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(HANSARD)

**Wednesday, September 17, 2003**



THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Wednesday, September 17, 2003

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

Prayers.

### SENATORS' STATEMENTS

#### ACADIE

##### FOUR-HUNDREDTH ANNIVERSARY OF ACADIAN SETTLEMENT

**Hon. Brenda M. Robertson:** Honourable senators, in May of 1604, Samuel de Champlain, Pierre Dugua, Sieur de Mons, and several other representatives of King Henry IV of France explored the shores of eastern Canada and, in June of that year, established Ste. Croix Island as the main settlement of the new colony of "Acadie." In 2004, Acadie will celebrate 400 years of history, 400 years of contribution by francophones to the development, diversity and vitality of North America, and to the splendid mosaic that is this great country of Canada. This will be a moment in our nation's history that all Canadians should take pride in, the anniversary of the birth of the Acadian people and the roots of modern Canada.

Next year, honourable senators, Atlantic Canada will be very much on the international stage as tens of thousands of people from around the world will gather in our four Eastern provinces to celebrate not only this historic anniversary, but also the Congrè Mondial Acadien — the World Congress of the Acadians — that will also be celebrating at that time. Across all four Atlantic provinces preparations are well underway for events and celebrations, festivals and family reunions, historic re-enactments and cultural activities.

In conjunction with the four-hundredth anniversary preparations, the Société Nationale de l'Acadie has unanimously passed a resolution at their annual general assembly asking the federal government to officially declare 2004 "l'Année de l'Acadie."

As a New Brunswicker and a Canadian, I am proud of the enormous contribution of the Acadian people to the rich history and culture of my home province and our country. I heartily endorse this request and encourage my colleagues in the Senate to do the same by sending the government a strong message of support for this request.

[Translation]

#### THE HONOURABLE HERMÉNÉGILDE CHIASSON

##### NEW BRUNSWICK—CONGRATULATIONS ON APPOINTMENT AS LIEUTENANT-GOVERNOR

**Hon. Viola Léger:** Honourable senators, I am extremely pleased to pay tribute to the new Lieutenant-Governor of New Brunswick, the Honourable Herménégilde Chiasson. This great poet, painter, writer, playwright, film-maker and teacher,

this great Acadian, has always been able to trigger very strong emotions, both good and bad, in each one of us.

His multidisciplinary creations have always given us food for thought. That is the role of a true artist: to provide a vision of the future.

In his inaugural address on August 26, he was true to his role as an artist inviting us to reflect. He spoke as follows:

Societies, like individuals, need dreams and ideas if they are to be able to move toward the future. It is artists and thinkers who give substance to those dreams, those ideas. Not unlike the First Nations shamans, they are our bridge between the world of the spiritual and the world of the senses, our guides to beauty itself. Our entire lives are a quest for that beauty, which lies within each one of us. All artistic endeavours are therefore a form of prayer, an expression of faith in the ability of language to resolve our differences and establish a deep communion.

I totally agree with my friend Hermé's views. Culture is a vessel for both the history of the world and our own personal history. Not only the production of works of art, but also the way we live together, the way we express ourselves, the way we do things — these are all part of the legacy we will leave for future generations, a legacy we owe to them.

[English]

Herménégilde Chiasson has always been very close to the Aboriginal people in New Brunswick and he has just lately completed a film called *Those Who Wait*. Again, I would like to quote his words concerning First Nations people. He said:

I also want to make myself available to as many groups as my schedule will allow, but especially to First Nations people, whose culture, for many of us, is still a mystery — a secret. I want to try to use my Office to encourage and incite them to cross that cultural barrier and to share with us the language of their soul, that voice which for me is still the most profound and the most intense voice of this land.

[Translation]

Herménégilde Chiasson, this multidisciplinary creative genius, will now put his creativity to work in his role as Lieutenant-Governor of New Brunswick. He will continue to paint, to write, to be the poet who writes our future.

Thank you, Hermé, and good luck.

• (1340)

## OFFICIAL LANGUAGES

### FEDERAL COURT DECISION ON CASE BROUGHT BY FORUM OF MAYORS OF ACADIAN PENINSULA

**Hon. Gérald-A. Beaudoin:** Honourable senators, I wish to add a few words to the statement made yesterday by my colleague, the Honourable Jean-Robert Gauthier, concerning section 41 of the Official Languages Act.

I welcome the September 8, 2003 decision by Federal Court Justice Pierre Blais in *Forum des maires de la Péninsule acadienne v. Canadian Food Inspection Agency*.

It has always been my view that section 41 in Part VII of the Official Languages Act is not a strictly declaratory clause but a directory one, which means that it is enforceable.

I note that Justice Pierre Blais went along that same line. He also referred to the Canadian Charter of Rights and Freedoms and to remarks by Justice Bastarache in the *Beaulac* case.

The Official Languages Act is a special act of Parliament. The lawmaker does not speak for the sake of speaking. The act does use the word “committed.” This is not just a political term. It is also a legal one, and in the context of section 41 and Part VII, it becomes enforceable.

[English]

## BRITISH COLUMBIA

### FOREST FIRES

**Hon. Pat Carney:** Honourable senators, I wish to draw your attention to the outstanding service performed by B.C. firefighters and emergency planners in combating some 2,476 forest fires, which threatened lives, devastated communities and destroyed some 250,951 hectares of forest and parkland in the province this summer. The threat is not yet over, with 580 active fires still burning today.

In Kelowna alone, fires have destroyed 238 homes and forced nearly 30,000 people to flee their homes in front of a wall of flames. The entire community of Louis Creek, including its sawmill, was consumed by fire, while Barriere, Sun Peak and East Kootenay communities were also damaged or threatened.

Yet, despite the dangers, the fires have been contained, property protected and people evacuated without one single loss of life or serious injury. While firefighters on the ground and in the air have been commended for their bravery and exhausting effort, credit should also go to the emergency planners in the operation centres of the various communities whose years of preparation, practise and procedures paid off big time when their expertise was needed to save lives, communities and heritage forests.

We lost a lot in Kelowna and other parts of B.C., but the losses would have been far greater if those backroom planners had not been in place 24/7 for weeks at a time.

On August 28, I visited Kelowna to meet with the mayor, Walter Cray, and some of his councillors to pledge my support for the efforts of our colleague Senator Fitzpatrick, who has been actively involved in seeking funds and help. Kelowna's Fire Chief, Gerry Zimmerman, invited me to visit the fire hall's busy operations centre to view the behind-the-scenes activity. There, I met key personnel like emergency planning official Sid LeBeau, Assistant Fire Chief Rene Blanleil, City of Kelowna engineer John Voss and others.

One of the lessons I learned from them included the importance of emergency preparedness practise sessions. Years of tedious mock emergency sessions resulted in a smooth operation when the real thing came along. Officials told me that while the first phase, response to the emergency, went well, more attention should be paid to the recovery because one does not get a chance to practise that phase very often.

Another lesson was the need to integrate the various jurisdictions. Kelowna's operation included two regional districts and the city itself, plus fire personnel in Kamloops and nearby municipalities. Agencies such as the RCMP, emergency social services, fire department, public health, B.C. Forest Service and others, such as the Red Cross and the Salvation Army, worked as a team. Fire crews and equipment from other parts of B.C. were quickly dispatched and smoothly integrated in the field. The role of volunteers who staffed the kitchens and sent the food prepared by restaurants out to the fire lines was important.

Next was the need to coordinate communications and all mapping, extensively used in Kelowna to delineate the areas burned or threatened, with everyone using the same sets and systems.

Finally, Chief Zimmerman explained that the role of the media and the need to keep information flowing is vital. He said that the B.C. media did an outstanding job in getting the word out about fire front developments.

The forest fires will spark many debates about forest practices in B.C. and elsewhere, but I hope it ignites more attention to emergency planning and emergency preparedness. Our lives may depend on it.

## UNITED STATES

### SECOND ANNIVERSARY OF TERRORIST ATTACKS ON SEPTEMBER 11, 2001

**Hon. Ethel Cochrane:** Honourable senators, last Thursday, September 11, marked the second anniversary of the terrorist attacks in the United States that claimed more than 3,000 lives, 24 of them our fellow Canadians.

We all remember where we were and what we were doing when we learned of the attacks. For my part, I was in Edmonton attending caucus meetings. I can tell honourable senators that this memory was fresh in my mind last week as I attended caucus meetings in St. John's and saw many of my colleagues fly home on September 11.

Though our initial shock and grief has eased with the passing of time, there is still a sense of disbelief that such acts could happen in North America. Yet, in the midst of the devastation and the turmoil, September 11 has also come to symbolize hope and goodness. I am, of course, referring to the countless acts of kindness and support that occurred in communities across our great nation.

My province of Newfoundland and Labrador was front and centre for many of these stories. As a result of the hospitality of my province, scholarships were set up for local students by the so-called "plane people"; executives and businesses donated computers and resources to the schools that hosted them; and in every home and community that opened its doors to strangers, friendships were forged.

