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THE SENATE
Monday, October 28, 1996

The Senate met at 8 p.m., the Speaker in the Chair.

Prayers.

[Translation]

The Late Honourable Arthur Tremblay, O.C., B.A., M.A., M. Ed.

Tributes

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, one of the first new colleagues I had the honour to meet shortly after being appointed to the Senate was the Honourable Arthur Tremblay, whose passing, yesterday, has deeply saddened us all.

I already knew him by name, of course. I knew he was one of the great mandarins who shaped Quebec during the 1960s. I knew of his insight and expertise in all constitutional matters. I was not without knowing that he had been involved in the intellectual community and the education field before taking up a career in the public arena, and that he had been granted honourary doctorates by many universities.

What I did not know and soon learned was that, first and foremost, the Honourable Arthur Tremblay was a man of great simplicity, who was nice to everyone he encountered along his way. That is what made those who worked with him the envy of those who did not have that privilege.

In my mind, there will always be a picture of this man sitting, preferably in a group, a beer in his hand, always ready to discuss and argue with a degree of intellectual rigour that never ceased to impress even those who may not have shared all of his ideas and opinions.

He was one of the many individuals who, a year ago minus two days, while still claiming to be federalists, voted yes in the referendum. He did not see any contradiction in doing so, because, for him as for so many others in Quebec who are still waiting, the future of Canada, of which he was a proud citizen, depends to a large extent on the formal recognition of the evolution of Quebec, a proud defender of which he was. There would be no better way of honouring his memory than by recognizing this reality.

My deepest sympathy goes out to his wife Pauline, their children, Suzanne and Simon-Pierre, as well as his family.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, it is with great sadness that we learned of the death of our former colleague the Honourable Arthur Tremblay.

[English]

From the time he was first appointed to the Senate in 1979 until his retirement in June of 1992, Arthur Tremblay made his mark during some of our most tumultuous debates on Canadian constitutional issues. He became a very close advisor to two former prime ministers, the Right Honourable Joe Clark and the Right Honourable Brian Mulroney.

He was a senior Conservative voice on the special joint committee that dealt with the patriation of Canada's Constitution from Great Britain in 1980. He was also joint chairman of the Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord.

We knew Arthur Tremblay as an outspoken advocate for the issues in which he believed. Although we did not always agree with his views on constitutional questions, his convictions were strongly and forcefully maintained, and expressed with great vigour. He also brought the same zeal for reform to this place. Soon after being appointed, he called for Senate reform. One of his first suggestions in that vein was that the Senate Speaker be elected.
Arthur Tremblay has been at the heart of one of his province’s most important issues: He was the chief architect of education reform in Quebec in the 1960s. Throughout that time Mr. Tremblay was the deputy minister of education for his province. During his distinguished career, he was also a university professor and an author.

(2010)

In 1989, Mr. Tremblay published a book on the history of the Quebec education system from the beginning of Confederation to 1964. I am told that in his retirement he was working on another book, this one dealing with reform of the Quebec education system.

When he left this chamber on his 75th birthday, the Canadian Press described Mr. Tremblay this way:

[Translation]

Senator Tremblay has eyes like a hawk, a memory like an elephant and a sharp intelligence.

[English]

The newspaper Le Droit wrote in 1993:

[Translation]

Senator Arthur Tremblay is one of a kind.

[English]

Those of us in this chamber who have had the pleasure of serving with him echo that sentiment.

[Translation]

We wish to express our sincerest condolences to his wife and to his family and to the people of his province, who have lost such a dedicated citizen.

Hon. Lowell Murray: Honourable senators, I have known the Honourable Arthur Tremblay since he was appointed to the Senate in September 1979. At the time of his appointment, he had already distinguished himself for 17 years as a senior official in the Quebec public service.

As the Leader of the Government just reminded us, during the Quiet Revolution, he was entrusted with several key positions in education and intergovernmental affairs planning and development by Premiers Lesage, Johnson, Bertrand, Bourassa and Lévesque.

As a top civil servant, he earned the respect and admiration of both his fellow Quebecers and his professional colleagues across Canada.

Two of his colleagues from outside Quebec proposed Senator Tremblay’s appointment to the Senate. As Prime Minister Clark did not know Mr. Tremblay, it was at the instigation of William Davis, former education minister of Ontario and Premier of that province at the time, and of Marcel Massé, then Clerk of the Privy Council in Ottawa and today a minister in the federal government, that Mr. Clark invited Arthur Tremblay to Ottawa.

Prime Minister Clark asked him to prepare a white paper on federalism, a project that underwent a transformation after the defeat of the Conservative government in 1980 and the return of the party to the ranks of the opposition. Mr. Tremblay helped Mr. Clark and his advisors work out their arguments for the No side in the 1980 referendum debate.

In the months preceding parliamentary debate on Prime Minister Trudeau’s constitutional project in 1981 and 1982, Senator Tremblay co-chaired, with the Honourable Jake Epp, the Conservative caucus committee responsible for formulating our party’s policy and strategy.

After the election of the Conservative government in 1984, Senator Tremblay was appointed constitutional advisor to Prime Minister Mulroney and he brought his extensive knowledge of this dossier to a departmental committee I had the honour to chair beginning in 1986. At Meech Lake in April 1987, in the Langevin Block two months later, and at the Conference Centre in June 1990, Senator Tremblay was by our side. He was a well-respected spokesman, and an intelligent and cultivated advisor.

His contribution to the debates of the Senate during his 13 years in this Chamber was not limited to the broader issue of the Constitution. He chaired our Standing Committee on Social Affairs, Science and Technology, and took part in the discussions of several other committees covering the whole range of government activities.

Autumn 1995 marked Arthur Tremblay’s last and most dramatic involvement in public affairs. For many of his friends, it was also the most poignant. The man who had taken a stand for the No side in 1980, and for the Meech Lake Accord after the 1982 patriation, declared his support for the sovereignist project in the 1995 referendum.

He had not completely abandoned his faith in federalism and, as Senator Lynch-Staunton alluded to just now, the sovereignty he had in mind was that of a state within a federation. He had lost hope in Canadian federalism as he felt it was evolving at the present time. He compared his actions to saying “Yes” to oneself in order to drown out the “No” of another.

His position was not, however, surprising to many of his friends, even though they did not agree with his analysis. He said that at the age of 78 he had made the discovery that the path he had chosen to take up until then led nowhere.

Arthur Tremblay left us at the time of the 1995 referendum, but never broke the ties of friendship he had forged over the years, throughout Canada, and in this house in particular. I personally shall always hold dear the memory of a servant of the people who was known for his great intelligence and the highest integrity. I deeply mourn the loss of a wonderful friend and colleague.

Hon. Roch Bolduc: Honourable senators, I knew Arthur Tremblay in the fifties when he was a professor at the School of Education at Laval University. After his years in Paris and at Harvard, Arthur made a name for himself with his excellent brief, that is to say the brief presented by Laval University professors before the Tremblay Commission appointed to examine constitutional problems in the fifties.

