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OFFICIAL REPORT
(HANSARD)

Wednesday, November 19, 2014

The Honourable NOËL A. KINSELLA
Speaker

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THE SENATE

Wednesday, November 19, 2014

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

Prayers.

SENATORS' STATEMENTS

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

TWENTY-FIFTH ANNIVERSARY

Hon. A. Raynell Andreychuk: Honourable senators, I rise today to mark the twenty-fifth anniversary of the United Nations Convention on the Rights of the Child.

The Convention on the Rights of the Child was 11 years in the making at the time of its adoption, on November 20, 1989. Today, with 194 states parties, it is the most widely ratified human rights treaty in history. It is the first and only legally binding international instrument to describe the unique civil, cultural, economic, political and social rights of children. It is a framework in which children are viewed as participants in their own well-being and development.

Article 3 of the convention establishes a fundamental principle in international law:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Globally, the Convention on the Rights of the Child has helped focus nations to bring about significant reductions in child labour and infant and maternal mortality and unprecedented enrolment in primary education.

Jurisdictions across Canada are also guided by the convention in areas such as youth criminal justice, education, health, adoption and foster care, safety and security. Yet our work is far from finished.

As many senators will remember, the only comprehensive study on Canada's progress under the Convention on the Rights of the Child was tabled by the Senate Human Rights Committee in April 2007. The study called for more effective implementation, coordination and education. This was echoed by the United Nations Committee on the Rights of the Child in its 2012 report on Canada. The report raised concerns about "children in similar situations being subject to disparities in the fulfillment of their rights depending on the province or territory in which they reside in."

As we celebrate the twenty-fifth anniversary of the United Nations Convention on the Rights of the Child, a world fundamentally shaped by the convention remains a distant reality. Yet, as noted in the *State of the World Population Report* released yesterday by the United Nations Population Fund, "There are more young people between the ages of 10 and 24 today than at any other time in human history."

As we look forward to the next 25 years of the Convention on the Rights of the Child, let us recommit ourselves to ensuring that the best interests of the child are always a primary consideration. I urge all senators to look to the convention as a guideline.

NATIONAL CHILD DAY

Hon. Jim Munson: Honourable senators, I too join Senator Andreychuk in noting tomorrow's being a very special day. Your words are wise words, and you and I have worked together on a lot of these issues when it comes to children.

Indeed, tomorrow is National Child Day. In fact, it's the twenty-fifth anniversary, as Senator Andreychuk mentioned, of the UN Convention on the Rights of the Child, from which National Child Day was born. It is important for us to take a moment to act and reflect on the intention and purpose of these rights.

Here are some interesting words: "The way a child is treated by society is an indication of what that society is all about."

This wise statement comes from a young person. I don't have his age or her name, and that's the way it's supposed to be in this particular statement, but I'm grateful to have found his or her insight preserved in the records of the Landon Pearson Resource Centre.

• (1340)

Chances are, whoever made this statement is doing well, having had the benefit of what most children in our society enjoy in Canada: access to education, health care, good homes and safe communities.

This is not necessarily the case, though. The truth within this statement would be just as meaningful to a young person shut out from the advantages and hope so prevalent in mainstream society — an Aboriginal child or youth, a child or youth with a disability or living in poverty. Children are attuned to the connection between how they are treated and what kind of a society they live in. They are born vulnerable, dependent on adults for all they need to survive and develop into independent adults.

The most vulnerable children in our society are those with the greatest needs. Aboriginal children, for instance, trail the rest of Canada's children on virtually every aspect of well-being: family income, educational attainment, poor water quality, infant mortality, suicide and homelessness. This, in my view, is a human rights violation, a children's rights violation. Rather than addressing the hardships endured by these and any children as though we are being charitable, we must instead live up to our responsibilities — as human beings and as citizens of a country that should be promoting and ensuring the rights of the child.

All children have the same rights. The UN Convention on the Rights of the Child, as mentioned by Senator Andreychuk, provides an invaluable framework for enabling children to live, grow and flourish. Eliminating social inequities that hinder and harm them, and acting in respect of children's rights begins with the choice to do so. It is an easy beginning to the greatest commitment our society can make.

Children and youth should always be celebrated. They are capable of great thoughts and great actions. They remind me of the worth we all possess, children and adults alike.

In closing, honourable senators, I would like to invite you all to an event tomorrow morning. We have a breakfast here that a few of our senators, including Senator Martin, Senator Mercer and myself, have hosted over the last few years and to which a lot of children's advocacy groups come. It will be between 8:00 and 9:00. We have a special guest tomorrow, the person who hauled me into the Senate 11 years ago now, Senator Landon Pearson. She's our special guest and she will have fascinating things to say about her children's resource centre at Carleton University on this twenty-fifth anniversary.

CHINA

INTERNATIONAL TRADE AND RELATIONS WITH CANADA

Hon. Victor Oh: Honourable senators, from November 5 to 10, I had the privilege of joining Prime Minister Harper on his third official visit to China. We received a warm reception from the Chinese during our visit to the city of Hangzhou and the capital city of Beijing.