Two years have passed now, and it seems all the articles and reports have been written on 9/11. However, the many positive stories continue. Again last week, my province welcomed some of those "plane people" back to our shores. They returned yet again to the communities that embraced them in troubled times. For many of these people, it has become an annual visit.

Honourable senators, I applaud all those Newfoundlanders and Labradorians — and, indeed, all Canadians — who welcomed those unwitting guests and provided an example of hope and love to the world during the most difficult of times.

## AGRICULTURE AND AGRI-FOOD

### BOVINE SPONGIFORM ENCEPHALOPATHY— ASSISTANCE TO FARMERS

**Hon. Gerry St. Germain:** Honourable senators, I have a brief statement in regard to the presence on the Hill today of ranchers and cattlemen who have come from across Canada. This is not just a Western issue, honourable senators; it is impacting Ontario and some of Eastern Canada, possibly not quite as much as it is impacting certain provinces, but it definitely has had a negative effect right across the agricultural community.

Representatives are here from across the country stating their case, not protesting, as we generally see with regard to many special interest groups or any groups that have been negatively affected by what we can term as a national disaster. Can we imagine that one cow — one cow — develops BSE, and we are faced with this crisis?

I have watched the Prime Minister, Premier Ralph Klein and others, and I see the bewilderment in their eyes that one animal could cause such aggravation in a community. The result has been an international overreaction to what could have been a huge disaster, but has proven to be the scenario of a single, isolated event.

The Department of Agriculture has done a credible job in proving it is an isolated situation. The civil servants who have worked on this crisis under the guidance of the government have done an excellent job.

The government must recognize how this issue is adversely affecting families and people who are completely dependent on the production of beef, as well as the people in the transportation industry, the slaughterhouses and what have you. I know that they are aware of this, and that this is a complex situation, but I am asking the government to really reconsider their position on this matter in view of the fact that Saskatchewan has re-evaluated theirs, as have other provinces. I would like to state again how nice it is to see people coming to the Hill in an orderly, gentle fashion to ask the government for consideration.

• (1350)

## ROUTINE PROCEEDINGS

### SPAM CONTROL BILL

#### FIRST READING

**Hon. Donald H. Oliver** presented Bill S-23, to prevent unsolicited messages on the Internet.

Bill read first time.

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

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

### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

**Hon. Michael Kirby:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 2 p.m., Tuesday, October 7, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**UNITED STATES  
BALLISTIC MISSILE DEFENCE SYSTEM**

NOTICE OF MOTION RECOMMENDING  
THE GOVERNMENT NOT PARTICIPATE

**Hon. Douglas Roche:** Honourable senators, I give notice that two days hence I will move:

That the Senate of Canada recommend that the Government of Canada refuse to participate in the U.S.-sponsored Ballistic Missile Defence (BMD) system, because:

1. It will undermine Canada's longstanding policy on the non-weaponization of space by giving implicit, if not explicit, support to U.S. policies to develop and deploy weapons in space;
2. It will further integrate Canadian and American military forces and policy without meaningful Canadian input into the substance of those policies;
3. It will make the world, including Canada, not more secure but less secure.

**QUESTION PERIOD**

**NATIONAL DEFENCE**

BRITISH COLUMBIA FOREST FIRES—  
ECONOMIC COMPENSATION UNDER DISASTER  
FINANCIAL ASSISTANCE ARRANGEMENTS

**Hon. Pat Carney:** Honourable senators, I would like to address my question to the Leader of the Government in the Senate. On August 24, the Prime Minister toured B.C.'s Okanagan region, which, like other areas of British Columbia, has been ravaged by historic forest fires this summer. The Prime Minister said that the federal government would work with the provincial government under the auspices of the federal disaster assistance fund to help offset forest firefighting and recovery costs. As we know, this fund, which is essentially bottomless, requires the province to assess the damage and compensate victims and then submit the bill to Ottawa. This procedure was used in the case of the ice storm here in Eastern Canada, and it has been used in New Brunswick with the parasite damage to New Brunswick forests.

Can the minister give us any idea how long this process might be? I realize she may not have an answer today, but people in these communities are waiting for some word on when they can get the funds to rebuild their homes and businesses.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I can say this afternoon that clearly the assistance fund has been set up with certain criteria. It would appear that British Columbia meets those criteria. However, I cannot give the

honourable senator a detailed plan as to when monies may flow because, as of this day, we have not received the assessment from the Province of British Columbia.

**HERITAGE**

ASSISTANCE TO REBUILD  
KETTLE VALLEY RAILWAY TRESTLES

**Hon. Pat Carney:** I realize that, but could the minister find out for us, in the absence of any other avenue, how long this process takes, whether it is months or years? The honourable leader must have some recourse to information.

Similarly, Heritage Minister Sheila Copps was in Kelowna on September 8 to meet with officials about rebuilding the Kettle Valley railway trestles. This an engineering marvel built at the turn of the last century over the canyons of the mountain passes. All but four of the 18 trestles were destroyed. It is a 15-kilometre route and is part of the Trans-Canada Trail. It is a national historic site. The replacement cost is estimated at \$30 million by the Myra Canyon Trestle Restoration Society. The minister has committed her department to help with this cost, but she did not say how much money Ottawa will commit. Could the leader discuss this matter with Minister Copps and let us know how the minister will be honouring this pledge and when the cheque can be expected in the mail?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, let me address the first part of the honourable senator's question, namely, whether it will be months or years. Assessments will be made on a case-by-case basis. Neither the provincial nor the federal government will recognize any cases already covered by insurance. In some cases, individuals who suffer fire damage do not know until after the public sector has done their insurance evaluation what may not be covered by them. I can only say from my personal experiences with the flood in Manitoba, for which DFAA did apply, that in some cases it took years. Hopefully, those assessments will be done quickly. If the honourable senator has any influence with people in the area struck by this forest fire, I would urge her to convince them to get their applications in as quickly as the province establishes the criteria. Certainly, that was the delay in the province of Manitoba before the dollars began to flow.

Second, with respect to the trestles, the Honourable Minister of Canadian Heritage has indicated their heritage value. She has not heard from British Columbia as to the exact amount of associated costs, but I will urge her to enter into negotiations on a rapid basis.

**SOLICITOR GENERAL**

ONTARIO—INVESTIGATION OF COLLEGE  
ON ALLEGATIONS OF ASSISTING  
IN ILLEGAL IMMIGRATION

**Hon. James F. Kelleher:** Honourable senators, I have a question for the Leader of the Government in the Senate. A federal anti-terrorism probe investigating 19 men as possible national security threats has found that a Toronto college provided fraudulent letters to foreigners so that they could enter Canada on

student visas, even though they did not attend classes. Ontario Public Safety and Security Minister Bob Runciman announced that the province would conduct an investigation into the province's colleges to ensure that they are not aiding illegal immigration as he has "lost confidence in federal authorities to do the job properly."

Could the Leader of the Government in the Senate tell us if the federal government is lending any assistance to the Ontario Ministry of Colleges and Universities or the Ontario Ministry of Public Safety and Security in their investigations?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not know whether any assistance has been requested by the Government of Ontario. They seem to be very busy these days with the provincial election. However, I think it is appropriate to remind senators that while the money comes from the federal government in the support of these colleges, the entire administration is in the hands of the provinces by virtue of a federal-provincial agreement. If the college was not functioning appropriately — and, indeed, it was not because their charter was pulled from them — then that decision is made by the Province of Ontario alone.

**Senator Kelleher:** Honourable senators, this particular investigation has been confined to Ontario, but it may be worthwhile for other provinces to conduct similar probes into their own colleges to ensure that they are not assisting with illegal immigration or fraudulently receiving federal student loans. Has the federal government suggested to other provinces that they conduct a similar review of their registered colleges?

• (1400)

**Senator Carstairs:** I do not know that any specific suggestion has been made. I would not want the activities of one college to in any way besmirch the very positive activities being done by many colleges throughout the country. In this situation, a college was issuing letters that indicated that these individuals were duly placed as students. However, for all intents and purposes, this college did not even exist, except to issue the said letters.

The provinces that administer colleges must be vigilant in ensuring that those that would seek to offer services do that and respond in good faith to all who attend.

## HEALTH

### RESIGNATION OF FORMER ASSISTANT DEPUTY MINISTER OVER ALLEGATIONS OF FRAUD AND BREACH OF TRUST

**Hon. Marjory LeBreton:** Honourable senators, my question is for the Leader of the Government in the Senate. In 2001, a former Assistant Deputy Minister of Health, Paul Cochrane, resigned over allegations that he took bribes in exchange for sending \$6 million in grants to a Manitoba native treatment centre. Over

the past summer, there have been two developments on this file. First, the police have formally charged Mr. Cochrane with fraud and breach of trust. Second, we learned that since his 2001 resignation, Mr. Cochrane has been on the payroll of both HRDC and Public Works through consulting contracts.

