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Wednesday, May 14, 2008

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Wednesday, May 14, 2008

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

Prayers.

SENATORS' STATEMENTS

USHER OF THE BLACK ROD

WELCOME OF MR. KEVIN MACLEOD

Hon. Terry M. Mercer: Honourable senators, on March 27, the new Usher of the Black Rod was appointed — this position being the most senior protocol officer in Parliament.

I cannot think of anyone more deserving of this title than Mr. Kevin MacLeod. Mr. MacLeod, a fellow Bluenoser who grew up in Boularderie, Cape Breton, has proven his dedication to Canada through his 31 years in the public service, the last 22 years at the Department of Canadian Heritage, where he most recently held the position of Chief of Protocol.

Kevin's services have not gone unnoticed. He is the only Canadian who has been promoted by Her Majesty the Queen through all three ranks of the Royal Victorian Order, as a member, lieutenant and then a commander.

Honourable senators, Mr. MacLeod has not only proven his loyalty to Canada but to his Scottish roots as well. In 2007, he launched his first book, entitled *A Stone on their Cairn*, where he mixes historical fact with stories from his youth to portray what it was like for the early Scottish settlers in Cape Breton between the Royal Jubilee of 1897 and the First World War in 1914.

Kevin will have a tough role to fill in the Senate as the position is being passed from one Cape Bretoner to another. I believe that he will more than dutifully perform this job and show us the same loyalty and dedication that he has shown to all Canada over the past 30 years.

Honourable senators, it is also worthy of note that Parliament Hill is where Mr. MacLeod's career began. After finishing his degree at the University of Dijon in France, Kevin served as an assistant for 10 years in the House of Commons.

I welcome Mr. MacLeod's return with open arms and wish him the best of luck when he takes up his new position as Usher of the Black Rod on May 26.

• (1335)

COALITION FOR STUDENT LOAN FAIRNESS

Hon. Yoine Goldstein: Honourable senators, today I will ask leave to table a document that provides ample proof that Canada's student loans system must be improved. This document is the result of an online petition organized by the Coalition for Student Loan Fairness. The petition has received 1,442 online signatures. More importantly, it includes many heart-wrenching, first-hand descriptions of how shortcomings in the current loan system wreak havoc in the lives of young Canadians.

I have been aware for some time of the financial difficulties faced by many former students. This is why I introduced Bill S-205, which would change the way student loans are dealt with in bankruptcy proceedings.

Several borrowers described the student loan system as "onerous," "unfair," and "a nightmare." One former student describes his limited income, massive debt and efforts to raise two disabled children, writing, "I once thought going to school would improve my life. It did the opposite." Another says, "Student loans have ruined my life." Several others conclude that borrowing money for their education "was probably the worst mistake of my life." Others say their debts have become so debilitating they would never encourage young people, including their own children, to pursue post-secondary education if it required incurring students loans.

One terribly distressing entry, No. 1,233, describes how student debt and harassment from collection agencies led the writer's sister to commit suicide.

Another borrower in repayment simply says: "We need help."

Honourable senators, we must listen to Canadians. We must defend their interests. We must try to help where help is needed. Higher education is a value in and of itself but a skilled and educated workforce is also central to our country's prosperity and its well-being.

The current student loan system is difficult to navigate. It is discouraging many young Canadians from pursuing post-secondary education. High interest rates — the highest in the Western world — inadequate debt relief programs and vicious collections practices create a disincentive for those who must borrow money to attend college or university. This is wrong for both ethical and practical reasons and it must change.

SPECIAL NEEDS EDUCATION

VISIT BY STUDENTS OF CHARLES P. ALLEN HIGH SCHOOL LEARNING CENTRE

Hon. Donald H. Oliver: Honourable senators, on Thursday, May 8, I had the pleasure of welcoming to my office 11 special-needs students from the Charles P. Allen High School Learning Centre in Bedford, Nova Scotia. The students were accompanied by their two teachers, Ms. Janet Hattie and Mr. Jeff Hunter, seven educational program assistants and one respite worker. The students were able to raise over $20,000 to come to Ottawa. These funds allowed them to live their dream and personally speak with parliamentarians on the shortcomings of the educational system for special-needs students.

