the corresponding areas defined under common law are also under provincial jurisdiction.

However, since 1867, the federal Parliament has passed more than 300 bills and all or part of their clauses deal with matters of private law. Parliament passed these acts under its exclusive jurisdiction in areas which, if it had not been for the division of jurisdictions under sections 91, 92 and 93 of the Constitution Act, 1867, would have been under provincial jurisdiction.

As a matter of fact, the federal government has several exclusive jurisdictions in private law: bank and monetary operations, interest on money, bankruptcy and insolubility, maritime law, invention and discovery patents, copyright, marriage and divorce. Despite the fact that the federal government derogates to or adds some clauses to the civil law of each province, this does not mean that all those acts constitute an autonomous legal system.

The concept of suppletive law, in the fifth whereas of the preamble of the bill can be defined in the following way: Federal private law, in Quebec, is made of the private law as defined in an act of the Parliament of Canada and of the provincial civil law if it is necessary to use an external source to enforce a federal act. The Parliament of Canada can pass acts, in the area of private law, which will constitute a complete code and in that case it is not necessary to use an external source. Parliament may also pass acts of private law which, being incomplete, will necessitate an express or implicit use of civil law for their implementation. This occurs when the acts say nothing about the definition of an expression used in private law.

In sections 92 and 94 of the Constitution Act, 1867, the Fathers of Confederation enshrined the principle that a federal law based on an external private law source will not necessarily apply the same way across the country.

As Justice Décary of the Federal Court of Appeal said recently in *St-Hilaire*:

> Systematically associating any federal legislation with common law is to ignore the Constitution. Any judge responsible for administering a federal law in a matter regarding civil rights in Quebec must know that in general ... civil law is the suppletive law. This does not mean that efforts should not be made to harmonize the impact of federal laws across the country where possible in private law. It means that asymmetry is the rule under the Constitution. It means that any harmonization can be based on civil law as well as on common law.

This is the interpretation that must be accepted with regard to the fifth whereas in the preamble of Bill S-4. In this sense, it is clear and compatible with the provisions of the bill.

Honourable senators, in light of the arguments I have put forward today, the preamble of the bill is clear, intelligible and compatible with the provisions of this legislation.

Now I will talk about the Senate resolution of 1995. It was mentioned throughout debate on Bill S-4, and I thought it would be appropriate to set the record straight. I should like to discuss briefly the issue of the validity of the Senate resolution, on which the Department of Justice based itself to justify the presence of the second whereas in the preamble of Bill S-4.

If you are really concerned about certain words in Bill S-4, listen to what was voted on in 1995. The motion stated, and I quote:

[Senator Nolin]

> Whereas the People —
>
> — not the citizens, the People —
>
> — of Quebec have expressed the desire for recognition of Quebec's distinct society, the Senate recognize that Quebec is a distinct society within Canada; the Senate recognize that Quebec's distinct society includes its French-speaking majority, unique culture and civil law tradition; the Senate undertake to be guided by this reality; the Senate encourage all components of the legislative and executive branches of government to take note of this recognition and be guided in their conduct accordingly.

This is exactly what the Minister of Justice did. The text of this motion was adopted, unanimously by the way, by the Senate on December 14, 1995. The motion was adopted following a solemn commitment made by the Right Honourable Jean Chrétien during the last week of the referendum campaign, in October 1995. On three occasions, namely on October 24 in Verdun — and Senator Joyal was with me on all three occasions — on October 25 during a message addressed to the nation, and on October 27, at a huge rally of Canadians and Quebecers in Montreal to support the no side, the Prime Minister recognized that Quebecers form a distinct society within Canada.

On November 29, 1995, the Prime Minister tabled in the other place a motion almost identical to the one that I read. He said, and I quote:

> Less than a month after the referendum, the government is keeping its word and fulfilling its commitments.