I was a junior public servant in Quebec City, and we used to ask his advice on problems relating to methodology or issues connected with teacher training, because at the time vocational training was the responsibility of the Department of Youth.

He had a brilliant mind, and it was fascinating to see him, and especially to hear him, thinking out loud about a problem. With a gleam in his eye and a lively imagination, he would mull over ideas with intense pleasure. At the time, he was already emphasizing the use of computers in education. Then came the Quiet Revolution, which he helped to bring about.
I worked at his side for three exciting years. School reform was being prepared by the Parent Commission of which he was a member, and at the same time he was senior advisor to the Minister of Youth, Paul Gérin-Lajoie. Arthur constantly made suggestions to the government on short- and long-term policies and programs designed to bring about major changes to the education system: raising the legal school-leaving age, funding plans for school boards, making sales tax more comprehensive, regionalization of school boards, reports on technical and occupational training, and so forth.

During the election in the fall of 1962, which was on the second round of nationalizing electric power, when the minister went off on his election campaign, Arthur could concentrate on producing the report of his task force. He dictated literally 20 pages a day for one month. By Christmas, the two volumes of the 550-page report were ready. It was a formidable document, which did not receive all the attention it deserved because of the political effervescence at a time when public opinion was absorbed by so many problems simultaneously.

Arthur then chaired the planning and development office, which was active in preparing and implementing joint regional development projects with the federal government.

During the sixties, in Quebec City, a number of senior officials, including Mr. Tremblay, sat on ad hoc cabinet committees with a number of ministers. We discussed controversial issues selected by the premier and reported to him on these discussions. Messrs Lesage and Daniel Johnson senior, and also M. Bertrand, had chosen this approach to try to resolve the many problems they encountered.

Arthur's opinion always proved to be a decisive factor because of his intellectual acuity and his sincerity. He subsequently worked full time on federal-provincial relations, when I also had the pleasure of discussing with him issues relating to municipalities and housing.

Wherever we happened to work, we always managed to meet to continue our discussions, not only on the controversial issues we had on our plate but on all the major social issues of that time.

Arthur, who was a few years older than we were, thus became the mentor of a whole generation of government officials.

Later, at Mr. Clark's request, he joined the Senate. Everyone knows the important role he played here, particularly at that time and under Mr. Mulroney, to whom he was an advisor on constitutional issues during the Meech Lake Accord. I had the pleasure of working with him again in 1992 on a proposal concerning the sharing of powers, before the Charlottetown Accord.

Finally, I want to say that Arthur Tremblay, who also had friends in the academic and cultural world, was an endearing and simple man. He loved nature, including fishing, but also French literature, in which he was well versed. Arthur Tremblay grew up in the Saguenay region during the Depression era, in the thirties. He was a disciple of Father Lévesque's and he was one of Quebec's pioneers in the study of social sciences with, among others, his friends Jean-Charles Falardeau, Albert Faucher, Maurice Lamontagne and Jean Marchand.

Let us not forget that the early part of these men's professional lives happened during the Duplessis years. They believed that the then premier of Quebec was not a progressive politician, in that, for example, he was not involved sufficiently in the economic and educational spheres. At the same time, they believed that he overexercised his discretionary powers. The collision of two very different mentalities explains in part why some entered provincial politics, while others became involved at the federal level. All believed in the positive action of the government of the time.

I have lost a friend of many years and a great pal. I offer my sympathy to Pauline, who supported him so well, and to his children.

[English]

**Hon. Richard J. Doyle**: Honourable senators, just over a year ago, when we were at last becoming aware of the fact that the Quebec referendum posed a very real threat to the solidarity of our country, we got the news that our former colleague Arthur Tremblay had been listed among the supporters of the "Yes" vote.

Arthur was no whirling dervish in Canadian politics. When Prime Minister Clark sent him to this place, he was immediately accepted as one of the Upper Chamber's senior statesmen - a wise, experienced and articulate veteran of this country's continuing constitutional wars.

When Lowell Murray, as Government Leader, offered his retirement tribute to Senator Tremblay in June 1992, he caught the mood of the chamber. He said:

He commands the respect and appreciation of his peers and fellow citizens. His 13 years here were the crowning achievement of an already brilliant career in education and public administration.

It had been my good fortune, honourable senators, to have Arthur Tremblay as my next door neighbour for seven Ottawa years. He was my mentor in the arcane ways of Senate committees.

I knew that Arthur was one of the people whom prime ministers sent for when the bottom seemed to be falling out of the country. He was, for my money, the most assured and effective participant in the famous Meech Lake debate, and when Pierre Trudeau came to this chamber to oppose the accord, Arthur was his final - and most effective - interrogator.

Twenty-one days later, Senator Tremblay had his own say about Meech. Will you forgive me for quoting from that splendid address? He said:

> The purpose of the Constitution Act, 1987, once it is proclaimed, will be to put things back in their proper order in a federation such as ours. It would not have been natural that the Constitutional Act of 1982, the purpose of which was to sever the last colonial link still connecting us to Westminster, should go through all the necessary legal stages without Quebec being part of the operation....

> When I heard comments to the effect that there was no emergency, I really felt the weight of this anomaly which had existed for the past five years. Eventually, Quebec and the rest of the Canadian federation would have to get out of the impasse. It is to the honour and credit of Mr. Mulroney to have taken the first initiative towards normalization. He did it in a way which clearly demonstrated how much he was aware of the need to pursue this objective with caution and judgment.

It is doubtful if Senator Tremblay himself knew on that day in 1988 how important caution and judgment would become in assessing the misfortune that would flow from former Prime Minister Trudeau's marathon lecture to the Senate.

Was it exasperation, anger, disappointment or pain that ultimately persuaded Arthur to stand on the other side of the referendum that sprung from the failure of Meech? Or was it something not nearly so grand? Something that Arthur Tremblay allowed for in his final speech to the Senate on that June day in 1992? He said:

> Usually in ambivalent situations of this kind or, faced with contrary impulses - forced to look inside oneself, for all practical purposes - I have always felt that it was better not to give in to one's spontaneous intuition but to follow custom and tradition.

Was the key word "usually"?
Hon. Marcel Prud’homme: Honourable senators, I had the honour of first meeting the Honourable Arthur Tremblay at the Canadian Institute on Public Affairs a great many years ago, and a few government members, including the honourable Whip, were with us. This was back in the 1950s, during the Duplessis era. Everybody knew that every year, in September, we would meet, and I was a very young student at the time and I remember receiving a $50 grant every year to attend this meeting in Sainte-Adéle.

The meeting brought together everyone who, in Quebec, took an interest in public life, education and the future of Quebec and Canada. Later on, I had the opportunity to see him in action in his many activities regarding the Constitution.

Since then, as a history buff myself, I know that some people read the Debates of the Senate to get a better idea - I am saying this for the benefit of students in particular who like to know who so and so was - I would refer you to the Debates of the Senate for Wednesday, June 17, 1992. That is the day he retired. I would urge the honourable senators to read over the very eloquent speeches made on that occasion by the honourable senators Lowell Murray, Royce Frith, Gérard Beaudoin, Mario Beaulieu, Pierre De Bané, Solange Chaput-Rolland, Brenda Robertson, Lorna Marsden, Gildas Molgat and Richard Doyle, who has just paid tribute to him.

