SENATE SÉNAT

CANADA

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OFFICIAL REPORT
(HANSARD)

Tuesday, May 27, 2014

The Honourable NOËL A. KINSELLA
Speaker

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# THE SENATE

**Tuesday, May 27, 2014**

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

Prayers.

## SENATORS' STATEMENTS

### THE HONOURABLE PAUL E. MCINTYRE

CONGRATULATIONS ON FIFTIETH MARATHON

**Hon. Norman E. Doyle:** Colleagues, I wish to draw to your attention a special milestone in the life of Senator McIntyre of New Brunswick. I don't know if you've heard, but a couple of days ago, on Sunday, May 25, our colleague ran his fiftieth marathon, which is quite an accomplishment for anyone in their late sixties.

**Hon. Senators:** Hear, hear!

**Senator Doyle:** However, I'm also sure that running in 50 marathons is a notable feat for any sitting legislator on Parliament Hill. Indeed, I'm unaware of anyone in this chamber or the other place who can match our colleague's running record — as a matter of fact, maybe not anyone in Canada.

First of all, some of us might be wondering just what constitutes a marathon. It is a road race of 42.2 kilometres, which for the older generation is 26.2 miles. The marathon was first run at the start of the modern Olympics in 1896. The race was named for the running feat of a Greek soldier, Pheidippides, who ran all the way to Athens with the news that the Greeks had defeated the Persians in the Battle of Marathon in 490 BC.

It may interest my colleagues to know that there are some 500 marathons held every year, in all corners of the globe, and the larger races can involve thousands of runners, the vast majority of whom are recreational athletes.

Senator McIntyre began running for his health and fitness in his early twenties, often running on the beach in his bare feet. Over the years, I'm told our colleague competed in at least 200 races of a shorter duration, but in 1982, he ran his first marathon in Montreal. His time for that race was 3 hours and 58 minutes, but as he got older, apparently he got better because his best time to date is 3 hours and 33 minutes. He obviously caught the marathon bug because some 32 years later, he's just finished running his fiftieth.

Over the years, Senator McIntyre has competed in marathons in places like Boston — three times in the Boston Marathon — Montreal, twice in New York, Chicago, Toronto, Quebec City, Paris, Maui in Hawaii, San Francisco, Beijing, Prince Edward Island and Nova Scotia, not to mention a host of races a whole lot closer to home. He keeps in shape for these events by playing recreational hockey and cross-country skiing, in addition to just plain running.

All told, he covers, would you believe, 2,000 kilometres a year, which means he's on his feet and running, skating or skiing about 70 kilometres a week, regardless of the weather, regardless of the season of the year. That's a level of dedication that most of us can only admire but very few of us can match or even attempt to match.

Obviously, running a marathon is not for the faint of heart or weak of legs. Our colleague has only been able to accomplish his marathon record because of his tremendous self-discipline and his passion for the sport. Indeed, most of the race is not a battle with your fellow competitors, he says; it is a solitary battle with yourself, a battle our colleague has won many, many times. On top of that, he says good exercise is good nutrition.

In summing up, honourable senators, I give you our colleague from New Brunswick, our own Pheidippides, our own Sir Runs-A-Lot. I ask you to join me in congratulating him on his fiftieth marathon.

**Hon. Senators:** Hear, hear!

**Senator Doyle:** Like all of us — let me just —

**The Hon. the Speaker:** Order! Your time has run out.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of a delegation of our colleagues from the Parliament of the Czech Republic, who are visiting Canada and meeting with a number of our working committees today. The delegation is led by Ms. Alena Gajdušková, the First President of the Senate for the Parliament of the Czech Republic.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

**Hon. Senators:** Hear, hear!

### RECONSTITUTION OF HISTORICAL DEBATES

**Hon. Marie-P. Charette-Poulin:** Honourable senators, today we celebrate, along with the Library of Parliament, the completion of the historically significant project of reconstituting the parliamentary debates dating right back to Confederation.

Earlier today, I had the honour to attend a reception as Co-chair of the Standing Joint Committee on the Library of Parliament, during which the Parliamentary Librarian, Sonia L'Heureux, presented the Speakers of both houses of Parliament — the Honourable Noël Kinsella and the Honourable Andrew Scheer — with a copy of the debates for the years 1873 and 1874.

What might not be widely known is that formal reporting of the debates, also known as Hansard, did not begin at the time of Confederation. Official reporting began first in the Senate in 1871, but only in English, and in 1880 in the House of Commons.

There was no official record of Canadian parliamentary deliberations prior to these dates. In order to complete the historical record, a very ambitious project was undertaken to reconstitute the early debates by combing through newspaper reports to produce an unofficial account.

• (1410)

Canadians and, indeed, people worldwide now have access to all the debates dating back to the first Parliament in a digitized format and in both official languages, including those that have been reconstituted by means of the Historical Debates of the Parliament of Canada portal. This access has been made available thanks to the efforts of the Library of Parliament in collaboration with Canadiana.org.

[*Translation*]

I congratulate and thank everyone who participated in this project. Not only does this project preserve an important part of Canadian history, but it also reminds us that freedom of speech is a cherished Canadian value and that one of our responsibilities as parliamentarians is to staunchly defend this value in the Senate and in the other place with properly researched and presented debates while remaining respectful of others' opinions.

## CANADIAN PARENTS FOR FRENCH B.C. AND YUKON

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, I rise today to tell you about the 31st Concours d'art oratoire presented by Canadian Parents for French B.C. and Yukon (CPF), which was held on May 3, 2014, in Surrey, British Columbia.

[*English*]

I wish to recognize the leadership and dedication of Patti Holm, President, and the board of directors, Executive Director Glyn Lewis, and all the parents, teachers and students whose contributions and participation have contributed to the success of the annual event. An impressive 10,000-plus students participate in communities across B.C. each year.

[*Translation*]

I was a teacher for 21 years and, at various times, taught French as a second language. Therefore, it was an honour for me to take part in this important event that celebrates the accomplishments of brilliant young students, encourages bilingualism and language learning, and highlights the value of our education system.

[*English*]

It was a sincere pleasure to present the awards to the winners and to congratulate all of the students for participating in this annual contest in making a commitment to become fluent in Canada's two official languages.

[*Translation*]

Canadian Parents for French was established in 1977 by parents who wanted their children to have the opportunity to become bilingual in the Canadian education system. In the beginning, a small group of parents met in Ottawa. Today, the organization has become a national umbrella network with ten local offices and some 150 chapters in communities across Canada.

[*English*]

CPF is composed of a national network of volunteers which values French as an integral part of Canada, and which is dedicated to the promotion and creation of French second language learning opportunities for young Canadians. French and English are Canada's official languages. The decision to immerse our children in French language training at a young age will help them to develop the skills they need to open many doors and opportunities, not only in Canada but in the world. They will learn about the language, culture and lifestyle, which, in turn, will help them better understand the diversity that exists in Canada and in the world.

[*Translation*]

Parliament Hill represents all regions of Canada. As senators, we represent each of the regions. The ability to speak both French and English is an asset in our day-to-day activities here on Parliament Hill, across Canada and around the world.

Honourable senators, join me in congratulating CPF on the 31st Concours d'art oratoire.

[*English*]

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery in the Governor General's gallery of representatives of the Royal Canadian Air Force, led by Lieutenant-General Yvan Blondin, Commander of the RCAF; Major-General Richard Foster, Deputy Commander;

Chief Warrant Officer Patrick Young, Chief Warrant Officer of the RCAF; and Dean Black, Executive Director of the Air Force Association of Canada.

On behalf of all senators, I welcome you to the Senate of Canada.

**Hon. Senators:** Hear, hear!

[*Translation*]

## AIR FORCE APPRECIATION DAY ON PARLIAMENT HILL

**Hon. Joseph A. Day:** Honourable senators, it is my distinct pleasure to rise today in honour of Air Force Appreciation Day on Parliament Hill.

[*English*]

In recent years, the Royal Canadian Air Force has participated in operations in Haiti, Libya, Afghanistan and Mali. In the past months, six CF-18 Hornets were dispatched to Eastern Europe as a result of tensions in Ukraine. Canada is and will remain a reliable partner in our military alliances, thanks in no small part to the capabilities of the Royal Canadian Air Force.

While many of the headline-grabbing missions that our air force conducts occur a world away, we must not forget the important role that they play at home.

This past December, many of us witnessed on live television the bravery of many members of Canada's 424 Tiger Squadron from CFB Trenton. When a blaze erupted at a construction site in Kingston, Ontario, a lone crane operator became stranded at the end of his crane, 180 feet in the air. He could not be reached from the ground and, as we watched, we all feared what was to come next.

There was a collective sigh of relief then when a CH-146 Griffon helicopter roared over the horizon and a lone figure was lowered from the aircraft to help pluck the man off the very end of the crane and lift him to safety. To those of us watching, it all seemed so routine and easy, yet the skill and bravery these men and women displayed in those few minutes is but a small example of that of which they are capable.

The man lowered from the helicopter was Sergeant Cory Cisyk. He was lowered from hundreds of feet above the blazing inferno, risking his life for a man he had never met. Many would call him a hero, but, to Sergeant Cisyk, the heroes were the ones in the helicopter. There was Captain Iain Cleaton, who had to manoeuvre the winch into position as he was lowered into space, quickly diminishing over the crane. Pilot Dave Agnew and first officer Jean-Benoit Girard-Beauseigle were at the controls of the helicopter. There was also Master Corporal Matt Davidson, who provided direction and information as they manoeuvred to rescue the man on the crane.

I have no doubt that each of these individuals would credit the other with saving the day. It is just the nature of the individuals who make up the Royal Canadian Air Force. They are a team, and they work as a team.

Honourable senators, I would encourage each of you to join the guests who are in our gallery today, along with many others from the Royal Canadian Air Force, in Room 256, between five and seven o'clock, to meet these men and women and let them tell you first-hand of the things that they have done and seen in their time with the Royal Canadian Air Force. Thank you.

• (1420)

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of Ms. Lucya Spencer, Executive Director, Immigrant Women Services (Ottawa), Ms. Nancy Worsfold, Executive Director of Crime Prevention (Ottawa) and Mengistab Tsegaye who is the Executive Director of World Skills Employment Centre. They are the guests of the Honourable Senator Jaffer.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

**Hon. Senators:** Hear, hear!

## MS. LUCYA SPENCER

**Hon. Mobina S. B. Jaffer:** Honourable senators, I rise today to recognize a Canadian who has been doing exceptional work in Canada. Lucya Spencer has been a strong voice for the most vulnerable women. Following her arrival from Antigua to Ottawa, she quickly became involved with Ottawa Community Immigrant Services Organization. When the OCISO restructured, Lucya was hired as a coordinator of a centre where women could acquire information, engage in workshops on different themes and learn more about the integration process.

In 1988, Lucya co-founded Immigrant Women Services Ottawa. The mandate of the agency is to provide culturally appropriate services to immigrant women and their children who are victims/survivors of violence and other services and/or programs that assist immigrant women in their journey to attain their full potential.

In 1993, Lucya accepted the position of Executive Director of Immigrant Women Services Ottawa, a position which she still holds today. She has been actively involved in many advocacy groups at the national and provincial levels.

On top of this, she has served as president of several organizations including the Immigrant and Visible Minority Women's organization, both in Ontario and nationally, the

Ontario Council of Agencies Serving Immigrants, and she was the first woman of colour to hold the position of President of the Children's Aid Society of Ottawa.

Lucya has received many awards for her contribution to the community. Notable among them are: the Governor General Canadian Study Conference Appreciation Award (1995); the United Way Community Builder Award (2008); the OCASI Award of Excellence for outstanding leadership (2008); the Black Women's Civic Engagement Award for professional and social activism that helped build stronger communities across Canada (2011); and, most recently, the Citizenship and Immigration Canada recognition award for long-standing service to the Settlement and Integration Community (2013).

Honourable senators, Lucya Spencer truly understands the challenges of the most vulnerable. She has been a bridge for immigrant women, allowing them to reach their full potential. I have no doubt that many women in Canada would not be where there are today if it wasn't for the great work of Lucya Spencer. It has been my absolute pleasure to work with Lucya for the past 30 years. Let me share what one woman said about Lucya's work. She said:

> I was badly beaten and thrown out of my house with my three children, aged 4, 3 and 1 year old, on a very cold night in Ottawa. The police helped me to connect with Lucya and her organization. That night, Lucya hugged me and enveloped me with kindness. She arranged to have me attend school and then work, and then she helped me find a transition home and then a permanent home. Lucya gave my life meaning and dignity. Now I volunteer at Immigrant Women's Services.

This is just one of many women who Lucya has worked for tirelessly.

Thank you for your work, Lucya Spencer.

### TURKS AND CAICOS

**Hon. Terry M. Mercer:** Honourable senators, yesterday I had the pleasure to meet with the Premier of the Turks and Caicos Islands, the Honourable Dr. Rufus Ewing. He met with parliamentarians in hopes of promoting greater tourism and trade connections with Canada. Canada's approach and focus has always been geared towards the betterment of both Canada and the Turks and Caicos. This partnership is based on a foundation of shared values where we are working towards agreements that would allow the Islands to reach their full potential through greater ties with Canada.

As well, the road towards making the Turks and Caicos the "eleventh province" of Canada has been a long and ongoing one. It started in 1917 with Prime Minister Robert Borden. After visiting the tropical islands, he returned with a strong desire to annex those islands. Though his suggestions were turned down, there have been many others since then who have shown their interest in the Turks and Caicos becoming Canada's very own Florida.

Honourable senators, the idea does have many advantages. This province or territory could offer a safe retirement and vacation destination for Canadians with the same currency, promotion of multiculturalism and many more advantages.

Although there is some hesitancy towards adopting the Islands from both Canada and the Turks and Caicos, I believe it's an idea worth exploring. Canadians are already very present on the Islands, from retirees to tourists to professionals, and many of the recreational facilities are owned by Canadians. In fact, Canada is the second largest source of tourists to the Islands and has the greatest number of foreign direct investment, so a potential furthering of our friendship with the Turks and Caicos is something much more than gaining a holiday hot spot.

Honourable senators, it was an honour to meet with Premier Ewing yesterday and I thank those of you who made it a point to visit with him as well. I believe this is just the beginning for enhancing political and economic ties between our two nations. I encourage you all to visit the Islands and experience the wonderful culture they have to offer.

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[*Translation*]

## ROUTINE PROCEEDINGS

### PUBLIC SECTOR INTEGRITY COMMISSIONER

ENTERPRISE CAPE BRETON CORPORATION—CASE REPORT OF FINDINGS IN THE MATTER OF AN INVESTIGATION INTO A DISCLOSURE OF WRONGDOING TABLED

**The Hon. the Speaker:** Honourable senators, pursuant to subsection 38(3.3) of the Public Servants Disclosure Protection Act, I have the honour to present, in both official languages, the Office of the Public Sector Integrity Commissioner's case report.

### CANADA GRAIN ACT
### CANADA TRANSPORTATION ACT

BILL TO AMEND—FIFTH REPORT OF AGRICULTURE AND FORESTRY COMMITTEE PRESENTED

**Hon. Percy Mockler**, Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Tuesday, May 27, 2014

> The Standing Senate Committee on Agriculture and Forestry has the honour to present its

FIFTH REPORT

Your committee, to which was referred Bill C-30, An Act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures, has, in obedience to the order of reference of May 13, 2014, examined the said Bill and now reports the same without amendment.

Your committee has also made certain observations, which are appended to this report.

Respectfully submitted,

PERCY MOCKLER
*Chair*

(*For text of observations, see today's* Journals of the Senate, *p. 867.*)

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

**Hon. Donald Neil Plett:** Honourable senators, with leave of the Senate and notwithstanding rule 5-5(b), I move that the bill be placed on Orders of the Day for reading later this day.

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

**Hon. Senators:** Agreed.

(On motion of Senator Plett, bill placed on the Orders of the Day for third reading later this day.)

[*English*]

## THE SENATE

NOTICE OF MOTION TO RECOGNIZE THE SECOND WEEK OF MAY AS INTERNATIONAL MATERNAL, NEWBORN, AND CHILD HEALTH WEEK

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

That the Senate recognize the second week of May as "International Maternal, Newborn, and Child Health Week", with the goal of engaging Canadians on the health issues affecting mothers, newborns, and children in Canada and around the world; reducing maternal and infant mortality; improving the health of mothers and children in the world's poorest countries; promoting equal access to care to women and children living in households of lower socioeconomic status, those with lower levels of education, those living at or below the low-income cut-off, those who are newcomers, and those groups who live in remote and sparsely populated areas of Canada; and preventing thousands of mothers and children from unnecessarily dying from preventable illnesses or lack of adequate health care during pregnancy, childbirth and infancy.

• (1430)

[*Translation*]

## RECREATIONAL ATLANTIC SALMON FISHING

NOTICE OF INQUIRY

**Hon. Ghislain Maltais:** Honourable senators, I give notice that, two days hence:

I will call the attention of the Senate to the protection of the Atlantic salmon sports fishery in the marine areas of eastern Canada, and the importance of protecting Atlantic salmon for future generations.