Could the government leader advise how it came to pass that someone who was forced to step down over bribery allegations could get contracts from not one but two different government departments?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, Mr. Cochrane has been charged. The honourable senator has not asked me to speak on that procedure because the matter is before the courts. However, the honourable senator is quite correct: Mr. Cochrane did receive HRDC and Public Works contracts prior to being formally charged. Unfortunately, the awarding of the contracts occurred before there were any public accusations of the criminal intent that he is alleged to have committed.

**Senator LeBreton:** Honourable senators, that is an interesting answer. This man resigns over allegations, but he is still given contracts. I would like the Leader of the Government in the Senate to assure honourable senators that these contracts were not part of an agreement associated with Mr. Cochrane's resignation.

**Senator Carstairs:** I can assure the honourable senator that they had nothing whatsoever to do with his separation. I would remind the honourable senator that the allegations came after, not before.

**Senator LeBreton:** Since 2001, we have had three ministers of Public Works, Alfonso Gagliano, Don Boudria and now, Ralph Goodale, while over this same period there has been one minister in charge of HRDC, Jane Stewart. Two of the Public Works ministers left their positions under a cloud.

Could the government leader advise us whether any of these ministers were aware that Mr. Cochrane was on their payroll and, if so, did they find this acceptable?

**Senator Carstairs:** I disagree with the honourable senator that the two ministers left under a cloud. They did not leave under any cloud.

As to the contracts awarded to Mr. Cochrane, they were awarded under normal procedures, and I would doubt very much if any of the ministers knew of his previous behaviour that has been alleged. I keep indicating that we are talking about alleged conduct. His contracts were awarded in the normal process of application, receipt and approval.

**Senator LeBreton:** In view of that answer, one must really wonder what message is sent to hard-working and dedicated public servants when someone who resigns over allegations is then hired back as a consultant.

With that in mind, could the Leader of the Government in the Senate report to the Senate as to the amount of these contracts and what work was performed for them? Could she table all written documents pertaining to this work?

**Senator Carstairs:** The honourable senator insists that these allegations seem to have been well known. Indeed, they were not well known at the time of Mr. Cochrane's resignation. They did not become known until this summer. This summer, charges were laid. However, I would remind honourable senators at each and every opportunity that, in this country, because of our Charter, one is considered innocent until proven guilty.

**Senator LeBreton:** That response does not change the intent of my last question. There should be nothing wrong, therefore, with ascertaining the amounts of the contracts, describing the work that the contracts were given for and requesting that all documents be tabled.

**Senator Carstairs:** I am assuming that that information is available, and I will make it available in a reply to the honourable senator.

## NATIONAL DEFENCE

### REPLACEMENT OF HERCULES AIRCRAFT— INADEQUACY OF TRAINED MAINTENANCE PERSONNEL

**Hon. J. Michael Forrestall:** Honourable senators, I wish to direct my question to the Leader of the Government in the Senate. I appreciate very much her word to me earlier this afternoon with respect to the air tragedy. Thank God there were no serious injuries resulting from the helicopter crash in Labrador. If the minister has anything to add to the earlier news, I would appreciate it.

My question has to do with a report to the Department of National Defence this summer noting that two thirds of Canada's 32 Hercules are listed as unavailable due to maintenance backlogs, parts shortages and generally the age of the aircraft. Many of the Hercs date from the early 1960s. The report also casts doubt on the military's ability to continually send the aircraft to support missions abroad. The air force has responded by reducing the flying time of the aircraft from the annual 21,000 hours to 16,200. The priorities, of course, of use have changed significantly.

What plans does the government have to replace these aircraft that are expected to reach the end of their service life by 2010?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his questions. Since he has combined a number of issues, let me first indicate, as I had indicated to him when I saw him at the beginning of this sitting, that a Griffin helicopter with a crew of five crashed near Goose Bay, Labrador, earlier today. I do want to inform the house that all crew members are safe, although unfortunately two were injured. Details are still emerging, and a full investigation into the incident will be launched.

In terms of the honourable senator's question with respect to the Hercules aircraft, as he indicated, they are not expected to go out of service until 2010. I do not know if, at this point, 2003, we

are already planning for replacement aircraft, but I will make inquiries on behalf of the honourable senator and report to him.

I do have information for him with respect to questions he asked yesterday about the acquisition of British submarines. The initial approval for \$812 million in 1998 has been added to, by some \$85 million, and the acquisition cost is \$897 million in today's dollars.

The honourable senator also asked the question about why we made a contract with BAE for engineering and supply management. That, of course, was done because we knew it would take time to transfer. He should know that that contract has been amended because it has taken even longer to transfer. As a result, our local expertise has not developed because we have not been servicing those submarines for the most part. That has been done in Great Britain. However, we expect that the majority of maintenance work will be done in Canada by a Canadian industry or by the navy's own fleet maintenance facilities in four to six years.

• (1410)

**Senator Forrestall:** Honourable senators, I wish I could have such a flood of information about Sea Kings.

As the report I referred to earlier indicated that units wishing to apply for training will have to hire a commercial charter to do so, my further supplementary question would be to ask about the cost of hiring a commercial charter for training purposes.

As well, I should like to know what the government is doing to ensure presently, today, that the lives of the crews that are flying the Hercules crafts are not being put at undue risk.

**Senator Carstairs:** I thank the honourable senator for his question. As he knows, I do not have that information available, but I will make it available to him as quickly as I can.

**Senator Forrestall:** One of the reasons cited for the lengthy grounding of the Hercules is the shortage of trained personnel to maintain those aircraft. This, of course, is a chronic, systemic problem throughout the various units of the Armed Forces. In spite of the dire future prospects, we are all heartened by Paul Martin's words that he will correct or deal with these problems immediately. I recognize that "immediately" may mean only six, eight or ten years. What will the government do to address the shortfall in the interim? This is a major problem.

**Senator Carstairs:** As the honourable senator is well aware, there has been a major recruitment program within the Armed Forces. There has been an acute shortage of pilots, particularly fighter pilots, and the federal government has been increasingly active in its recruitment of those pilots. One hopes that the negative effects being experienced by commercial traffic may translate to a positive effect on the Armed Forces, with pilots applying to serve the forces because their opportunities are not quite so vibrant in the private sector.



## FOREIGN AFFAIRS

UNITED STATES—EXTRATERRITORIAL APPLICATION  
AGAINST CANADIAN CITIZEN OF LAWS  
TO COMBAT TERRORISM

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate. It has been reported in the news that a Canadian citizen named Said Ali tried to wire \$116 to a friend in the Netherlands named Mohammed Ali, and the money was impounded by Western Union. Apparently, the name “Mohammed Ali” appears on a U.S. list of names linked to terrorism. The name is quite common in the Islamic world, and there is no information, at least publicly available, that this particular Mohammed Ali has terrorist links. Mr. Said Ali has asked for his money back, and Western Union has refused. Canada’s Department of Foreign Affairs has noted that it has protested vigorously against the extraterritorial application of U.S. law, but that more research is needed to discover if this is the situation in this case.

My question for the leader is this: If the Canadian authorities discover that this is, indeed, a misapplication of U.S. law, what steps will the government then take to halt this kind of behaviour in the future? More specifically, what will they do to get Said Ali his money back?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator knows and has clearly identified, this is a private corporation, but it is a private corporation registered in this country and, therefore, it should not have its policies directed entirely by the American government and certainly not by American law. The Foreign Affairs Department has protested to Western Union and, if it is discovered that this has been done as a breach of supposed American laws, I can assure the honourable senator the protest will go to the highest offices in the United States.

**Senator Oliver:** Honourable senators, we have our own financial tracking process, of course, in Canada. Can the leader tell this chamber if this particular transaction was one that was considered suspicious by FINTRAC?

**Senator Carstairs:** I cannot give the honourable senator the information he asks about with respect to FINTRAC. My own knowledge would indicate probably not, because of the amount of money involved here but, to be absolutely sure, I will check and make sure that there was no other form of tracking that would have had our laws apply to this particular situation.

## UNITED NATIONS

IRAQ—SECURITY COUNCIL RESOLUTION  
ON TRANSITION PROCESS

**Hon. Douglas Roche:** Honourable senators, my question is to the Leader of the Government in the Senate. Although Canada is not now a member of the UN Security Council, the work of the council in dealing with the future of Iraq is extremely important to Canada.

My question in that regard is: What is Canada’s position on the new U.S.-sponsored resolution in the UN Security Council concerning control of the transition process in Iraq? Recognizing that the U.S. insists on maintaining military control, can the minister state that Canada wants the United Nations to have political control of the transition process? Germany and France favour this position. Where does Canada stand?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator has already indicated, that decision will be made by the United Nations Security Council, of which we are not a member. Having said that, the position of Canada is that we are very pleased that the United States has reached out to the international community.

We have already made substantive contributions to the reconstruction effort in Iraq. We have committed some \$300 million, \$50 million of which has already been distributed to NGOs and \$200 million of which has been specifically put aside for infrastructure construction, buildings such as hospitals and schools. We are very pleased with the contribution that we have made.

