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WAGE EARNER PROTECTION PROGRAM BILL

Third Reading

Speech by:

The Honourable Jerahmiel S. Grafstein

Friday, November 25, 2005

THE SENATE

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THIRD READING

Hon. Jerahmiel S. Grafstein: Honourable senators, I regret the last comments of the Honourable Senator Plamondon, whom I greatly respect. She has been an active member of our committee. However, regrettably, she was not at our extensive deliberations that went beyond the sittings of this house. I regret that she was not able to participate, but perhaps before she opines on this matter she would allow me an opportunity, as chairman of the committee that has presented a unanimous report, to explain, and perhaps she might come to a different conclusion.

Honourable senators, I first want to thank all members of the Banking Committee. In particular, I want to thank our august Deputy Chairman, Senator Angus. I want to thank every member of the committee, including our expert members. We have Senator Goldstein on our committee, who was at one time counsel to the committee and was very much involved in the Senate studies on the subject matter of Bill C-55. I thank all honourable senators who participated, read the materials carefully and held very strong convictions about the bill.

I also want to thank the clerk of our committee, Gérard Lafrenière who, under arduous circumstances, fulfilled his duties with great professionalism. In addition, I want to thank our senior analyst, June Dewetering, who helped us, on a tight time frame, to come to what I hope is a very satisfactory conclusion.

I also want to commend the Leader of the Government in the Senate and the Leader of the Opposition in the Senate, who collaborated in the interests of the Senate to come up with a compromise that I believe dealt with not only the public will, as exemplified in the other place, but also the concerns in this house and our constitutional responsibilities.

I reiterate that I regret that Senator Plamondon was not there, because she has been a very active, astute and helpful member of our committee in our deliberations. As this bill came to us so suddenly from the other place, we were unable to consider a bill into which she had great input, that being the consumer study bill, although we intend to deal with it as soon as possible. However, it is our constitutional responsibility to deal first with government business referred to our committee.

I will explain what happened. The committee was confronted with a Solomonic choice or, as one of our astute members said, a Hobson's choice. Just this week, we received Bill C-55, a very large omnibus bill that deals with not only worker protection but also insolvency and bankruptcy, which is the underlying framework of our economy. We, therefore, were faced with a terrible dilemma. There was a clear demonstration of public will

in the other place. As honourable senators know, the other place is a House of confidence, while we are not a house of confidence. The House of Commons unanimously adopted a bill that they wanted to have passed quickly in light of a pending dissolution of Parliament, which bill would protect vulnerable workers, a principle with which I believe all members of this house agreed.

Our difficulty was that we were told — and the committee looked at this question very carefully — that in light of the pending dissolution there was no opportunity to hear witnesses or to amend the bill, if we so desired, because had we done so the bill could not have been dealt with in the other place and would have died on the Order Paper given the timetable that developed due to actions of all parties in the House of Commons.

What to do? We believed that we had to protect vulnerable workers under the wage earner protection provisions in the bill. However, as Senator Plamondon pointed out, we were told by government officials that the bill was flawed. We were further told that government officials had prepared amendments not only to the legislation itself but also to the regulations that were to be implemented in the future as they were not satisfied with the bill. That was the evidence before the committee. Therefore, what were we to do to fulfil our constitutional responsibilities?

Let me spend a minute or two, Senator Plamondon, because I think it is important that all senators, and new senators, be reminded of their constitutional responsibilities. I will try to be succinct.

Our constitutional responsibilities go back to the great Sir William Blackstone, and Blackstone enunciated, back in the 17th century, the principle of checks and balances. The human condition was imperfect, and the popular will sometimes thwarted and unfair, so we developed a system of governance based on checks and balances between the executive, the house of popular will and the secondary chamber. Each was to check and balance the other so the public will was ultimately, properly and appropriately exercised.

When it came to the Fathers of Confederation, they set up this particular institution to represent the regions of the country and those voices that could not be heard in the popular will, and hence we were considered under our constitutional responsibilities to be a chamber of second sober thought.