Honourable senators, the purpose of this trip was clear. Trade promotion was at the top of the agenda, as is the case for many Canadian businesses. We also had productive exchanges on the Canada-China bilateral relationship, and agreed to increase people-to-people ties in areas such as culture. To promote mutual understanding, both governments announced 2015-16 as the Canada-China cultural year.

As a member of both the Foreign Affairs Committee and the Agriculture and Forestry Committee, I have heard from industry associations, department officials and academic experts. The witnesses have urged the government to take a more active role in engaging the Asia-Pacific region. This high-level visit to China was a way to accomplish this goal. I would like to share with you a few highlights from this trip.

First, the government expanded its trade network in China by announcing the establishment of four new Canadian trade offices. This brings the total number of cities with a trade office to 15. It also provides Canadian businesses in China with the on-the-ground tools needed to succeed abroad.

Second, after multiple rounds of negotiations, Toronto has been chosen as the first city in North America to have an offshore renminbi centre. This measure will reduce transaction costs and help Canadian firms to do business in China.

Finally, to the delight of our agricultural sector, China has agreed to increase market access for fresh blueberries and cherries from Canada. We hope that these measures will be the beginning of even greater access for our agriculture products in the region.

Honourable senators, I am pleased to report that these meetings between China and Canada have been very productive. Under the leadership of our Prime Minister, I am proud of the achievements we have made through this visit.

WALKING WITH OUR SISTERS ART EXHIBIT

Hon. Lillian Eva Dyck: Honourable senators, on October 31, I attended the opening of the Walking With Our Sisters art exhibit at Wanuskewin Heritage Park in Saskatoon. This exhibit is a commemorative art installation dedicated to remembering and honouring the missing and murdered indigenous women and girls. It acknowledges the grief and torment of the families of these missing and murdered girls and women. Furthermore, the exhibit is raising awareness of the issue and providing opportunities for broad community-based dialogue about the issue.

The Walking With Our Sisters art exhibit is being installed in 25 locations throughout North America and is booked next for Yellowknife.

As honourable senators know, over 1,181 indigenous women and girls in Canada have been reported missing or been murdered in the last 30 years. Many vanished without a trace or without adequate attention from the media, the general public, politicians and even law enforcement.

The Walking With Our Sisters art exhibit is comprised of about 1,800 pairs of moccasin vamps, including about 100 pairs of children's vamps. These beautifully beaded vamps were created and donated by hundreds of volunteers across Canada. Viewers walk on a red cloth path which winds along a pathway of vamps. Volunteers in each community assist in creating their own design for the manner in which the vamps are installed. For example, in Saskatoon the vamps were arranged in a path circling a central, open teepee. The children's vamps were placed inside the teepee surrounded by sage and stone rocks.

The unfinished moccasins represent the unfinished lives of the women and girls whose lives were cut short. The children's vamps are dedicated to children who never returned home from residential schools.

The art installation is tremendously powerful, inducing a wide range of emotions. It is beautiful to view and yet so profoundly sad to reflect on the lives lost and the deep wells of grief felt by their families.

Honourable senators, you can view the exhibit on your iPad. In Safari or Google, type in the words “panorama WWOS” and “acomultimedia” will come up first on the list. Click on it, and the first image shown is the WWOS exhibit in Saskatoon.

I wish to acknowledge the many volunteers in Saskatoon who worked to put together the Walking With Our Sisters art exhibit and who are keeping the sacred fire burning throughout. The volunteers are there every day to guide visitors in the proper protocol to enter and view the exhibit. For example, visitors smudge with smoke from burning sage before entering the exhibit to cleanse their hearts, minds, spirits and physical bodies, and they are given tobacco to offer prayers.

Honourable senators, the Walking With Our Sisters exhibit will open in Ottawa in September 2015. I hope you visit it and experience its beauty and spirit.

Today I am wearing a vest made to honour Shelley Napope, one of the 153 murdered Aboriginal women from Saskatchewan.

THE SENATE

QUESTION PERIOD

Hon. Stephen Greene: Ladies and gentlemen, Question Period is like the weather: everybody complains about it, but nobody does anything about it — until Senator Baker came along.

• (1350)

Over this past month, Senator Baker has re-energized Question Period by rising to his feet to ask good questions of committee chairs about their work. The answers he has received from chairs, such as Senator Ogilvie, Senator Patterson, Senator Runciman, Senator Gerstein, Senator Dawson and others have been informative and entertaining as well as the highlight of the Question Period of the day. The whole chamber listens when they speak, a rare thing indeed.

We listen because the answers given by committee chairs are based on factual information and evidence, as well as the learned opinions of expert witnesses. We pay attention because we can learn something useful.

But when it comes to the kind of Question Period we traditionally practice, we pay less attention because the answers delivered by leaders, regardless of the party in power, are really the product of creative development by staff. The answers are defensive more than informative because the questions posed by the opposition of the day are usually designed to trap the government leader into a mistake or to put the government in a bad light of some sort.