We are, meanwhile, conducting detailed discussions with our partners to determine how best we can continue to provide our expertise, and one area of expertise that has been requested and that is being examined relates to the issue of whether our RCMP would be the best group of police officers to assist in the training of Iraqi police officers.

The matter of the United States wishing to have control, while, of course, wishing to have partners, is being debated thoroughly.

## REFORM OF SECURITY COUNCIL

**Hon. Douglas Roche:** Honourable senators, I thank the minister for her response. That is indeed the issue of the debate now. I repeat my question: Does Canada favour the United Nations having political control of the transition process in Iraq?

As the UN General Assembly begins its general debate next week, will the Government of Canada address the issue of reform of the UN Security Council, which Secretary General Kofi Annan recently said is essential if the council is to play its charter-given role as the primary authority for peace and security in the world?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not know what position the Canadian representatives will take during that debate. I would suggest we will simply have to wait to see, but I can assure the honourable senator that I will raise with the appropriate authorities his intervention that we should be taking a position on UN Security Council reform.

**Senator Roche:** I thank the minister for that.

## AGRICULTURE AND AGRI-FOOD

### BOVINE SPONGIFORM ENCEPHALOPATHY— UNITED STATES TRADE RESTRICTIONS

**Hon. Leonard J. Gustafson:** Honourable senators, my question is for the Leader of the Government in the Senate. Those of us who attended the farm rally in front of the buildings today know that there is a real sense of desperation among farmers. We have harped on this so much that it seems that Canadians have closed their ears to the problem. Probably the most serious problem that Canada faces is mad cow disease. At the suggestion of the government, young farmers have gone out and diversified. They bought cattle and financed them through the banks, and now they cannot move their cattle. It is a very serious problem.

This subject affects every province across Canada. Some people from Ontario gave us some staggering numbers today. It has affected the grain market. Today, barley is worth half of what it was a year ago — just half. Durum wheat is selling for \$2.68. That was the price we got for wheat in 1970. Fertilizer costs have doubled. It is impossible for farmers to meet their input costs and, as a result, there is a sense of desperation.

• (1420)

The World Trade Organization talks on agriculture in Mexico broke down.

Honourable senators, I defeated Ralph Goodale — twice.

**Senator Meighen:** Maybe he learned something.

**Senator Stratton:** Go back and do it again.

**Senator Gustafson:** However, I admit that Mr. Goodale has been a hard worker for the West. He is again saying that the Americans and the Europeans must drop their subsidies. Honourable senators, that will never happen. In fact, the Americans have just put \$90 billion back into subsidies over 10 years. The Americans are committed for 10 years. How can Canadian farmers deal with this situation? They are in a position which they can no longer tolerate. Something has to happen.

Would the government consider sending a trade delegation to Washington? Yesterday, I asked that there be a high-level trade delegation to deal with the cattle situation.

Honourable senators, Paul Martin has stated that there is hardly a commodity in Canada that is not trading north-south across that border and, when that border is closed, we are in trouble. It must be opened somehow. Trade worth \$1 billion crosses that border every day. We now have two log-jammed areas on that border.

Would the government consider holding high-level trade talks with the Americans? If the Americans do not change their minds on this situation, we will be dead in the water.

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. I think all Canadians were extremely disappointed with what happened in Cancun last week. We had been hearing on a fairly regular basis from the United States that the only reason they were putting in all these subsidies

was that the EU had all of their subsidies. Yet, it would appear that the talks failed in Cancun because, all of a sudden, the EU and the U.S. were working together in order to not just have a level playing field for us but — and this is much more important as far as I am concerned, as important as my own country is to me — all the underdeveloped nations of this world are, quite frankly, beyond a state of desperation in trying to get their products to reasonable markets.

Should we consider a trade delegation to Washington? I can assure the honourable senator that I will bring that suggestion forward on his behalf.

As honourable senators know, the government has an ongoing relationship with the United States. However, up to this point, we have been unable to break down certain barriers. There is only so much a country can do to influence another country.

Yesterday Senator Grafstein talked about the very important work that is being done between parliamentarians here and Congressmen and senators on the other side. I believe we must play it in that field as well.

I will take the suggestion forward. Although I am not certain that it will be particularly useful, we should try everything that might be useful.

**The Hon. the Speaker:** Honourable senators, unfortunately, the time for Question Period has expired.

[*Translation*]

## DELAYED ANSWER TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table in both official languages a response to questions raised in the Senate on June 3, 2003 by Senator Tkachuk regarding the Superintendent of Financial Institutions—Voyageur Colonial Pension Plan.

## FINANCE

### SUPERINTENDENT OF FINANCIAL INSTITUTIONS— VOYAGEUR COLONIAL PENSION PLAN— MONITORING OF PENSION PLANS ON WATCH LIST

(*Response to questions raised by Hon. David Tkachuk on June 3, 2003*)

In May 1994, OSFI was informed by the plan actuary of the sale of business by Voyageur Colonial to Greyhound. OSFI did not know of the sale prior to that time. The sale closed in June 1994. In May 1995, OSFI received an inquiry expressing concerns that the plan might be experiencing financial difficulties. Shortly thereafter, in June 1995, confirmation was received that the plan was in financial difficulty, through the filing of a valuation report and information received from the plan actuary.

Partial termination of the Voyageur plan occurred in March 1995, followed by the full termination of the Voyageur plan in March 1997. Under the terms of the Pension Benefits Standards Act, 1985, OSFI is required to review and approve all termination reports for federal pension plans that are terminating in whole or in part. At the time, OSFI's powers of intervention basically were limited to terminating a plan that was experiencing difficulty. Bill S-3, which was enacted in 1998, has given OSFI a wider range of powers with which to intervene.

Plan members contacted OSFI with their concerns in the fall of 1995, having received notification from the plan administrator that the plan was in financial difficulty.

In the case of the partial termination, 67 members lost 18 per cent of their benefits. In the case of the full plan termination, 146 members lost 14 per cent of their benefits. The remaining 86 members received 100 per cent of their benefits. The differences in the payment of benefits are due in the main to the plan text, which allowed for some categories of members to receive more than others.

In February 1998, plan members asked OSFI to have an audit conducted of the plan to review the circumstances that had led to its termination. In response, PriceWaterhouseCoopers was hired to conduct an audit and delivered its report to OSFI and the board of trustees in February 1999. The report, which is a public document, was made available by the board of trustees to all plan members, on request, shortly thereafter. OSFI determined that no further action was required as a result.

Although each situation is different, the aforementioned activities represented normal practice for OSFI in such matters at that time. No unusual actions were taken in connection with the file.

**Hon. Mira Spivak:** Honourable senators, Bill C-42 regarding the Antarctic Environmental Protection Act is certainly worthy of support in principle. It will permit Canada to ratify an international protocol known as the Madrid Protocol to protect the relatively pristine and vulnerable environment of the Antarctic. It will require Canadians who conduct scientific research on the continent to abide by its protective measures. It will allow only those scientists and tour operators who have permits issued by the government — permits issued after environmental assessments of their proposed ventures — to legally enter the region.

There is no suggestion that the 37 Canadian scientists and 2 Canadian tour operators working in the Antarctic have not followed the spirit of the protocol on such matters as waste management or protection of flora and fauna. Ratification of the protocol, which Canada signed some 12 years ago, however, is a good step to prevent problems.

The Antarctic, with its 14 million square kilometres of permanent ice and floating ice shelves, is unique. Some 70 per cent of the world's fresh water is bound in its ice cap that is more than two kilometres deep. The ice-free half per cent of the continent has mountain peaks and tiny areas around the coast that are home to hearty species of plants, penguins and seals.

The Antarctic is politically unique. It is the only region of the world where nations have agreed to suspend claims of sovereignty, to prohibit all military activity, nuclear tests or disposal of radioactive waste, and to work cooperatively in scientific research.

The Antarctic Treaty came into effect in 1961. Canada acceded to it in 1988 and has adopted its two conventions to conserve Antarctic seals and to protect other Antarctic marine life.

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, on Orders of the Day, I would like us to start, under Government Business, with Item No. 2 under Bills, resuming debate for second reading of Bill C-42. Once this item has been dealt with, we can return to the order provided in the Order Paper.

[English]

### ANTARCTIC ENVIRONMENTAL PROTECTION BILL

#### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Christensen, seconded by the Honourable Senator Léger, for the second reading of Bill C-42, respecting the protection of the Antarctic Environment.

With this bill and Canada's ratification of the Madrid Protocol, we will be fulfilling another important international obligation. If we are tempted to think of the Antarctic as far removed from our lives and scientific research on the continent as somewhat esoteric, it is worth remembering the events of the 1980s. In May of 1985, scientists of the British Antarctic Survey published an article in *Nature* reporting large and unexpected losses in ozone in the atmosphere above a research station at Halley Bay on the Antarctic coast. Their finding of the hole in the ozone layer was confirmed that August by NASA's Nimbus-7 satellite, which had been taking ozone measurements since the 1970s but had been programmed not to record exceptionally low levels.