The Americans put it well too, because they have the same theory, a different practice but also checks and balances. What did the Americans say? They said that the second chamber, the upper chamber, was to be a chamber that when they received scalding tea in a cup they were to pour it, which represented the heated or overheated public will. They were to put the scalding tea in a saucer and allow it to cool so that it could be ingested without scalding the innards of the public interest.

That, in a nutshell, is our constitutional responsibility: to be a check and balance on the popular will. However, when the popular will is clear, it is not up to us to thwart that public will, and that is the dilemma we faced. Then what would we do?

I now refer honourable senators to the report of the committee, which is succinct. It will set out the rationale in clear terms as to what we were confronted with and what our compromise solution was, which I think will commend itself to this place. I will read from the report. Senator Plamondon was not there; otherwise she might have read the report. It was tabled yesterday. Let us refer to the report. It is in French and English, but I will read portions of it in English.

The committee wishes to indicate our disappointment with the process by which the Bill arrived in the Senate. We recognize the extraordinary circumstances that exist with the impending dissolution of Parliament, but we believe we had

— as Senator Plamondon pointed out —

an inadequate opportunity to review comprehensively such an important piece of framework legislation.

Notwithstanding the foregoing, the Committee has decided to report Bill C-55 without amendment and without having conducted the customary comprehensive study and review. We do so not because we approve of the legislation in its entirety, as drafted, but rather because of three key factors.

First, the Committee unanimously supports and approves of the long-overdue wage earner protection provisions of the Bill and does not wish to delay, or in any way deny — or appear to deny — access to the enhanced legislated protection for this vulnerable group of creditors.

Second, the witnesses heard by the Committee, including the Minister of Labour and Housing and the Parliamentary Secretary to the Minister of Industry, gave unqualified assurance to the Committee, to be confirmed in writing forthwith, that Bill C-55 would not be proclaimed

— would not, in effect come —

into force, prior to 30 June 2006 at the earliest.

I will pause for a moment to talk about the time frame. We believe there is pending dissolution. We believe that there will be an election. This is our belief. We cannot really know until next week. We believe that there will be an election in the month or so ahead. We believe there will be a period of time after that for the government of the day to regroup itself, and we believe that we will be back here some time early next year. We believe that will allow us adequate time to do what we think will fulfil our Constitutional responsibilities.

Third, the Committee expects that between now and the proclamation of Bill C-55, we will receive a timely Order of Reference that will enable us to undertake the thorough review of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* that would have occurred with respect to Bill C-55 had it been referred to committee to us on a more timely basis.

In connection with the Committee's study in 2006, we look forward to receiving, from Industry Canada officials, the legislative and regulatory changes they undertook

— and I add “in committee” —

to provide to improve Bill C-55 and Canada's insolvency regime more generally. All stakeholders should have an opportunity to share with us their views on key aspects of the *Bankruptcy and Insolvency Act*, and the *Companies' Creditors Arrangement Act* as well as other insolvency legislation. Unfortunately,

— and this is right out of the report —

too few witnesses were heard and there was insufficient study at Committee in the House of Commons during its examination of Bill C-55 which may, in part, explain why obviously needed amendments were not introduced before the Bill was sent to the Senate.

The Committee has

— and this is a piece of history that Senator Plamondon should understand —

in-depth knowledge of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. In 2002 and 2003 we reviewed these Acts and, in November 2003, tabled our report *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*. In that report, we comprehensively examined and made recommendations respecting the full range of consumer and commercial insolvency issues as well as on administrative procedural matters.

Now, the report goes on, Senator Plamondon.

While the Committee wholeheartedly supports the principle of wage earner protection regime, even in that instance we have questions. In our view, workers should be compensated in the timeliest manner possible, and we are not certain that the Bill's provisions meet that test of timeliness. For example, we wonder why the administrator is not able to pay the workers immediately, rather than waiting for workers to be paid out of the Wage Earner Protection Program.

I will move from the report and explain what we tried to do.

In the last two days, your committee was seized of this matter, or about to be seized of it, and I, with our august deputy chairman and all members of the committee, with their leadership on both sides, sought to come up with a solution. One solution was to split the bill, and that was our intention. However, we then found the bill difficult to split in a timely manner without amending it, which would have made it die on the Order Paper because we needed provisions from one section of the bill to be implemented to finally and fully protect the workers. Therefore we struggled to come up with a timely solution, but it was not to be because of the exigencies of the matter.