While Question Period might have a role to play in the House of Commons, in my view, it doesn't serve the Senate or senators very well.

In my maiden speech as a senator, when I had been here just a little over two weeks, I questioned the relevance of a Senate Question Period. About six years later, I still think it is a waste of time and should be abandoned before we agree to television. However, replacing Question Period as we know it with a different Question Period designed to illuminate the real work of the Senate is something I could support wholeheartedly, and it would make excellent television.

For his attempts to reform Question Period, I hope Senator Baker will accept this small bouquet.

ROUTINE PROCEEDINGS

SPEAKER OF THE SENATE

PARLIAMENTARY DELEGATION TO ENGLAND AND
WALES, UNITED KINGDOM; NETHERLANDS,
MAY 16-23, 2014—REPORT TABLED

The Hon. the Speaker: Honourable senators, with leave of the Senate I would like to table a document entitled: “Visit of the Honourable Noël A. Kinsella, Speaker of the Senate, and a Parliamentary Delegation, England and Wales, United Kingdom; Netherlands,” May 16 to 23, 2014.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

ECONOMIC ACTION PLAN 2014 BILL, NO. 2

EIGHTH REPORT OF FOREIGN AFFAIRS AND
INTERNATIONAL TRADE COMMITTEE ON
SUBJECT MATTER TABLED

Hon. A. Raynell Andreychuk: Honourable senators, I have the honour to table, in both official languages, the eighth report of the Standing Senate Committee on Foreign Affairs and International Trade, which deals with the subject matter of those elements contained in Division 15 of Part 4 of Bill C-43, A second Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures.

The Hon. the Speaker: Honourable senators, pursuant to the order of the Senate of October 30, 2014, this report will be placed on the Orders of the Day for consideration at the next sitting of the Senate, and the Standing Senate Committee on National Finance is simultaneously authorized to consider the report during their study of the subject matter of Bill C-43.

[Translation]

ADJOURNMENT

NOTICE OF MOTION

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 when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, November 25, 2014 at 2 p.m.

[English]

INTER-PARLIAMENTARY UNION

STEERING COMMITTEE OF THE TWELVE PLUS GROUP AND SEMINAR ON ENDING VIOLENCE AGAINST WOMEN AND GIRLS, SEPTEMBER 22-26, 2014—REPORT TABLED

Hon. Salma Ataullahjan: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Inter-Parliamentary Union respecting its participation at the Steering Committee of the Twelve Plus Group and the Seminar on Ending Violence against Women and Girls, held in Berlin, Germany on September 22, 2014 and Dhaka, Bangladesh from September 23 to 26, 2014.

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY EMERGING ISSUES RELATED TO MANDATE

Hon. Richard Neufeld: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Energy, the Environment and Natural Resources be authorized to examine and report on emerging issues related to its mandate:

- (a) The current state and future direction of production, distribution, consumption, trade, security and sustainability of Canada's energy resources;
- (b) Environmental challenges facing Canada including responses to global climate change, air pollution, biodiversity and ecological integrity;
- (c) Sustainable development and management of renewable and non-renewable natural resources including but not limited to water, minerals, soils, flora and fauna; and

(d) Canada's international treaty obligations affecting energy, the environment and natural resources and their influence on Canada's economic and social development.

That the committee submit its final report no later than September 30, 2015 and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF NON-RENEWABLE AND RENEWABLE ENERGY DEVELOPMENT IN NORTHERN TERRITORIES

Hon. Richard Neufeld: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the order of the Senate adopted on Tuesday, March 4, 2014, the date for the final report of the Standing Senate Committee on Energy, the Environment and Natural Resources in relation to its study of non-renewable and renewable energy development including energy storage, distribution, transmission, consumption and other emerging technologies in Canada's three northern territories be extended from December 31, 2014 to September 30, 2015.

QUESTION PERIOD

FINANCE

TARGET BENEFIT PENSION PLANS

Hon. James S. Cowan (Leader of the Opposition): My friend Senator Greene was congratulating Senator Baker a short time ago for his initiative in improving our Question Period. I want to draw the attention of senators to our own initiative, which is to invite Canadians to submit questions, which we then ask on their behalf.

The question I have for the Leader of the Government in the Senate today is another arising out of a series of questions that Senator Cordy and I have asked over the last while about the proposed target benefit pension plans. This one today comes from Mike Moeller of Antigonish, Nova Scotia, who wrote as a follow-up to the questions we'd asked earlier.

His question is as follows:

In the year 2000, the Canada Post Pension plan was implemented, coming from the federal superannuation plan. I have been a member of the Pension Advisory Council for all 14 years, and have represented three bargaining units: Canada Postmasters and Assistants, the Union of Postal Communications Employees, and the Association of Postal Officials of Canada.

I feel that this government is pulling the rug out from Canada Post employees and retirees.