During our meeting, numerous students shared their future career goals with me. One student spoke of his aspirations to work with computers and his skill to follow the stock market. Another said that she wanted to study cosmetology and her classmate wanted to be a businessman.

It was clear that these students aspire to do great things and have the potential to be successful, productive members of our community. However, their future success depends on programming in Halifax to support graduates with special needs. Some of these students are in wheelchairs due to physical disabilities; others have impaired vision, impaired speech or cognitive delays. One by one, the C. P. Allen students expressed their frustration with the current educational gap. They told me that special needs students do not have adequate services or programs required to find a job or pursue an education in their chosen field.

Currently, there are very few opportunities for high school graduates with cognitive delays and/or physical challenges to further their education or pursue work in the Halifax Regional Municipality. A tentative agreement with the Department of Education in Nova Scotia allows graduates with special needs to return to their high school until they are 21 years of age.

• (1340)

I congratulate the 11 students from Charles P. Allen High School Learning Centre for vocalizing their concerns and their needs. It was a pleasure to meet such determined individuals.

I call on honourable senators to support the initiatives of these students to decrease the current educational gap for students with special needs and to increase support for them to enter the Canadian workforce.

I was happy, honourable senators, to read in today's *Quorum* that the federal government announced increased funding to the Vera Perlin Society, which helps unemployed workers with developmental disabilities in the St. John's area. The society will receive $106,684 to help individuals with special needs re-enter the workforce.

[*Translation*]

IMPORTANCE OF HUMAN RIGHTS AND INTERNATIONAL LAW AND CONVENTIONS

Hon. Roméo Antonius Dallaire: Honourable senators, today I was going to speak about my regiment, the 6th Artillery Regiment of Lévis, the return of 18 soldiers from Afghanistan, the 25 others who are preparing to leave and their families, but a more pressing subject came up that I would like to raise in this house.

[*English*]

It is my firm belief that nations like Canada must act to protect and enforce international law and codes of behaviour that we have ratified through the United Nations over decades. These laws have been established to safeguard human rights, to protect human beings caught up in wars and conflict, and to give us the certainty that the rule of law prevails.

It is my strongly held view that the continued, illegal incarceration and prosecution of Omar Khadr — who was a 15-year-old child soldier at the time of his arrest in 2002 — puts into jeopardy the Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Our acquiescence with his continued incarceration and prosecution calls into question Canada's standing as a nation respectful of human rights and international law. More than ever before, the new global challenges we face in the wake of the September 11, 2001 terrorist attacks require nations like Canada to protect and enforce international law.

Frankly, it is a distraction from the issue at hand to engage in a debate over the semantics of my response to a loaded question raised by a Conservative MP at the Human Rights Committee of the House yesterday, who asked whether I was equating the Canadian and the American governments as equal to Al Qaeda in terms of terrorism. Suffice to say that I in no way intended to equate Canadian or U.S. authorities with the terrorist organization Al Qaeda. However, we cannot avoid the point that if we violate international law in our pursuit of the war on terror, we risk reducing ourselves to the same level as those we oppose.

I stand by my views about the descent into uncertainty and the risk that our nation faces when we fiddle with the basic tenets of human rights, international law and conventions, and do so in the name of protecting our security.

In 2004, Louise Arbour stated that her main challenge in her new post as High Commissioner of Human Rights for the United Nations would be to protect rights that are now being sacrificed — from Guantanamo Bay to Baghdad to unknown points — in the name of fighting terrorism.

She pointed to the increased use of detention around the world by the United States and its allies and called for more scrutiny of detention conditions and interrogation methods that could violate basic human rights.