This promise had been made when all the federalist forces in Quebec were desperately trying to win on October 30, 1995. I will not dwell on that aspect of the issue. I simply wanted to remind my two colleagues of the context in which the motion was brought forward by their leader.

Honourable senators, in the speech that he made on April 4, Senator Grafstein said, and I quote:

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

• (1520)

Thus the government cannot use the text of this resolution to support a defence of the validity of the second whereas in the bill, because it cannot be binding on future Parliaments. The same day, Senator Cools said that the resolution would die on the Order Paper with the dissolution of the Thirty-fifth Parliament. That is another significant statement.

Honourable senators, I am totally in agreement with Senator Grafstein that the 1995 resolution constitutes an opinion expressed at the time it was adopted. I have, however, consulted two reference works: the 6th edition of *Beauchesne's Parliamentary Rules & Forms* and *Erskine May's Treatise on The Laws, Privileges, Proceedings and Usage of Parliament.* Neither of these authorities on Canadian parliamentary procedure states that a resolution passed by the Senate or the other place disappears at the end of a parliamentary session.

In a question to Senator Grafstein, Senator Murray indicated that Prime Minister Jean Chrétien had used a resolution that had been passed by a previous Parliament to block Conrad Black's appointment to the House of Lords in the Westminster Parliament. My colleague was unable to apply the principles he cites from Dreidger to respond to this most interesting question. We still await his response. Until proved otherwise, the resolution we have passed contained no date indicating when it would cease to apply to the work of this house.

If, in the text of this resolution, we had included a date, then the resolution would have disappeared on that date. No date was given.

As well, the Senate as a whole has never voiced an opinion other than the one adopted on December 14, 1995. We could have decided to do so, but we did not. As the text of the resolution is still in existence in the *Debates of the Senate* and the *Debates of the House of Commons*, I believe it will continue to guide the work of the federal Parliament.

In this sense, the Minister of Justice could thus refer to the text of the resolution as justification for the wording of the second whereas clause in the preamble to Bill S-4.

As for the argument used by Senator Cools, the resolution did not die on the Order Paper following dissolution of the Thirty-fifth Parliament in the spring of 1997. The reason is very simple. From the time of its passage on December 14, 1995, the text of this resolution no longer appeared in the Order Paper of the Senate. This is not hard to understand.

I would conclude my remarks by offering a practical demonstration of the operation of Canadian bijuralism and of the application of the concept of suppletive law. In order to do so, I will refer to the decision by the Federal Court of Appeal of March 19, 2001, in *St-Hilaire*. This case involved Constance St-Hilaire versus the Attorney General of Canada and the Treasury Board.

The facts are as follows. On February 3, 1995, the accused stabbed her husband, Mr. Morin, with a knife in the course of a violent domestic quarrel. He died several hours later. Charged with first degree murder, Constance St-Hilaire pleaded guilty to a reduced charge of manslaughter and was sentenced to jail for two years less one day. Mr. Morin — and this is where the federal Parliament comes in — was a member of the public service of Canada, having worked for the Coast Guard of Canada. He had contributed for over 25 years to the pension plan provided under the Public Service Superannuation Act and to the death benefits plan also provided by the law.

Mrs. St-Hilaire applied to the Treasury Board to get the benefits she was entitled to under the law, on the one hand as the surviving spouse and, on the other, as heir to the property of Mr. Morin. The federal department turned down her request citing a rule of common law which provides that no one may benefit from a crime. This refers to the notion of unworthiness by operation of law. As a result, Mrs. St-Hilaire appealed the decision to the Federal Court, Trial Division, claiming that the provisions of the *Civil Code of Quebec* should apply in her case and not those of the common law regarding unworthiness by operation of law and inheritance. Under article 620 of the code, she could not be declared unworthy since she had not been convicted of first degree murder. Justice Blais of the Federal Court, Trial Division, agreed with Mrs. St-Hilaire, stating that the applicable law in this case was Quebec's civil law and not the common law, since there was nothing in the law about the notion of unworthiness by operation of law. Therefore, under the Quebec law of succession, a person is unworthy to inherit by operation of law only if there was an intent to commit the alleged crime. Therefore, article 620 of the code did not apply since the offence of manslaughter does not come under it.