I am aware that we now have a commitment from the government that retirees will not be affected without their consent. Canada Post has been clear that there is a real possibility that a negative-option voting will be used when consent is placed on the ballots. That is the most undemocratic possibility to take place in any sector, and could result in an outcome that does not reflect the true voting of retirees.

All retirees will be contacted by Canada Post, which is troubling in itself, as their pension plans should not be touched in the first place. There are a variety of reasons as to why retirees cannot vote or have difficulty doing so. Negative-option voting is a process whereby all retirees receive a ballot to vote to consent or reject changes. The people who “do not vote” for whatever reason are then counted as consenting. This could mean that 80 per cent of ballots do not consent to changes, but if there are enough people who “did not vote,” they could be counted as consenting. This distorts the voting results.

• (1400)

People who do not vote should not be counted as either consenting or disagreeing with the changes.

My question is twofold:

Will the proposed Target Benefit Pension plan legislation allow for negative-option voting? Will employers and administrators be able to use negative-option voting for any of its stakeholders, including retirees?

My second questions is this, following a negative-option vote, does the government intend on allowing any accrued monies that have “already been paid into a Defined Benefit plan” to be replaced by a new Target Benefit Pension plan? All current employees, as well as retirees, should not have any of the monies that they paid into the Defined Benefit plan touched, altered, or changed.

Senator Carignan, what is the government’s response to Mr. Moeller?

[Translation]

Hon. Claude Carignan (Leader of the Government): Thank you for that question. As I have already said and as you know, there are two different types of pension plans in Canada: the defined contribution plan, which is a type of group RRSP — if I can call it that — that workers contribute to, and the defined benefit plan, which employers and workers contribute to.

Obviously, we felt the need to do something to improve the existing retirement savings options. Public consultations were held. The proposed structure for target benefit plans would ensure

that individuals who are working for federally-regulated private sector businesses and Crown corporations have access to different pension plan options that are effective and viable.

Target benefit plans are an innovative approach that seeks to maintain or increase the number of employers who are able to offer their employees an affordable pension plan that pays predictable benefits, regardless of the market conditions.

In answer to another question you asked on behalf of a Canadian, I told you that this formula can also be used when a new pension plan is being created by members and retirees.

The proposed joint governance structure would reflect the sharing of risks inherent to the target benefit plan and ensure that employers, members and retirees are effectively represented.

As I explained before, because of the voluntary nature of the framework, all parties would be involved in deciding whether or not to adopt the target benefit plan formula and in designing the plan, where applicable.

Employees represented by a union could take advantage of such a process to adopt policies or make changes to their plan, which must be adopted by the union in keeping with union democracy.

As I have already said, retirees will have the opportunity to consent to changes to future benefits if they vote for a target benefit plan.

[English]

Senator Cowan: We covered this ground last time, Senator Carignan, and I understood then and I understand now what a Target Benefit Pension plan is and I understand that it is a third way, as you describe it; you have your defined contribution and you have your Defined Benefit plans that we’re familiar with, and this is a third option to define it as an innovative option.

You said that this would not be imposed on any group without consultation. When Senator Cordy asked you about the consultation process, you said that it was finished, and I believe, when she asked who was consulted, you did not provide and did not agree to provide the names of the groups or individuals who had been consulted. You simply said that they were individuals who are “people on the ground with some connection in the field,” which was a fairly vague answer.

So we have no idea as to the extent of the consultation. You have not provided any details as to the level of consultation and the kinds of people who have been consulted, other than to say they have some connection in the field. And that’s troublesome, Senator Carignan, but more troublesome — and the particular point of Mr. Moeller’s question — was when you said that this would not be imposed on any group without their consent which raised the issue of how the government or the employer was going to determine whether or not there was consent. That’s where this issue at the centre of Mr. Moeller’s question is with respect to how the votes are going to be counted.

You will recall that Bill C-525, one of the government's bills dealing with unions, in its original form included this concept. The votes were counted, yes and no, and then if you didn't vote the votes, depending on whether you were certifying or de-certifying, were cast on one side or the other, even though all those people didn't vote. In the House of Commons that section was removed from Bill C-525 but, if you're prepared to do that, why would you even be considering this concept when you're talking about introducing the benefit plans which you describe as the third option? Can you give assurances to Mr. Moeller that this will not be part of the government's package?

[Translation]

Senator Carignan: Your question is from a retiree, yet you seem to be referring to a bill that applies to unions. As you know, retirees are not involved in negotiations concerning changes to a collective agreement. Consequently, you cannot use the example of changes to a collective agreement because the case you just spoke about involves a retiree.

I've said it before and I'll say it again: Retirees will have to consent to changes that affect them.

[English]

Senator Cowan: Let me try it another way. Let's leave Bill C-525 aside. Let's deal solely with the process by which the opinion of the retirees will be determined. Clearly, they will be given the option that they can vote yes, or they can vote no. The third option is that those who don't vote will be considered to have voted one way or the other. Can you assure Mr. Moeller that only those people who actually vote on the issue that's put before them will have their votes counted and those who don't vote will simply not be counted, as is the case in any democratic election anywhere?