She said there was no question that the security-driven agenda of the war on terrorism "calls for turning to measures that enhance security and restrict liberty."

The more we permit our political leaders to act outside of these same rules, the more we expose ourselves to potential abuses and loss of freedom and individual rights.

It is clear that Canada has no legal basis on which to justify our inaction in allowing a Canadian citizen, and the first-ever child soldier, to be prosecuted for war crimes in an illegal process at Guantanamo Bay.

As more facts surrounding Khadr's detention and this illegal process have become available, the issue and the risks are clear. UN officials have said that this prosecution will set a dangerous precedent and put at risk the child soldiers whom we pledged to protect and to assist with disarmament and reintegration into society.

ROUTINE PROCEEDINGS

COALITION FOR STUDENT LOAN FAIRNESS

ELECTRONIC PETITION TABLED

Hon. Yoine Goldstein: Honourable senators, pursuant to rule 28(4) and with leave of the Senate, I wish to table a document entitled *Ensuring Student Loan Borrowers are Treated Fairly*, a petition from the Coalition for Student Loan Fairness with thousands of signatures attached.

• (1345)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SEVENTH REPORT OF COMMITTEE PRESENTED

Hon. George J. Furey, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Wednesday, May 14, 2008

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

SEVENTH REPORT

Your Committee recommends that the following funds be released for fiscal year 2008-2009.

Internal Economy, Budgets and Administration

Professional and Other Services	$ 5,000
Transportation and Communications	$ 0
All Other Expenditures	$ 0
Total	**$ 5,000**

Respectfully submitted,

GEORGE J. FUREY
Chair

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

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

CREDIT CRISIS

NOTICE OF INQUIRY

Hon. Jerahmiel S. Grafstein: Honourable senators, I give notice that two days hence:

I will call the attention of the Senate to the current credit crisis, its impact on Canadian financial services and what reforms the Government of Canada and others might consider to avoid similar financial shocks in the future.

QUESTION PERIOD

BANKING, TRADE AND COMMERCE

INCOME TAX AMENDMENTS BILL, 2006—
TELEVISING OF HEARINGS

Hon. Yoine Goldstein: Honourable senators, my question is to the Leader of the Government in the Senate. A well-known movie producer, Mr. David Cronenberg, will be testifying this afternoon with respect to Bill C-10. He is an outspoken critic of the censorship provisions contained in Bill C-10. The CBC broadcast news this morning that the chair of the committee had so arranged the situation that there would not be television coverage of the hearings this afternoon. This morning, we, the Liberal members of the committee, having been apprised of this situation, forced the re-establishment of the coverage as soon as we discovered that it had been countermanded.

Honourable senators, the hearing this afternoon is about censorship. The activities of both the chair and the Conservative party are a further manifestation of censorship by this government, depriving the press and the people of Canada from hearing opinions and ideas which do not reflect the opinions and the will of this government.

The government was attempting to censor a public hearing dealing with the attempts of the government to censor the arts in Canada, a sort of double-dipping on the part of the government — so much for transparency, so much for honesty.

This question should more properly be a matter of privilege. I reserve my right to raise it as a privilege because my privileges as a senator have been breached by this attempted act of censorship.

Honourable senators, the proceedings of the Standing Senate Committee on Banking, Trade and Commerce have been televised for years. The people of Canada are entitled to know who is responsible for this attempted additional imposition of secrecy and for the flouting of the rights of the Canadian public by this so-called "transparent" government.

My questions, one at a time, are the following: First, who arranged this? Did the chair of the committee arrange this or was it someone else?

• (1350)

The Hon. the Speaker: Order.

Honourable senators, the chair does not like to intervene in Question Period. However, that question is clearly a matter of committee business and should be addressed to the chair of the committee.

Some Hon. Senators: He just left.