Treasury Board appealed the case to the Federal Court of Appeal, arguing as follows: The case at issue is a matter of public law exclusively and more specifically of administrative law, that common law is the source of federal public law and applies to the federal government even within Quebec territory, that under common law there is a rule of public order, which provides that no one may benefit from a crime and that applies to the crime of manslaughter, that Quebec private law cannot set this rule aside in view of federal public law and, finally, that, in any case, the crime of manslaughter results in the unworthiness by operation of law under Quebec civil law.

The Court of Appeal, citing bijuralism and the concept of suppletive law, rejected the arguments brought forward by Treasury Board and maintained the ruling by the trial court. The Department of Justice cannot always have its way! Justice Décary mentioned in paragraph 35 of his comments, and I quote:

> The Quebec plaintiff, involved in litigation regarding her civil rights under a federal act which is silent in this regard, can expect to have her civil rights defined by Quebec civil law even though the opposing party is the federal government.

In his remarks, Mr. Justice Létourneau pointed out that the Federal Court of Appeal:

> ...has frequently recognized the suppletive nature of civil law with respect to federal law.

Please note that "supplétif" is the same word used in the preamble. He goes on as follows:

> The Court has tried, insofar as possible, to harmonize the impact of federal law in order to avoid disparities which would be a source of injustice, while recognizing a right to a different resolution when harmonization is impossible.

This is precisely what the court did in *St-Hilaire*.

Therefore, in conclusion, the coexistence of two systems of law in Canada, while very complex, is the foundation for Canadian bijuralism, which is held up as a model by several other countries in a similar situation. I believe that the harmonization process proposed in Bill S-4 will enhance our country's international prestige.

Similarly, I believe that the declaration of principle in the preamble to the proposed legislation will give Quebecers, Canadians and foreign observers greater insight into the importance of the two great Canadian private law traditions to our federal law and to the operation of our legal system. The preamble to Bill S-4 describes this reality so well that Mr. Justice Décary took care to cite it in full in his comments in order to better explain the concept of harmonizing federal law with the Civil Code of Quebec.

• (1530)

For all the reasons I have mentioned, I urge honourable senators to reject the amendments moved by Senators Grafstein and Joyal and to give their full support to Bill S-4. I am now available to answer your questions.

Hon. Serge Joyal: Honourable senators, I simply wish to point out that the honourable senator's remarks imply that, on December 14, 1995, I voted in favour of the resolution that Quebec should form a distinct society. I would point out to honourable senators that I was sworn in as a member of this chamber on December 27, 1998. I therefore did not vote in favour of this resolution.

Senator Nolin: Honourable senators, I did not mention Senator Joyal. This decision was taken by the Senate of that time. That was what my text insinuated and that is what parliamentary law tells us as well.

[*English*]

Hon. Jerahmiel S. Grafstein: Honourable senators, I made a brief speech against that resolution here. The speech was very simple. It was three lines long. I said that Canada is a distinct society and that all the rest is commentary. Those comments are in the *Debates of the Senate.*

Hon. Lowell Murray: Honourable senators, I have a brief intervention to make, but I will not detain the Senate now. I understand that we are operating under an understanding, if not a house order, that the Senate should adjourn at 3:30 today. I will, therefore, make my fairly brief observations tomorrow, if I may propose the adjournment of the debate now.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, it is true that the Senate usually adjourns at 3:30 p.m. on Wednesdays. However, since several senators wish to take part in today's debate, and given that tomorrow the debate on Bill S-4 will have to be completed by 3:15 p.m., I would propose that today's sitting be extended, so that everyone can be heard.

The Hon. the Speaker *pro tempore***:** Are there other senators who wish to address this issue?