[Translation]

Senator Carignan: As I said, the proposed framework for converting the plan will have to receive the consent of all the parties, whether they are unionized members or retirees. I don't want to speculate, but when the detailed announcements are made, we will learn more about the process. I don't believe that this person necessarily wants to know about the process. He wants to know that there will be a process in place, whether the voting happens by mail, in secret, or in some other way.

• (1410)

I don't think this is about the process; it's about consent. I've said it before and I'll say it again: To switch to a target benefit plan, retirees will have to give their consent.

[English]

Senator Cowan: Senator Carignan, the point of Mr. Moeller's question is: How will the government determine consent? It's a simple question. Do you agree or do you not agree that some people will vote yes and some will vote no? Mr. Moeller wants to ensure that those who don't vote, who for whatever reason decide not to participate in the process, will not be considered to have

[Senator Cowan]

cast their vote for one side or the other. That's his question; it's very simple. It should be an easy question to answer. If you don't have the answer today, I would ask you to consult with your colleagues to provide an assurance because process is important. We're talking about the process by which the government will determine whether it has the consent of the persons who are affected.

I appreciate the assurances you provided earlier that this will not be imposed on people without their consent. That's very encouraging; but if at the same time you bring in this negative-option voting concept, then you destroy the validity of the process by which you're trying to determine the consent. That's Mr. Moeller's point.

[Translation]

Senator Carignan: Retirees will have to give their consent. I don't know how to make that any clearer. All parties will have to give their consent when they want to switch to a target benefit plan. That includes the employer, union members and retirees too. I don't see how I can make it any clearer. All I can say is that it requires consent. I don't know if you've seen a recent definition of "consent" in a dictionary, but it involves saying yes.

[English]

Senator Cowan: I understand what you're saying, but Mr. Moeller is concerned that it has been suggested by officials on behalf of Canada Post that negative-option voting will be on the table. I've explained to you, and I'm sure you understand, how that would distort the result of a vote. If the answer is simply that the votes of those who vote yea or nay on a question are the only votes counted or considered, I appreciate, understand and support what you say. However, if they're going to put on top of that this negative-option voting, then that will distort the process; and that's the point of Mr. Moeller's question.

The simple question for which I'm looking for an answer from you is: Is the negative-option voting on or is it off? That's the question Mr. Moeller wants an answer to.

[Translation]

Senator Carignan: I'll say it again: Consent is consent. I think we should avoid fear mongering and spreading rumours about what the target benefit plan will be. It will be a voluntary plan. It will be a voluntary option, and I want to strongly emphasize once again that it will require the consent of the parties.

[English]

Senator Cowan: Just a suggestion that somehow I'm fear mongering or putting out rumours that will upset people. Mr. Moeller says that the concept or suggestion of negative-option voting was raised as a real possibility by a Canada Post legal representative at the Pension Advisory Council. You will recall that I said that since 2000 Mr. Moeller has been a member of the Pension Advisory Council. It was raised by a legal representative of Canada Post at the PAC's meeting in June. This is not just some speculation or rumour mongering on Mr. Moeller's part or on my part.

[Translation]

Senator Carignan: Senator, as you know, we felt it was vital to hold consultations, and the outcome was clear: The consent of all the parties will be required. Be they employers, union members or retirees, they will have to agree to this voluntary plan. I know that people can make assumptions about what changes might be made, but it will be up to the people to decide whether to make them or not. Before expressing opposition to the measure, it might be a good idea to wait for the official framework that will be proposed following the consultations that were held over the past few weeks.

[English]

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, in the absence of a clear answer, I'm driven to conclude that negative-option voting is at the very least being considered.

If memory serves, there was outrage across the land, including in the government, when the cable television people wanted to do negative-option billing. Cable television is a bit of a luxury; one's pension is not a luxury. Why is a negative-option procedure unacceptable for a luxury but acceptable when it comes to one's retirement income?

[Translation]

Senator Carignan: You mentioned negative-option voting. Never did I think, Senator Fraser, that I would one day have to give you an explanation or definition of the word "consent." When people give their consent, it means they agree. This is a voluntary and optional plan. There will be no changes and no new plan if people do not give their consent. You are a woman of letters, so I imagine you know what the word "consent" means.

[English]

Hon. Jane Cordy: You can certainly put these rumours to rest by simply letting Mr. Moeller and us know. Mr. Moeller sent his question in good faith to be answered by the Leader of the Government in the Senate, and you have done nothing but skate around the issue. You can certainly put the rumour to rest by answering Mr. Moeller's question. Will negative-option voting be part of the voting process?

[Translation]

Senator Carignan: As I said, we have been very clear that the target benefit plan will be a voluntary option based on consent. We will be presenting the proposal in the coming weeks. I would ask that you wait until the framework has been proposed before you oppose it, first of all, and second, before you start spreading rumours that will only worry Canadians, especially retirees.