The global problem of ozone depletion that scientists had predicted in 1974 was suddenly a political reality. It led to the Montreal Protocol, the international agreement championed by the then Progressive Conservative government of Brian Mulroney, to reduce emissions of ozone-depleting substances. It led to the UV index warnings that Environment Canada now issues routinely. It led Canadians to use high-powered sunscreens to prevent burns and skin cancers when they are out in the summer sun or on winter holidays.

The scientific discovery in the Antarctic region has changed our behaviour and has prevented untold cases of cancer. If the global community is to benefit from other future scientific research in the region, its natural environment must be protected to the extent that we can.

The treaties that protect the Antarctic are not fail-safe. They are not designed to last in perpetuity. The suspensions of sovereignty, military activity and mining, for example, extend only until 2041, the result of a 50-year extension in 1991. The agreements, however, are generally protective for now and we should certainly pass legislation that allows Canada to ratify the Madrid Protocol.

• (1430)

Bill C-42 swept through the other place in a single day — an indication of the all-party support it received. There were, however, some questions raised that were not answered in any committee examination of the bill.

Why, for example, do we find it necessary to exempt members of the Canadian Forces from the permitting system it creates? Our briefing books tell us it is consistent with the requirements of the treaty and the protocol. Article 11 of Annex IV, on the prevention of marine pollution, specifies that it does not apply to any warship, naval auxiliary or other state-owned ship used for non-commercial purposes. It does, however, require signatories to adopt other appropriate measures for military vessels that are consistent with the annex. What measures does our military have in place, if need be, to perform its duties without leaving the huge imprint that has been left in our own Arctic region?

Why does our legislation also exempt vessels in the Antarctic for the sole purpose of commercial fishing? Our own scientists at the Bedford Institute have been at the forefront of warning the global community of the massive decline in fish stocks, including large species in the Antarctic. Given the devastation of our cod stocks, why do we not see commercial fishing in the Antarctic as a threat to that environment?

Finally, why has it taken so long to bring forward this proposed legislation? A dozen years have passed since Canada signed the Madrid Protocol. Our briefing books suggest that, among other things, the government had other environmental priorities — the Kyoto Protocol, species at risk legislation and establishing the Arctic council. These are all worthwhile causes, yet they are relatively recent developments in the life of the government.

Honourable senators, this is not a bill that we should delay further and watch die on the Order Paper. However, it would be worthwhile for the Standing Senate Committee on Energy, the Environment and Natural Resources to examine it and gain answers to those basic questions. I hope that we can do that work with dispatch and approve legislation that truly allows Canada to fulfil an important global environmental commitment.

**Hon. Rose-Marie Losier-Cool (The Hon. The Acting Speaker):** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Christensen, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

### SPECIFIC CLAIMS RESOLUTION BILL

THIRD READING—MOTION IN AMENDMENT—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended,

And on the motion in amendment of the Honourable Senator Watt, seconded by the Honourable Senator Gill, that the Bill, as amended, be not now read a third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**Hon. Willie Adams:** Honourable senators, I rise today to speak to Bill C-6 and in support of Senator Watt's amendment to refer the bill to the Standing Senate Committee on Legal and Constitutional Affairs.

On a couple of occasions, Senators Watt, Sibbeston, Gill and myself met with members of the First Nations, who expressed their concerns about not only Bill C-6, but also other bills. Bill C-6 does not live up to the promises made by the government.

Since the signing of the Constitution Act, 1982, the principal concern of the Minister of Indian Affairs and Northern Development should have been the settlement of land claims.

I agree with Senator Chalifoux, who expressed the view that the Standing Senate Committee on Aboriginal Peoples did an excellent job in its examination of Bill C-6. I had been a member of that committee for over 10 years. However, three or four years ago, I resigned. My resignation had nothing to do with the work of the committee, rather, it had to do with certain concerns I had about the actions of the government relating to a site request by a mining company which involved the rights to explore for minerals on 20 per cent of the land designated for a national park.

Last May there were demonstrations on Parliament Hill when approximately 200 to 300 people expressed their concerns about Bill C-6, Bill C-7, Bill C-9 and Bill C-19. There was also a demonstration in Toronto.

[ Senator Spivak ]

Last April, I participated in a panel discussion in Ottawa hosted by the Assembly of First Nations. All the Aboriginal senators were invited to attend. Senator Sibbeston, Senator Watt, three MPs, John Godfrey from Toronto, Rick Lalibertie from Churchill River, and Clifford Lincoln from Quebec were all in attendance. At that time we heard complaints from the AFN about the House of Commons and the Senate. Delegates felt that their concerns were not dealt with by the Commons committee that studied the bill, and they expressed disappointment that the Senate committee had not travelled to the communities to discuss concerns. We explained to the representatives of the organization it was our intention to help them in whatever way we could.

Honourable senators, the bill may not be the best bill, but it is a step in the right direction. That is why I believe the bill should be referred to the Legal and Constitutional Affairs Committee, so that its members may further study the amendments. The sober second thought of the Senate in this committee may help. That is what we are here for. It is the job of committees of Parliament to listen to the concerns of Canadians before bills are passed. The Standing Senate Committee on Aboriginal Peoples has the specific job of ensuring that the concerns of people in the communities are taken into consideration, and I believe that the committee has done a good job.

• (1440)

Although I am no longer a member of the Aboriginal Committee, I did attend a couple of meetings where I heard witnesses express certain concerns about some of the clauses of the bill. There was some discussion at that time about introducing an amendment but, honourable senators, that never happened. I do know that some of the witnesses are not satisfied with Bill C-6.

In the past, when dealing with proposed legislation which would directly affect people in northern communities, we would travel to those communities to give people the opportunity to express their concerns to the Senate committee. That did not happen with respect to Bill C-6. It seems, honourable senators, that the Senate budget is cut every year, to the extent that there are fewer opportunities to invite witnesses from the communities to travel to Ottawa to appear before our committees. As well, our committees rarely travel to the communities.

Honourable senators, I sometimes think that it will be a long time before people are genuinely concerned about settling Aboriginal land claims. Senator Chalifoux said that 60 per cent of the claims will be dealt with in Ottawa. The settlement of those claims will determine the future of Aboriginal peoples across Canada.

I have some proposals that I would like to have incorporated into Bill C-6. However, I recognize that those will never be a part of the bill. When Minister Nault announced that the bill was to be drafted, every First Nations community expressed some concerns. It might have been a good idea to have invited some of those representatives to outline their concerns before the bill was drafted. Perhaps they could have looked over the draft bill even before it was introduced in the House of Commons.

We, as parliamentarians, should know what Aboriginal people think should be the future for their communities. They could petition us and tell us what they want.

Honourable senators, the cap in the bill is set at \$7 million. That is the amount to do the job and settle the claim.

Nunavut land claims began in the 1970s. Those took us over 20 years, and they cost over \$20 million. How much can you do for \$7 million? A proposed amendment would have raised the cap to \$10 million.

In any discussion of land claims, there is a recognition that the people who live in northern communities are hunters and, as such, they have a concern about the future of the land. People grew up in those areas by living off the land.

A cap of \$7 million is not very much. Today, even \$10 million is not much money. Nunavut land claims started in the 1970's and those cost over \$20 million to settle. Costs may be double today.

Bill C-10B was referred to the Standing Senate Committee on Legal and Constitutional Affairs last December. We tried to find out, through the House of Commons, what was the definition of "cruelty to animals," but it appears that no government department can give us that definition.

If Bill C-6 is passed as it is today, any organization that wants to make a claim will have to wait for five years for changes to be made to the bill. That is a long time, and there is a \$7 million cap contained in the bill.

However, I do not believe that we should kill the bill. We should do the best that we can now. Although some native people have concerns with the bill as it is, they are willing to yield because, with the passage of this bill it may be easier for them to deal with land claims in the future.

Honourable senators, I work here in Ottawa in one culture, and when I go back to my home community of Rankin Inlet, I must adapt to a different, but more familiar culture. It can be very difficult for me. Not everything that we do in Ottawa will fit into the lives of the people in the communities.

I hope the day comes when the government realizes that Aboriginal people have lived on this land now called Canada for thousands of years. We understand how to live on the land. The government told us that the only way we could survive would be to adapt our way of life, our policies, to fit in with the policies of the south. That has been a difficult thing to do.

I expressed these same concerns when we passed Bill C-5 before Christmas. That legislation now impacts upon people in northern communities.

The species at risk studies were done in Ottawa. The government decided that our mammals were at risk and cut the quotas for hunters of polar bears and whales. People in northern communities, who live on the land, have respected those quotas and now hunt fewer polar bears and whales.

• (1450)

**The Hon. the Speaker:** Senator Adams is asking for additional time. Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Adams:** Thank you, honourable senators.