Reading these speeches gives us a better idea of what a charming, pleasant, competent, well-known, well-liked and distinguished man Arthur Tremblay was. At another time, I had the honour to be appointed by the Right Honourable John Turner, a long-time friend of mine, to attend in Paris the first meeting of La Francophonie, presided over by the Right Honourable Brian Mulroney, whom I also call my friend. You should have seen Arthur explain to the senators and members of Parliament present just about everything there was to know about La Francophonie worldwide: every detail, every country, every conference, every piece of advice he had ever given the five premiers of Quebec under whom he had served as an advisor. He could talk for ever. He was an extraordinary source of information of the type you could not find anywhere in books.

Now you know me; I made a point of writing about it in the evening, because I always note at night in my diary the day's main events. I do not know if it will come in handy some day, but it certainly provides a wealth of details on some decisions made by both the Government of Canada and the Quebec government.

I think he would be very happy to hear me relate another extraordinary, equally historic event that occurred on July 1, 1980 - I have no notes on this, as it is so clear in my mind - when the Honourable Francis Fox finally decided to proclaim O Canada as the national anthem. Francis Fox had invited our colleague, Senator Forrestall, and myself to a big ceremony on the Hill on July 1. Why? Simply because we were the only two survivors of the Pearson government who, as members of the House of Commons or the Senate, had recommended that O Canada be finally designated as Canada's national anthem. Francis Fox spoke about the 100th anniversary of O Canada being performed in Quebec City in 1880. I can still hear the voice of precision, Senator Tremblay, saying: 'One hundred years and one week,' no matter what English Canada's frequently revised history may say and despite Francis Fox's statement about July 1 being the 100th anniversary.

You see how history can be distorted, when everyone knows that the lyrics of O Canada were written by Sir Basile Routhier for the Saint-Jean-Baptiste holiday on June 24, 1880, not July 1, 1880. Sir Basile Routhier composed our national anthem in collaboration with Calixa Lavallée.

So why was Senator Tremblay standing on the platform? I was intrigued and you will be too.

[English]

You will be glad to know that he said: I have nothing to do here.

His wife is the granddaughter of Sir Basile Routhier. Few people know that. She has relatives in Alberta and New Brunswick. The Speaker of Alberta, a Conservative who was honoured here last week, is determined to do something, having learned that relatives of Sir Basile Routhier lived in Alberta. I am trying to convey to you: Canada, Canadien français; O Canada!

He objected, as do I, to this tendency that we have to sing partly in French, and then switch at the end. The best part of O Canada! for us is the end. Canada has decided to "stand on guard for thee" many times. Why? We say:

[Translation]

Ô Canada, terre de nos aïeux, protégera nos foyers et nos droits.

[English]

That verse is repeated twice.

[Translation]

That is the Canadian charter of rights. That is the true song, as written on June 24, 1880 by Sir Basil Routhier. We tend to sing just part of it, and it ends up meaningless. The reason we in this country do not understand each other any more is that we are not singing the same thing. That is a little historical fact I share with you on the occasion of his regrettable death. It was a honour for me to receive my title as Privy Councillor from the hands of her Majesty. Who was with me? Arthur Tremblay.

[English]

If you look in the Canadian Parliamentary Guide, you will find that Arthur Tremblay was not only a senator, that, on July 1, 1992, he received the title of Member of the Privy Council from the very hand of Her Majesty the Queen of Canada.

I thought that today I could use this occasion as historical background for those who, like him, have slowly lost faith in this great country of ours. He was not alone. There are more and more people who wonder if all these dreams of Senator Tremblay, his fight for the simple fact of life -

[Translation]

- the place of French Canadians in this country. This is so simple. It does not take treatises on political science. All it takes is to accept an historic fact with generosity and intelligence. That was Arthur Tremblay. That was the real Arthur Tremblay, who asked Canada to have the generosity, understanding and intelligence to accept an historic fact. How could anyone not understand? He said once in a conversation:

Today, across Canada, people fly the Canadian flag.

But who fought the hardest to have a distinctive one? French Canadians. Remember the famous flag debate in 1964, under Mr. Pearson. It met with contempt in Alberta, Saskatchewan, Manitoba and British Columbia; with contempt in the Atlantic provinces. It was shocking. I was there as a young M.P., urged on by Arthur Tremblay, because he knew it was an important symbol for a country, this Canadian flag. Today, those
who protested so vehemently against this symbol of unity are the very people who are using it. But do you know how far they are taking it?

It is like it says in the Gospel: “O ye of little faith” in a country that could be so great if people would only understand the messages that were sent by Arthur Tremblay.

I wish to extend my sincere condolences to his wife Pauline, his family and his friends who have lost a loved one and a dear friend.

[English]

ROUTINE PROCEEDINGS

Employment Insurance (Fishing) Regulations

Report of Social Affairs, Science and Technology Committee Presented

Hon. Mabel M. DeWare, Chairman of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Monday, October 28, 1996

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

SEVENTH REPORT

Your Committee, to which was referred the Employment Insurance (Fishing) Regulations made under section 153 of the Employment Insurance Act and approved on September 17, 1996, and any matter relating thereto, has, in obedience to the Order of Reference of Thursday, October 3, 1996, examined the said Employment Insurance (Fishing) Regulations.

Your Committee, having heard from officials of the Department of Human Resources Development, considers its examination of this Order of Reference completed.

Respectfully submitted,

MABEL M. DEWARE
Chair

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

Senator DeWare: Honourable senators, I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

Hon. Gérald J. Comeau: Honourable senators, I wished to make a brief intervention on this report. However, since it will be considered at the next sitting of the Senate, I will make my comments at that time.

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

ORDERS OF THE DAY

Judges Act

Bill to Amend—Third Reading—motion in amendment—Debate Continued

On the Order:
Resuming the debate on the motion of the Honourable Senator Bryden, seconded by the Honourable Senator Stollery, for the third reading of Bill C-42, to amend the Judges Act and to make consequential amendments to another Act,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Doody, that the Bill be not now read the third time but that it be amended:

(a) in clause 4 on page 3:

(i) by replacing line 13 with the following:

approval of the Council,

(ii) by replacing line 15 with the following:

granted pursuant to subsection (1), the chief, and

(iii) by deleting lines 23 to 31; and

(b) in clause 5, by replacing lines 11 to 45 on page 4 and lines 1 to 35 on page 5 with the following:

56.1 (1) A judge on leave of absence granted pursuant to subsection 54(1) may, with the approval of the Council granted pursuant to subsection (2), perform judicial or quasi-judicial duties for an international organization of states or an institution of such an organization and may receive in respect thereof reasonable moving or transportation expenses and reasonable travel and other expenses from the Government of Canada.