[*English*]

Hon. Eymard G. Corbin: Honourable senators, with leave, may I ask a question of clarification to the Deputy Leader of the Government? I understand that the ideal adjournment on Wednesday is at 3:30 p.m. Nevertheless, I have a committee to attend, and other committees have scheduled meetings at 3:30 p.m. today on the understanding that there would be an adjournment. Does the Foreign Affairs Committee have leave to sit at 3:30 p.m. or does it not?

Senator Robichaud: Honourable senators, no motion was adopted to adjourn at 3:30 p.m. today. There was a motion that the sitting would start at 1:30 p.m. today.

As I said, because of the importance of the question before us, I want to ensure that those who want to speak have an occasion today because tomorrow will also be a short day. Tomorrow, all questions must be disposed of by 3:15 p.m.

I would hope that we could continue for perhaps 15 minutes or 20 minutes because only a few senators today are ready to speak. Committees could then hold their meetings. This discussion is important, and we should continue with debate.

Hon. Roch Bolduc: Honourable senators, if we do not have the time to speak today, we might be squeezed for time tomorrow. Is it possible to skip Question Period tomorrow in order that we would have adequate time to speak?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, one would find on this side of the house agreement to put off that house order of time allocation to next week if it were the unanimous consent of the house. We then would have sufficient time.

Senator Grafstein: Honourable senators, Senator Nolin raised a number of issues in his speech that obviously were directed to myself, as well as others. I have one question for him. Perhaps I could ask him that question, and then I would try to respond to him tomorrow in the attenuated time that has been made available to us to deal with this important issue.

The Hon. the Speaker *pro tempore***:** Is leave granted to Senator Grafstein to ask his question of Senator Nolin?

Hon. Senators: Agreed.

Senator Grafstein: Senator Nolin, you referenced the phrase "unique society" in your speech. Do you agree that this phrase could be used differently by separatists or sovereignists in Quebec than it could be by federalists in Quebec?

[*Translation*]

Senator Nolin: Honourable senators, each individual can use the words that he wants to express an idea, but that particular expression would be interpreted the same way by all Quebecers. There is no question about that.

Senator Joyal: May I ask Senator Nolin, if he agrees, to please distribute the full text of the article by the Right Honourable Pierre Elliott Trudeau, which he quoted from, specifically pages 266 and 269 in the September 28, 1992 edition of *Maclean's*, in which Mr. Trudeau is clearly opposed to including the concept of distinct society in a preamble? Could the Honourable Senator Nolin, who quoted an excerpt of that article, distribute the full article, so that all senators can decide for themselves what the Right Honourable Pierre Elliott Trudeau thought of this idea?

Senator Nolin: Honourable senators, I have no objection to tabling the texts that I quoted in my speech. If the Right Honourable Pierre Elliott Trudeau contradicted himself in another article, you can take the initiative of distributing the full document yourself. I will not do it. I will table the article in which he said he was not opposed to having the terms "distinct society" included in a preamble. He suggested that himself.

He opposed an interpretation clause, such as the one included in the Meech Lake Accord. Senator Beaudoin could confirm this. The Right Honourable Pierre Elliott Trudeau did not oppose a preamble for one simple reason: a preamble is a statement of principle, whereas in the Meech Lake Accord an interpretation clause was needed, and it would have saved us a lot of problems elsewhere, but that is another matter. I have no objection to tabling the text I quoted, but not the article. If it is contradicted, that is another matter.

Senator Joyal: Honourable senators, with Senator Nolin's indulgence, I would say, I will myself distribute the article by the Right Honourable Pierre Elliott Trudeau. Honourable senators will have the opportunity as well to draw their own conclusions on the coherence of the political thought of the Right Honourable Pierre Elliott Trudeau.