[*English*]

## GENETIC NON-DISCRIMINATION BILL

NOTICE OF MOTION TO WITHDRAW BILL FROM LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE AND REFER TO HUMAN RIGHTS COMMITTEE

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That Bill S-201, An Act to prohibit and prevent genetic discrimination, which was referred to the Standing Senate Committee on Legal and Constitutional Affairs, be withdrawn from the said Committee and referred to the Standing Senate Committee on Human Rights.

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[*Translation*]

# QUESTION PERIOD

## TRADE

INTERPROVINCIAL TRADE

**Hon. Céline Hervieux-Payette:** Honourable senators, my question is from Ian Shepherd in Vancouver, and I feel it is quite relevant at this point in time. I would like to read it in the language in which it was written.

[*English*]

Why does our federal government allow interprovincial trade barriers to block economic activity?

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** Thank you for your question. As you know, the economy is our priority, and we want to ensure that trade can flourish as much as possible. Our legislation on Canadian wine is a good example of that. It allows the provinces to buy and sell Canadian wine interprovincially. That is a great example of our country's and our government's commitment to interprovincial trade.

**Senator Hervieux-Payette:** I will conclude with something else from Mr. Shepherd.

[*English*]

> What will the national government do now to open up this country and do away with outdated, parochial, regional, competition-destroying provincial laws and regulations that only serve special interests, and when will our federation's markets be open for business to all Canadians everywhere?

[*Translation*]

Instead of dreaming about international agreements, perhaps we should be working on national agreements and eliminating the hundreds of barriers that still exist within Canada.

**Senator Carignan:** As you know, we are focused on the economy, but we are also trying to respect provincial jurisdictions. Many of these areas fall under provincial jurisdiction. However, we will continue to implement our economic action plans and create jobs.

**Senator Hervieux-Payette:** Thank you, Mr. Leader. I would like you to give me the name of the committee that is currently studying these issues and the date when the report to remove these barriers will be released. This issue is currently on the government's agenda, but there is no indication as to when your government, which is supposed to create jobs, will remove these totally ineffective barriers that are quite costly to consumers. When will we receive the committee that will advise us that, over a certain number of years, we will take action with the provinces to remove interprovincial barriers?

**Senator Carignan:** As I said earlier, we want to continue promoting the economy and job creation and taking economic measures that meet those objectives while respecting our provincial partners in the discussions that we have with them and according to their jurisdictions.

[*English*]

## ENVIRONMENT

### CLIMATE CHANGE

**Hon. Grant Mitchell:** Mr. Leader, the Prime Minister continuously hides his reluctance to do something significant about climate change by saying that other countries have to do something first. In fact, relatively recently he said he will implement strong regulations on the oil and gas industry in lockstep with the United States doing the same thing. Clearly, after eight years in government, he has not implemented those important standards, long-awaited and long-promised. Promise made; promise still broken.

At the same time, we have just seen a report by the Environmental Protection Agency dated June 2013 that indicated very clearly that the United States actually has taken the steps as of 2013 that the Prime Minister said he would match in lockstep. A year later, he still has not done so.

Why is it that a year after the U.S. acted in a way that Mr. Harper said he would follow, the Prime Minister still has not done it? Is he simply misleading the Canadian people?

**An Hon. Senator:** What did they do?

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** I thank the honourable senator for the question. We continue and will continue to take measures with regard to the two main sources of emissions in Canada, namely the transportation and electricity production sectors. As you know, Senator Mitchell, we were the first major coal user to ban construction of traditional coal-fired power stations. The first 21 years of our new coal regulations on the coal-fired electricity sector are expected to result in a cumulative reduction of greenhouse gas emissions that is equivalent to removing roughly 2.6 million vehicles from the road. Since 2006, we have made considerable investments in more efficient technologies, better adapted infrastructure and clean energy. As I said, thanks to our measures, emissions will be reduced by nearly 130 megatonnes compared to what they would have been under the Liberals.

We are also one of the founding members of an international coalition taking action to reduce pollutants, such as black carbon. We have made the fight against pollutants a priority for the Arctic Council, which we chair, and we have provided substantial funding to developing countries so that they too can reduce their emissions. We are therefore taking meaningful action in this regard.

[*English*]

**Senator Mitchell:** Getting the permission to build projects like the Keystone XL Pipeline, which are so critical to Canada's energy future in many complex ways — and I should point out that after almost nine years, this government has not been able to build a single pipeline to find new markets, and yet people continue to say, somehow, that this government can actually run an economy.

But the key to getting the social licence or permission to do that is the credibility people feel in Canada's commitment to protecting the environment. That's one of the hang-ups — probably the major hang-up — in the case of the Keystone XL process.

• (1440)

Has Mr. Harper not sacrificed Canadian credibility essential to getting the social licence and the official permission to build Keystone XL when he says he will act in the way that the U.S. acts? The U.S. acts in that way, and then Mr. Harper continues to do nothing a year later.

**Senator Tkachuk:** How did the U.S. act?

**Senator Mitchell:** You wouldn't know.

**Senator Tkachuk:** Exactly; you have to tell us.

[*Translation*]

**Senator Carignan:** Senator Mitchell, as you know and as I have already said, we are disappointed that politics continue to delay the decision to build the Keystone XL pipeline.

We believe that this project will create tens of thousands of jobs on both sides of the border and improve North America's energy security. It has strong support from the people of the United States and the country's departments, which have recognized on multiple occasions that the pipeline was environmentally safe. Moreover, I think that the people of your province also support this project.

[*English*]

**Senator Mitchell:** If it's so obvious, you really wonder why even this Prime Minister couldn't get it done.

The second excuse that the Prime Minister continues to use is that there is really not much point in Canada doing anything until China does because China is such a huge polluter. The fact of the matter is that over the next several years China is putting $280 billion into reducing greenhouse gas emissions. Twenty per cent of this year's and next year's actual new energy creation will be solar, not to mention wind and other renewable sources of energy. China has the most to gain from dealing with climate change in the world because they will be able to produce renewable energy infrastructure more cheaply than any other nation in the world. In fact, China probably does not want to us to think that they are doing something about it because they want to get ahead of us so far that we will never of catch up in North America and elsewhere.

Has it ever dawned on this government that just maybe the Chinese are introducing reverse psychology on us by going ahead and doing things without letting us know so that they are so far ahead that we will never compete in a new renewable energy world?

[*Translation*]

**Senator Carignan:** Senator Mitchell, I see that you are applauding China and its environmental record. I believe that I saw in the news last week that China has signed a pipeline agreement with Russia.

[*English*]

## JUSTICE

### SUPREME COURT OF CANADA—APPOINTMENT PROCESS

**Hon. Joan Fraser (Deputy Leader of the Opposition):** To the Leader of the Government in the Senate, it is now nine months since one of Quebec's three Supreme Court justices retired. When can we expect his replacement to be named, and what is the process that the government is following to choose his replacement?

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** A replacement is expected to be appointed soon. You can be sure that the government will respect the spirit and the letter of the Supreme Court's ruling in this regard.

[*English*]

**Senator Fraser:** Yesterday, in a written response to a question from the Honourable Stéphane Dion in the other place, the other government tabled a document that says, among other things that the government is considering all its options, including the appointment of a replacement for Justice Fish at the earliest available opportunity. On the face of it, that suggests that an early replacement for Justice Fish is an option, not a priority. Could you please clarify?

[*Translation*]

**Senator Carignan:** I see that you are still coordinating with the Liberal caucus in preparing your questions. As I said earlier, we will respect the letter and the spirit of the Supreme Court's ruling, and we will act quickly to fill the position that has been vacant since Justice Fish retired.

[*English*]

**Senator Fraser:** As we know, there will soon be yet another vacancy among the Quebec seats on the Supreme Court. I ask again: What process is the government going to adopt to ensure that the best possible appointments are made now that we've had a Supreme Court ruling, and would that process, by any chance, include the investigation of a possible constitutional amendment concerning the Supreme Court composition?

[*Translation*]

**Senator Carignan:** In the process for appointing Quebec judges to the Supreme Court, we will respect the letter and the spirit of the decision in Justice Nadon's case.

[*English*]

**Hon. James S. Cowan (Leader of the Opposition):** The government published, quite properly, in advance of the last several appointments, a protocol that called for a process to be

followed. Will the government be following the same process with respect to these appointments that are forthcoming?

[*Translation*]

**Senator Carignan:** The government will choose a process that respects the letter and the spirit of the Supreme Court decision.

[*English*]

**Senator Cowan:** That wasn't my question. I don't think you have any choice as to whether you respect or follow the judgment of the Supreme Court of Canada. The Supreme Court is the highest court in the land, and all citizens and all governments in this country would be expected to respect the decisions of the Supreme Court of Canada. So I would hope that this is not some new position that the government is taking.

This government established, early in its mandate, a process for consultation and for a hearing before a committee of members of Parliament for nominees for the vacant position on the Supreme Court of Canada. Will the government be following the same process, including the consultations that it specified in that protocol? Will it be following that same process with respect to the existing vacancy and the one that has recently been announced?

[*Translation*]

**Senator Carignan:** As I explained, the government will follow a process that respects the letter and the spirit of the Supreme Court decision in Justice Nadon's case.

[*English*]

## ATLANTIC CANADA OPPORTUNITIES AGENCY

### ENTERPRISE CAPE BRETON CORPORATION

**Hon. Jane Cordy:** Honourable senators, the investigation by the federal Integrity Commissioner, Mario Dion, has found that Enterprise Cape Breton Corporation, ECBC, CEO John Lynn committed a serious breach of the code of conduct when he hired Rob MacLean, Allan Murphy, Ken Langley and Nancy Baker, all four with strong ties to the Conservative Party. Two are defeated Conservative candidates, and they were hired without following ECBC's competitive hiring policies. Essentially, they were given the jobs without any interviews.

The commissioner's findings were clear. The hiring of the four was, to quote the commissioner, "unfair" and "improper" patronage appointments. Mr. Lynn blatantly ignored ECBC's hiring policy to appoint his friends in plumb federal jobs.

Were these patronage appointments made with the approval of the Prime Minister's Office, and will this government revoke the four ECBC hires that the Integrity Commissioner has deemed, in his words, to be "improper"?

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** As you know, action has been taken to terminate Mr. Lynn's employment. We have agreed with the findings of the Public Sector Integrity Commissioner. Enterprise Cape Breton Corporation has already implemented the commissioner's recommendations.

In his report, the Integrity Commissioner indicated that the corporation has already taken action and implemented a new recruitment and selection process policy, which clearly reflects the fairness and transparency of the corporation's staffing process.

[*English*]

**Senator Cordy:** Did you say that Mr. Lynn's position and Mr. Lynn have been terminated from ECBC? Is that what I heard you say? I'm not quite sure with translation.

[*Translation*]

**Senator Carignan:** We have taken action to terminate Mr. Lynn's employment.

[*English*]

**Senator Cordy:** Mr. Lynn has lost his job. In light of the report, that's a good thing. Will Mr. Lynn be receiving a severance package? In Bill C-31, the budget bill, subclause 183(1), it says:

> The members of the Board of Directors of the Corporation cease to hold office on the day on which this Division comes into force.

Subclause (2) says:

> Despite the provisions of any contract, agreement or order, no person who is appointed to hold office as a member of the Corporation's Board of Directors, except the Chief Executive Officer, has any right to claim or receive any compensation, damages . . . .

And it goes on.

• (1450)

Does your comment mean that Mr. Lynn will receive no compensation, because he has lost his job? That is, he will not receive a severance package?

[*Translation*]

**Senator Carignan:** Can I ask you to restate your question, more slowly this time, because I missed half of the translation?

[*English*]

**Senator Cordy:** Sorry; I'm just reading from part of Bill C-31, the budget bill. Subclause 183.(1) states:

> The members of the Board of Directors of the Corporation cease to hold office on the day on which this Division comes into force.

Subclause 183.(2) states:

> Despite the provisions of any contract, agreement or order, no person who is appointed to hold office as a member of the Corporation's Board of Directors, except the Chief Executive Officer, has any right to claim or receive any compensation, damages . . .

It continues, but that's my point.

Since John Lynn was the chief executive officer, will he or will he not be receiving any severance package in light of the fact that he lost his job because of the report of Mr. Dion?

[*Translation*]

**Senator Carignan:** Like all terminations of employment, this dismissal was handled as required by law.

[*English*]

**Senator Cordy:** I'm not clear. Will hard-earned taxpayers' dollars be given to Mr. Lynn in terms of a severance package in light of the fact that Mr. Lynn has already been on paid leave since June 2013? In addition to having received income for the past almost a year, while this investigation was taking place, will he in fact be receiving hard-earned taxpayers' dollars in a severance package from the government?

[*Translation*]

**Senator Carignan:** I am not aware of the details of the day-to-day management and administration of the corporation with respect to its employees, but we expect that government agencies will act in accordance with the law.

[*English*]

**Hon. Terry M. Mercer:** Mr. Speaker, perhaps the Leader of the Government in the Senate could tell us this: Of the people listed in Senator Cordy's question, including Mr. Lynn, have any received a performance bonus in the past number of years for jobs they were not doing?

[*Translation*]

**Senator Carignan:** That involves the day-to-day management and administration of an agency; you will understand that it is impossible for me to provide that information at this time.

[*English*]

**Senator Mercer:** Hide behind that if you like, Mr. Leader, but the fact of the matter is that questions have been raised here, in Cape Breton and in other parts of Atlantic Canada, such as Prince Edward Island, about the performance of these people and about the fact that they have been getting paid for years in jobs that they never applied for.

It was blatant patronage when there was a system in place to hire people for those positions. The people of Canada deserve to know whether they have paid performance bonuses to these people for jobs that they didn't do.

[*Translation*]

**Senator Carignan:** Our government is determined to ensure that the public service is professional, independent and non-partisan. The independent inquiry conducted by the commissioner has found no evidence of misconduct or influence from the minister or from political staff in this matter. I would remind you that this situation is very different from what happened in 2006, when the Liberals gave ministerial aides free rides into the public service.

[*English*]

**Senator Mercer:** You live in a bit of a dream world over there. The government had nothing to do with it? They all were friends and/or employees of the current Minister of Justice. Indeed, one of the people involved currently does work in the minister's office again.

The leader can sit there and tell me all the rules about the Treasury Board, but the fact of the matter is decisions about performance bonuses are not made by the Public Service Commission. Decisions on performance bonuses are made by the people in charge, and the people in charge are not the Public Service Commission.

The people of Canada want to know this: Did these people receive performance bonuses for jobs they were not doing?

[*Translation*]

**Senator Carignan:** As I told you, our government is determined that the public service must act in a professional, independent and non-partisan way. Let me answer your question with a question of my own.

Do you remember what happened in 2006, when the Liberals gave ministerial aides free rides into the public service?

[*English*]

## ANSWERS TO ORDER PAPER QUESTIONS TABLED

### NATIONAL REVENUE—OVERSEAS TAX EVASION

**Hon. Yonah Martin (Deputy Leader of the Government)** tabled the answer to Question No. 10 on the Order Paper by Senator Downe.

VETERANS AFFAIRS—VETERANS CHARTER

**Hon. Yonah Martin (Deputy Leader of the Government)** tabled the answer to Question No. 16 on the Order Paper by Senator Downe.

VETERANS AFFAIRS—VETERANS AFFAIRS CANADA

**Hon. Yonah Martin (Deputy Leader of the Government)** tabled the answer to Question No. 24 on the Order Paper by Senator Downe.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, I have the honour to table the answer to the oral questions asked by the Honourable Senator Jaffer on April 8 and 30, 2014, concerning foreign affairs, Burma and human rights. I also have the honour to table the answer to the oral question asked by the Honourable Senator Charette-Poulin on May 8, 2014, concerning network neutrality.

## FOREIGN AFFAIRS

BURMA—HUMAN RIGHTS

*(Response to questions raised by Hon. Mobina S. B. Jaffer on April 8 and 30, 2014)*

The promotion and protection of human rights is an integral part of Canada's foreign policy and Canada takes principled positions on important issues to promote freedom, democracy, human rights and the rule of law. The government's actions are consistent with its commitments in the 2011 Speech from the Throne to "standing for what is right on the world stage" and to ". . . help protect religious minorities and to promote the pluralism that is essential to the development of free and democratic societies."

The Minister of Foreign Affairs has raised the situation of ethnic minorities with Wunna Maung Lwin, the Minister of Foreign Affairs for Burma. Canadian officials, including Canada's first resident Ambassador in Burma, Mark McDowell, raise concerns at every appropriate opportunity, both bilaterally with the Burmese authorities, and in multilateral settings such as the United Nations.

Canada condemns violence and human rights abuses against ethnic or religious minority communities in Burma, including the Rohingya, and we continue to monitor the situation. Canada urges the Burmese government to ensure that the safety of all residents is protected, and to be fully transparent with regard to the situation in Rakhine state.

Canada has consistently called on all sides to work toward a peaceful resolution of the tension that has led to the violence. Long-term peace and prosperity will require dialogue and cooperation among all groups, including the ethnic and religious minorities.

Canada continues to provide humanitarian assistance to meet the basic needs of refugees and displaced Burmese. This includes funding to humanitarian organizations operating in Rakhine state to provide access to emergency health care, safe drinking water, sanitation facilities, screening and treatment of cases of acute malnutrition for displaced children under five, shelter assistance, essential household items, and food assistance. We have consistently called on the government to ensure that humanitarian organizations have safe, full and unhindered access to crisis-affected people throughout Burma. In 2013, Canada provided over $6 million in humanitarian assistance to Burma.