(2) Where a judge requests a leave of absence pursuant to subsection 54(1) to perform judicial or quasi-judicial duties for an international organization of states or an institution of such an organization, the Council may, at the request of the Minister of Justice of Canada, approve the undertaking of the duties.

Hon. Anne C. Cools: Honourable Senators, I rise to speak in support of Senator Nolin’s amendment to Bill C-42. On October 1, 1996, at second reading debate, I laid out many of my objections to this bill. Senator Nolin’s amendment will permit some international activities by judges but will limit the purpose, scope and function of such activities to judicial and quasi-judicial functions, and will also define the salaries for so doing. Senator Nolin’s amendment upholds section 100 of the Constitution Act 1867, and Parliament’s rights and judges’ emoluments. Honourable senators, I should like to begin by reviewing some past and recent debate in this very chamber on the international use of Canadian judges.

Honourable senators, in 1992, Prime Minister Mulroney’s government negotiated the North American Free Trade Agreement, or NAFTA. In 1993, the Senate of Canada considered the NAFTA enabling legislation, Bill C-115, which placed the issue of the judges’ role into debate in the Senate. Bill C-115, clause 218, amended the Special Import Measures Act to add section 77.013(1) establishing dispute settlement panels and 77.013(2) making Canadian judges available to be appointed to these binational dispute settlement panels - something strictly forbidden by the Judges Act. Thus, Bill C-115 altered the application of the Judges Act. Liberal senators, then in opposition, building on then Leader of the Opposition John Turner’s and Liberal senators’ 1988 opposition to the Free Trade Agreement, maintained that this use of the judiciary was not consonant with Canadian usage, and consequently opposed Prime Minister Brian Mulroney’s NAFTA bill, Bill C-115.

Senators John Stewart and Allan MacEachen led on this matter. At third reading, on June 17, 1993, Senator Stewart said:

Our Judges Act precludes judges from acting as members of these binational panels. The proposed subsection of the Special Import Measures Act would read as follows:

Judges of any superior court in Canada and persons who are retired judges of any superior court in Canada are eligible to be appointed to a panel.

By this clause, the Government of Canada is asking this house to support the government’s decision to acquiesce in the American demand that the nature of the panels be changed.

He also said:

Growing weary of having been found wrong again and again by the panels, the Americans have come to question the personnel of the panels...

What the Americans want are panels composed entirely of judges, to the fullest extent practicable.

Senator Stewart then moved an amendment to delete the relevant part of Clause 218, saying:

That Bill C-115 be not now read the third time, but that it be amended in clause 218 at page 159 by striking out section 77.013(1) as set out in that clause, and by renumbering section 77.013(3) as 77.013(2).

Liberal senators, of whom I was one, had thoroughly discussed these issues in caucus and were unanimous on the role of Canadian judges. Senator MacEachen, speaking to this amendment that same day, quoted from the proceedings of the Standing Senate Committee on Foreign Affairs on Bill C-115 and the testimony on June 8, 1993 of Konrad von Finckenstein, Assistant Deputy Attorney General, Tax Branch, Department of Justice.

(2050)

Senator MacEachen narrated his exchanges with Mr. von Finckenstein by stating:

It is interesting to put some of that testimony on the record. It illustrates that not only did the Americans request...that the composition of panels be readjusted to permit the service of judges and former judges...but that our negotiators acquiesced in their request. Further, the Government of Canada undertook a special amendment in this bill to accommodate that request.
He continued:

I went on to ask the legal advisor whether it was true that, in order to accommodate the Americans, the Government of Canada was undertaking an amendment to the Judges Act:

"...As I understand it, we have accommodated the Americans by proposing an amendment to the Judges Act to permit judges to participate; is that not the case?"

Senator MacEachen recited Mr. von Finckenstein's answer:

Mr. Von Finckenstein: No, there is no amendment to the Judges Act in the legislation before you, senator.

Senator MacEachen then related his own response to the witness as:

I was mistaken, then.

Honourable senators, I was present at that committee meeting. I observed the witness’ uneasiness and his unforthcoming responses while asserting that Bill C-115 did not alter the application of the Judges Act. I observed Senator MacEachen, himself a former Minister of Foreign Affairs well schooled in Canada's judicial and international affairs, and his obvious frustration and puzzlement as to whether the witness was misleading us. Moments later, Mr. von Finckenstein yielded, saying:

I apologize, senator. I made a mistake.

Senator MacEachen continued in his speech:

...it was a purely temporary setback to my argument, because the witness then acknowledged that, in order to make it possible for judges to serve, there was required an amendment to the Special Import Measures Act. An amendment was undertaken to accommodate the Americans to permit judges:

Senator Stewart's amendment and the Liberal senators were defeated by the government senators. Clause 218 of Bill C-115 became law, enacting this novel use of Canadian judges. I note, however, that the bill's proposed role for judges was limited only to judicial functions.

Bill C-42 is a total reversal of Liberal Party policy. Unable to discern the Liberal Party caucus origins of such policy reversals as Bill C-42, I conclude that this policy reversal is the contrivance of interested departmental officials and some interested judges.

I am a Liberal, and remain opposed to entrenched private interests. Canadian judges are not for lease by anyone or by any organization, for any purpose whatsoever. Judges' salaries are the business of Parliament. As a Liberal, I am always open to changes in public policy, including the deployment of judges. However, any such policy changes must be openly debated in Liberal caucus in full consultation with the public, which has a right to an unimpeachable judiciary.

Honourable senators, I shall speak now of the Canadian International Development Agency, CIDA, and to the unprecedented fact of CIDA's financing of, and involvement with, certain of Canada's judges. I have not discerned the nature and scope of CIDA's financial payments for or on behalf of Canadian judges; or the range of CIDA's involvement with Canadian judges; or the range and scope of the international activities and international travels of Canadian judges; or the identity of any such Canadian judges.

When the Standing Senate Committee on Legal and Constitutional Affairs studied Bill C-42, it did not hear from the Minister of Foreign Affairs, Lloyd Axworthy, or from the minister responsible for CIDA, Pierre Pettigrew, or from the Commissioner of Federal Judicial Affairs, Guy Goulard. I would have thought their testimony to have been critical.

The Deputy Minister of Justice, George Thomson, however, appeared before the Standing Senate Committee on National Finance in its study of the Main Estimates on October 23, 1996. In response to my question regarding his attendance at a CIDA legal-judicial round table meeting in April of 1996, he told of his attendance at that meeting and, further, he said:

Chief Justice Lamer was there at the beginning of the meeting to indicate the support of the judiciary in helping other countries to develop justice systems. I think he was the only judge present...

That meeting was months before Bill C-42 was introduced. The consequences for judicial independence, Canada's judges, and justice itself are enormous from CIDA's financing of programs supervised by the Deputy Minister, Guy Goulard, Commissioner of Federal Judicial Affairs. A deputy minister's choice of judges for use in such programs contains the potential for mischief in the administration of justice. As Senator Andreychuk said at second reading debate of Bill C-42:

...the public cannot understand why Judge A gets a certain opportunity and Judge B does not.