In a local community newspaper last week, there was an article about the many Americans who travel to Nunavut every year to hunt caribou. Under government policy, local guides are not allowed to carry guns. Honourable senators, two Inuit people, who were guiding a group of American hunters who were caribou hunting on the mainland, were attacked by a polar bear that ripped their tent open and chased them. They did not have a gun to protect themselves. In fact, the bear had gotten into the Americans' tent first but, fortunately, it did not attack them. The bear did, however, go after an Inuk who did not have a gun. The Inuk hunter had left caribou meat outside his tent, but the bear showed no interest in eating it.

The Inuk person was attacked by the polar bear. When he fell, the polar bear climbed on top of him and bit his head. The hunter was trying to protect his neck because he knew the polar bear would go for his neck and kill him. The polar bear broke two ribs of the hunter. They say that, if you are attacked by a polar bear, you must not scream, because the bear will know you are still alive. Knowing that, the hunter stopped screaming, stopped calling for help. The polar bear then bit the Inuk's feet, and dragged him down to the seashore by his toe. The hunter had to have over 300 stitches in his head and back. That is the type of horrific situation that can happen if guides are not allowed to carry guns to protect themselves and their clients.

Parliamentarians sometimes pass laws that make no sense to people living in the North.

However, I agree with Senator Chalifoux that we must do what is best. If we help other people and try to make their lives better, we will sleep better at night.

On motion of Senator Stratton, debate adjourned.

## COPYRIGHT ACT

BILL TO AMEND—SECOND READING—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Gill, for the second reading of Bill S-20, to amend the Copyright Act.—(*Honourable Senator Day*).

**Hon. Joseph A. Day:** Honourable senators, what I would like to discuss for a short while today relates to the photographic portrait of the Queen that sits outside this chamber. I also received recently a document advertising a showing of Melvin Charney's

work at the Canadian Museum of Contemporary Photography from September 20 to January of next year. I would like to discuss how the Copyright Act impacts on those two items and many others. I hope to be able to convince my honourable colleagues that the Copyright Act needs amendment as outlined in Bill S-20 and that it should be amended immediately to provide the same rights to the portrait photographer of Her Majesty the Queen as if Mr. Charney's pictures had been painted.

[*Translation*]

Honourable senators, it is an honour for me to talk about Bill S-20, to amend the Copyright Act. This bill is the result of efforts by many people, in particular the Canadian Photographers Coalition, which was the first to bring this issue to the attention of a number of senators.

The purpose of this measure is to eliminate the exception to the general rule concerning ownership of copyright that affects Canada's photographers. Because of the exception that currently exists, the owner of the initial photograph is deemed to be the author or creator, even if the owner is not really the creator. Since copyright arises from the creation of a work, photographers, under the current law, are not entitled to the rights that creators of other works normally enjoy. The purpose of the bill is to give photographers the same rights and privileges as all other creators of works protected by the Copyright Act.

[*English*]

Honourable senators, copyright is a legal right granted to artists, authors, composers, playwrights and others. It is an exclusive right to publish, produce, sell or distribute literary, musical, dramatic or artistic works. The definition in the Copyright Act of artistic works includes photographs but, as I will explain, there is an exception to the owner of copyright with respect to that particular type of artistic work.

The general purpose of copyright law in our country is to encourage the production of works and their distribution to the public. A comprehensive explanation of copyright is located in a report entitled "From Gutenberg to Telidon," which was produced by the Government of Canada in 1984. I will quote one excerpt to help honourable senators understand what is meant by this legal right of copyright.

The concept of copyright encompasses two types of rights: economic rights and moral rights. An Author's economic rights, e.g. the right to control reproduction and public performances of their works, manifest themselves in the marketplace. They can be bought and sold —

— or licensed —

— like other property rights. Moral rights, which are equally important, enable creators to claim authorship and restrain others from distorting or mutilating their work.

• (1500)

Honourable senators, this legal right, which we call copyright, or “droit d’auteur” in French, is granted to the author or creator of the work, whether the work is a play, a song, a painting or a book. The notion of the author, being the first person entitled to copyright, and that right being free to the author to do with as he will, is a longstanding principle of copyright law in Canada. Section 13(1) of the Copyright Act reads:

Subject to this Act, the author of a work —

— and “work” is defined —

— shall be the first owner of the copyright therein.

That is to say that copyright goes to the creator of the work. As the creator, initially he or she is the owner of copyright. However, there is the exception that I read just now subject to the act. Therefore, when a painter creates a work of art or when a composer creates a piece of music, he or she is the author of that work and can be confident in the knowledge that he or she will have control over how it is reproduced and how it is presented to the rest of the world. Of course, since the right is a commercial right, he or she, the composer, can sell that right or license it.

Honourable senators, when it comes to photographers, there is an exception to this general rule. Even though a photographer may be the creator or the author of the work in the traditional sense, the author’s rights to copyright do not necessarily flow to that photographer the way they would to another type of artist. In regard to photography, the law deems someone other than the photographer to be the author.

Section 10(2) of the Copyright Act as it now exists refers to the author of a photograph as the person who is the owner of the initial negative or the owner of the initial photograph, and that person is deemed, in law, to be the author.

Honourable senators will recall that the author is the owner of copyright. Therefore, the act deeming someone other than the creator to be the author, that person becomes the owner of copyright even though he or she may not have taken the photograph, may not have been the person who created that photograph. Hence, in regard to photographs, copyright flows to the owner of the negative.

Why do we have such a difference between those who produce such striking illustrations as those found in photographs by persons such as Yousuf Karsh, Malak Karsh, and in the Maritimes, Freeman Patterson or Ansel Adams, to name but a few photographers? Why are their rights different as creators from those other creators who produce books, paintings or music? Why are photographers treated differently in the act?

The part of the Copyright Act that deals with photographs as an exception to the general rule can be traced back to 1911 in the United Kingdom Copyright Act. That section in the U.K. has long since been changed, but it has not been changed in the Canadian Copyright Act. During that time, photography was

commonly regarded as an industrial operation. This was in the early stages of photography in 1911. The equipment that was used constrained photographers from expressing any form of originality in their work. Photographs were not seen for their artistic merit until years later.

Although our view of photography has changed such that we now view it as an art form, the law has not evolved to reflect that change. The changes that are proposed in Bill S-20 have been recommended on a number of previous occasions. In the 1984 publication I referred to earlier, “From Gutenberg to Telidon,” the Department of Consumer and Corporate Affairs, as it then existed, recommended that there be a change in this particular section. The recommendation was that photographers should be treated like any other artists and that subject to any other licences or contracts that the photographer may have entered into with any other person — and that is a commercial aspect — the original photographer would be the original owner of copyright in the work.

Unfortunately, the change was not made in 1984, for political reasons. Honourable senators can guess why, and each one of us would be right in guessing why the amendments to copyright did not take place at that time.

These required changes were raised again during debate on Bill C-32, introduced in Parliament some 13 years later, in 1997. The changes dealt with government copyright reform. Unfortunately, the final version of that bill did not include the changes with respect to the rights of photographers, even though the initial bill had the changes recommended.

Hence, although the desirability for these changes has been recognized for many years, no change has occurred. We have considered these changes long enough. We know that the current regime of law is outdated in relation to this narrow issue, and the time for action is at hand. In fact, the time is now long overdue that the law should reflect the view of society and recognize that photographers are artists.

Honourable senators, virtually every other industrialized nation has corrected this historical exception, including the U.K., from which our law derives. In the United States, the same exception relating to photographers was corrected in 1976; in the U.K., in 1988.

In Canada, copyright laws are constantly in the process of analysis and revision. Most recently, Industry Canada produced a report in October of 2002 entitled “Supporting Culture and Innovation.” That report identified this very exception relating to photographers as an outstanding matter requiring change, but to be dealt with in future phases of copyright revision. The report went on to state, however, that this particular issue with respect to photography’s exception “may require more immediate attention as the reform process unfolds.”

Honourable senators, we have seen that the issue has been debated for over 20 years. Now is the time for reform.

It may take many more years for this historical anomaly of photographers to be corrected if we do not act upon it in this bill dealing exclusively with this issue. The reason I say that is that copyright is so pervasive, technology is changing so rapidly that it is difficult for the legislation to deal in an omnibus fashion with all of the changes to copyright that are necessary.

I ask honourable senators to deal with this narrow issue that could be easily remedied now rather than wait for it to appear in a massive omnibus bill. I suspect that in 1984, 1987, 1997 and 2002, this small issue gets lost each time given the much bigger issues that must be dealt with.

I would like to quote one item from the 2001-02 Industry Canada report:

The Government of Canada recognized that the rapid pace of technological change and international developments affecting copyright mean that large-scale amendments of the Copyright Act may no longer be the most effective approach to copyright reform.

That is a government statement of a year or year and a half ago.

Honourable senators, I suggest that we deal with this reform now. It is a neat, easy issue to deal with, and there is no logical reason why this anomaly has continued for such a long period of time.

Honourable senators, while I ask you whether we should take a piecemeal approach to copyright reform, I am reminded of the words once used by Dwight D. Eisenhower when he was President of the United States. He stated:

The older I get, the more wisdom I find in the ancient rule of taking first things first — a process which often reduces the most complex human problems to manageable proportions.