The Ambassador for Religious Freedom remains concerned about religious freedom in Burma, and has and will continue to speak out about abuses as necessary. Canada's Religious Freedom Fund will support projects to help promote and protect religious freedoms and religious communities in Burma, including the Rohingya in Rakhine state.

## CANADIAN HERITAGE

NET NEUTRALITY

*(Response to question raised by Hon. Marie-P. Charette-Poulin on May 8, 2014)*

It is the government's view that Canadians should have access to the lawful content of their choice when using the Internet in order to participate fully in the digital economy. Network neutrality is the principle that all online data should be treated equally irrespective of its source, type, or destination and is under the jurisdiction of the telecommunications regulator, the Canadian Radio-television and Telecommunications Commission (CRTC).

Some internet service providers (ISPs) have applied various measures such as monthly usage caps or limits to the speeds of certain types of bandwidth intensive applications (e.g., peer-to-peer applications, which are file sharing services that facilitate fast, but often illegal, file downloading) to help manage network congestion. The appropriateness of these measures and whether regulatory frameworks are required to govern their use have been central to the network neutrality debate. There have been persistent concerns that such measures could be used for anti-competitive purposes.

Following a year-long public consultation process, the CRTC released a network neutrality policy in 2009 that guides the telecommunications industry in the use of acceptable Internet traffic management practices (ITMPs). The policy attempts to balance the freedom of Canadians to use the Internet for various purposes, with the legitimate interests of ISPs to manage traffic flows. It has been generally well received by stakeholders, including consumer groups.

The policy applies to all Canadian network providers, including both wireline and wireless network operators. Key highlights of the policy include:

- ISPs must be transparent about how they manage traffic on their networks;
- continued network investment should be the primary means to deal with network congestion;
- outright blocking or degrading time-sensitive traffic (e.g., Voice over Internet Protocol, or VoIP) is prohibited unless prior CRTC approval is obtained; and
- any Internet traffic management measures that are employed must not result in unjust discrimination or undue preference.

If consumers feel these principles are not being respected, complaints can be filed with the CRTC, which will be evaluated on a case-by-case basis.

The government will continue to monitor our legislative and regulatory frameworks to ensure that they are responsive to the needs of Canadian consumers and businesses.

# ORDERS OF THE DAY

## CANADA GRAIN ACT
## CANADA TRANSPORTATION ACT

BILL TO AMEND—THIRD READING

**Hon. Donald Neil Plett** moved third reading of Bill C-30, An Act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures.

He said: Honourable senators, I am honoured to rise again to speak to Bill C-30 at third reading. The Standing Senate Committee on Agriculture and Forestry met every day last sitting week, and some days twice a day, to ensure this important bill got the study it deserves in a timely manner. We had 24 witnesses testify over nine hours of hearings. The vast majority of the witnesses were supportive of the bill and thankful to the government for our initiative. In fact, the only witnesses we heard from who were opposed to the legislation were the two main-line railways, CN and CP.

The canola farmers, as late as today, were complaining to the Canadian Transportation Agency about what they call "dismal service" from the country's two largest railways. Brett Halstead, President of CCGA and farmer from Nokomis, Saskatchewan, said:

> The breakdown of the Western Canadian rail transportation this year is completely unacceptable for grain producers. Ultimately it is farmers who are bearing the cost of this supply chain failure.

CN's defence to these accusations was the following. I quote Mark Hallman, a spokesman for the railway, who said:

> This situation is about a 100-year crop and the worst winter in decades . . . . CN is moving record grain volumes . . . and has fared far better than all other railroads during this difficult winter. . .

My response to Mr. Hallman would be: First, there are only two main-line railways in Canada, so I'm not sure what he means when he says they are faring better than all other railroads.

Second, winter comes to Canada at least once every year and will continue to do so. We are hopeful and optimistic that this 100-year crop will become the norm and not the exception.

Our Western Canadian farmers are delivering and the rest of the supply chain needs to follow suit.

• (1500)

The other 22 witnesses recognized the severity of the grain backlog issue and strongly supported the government's efforts.

Art Enns, executive member of Grain Growers of Canada, said in committee:

> The government is listening to our concerns, and this legislation, in building on the order-in-council provision, is moving us toward a rail system that is more balanced and accountable. We thank them for that.

Phil de Kemp, president of the Malting Industry Association of Canada and policy adviser for the Barley Council of Canada, said at committee:

> This is about a long-term solution that delivers national economic security for all of Canada.

Pulse Canada represents 30,000 farmers from across Canada. The chief operating officer, Greg Cherewyk, also appeared at committee, stating:

> . . . Bill C-30 sends a strong signal that rail capacity that does not meet the market demand of the ag industry and rail capacity that cannot recover from adverse weather conditions is simply unacceptable.

The one message that came through loud and clear was the need for urgency. The order-in-council mandating minimum volumes of a million tonnes a week runs until June 1, just a few days from

today, the beginning of a crop week. This legislation intends to extend these same volume requirements until the beginning of the new crop year, August 3 of this year.

We need to have legislation in place as soon as possible to extend that mandate and to protect our farmers. Time is money. As the minister told us, every million tonnes we move is cash flow for farmers. We need to ensure they get paid for their hard work. The grain has started to move through the system and out of port, thanks in large part to the order-in-council issued on March 7.

According to a Statistics Canada release last week, wheat exports were up over 7 per cent in March, and durum exports over 30 per cent. We must ensure it keeps moving. With planting season upon us, it is absolutely critical to keep the grain moving so farmers can free up storage space for this year's harvest.

Of course, as we heard at committee, more than farmers are affected. That is why the bill seeks to ensure that we are not increasing grain shipments at the expense of coal, potash, timber and other bulk commodities, as well as containers.

This is a priority for our government, not only to alleviate the backlog faced by our grain farmers and shippers, but also because the industry is a substantial contributor to the Canadian economy. The success of Canada's grain industry is one of the major reasons that the Canadian economy has experienced one of the best performances among the G7 countries in terms of both output and job creation. Canada's grain industry exported close to $20 billion in 2013. In fact, Canada's top 2013 agricultural export was wheat, at nearly $7 billion, with canola seeds and soybeans a short distance behind.

On average, our farmers export one of every two bushels of grain they produce. Farmers depend on an efficient, reliable supply chain to get their products to market. The Government of Canada has been working with all parts of the supply chain to build a world-class logistics system to help them do that. We are taking concrete actions to get grain moving faster in Western Canada.

Through the proposed emergency grain transportation legislation, we are pursuing further measures to ensure the entire supply chain is working, to better utilize its capacity, to strengthen contracts for farmers and to help Canada maintain a world-class logistics system.

The Minister of Agriculture and Agri-Food and the Minister of Transport have brought forth this proposed new legislation to amend the Canada Transportation Act and the Canada Grain Act to provide the Governor-in-Council the authority to set volume targets for grain transportation, based on a joint recommendation from both ministers; to add greater specificity to service-level agreement provisions; to regulate contracts between producers and licensees, including shippers; to provide the Canadian Transportation Agency with the authority to order railway companies to pay compensation to shippers for expenses resulting from a failure to meet their service obligations; and to extend interswitching limits.

In short, this legislation will provide a mechanism that will establish clear and achievable solutions to address grain transportation issues.

With Bill C-30, the government is proposing short- and medium-term measures to improve the efficiency and effectiveness of the crop logistics system now, heading into the next crop year, and beyond. The fair rail for grain farmers act will put into law measures to help ensure Canadian shippers get their agricultural products to market in a predictable and timely manner.

Colleagues, allow me to speak to the specifics of what this bill sets out to accomplish. Under Bill C-30, we will amend the Canada Transportation Act to allow the Governor-in-Council to set out minimum volumes of grain, if needed, that railways will be required to transport, at the joint recommendation of the Minister of Transport and the Minister of Agriculture and Agri-Food. This change would provide greater predictability for shippers and producers, ensuring that the supply chain is better prepared to respond to peak demand.

The order-in-council was the first and quickest step toward getting more grain moving immediately. The new legislation creates the ongoing authority to set such volume requirements should they be needed.

Second, our government is creating the regulatory authority to enable the Canadian Transportation Agency to extend interswitching distances to 160 kilometres from 30 kilometres for all commodities on the Prairies.

Interswitching is an operation performed by railway companies where one carrier picks up cars from a shipper and drops off these cars to another carrier that performs the line haul. Currently, CN and CP are only obligated to offer interswitching within a 30-kilometre radius from the hand-off point. Any shipper beyond that 30 kilometres is out of luck. Increasing the access that farmers and elevators have to lines of competing railway companies will increase competition among railways for business and give shippers more transportation options.

One hundred and fifty elevators would have access to more than one railway, compared to only fourteen now. Currently, the vast majority of elevators are served by just one railway. Increasing the distance to 160 kilometres would give almost half of the elevators access to interswitching, compared to only 4 per cent today. This will increase competition among railways and give shippers access to alternative rail services by getting more elevators within range.

Third, we will amend the Canada Grain Act to strengthen contracts between producers and shippers. The amendment would provide the Canadian Grain Commission with the authority to regulate certain clauses in grain contracts between farmers and grain elevators.

Fourth, we are establishing regulatory power to add greater specificity to operational elements in arbitrated service-level agreements, as asked for by all shippers. We will do this by

defining in regulations the operational terms that must be considered by arbitrators when they are assessing such agreements.

Bill C-30 will also strengthen accountability between shippers and the railways, thanks to an amendment passed in the other place. The amendment would allow shippers who enter service-level agreements — and those who don't — to be directly compensated for expenses they incur as a result of the railways' failure to meet their service obligations.

This amendment is a market-based solution to meet stakeholder requests for more balanced accountabilities between railways and shippers.

• (1510)

For example, if a grain shipper has a service-level agreement with the rail company and if the rail company does not meet its service obligations, triggering demurrage fees, now the grain shipper can ask the Canadian Transportation Agency to require the railway to provide compensation for these out-of-pocket expenses.

I would add that producers are very supportive of the amendment. Rick White, CEO of the Canadian Canola Growers Association, told us at committee that:

> The amendment introduced by the government is a step towards making the logistics system more commercially responsible.

Honourable colleagues, these are the immediate measures we are taking in this bill to get the grain moving now and over the coming months.

As well, the government will ask the Canadian Transportation Agency to consult with the railways and other supply chain partners to discuss their plans regarding the movement of grain during the upcoming crop year. We will also be able to ask for an updated analysis, as needed, throughout the year. This will help the ministers determine whether volume requirements are needed going forward, based on this hard data.

Furthermore, our government will also require the railways to provide more timely and detailed data regarding the movement of grain. As many have pointed out, this is urgent legislation.

Of course, we need to look at the long term. That is why the Minister of Transport has indicated that she will accelerate the review of the Canada Transportation Act, which had been slated for a year's time. Instead, the review will begin this summer, with an immediate focus on rail transportation. We will continue to assess and adapt our grain transportation legislation and practices to further improve Canada's rail transportation system over the long term.

Colleagues, taken together, these measures will strengthen contracts between producers and shippers, improve performance by railways and help ensure the entire supply chain is working at full capacity.

The fair rail for grain farmers act will help farmers and other shippers get their products to market and help secure Canada's reputation as a world-class exporter. The legislation will support the work we are doing to build a viable and sustainable system. Our government is committed to working with the entire grain value chain — industry, academia and governments — to grow the industry and help it reach its full potential as an economic driver in this country.

Bill C-30 will put into law measures to help ensure Canadian shippers get their agricultural products and other commodities to waiting markets around the world in a predictable and timely way.

I would like to express my appreciation to my colleagues on both sides of the chamber for their cooperation and their appreciation for the urgency of the situation for our farmers and grain industry. I would specifically like to note that the deputy chair of the committee, Senator Mercer, and his colleagues were supportive of this legislation, in principle, from the start.

**Senator Mercer:** There goes my reputation.

**Senator Plett:** I am happy to say that the legislation passed without amendment and with three observations that were agreed upon unanimously by our committee.

It was indeed a pleasure for me to be the sponsor of this bill and to work collaboratively with friends and colleagues from both sides of the Senate. I would also like to thank and congratulate the chair of the committee, Senator Mockler, for his tireless work on this bill.

Our committee noted the following observations: One, many stakeholders believe that the Ministers of Transport and Agriculture and Agri-Food must consult with all stakeholders when establishing mandatory volume requirements and that these take into account producer car, short-line and corridor-by-corridor requirements.

Two, many stakeholders believe that the Government of Canada should implement the necessary regulations to give effect to farmer-grain-company contracts, interswitching and service-level agreements by the beginning of the new crop year on August 1, 2014.

Three, many stakeholders expressed concerns over the ambiguity surrounding service-level agreements. While Bill C-30 gives the Canadian Transportation Agency the authority to regulate those service-level agreements, the Canada Transportation Act does not provide for a definition of "adequate and suitable" or for the term "service obligations."

The bill accelerates the upcoming review of the Canada Transportation Act currently scheduled to begin June 2015. Consequently, the committee believes that, during the upcoming

review of the Canada Transportation Act, the examinations should include an exploration of definitions for "adequate and suitable" and for "service-level obligations."

Now, to add to Senator Mercer's great reputation, the three observations were jointly proposed by Senator Mercer and me, and unanimously agreed to by the committee.

**Hon. Senators:** Hear, hear.

**Senator Plett:** As I said before, the order-in-council expires at the beginning of next week. For that reason, I urge all honourable senators to continue the cooperative efforts that were displayed at committee so that we can pass this bill immediately to ensure that there is no lapse in the mandate and that our farmers are protected. Thank you.

**Hon. Terry M. Mercer:** I already got kicked out of one caucus. He's trying to get me kicked out of another!

**Senator Plett:** Want to come over here?

**Senator Mercer:** Not in this lifetime.

Honourable senators, it's interesting that Senator Plett talked about timely and detailed data. I didn't have this in my notes, but it dawned on me that if he had timely and detailed data, then why did it take so long for the order-in-council to come into effect when we knew what the problem was beforehand? Indeed, questions were asked in this chamber before the order-in-council was there.

Honourable senators, I believe we all recognize the need for this bill. However, the fair rail for grain farmers act is merely the beginning of what I see as a major overhaul of the entire transportation system here in Canada. This is not the first time that we've seen provisions like those in this bill. We had Bill C-52 here last year. I can also guarantee it won't be the last time we deal with similar issues as well.

Before I make some comments on the bill, I, too, want to attack the reputation of Senator Plett. I would like to thank him and the Conservative Senate leadership for agreeing with our proposal to seek leave to get this bill to third reading today, as I am joining the Fisheries Committee on a trip in Nova Scotia tomorrow. It is our hope that this goodwill pervades other bills before us in the time to come.

**Senator Robichaud:** Don't push too hard.

**Senator Mercer:** We'll wait and see.

**Senator Cowan:** You're making Senator Robichaud very uncomfortable.

**Senator Mercer:** Honourable senators, I want to make sure we all understand that there are some problems with this bill. While Bill C-30 is a step in the right direction, does it go far enough to address the current backlog of grain movement and ensure an efficient supply chain in the future? I'm concerned that other commodities may suffer because of the lack of coordination among all stakeholders in the transportation system.

One committee witness in the other place, Mr. Etsell of the British Columbia Agricultural Council and the Canadian Federation of Agriculture, operates a turkey farm in the Fraser Valley. He expressed similar concerns. He said:

> My concern is that the difference in cars will come at the expense of other commodities. All the discussion to date has focused on moving the grain backlog to export positions. What about the value-added livestock and milling sectors that need that grain to feed their animals and process grain through their mills? We have a $2-billion livestock sector in B.C.'s Lower Mainland that is dependent upon prairie grain. Our volume demand is a constant 100 cars per week, 52 weeks of the year.

He goes on to say:

> . . . it must be recognized that the Canadian domestic livestock sectors and milling sectors are facing a crisis as well, as we depend on reliable transportation of prairie grain.

I agree with Mr. Etsell and hope that future deliberations on how to improve the transportation of grain include these discussions.

Honourable senators, higher grain yields, like we have seen this year, may continue to be the new reality across Western Canada. At least, we hope so. I hope that they are because it's a great success story for Canadian farmers. But instead, we are here again trying to fix the transportation system without taking into account the entire system.

• (1520)

Honourable senators, unintended consequences are outcomes that are not the ones originally intended by deliberate and decisive action. Last year, we had not only Bill C-52, the Fair Rail Freight Service Act, but also C-18, the Marketing Freedom for Grain Farmers Act. Bill C-52 amended the Canada Transportation Act to give freight shippers the right to enter service agreements with railway companies and establish an arbitration process in the event of a dispute between the shipper and the railway company regarding such an agreement.

We heard in debate on Bill C-30 concerns similar to those witnesses had then on C-52, that these service-level agreements were very expensive, up to $100,000 in some cases, to negotiate, and that there are not enough teeth in the appropriate legislation to define them properly. C-18 was enacted in order to transition to an open market for Western Canadian wheat and barley — the "death of the Canadian Wheat Board bill," as we like to call it.