This CIDA-cum-Canadian Judicial Council-cum-Commission of Federal Judicial Affairs exchange and collaboration is very troubling. This exchange of goods and services neglects the public interest, and wounds judicial independence and justice itself.

Honourable senators, I move now to Madam Justice Louise Arbour of the Ontario Court of Appeal. I urged the government to bring in a special bill for her situation, exempting her from the Judges Act. The government declined. A principle of Parliament and the judiciary is that no judge should animate special legislation for personal advancement and, further, that sitting judges should not invite public conjecture and suspicion regarding their judgments and rulings.

The United Nations Security Council's February 29, 1996 Resolution No. 1047 appointed Justice Arbour prosecutor for the International Tribunal for the Prosecution of War Criminals while she was still Commissioner for the Inquiry into Certain Events at the Prison for Women in Kingston. At the moment of that appointment by UN Secretary-General Boutros-Ghali, she breached the Judges Act. I quote from Ms magazine's July-August 1996 issue, from the article by Naomi Klein entitled "Is War Crimes Prosecution in the Right Hands?":

By the time her 311-page report was released in April 1996, Arbour had already been appointed to head up the war crimes tribunals. It was impossible not to see her findings as a dress rehearsal for the judge's new role as an international advocate for the rights of women who have been systematically humiliated by men in positions of power.

Ms magazine noted Justice Arbour's reversal on rape shield laws in her Prison Women Report findings, and casts doubts and reflections on her integrity and her rulings on the case of Regina v. Finta, the prosecution of an alleged Nazi war criminal. Ms magazine has impugned the impartiality of Justice Arbour's judgments from the bench. That is a serious matter, which places Madam Justice Arbour at a serious
At home, gossip magazine *Frank*, in the October 23, 1996 issue, wrote in an article, "Judge Arbour’s Friends in High Places":

> ...Ms. Arbour has many friends and allies to boost her to the top. ...

It was Goldstone who finessed Arbour’s appointment through the United Nations. In Canada, the deal was stick-handled through judicial circles by her common-law husband, the sebaceous deputy attorney-general of Ontario, Larry Taman.

Larry Taman succeeded George Thomson as Deputy Attorney General of Ontario when George Thomson came to Ottawa to become the Deputy Attorney General of Canada. Their friendship is well known in Toronto.

Honourable senators, the mere existence of conjecture makes my point. The terrible specter has been raised that Justice Arbour’s findings are related to the procurement of her new position and places her under a most undesirable cloud of suspicion and disadvantage. All judges who seek like employment and remuneration will invite like criticism, suspicion and cynicism.

George Thomson, Deputy Minister of Justice, at the October 23 meeting of the Standing Senate Committee on National Finance, when asked about Justice Arbour’s United Nations’ salary, said this:

> I simply do not know what the UN has offered to pay her in this role, and I am not sure we are entitled to know that from her. We do not know at this point in time.

To this same question, Harold Sandell, Mr. Thomson’s associate, said:

> It is a private matter between Madam Justice Arbour and the United Nations. We are not privy to the information.

Section 100 of the Constitution Act, 1867, states that judges’ salaries are a parliamentary matter. I am informed that Justice Arbour’s contracted salary with the United Nations is $250,000.00 U.S. tax free with, in addition, many more hundreds of thousands in expenses. With remuneration like that, Canadian judicial benches will soon be empty if Canadian judges are permitted to roam internationally in procurement of such employment and remuneration. Further, if those judges, occupants of those positions, could continue to use their Canadian judicial titles and offices, the consequences to justice in Canada could, and would, be catastrophic.

About Justice Arbour’s appointment, Minister of Justice Allan Rock, at the Senate Legal and Constitutional Affairs Committee meeting on October 3, 1996, said:

> I might point out that there are significant precedents for judges undertaking such work. The outgoing chief prosecutor for the former Yugoslavia and Rwanda, Mr. Justice Goldstone, is himself on leave from the South African Constitutional Court for the period of his service as chief prosecutor. One will also remember, Madam Chair, that Mr. Justice Robert H. Jackson, who was granted leave from the United States Supreme Court in 1945 and 1946, served as the U.S. chief prosecutor at the Nuremberg War Crimes Tribunal.

(2100)

I shall show that these two cases are not precedents at all, and are not even helpful to the consideration of Bill C-42. First, Mr. Justice Richard Goldstone; about him, the South African Government wrote to me that:

> According to the South African Department of Justice there was no legislative amendment made - or required to be made - to release Judge Goldstone from his position.

Therefore it is not a precedent. Neither is it helpful, because no parliamentary or legislative action was required.

Second, Justice Robert Jackson in Nuremberg from 1945 to 1946: His absence from the United States Supreme Court and his role at Nuremberg drew much criticism. His own two successive United States Supreme Court chief justices opposed him. Chief Justice Harlan Stone described Justice Jackson’s activities as, “Jackson’s high-grade lynching party.” On Stone’s death in April 1946, his successor, Chief Justice Frederick Vinson, also opposed the use of Supreme Court Judges.

Brigadier General Telford Taylor states:

> In the early stages of the Nuremberg trials, several leading Federal judges accepted invitations to sit at Nuremberg, but Mr. Chief Justice Vinson shortly thereafter directed that no members of the Federal judiciary should serve there.

That has been the consistent position of the chief justices of the Supreme Court of the United States of America.

Taylor, chief counsel for these war crimes trials, wrote this in his *Final Report to the Secretary of the Army on the Nuremberg War Crimes Trials*.

A more helpful case from the Minister of Justice would have been the Supreme Court of Ontario's Justice Donald Morand.

The Hon. the Speaker: Honourable senators, the allotted time has expired for Senator Cools’ speech. Is leave granted for her to complete?

Hon. Senators: Agreed.


En passant, many thought that Jackson’s stint at the Nuremberg prosecutions scuttled the possibility of his nomination as chief justice of the Supreme Court. Conversely, Canada’s media tell us daily that Justice Arbour’s stint abroad will assure her both an appointment to, and the role of, the Supreme Court. Conversely, Canada’s media tell us daily that Justice Arbour’s stint abroad will assure her both an appointment to, and the role of, the Supreme Court.
Some will say that is nit-picking. My response is that it is not nit-picking to ask appeal court judges and the Justice Minister to comply with the letter as well as the spirit of the law. If justice ministers and appeal court judges cannot be expected to comply with the rule of law, who can?

Honourable senators, to uphold judicial independence, to uphold the need for an unimpeachable judiciary and to uphold the public's interests and confidence in Canada's judiciary, I support Senator Nolin's amendment to Bill C-42.

I would like to say in closing that Senator Nolin's amendment is not perfect. Had I written it, I would have done so a little differently. However, it deserves my support.

It has always been parliamentary practice that bills in Parliament in respect of judges' salaries and emoluments should fetch the support of both sides of the chamber. Bill C-42 has not. It was claimed that Bill C-42 was a technical amendment. It is not, yet it has brought unhappiness and division in this chamber, and a very old and very vital principle has been ignored: that issues, including salaries of the judiciary, should go forward unopposed and supported.