Senator Goldstein: I have a supplementary, if I may, which is not a committee issue. The question is: Did the government make that arrangement?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Absolutely not. The fact is there was no effort by anyone on this side in this process. Those arrangements are made between the whips. I am not totally familiar with how committee rooms are allocated in terms of whether or not the meetings are televised. There is absolutely not one shred of evidence that it had anything to do with anyone in the government.

Many people follow the proceedings of the Standing Senate Committee on Banking, Trade and Commerce. Given the witness for this afternoon, I was surprised by the senator's question because these allegations are news to me. I heard that there was some question about a committee room last night, and I said that it was obvious that it would be televised. Thus, I do not know what the senator is talking about. I do not know who is behind this. I can assure the honourable senator that no one from the government in any way, shape or form would restrict the televising of any committee.

As His Honour quite rightly pointed out, this issue is not for the government in any event. We do not decide which committees are televised and which are not.

Senator Goldstein: The CBC said the chairman made these arrangements. Is the Leader of the Government in the Senate saying that the CBC lied?

Senator LeBreton: The honourable senator does not expect me to stand here and defend the CBC. As with many organizations, misinformation is often passed around this town. I do not single out the CBC, but one does not believe everything one reads in the newspapers or hears on the CBC. As a matter of fact, I try to follow an old adage: I believe 95 per cent of what I see, and 5 per cent of what I hear.

[*Translation*]

ECONOMIC DEVELOPMENT AGENCY OF CANADA FOR REGIONS OF QUEBEC

NON-PROFIT ORGANIZATIONS—FUNDING

Hon. Francis Fox: Honourable senators, I would have liked to put my question to the Minister of Public Works as the minister responsible for Montreal, but I believe that the rules do not allow that. I will instead put it to the Leader of the Government.

The minister responsible for the Economic Development Agency of Canada for the Regions of Quebec recently decided to cut funding for non-profit organizations dedicated to the economic development of various regions in Quebec.

First, can the leader tell us whether this policy applies only to the department responsible for economic development in Quebec, or to Canada as a whole?

Second, can she table the names of the non-profit organizations concerned, along with their respective success rates? And third, could she tell us if this is a deliberate policy to undermine the economic base of these effective organizations from various Quebec regions?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, Senator Rivest asked me that question last week.

The honourable senator is misinformed. The fact is that funding of these various organizations does not go on forever. It is one-off funding, and other organizations are funded. I provided a rather detailed answer to Senator Rivest when he asked the question about Montreal International. I will be happy to provide that to Senator Fox.

[*Translation*]

MONTREAL INTERNATIONAL—FUNDING

Hon. Francis Fox: I thank the minister for her answer, and I would like to receive a list of the non-profit organizations whose financial support is being cut.

My second question — which will come as no surprise to Minister Fortier — concerns Montreal International, a tremendous success story in Greater Montreal that brings together the three levels of government and the private sector in an organization unique in Canada.

I would like to point out that in his answer in the other place, the minister in charge said that he was withdrawing his support because he had asked that organization to make public a list of all the organizations — I assume he meant "international organizations," because that is one of Montreal International's mandates — and his request had been refused because the list was confidential.

• (1355)

I would like to inform the Leader of the Government in the Senate that Montreal International's website mentions some 60 international organizations. Of course, these organizations did not all come to Montreal because of Montreal International, but the site does mention four international organizations that have set up office in Montreal this year because of Montreal International's promotional and economic development efforts.

If Minister Jean-Pierre Blackburn was thinking of corporations that have been attracted by the marketers — and without financial support, there will be no one marketing Montreal across the United States and Western Europe — can it be that he does not know the names of these companies when his own deputy minister sits on the board of directors of Montreal International?

I repeat that I would have preferred to put the question to Senator Fortier, who is very sympathetic to organizations such as Montreal International. I hope that with his help, this decision can be changed for some non-profit organizations in Montreal.