[English]

Senator Cordy: I'm not spreading rumours. The question was asked by Mr. Moeller, who is on the Pension Advisory Council for Canada Post. This is not a rumour. Surely to goodness you wouldn't be breaking any confidentiality by saying that negative-option voting would not be the case. As Senator Fraser

said, the public in Canada was outraged when cable television companies tried to use negative option billing for cable service. I assume the public would be suitably outraged if it is reflective of changes to their pensions.

You said in your comments to Senator Cowan that you have highlighted your consultation process. As I said earlier, Mr. Moeller is a member of the Pension Advisory Council for Canada Post. Clearly he and his organization weren't consulted. When I asked this question before, you wouldn't let the chamber know who was consulted, other than to say it was people on the ground. The consultation has been completed, which is what you told this chamber. If, in fact, you're highlighting the consultation process, would you at least give us, if not the names of the people who have been consulted, the organizations in Canada that have been consulted in regard to the changes to the pension plan?

• (1420)

[Translation]

Senator Carignan: If you like, I will forward that question and your concerns over negative-option voting to the minister. You will be able to say that this part of the consultation is complete and that in the context of a broader consultation, you shared with the minister your concern that negative-option voting should not be part of the consent process. I can make that commitment.

What I have been saying from the start is that this is an optional, voluntary plan and we will be sure to obtain consent. People who want to join to this plan will have to give their consent, whether we are talking about the employer, union members or, of course, retirees.

[English]

Senator Cordy: I gather from your comments to Senator Cowan, to Senator Fraser and to me that when Senator Cowan is touch with Mr. Moeller, he will suggest that you haven't answered the question. If you haven't answered the question, one can only assume it's because negative-option voting will be on the table.

[Translation]

Senator Carignan: Honourable senator, I understand that your intervention is a comment and not a question. I invite you to share your comments and those of the other people in the section reserved for comments on the Department of Finance website at <http://www.fin.gc.ca/consultresp/pic-impicc/index-eng.asp>.

[English]

Senator Cordy: I've just been told that I have missed translation and you have said that you would refer this to the minister. That would be very helpful.

[Translation]

Senator Carignan: I don't know if there was an error in the translation. I understood the concerns you raised about negative-option voting. I responded by saying that this plan

would be voluntary and that people will have to give their consent. Your comments concern the desire not to use negative-option voting to express consent. I will pass all of this on to the minister's office, as if this were a consultation on the proposed future plan.

GOVERNMENT EXPENDITURES—
TRANSPARENCY

Hon. Céline Hervieux-Payette: My question is for the Leader of the Government in the Senate. The Parliamentary Budget Officer presented a detailed analysis, which we all received, of the government's fourth appropriation bill for the 2014-15 fiscal year. As it turns out, all expenditures are on the rise, including those for economic affairs, social affairs, international affairs and government affairs. All the expenditures are going up except for one: The government decided that it would decrease by 2 per cent the expenditures related to transparency and accountability — in other words, the government's famous bill.

Leader, are you now going to tell us that your government has done so much for transparency that the government is crystal clear and you can now reduce the budget for transparency? If so, how will you reduce it?

Hon. Claude Carignan (Leader of the Government): Honourable senator, I invite you to examine the supplementary estimates that are presently being studied by the National Finance Committee. You will see all the different expenditures.

Senator Hervieux-Payette: I would like to thank the Leader of the Government for his response. I sit on the National Finance Committee and I often say that we study Canada's finances from 35,000 feet above because we don't see very much and it is all general. Even the witnesses who appear before the committee, including those who came yesterday, don't have any answers. Therefore, the Finance Committee is not the place where we get answers about exactly where Canadians' money goes.

I would like to remind you about a few things, which I have chosen arbitrarily. This is not an exhaustive list. In 2011, *Le Devoir* reported that the government and senior officials deliberately misled the Auditor General about the G8 and G20 expenses, which totalled more than \$1 billion.

In 2012, the Auditor General of Canada considered taking the Harper government to court if he did not obtain the details about the \$5.2 billion in cuts in the budget. So much for transparency.

In May 2013, the group Canadian Journalists for Free Expression gave the federal government a "D" for transparency. A "D" is not very good.

In September, 2013, the Information Commissioner of Canada, Suzanne Legault, denounced the Harper government's increasing obstruction of access to information. More words are redacted than not.

More recently, in September 2014, *Le Devoir* ran an article on how Ottawa has intensified the culture of secrecy and said that a large number of reports, memos and documents are considered cabinet secrets.

[Senator Carignan]

Leader, what specific measures will the government take to restore transparency and honour its promise to Canadians, on which it was elected in 2006, and its famous accountability and transparency act?

Senator Carignan: Honourable senator, I would encourage you to read more than one newspaper article before forming an opinion on the government and its actions.

What I look at and what matter to me are the figures. The Federal Accountability Act of 2006 expanded the scope of the Access to Information Act to cover 250 institutions, including Crown corporations. As a result, the government has received more requests under the act than all previous governments, and it responded to 53,933 requests in 2012-13. That is more requests for information than were answered by the governments of Trudeau, Turner, Mulroney, Campbell, Chrétien and Martin combined. That does not include information obtained from websites. As you know, thanks to technology, more information is now available online.