This debate will continue because there is another side to judicial independence as we talk about institutional comity and the comity between the judges and ourselves, being Parliament. We grant them protection and judicial independence, and they grant us distance.

In closing, I quote the words of Mr. Justice John McClung, Alberta Court of Appeal, in a ruling in the 1996 case of Vriend et al. v. Alberta:

...none of our precious and historic legislative safeguards are in play when judges choose to privateer in parliamentary sea lanes.

We have here, honourable senators, a case of judges privateering in the parliamentary sea lanes.

On motion of Senator Carstairs, debate adjourned.

Bankruptcy and Insolvency Act
Companies' Creditors Arrangement Act
Income Tax Act

Bill to Amend—Second Reading—Debate Adjourned

Hon. Michael Kirby moved the second reading of Bill C-5, to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Income Tax Act.

He said: Honourable senators, I rise to speak in support of Bill C-5, which contains amendments to the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Income Tax Act.

In these brief remarks, I will focus on the impact on consumers of the amendments to these three acts. In so doing, honourable senators, I want to outline briefly a number of the issues that the Standing Senate Committee on Banking, Trade and Commerce will want to explore while this bill is before the committee.

One of the basic intentions of the amendments in Bill C-5 is to provide an opportunity for debtor consumers to be rehabilitated quickly and to act responsibly. One of the major thrusts of these amendments is to encourage debtors to rehabilitate rather than declare bankruptcy. The bill also encourages consumer debtors to act more responsibly by repaying, where they can, at least a portion of their debts. For example, the current law does not require that income which is surplus to the essential needs of the debtor be deposited with the trustee for reimbursing creditors. The current law only provides for a court order to force the bankrupt party to do this. Failure to remit a portion of income surplus to a debtor's needs is not a ground under today's law for opposing a discharge in a bankruptcy case.

In fact, the current process is so incredibly cumbersome and expensive that frequently, and indeed usually, it is not worth the trouble for creditors to get involved in this complex and lengthy process in order to obtain that part of the debtor's funds that may be surplus to his needs. An interesting example of that is, frequently, that such opposition hearings, as they are called, wind up being delayed for more than a year. The cost to the creditor to pursue this legal avenue is clearly not worth it.

Furthermore, even after waiting up to a year, the creditor has absolutely no assurance that the judgment rendered by the Registrar of Bankruptcies will be in the creditor's favour. There appears to be a considerable lack of consistency in decisions given by both judges and registrars who hear and discharge cases.

Indeed, Honourable senators, the current rules do not encourage very responsible debtor behaviour. The new rules contained in the amendments that form Bill C-5 take steps to make the bankruptcy process more fair and reasonable to creditors. They, in effect, shift the balance from a balance at the present moment, that favours debtors somewhat, to a balance that is substantially more fair and reasonable to creditors. The proposed amendments require that debtors remit a portion of their surplus income to the income that exceeds the minimum amount they require in order to live. Such remittance would then be redistributed to creditors.

(2110)

Another important area where the bankruptcy legislation is being amended and an area that the Standing Senate Committee on Banking, Trade and Commerce will want to review is the area of student loans. If thousands of Canadian students can obtain financial assistance today from governments to pursue higher education, it is in part because past students who have received this societal benefit have, in fact, repaid their loans. These repayments are then recycled in order to be used by other students. This is particularly important today, as public treasuries struggle with budgetary deficits. For future generations of Canadian students to be able to continue to benefit from government-sponsored assistance and loans, it is imperative that the rate of repayment of student loans be maximized.

Bill C-5 provides that student loan debts will be non-dischargeable for a period of two years after a person leaves school. This measure deals in part with the situation where university students are receiving loans in order to get through post-secondary education and shortly after graduation, before they have taken a job, they go through the bankruptcy process. Under the current rules, declaring bankruptcy completely discharges the obligation to repay student loans.

Students are indeed Canada's most valuable resource. It is equally true that students, like all members of society, must act responsibly when dealing with obligations that they incur as part of their education. Therefore, the provisions of Bill C-5 that deal with student loans will be of some interest to the Standing Senate Committee on Banking, Trade and Commerce, and I am sure they will want to review them.

On October 17, 1996, Professor Ted Morton, political scientist, University of Calgary, testified at the Senate Legal and Constitutional Affairs Committee on Bill C-42. About Justice Arbour, he stated:

...companies can be partially adjudicated in bankruptcy.
It is also important, honourable senators, not to put an undue burden on the finances of individuals who most need help. In this regard, members of the Standing Senate Committee on Banking, Trade and Commerce are likely to be encouraged by several of the amendments to the legislation recently introduced in the other place prior to third reading. These amendments are aimed at helping low income families facing insolvency. For example, families facing insolvency will be exempt from seizure in bankruptcy of GST credit refunds and other similar benefits that are clearly intended to meet essential living needs. The bill also contains amendments enabling proposals from individuals to be made jointly if their financial relationship can be reasonably dealt with under a single proposal. The advantage of this provision is that it will enable insolvent spouses to make joint proposals, which will significantly streamline the process and reduce costs.

Another important change brought on by Bill C-5 relates to the fairness of the process in that, currently, the law gives 30 days before a consumer proposal is deemed to be accepted by creditors and another 30 days as a holding period before the plan is deemed accepted by the court. Unfortunately, however, as history has shown in the past several years, the acceptance of the creditors is substantially more fundamental to the period than might be suggested by a mere 30-day waiting period. Frequently, 30 days has turned out to be insufficient time for a creditor to agree to a proposal.

One of the amendments contained in this legislation is that the waiting period before a consumer proposal is deemed acceptable by creditors be increased from 30 days to 45 days. Correspondingly, the holding period for the courts is reduced to 15 days. Therefore, the 60-day time period for the entire two-step process remains the same, but an extra 15 days has been given for creditors to consider a reorganization proposal or a refinancing proposal from debtors prior to making a decision.

Honourable senators, this legislation has received a great deal of support from the Minister of Justice and the Secretary of State Responsible for the Status of Women in the areas involving spousal rights and victims' rights, particularly victims' rights in abuse cases. Under the current law, a spouse is not considered to be a creditor in a bankruptcy case. As such, spouses do not obtain a share of the debtor's assets when those assets are divided among creditors, regardless of the fact that part of the debts may be arrears in spousal and child support payments. Under the amendments contained in Bill C-5, spousal and child support payments are not only recognized as legitimate debts, but are established as priority claims upon the debtor's assets when they are divided among the creditors.

In another crucial area, honourable senators, we have the situation where people who have been sued in civil court for sexual or physical assault discharge their obligations by declaring bankruptcy. Under Bill C-5, sexual and other physical assault judgments become non-dischargeable. Thus, someone who receives a judgment as a result of sexual and physical assault cannot avoid paying that judgment simply on the basis of declaring bankruptcy.

These amendments, promote social fairness and equity. Indeed, they are among the areas in which the Standing Senate Committee on Banking, Trade and Commerce will be looking forward to hearing testimony.