Nevertheless, I would like to ask the minister to draw Minister Blackburn's attention to the fact that saying he does not know what the organization does is no answer, when he has been funding it for 10 years and his deputy minister sits on the organization's board of directors.

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Senator Rivest's question of a few weeks ago was specifically with respect to Montreal International. I will let the minister know of the honourable senator's concerns. Since the honourable senator has asked for specific information, I will seek to respond to him by delayed answer.

TRANSPORT

HALIFAX PORT AUTHORITY— DREDGING OF HARBOUR

Hon. Terry M. Mercer: Honourable senators, it was learned today that the Halifax Port Authority will spend $1 million to dredge Halifax Harbour as a result of a security fence that was installed by the Canadian navy to protect its ships against possible terrorism attacks. This fence impedes the normal path of container ships through the harbour. Now those ships have been forced to change their path in the harbour to go through shallower waters.

My question to the Leader of the Government in the Senate is this: Why is the port authority paying for the dredging and not the Department of National Defence or the Department of Public Safety, when it seems that this problem was created by them?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): We are blamed for many things, but harbours requiring dredging — obviously there are security concerns here, as Senator Mercer mentioned. Other senators in this place urge us to pay more attention to the security of our various ports and points of entry.

With regard to how the costing will be borne by the various agencies, I do not have the exact figures in front of me but I will obtain them for the honourable senator.

Senator Mercer: As usual, the Leader of the Government in the Senate twisted what I said. I was not speaking against the security fence, I asked if an action by one government department causes the Port of Halifax to spend $1 million, then should that government department not be responsible for taking care of it?

THE CABINET

POLICIES REGARDING ATLANTIC PROVINCES

Hon. Terry M. Mercer: Honourable senators, I do not understand what this government is thinking at this point. One arm of the government is paying for another department's project. This past Monday, the government announced they were transferring a third Canadian Coast Guard vessel out of Nova Scotia, leaving the Canadian Coast Guard College in Sydney without a training ship. We have a wonderful school in Sydney, which has been there for years training members of the Canadian Coast Guard; indeed, children of senators from this chamber have been seamen in the Coast Guard. Now they will have to train these people with no ship to train on. They will probably fly them to Newfoundland or to Quebec.

Minister Hearn is quoted as saying that the move to the lower north shore of Quebec will enable the Canadian Coast Guard to continue to focus on services for mariners. This announcement is on the heels of last April's announcement that the two heavy icebreakers will be moved from Halifax to bases in Newfoundland and Labrador. That move worked well. Talk to the people on the ferry stuck outside of Sydney Harbour that was blocked with ice because there were no icebreakers. This is a good plan.

Again, I wonder about the government when it says it is making these changes for security and safety, because it appears that these changes, like moving icebreakers to Newfoundland or moving this other ship to Quebec, are either to save money or to play politics. They obviously do not think DND and Public Safety Canada should pay to dredge the harbour.

• (1400)

Does the government have any idea what it is doing? When will it stop ignoring the needs of Atlantic Canada, and Nova Scotia in particular?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I hate to tell Senator Mercer, but to paraphrase a very influential individual in this country, after a decade of darkness for our Canadian military, if we have difficulty manning the various posts and moving ships or helicopters around, it is because there are fewer ships, fewer helicopters and fewer aircraft. All of this is the result of the policies of the previous government, which we are about to deal with in the "Canada First" defence policy that was announced by the Prime Minister and Minister MacKay in Halifax on Monday.

There are obviously very good reasons. I really take issue with Senator Mercer's veiled inference that somehow or other we do these things for politics. That is the way the honourable senator used to do things. We are doing things because we are working with the various agencies for the safety and security of Canadians, and also to ensure that our Armed Forces are properly equipped and deployed in areas where they are most needed.

I saw the article this morning in regard to the Canadian Coast Guard College in Sydney, Nova Scotia. I am sure there is a logical and reasonable explanation, and I will be happy to find that for Senator Mercer.