I will conclude by saying — and I will not read this but you should — moreover, we listed a number of provisions unrelated to wage earners' protection that we believe fall far short, and we have listed them in the report. I will not belabour or take the time of the house to go over those provisions, but it appears it is in the heart of the bill.

Let me conclude with these comments:

The committee notes that we have some experience with delayed proclamation of legislation. A similar approach was adopted in December 1997,

— and Senator Murray will all recall this —

when the Minister of Finance delayed the coming into force of the governance and investment provisions of the *Canada Pension Plan Investment Board Act* until April 1998 in order that we could study them. The Minister also agreed to refer the draft regulations governing the Investment Board to us for review and comment. We believe that this approach was successful then, and will be successful when we have the opportunity to study and review, in a comprehensive manner, the subject matter of Canada's insolvency framework legislation in 2006.

The committee concludes with these comments, which I am sure will help satisfy, in part, the concerns of Senator Plamondon:

The Committee continues to believe that the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* constitute critical framework legislation that affect, in a very fundamental manner, the Canadian economy and all Canadians who participate in it.

Finally, the committee says this in our report:

The Committee understands that the appropriate government legislative initiatives will be taken to ensure the foregoing.

We then had an undertaking in the committee by the government to withhold the implementation of this bill, but the message would go out clearly to workers that they, in fact, will be protected. As well, in the normal course of circumstances, the question that was raised in the Senate by the Honourable Senator Tkachuk, which was if the bill will be proclaimed in June, why can we not kill the bill now without amendment? I believe the clear answer on the record was, had we done that, we would defer worker protection for still a longer period, because it takes a number of months to implement and put into place the infrastructure, the amendments and the regulations to give effect to worker protection.

The Hon. the Speaker pro tempore: I am sorry, but Senator Grafstein's time has expired, unless he wishes leave to continue.

Hon. Senators: Agreed.

The Hon. the Speaker pro tempore: Five more minutes?

Some Hon. Senators: Agreed.

Senator Grafstein: Again, I think Senator Plamondon would like to hear this explanation.

At the end of the period, we concluded that this was the only workable explanation. We required, of course, a key. It is not in the report, but as some honourable senators have mentioned, this was a pre-condition because the committee was not satisfied. In light of the circumstances of dissolution of the other place, we wanted assurance in writing.

If honourable senators had been present at the committee last night when we dealt with Bill C-55 and gave it a thorough review and commended it to this place, at that time I received a letter from the Minister of Industry Canada responsible for the bankruptcy proportions of this bill. I would like to read that letter to the house. All members, had they been present, would have received a copy of this letter, which I circulated at the time. That occurred late last evening while we were hard at work.

The letter is addressed to me and is dated November 24, 2005. It is under the letterhead of the Minister of Industry, David L. Emerson. Honourable senators, I am prepared to place this on the record of the house with your consent. Allow me to read it in full:

I am writing in response to observations made during your committee's meeting of November 23, 2005 with respect to Bill C-55, an Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments. As the Committee noted, the bill is a very important piece of legislation that will have significant impact on the economy, the protection of workers, and the life of many Canadians who face a situation of financial distress.

Bill C-55 contains a comprehensive and balanced reform to Canada's insolvency system. There is very strong and broad support for the policy objectives of the bill, which underscores the importance of securing its adoption by Parliament in a timely manner. However, given exceptional circumstances, the scrutiny of the detailed provisions of the bill has raised a number of implementation issues that deserve further consideration. In this regard, the Government commits not to proceed with the coming into force of Bill C-55 before June 30, 2006. As soon as possible in 2006, the Government, through the Leader of the Government in the Senate, will refer the matter to the committee for further study.

I would like to thank your committee for its diligence and cooperation.

Sincerely, David L. Emerson.

Honourable senators, we have received a written assurance by the government. This assurance, to my mind, gives me confidence that we will be able to fill our constitutional responsibilities as soon as we come back.

We will be here, and Senator Plamondon will also be here. I commend to the Senate that we speedily pass this measure in the interest of the workers of Canada.