[*English*]

• (1540)

Hon. Wilfred P. Moore: Honourable senators, I have listened carefully to the comments made by my colleagues both in committee and in this chamber. No senator has a problem with the bill per se, and all admire this exemplary juridical harmonization exercise. However, the preamble to Bill S-4 has numerous inappropriate phrases. Other senators have spoken in detail about these shortcomings.

Honourable senators, it is clear from those submissions and from my own experience as a barrister that this preamble leaves much to be desired. Further, it is also clear from the evidence given by Department of Justice officials at committee that this preamble is not necessary for the bill and that its removal will have no impact on the bill.

In respect of the words in the last phrase of the second recital and the concept of the "unique character" of a provincial society, I believe that the societies of all provinces and territories are of unique character. A society cannot be unique in relation to another, in fact, without that other being unique in relation to the first.

I think of my own beloved Nova Scotia, with its French-speaking and Gaelic-speaking communities, its music and its Maritime culture, it being the place where the first seeds of Canada were sown by Samuel de Champlain, it being the seat of the first responsible government in Canada, and it being the birthplace of the freedom of the press in Canada. To say that Nova Scotia society is of unique character cannot be denied.

Honourable senators, I understand the comments and concerns of Senators Grafstein and Joyal and the debate that this imprecise preamble has led us into. I share their frustrations herein. In view of the fact that this preamble is wanting and in view of the fact that this preamble is not necessary, I shall support the amendments tabled by my colleagues. I urge other senators to do so.

It is my preference, honourable senators, that the amendment of Senator Grafstein be adopted by this chamber. However, in considering the possibility that his amendment be not adopted, I wish to table an amendment to the fourth recital of the preamble. My amendment is simply an attempt to more clearly set out the benefit that should come to Canadians by virtue of the harmonization achieved in this bill. I believe that the wording in my amendment is more appropriate than the wording in the draft bill. I commend this amendment to honourable senators and ask for your support of it.

MOTION IN AMENDMENT

Hon. Wilfred P. Moore: Honourable senators, I move, seconded by Senator Joyal:

> 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 15 and 16 with the following:
>
> "two major legal traditions gives Canadians enhanced opportunities worldwide and facilitates ex-".

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

Hon. Marcel Prud'homme: Honourable senators, could Senator Moore explain to me why it is that we dilute a reality and create confusion when we talk about the uniqueness of each and every one of us? Tomorrow I will speak to my colleagues about their individual uniqueness.

Honourable senators, I could go from bench to bench in this place and talk to Senator Finestone, who is from Quebec, about her uniqueness. I could speak to Senator Robichaud about the Acadian people. I could speak to Senators Austin and Grafstein about their uniqueness. I could speak to Senator Chalifoux, who is a proud member of the Métis society. I could speak to Senator Watt about his uniqueness. I could talk to Senators Cools and Oliver about their uniqueness.

Honourable senators, please help me to understand. The phrase "unique character" only serves to create more difficulties for federalists, of whom I am one. I am absolutely sure, without the shadow of a doubt, that I am a "Canadien français du Québec." In this sense, I feel unique. If only people could address this issue without trying to dilute it.

The Hon. the Speaker *pro tempore***:** Does the honourable senator have a question?

Senator Prud'homme: Honourable senators, I asked why there is an insistence to always dilute what has been an absolute reality since 1867 — the uniqueness of society. Why is it that everyone wants to dilute the reality of uniqueness? Why is it so difficult to accept the fact that without it, Canada would not be the country that we know?

Senator Moore is unique in his own way in that he is from Nova Scotia. However, in all my 38 years in Parliament, I have never heard anyone from Nova Scotia talk about their uniqueness, while the other debate has been happening since 1774. Please help me to understand this sudden reflection on the issue of uniqueness.

Senator Moore: Honourable senators, Senator Prud'homme has answered his own question. One might ask the honourable senator the same question: Why does he want to dilute the other realities of the other unique situations throughout the country? The reality begs the question.