[English]

ORDERS OF THE DAY

COPYRIGHT ACT TRADE-MARKS ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Tkachuk, seconded by the Honourable Senator Seidman, for the second reading of Bill C-8, An Act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts.

Hon. Joseph A. Day: Honourable senators, permit me to say a few words with respect to Bill C-8. First, I thank Senator Tkachuk for giving us not one but two second reading speeches on this particular bill, which I've had an opportunity to review, and that's all I'll say about that.

Honourable senators should be aware that this particular piece of legislation is an act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts, but the short title is more important, I think, and more informative, and that is that it is an act to control counterfeit products. That's really what this particular piece of legislation is about. The precise wording of the short title, honourable senators, is "Combatting Counterfeit Products Act," and that is what this bill is primarily intended to deal with.

• (1430)

Why do we need this legislation when we already have legislation such as the Copyright Act and the Trade-marks Act? There are infringement provisions in both of those pieces of legislation that have been around for a long, long time. If someone misappropriates any rights under either one of those pieces of legislation, then there are procedures available in the legislation as it exists in order to deal with the inappropriate use or infringement.

Honourable senators, this bill is at second reading and we're trying to understand the principle or the purpose for the legislation. The government stated that counterfeit goods made of inferior material without quality control may cause problems such as health or safety risks and they undermine consumer confidence in the marketplace. That by itself might not be enough to convince you that we need more legislation because the legislation, as I said, already exists.

The government also asserts that these goods disrupt Canadian markets, lead to lost tax revenues for the government and increase costs for legitimate Canadian businesses. It also contends that resulting lost revenue for rights holders leads to delays in creating new products and innovative services. All the policy arguments are there, honourable senators, but it's generally believed that this legislation is, at least in part, an attempt to meet some international obligations that the government may feel it has in relation to an anti-counterfeit trade agreement.

The problem, honourable senators, is with respect to the Anti-Counterfeiting Trade Agreement, which, after several years of negotiation, was signed by Canada initially in 2011. Since that time, it has been rejected by the European Economic Community. It's been rejected by Australia. It has not been ratified by the United States. In fact, the only country with a free market economy that has agreed to this particular international convention is Japan, as I'm sure Senator Tkachuk is fully aware. Does Canada feel it needs to be a leader with respect to this particular international convention when we enter into free trade agreements with many countries around the world, none of which have ratified this particular scheme of legislation?

Why haven't they? That is the important point. Why haven't nations accepted the legislation that flows from this international agreement on counterfeiting? The main reason is that there aren't safeguards for individuals. It's too much of an intrusion into individual rights. That seems to be the main argument that's being made.

I will try to touch on some of those points, honourable senators, as I go through my presentation today so you can understand more about what changes should be made to this legislation. Having looked at the legislation at second reading, I'm not convinced that we should reject this legislation outright. In fact, it's probably a step in the right direction, as has been said by a number of witnesses. However, there are a lot of improvements that could and should be made to the legislation, and I'm hopeful that we will deal with those proposed changes with witnesses at committee stage.

There is some pressure on us to deal with this quickly, honourable senators. Honourable senators will know that I normally at this time would be at a meeting of National Finance on another matter that is of some urgency to the government and the government side. What is the urgency with respect to this legislation? I think it is important for all of us to question that.

Let me give you the history of this bill. It's gone through many, many steps along the way. It's gone through a prorogation and then was reintroduced. This particular legislation was introduced at first reading in the House of Commons on October 28, 2013. It took until October 2, 2014, for it to pass through the various steps in the House of Commons. They sent it to us, we've had it for about a week, and we're getting requests to act on this expeditiously.

Senator Downe: Shameful.

Senator Day: This measure was in the House of Commons for over a year. They sent it to us and said, "Please deal with it quickly." In other words, "Please rubber stamp another piece of legislation without looking at the legislation like you were intended to do."

Senator Downe: We will not do that.

Senator Day: And we will not do that and we should not do that.

Senator Downe: That's right.

Senator Day: I appreciate my honourable colleague agreeing with me on that particular point.

Let's talk briefly about what this legislation proposes to do, and then I'll touch on two or three areas where it doesn't do what it should do.

This bill creates new civil causes of action. There are rights for border crossing officers, customs officers, being given here. There are new civil remedies that are being given. There are new criminal remedies that are created. We looked at the Copyright Act two years ago. An extensive amendment of that Copyright Act has provisions with respect to criminal responsibility, which is normally a commercial type of legislation. That concept is being repeated here. The Trade-marks Act will now have criminal provisions in it as well. It creates the new criminal offence of prohibiting the possession or export of copies or copyright trademark goods, packaging or labels.

Understand that a trademark is and has traditionally been something that you place on a product or a service that distinguishes that product or service from anybody else's so it's distinguishable and it's unique, like a Coke bottle, for example, and Coca-Cola. Even though there are other cola drinks, Coca-Cola is a trademark, so it's a commercial right under this general heading that we call intellectual property.