• (1510)

I submit to honourable senators that this is one of those items that we can deal with on a first-things-first basis, and we will deal with many other issues of copyright as they come along. I would urge support of this particular matter at second reading, as other honourable senators have already spoken.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Would the honourable senator take a couple of questions for clarification?

**Senator Day:** Of course.

**Senator Kinsella:** Could the honourable senator advise the house as to which minister currently is responsible for the Copyright Act?

**Senator Day:** There are two ministries responsible. Minister Rock is involved, and Heritage Canada is also involved. With respect to copyright, that is part of the problem. It jumps back and forth between two different departments.

[ Senator Day ]

**Senator Kinsella:** Could the honourable senator advise us as to whether the views of those respective ministers have been canvassed by him? The proposal is to change a provision in the current Copyright Act. Did the honourable senator consult with those two ministers?

**Senator Day:** Honourable senators, as indicated during my remarks, the policy statement entitled "Supporting Culture and Innovation" is a Government of Canada document of 2002. That document specifically states two things. First, that this section needs to be changed. It is recognized that it needs to be changed. Second, proceeding by way of an omnibus bill, with all of the changes together, might not be the best way to go in the future. On that basis, I have sent a copy of my proposed bill to both Heritage Canada and Industry Canada, and I have not received anything back saying I should not do that.

**Senator Kinsella:** That is not surprising, because many Canadians write to ministers and never hear back from them.

The bill is clear, and the honourable senator's explication of it is straightforward. It is not very complicated. However, it does raise the question that not one ministry but two ministries are given appropriations to operate and administer the Copyright Act. That raises in my mind the question of whether a Royal Recommendation is required for this bill so that it is in order. Has the honourable senator examined whether this bill requires a Royal Recommendation?

**Senator Day:** No, I have not. I suspected that might be one of the issues at second reading of the bill. That issue might be studied in more depth at committee stage. I felt my responsibility under the rules at this stage were to explain the general principles of the bill, which is what I have attempted to do.

**Senator Kinsella:** Unfortunately, I believe that for a bill to be in order at second reading, we need a clear determination as to whether a Royal Recommendation is required for us to proceed. It is not a matter for a committee. Before we can adjudicate on the principle of the bill, we would need to know whether a Royal Recommendation is required.

I simply raise this issue because there are two ministries involved. If we examine the Estimates for the Department of Industry and for Heritage Canada, a significant budget item is associated with copyright. Therefore, there may very well be a serious question here of the Royal Recommendation.

**Hon. David Tkachuk:** So that I understand this subject better, if a photographer is taking family portraits, working for a photography studio, under the law now, I assume that when that photographer leaves the employment of the studio, the pictures of the family stay with the studio. Is the honourable senator saying that when this legislation is passed, that photographer will be able to take those family pictures unless there is an agreement made otherwise between the studio and the photographer?



**Senator Day:** No, I am not saying that. Another section of the Copyright Act states that if someone is in the employ of another company, the studio in the honourable senator's example, there is an implied contract, in effect, that the photographer is working for the company. The company owns the photographs unless there is something to the contrary. A section of the act that we are not proposing to change provides for this implied contract between an employee photographer and the company.

**Senator Tkachuk:** In the case of a news photographer working for *The Globe and Mail*, when he or she takes a picture under the present law, does the picture belong to the photographer for all future use or to *The Globe and Mail*? Describe the situation as it exists now, and then tell me what would happen if this bill were to pass. I am somewhat confused. It is not as easy as my honourable friend makes it out to be, but he has been at it longer, I think.

**Senator Day:** I did not hear that last comment.

**Senator Meighen:** It is just as well.

**Senator Day:** If the photographer were an independent and took these photographs for *The Globe and Mail*, under the current legislation *The Globe and Mail* would be the owner of copyright. If the photographer were an employee of *The Globe and Mail* as opposed to being an independent, there would be no change. *The Globe and Mail* would own the photographs in both instances.

Going back to the first instance, if the photographer is an independent and the photograph is taken for *The Globe and Mail*, under the proposed change, if *The Globe and Mail* were not smart enough to enter into a contract with that photographer to allow it to use the photograph again and to make whatever changes to the photograph it wanted, the photographer would be the owner of copyright and would be able to sell that photo to other people.

**Senator Tkachuk:** In other words, under the present law, the independent photographer could sell it to *The Globe and Mail* under provision that he continue to own the photograph, could he not?

**Senator Day:** He could. The honourable senator is quite right. The photographer could do so, but it would be necessary for him or her to have a signed contract with *The Globe and Mail*.

If a painting were done for *The Globe and Mail*, copyright would remain with the painter without the necessity of a contract. *The Globe and Mail* could only use the painting for the purpose for which it initially purchased the painting.

**Senator Tkachuk:** Under the present law, it is if the photographer is smart enough, and under the future law, it is if *The Globe and Mail* is smart enough. That is the only difference

**Senator Day:** The purpose of this bill is to put all artists on the same footing and not to make a distinction as to whether the art in question is a photograph or a sketch or a painting. The purpose of the bill is to treat everyone the same and not have an exception in the rules that puts a photographer in a different or weaker position commercially than other artists.

• (1520)

**Hon. Eymard G. Corbin:** Honourable senators, I would like the sponsor of this bill to clarify one matter. The exchanges so far have been dealing with artists, commercial photographers, commercial studios, press reporters, photographers and so on and so forth. I never heard the honourable senator mention once "amateur photographers" or "serious amateur photographers." Surely they are included in the bill.

**Senator Day:** The honourable senator is absolutely right. If an amateur painter paints a painting or an amateur writer writes a song, that amateur owns the copyright as much as a professional would.

**Senator Corbin:** Traditional photography is a mechanical, reproductive system. Now, by way of the Internet, we are dealing with a totally new type of creativity and expression. In terms of traditional photography, is the bill aiming to copyright the negatives or prints or both?

**Senator Day:** Copyright is the right to produce or reproduce. With respect to photography, the definition is that there is copyright in the negative. If there is no negative, then copyright is in the initial print or in whatever other mechanical or electronic means is used to make the impression on the medium. It is all covered by the definitions of "photograph" and "artistic work."

**Hon. Terry Stratton:** Honourable senators, it is funny that this bill is numbered S-20. I had Bill S-20 in the last session dealing with the appointments of certain individuals to positions such as judges and senators, to name but two.

**Senator Tkachuk:** I am sure we will be as cooperative on this one.

**Senator Stratton:** That bill required an interpretation by the Speaker of a Royal Recommendation; I will get to that moment. That bill is Bill S-4 in the current session, but I will keep at it. I will keep going. If the bill is not passed this session, it will be introduced again.

When the honourable senator talked about the requirements for this bill, my initial reaction was positive because there have been cases in law where photographers have tried to do something about their work but have not been successful because someone else owns the print.

Compact discs can now be downloaded from the Internet. One company from the recording industry has recognized the problem as virtually unsolvable and so has reduced its prices by 50 per cent to entice people back into buying CDs.

In one case, a young girl was fined \$2,000 by the courts for such downloading behaviour in the hopes that it would frighten other people away from downloading. How does the honourable senator see us addressing that concern? I can see exactly that problem developing here because many of the photographs taken these days are taken electronically and are transmitted over the Internet. How does the honourable senator see this bill as resolving that issue? Has he thought about that problem?

**Senator Day:** This bill will deal with that issue only indirectly. The honourable senator will be aware of several court cases on the downloading of copyright material, particularly in the United States where the law is a little more clear in relation to the ownership of copyright.

This bill will deal with the issue of photograph ownership. It will not deal with whether it is an infringement of a particular right to download for personal use or for educational purposes. That issue is being addressed by the courts now with respect to CDs, with respect to songs and with respect to movies that are downloaded and shared. The issues surrounding that entire industry are now working their way through the court system.

**Senator Stratton:** I understand that the honourable senator does not feel that this bill should address that issue at all.

**Senator Day:** Honourable senators will recall that I talked about a review of the Copyright Act as a result of the mandatory five-year review in the existing act. In supporting culture and innovation, the Government of Canada deals with many different copyright issues. I referred to the issues of rapidly advancing technologies and the changes in international trade, all of which will come forward. I felt that it would be better to deal with this very narrow issue and get it behind us.

I look forward to debating all of the other copyright issues as they come to us with recommendations from the departments.

#### POINTS OF ORDER

**Hon. Terry Stratton:** Perhaps I could ask Your Honour to determine whether this bill requires a Royal Recommendation.

**The Hon. the Speaker:** I will take that question as a point of order. I see another questioner. Perhaps we could deal with that before I move to whomever wants to adjourn debate, if anyone does.

**Hon. Eymard G. Corbin:** Your Honour, on the point of order —

**The Hon. the Speaker:** Honourable senators, to clarify, we are in the process of finishing Senator Day's 45-minute time allotment, and we are dealing with questions. Senator Kinsella has asked whether a Royal Recommendation is required. I suggested we deal with further questions first. If we get to the point of order, then I must stop taking further questions.