Hon. Lorna Milne: Honourable senators, this morning I experienced a bit of chagrin when I was referred to by a senator from Quebec as the "quintessential WASP." I was somewhat reassured when Senator Prud'homme omitted me from his list of unique characters. I consider it a rather pejorative term, but as a WASP from Ontario, I may provide a different emphasis on some of the issues that have been discussed.

In this chamber and in committee, I heard the statement repeated over and over again that words matter. I agree that words do indeed matter — they are of the utmost importance. Bill S-4 is all about the harmonization of the words in federal statutes so that the English-language version of the civil law can apply in the province of Quebec and the French-language version of the common law can apply equally and equitably in the rest of Canada. The only source of contention in this bill is the debate over the preamble.

• (1600)

Honourable senators, this is a government bill. I believe that the Government of Canada has a perfect right, and indeed an obligation, to spell out its intentions in a preamble, particularly in a bill such as this one, which is the first in a series of bills on this important matter. This preamble is perfectly in order and it is a clear and proper statement of intention. Originally, it was nothing more and nothing less. However, the extensive debate on this matter seems to have escalated it into something more, and therefore, I wish to return to the importance of words.

In 1995, as has been pointed out, the Senate passed a resolution that stated, among other things, the following:

> (2) the Senate recognize that Quebec's distinct society includes its French-speaking majority, unique culture and civil law tradition;
>
> (3) the Senate undertake to be guided by this reality;
>
> (4) the Senate encourage all components of the legislative and executive branches of government to take note of this recognition and be guided in their conduct accordingly.

That motion passed unanimously, with the support of those honourable senators who were here at that time. For those senators who have arrived in this place since then, it may be useful to recap why that motion passed with such resounding support. Senator Nolin has already referred to this matter.

The referendum held in the province of Quebec had just narrowly been defeated. Those who live outside Quebec had been forced to stand on the sidelines while our country came excruciatingly close to self-destruction. This motion was put forward by Prime Minister Chrétien as part of the federal effort to make certain that such a narrow escape from disaster would never happen again.

This 1995 motion was the Senate's heartfelt response to the federalist supporters in the province of Quebec. Senators in this place voted for the motion and gave, I believe, our solemn word to the people of Quebec that we undertook to be guided by the reality that the people of Quebec do indeed form a distinct and unique culture within this country.

Those who claim that a motion dies with the Parliament that passed it may be absolutely, legalistically speaking, correct. Does any honourable senator dispute that? Senator Nolin says that that is not the correct legal position. Does the general public anywhere in Canada think that a government's word is really only good until the next election? Certainly not. In no circumstances would a motion like the one that we supported so strongly in 1995 impose upon us only a temporary and time-limited obligation. I for one do not feel that it does.

I believe that honourable senators in this place gave their solemn word to Quebecers in 1995 that they would be guided in the future by that motion. I believe senators undertook both a moral and an emotional obligation to Canadians who live in that unique province. I believe that words do matter. I believe that my word matters, and I believe that I gave my word to the people of Quebec in 1995. I do not intend to go back on that word and I urge this Senate to stand by its word.

This is a long overdue and carefully crafted bill, with an appropriate and entirely proper preamble. I will not support any amendment that removes the preamble or changes the second "whereas" in the preamble to the bill. I urge honourable senators to join me in rededicating ourselves to the principle so clearly laid out in that second paragraph.

> Whereas the civil law tradition of the Province of Quebec, which finds its principal expression in the *Civil Code of Quebec*, reflects the unique character of Quebec society;

Hon. Joan Fraser: Honourable senators, I believe that I am the senator from Quebec to whom Senator Milne referred at the outset of her remarks. For the record, I would say that being quite Protestant and anglophone myself, I could hardly consider it an insult to call someone a WASP.

What I was saying to Senator Milne, honourable senators, was in the context of a brief conversation we had when she told me what she was about to say this afternoon in the Senate. I was deeply moved by it and I said, speaking as a Quebecer, that I thought it was simply wonderful that someone with such strong roots in Ontario, with such long political experience and background in Ontario, should speak so nobly in this cause.