Has the end of the single desk at the Canadian Wheat Board contributed to the mess we are in now with such a backlog of grain on the Prairies? First, let's go over the service-level agreements. Bill C-30 really does not do a lot to establish or enhance existing service-level agreements between shippers and

the railways. All it actually does is permit the Canadian Transportation Agency to regulate elements in those negotiated service-level agreements. Bill C-52 was designed to prevent the problems that are now being addressed in Bill C-30, this time through regulation.

Many stakeholders agree that amendments to the legislation were needed then to clearly define service obligations and make it easier to fine rail companies over transportation problems. However, all proposed amendments that would have strengthened the position of the shippers and farmers were unanimously defeated by the Conservatives in the House of Commons. Bill C-30 was introduced in an effort to fix the shortcomings of the previous Bill C-52. However, Bill C-30 also fails to define what adequate and suitable service levels should be. We continue to receive legislation that refers to suitable accommodation and service obligations, but the terms are not clearly defined.

This is one of the reasons why the committee attached observations to the report on Bill C-30. Under the review of the Canada Transportation Act, we encourage stakeholders to examine these definitions and try to agree on what an actual service obligation is and what "adequate and suitable" means. As Phil de Kemp, President of the Malting Industry Association, who appeared before the committee on behalf of the Barley Council of Canada, said to the committee — the same person, a different quotation:

> As we strive to find a solution for everyone, we also recognize that there are some specifics within this bill that do require clarification. For us to have a strong, viable and transparent rail system, we need language that sets it in place. Certainly the terms "adequate and suitable" and "service obligations" within the existing bills are, in our view, too ambiguous and leave room for subjective interpretation. We need language that clearly defines the rights and obligations of all parties. We ask that this be addressed under this legislation. If it can't because of the time constraints, we certainly ask that this be given consideration under the current CTA review.

Kevin Bender, Commission Director of the Alberta Wheat Commission, had this to say:

> As Mr. de Kemp already mentioned, the Alberta Wheat Commission continues to seek a more specific definition of the terms "adequate and suitable accommodation" as well as the reference to "service obligations." The current definitions are too ambiguous, leaving room for subjective interpretation. These terms should clearly define the rights and obligations of all parties.

These guys are agreed.

I will be paying attention when the review of the Canada Transportation Act begins. I have the advantage, Your Honour, of also being on the Transport Committee, so when the review of the Canada Transportation Act comes up, I will get to have a crack at it. Senator Plett is also on that same committee and we'll have a go at it again. That begins round three. We hope that the government will indeed include these discussions in the mandate of that review.

Honourable senators, I also am concerned about the short-sightedness of the government when it comes to the end of the single desk at the Canadian Wheat Board. We have had that debate, and I do not want to open old wounds. What I do see now though is a failure to plan for after the end of the single desk. I do not believe many can argue that one of the mandates of the Canadian Wheat Board was negotiating for effective transportation of Canadian wheat and barley. While weather problems were a problem for the railways this year — as Senator Plett says, winter does come once a year around here, and sometimes it stays too damn long — so too was the lack of coordination amongst stakeholders in the system to get the grain out. That was something the Canadian Wheat Board did — coordinate.

When we switched from the single desk to the open market, I do not believe there was another plan to address how individual farmers and suppliers acted on their own in a market where they were now not under the umbrella of a larger organization like the single desk at the Wheat Board. Mr. Pellerin, the manager of GNP Grain Source Limited and representing the Inland Terminal Association of Canada, had this to say:

> If you look at it from the independent point of view, the debate about the Wheat Board was done. We've moved on from that. We felt that we could actually deal in the open market. We thought we could look after our customers.
>
> It became complicated in that it's hard to compete in the driveway when the fellow across the street is getting train after train, and we don't get any service. It puts us in a real bind. Then, when we did get a train, if it took 14 days to get to Vancouver, it was capital tied up. For an independent, that is rather significant.

"Rather," indeed. Mr. Ken Eshpeter, Chairman and CEO of Battle River Railroad, also commented before the committee:

> It's a little bit difficult to say because with the elimination of the Canadian Wheat single desk, we didn't see a lot of these transportation issues. Now that it has become kind of a free-for-all, we are thrown right in the middle of car allocation and trying to get good service from our partner, CN.

**Senator Mitchell:** Have they ever done anything right?

**Senator Mercer:** When I asked him in committee whether the Wheat Board helped solve some of the problems that we're seeing now, he went on to say:

> Absolutely. The Canadian Wheat Board, in conjunction with the Canadian Grain Commission, was very instrumental in determining the allocation of cars and where those cars went. They were involved with what you would call the orderly marketing of our system. We don't have such a beast any more. We need to get all the players and the industry together to determine how we're going to orderly market these commodities.

Let me repeat that:

> We need to get all the players and the industry together to determine how we're going to orderly market these commodities.

This is important. Again, while C-30 may fix the backlog of problems, what really needs to happen is a larger review of the entire system in order to try to mitigate and hopefully avoid similar problems in the future.

The facts remain clear, honourable senators. The estimated value of the backlog of grain is in the untold billions of dollars. Grain is still sitting in farmers' yards and in silos when it should be in the hands of our customers around the world. This is unacceptable. While Bill C-30 may not be perfect, it should help ease the backlog for the time being. I am pleased to support it for that reason.

• (1530)

In closing, honourable senators, I would like to again put a nail in Senator Plett's political career by thanking him — and the Conservative leadership — for working with us and not against us on this issue. We are all worried about the backlog in grain and the future of our farmers. I hope that this bill will solve some of the problems to get more grain to our partners around the world. Let us hope that a renewed sense of cooperation between the two sides here in this chamber will be of benefit to the other bills that we will be debating in the future.

Thank you, honourable senators. Please support this bill.

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

**Hon. Senators:** Question.

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

**Hon. Senators:** Agreed.

(Motion agreed to and bill read third time and passed.)

## CANADA ELECTIONS ACT

### BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Linda Frum** moved second reading of Bill C-23, An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts.

She said: Honourable senators, I am pleased today to rise in second reading debate as the sponsor of Bill C-23, the fair elections act. The "Fair Elections Act" is the perfect short title for this bill because its provisions will make federal elections more fair.

This legislation will improve the integrity of our electoral system. When Canadians next go to the polls they will find that it will be easier than ever to vote; that the influence of special interests will be more tightly controlled; that there will be tough new laws and harsher penalties for electoral violations; that there will be increased protections against the possibility of fraudulent voting; and that there will be stringent rules governing the use of voter contact calling services.

Why has the government brought forward Bill C-23? We've done it because the government committed to bring forward comprehensive changes to Canada's elections laws and the fair elections act fulfills that commitment. We are doing it because we have found shortcomings in the current act, and also in response to those who have said improvements to the Canada Elections Act are necessary.

The Chief Electoral Officer is one. He recommended changes in his reports to Parliament after the fortieth and forty-first general elections in 2008 and 2011. After studying his reports, a committee of the other place agreed changes were needed. Bill C-23 incorporates 38 of the Chief Electoral Officer's recommendations.

Court cases, too, have shown there are problems, such as the lower court of Ontario overturning the Etobicoke-Centre election result of 2011 due to voting irregularities. In response to that case, taken all the way to the Supreme Court by a former Liberal MP, then-Liberal leader Bob Rae said:

> There clearly are some improvements that we need to make in our election law.

In addition, Harry Neufeld, the former Chief Electoral Officer of British Columbia, conducted a now famous compliance investigation on the 2011 election at the request of the Chief Electoral Officer. In that report Mr. Neufeld declared:

> Public trust is at risk if the rate of error is not significantly reduced by the next general election.

He added:

> . . . indications of widespread and serious procedural errors . . . signal unmistakably that an overhaul is urgently required.

Mr. Neufeld also concluded that the rate of error sustained in the 2011 election would not "be even remotely acceptable to an average Canadian."

A dispassionate review of Mr. Neufeld's compliance report makes clear that the Canada Elections Act required amending, and that is what Bill C-23 will do.

What is more, through committee hearings both here and in the other place, the government listened to stakeholders and proved itself to be open to suggested improvements, including some from those of us here in the Senate.

Our Standing Senate Committee on Legal and Constitutional Affairs conducted a pre-study of this bill. The committee made nine unanimously approved recommendations and the government incorporated the most important of these into Bill C-23 as part of 45 amendments adopted by the House of Commons. As a result of this process, Bill C-23 arrives in this chamber as a well-considered and well-reviewed piece of legislation. Let me highlight some of the main electoral improvements and modernizations contained in Bill C-23.

The first is more voting days. There will be another advance polling day, bringing the total to four. This will give one more opportunity to vote on a day and at time most convenient to the voter. This measure was widely praised during pre-study of Bill C-23 by the Standing Senate Committee on Legal and Constitutional Affairs.

The second relates to tighter control of special interests. We are tightening control of election spending by third parties. From now on, third parties must certify that they are Canadian citizens, permanent residents or reside in Canada. This was one of the recommendations made by the Chief Electoral Officer that the government has moved forward with.

The third is changes to election financing. Jean-Pierre Kingsley, the former Chief Electoral Officer, spoke to our Senate committee about the control of money in Canada's political process. He said:

> We have one of the best systems. I hesitate to say the best because we're humble by nature, but I think we're the best.

Well, Bill C-23 will make us even better.

Bequests, which currently face no contribution limit, will from now on be limited to the same annual amount as individual contributions of $1,500 a year, rising by $25 each year. There will be tougher audits and penalties to enforce the limits.

The use of loans to evade donation rules will be banned. From now on, loans will have to be repaid within three years. Loans will not be able to exceed the annual individual contribution limit of $1,500. Only financial institutions and political entities will be able to make loans beyond that contribution limit and all political loans must be reported uniformly and transparently, including the terms and identity of the lender.

The fourth is stiffer penalties. To reflect the seriousness of Elections Act violations, maximum penalties will be stiffened. On summary convictions, fines will go up tenfold from $2,000 to $20,000, with the possibility of up to one year in jail. For convictions on indictment, fines will also rise tenfold from $5,000 to $50,000 in the future, or jail time of five years.

The fifth relates to cracking down on fraudulent calls. This legislation will also significantly tighten up the rules around automated voter contact calling services, popularly known as robo-calls. Robo-calls in and of themselves are a legitimate tool of modern-day election campaigns. However, Canadians are increasingly concerned about their abuse, and Bill C-23 addresses those concerns aggressively and forcefully.

First, honourable senators, the CRTC will be responsible for establishing, administering and enforcing a voter contact registry. Anyone making automated voter contact calls or using such a service must register and their identity must be verified.

Registrations must be made publicly available 30 days after polling day, and they must be made available to CRTC officials within 48 hours of a call being made for voter contact purposes. The fair elections act would also clarify in law that neither Elections Canada nor elections officers can make unsolicited calls to voters.

Finally, as amended based on the Senate committee's pre-study recommendations, this legislation requires that any recorded messages sent out by automated calls and any scripts of live messages be kept for three years, not the one as initially proposed. This no doubt will prove helpful to any investigation by the commissioner into such calling services should such an investigation be necessary.

• (1540)

Those who don't follow the rules face a fine of up to $2,000 or three months in jail. Anyone who knowingly contravenes their obligation to properly keep these records faces a fine of $20,000 or one year in jail on summary conviction, or $50,000 or five years in jail on conviction by indictment.

Sixth is identity vouching. Honourable senators, the fair elections act will bring an end to voting by vouching, where anyone without the required ID could have his or her identity vouched for by another elector. Bill C-23 eliminates vouching. From now on, electors will have to provide personal identification before they can vote, as well as proof of address.

There is virtually nothing we do anymore in Canada — indeed, in most of the world — without having to prove who we are. We can't board a plane, write a college exam, drive a vehicle, obtain government services or benefits, or open a bank account unless we properly identify ourselves.

Canadians agree that electors should have to do the same when they vote. A recent Ipsos poll found that 87 per cent believe it's reasonable to require that electors prove their identity and address before they can vote. Voting is one of the greatest duties and privileges we enjoy as free citizens, so it's no surprise Canadians agree that appropriate safeguards are needed to protect the system's integrity.

In his report, Mr. Neufeld estimated there were 120,000 instances of vouching in the 2011 election. He found that 42 per cent of those ballots had "serious errors" — serious enough to be considered "irregularities" by the courts and, as such, capable of overturning elections.

By ending vouching, we are eliminating a potential threat to the integrity of our electoral system. As our committee was told by Michael Pinto-Duschinsky, a British expert on electoral systems around the world:

> . . . we have found in Britain that, if a system is open to abuse, then sooner or later — and usually sooner — that abuse will occur.

The government, however, has recognized through the healthy debate on Bill C-23 that some people, while able to show proof of identity, may not also be able to provide proof of address. The fair elections act permits people in that situation to swear a written oath of their address, provided this is attested to by a written oath of another elector on a list of electors from the same polling division who has already provided personal and residence identification. The person administering the oath must advise the oath-taker beforehand of the penalties faced for contraventions.

To further reduce any chance of fraud and error, and to ensure integrity in voting, after polling day the Chief Electoral Officer will be obliged to have an auditor verify that local elections officials properly exercised their powers and properly performed their duties and functions, including with respect to residents' attestations under oath.

The right of Canadian citizens to vote is constitutionally guaranteed, and it is a supremely important, foundational right. But there is nothing wrong, and indeed everything right, in making sure that electors are who they say they are and live where they say they live before they vote.

Some claim there is no evidence of vouching fraud in Canada, but we don't know that because Elections Canada never conducted audits of vouching after elections to see if there was fraud. What we do know for sure is this: Every fraudulent vote cancels a legitimate vote. By cracking down on the potential for fraud, Bill C-23 will make our elections fairer.

Seventh is in reference to refining the mandate of the Chief Electoral Officer. Honourable senators, the fair elections act will change the Chief Electoral Officer's section 18 mandate, which at present says that he or she:

> . . . may implement public education and information programs to make the electoral process better known to the public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights.

This power has been too broad, too vague and too much at variance with the Chief Electoral Officer's primary, most important responsibility, which is the nitty-gritty of preparing for and running fair elections that are as free of serious errors and irregularities as possible. In the future, the Chief Electoral Officer's public education mandate will be more focused and more directly helpful to voters. The CEO will be able to advertise to voters the basic information they need to cast a ballot — where, when and what ID is needed — since many people do not seem to know that, especially young voters.

As the Chief Electoral Officer reported in his National Youth Survey Report after the last election, "approximately one quarter of non-voters said that they were influenced in their decision" not to vote "by not knowing when or where to go to vote." Forty per cent of Aboriginal youth cited personal circumstances for why they didn't vote: They were at school, working, caring for family, travelling, sick or unable to get to the polling place on election day.

This data indicates that young voters need more information about the mechanics of voting. They need to be better informed about how much flexibility is available to them, such as voting at advance polls, voting at the local Elections Canada office any time during the election period, or voting by mail-in ballot. Bill C-23 will ensure that the CEO and Elections Canada will focus their efforts on this most crucial element of voter education.

Eighth is about changes to compliance and enforcement. Honourable senators, compliance with and enforcement of the Canada Elections Act are central to assuring the integrity Canada's electoral system. The Commissioner of Elections Canada is the person in charge of compliance and enforcement. In the future, because of the measures found in Bill C-23, the commissioner will be truly independent. The commissioner's office will be moved out from under the office of the Chief Electoral Officer and into the office of the Director of Public Prosecutions.

The commissioner will be a deputy head in charge of hiring and managing his own staff. The commissioner will no longer be appointed or fired by the Chief Electoral Officer. The commissioner will serve for a set term of seven years and can only be removed by the Director of Public Prosecutions for cause. The Chief Electoral Officer will also no longer handle media relations for the commissioner, no longer speak publicly for the commissioner concerning investigations, and no longer will be able to direct the commissioner to proceed with an inquiry.

These measures will make the commissioner independent. This is clearly in accordance with best practices, creating a more arm's-length relationship between the administrator of elections and the investigator of elections.

Under Bill C-23, the Commissioner of Canada Elections will have explicit legal and practical autonomy over electoral investigations, and the Director of Public Prosecutions will be explicitly prohibited from directing the commissioner's investigations. Further, the act governing the DPP already prohibits the Minister of Justice and Attorney General from involvement in any prosecutions under the Canada Elections Act.

Will the commissioner and Chief Electoral Officer still be able to communicate with each other? Yes, absolutely. They can meet in person, phone each other and exchange emails. Further, the fair elections act makes it clear that the CEO can communicate to the commissioner any information he considers may be useful. The commissioner in turn can require that the Chief Electoral Officer disclose any information gathered under the Canada Elections Act that will assist him in his duties.

Honourable senators, Bill C-23 is called the fair elections act for good reason. It is a bill that will markedly improve our electoral system. It is a bill that will make our democracy stronger

than ever. It is a bill that many in this chamber, on both sides of the aisle, can fairly say they helped to shape.

On that note, I would like to thank and congratulate all the members of the Standing Senate Committee on Legal and Constitutional Affairs for the long hours and hard work each put in during the Senate's pre-study of this bill. In particular, I would like to acknowledge the contributions of my Liberal colleagues, especially our deputy chair, Senator Baker. Under the leadership of our chair, Senator Runciman, I think we showed the excellent work the Senate can do when we all work together collaboratively.