Another area that has sparked some comment in relation to the proposed set of amendments is that of environmental liability. Bill C-5 creates a first charge for environmental cleanup costs against contaminated real property. Thus, this bill will have important repercussions for owners of contiguous property and creditors who have lent security on real property that turns out to be polluted. The Standing Senate Committee on Banking, Trade and Commerce will want to explore these repercussions for a variety of interested parties when it holds hearings on the bill.

The Standing Senate Committee on Banking, Trade and Commerce will also want to look at a number of proposals that have been put forward in relation to this bill that encourage consumers to choose rehabilitation, refinancing or reorganization of their financial affairs over bankruptcy. As I have already stated, the notion of putting the emphasis on consumers rehabilitating their financial affairs rather than declaring bankruptcy is a major thrust of this legislation. The Standing Senate Committee on Banking, Trade and Commerce will want to look at the full range of options which were considered and not merely examine the particular policy options that were ultimately chosen for dealing with this problem.

The area of exempt property is another concern. The industry committee in the other place heard a considerable amount of evidence on the need to establish more equitable rules for property that is exempt from seizure in bankruptcy. Several witnesses appearing before the committee in the other place recommended, for example, that all RRSPs, not just those associated with life insurance policies, be exempted from seizure in a bankruptcy case. The Standing Senate Committee on Banking, Trade and Commerce will want to hear evidence on this area because the evidence presented to the industry committee of the other place was quite controversial. Yet, this particular area was not included in the amendments that were introduced at the completion of those hearings.

On the issue of unpaid suppliers - another fairly controversial element of current bankruptcy law, and I am sure, one on which we will want to hear testimony - under the current Bankruptcy and Insolvency Act, unpaid suppliers have the right to recover their goods from an insolvent purchaser, an insolvent company to whom they have sold their goods, where the goods were delivered during the 30-day period preceding the bankruptcy and the supplier meets the conditions set out in the Act. This right, however, is inoperative when an insolvent purchaser commences reorganization procedures - that is to say, begins the process of reorganizing under the Companies' Creditors Arrangement Act, the CCAA, which, as senators know, is essentially the Canadian equivalent of Chapter 11 in the United States. This presents a problem because there is nothing in the Bankruptcy and Insolvency Act to prevent a debtor from selling the goods during a reorganization. Under those circumstances, the purchaser would not be accountable to the supplier for the money earned from the goods of sale because it has occurred during this reorganization period. Again, the historical evidence and the feeling has been that that particular provision of the current Bankruptcy and Insolvency Act is, in fact, inequitable to people who are supplying goods to retailers for sale.

Finally, the committee will want to ask some hard questions about the rationale for there being several statutes dealing with bankruptcies. For example, should the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act be more closely aligned? Should there be a fundamental to the period than might be suggested by a mere 30-day waiting period. Frequently, 30 days has turned out to be insufficient time for a creditor to agree to a proposal.

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(2120)

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Hon. Anne C. Cools: Honourable senators, I wish to speak to this matter at this time.

The Hon. the Speaker: Senator Cools, the motion stands in the name of Senator Watt at this time.

Senator Cools: I have discussed the matter with Senator Watt, and he has deferred to me.

The Hon. the Speaker: Has Senator Watt relinquished his right to speak and is he prepared to have you speak?

Senator Cools: I can assure you that I have discussed this matter with Senator Watt.

The Hon. the Speaker: Honourable senators, if the Honourable Senator Cools speaks now, her speech will have the effect of closing debate on this matter.

Senator Cools: Honourable senators, I rise to close second reading debate on Bill S-4. I thank Senators Wood and Kelly for speaking to this debate.

At second reading on March 26, 1996, I said that Bill S-4 will correct the particular mischief of deceit and fraud perpetrated upon the courts by its bill. Bill S-4 will remove uncertainties in the use of solicitor-client privilege and judicial privilege to shield falsehood and wrongdoing. It will clarify the relationship between truth and falsehood within judicial proceedings and uphold the principle that truth is central in judicial proceedings and pivotal to the interests of justice. Bill S-4 will build on the legal profession’s rules of professional conduct and upgrade these rules to laws, codifying them in the Criminal Code of Canada. This bill will provide adequate sanction for violations of professional ethics by offending lawyers.

In my previous speech, honourable senators, I cited many cases of false allegations before the courts, including S. Casey Hill v. Morris Manning and the Church of Scientology of Toronto, Plesh v. Plesh, Lin v. Lin, Paterson v. Paterson, and the Toronto case of Reverend B. I would now add the most recent 1996 custody case Allen v. Grenier. During a motion before Madam Justice Patricia Wallace of the Ontario Court General Division, the mother, Miss Grenier, raised allegations of sexual abuse against the father, Mr. Allen. The judge adjourned the motion because of these allegations, asking the Children’s Aid Society, the CAS, to apprehend the child and make a report. When the motion resumed two weeks later, the CAS informed that it had had custody of the child for only three days, after which the mother had abducted the child. The CAS decided to take no action in response to the abduction. About this, Madam Justice Wallace said:

I am not very impressed,....with the Society’s actions....for the Society to tolerate a snatching,...without bringing the matter back to the court, in my view, is completely inappropriate.

Subsequently, the court proceeding proved that the mother’s allegations of abuse were false. The CAS worker’s affidavit stated that the mother:

...acknowledged that she does not believe that there was a real danger of this child having been sexually abused by the Applicant.

Madam Justice Wallace noted the reprehensible effect of false allegations on the administration of justice, saying:

I consider the kind of conduct that the Respondent has involved herself in by raising what is very clearly a known, false sexual abuse allegation to be significantly worse than mischievous and potentially incredibly damaging to not only Mr. Allen and his reputation but to the court system and to the administration of justice. That someone would play with the system in such a way is intolerable and not something that the Court will condone.

Honourable senators, this case clearly demonstrates the full emotional and societal impact of false allegations within judicial proceedings. Mr. Allen’s life was devastated because unsubstantiated allegations were made in judicial proceedings and in court, which then engaged the child protection agencies. Mr. Allen was eventually granted significant access, but the social and psychological damage to Mr. Allen and to his daughter had already been inflicted. Bill S-4 proposes to correct like situations.

(2130)

Honourable senators, my bill received unexpected support from a widely publicized incident of false accusations and abuse of process in Toronto. During the week of April 7, 1996, Donna Mercier deceived the Toronto Metropolitan Police Force, the media, and a compassionate Toronto public. A sympathetic public donated $112,000.00 to her plight, such money being directed to a bank account opened by the sympathetic police for Donna Mercier. She told that she was poor, alone with a child, abused by her husband, dying of cancer, and that her purse, with her last $150.00 inside, was stolen, along with a bus ticket for her little boy to go to Winnipeg, Manitoba, where someone there would care for him after her death. In a televised appeal for money, Donna Mercier appeared silhouetted and nameless, supposedly to avoid sympathy. Kenneth Sylvia was eventually acquitted. The police charged Donna Mercier with mischief, to which she pleaded guilty. Honourable senators, despite this previous incident, the police believed her again, with no investigation and no questions asked. Even a cursory Canadian Police Information Centre (CPIC) check would have revealed her criminal record and her past activity. I am always amazed at the seeming ease with which certain female persons perpetrate deceit on the justice system and the readiness of the system to yield to such deceit.