Hon. Jerahmiel S. Grafstein: Honourable senators, I wish to ask the Chairman of the Constitutional and Legal Affairs Committee a simple question. Is she saying that a legalistic argument based on a legal statute is irrelevant to the debate in this Senate?

The Hon. the Speaker *pro tempore***:** Is the honourable senator taking questions?

Senator Milne: No.

Hon. Charlie Watt: Honourable senators, I, too, should like to say a few words in the debate on this important bill that is about to be passed. I, too, at times, feel that we talk about things that further complicate matters rather than making them simple. At times I disagree with Senator Prud'homme, but this time I agree with him.

Honourable senators, I will refer to the statement made by the National Chief of the Assembly of First Nations, Matthew Coon Come, which I believe he made in December 5, 1995 in a meeting of the Constitutional and Legal Affairs Committee. The potential adverse impact of the bill on aboriginal people, such as the Cree, Inuit and the other aboriginal peoples, in the province of Quebec is uncertain. I say that because Bill C-99 on the provincial government side has been formulated and passed, and it also described the people of Quebec as one people. As we all know, we are not one people. We are different nations within the province of Quebec. Indeed, the government of René Lévesque passed a resolution stating that there were 11 aboriginal nations in the province of Quebec.

Honourable senators, I wish to refer to Matthew Coon Come, and a brief comment he made on the distinct society resolution. He said:

> We believe that the distinct society resolution, as drafted, is seriously imbalanced. Recognition of a Quebec distinct society, if it is deemed desirable, should have been done in a balanced manner, at least to the extent that it was accomplished in the Charlottetown accord.
>
> Since it is unknown exactly what elements, other than the French speaking majority, unique culture and civil law traditions, are included in the distinct society notion, it is imperative that such recognition also refer to other balancing and affirmative elements pertaining to aboriginal people. The present motion does not even contain a non-derogation clause in favour of aboriginal people. In this sense, the Prime Minister's motion breaks traditions with both distinct society provisions in the Meech Lake and Charlottetown accords.

• (1600)

It must be noted that this basic requirement of non-derogation was adopted and approved by all governments in both of those constitutional rounds. The resolution states that:

> The people of Quebec have expressed the desire for recognition of Quebec's distinct society.

First, it should be made very clear in the resolution who exactly constitutes the people of Quebec. The Crees and the other Aboriginal people in Quebec have repeatedly stated that we are each distinct peoples, and not part of a single Quebec people. Even the Lévesque government in its own resolution recognized 11 aboriginal First Nations in Quebec. It is time now for Canada to act.

If the Government of Canada intends in the content of this resolution to include the Aboriginal people in its description of a single Quebec people, it would be a forcible inclusion since it lacks our consent. It would also violate our rights to self-identification that the United Nations is in the process of recognizing in explicit terms.

Moreover, if we and other Aboriginal peoples are included in the phrase "people of Quebec," then the preamble to the Prime Minister's motion misrepresents us since we have always said that we are the Eeyou, the Crees, our own people, and have never opposed the recognition of Quebec's distinct society.

On the other hand, if Aboriginal peoples are distinct from the people of Quebec, as is obvious from the text of section 35 of the Constitution Act, 1982, then the Prime Minister's motion should make this clear. In addition, the motion should include affirmative language requiring Parliament to recognize and respect in its conduct the fiduciary responsibility in favour of Aboriginal peoples.

As with Bill C-110, we feel that the proposed distinct society resolution fails to adequately take the very real secessionist context into account. It is beyond the Prime Minister's commitment during the Quebec referendum to recognize the people of Quebec in any parliamentary instrument. This is a different issue from the recognition of any distinct society in Quebec and could have extremely serious consequences in a secessionist scenario.