**Hon. Grant Mitchell:** Will the senator take a question? Thank you.

I greatly admire Senator Frum's "the glass is half full" can-do attitude, although I don't admire her bill as much as she clearly does.

There seems to be an inherent contradiction in the thinking about vouching. On the one hand, the senator has made it clear — and it's certainly the government's position — that vouching should stop; that is, vouching to the extent that I prove where I live in this constituency so I can vote at that poll.

On the other hand, the government does not acknowledge or seems to want to deny an inherent contradiction in their position, because you have to do nothing to prove that you are a Canadian citizen. So the government will accept a Canadian's word that they are Canadian, but they won't accept the same Canadian's word, verified by another Canadian's word, that they just live down the street. How can you have it both ways? If it's okay that you can vote without proving with ID that you are Canadian, why wouldn't it be okay to prove without ID that you live down the road and are in this poll, particularly when you're vouched for by some other Canadian?

• (1550)

I know Senator Frum, in debate, said that I must think that banks should leave their doors unlocked because we can trust all Canadians. She is trusting all Canadians and all non-Canadians in Canada that they can vote without having to prove, with some form of ID, that they are Canadian. I'm arguing that they shouldn't have to show that and that vouching should be absolutely fine. Can you have it both ways?

**Senator Frum:** Thank you for the question, Senator Mitchell. What will happen now that did not used to happen before Bill C-23 is that a voter will have to show ID to prove who they are. That was not the case before this bill. That is a significant improvement to protect the integrity of our process. If the voter has ID but cannot prove their residence, they can have that attested to by a sworn oath. These are improvements over the situation we have today.

**Senator Mitchell:** My point stands. They have to have ID to prove who they are, but they don't have to have ID to prove that they are Canadian. So you accept their word on that side, which I think is perfectly legitimate. You accept their word that they're Canadian, but you won't accept their word that they are who they are. Yet, that word is, in turn, under vouching, vouched for by a third party. How is it? You can't have it both ways. We don't need vouching to prove we are Canadian. We don't need anything to prove that we are Canadian to vote, but being vouched for about where I live and who I am is inadequate. How can that be? You can't have it both ways, can you?

**Senator Frum:** As we heard during our pre-study, the solution to the problem you are describing would be a national identity card for Canadians. If that is a policy you want to pursue, I encourage you to do that. It's not part of this legislation, but if it's something you are interested in promoting, go for it.

**Senator Plett:** Absolutely. I'll support you.

**Senator Mitchell:** I'm not interested in promoting that. In fact, I've made that very clear. Of course, that's the technique that is used. They jump to a conclusion.

Is the government considering a national ID card because they've left what they would surely, by the logic of their position on vouching, consider must be another gap? I don't. I think that we can take the word of Canadians for it. I think vouching is perfectly legitimate. It's hard enough to find one liar, let alone two liars, and you'd have to do it over and over again. Somehow, this government does not seem to have that kind of confidence in Canadians. They won't believe them on the where they live and who they are side. Why would they believe they are Canadian? I'm just saying that it's not my problem; it's your problem. It's not my contradiction; it's yours. I'm not arguing that there should be a national ID card, but I think that's where you're going. Are you?

**Senator Frum:** No, that's not in this legislation. The legislation speaks for itself. It's very clear. We want Canadians to show ID when they vote. It is very clear.

(On motion of Senator Fraser, for Senator Moore, debate adjourned.)

## STATUTE LAW AMENDMENT PROPOSALS

### MOTION TO REFER TO COMMITTEE— DEBATE ADJOURNED

**Hon. Yonah Martin (Deputy Leader of the Government),** pursuant to notice of May 15, 2014, moved:

> That the document entitled *Proposals to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect*, tabled in the Senate on May 15, 2014, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**The Hon. the Speaker** *pro tempore*: Senator Martin, on debate.

**Senator Martin:** Question.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** I wonder if we could have just a brief explanation of what is involved?

**Senator Martin:** Thank you. I called the question simply because the motion is quite self-explanatory. This is a document that proposes to correct certain anomalies and inconsistencies in the English and French versions, as well as anything that would be repealed because of an expiry. This is a routine procedure in looking at all of the loose pieces that need to be addressed, so the standing committee will look at this document and report back.

**Senator Fraser:** But the document itself is not a bill, so what we are going to have here is essentially a study by the Standing Senate Committee on Legal and Constitutional Affairs?

**Senator Martin:** Yes.

**Hon. Wilfred P. Moore:** I'm confused. Is this a process under the miscellaneous statutes provision? Can we expect a miscellaneous statutes bill to come forward? It doesn't say that. We've done it many times, but it's not there.

**Senator Martin:** It's as the motion states. It is a document that will outline some of the items that need to be examined for the eventual bill, and the committee will look at that in their study.

**Hon. Serge Joyal:** I think my honourable colleague will understand the difference between a document and a bill. For a bill, we have first, second and third reading. If we want to correct a bill, we have to follow the process that we need to follow to correct a bill, especially, for instance, if we want to make sure that the French version is equivalent to the English version. In the context of the document, it seems to be just general consideration of the various sets of issues. I would understand that the Department of Justice or the Privy Council has come to the conclusion that this needs to be done further down the road. So we are not dealing here with legislation. We are dealing essentially with a report that discusses a certain number of issues that will find their way into a formal bill later.

**Senator Martin:** Thank you, Senator Joyal. The miscellaneous statute law amendment is called a bill, but it's not quite a bill yet. It's a proposal, as stated in the motion, referred to the committee. The proposal is simply amendments requested by the federal departments and agencies. Because any proposal must not be controversial, result in public expenditure, affect individual rights or create a new offence, the proposal is simply to correct certain anomalies, and most of these anomalies are word inconsistencies, as I said, between the French and English or minor corrections that need to be made. If there are any objections from the committee, it will be withdrawn.

**Hon. Joseph A. Day:** I wonder whether the honourable senators could help me a little bit as well. Are there some guidelines that we can refer to that would help explain what "non-controversial and uncomplicated nature" means? This looks like an omnibus bill, and you are using these words to lead us to have some comfort to pass it on, without knowing what is going on here. If there are guidelines, that would be helpful.

**Senator Martin:** Rather than specific guidelines, I could perhaps clarify that the Miscellaneous Statute Law Amendment Program was first initiated in 1975 to allow for minor, non-controversial amendments to federal statutes in a potential omnibus bill. It can be viewed as an omnibus bill as it makes about 80 changes with respect to many bills. However, I've been assured that there is nothing controversial about the proposal and that it's expected, from both the House of Commons and the Senate side, that the miscellaneous statutes legislation, the MSLA, will receive immediate passage since any potentially controversial or unconstitutional clauses have already been removed. These are very specific anomalies and matters that are non-controversial and uncomplicated in nature.

• (1600)

**Senator Day:** Thank you. As I understand it, then, you have been assured that this omnibus bill deals with matters of a non-controversial and uncomplicated nature and you're now telling us that same thing. You're relying on the advice that you've received and you would like us to rely on the advice that you're passing on to us?

**Senator Martin:** Yes.

**Senator Day:** Thank you.

**Hon. Anne C. Cools:** Honourable senators, my interest in this measure has suddenly arisen. Could the honourable senator tell us the nature and the character of the document? Her motion states that "the document entitled," and then the title is listed, "proposals to correct certain anomalies," and it proceeds. This is on the record. However, when the senator answers questions, she speaks about clauses. I am referring to what you said. You said the matter was "non-controversial," and so on.

Could you tell us this: What are the nature and the character of the document before us? If you had wanted the matter referred to the committee, why did you table it in the first place and not present it to the house? I would like to know the nature, the character and the form of the document.

**Senator Martin:** Senator Cools, thank you. As I explained, what I'm aware of is that what's contained in the proposal are these matters that are non-controversial and uncomplicated, such as some differences in the English and the French, that need to be corrected in both houses. These will be simply addressed and the committee can have a look at it.

It's omnibus in the fact that it has about 80 items, but, again, they're very simple technicalities that can be examined carefully by the committee. If there are any other concerns, those will be withdrawn, but there has already been a first careful look to ensure there is nothing controversial in this particular document.

**Senator Cools:** I am having difficulty following the position of the honourable senator.

You keep saying "they have already gone through," as if someone has conducted a review, but we have no knowledge of that.

The honourable senator is using strange language. She is talking about "proposals." I'm trying to determine what form this is. The Deputy Leader of the Government continues to say that this is a document. Is it a bill?

**Senator Martin:** No, it's not.

**Senator Cools:** What is it, then? You have to tell us. You cannot move a motion saying "a document entitled whatever." You must tell us what it is.

**Senator Martin:** It's not a bill, but it is a document that will contain various non-controversial and uncomplicated items that are contained in this document.

As I said earlier — let me double-check — it is amendments requested by the federal departments and agencies. In the review I was talking about it would have been reviewed by these federal departments and agencies; that is, any of these anomalies, inconsistencies and errors that they noted. So it's in a document for the committee to review. They're non-controversial in that they are these items related to French-English, ensuring that these accuracies are addressed. They're non-controversial for that fact.

**Senator Cools:** The honourable senator is not asking the committee to do anything; she is asking to refer the matter to the committee. However, I do not understand why she would be referring a document with amendments that are requested by federal departments and agencies.

What are you asking the committee to do with this? You do not say. Are you asking the committee to study it? Are you asking the committee to report on it? The intent is unclear. It may be perfectly clear in your head, but it is not clear at all as to what it is. As soon as you are talking about amendments requested by departments, you are talking about future statutes.

We should be crystal clear with what we are speaking about; otherwise, this will become very complicated. I will want to look into this and I may take the adjournment, if necessary. You must be clear.

**The Hon. the Speaker** *pro tempore*: Senator Martin, do you want to give an answer?

**Senator Martin:** I will simply say that in terms of the committee's work, it will be to look at the document, look at the items listed and ensure that they don't have any objections from the committee on any of the items in this document, which at this time is not a bill but will be tabled later on as a bill.

**Senator Cools:** You are not asking the committee to study it, so it is not clear at all what you are asking the committee to do. Perhaps you should take some time to look at the motion and decide what it is you are asking the committee to do.

When we send a bill to a committee, we are clear; we know what we are doing in that instance. But this is not clear. If you want the committee to study this and to report, you ought to say that in the motion that was moved. This would require an amendment.

**Senator Martin:** If I may further clarify, it is not a bill yet, so it is a document. The document was tabled in the House of Commons by the Minister of Justice and referred to the appropriate standing committee of the house. This is the document that we will be receiving and referring to the committee.

Consideration of the proposals by the committee that will receive it — in our case, the Standing Senate Committee on Legal and Constitutional Affairs — has always been thorough and non-partisan. If any of the committees consider a proposal to be controversial, that proposal will be dropped.

The committee that will receive the document will simply review the items, which should be non-controversial and straightforward, but if they do flag any item as being of concern, then that will be eventually withdrawn.

At this time it is not a bill; it is a document that is to be studied by both houses to then eventually become a bill.

**Senator Moore:** It seems to me that the cart is before the horse here. Your Honour, I'm on the Standing Joint Committee for the Scrutiny of Regulations, as are other members of the chamber, and we always come across these anomalies. We ask about them. We ask, "Is this going to be coming forward as part of a miscellaneous statutes bill?" which cleans up all the wording and these little uncontroversial things, and so on.

What we should have here is a bill being brought forward by the government under the "Miscellaneous Statutes" provision. That's what we should have. This is new to me. I haven't been here as long as some people, but I've never seen this before. I think it's backward. We should have a bill coming forward. Normally, it would go to the Scrutiny of Regulations Committee to look at. It would be reported to the chamber as a non-controversial cleanup item, we would then vote on it and it would be done. That's normally what happens.

**The Hon. the Speaker** *pro tempore*: I'm sure the comments you are addressing to me need to be answered by the Deputy Leader of the Government. Senator Martin.

**Senator Cools:** Point of order.

**The Hon. the Speaker** *pro tempore*: Senator Cools, order, please. Senator Martin.

**Senator Martin:** This Miscellaneous Statute Law Amendment program was established back in 1975. Since then, nine acts have been passed. We will eventually get the bill, but at this time we're asking the committee to look at the proposal, this document which contains the proposals. Perhaps it could be treated like a pre-study for the committee.

• (1610)

I can assure all honourable senators, including the members of the committee, that the document contains these anomalies and non-controversial items. It's for their review, and if there are any concerns, they can be reported back to the Senate chamber when they report it back.

**Senator Fraser:** I think I got this all going, but if I understand what you've been saying, Senator Martin, in a sense this document is rather like what used to be called a white paper.

**The Hon. the Speaker** *pro tempore*: Senator Fraser, before you continue, Senator Martin, are you asking for more time?

**Senator Martin:** Yes.

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

**Senator Fraser:** That is a set of proposals which is submitted to the committee for consideration and report. Upon the basis of the report of our committee and the committee of the other place, a bill will eventually be drawn up.

One of the things that have concerned me about this is that although I was a member of the Legal Committee for many years, I've never seen this particular procedure before that I recall. I was concerned that we might be getting into one of those situations that exist, for example, with user fee proposals, where it takes effect automatically — becomes law, if you will — and I wanted to be very sure that that is not what we're talking about here, that all we're talking about here is an actual study and that, on the basis of the results of our study and the study in the other place, the government will then draft an actual bill, which will become a subject for our further contemplation. Is that the way it is?

**The Hon. the Speaker** *pro tempore*: Senator Martin, before you answer, I may help the discussion, just to make sure that we can produce something. It's not the first time that we have in this place a similar document. When I say "similar," I mean identical.

In 2001, a similar document, word for word, was introduced here by Senator Robichaud, by the way, to do exactly the same thing. It was in 2001. The document is a proposal to correct certain anomalies and inconsistencies, same words. So I think they just reprinted the same title.

I'm looking at the government now. You may wish to ask for an adjournment to make sure that you have all the correct answers to all the various questions that were asked of you, and maybe tomorrow you can come back and just move the closing of the discussion on that, and then we can proceed with the question.

**Senator Martin:** Thank you, Your Honour. The last time this did happen, that such a motion was tabled, was in 2001, as you say. What the committee reports back, and if there are any concerns regarding any of the items in the proposal, that would not be part of the eventual bill. But in order to ensure that Senator Cools and others are fully satisfied in understanding this step before such a bill is introduced — because it's new for me as well, but it is something that has been done since 1975, and the last time was 2001 — tomorrow I will return with further explanation and answer any of the questions that have been raised today.

(On motion of Senator Martin, debate adjourned.)

[*Translation*]

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Tardif, for the second reading of Bill S-210, An Act to amend the Criminal Code (criminal interest rate).

**Hon. Ghislain Maltais:** Honourable senators, since I spoke at length about this in a previous meeting, I will not go on for much longer.

Bill S-210 would amend section 347 of the Criminal Code of Canada. I understand why our colleague, Senator Ringuette, is working so hard to provide opportunities for average Canadian families that have to cope with sometimes surprisingly high interest rates. I reread her speech recently, and, where she talked about usurious rates for payday loans to individuals being as high as 1,200 per cent, I think you will agree with me that that is a little high.

Her concerns are justified. It would be a mistake — wilful blindness — to say otherwise. However, in 2007, the government passed Bill C-26, which enabled the provinces to enact legislation governing payday loans.

I believe that Alberta, British Columbia, Manitoba, Nova Scotia, Ontario and Saskatchewan took action under section 347.1 of the Criminal Code, which enables provincial legislatures to introduce fair legislation on usurious payday loan interest rates. That was one of Senator Ringuette's concerns.

It is important to be very clear here, honourable senators, that we cannot break down or attempt to correct a section of the Criminal Code without opening the door to a multitude of claims, not all of which are good. With this bill, Senator Ringuette is specifically targeting interest rates.

However, interest rates cannot be fixed unilaterally. There is the private sector, the business world — there are all kinds of legal considerations that must be taken into account. A bill cannot fix something only to create a problem elsewhere.

On the other hand, there are some worthwhile elements in Bill S-210. There are some aspects that cannot be dismissed outright. That would be irresponsible on our part as legislators. I think that, as legislators in this Parliament, it is our duty to do

what we can to try to protect our fellow Canadians who sometimes face the kind of abuse the senator is rightly denouncing.

I cannot vote in favour of this bill because I do not believe it is complete. However, the senator has put considerable effort into this and has done a lot of valuable work, and I strongly believe that, if we want to work together for all Canadians, the senator should ask the Standing Senate Committee on National Finance to study this issue and then make specific recommendations to legal affairs to fix precisely what Senator Ringuette wants to address.

• (1620)

I do not believe that her bill is detrimental, but I do believe that it would not correct the situation entirely. Furthermore, we would not be able to introduce another bill, which would result in the Criminal Code being amended in such a manner that would make life even more complicated for legislators, users and all Canadians — although it would certainly be a boon to lawyers, God forbid.

Nevertheless, that is not Senator Ringuette's objective. Her objective is very commendable and I support it. However, I am convinced that a Criminal Code section dealing with a financial matter cannot be corrected without consulting the business and banking communities, as well as the legal community. They must be consulted in order to fix the situation. It might be by means of Bill S-210, which would return in another form — and so much the better if Senator Ringuette herself were to reintroduce it. In that case, it could truly correct the situation for many years to come.