FISHERIES AND OCEANS

CAPE BRETON COAST GUARD COLLEGE— TRANSFER OF TRAINING VESSEL

Hon. James S. Cowan: Honourable senators, along that line, could the minister obtain and table in the Senate details of the planning process that led to the decision to move the training vessel to Quebec? That would remove any suggestion and perhaps alleviate any suspicion that some of us might have that there were political considerations that formed part of the decision-making process.

The Leader of the Government in the Senate indicated she would obtain the reasoning for the decision. I look forward to receiving that, but perhaps she could give us an indication as to the planning process that led to the decision.

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, that is the type of question that leads one to wonder why we have difficulties in this country.

I have already said that I am sure there are good and valid reasons for the deployment of the various pieces of equipment, and I will be happy to provide them. I will not participate in any debate that pits one part of the country against another.

Senator Cowan: While the honourable senator is preparing her response, perhaps she might seek an explanation so that she could provide an answer to the Senate as to how the Canadian Coast Guard College in Cape Breton is to provide sea training to its students without any vessels.

Senator LeBreton: Honourable senators, as I said to Senator Mercer, if we had not gone through a decade of darkness, we might have had all the vessels we needed.

I am quite certain that there is a good and valid reason for this decision, and there will be proper training and equipment provided to the training facility in Sydney. As I said to Senator Mercer, I will obtain as much detail on this matter as possible.

Hon. Jane Cordy: Honourable senators, Senator LeBreton's comment brought to mind a statement by Senator Robert F. Kennedy: "Our task is not to fix blame for the past but to fix the course for the future."

The release that came from the Department of Fisheries and Oceans said that the training requirements for the Canadian Coast Guard College, which is in Cape Breton, would be met through existing small vessels. A department spokesperson acknowledged that there are no other vessels at the college. Perhaps the Leader of the Government in the Senate can tell us how the people who are attending the Canadian Coast Guard College in Cape Breton will receive hands-on training with no vessels.

• (1405)

Senator LeBreton: Honourable senators, I loved the quote. If the honourable senator had applied it to her government, we would not have the current situation.

Senator Cowan: I do not think the leader understood the quote.

Senator LeBreton: I definitely did understand it.

Senator Fox: Ask Senator Fortier to explain it.

Senator LeBreton: As I said to Senator Cowan and Senator Mercer, I am quite certain that a plan is in place to accommodate everyone. I will try my best to obtain as much information as possible on the matter.

FOREIGN AFFAIRS

INTERNATIONAL TREATY TO BAN USE, PRODUCTION AND TRADE OF CLUSTER MUNITIONS

Hon. Elizabeth Hubley: Honourable senators, just over 10 years ago, Canada showed international leadership in the creation and ratification of the Ottawa convention to ban anti-personnel mines. This country earned an enormous amount of respect and admiration for taking the lead in the elimination of a weapon of war that created civilian victims for decades after hostilities ended. The attention of the world has now turned to the elimination of cluster bombs, a weapon just as deadly and indiscriminate as land mines.

However, far from taking another leadership role, Canada has not even declared a national moratorium on the use, production and trade of cluster munitions. My question is for the Leader of the Government in the Senate. Has Canada completed the destruction of its stockpile of cluster munitions? Does this government intend to declare a moratorium on the use, production and trade of cluster munitions?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for the question. As honourable senators know, Canada has been part of the Oslo Process. The matter of cluster munitions is currently receiving the attention of the government, and I will be happy to provide the honourable senator with information as soon as I have it.

Senator Hubley: Honourable senators, the Oslo Process is currently underway with the intention of finalizing an international treaty to ban cluster munitions. Next week, final negotiations will be held in Dublin, Ireland, with the signing scheduled for October 2008 in Oslo, Norway. Will Canada participate in the negotiations in Dublin? Does Canada intend to sign and ratify this treaty?

Senator LeBreton: Honourable senators, as I said in my first answer, this issue is before the government. Any announcement or plan that the government has will be forthcoming when the discussions have been completed.