I will leave it to Senator Corbin. Does he want the point of order to be dealt with now?

**Senator Corbin:** I am prepared to come back to it. I do not think it is a valid point of order.

**The Hon. the Speaker:** Honourable senators, we will finish the questions and then I will deal with the point of order.

**Hon. Wilfred P. Moore:** Honourable senators, I have a question. If a photographer takes a photograph of a

copyrighted work or of a trademark, how is that act handled in this bill? How is the holder of that copyright interest or that trademark interest protected in this bill?

**Hon. Joseph A. Day:** I thank the honourable senator for his question about the *Bluenose*.

The issue of trademark and the interrelationship of trademarks versus copyright is a very complicated area. Copyright material that is put on public display, such as a statute, such as a boat, material that may be trademark protected, can be photographed if that material is intended for public display. The photographer would then, with this amendment, have ownership in the copyright of the photograph.

That is as far as I can go in answering the honourable senator's question. Trademark protection and copyright protection are two different rights; they can exist together. Sometimes, for example, permission will be required from two different people to deal with something. For example, in the score for a song, the lyrics can be owned by one person, the music by another and a third person could own a copyright for the manner in which it is produced.

• (1530)

I referred you to the Canadian Museum of Contemporary Photography where Melvin Charney has an exhibit exploring "the central place of photography in Charney's multidisciplinary approach..." — and I thought this was quite interesting — "...from photographs to montages to painted photograph-based works."

It is quite conceivable under the existing act that someone would own copyright in the photograph that he has taken, other than himself, but he owns copyright in the painted portions or the changes he has made to that photograph. It is not inconceivable to have two different owners involved, one being the owner of the trademark and one being the owner of the copyright.

**Senator Moore:** I take it the answer is that if a photographer took a photograph of an original painting, the photographer would own the copyright in the negative. That would not extend to the image or the subject matter of the negative. In order for the photographer to commercially use that negative bearing someone else's copyrighted material, he or she would have to go to the person who owns the copyright in that work.

**Senator Day:** I agree with that.

**Senator Moore:** If that is so, then I would ask if the act has specifically provided for that. I have not looked at the act since June. I did not see a provision in there that the subject matter could be the intellectual property of others.

**Senator Day:** That is not specifically in the act because the act deals with a much narrower issue. I agree with the honourable senator's understanding of the law, that there can be and would be, in this instance, a photographer owning copyright in his or her

work, but that work might also be subject to someone else's intellectual property copyright. That is my understanding of the law as it exists. That is how it will exist in law if this chamber and the House of Commons are inclined to pass this bill.

**The Hon. the Speaker:** Honourable senators, to clarify, this is the first speech in this debate. The second speech may take 45 minutes and we would normally recognize a member of the opposition for the adjournment. However, before we do that, we have a point or order.

**Senator Stratton:** I would note that Senator Beaudoin had stood to adjourn the debate, but he has since had to leave the chamber. I would like that to be recognized, because it should be in order that a member of the opposition speak next.

My question with respect to the Royal Recommendation may sound facetious, and perhaps it is. However, I think there is a question here about whether this bill requires a Royal Recommendation. Bills are often introduced in this chamber without question; they are simply accepted. On occasion, we should ask if that question should be addressed. I will delve into that no further. However, on occasion that may be warranted.

**Senator Corbin:** Honourable senators, I think the suggestion that this bill ought to be examined in light of the requirement for a Royal Recommendation is full of holes. There is nothing in this bill that would entail a specific, votable budgetary item to bring into force the disposition of this bill.

This bill simply seeks to introduce a straightforward amendment to an existing statute that deals with order and good government. It does not deal with a specific expenditure. If honourable senators take the time to read the summary, the amendments and the explanatory notes, that will be very clear. Absolutely nothing in this bill would require a specific itemized budgetary item. Therefore, that negates the suggestion that it could possibly require a Royal Recommendation.

On a larger issue, are we to automatically ask the Speaker to rule on whether a new bill requires a Royal Recommendation, in those simple terms, or will we advance arguments in debate to demonstrate that, indeed, the bill requires a Royal Recommendation? I have not heard that from either Senator Kinsella or from the opposition whip. I think the house is entitled to hear that sort of argument before we ask the Speaker to rule on the matter — at least I would like to hear that argument.

**The Hon. the Speaker:** I see no honourable senator rising. Unfortunately, I do not have the bill before me and I should have an opportunity to look at it.

Two questions have been raised. Does the bill require a Royal Recommendation? That would be the case if an expenditure of money were required. As Speaker, I do not have the bills in a desk in front of me as honourable senators do. Perhaps that should be arranged so I may deal with matters like this more expeditiously.

You have raised another important point, and that is: Is it necessary to suspend the debate for a day in order that I may read it and rule on the point of order?

Any time a point of order is raised, the Speaker must take it seriously. That being the case, I will read the bill and rule on the two questions and those are, whether there is a need for the Royal Recommendation and Senator Corbin's question about how expeditiously a matter should be addressed. I will take the matters under advisement.

Senator Robichaud, do you wish to speak to this point of order?

[*Translation*]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I refer to the question raised by Senator Corbin on the subject of the argument that you should make a decision. That is basically what he was asking. The honourable senators asking for this decision have provided enough information for His Honour to make a decision.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I asked the question in order to find out if the bill's sponsor had consulted with more than one minister, that is, the Minister of Industry and the Minister of Canadian Heritage. He has sent them copies of his bill.

I am well aware that Parliament has voted a budget for each of these departments, and I know that there is a vote on the budget of the Minister of Industry for administration of the department. It was an amendment to the Corporations Act. The responsibility remains in the hands of the minister responsible.

• (1540)

These two departments have already earmarked funds for this. In my view, there is a connection between this amendment to the bill and this sum of money, which may be changed.

I have not received a specific answer on this. That is why I am asking whether this was necessary or not. It would be nice if at least one of the two departments replied to the letter the senator sent them, if only to thank him for the bill and tell him they agree with it. Or, if this is a problem for the department, it could apologize to the senator and explain that this is the responsibility of the executive council — cabinet — and not of an individual legislator.

Our colleague has not received anything from either minister. That is why I am opening up this question. Those are my arguments for asking this question.

[*English*]

**The Hon. the Speaker:** As I indicated a moment ago, I have the bill now, but I have not read it. I will read it and I will take into consideration all the matters raised and bring back a ruling very quickly. The matter of adjourning debate will be dealt with afterwards.

This goes to the question as to whether the matter is properly before us. That must be resolved before another step is taken. I will remember that Senator Beaudoin wishes to adjourn the debate.

### COMPETITION ACT

#### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Cook, for the second reading of Bill C-249, to amend the Competition Act.—(*Honourable Senator Kirby*).

**Hon. Michael Kirby:** Honourable senators, in rising to speak to Bill C-249 —

**The Hon. the Speaker:** I give notice to all honourable senators that if Senator Kirby speaks now, his speech will have the effect of closing the debate. If no other senator wishes to speak, I will see Senator Kirby.

**Senator Kirby:** Honourable senators, in my remarks on Bill C-249 and in Senator Eyton's response, we both indicated support for the principle of the bill, which is an amendment to the Competition Act. We also both raised some technical questions that can best be answered in committee. Therefore, if the chamber votes second reading of the bill, it would be my intention to immediately move that the bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

**Senator Robichaud:** Question!

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

Motion agreed to and bill read second time.

#### REFERRED TO COMMITTEE

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

On motion of Senator Kirby, 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, since several committees usually meet at 3:30 p.m. on Wednesdays, I move that all the items on the Order Paper be postponed until the next sitting of the Senate as they stand, except for Item No. 142, the motion by Senator Meighen, who wants to move it today.

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

Motion agreed to.

[*English*]

### NATIONAL SECURITY AND DEFENCE

#### MOTION TO AUTHORIZE COMMITTEE TO STUDY VETERAN'S SERVICES AND BENEFITS, COMMEMORATIVE ACTIVITIES AND CHARTER—DEBATE ADJOURNED

**Hon. Michael A. Meighen,** pursuant to notice of June 19, 2003, moved:

That the Senate Committee on National Security and Defence be authorized to undertake a study on:

(a) the services and benefits provided to veterans of war and peacekeeping missions in recognition of their services to Canada, in particular examining:

- access to priority beds for veterans in community hospitals;
- availability of alternative housing and enhanced home care;
- standardization of services throughout Canada;
- monitoring and accreditation of long term care facilities;

(b) the commemorative activities undertaken by the Department of Veterans Affairs to keep alive for all Canadians the memory of the veterans achievements and sacrifices; and

(c) the need for an updated Veterans Charter to outline the right to preventative care, family support, treatment and re-establishment benefits;

That the Committee report no later than June 30, 2004.

[*Translation*]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I move that the rest of the debate on this motion be adjourned until the next sitting of the Senate.

On motion of Senator Robichaud, debate adjourned.

The Senate adjourned until Thursday, September 18, 2003, at 1:30 p.m.

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