I hope, and I believe Senator Ringuette feels the same way, to one day correct a situation that, to my mind, is completely unacceptable. However, as my mother often said, we cannot apply a band-aid solution.

I invite Senator Ringuette to ask the Standing Senate Committee on National Finance and the Standing Senate Committee on Legal and Constitutional Affairs to study this matter in order to come up with a Senate proposal to amend the law once and for all.

Thank you.

**Some Hon. senators:** Bravo!

(On motion of Senator Martin, debate adjourned.)

[*English*]

## INTELLIGENCE AND SECURITY COMMITTEE OF PARLIAMENT BILL

SECOND READING—DEBATE ADJOURNED

**Hon. Hugh Segal** moved second reading of Bill S-220, An Act to establish the Intelligence and Security Committee of Parliament.

He said: Colleagues, I rise today to speak to Bill S-220, An Act to establish the Intelligence and Security Committee of Parliament. This is not a new attempt at innovative legislation on the issue of intelligence and security oversight. A very similar bill was introduced in the final months of the Martin government in an effort to bring Canada in line with the workings of our NATO partners and allies.

As I was introduced to this place in the final months of the Martin government, not all things that happened in the final months of that government were in any way bad or misdirected. Bill S-220 differs from that bill, however, in that the proposed committee in Bill S-220 will have absolute authority to call witnesses and require documentation. Its operating budget will be set, however, through Royal Recommendation. There would be no pay for committee members and members will be bound for life by their security oath.

The debate around instituting such a committee has gone on in Canada for more than a decade, long before the so-called Snowden affair. The discussion began immediately post-9/11 under Prime Minister Chrétien, when legislation was brought in to support the anti-terrorism efforts of the Government of Canada with our allies.

Recent debates now about new legislative proposals on digital privacy and measures to counter web-based bullying will require careful scrutiny by Parliament in the normal way. Bill S-220 helps in this debate because any public agency in the federal jurisdiction that seizes or receives private or supplier-held data without a warrant would be subject to the oversight provided for in this legislation. Purpose, necessity and protection of privacy could be inquired into by the committee this law seeks to establish. This does not now happen with effect in any parliamentary committee in Canada.

Democracy in its most basic definition is "rule of the people." In a legitimate democracy there needs to be some measure of oversight regarding processes undertaken within the national security and intelligence community. In our current system in Canada, neither elected members of Parliament nor appointed senators have access to materials necessary in order to make informed decisions because their security clearances are insufficient to receive those materials or testimony. Witnesses coming before the current house or Senate committees of National Security and Defence cannot be forthcoming and members of these committees are often left with more questions than answers.

Most of our NATO colleagues — the Americans, the British, French, Germans, Belgians, Italians, our Australian allies, the Netherlands — have a statutory oversight legislative process where people in positions of power within the intelligence community are not prevented by their respective security of information acts from telling the whole truth and revealing details to legislators who have the statutory status to hear it.

In recent hearings by our Standing Senate Committee on National Security and Defence, I put a direct question to the Prime Minister's National Security Advisor, Stephen Rigby, and asked him, in his dealings with counterparts in countries where legislative oversight was operational, whether they viewed the statutory oversight as problematic. He responded that, no, this

has never proved to be an impediment to their work. Further, when asked if such oversight would be problematic for him should Canada pursue such a committee, he believed that if prudently done it would not be problematic.

But on several other questions Mr. Rigby was unable to provide information or detail, through no fault of his own, because committee members had insufficient security clearance to hear the answers.

John Adams, who headed CSEC for seven years, when interviewed last October by CTV stated:

> One way of achieving a measure of informed consent would be to have an all-party group of Parliamentarians from both the House and Senate, if the government so desired, that would be cleared for briefings on the operations that CSEC was carrying on.

"Cleared for briefings" is the essential phrase. When the representatives of all Canadians are in the dark regarding the workings of their national security organizations because they are not of a level where information can be shared, we are then in the position of moving forward blindly and questioning the rationale and wisdom of those decisions that end up in our headlines, i.e., the alleged charge via Edward Snowden that CSEC had used its email and phone metadata to map communications within the Brazilian mines and energy ministry.

Colleagues, the terrorist threats we faced in the years after World War II, in the Middle East, in the Republic of Ireland, in Spain and Central America and elsewhere are not the same threats we face today, but change does not necessarily equal relief. Change in the nature of the networked terrorist threat, change that is turbocharged by Internet-based communications and digital coding, actually increases the diffuse nature of the terrorist risk we all face.

Terrorists who are prepared to die, in some cases eager to do so just to make a point, is also a quantum change from the hijackers with whom one could bargain in the 1970s and 1980s in a reasonable, rational way. Terrorism that is not about one set of borders, a specific grievance or only one enemy but about a broad stand against the entire Western world and which has no single nation state as a source of constraint or control is also different, especially when nation states like Iran choose to support several terrorist proxy groups throughout a region and with links worldwide.

When terrorism is used as a tactic, often within the same country, to sort through denominational battles between different sects of the same religious faith, which is really a political battle for control and domination — we face the shadow and knock-on impacts of some of the same throughout Western Europe — it is clear that the dimensions of terrorism have changed dramatically since the days that terrorist Stern Gang exploded a bomb in the King David Hotel near the end of the British mandate in Palestine. I support a robust intelligence and security capacity for Canada without any hesitation.

[ Senator Segal ]

• (1630)

In May 2010, the Special Senate Committee on Anti-terrorism was re-established, and I was honoured to be elected its chair following in the distinguished footsteps of Senator Joyal and Senator Smith (Cobourg). Between May 13, 2010, and February 14, 2011, the committee had 11 hearings and heard from a range of witnesses including scholars and members of the law enforcement and intelligence communities from countries that included Canada, the United States, the United Kingdom and Australia. The interim report produced by the committee focused on broad themes that emerged from these meetings: the changing threat environment, the challenges associated with terrorism investigations and prosecutions, the parliamentary oversight of Canada's national security.

On March 23, 2011, the Special Senate Committee on Anti-terrorism made observations within its report *Security, Freedom and the Complex Terrorist Threat: Positive Steps Ahead* regarding the issues and challenges facing Canada with several unanimous observations that dealt directly with this oversight deficiency.

In a speech to the Parliamentary Centre in November 2011 on behalf of the committee, I made the case that the capacity and context of our national security engagements were diminished by this ongoing gap of oversight and this glaring difference between Canada and our most important allies. It is a view that I still hold and commend, with respect, to all members of the chamber.

Canada has several intelligence agencies that address different issues. We have the Canadian Security Intelligence Service, the RCMP, CSEC, SIRC and CBSA. The Security Intelligence Review Committee and the CSEC Commissioner are small agencies, the latter with a small staff of 11 and one judge, and the former made up of former parliamentarians and other appointees who, by mandate, are only able to deal with complaints in a retroactive fashion. Canada is the only Western democratic nation without a mandated legislative oversight body.

The United States has a plethora of intelligence and defence oversight committees in their Congress and Senate, a framework I would not suggest for Canada. We have a different system of government, and any approach we take must reflect that difference.

There is a Westminster model, however, that S-220 suggests that could work well for Canada, one roundly endorsed and supported by the Thatcher, Major, Blair, Brown and Cameron administrations over two decades. In the U.K. there is a committee of parliamentarians reflective of the main parties present in both chambers, as well as the members of the upper house who are not of any political party, who are crossbenchers. Until last year, appointees were chose by the Prime Minister and reported annually to him on their work. However, the Justice and Security Act of 2013 reformed the Intelligence and Security Committee making it a committee of Parliament, providing greater powers and increasing its remit, including oversight of operational activity and the wider intelligence and security activities of government.

Other than the three intelligence and security agencies, the ISC examines the intelligence-related work of the cabinet office, including the Joint Intelligence Committee, the assessment staff and the National Security Secretariat. The committee also provides oversight of defence intelligence in the Ministry of Defence and the Office for Security and Counter-Terrorism in the Home Office. Members of the ISC are appointed by Parliament on nomination by the Prime Minister, and the committee reports directly to Parliament.

The committee may also make reports to the Prime Minister on matters which are of a national security nature and national security sensitive. The Intelligence and Security Committee of Parliament in the U.K. is currently chaired by Sir Malcolm Rifkind, M.P., a former foreign secretary and defence secretary. They do not receive a formal security clearance in the sense that we would understand it. Their annual report is made public, and when and if national security requirements demand that there be some editing by the cabinet office of any part of the report, the fact that matters have been excised must be reported as well. The law establishing the committee makes it legal for agency heads to share information. In Canada, no law allows any senior defence, intelligence, police or security official to share information with parliamentarians who do not have a security clearance as high as that of the official himself. In fact the law makes the opposite assertion. Only ministers have the clearance necessary to have access to this kind of frank discussion.

The Special Senate Committee on Anti-terrorism held an informal meeting with Sir Malcolm's committee here in Canada a couple of years ago. All our members had lunch with them at the British High Commission, and we had a very frank parliamentarian-to-parliamentarian discussion about how they operated. The oversight group looks at plans, budgets, operations, priorities and senior personnel for every single one of the British security agencies, and it has been in operation since 1994 — 20 years. Colleagues, there has never been one single leak from this committee in that period of time.

Many of the agencies and heads who appear before the British committee have said that they found the process extremely helpful because when on occasion the media or, heaven forbid, a member of the opposition makes an unfair allegation about what may or may not have transpired within the security services, the members of that parliamentary committee are in a position to say, when justified, "The allegation is both unfair and untrue. There was a full and broad discussion of those issues in our committee. We understand precisely what the security agencies were trying to do and why the decision was a rational reflection of the public interest as it might have been best understood at that time."

The U.K. system does not in any way dilute the ministerial responsibility to Parliament for the agencies that operate under the minister's jurisdiction. Nor does it interfere in day-to-day operational issues or the important chain of command that exists in national security, defence, intelligence or police agencies.

Why would such an approach be of value in Canada? First of all, it would move us beyond the retroactive complaints-driven limited role of SIRC, made up of distinguished and trustworthy former elected officials or community leaders. They do good work, but they have a backward and retroactivity bias because of their mandate. Beyond this, it would allow Canadian service heads an opportunity to discuss some of the medium- and long-term intelligence and security concerns in a way that educates parliamentarians and provides them with a clear sense of the challenge framework. Conversely, this approach provides service heads with a sense of how legislators would react to some of the challenges and choices ahead. Moreover, with legislators from both houses who bring specific defence, police, community, government operations and business experience to their task, there would be benefit flowing both ways.

The absence of legislative oversight means that service heads and senior officers get to talk only to their superiors and interdepartmental counterparts, if at all. Often, if and when things go off track, fresh perspective and open-mindedness may well be diminished in these circles, to be charitable.

The entire purpose of national security and intelligence is to protect Canadian democracy and its freedoms, the very things that annoy and spur to action those violent extremists who would do harm and those who would promote terror to achieve their goals. Without full-time legislative oversight, we can't know if the protection of our freedom and way of life is actually happening. The current model of part-time, complaints-based, retroactive-looking small agencies is completely inadequate in overseeing CSIS, the RCMP, the anti-terrorism unit of the RCMP, and the Integrated Terrorism Assessment Centre in the Department of National Defence.

The Prime Minister of Canada deserves great credit for the national security committee structure he implemented within the Privy Council after the last election. A properly established legislative oversight committee would be a welcome and constructive addition to the security infrastructure of Canada. No intelligence or security official canvassed informally at the time of the Senate committee's report in March 2011 seemed troubled by that proposition. There is no reason for a thoughtful government to be troubled by a statutory legislative review process where competence, discretion, judgment and legislators support and enhance the democratic underpinnings of the national security our officials are sworn to protect.

Today's fight against terrorism requires striking a delicate balance. On the one hand, terrorism represents a unique and potentially devastating threat to national security, and the public must be protected through vigilant intelligence gathering and proactive law enforcement. On the other hand, Canada has a strong history of commitment to human rights and the rule of law, as evidenced in the Magna Carta, the Canadian Bill of Rights, the Canadian Constitution, including the Canadian Charter of Rights and Freedoms, and the ratification of various international human rights agreements. The challenge is to determine how best to maintain the right balance in this country in achieving the end goal of keeping Canadians both safe and free. Canada is the only G8 country that lacks legislative oversight of its security services and is also a democracy.

• (1640)

Legislative accountability is important. The notion, as is the case before all of our committees in both houses now, that a head of CSIS or RCMP anti-terrorism is prevented by the Secrets Act

and prevented by the law from making full disclosure to parliamentarians does not reflect on their integrity or ours. It reflects on the absence of a statutory bridge so they can tell the truth as they often want to but are prevented from doing by virtue of the law as it exists. Bill S-220, I suggest respectfully, is that statutory bridge.

We must not lose sight of the balance that makes our society open, creative, free and dynamic. It is what at some level the terrorists and those who sponsor them hate the most and why the fight against those dark forces, homegrown, radicalized or foreign-inspired or directed, continues to matter deeply to us all. But for Canada and all of the civilized world we must not forget that delicate balance of keeping Canadians both safe and free. To quote Sir Winston Churchill during World War II, we do not want "Victory to be bought so dear as to be almost indistinguishable from defeat."

The qualities of freedom, diversity, gender equity, presumption of innocence and rule of law are by no means perfect in this or any other democracy, but they are worth defending against enemies both external and internal. I submit respectfully to colleagues on both sides that Bill S-220 assists materially in that cause.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Will the honourable senator take a question?

Senator Segal, I'm no specialist in this area. I like very much the concept of your bill. When I was looking at it the other day, a small thing struck me about it. This has nothing to do with substance but with form.

The English version of the bill says quite repeatedly, "must" do whatever, as in "the government must," or "the committee must." It seems to me that standard usage in bills that come before us is the word "shall," which in law is imperative. Why in your drafting is "must" used?

**Senator Segal:** To be honest, I took advice on this matter from the structure of the British bill, where there was a notion that "shall" had a measure of doubt in it, particularly when you are trying to compel officers of the Crown to make information available and to have a particular approach to how a matter might be pursued. In the British circumstance, senior officials of the parliamentary committee negotiate with senior officials of the various intelligence agencies about the agenda to be pursued. They have found in their most recent wording that "must" helps with the authority necessary in those negotiations somewhat more directly than "shall."

**Senator Fraser:** How very interesting. Thinking about debates and the legislative mandate of the Parliamentary Budget Officer, I find that a fascinating argument.

**Hon. Nicole Eaton:** Did I understand the honourable senator to say that the parliamentarians who would sit on this oversight committee would not be required to have security clearance?

**Senator Segal:** The members of the committee would have to execute the same oath that exists under a confidentiality of information act for senior officers of existing security agencies. The oath, which is specified in the bill, would have to be executed by the members of the committee and would be binding upon them until the end of their days, long after they served in this place, on committee or in the other place. While they would not receive a formal clearing in the sense that you describe, they would be subject to the same oath.

This bill provides for the committee to be elected based on nomination by the Prime Minister. The Prime Minister's Office, which was involved in nominations in the United Kingdom, did the normal analysis of individuals whom they deemed appropriate nominees for the committee — no lack of negotiation back and forth on occasion between the various parties, the British House of Commons and the House of Lords, about individuals. However, because the process requires both a nomination by the Prime Minister and a subsequent election by the chamber, obviously the Prime Minister's Office, the equivalent of the Privy Council Office, Cabinet Office, would do the appropriate checks before names were advanced in this context.

**Hon. George Baker:** Senator, when you were speaking I was thinking that we have dealt with amendments in this place to what are commonly referred to as the terrorism provisions in the Criminal Code. Over the years, we've been directed, on the most recent occasion, by the Supreme Court of Canada to bring in amendments to make it compliant. When one reads the most recent judgments of the Supreme Court of Canada, such as *R. v. Harkat* two weeks ago, one realizes that we've been operating in darkness as to the effect of the legislation that we pass as it relates to the terrorism provisions because we don't know the ultimate effect.

The Supreme Court of Canada said in its judgment a week and half ago that those provisions are quite different from the normal provisions of our domestic criminal law and the standards applied in those matters. We're dealing with a certain degree of hearsay as far as evidence gathering is concerned, and nobody is able to cross-examine the source material for this information. It is a different standard we are dealing with. I can see where your suggestion in Bill S-220 would provide parliamentarians with a source of independent analysis to go beyond information available in the normal course of things to more or less legitimize what legislators are doing.

It would be a great addition to our legislative process. Perhaps that committee could deal with some of the legislation directly as it pertains to the terrorism provisions of the Criminal Code. Is that what you generally had in mind?

**Senator Segal:** The main purpose of the bill is to provide for a parliamentary forum where parliamentarians from both chambers can ask a series of detailed questions about plans, operation, effects of legislation and the ways in which that legislation is implemented by various agencies. I see Senator Smith sitting across and Senator Tkachuk who is here. Interestingly enough, part of what we did in the work of the committee was to make those changes to the anti-terrorism legislation that were mandated by the Supreme Court of Canada, as you rightfully pointed out.