I should like to clarify this important issue. In the absence of adding further clarification in the motion itself, it is likely that the separatists will claim that Canada is recognizing that there is a single people of Quebec. This will almost certainly lead to the assertion by the separatists that everyone is thus bound by the results of a single referendum on the issue of secession. My people absolutely deny the validity of any such claim.

[Senator Watt]

Honourable senators, I am glad to have had this opportunity to place these words on the record.

Hon. Lowell Murray: Honourable senators, I am sure the Leader of the Government, or someone on behalf of the government, will take the opportunity before the debate ends to make a brief formal reply to the questions that have been raised by our friend, Senator Watt. I should not, therefore, try to anticipate that.

The preamble that we are talking about simply affirms that the Quebec civil law tradition is one of the elements constituting the unique character of Quebec society. It does not go further than that. In any case, I will leave that to a spokesman for the government to make a more considered reply.

If Senator Moore is correct, therefore, that each of our provinces and territories is in its own way distinct, then whatever is wrong with stating in the preamble to this bill that Quebec civil law tradition is one of the elements that makes Quebec society distinct? I leave that question with you for your careful reflection overnight and I will propose the adjournment of the debate and resume tomorrow.

On motion of Senator Murray, debate adjourned.

FINANCIAL CONSUMER AGENCY OF CANADA BILL

SECOND READING

Leave having been given to revert to Order No. 4:

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. Sharon Carstairs (Leader of the Government): Honourable senators, at the conclusion of this debate this afternoon, there was a question as to whether the Minister of Finance would be prepared to appear before the committee. The answer that I have been able to obtain is the following: Mr. Peterson has handled this bill all the way through the House of Commons. As you know, Mr. Peterson is presently ill. Thus, the commitment is that if Mr. Peterson is not sufficiently well during the hearing process of the Banking Committee to be able to appear before the committee, then the Honourable Mr. Martin will appear. However, the first choice will be Mr. Peterson, if he is able.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to underscore the point that because the text of the bill refers in many parts to powers that will be granted to the Minister of Finance and to the Deputy Minister of Finance, because of the statements that we have heard in debate so far, and notwithstanding that Mr. Peterson may be the sponsoring minister, there is a desire that the Minister of Finance be heard.

If efforts could be made by the Leader of the Government in the Senate to urge her colleague the Minister of Finance to make himself available at an opportune time while the committee is deliberating on that legislation, we would agree that the bill could be referred to committee.

Hon. Roch Bolduc: Honourable senators, may I point out to the Leader of the Government in the Senate that we are talking here about the shareholding system of the banking industry.

As you know, we have established by legislation the Canada Pension Fund Corporation, which is a major financial institution. In a few years, we will be talking about hundreds of billions of dollars in the hands of those people and they will invest the money in various corporations in Canada and throughout the world, including the banking industry of Canada. Thus, the Minister of Finance is deeply involved and I have some questions for him. I would like to have the minister, if possible.

Senator Carstairs: As I indicated earlier, I will continue to make every effort in that regard.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, the aim of this bill is such — and I know the minister's powers of persuasion — that everything must be done to get the Minister of Finance to appear himself. Scheduling Mr. Peterson to appear could cause uncertainty. In order to avoid problems, we should perhaps insist that the minister ask the Minister of Finance directly to appear. I think there is considerable interest in this and I believe that Mr. Martin would be interested in appearing. All of this would take place without waiting to see how Mr. Peterson, to whom we wish a speedy recovery, is doing.

[*English*]

The Hon. the Speaker *pro tempore***:** Is the house ready for the question?

Hon. Senators: Yes.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, on Wednesdays, we usually try to finish the business of the Senate earlier. Given the lateness of the hour, I ask that all items in the Orders of the Day and on the Order Paper stand in their present order until the next sitting of the Senate.

The Senate adjourned until Thursday, April 26, 2001, at 1:30 p.m.

CONTENTS

Wednesday, April 25, 2001

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