Another area is copyright. Copyright is the original expression of a work or a piece of art. It could be music. It could be the floor plans for your house. If somebody copies the design of your

house, they're not infringing copyright because the copyright is in the floor plans, but if they take your floor plans and have them copied and then take them to their own builder, they are infringing your copyright. That's the area of rights that we're dealing with here, and now they're expanding the sanctions from civil remedies, which have always existed, to also include criminal remedies. It exempts the importation of individuals. I think that exemption is important because if you happen to be travelling in China and you buy a watch and it happens to be what we would describe as a "knock-off," then that, in effect, is an infringement of trademark and possibly copyright, depending on what the product is. If you bring that back to Canada, you would be infringing our laws here. You would be infringing on these new laws, which are counterfeit laws, unless an exemption was placed, and that exemption is here. I think that is appropriate.

• (1440)

So the issue is importing for the purpose of resale and importing for the purpose of running a business with the product or goods that you're bringing in. It adds the offences set out in the Copyright Act and the Trade-marks Act to the list of offences set out in the Criminal Code for the investigation of which police may seek judicial authorization to use a wiretap. So these are new areas that I'm sure Senator Baker will be very interested in considering from the point of view of a commercial activity now falling into the criminal activity area. That's where this legislation is intending to go.

I hope Senator Tkachuk and I will be able to agree on having some witnesses come and talk to us about these particular areas. One issue in this legislation is that an individual or a company can request assistance from the border guards in Canada to determine when a certain product comes across whether it is an infringement of copyright. It's a counterfeit product; please seize it.

Now, you can think immediately of how that could be abused. If somebody wanted to keep a competitor's product out for a while, just wanted to slow down the market for a little while, then that's exactly what he or she would do; they would use the border crossing guards to seize the product and hold it for a period of time. There's no sanction and there's no oversight for the border guards to act as the police in this particular case. That is an area that I think we need to work on.

There is also no reporting on how many seizures take place during a year and how many times these particular provisions will have been exercised. It would be an easy thing to do, to have a report as public disclosure of what's going on. That's another area that I think should help to avoid abuse of process, which is very possible in this particular case.

There's the area of fundamental change to the Trade-marks Act that has nothing to do with counterfeiting, and when I read through that, it reminded me so much of the omnibus legislation that we have before us; you've got a fundamental document on one thing and then you sneak a few other little items in on it.

The changes with respect to the trademarks aspects of this are they expand what can be used to distinguish. It used to be a name or stripes, such as for Adidas running shoes. It was some mark

that you could see, but now it's being expanded to include smell. When you file an application for a trademark, how do you describe the smell of the product such that you could say someone else is using the same smell to infringe my trademark?

Senator Robichaud: We need to have registered noses.

Senator Day: We'll have to do a lot of thinking about this; perhaps little bottles of different types of smells or scents to help distinguish the particular one.

This needs more analysis. These measures won't get the attention that they should get because they are tucked in here with this other legislation.

Smell, taste, texture, signs and the whole concept of use of these particular things that expand the concept of trademarks are areas of concern. The texture of something is my trademark. That is very difficult to prove and establish when you register. It's not necessary to introduce a piece of legislation that is intended to relate to counterfeiting and the manufacture of a product to ship out of Canada or a product manufactured somewhere else in the world and brought in to Canada, which is an infringement or a counterfeit of the original owner's product and that is what this legislation is intended to.

That part of the legislation I can support as an expansion of the legislation that should be in place for an international trading nation, but let's not say we're doing this because of international obligations. I asked that question of Senator Tkachuk when he gave his first speech because I had read that this was about international obligations. That is what has been said by several government representatives, that this is really to help Canada meet its international obligations under international treaties, and that's not the case, but that doesn't mean it's not an improvement in the law. It just means that we should be watching this very carefully and creating what is right for Canada and Canada's role as a trading nation in the world.

Honourable senators, those are my preliminary comments with respect to this particular legislation, which I look forward to studying in committee to delve into some of these issues more thoroughly and come forward with a report and a proposal at third reading.

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

Hon. Senators: Question.

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

Senator Day: On division.

Some Hon. Senators: On division.

(Motion agreed to and bill read second time, on division.)

[Senator Day]

REFERRED TO COMMITTEE

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

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

• (1450)

BANKING, TRADE AND COMMERCECOMMITTEE AUTHORIZED TO MEET
DURING SITTING OF THE SENATE

On the Order:

Resuming debate on the motion of the Honourable Senator Tkachuk, seconded by the Honourable Senator Seidman:

That the Standing Senate Committee on Banking, Trade and Commerce have the power to sit on Thursday, November 20, 2014, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

Hon. Yonah Martin (Deputy Leader of the Government): Question.

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

Senator Fraser: On division.

(Motion agreed to, on division.)

(The Senate adjourned until Thursday, November 20, 2014, at 1:30 p.m.)

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