I recall speaking with a senior Justice official long before I was in this place when that legislation was brought in. I asked why it was not brought in with the notwithstanding clause, just to be

provocative, because then we would know it would come to an end in five years. It was a special circumstance and not a permanent abrogation of anybody's freedoms. The answer from the official, who answered in the best of faith, was that this legislation was utterly Charter-proof; he believed it to be the case. Of course, irony of ironies, when I had the great privilege of serving on the committee under chairs across the way and even during my period of chairmanship, we spent a large amount of our time making amendments to the bills that were ordered by the courts, where the courts had given us a period of time in which to address the law.

• (1650)

I think what this committee would allow us to do, which we cannot now do because none of the officials who run the agencies have the freedom to be frank, is to ask: "How will that provision with respect to the special evidence actually operate relative to the right to counsel that would normally be protected in our system? Can you tell us what some of the issues were impacting upon your need to protect various sources in the legitimate intelligence work you are doing?"

There is no place for us to ask that question with effect now. This committee would provide that, and likely in camera. The committee would go in camera based on provisions here either at the call of the chair or by vote of a majority of the committee; and then those in camera hearings would be reported upon with due discretion by the committee in a fashion that respected both its mandate and the requirements for national security.

**Hon. Percy E. Downe:** I would like to follow up on the question asked by Senator Eaton. In your answer you correctly identified the safety valves, if you will, of nominees, that Privy Council would conduct its reviews of CSIS and the RCMP and other agencies. But then, as you indicated, the Prime Minister could appoint the individuals to this committee. I don't want to be particularly partisan here, but the concern is that the Prime Minister also has the authority, as you well know from your previous experience, to simply reject advice from CSIS and the RCMP. We saw that with the recent head of the Security Intelligence Review Committee who is currently in a jail in Panama, a position so senior in the Government of Canada that that person has to be sworn into the Privy Council before they take the responsibility, and then they are eligible to see highly confidential documents.

Are you concerned that that is not enough protection to reassure the people who will be concerned about what you are proposing?

**Senator Segal:** There are several parts to that question. As is often the case with my colleague from Prince Edward Island, there are many levels to every question asked. One level in which I offer no advice or counsel would be the competence of the process by which any appointments are made by any government. That is a question which is touched upon by your question, and it's not a place that I intend to go in defence of the contents of this bill, but it is always a legitimate debate.

Secondly, the bill makes it very clear that while the Governor-in-Council gets to make the appointment based on the advice of the cabinet, it has to be done in consultation with both the parties in this chamber and in the other chamber. It could not be a process that is simply prime ministerial fiat.

For a committee like this to operate in confidence with the trust of parliamentarians, all parliamentarians have to feel through their legitimate leadership they have been consulted in the process of who is on it, as is the case with other committees that are appointed. The reason one begins with an order-in-council premise is precisely because of the security issues raised so effectively by my colleague Senator Eaton.

**Senator Downe:** Would it be your hope that not only would the other players be consulted, but they would also be able to see the same reports the Prime Minister received on the candidates if there was anything flagged by CSIS or the RCMP? It would have to be on that basis that they agree or not agree. That, I trust, would be what you would hope would happen.

**Senator Segal:** I think that's taking my answer perhaps a step too far. Advice given to the Governor-in-Council on issues of national security is not normally shared. The reason it couldn't be shared is because before the committee is set up and before the oaths of secrecy have been taken you would not actually know that the individuals with whom you might share it are qualified to receive it.

There is a tradition, as you know, of creating leaders of the opposition as privy councillors — I think Prime Minister Mulroney began this and others have done it since — so that they could be briefed on issues such as deployments in Afghanistan or other matters of national security. I understand that system has worked effectively and responsibly and has not been trifled with unfairly either by the government or by opposition leaders. My expectation would be that that same rule, where we have privy councillors now on both sides of the chamber in both places, would apply in the consultation with respect to these appointments.

(On motion of Senator Fraser, for Senator Dallaire, debate adjourned.)

[*Translation*]

## STUDY ON CBC/RADIO-CANADA'S OBLIGATIONS UNDER THE OFFICIAL LANGUAGES ACT AND THE BROADCASTING ACT

### THIRD REPORT OF OFFICIAL LANGUAGES COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Tardif, seconded by the Honourable Senator Munson, that the third report of the Standing Senate Committee on Official Languages, entitled *CBC/Radio-Canada's Language Obligations, Communities Want to See Themselves and Be Heard Coast to Coast!*, tabled in the Senate on Tuesday, April 8, 2014, be adopted and that, pursuant to rule 12-24(1), the Senate requests a complete and detailed response from the government, with the

Minister of Canadian Heritage and Official Languages being identified as the minister responsible for responding to the report.

**Hon. Suzanne Fortin-Duplessis:** Honourable senators, I would like to use my time today to comment on the third report of the Standing Senate Committee on Official Languages entitled *CBC/Radio-Canada's Language Obligations, Communities Want to See Themselves and Be Heard Coast to Coast!*, which was tabled in the Senate on April 8, 2014.

To begin, I would like to point out certain technical elements of this study. This report and its recommendations are the result of a lengthy study that was both thorough and detailed. In the fall of 2011, the committee was mandated to study CBC/Radio-Canada's obligations under the Official Languages Act and certain aspects of the Broadcasting Act.

As Senator Tardif, the committee chair, mentioned during her speech when the report was tabled, it was the first time that the committee conducted an in-depth study of the public broadcaster's role in promoting Canada's linguistic duality and the key role it plays in the development of official language minority communities.

More than 40 witnesses, represented by 80 spokespersons, appeared before the committee to talk about the importance of CBC/Radio-Canada. They were nearly unanimous in their desire to be seen, heard and read on the public broadcaster's various platforms. These testimonies — from organizations and individual Canadians across the country — all highlighted how concerned they are about the survival of their official language minority community and the role that CBC/Radio-Canada can play in fulfilling their aspirations.

The 12 recommendations of the report propose solutions, avenues that the government and CBC/Radio-Canada could consider with a view to meeting the needs of official language minority communities and promoting linguistic duality.

Honourable senators, I am not going to repeat each of these recommendations since Senator Tardif already provided an excellent summary of the report. However, I do want to underscore two recommendations, not because they are more important than the others, but because they speak to me personally.

• (1700)

First, I would like to talk about recommendation 8, which urges CBC/Radio-Canada to reflect the artistic and cultural talents of anglophone and francophone minority communities in its national programming, during prime time. I believe that it is imperative that the public broadcaster help promote local talent and support the emergence of artists worth knowing about.

This recommendation is the expression of Senator Champagne's somewhat unique devotion to the next generation of artists in Canada, and I would like to commend our colleague for her determination in advancing this cause.

Second, I would like to talk about recommendation 10, which urges the Crown corporation to consult with young Canadian anglophones, francophones and francophiles to determine what they expect and what they need. Particular attention must be paid to young Canadians because they carry the torch of linguistic duality. Having CBC/Radio-Canada make better use of its web platform, in keeping with the habits of our young people, would give us a major advantage in terms of promoting our official languages.

My comments on the third report of the Standing Senate Committee on Official Languages would not be complete if I failed to thank those who helped with the study. First of all, I would like to recognize the contribution of the Honourable Senator Chaput. The study, which began under the good auspices of our colleague from Manitoba, was carried out in a spirit of cooperation, free of partisanship.

It is in that same spirit that Senator Tardif continued the work. I would like to recognize the remarkable work of every senator who participated in this study. The Standing Senate Committee on Official Languages is without question a committee where goodwill reigns.

Clearly, I cannot overlook the work accomplished by the staff of the committee. All too rarely do we take the time to congratulate and thank our clerks and analysts. The committee is lucky to have such an outstanding analyst as Marie-Ève Hudon and such a remarkable and dedicated clerk as Daniel Charbonneau, who has recently joined us. That being said, Danielle Labonté, the very efficient clerk who started the study, also deserves our thanks.

Honourable senators, I encourage you to read the report. Now more than ever, our communities want to see themselves and be heard coast to coast.

On behalf of all the members of our committee, I ask that you adopt this third report as quickly as possible. Thank you.

(Motion agreed to and report adopted.)

[*English*]

## STUDY ON THE ABILITY OF INDIVIDUALS TO ESTABLISH A REGISTERED DISABILITY SAVINGS PLAN

### THIRD REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Banking, Trade and Commerce and International Trade entitled: *The Registered Disability Savings Plan Program: Why Isn't It Helping More People?*, tabled in the Senate on March 26, 2014.

**Hon. Irving Gerstein** moved the adoption of the report.

He said: Honourable senators, I rise today to seek the adoption of the third report of the Standing Senate Committee on Banking, Trade and Commerce, entitled *The Registered Disability Savings Plan Program: Why Isn't It Helping More People?*

At the request of the then-Minister of Finance, our departed colleague the Honourable James M. Flaherty, in a letter dated April 22, 2013, the committee undertook to study "the ability of individuals to establish a Registered Disability Savings Plan (RDSP), with particular emphasis on legal representation and the ability to enter into a contract."

My friends, in the days that followed Jim Flaherty's untimely passing much was said about his success in politics; the friendship and camaraderie he fostered and enjoyed across the political aisle; and his strong and steady stewardship of Canada's economy in challenging times. But any complete account of Jim's legacy must also describe his passionate and steadfast support for Canadians living with disabilities. For this reason, the Registered Disability Savings Plan was particularly important to our late friend Jim and it holds a special place among his many achievements as Finance Minister.

In 2009, Jim was recognized by *Euromoney* magazine as finance minister of the year — the first Canadian ever to receive this honour. *Euromoney* chose Jim, it said, because he "enhanced his country's reputation for sound fiscal policy that takes full account of social justice . . ." Those who knew Jim would agree that he always took full account of social justice.

His concern for those less fortunate was certainly informed and heightened by his own experiences as the father of a disabled son, but it was not for his own son's sake that Jim made the creation of the Registered Disability Savings Plan one of his first priorities as Finance Minister. No, honourable friends, it was because, in the words of Prime Minister Stephen Harper, "He believed he had taken on a responsibility for all of our families, not just his own." That, my friends, is what drove Jim Flaherty.

It was his sense of responsibility for all Canadian families. That is why he created the Universal Child Care Benefit and the child tax credit. That is why he created the Family Caregiver Tax Credit. That is why he created the Children's Fitness Tax Credit and the Children's Arts Tax Credit. That is why he introduced income splitting for seniors. Yes, honourable senators, that is why he created the Registered Disability Savings Plan and strove constantly to improve it.

Jim introduced changes to the RDSP in both his 2012 and 2013 budgets. Finally, he asked the Standing Senate Committee on Banking, Trade and Commerce for its help in answering his burning question about the RDSP: "Why isn't it helping more people?" Jim always wanted to help more people.

The RDSP is a uniquely Canadian innovation. It is a tax-assisted savings plan to help ensure the long-term financial security of Canadians with disabilities. Similar to the Registered Education Savings Plan, or RESP, a Registered Disability Savings Plan allows contributions and investments to grow tax-free. Matching contributions may also be made by the federal government through the Canada Disability Savings Grant and the Canada Disability Savings Bond if certain conditions are met.

To be eligible to open an RDSP, the beneficiary must first qualify to receive the Disability Tax Credit, for which eligibility is determined by the Canada Revenue Agency, in consultation with the individual and medical professionals.

My friends, this is an excellent and innovative program, but, like every innovation, it has experienced growing pains. To date, only 81,000 of the estimated 500,000 eligible Canadians living with physical and/or mental disabilities have opened RDSPs. This low participation rate of approximately 16 per cent is attributable to some significant obstacles to enrolment, and those obstacles were the focus of our study.

• (1710)

Honourable senators, over the course of several months of study, the committee held eight hearings and received testimony from 16 witnesses. The committee's subsequent deliberations produced four unanimous policy recommendations.

The first and foremost among these recommendations is meant to address the main impetus for Minister Flaherty's letter, and the crux of the committee's study — namely, the inability of some adult Canadians with disabilities to enter into legal contracts because their mental capacity is in doubt. Before an RDSP can be opened on their behalf, such individuals must be declared legally incompetent, which can be a long, expensive and even traumatic process.

I believe it was this type of situation that troubled the minister most. In an effort to address this issue, Minister Flaherty introduced in Budget 2012 a temporary measure allowing a spouse or parent to become a plan holder for an adult who may not be able to legally enter into a contract. However, the rules governing the legal capacity of mentally disabled adults and those individuals authorized to manage their property for them fall within the jurisdiction of the provinces and territories. Therefore, it is at that level of government that a permanent solution must be found.

At the time of his letter, Minister Flaherty recognized the governments of British Columbia, Saskatchewan, Manitoba, Newfoundland and Labrador and Yukon for their leadership in addressing this issue. By the time our report was tabled here in the Senate on March 26, 2014, the Government of Alberta had also taken action.

For the record, colleagues, each of the provincial and territorial governments were invited to appear before the committee, but all declined. The Government of Newfoundland and Labrador did

send a written submission, but it was received after the consideration of the report, as is noted in Appendix C.

However, some witnesses did testify about efforts to rectify the legal impediment to RDSP subscription at the provincial level. In particular, the Law Commission of Ontario testified that they are considering nine different options to address the issue, but they have yet to make a recommendation to the Ontario government.

Other witnesses called for a common federal solution, including an amendment to the Income Tax Act to introduce an RDSP-specific form that could authorize a person in a trusting relationship with the recipient to be a joint plan holder.

Senators, the committee acknowledges that a common solution would be ideal. It would provide benefits to both individuals and the financial sector. However, the lack of testimony from provincial and territorial governments left the committee unable to assess the effectiveness of the various approaches currently in place.

Furthermore, questions were raised regarding the viability of a national solution, given the differences in common versus civil law at the provincial level, the complexity of using the Income Tax Act to intrude into provincial jurisdiction, the implications of adding another layer of bureaucracy to a program that is already administratively difficult, and the likelihood that such an intrusion into provincial jurisdiction could result in a constitutional challenge.

As a result, the committee was not persuaded that a federal solution would resolve the problem. The committee's first recommendation, therefore, is that those provinces and territories that have not already done so must expeditiously examine their own legal frameworks in relation to legal capacity and representation.

Honourable senators, witnesses before the committee also identified several other issues with the RDSP program. For example, they were unanimous that a lack of awareness contributed greatly to the low level of RDSP enrolment. Hence, the committee's second recommendation is that the government communicate directly with those who already receive the Disability Tax Credit, partner with disability advocacy groups to promote the program, and work with disability support offices at the provincial and territorial level to promote RDSPs.

The committee also heard that while RDSP's are useful, there is a lengthy waiting period of 10 years between the end of government contributions and the time the beneficiary can withdraw funds from the plan without having to repay a portion of those contributions. This is a very serious problem. In cases where the beneficiary's disability reduces their life expectancy, they may never become eligible to make withdrawals without penalty. For that reason, the committee's third recommendation is that government reduce the waiting period from 10 years to five and reduce the amounts repayable to the government under the assistance holdback amount rules.

Finally, honourable senators, the committee recognizes that the beneficiaries of the RDSP program already experience difficulties in everyday life and may require assistance in establishing an RDSP. To help facilitate enrolment, the committee recommends either the establishment of a federal initiative or the funding of federally recognized organizations to assist disabled Canadians in opening RDSPs.

The committee further recommends that the government strongly consider automatically establishing RDSPs for Canadians who receive the Disability Tax Credit.

In conclusion, honourable senators, I believe I speak on behalf of the committee in saying it has been an honour to play a part in continuing the work Jim Flaherty started with the creation of the Registered Disability Savings Plan. It has reminded me that all of us, as parliamentarians, like Jim, have taken on a responsibility for all Canadian families.

Sadly, my friends, having founded and championed the Registered Disability Savings Plan, Jim will not see it reach its full potential, but we might. It is in that spirit that I ask you to adopt this report.

Thank you.

**Hon. Wilfred P. Moore:** I wonder if the honourable senator would take a question.

**Senator Gerstein:** I would be pleased to.

**Senator Moore:** I was surprised when you said only 16 per cent of those eligible to participate do so. How do we know that? Where did that figure come from? The provinces wouldn't come in and give you testimony, so how do we know what the numbers are — that only 16 per cent participate?

**Senator Gerstein:** Senator Moore, the RDSP is a federal program. They know how many RDSPs have been opened and they know roughly the number of disabled people in the country. That number is half a million. Some 80,000 have been opened, so they know specifically how many RDSPs have been opened.

**Senator Moore:** What's the basis for the total number of possible participants? Is that a registration within the income tax office? Is it from the census? How do we know the large aggregate number, and where does that come from?

**Senator Gerstein:** Senator Moore, my understanding at our hearings was that this number was brought forward by various agencies as the rough number of people in Canada who suffer from disabilities.

**Senator Moore:** Is there any indication of why the provinces wouldn't appear and give you some ideas or thoughts on this?

**Senator Gerstein:** That's a very good question, and the answer is that I do not know. It was not only the provinces that have taken certain steps that would not come; it was also those that have not. But I can assure you we made every effort to try to have them come before us.

**Senator Moore:** I'm certain you did. Thank you.

(On motion of Senator Fraser, debate adjourned.)