The matter was significantly embarrassing for Toronto’s community-relations-minded Metropolitan Police. They have charged Donna Mercier yet again with mischief. Her personality disorder and the public’s shame for being dishonestly manipulated are matters for reflection.
Perhaps during examination of Bill S-4, the committee could hear witnesses on Munchausen’s syndrome and/or Munchausen’s syndrome by proxy, a troublesome disorder of continued attention seeking and deceit, which may even inflict hurt on children. Some of these women are known to have physically harmed children to get attention. Women afflicted with Munchausen’s syndrome by proxy are well-known originators of false allegations of sexual abuse of children. False allegations of sexual abuse in cases of Munchausen’s syndrome by proxy are different from those in matrimonial and custodial disputes. However, I hope that our committee will examine these pressing social questions.

Honourable senators, on April 17, 1996, I attended the Manitoba Civil Justice Review Symposium Workshops at the invitation of the Review’s Task Force Chairman, David Newman, a member of the Manitoba Legislative Assembly. The review examined that province’s operation of civil justice and held extensive public hearings. The other members of the task force were Associate Chief Justice Jeffrey Oliphant, Manitoba Court of Queen’s Bench, Ron Perozzo, Associate Deputy Minister of the Manitoba Department of Justice, Associate Chief Justice Gerry Mercier, Manitoba Court of Queen’s Bench Family Division, Mr. Justice Guy Kroft, Manitoba Court of Appeal, Brenda Cooke, President of Assiniboine Community College, and private barrister Colleen Suche. This review was initiated by Manitoba’s Minister of Justice, Rosemary Vodrey. I participated in the workshop entitled “Child Protection,” focusing on child protection and false accusations of child abuse. I commend Minister Vodrey and Chairman Newman for their ground-breaking efforts on these difficult issues. The review’s report was released in mid-October. These social problems are bedevilling litigation and judicial proceedings.

Honourable senators, the use of false accusations in litigation is difficult and complex, with many elusive aspects. I have studied the matter exhaustively and thoroughly. I have personally conducted several public consultations, in Calgary, Edmonton, Montreal, Ottawa, Peterborough and Toronto, and will do so again this coming weekend in Winnipeg. Some of my meetings with the public were attended by as many as 300 to 400 eager participants at a time, many telling their personal histories or citing other cases of false allegations within custodial and matrimonial disputes. Many professionals in the social services field also related numerous cases and expressed their concerns.

I wish honourable senators could have heard some of these stories. The pain of custodial and non-custodial parents trapped in these disputes is an enormous tragedy for both the parents and the children. The financial exhaustion of the parents and their families, as well as their alienation from their children, are only some of the problems encountered. All involved are bewildered and despondent that governments in Canada permit such darkness in the courts. The anguish of the children caught in the cross-fire is endless, and their emotional problems will remain and daunt them for generations to come. The situation of non-custodial parents trying to gain access to their children or to enforce the access already granted to them also commands the government’s attention.

Honourable senators, I have sought legal opinions and political advice from the great minds and practitioners of this country. I have read much literature and jurisprudence, and extensively reviewed legal documents. I have personally observed some of these disputes in the courts. I am satisfied that Bill S-4, drafted by one of the finest and most experienced Canadian legislative drafters, is an excellent piece of work technically. I look forward to committee study and to hearing witnesses on this matter, which, until now, has received insufficient public scrutiny in this country and no parliamentary attention.

Honourable senators, litigation stemming from marriage breakdown is especially unpleasant and bitter. The acrimony and vengeance is profound. In an excellent piece on this subject, “The Divorce from Hell”, published in the February 1996 issue of Toronto Life, Wendy Dennis writes of Ben Gordon, a litigant who spent $275,000.00 and 7 years in the courts, only to be alienated from his child and deep in debt. Of her experience with this case and with family litigation, Miss Dennis wrote:

> ...I came to learn a great deal about the way in which our family courts work, and much of what I saw turned my stomach. I saw lawyers play the game of law and get richer......judges with too many cases and too little wisdom.... Experts’ wield astonishing power with devastating consequences......a father who simply wished to parent his children, dragged through a system where the cards were stacked against him from the start......I saw an arbitrary system without accountability or closure, which sanctimoniously professed to act in the best interests of the children but which failed scandalously to do so.

The conduct of some spouses in these proceedings is an unspeakable tragedy for their children. The children’s plight motivated me to advance these issues and Bill S-4. The damage to them is enduring and often permanent. Bill S-4 posits that courts and judicial proceedings are not to be deliberately used as instruments of malice and injury; that neither party may use legal process for vengeance or to gain advantage; that no counsel or lawyer may bend the rules of legal practice by using falsehood, deceit or inflammatory statements in court documents and judicial proceedings. Bill S-4 states:

135.1(2) Every person is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who, as counsel in any judicial proceedings,

(a) wilfully deceives or knowingly participates in deceiving the tribunal or other body legally authorized to conduct the proceedings, or

(b) wilfully presents or knowingly relies upon a false, deceptive, exaggerated or inflammatory document, whether or not under oath.

Honourable senators, Bill S-4 is, to my mind, the first legislative and parliamentary solution evolved to date. It is directed at barristers’ accountability for the affidavits and documents that they produce and commission as Commissioners for taking oaths. Solicitor-client privilege and judicial privilege protect many documents and court proceedings. However, truth must conjoin with the interests of justice such that untruth and falsehood are not shielded by judicial privilege. In the 1856 United Kingdom case of Gartside v. Outram, Sir William Wood, Vice-Chancellor of the Court of Chancery, enunciated the effect of untruth on the doctrine of privilege and the doctrine of solicitor-client confidentiality, saying:

> ...there is no confidence as to the disclosure of iniquity. You cannot make me the confidant of a crime or a fraud, and be entitled to close up my lips upon any secret which you have the audacity to disclose to me relating to any fraudulent intention on your part: such a confidence cannot exist.

As commissioners of oaths and officers of the court, lawyers are supposed to ascertain the truth of the contents being sworn. About the duties of counsel and the attachment of privilege to fraudulent communications, the Vice-Chancellor, Court of Chancery, Sir George Turner, in the 1851 United Kingdom case Russell v. Jackson, said:

> ...the existence of the illegal purpose would prevent any privilege attaching to the communication. Where a solicitor is party to a fraud no privilege attaches to the communications with him upon the subject because the contriving of a fraud is no part of his duty as solicitor.
Honourable senators, Bill S-4 supports this principle. As officers of the court, all lawyers must stand responsible and accountable to the law of Canada for their roles in drafting affidavits and court documents and their roles in judicial proceedings. It is in the interests of justice, of public policy, of statute, and of Parliament that I urge honourable senators to support Bill S-4.

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 Cools, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

The Senate adjourned until tomorrow at 2 p.m.