• (1720)

## RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

### MOTION TO AUTHORIZE COMMITTEE TO STUDY CHANGES TO SENATE'S RULES AND PRACTICES THAT WILL HELP ENSURE SENATE PROCEEDINGS INVOLVING DISCIPLINE OF SENATORS AND OTHERS FOLLOW STANDARDS OF DUE PROCESS— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator McCoy, seconded by the Honourable Senator Rivest:

That the Standing Committee on Rules, Procedures and the Rights of Parliament be authorized to examine and report on changes to the Senate's Rules and practices that, while recognizing the independence of parliamentary bodies, will help ensure that Senate proceedings involving the discipline of senators and other individuals follow standards of due process and are generally in keeping with other rights, notably those normally protected by the *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms*; and

That the committee submit its final report to the Senate no later than November 30, 2014.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Colleagues, as you know, the subject of this motion, namely modernization of the Senate, is the subject of a number of items now before the Senate, as well as intense and fascinating discussions. Perhaps it is appropriate that rather than plunge into any one of those items right at this moment, I would ask your leave for the item to remain adjourned in the name of Senator Cowan. He has already adjourned it once, so I'm seeking leave to do that again in his name.

**The Hon. the Speaker:** Thank you for reminding the chair.

(On motion of Senator Fraser, for Senator Cowan, debate adjourned.)

## THE SENATE

### MOTION TO STRIKE SPECIAL COMMITTEE ON EQUALIZATION AND FISCAL FEDERALISM— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Cowan, seconded by the Honourable Senator Munson:

That a Special Committee on Equalization and Fiscal Federalism be appointed to consider whether the current formulae for equalization and other related federal transfers affect the ability of Canadians living in all regions of the country to access a basic standard of public services without facing significantly different levels of taxation.

That the committee be composed of nine members, to be nominated by the Committee of Selection and that four members constitute a quorum;

That, the committee have power to send for persons, papers and records; to examine witnesses; and to publish such papers and evidence from day to day as may be ordered by the committee;

That, notwithstanding rule 12-18(2)(b)(i), the committee have power to sit from Monday to Friday, even though the Senate may then be adjourned for a period exceeding one week; and

That the committee be empowered to report from time to time and to submit its final report no later than March 31, 2015.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** I learned earlier this day that Senator Callbeck wishes to speak to this motion, and as you can see, colleagues, she is not in the chamber at this precise moment. I wonder if I could move the adjournment in the name of Senator Callbeck.

(On motion of Senator Fraser, for Senator Callbeck, debate adjourned.)

## CANADIAN CHILDREN IN CARE

### INQUIRY—ORDER STANDS

On the Order:

Resuming debate on the inquiry of the Honourable Senator Hubley, calling the attention of the Senate to Canadian children in care, foster families, and the child welfare system.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Colleagues, Senator Jaffer has had to leave the chamber for a moment, and she has asked me if I would move the adjournment in her name. The item is at day 13 and concerns a subject of considerable interest to us all. I ask for that.

**The Hon. the Speaker:** The item standing in the name of the Honourable Senator Jaffer and Senator Jaffer not being present, the normal practice would be to stand the item. I wouldn't go against that as that would be against the rules.

Honourable senators, the matter will stand in the name of Senator Jaffer.

(Order stands.)

## DISPARITIES IN FIRST NATIONS EDUCATION

INQUIRY—ORDER STANDS

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Dyck, calling the attention of the Senate to the disparities in educational attainments of First Nations people, inequitable funding of on-reserve schools and insufficient funding for postsecondary education.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Here I go again, colleagues. This is also on day 13, and Senator Tardif is away from Ottawa this week. She will be unable to speak to it this week. I ask, therefore, that the adjournment stand in her name and that the clock be rewound.

**The Hon. the Speaker:** There is no provision, honourable senators, to rewind anything. The item stands on the Order Paper for 15 days, and if it's not spoken to within those 15 days, it falls off the Order Paper. I think it's important that, unless we get a report from the Rules Committee to change that rule, we have to start applying that rule.

The matter will stand adjourned in Senator Tardif's name. If someone commences the debate on it tomorrow, then the desired effect would be achieved.

(Order Stands.)

[*Translation*]

## THE SENATE

ROLE IN PROTECTING MINORITIES—
INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Nolin calling the attention of the Senate to its role in protecting minorities.

**Hon. Maria Chaput:** Honourable senators, I would like to begin by thanking Senator Joyal for graciously allowing me to take part in this inquiry today with the understanding that when I am finished, the debate will remain adjourned in his name.

Honourable senators, I believe that the debates initiated by the Honourable Senator Nolin will have a major impact on the future of our institution, the Senate. I thank him for this initiative that allows me today to take part in one of these inquiries: the Senate and its role in protecting minorities.

I chose this inquiry as a francophone from Manitoba and also as a woman who is well aware of the importance of the Senate's role in protecting minorities. Being in a minority situation is a status I am very familiar with and something that has defined me and my career in the Senate of Canada.

In passing the Official Languages Act, Canada recognized the importance of linguistic duality and official language minority communities. The Act is a testament of Canada's commitment to promoting the growth of official language minorities, supporting their development and promoting the full recognition and use of French and English in Canadian society. That has also become my commitment. It has marked my community interventions and continues to guide me in my work, but this time as a parliamentarian, a member of an institution of Parliament and the Government of Canada.

This privilege and this great responsibility are a lifelong commitment, one that I strongly defend. I am also fully aware that it is precisely because of the Senate's role in protecting minorities that I have had the opportunity to have the voice of my community heard in Parliament.

I will continue to follow the debates on these inquiries with great interest. After all, the Senate does not play its various roles in isolation. All of the roles of the Senate and senators are connected.

[*English*]

We must, first, address and dismiss the false debate between democracy and the protection of minorities. To do so, we must simply understand what democracy means in Canada.

Winston Churchill famously stated that "democracy is the worst form of government, except all the others." This quote implies the understanding that the most basic definition of democracy — the rule of the majority — is imperfect. It is of course of the highest value that power is vested in and exercised by the people through an elected government, under a free electoral system. It provides a safeguard, protects our most fundamental freedoms and is deeply ingrained in our morals and our civic understanding.

But democracy, when defined as a system of simple majority rule, is imperfect. It allows for majorities to take care of themselves but provides no protection for minorities. It does not, on its own, even provide for the protection of the rule of law. The Canadian definition of democracy, of course, goes beyond the proposition of "a system of simple majority rule." In the 1998 *Reference re Secession of Quebec*, which Senator Nolin

mentioned, the Supreme Court explains that Canadians never accepted such a definition of democracy. "Our principle of democracy," the court explains, "is richer."

This development did not arise only through the courts, either. As early as 1864, following the constitutional conference in Quebec, George Brown, one of the Fathers of Confederation, declared:

> Our Lower Canadian friends have agreed to give us representation by population in the Lower House, on the express condition that they could have equality in the Upper House. On no other condition could we have advanced a step . . . .

• (1730)

[*Translation*]

The Reference re Secession of Quebec is the most comprehensive study in Canadian legal history about the basic constitutional principles. The Supreme Court pointed out that the Constitution includes both unwritten and written rules, as well as rules and principles that "govern the exercise of constitutional authority in the whole and in every part of the Canadian state." The Supreme Court then identified "four fundamental and organizing principles," although the list was not exhaustive: federalism, democracy, constitutionalism and the rule of law, and respect for minorities. According to the court, these principles "inform and sustain the constitutional text: they are the vital unstated assumptions upon which the text is based." What is more, it would be "impossible to conceive of our constitutional structure without them." On the last principle, respect for minorities, the Supreme Court pointed out that "Canada's record of upholding the rights of minorities is not a spotless one," but that "that goal is one towards which Canadians have been striving since Confederation, and the process has not been without successes." We should heed this reminder about our history as we plan our future.

In a part of the decision that we too often forget, the Supreme Court also clarified that these principles "function in symbiosis" and that none of them "can be defined in isolation from the others, nor does any one principle trump or exclude the operation of any other."

Protection of minorities is therefore not an accessory or a complement to our constitutional framework and our democracy; it is an essential component of it.

Of course, the Canadian Charter of Rights and Freedoms protects the rights of minorities. Courts are there as a last resort to protect minority rights. But is that really enough? Is that the only relationship that must exist between the Parliament of Canada and its minority groups? A relationship that is perpetually conflictual, requiring constant intervention from the judicial arm?

[*English*]

In a recent commentary on the Supreme Court's opinion on Senate reform titled "The Supreme Court ruling on the Senate was good for minorities," constitutional lawyer Jennifer Klinck notes, "The structure of government itself strikes a delicate balance between the interests of the federal government and the provinces, and between those of the majority and minorities." This is the reason why constitutional amendments are so difficult to achieve.

On the Supreme Court's decision in *Reference re Secession of Quebec* , Jennifer Klinck explains that the reason broad consensus is required to change constitutional rights and institutions that protect minorities is because "the Constitution ensures that minority interests must be addressed before proposed changes which would affect them may be enacted."

[*Translation*]

We hear very little about the abolition of the upper house in Manitoba. On February 4, 1878, in fact, Manitoba abolished its Legislative Council, the six-member upper house that played more or less the same role of "sober second thought" as the Senate of Canada. In exchange, it received larger grants from the federal government. The Manitoba premier of the time promised francophones that their rights would be protected, despite the abolition of the upper house.

In 1890, barely 14 years later, Manitoba decided to abolish the constitutional rights of the province's Catholics and francophones. The Legislative Council, which could have delayed or even blocked those decisions, was no longer there to play its role as the defender of minorities.

This chapter of Manitoba history demonstrates the protection that an upper house that is responsible for the rights of the country's minorities can provide.

The principle of protecting minorities goes much further than the simple existence of a judicial system. The principle must also be reflected in our parliamentary process.

Hence the importance of the Senate's role in protecting minorities.

Indeed, it is very instructive to see the extent to which the Senate's different roles are connected to those fundamental principles. Our role in providing regional representation, for example, is intimately linked to the constitutional principle of federalism. Our role in providing sober second thought on legislation serves the rule of law, and our role in providing protection and representation for minorities is an expression of the fundamental principle of the respect for minorities. We may more often associate the House of Commons, where the elected members sit, with democracy, but we must not forget what is understood by Canadian democracy. As the Supreme Court explains, it also implies progress toward the goal of universal suffrage and more effective representation, especially for "those unjustly excluded from participation in our political system — such as women, minorities and aboriginal peoples."

How can the Senate fulfill its role of protecting minorities? First, the lack of electoral pressure clearly allows the senators to lend their voices to the minorities whose interests are not heard in the other place. That is not done at the expense of the senators' other obligations, but rather in a complementary way.

Here we have several examples of senators who stand up for minorities and devote special attention to protecting them. Actually, all senators are aware of the role that should be played in studying legislation, in order to ensure that minorities are not unduly or even unintentionally affected by one action or another.

A second very important way to ensure the protection of minorities is to make sure they are represented. It is important for minorities to see informed and caring legislators in the Senate, but it is just as important for them to see themselves represented in the democratic process. The history of the Senate of Canada is full of examples of such senators, who came to the Senate to give a voice to their communities and our diversity.

I am thinking for example of the francophone senators from Manitoba. Senator Marc-Amable Girard, appointed on December 13, 1871, by Prime Minister MacDonald, served in the Senate until 1892, constantly speaking up for the rights of French-Canadian minorities. To him, we owe the recognition of French, on par with English, in the Northwest Territories. We should also note his comments in the Senate in response to the anti-francophone measures taken by the Manitoban government at the time. On May 27, 1891, he rose in the Senate and said:

[*English*]

> I am asking you now to protect the minority in one of the provinces and in the territories from an encroachment upon their rights and privileges. It seems to me that it is the duty of every member of this House, if he finds a lack of harmony in the province from which he comes, to investigate the cause and to suggest a remedy. I must say that the present Government of Manitoba has dealt harshly with the French minority of the province. It is not necessary for me to enter into an argument, before a body that is so well disposed towards us as the Senate is, to show the importance of the French language. At the same time, I may say that we ask simple justice and we claim a right which should not have been contested in any way. Under the circumstances, we are justified in calling upon the Federal Government to come to our protection. There are people of French origin, not only in Manitoba, but throughout the North-West, who are waiting for justice, and they do not understand why they have to wait so long for that to which they are fairly entitled.

This was in 1891.

The use of the "we" is noteworthy. There is no doubt in Senator Girard's mind about who he represents. The fact that a senator would ring the alarm bells as early as 1891 about the great injustices faced by francophones in Manitoba is also telling, as it would take almost an entire century for the provincial government to make amends.

[*Translation*]

Senator Thomas-Alfred Bernier, who was appointed to the Senate in 1892, must also be mentioned. He actively showed his unwavering support for francophone schools in Manitoba. On April 3, 1894, he rose in the House to say, and I quote:

[*English*]

> It was repeatedly said that all through confederation, and for all time to come, the minorities would receive protection and be accorded the free and full enjoyment of their language, and especially of their institutions and liberties. Why? Confederation was conceived and passed and adopted expressly with that view!

• (1740)

[*Translation*]

A year later, Senator Bernier said the following:

[*English*]

> We surely do not deny that we are in a small minority, but we resent the idea that because we are in a small minority, because we are weak, no attention is being paid to our interest or our feelings. The law was passed in anticipation that there would be a minority. It was passed for the protection of that minority. The majority does not need such constitutional protection. It can take care of itself.

[*Translation*]

There is also Senator Gildas Mogat, my predecessor, who represented Manitoba from 1971 to 2001. I want to specifically highlight his tireless efforts to maintain the court challenges program throughout the 1990s. This program provided funding for important cases related to protecting the rights of francophone minority communities, including the landmark *Mahé v. Alberta* (1990), in which the court recognized that communities had a right to management and control over education.

This tradition certainly continues to this day. Let us think of our honourable colleagues who are such worthy and passionate representatives for official language minority communities.

Let us also think of our colleagues who represent the First Nations and who are particularly aware of their reality.

I also want to mention the senators who reflect our ethnic, religious and cultural diversity.

All of these senators contribute to the Senate's diversity, and this chamber is all the better for it.

It is immediately clear to Senate newcomers that our representational role is a serious one. For example, the *Orientation Guide for New Senators* sets out three roles for the modern senator: a legislative role, an investigative role and a representative role. The guide states the following: "Some

senators adopt informal constituencies, focusing their efforts on groups whose rights and interests are of particular concern to them."

The *Conflict of Interest Code for Senators* also states that "service in Parliament is a public trust" and that "senators are expected (*a*) to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities."

Of course, the *Senate Administrative Rules* recognize the constitutional independence of senators with regard to their office and the carrying out of their functions. Senators are not required to represent regional groups or interests but are entitled to do so. For those who choose to go that route, the *Senate Administrative Rules* also recognize the importance of public business related to representative business, which is granted the same importance as official business.

On April 25, 2014, we received the opinion of the Supreme Court of Canada in the reference regarding Senate reform.

[*English*]

I will now read this brief statement of the Supreme Court in English:

> Over time, the Senate also came to represent various groups that were under-represented in the House of Commons. It served as a forum for ethnic, gender, religious, linguistic, and Aboriginal groups that did not always a meaningful opportunity to present their views through the popular democratic process . . .

The Supreme Court, thus, has informed us that the Senate's role in protecting minorities is not one achieved only through the sober second thought given to bills and government initiatives, but also through giving a voice to minorities and ensuring their representation.

[*Translation*]

It is not surprising that the Fédération des communautés francophones et acadienne (FCFA) and the Société de l'Acadie du Nouveau-Brunswick (SANB) both participated in the hearings before the Supreme Court concerning Senate reform. These two organizations clearly explained why minorities — and not just official language minorities — value the Senate.

Those who want to see a more inclusive democracy cannot seriously consider the destruction of an institution that gives minorities a voice in Parliament, and they cannot talk about Senate reform without considering the vital role that the Senate plays in representing minorities.

[*English*]

All talks of Senate reform and nominations must include serious consideration of our institution's vital role of minority protection and representation.

Prior to concluding my remarks, I will briefly address the topic of Aboriginal representation. We often speak of Aboriginal representation in the context of minority representation and protection. I have myself noted the efforts of our Aboriginal and non-Aboriginal colleagues in the Senate who work so hard to bring Aboriginal voices to Parliament. I believe, however, that we have to look beyond the parameters of minority protection when we speak of Aboriginal representation, simply because we cannot consider our First Nations as minorities.

As we all know, Senate seats were distributed evenly between the Maritimes, Quebec, Ontario and the West. At the basis of such a distribution was the understanding that all regions of Canada are equally important, regardless of the size of their population, and that their respective interests and preoccupations deserve equal attention. It is perhaps time to extend this underlying concept of equality when we speak of the voice that must be given to First Nations in Canada.

I would be interested in what my colleagues, and especially my Aboriginal colleagues, have to say.

[*Translation*]

In closing, I will be forever grateful to the Honourable Jean Chrétien, who upheld the tradition of appointing to the Senate a Manitoban to represent the francophone community in that province.

On December 10, 2002, Mr. Chrétien gave me the opportunity to renew my commitment — to myself and my community — to support the development of official language minority communities and to make that commitment public.

Senator Nolin, I am very grateful to you for giving me the opportunity to participate in this inquiry.

(On motion of Senator Fraser, for Senator Joyal, debate adjourned.)

(The Senate adjourned until Wednesday, May 28, 2014, at 1:30 p.m.)

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