HUMAN RESOURCES AND SOCIAL DEVELOPMENT

EARLY EDUCATION AND CHILD CARE PROGRAMS

Hon. Jane Cordy: Honourable senators, my question is directed to the Leader of the Government in the Senate. According to the report of the Child Care Resource and Research Unit released on April 10, 2008, the state of early education and child care in Canada has deteriorated considerably since Mr. Harper became Prime Minister. Between 2001 and 2004, new child care spaces created totalled over 152,493 — an average of over 50,000 new child care spaces per year. This government took over and promptly cancelled the Liberal's national child care plan and replaced it with their corporate tax incentive plan — which the government, I understand, has since admitted was a failure and cancelled — and the $100-per-month-before-tax family baby bonus. The growth of new child care spaces in Canada has dropped to just over 26,000 new spaces last year.

When will this government stop ignoring the concerns of Canadian families and make a serious effort to support these families with their early education and child-care needs?

• (1410)

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, as a government, we believe we have made significant efforts to support child care and early learning. As stated in Budget 2007,

we transferred $250 million per year to the provinces and territories to support their priorities in child care spaces, including the creation of new spaces. This spending was on top of the $850 million that they received through the Canada Social Transfer. I believe the federal, provincial and territorial governments have recently committed to creating 60,000 new child care spaces as a result of this initiative.

The honourable senator makes light of the payment to parents of $100 per child. This program has been extremely well received and is popular across the country. Child care varies from province to province and from urban to rural areas. It is only one of many options available to parents. We have spent considerable sums transferring monies to the provinces and territories for the specific purpose of child care.

I know that many families appreciate the government's payment because I hear from them when I travel around the country, especially young mothers who have chosen to stay at home. Young mothers who have chosen to enter the paid workforce also see the payment as some assistance. Granted, it does not cover the total cost of child care, but it helps.

We believe we are contributing greatly to providing child care spaces for our young children and their families through the money we transfer to the provinces and territories.

Senator Cordy: On a supplementary question, families are concerned about child care spaces. The $100 per month does not create spaces. It works out to approximately $3 per day, and the leader of the government said it, it does not pay for child care.

I asked a question over a year ago on May 9, 2007. The leader said today that the government has made significant efforts. I asked over one year ago how many child care spaces this government has created. I still have not received an answer.

In January 2008, I was told by the deputy leader that because Parliament was prorogued, I needed to re-ask the question. That same month, I submitted written questions on the number of child care spaces created and I still have not received an answer.

I was in the Atlantic region on Monday and Tuesday with the Special Senate Committee on Aging so I checked delayed answers. I thought perhaps the answer would have been given. There was a delayed answer from May and one from March, but I still have not received the answers to my questions asked over a year ago.

The leader may hear that people are enjoying the $100 per month and no doubt they are. However, the families I speak to are concerned about the lack of child care spaces.

I heard from someone who turned down a promotion that required moving to Toronto because there was a six-month wait for child care spaces. This person did not have family or anyone who could fill in for the six-month period.

This government talks about choices in child care. I say to the Leader of the Government in the Senate that "no spaces is no choices."

When will this government offer families a real choice for quality child care and early learning programs?

Senator LeBreton: The honourable senator keeps referring to the previous government and I remember the then Minister Ken Dryden running around the country. Not one single child care space was created by that program. It was all talk. As one of the honourable senator's former colleagues, Tom Axworthy, said, it was a last-ditch effort to save a dying government.

• (1415)

The provinces create the child care spaces because of the federal transfers to the provinces and territories. As I mentioned, Minister Solberg and the provinces and territories have announced their intention to create over 60,000 new child care spaces. In terms of the actual child care spaces, I imagine it is taking some time to compile this information because they have to get that information from the provinces.

In view of Senator Cordy's pleading question about wanting answers to her questions, I will ask the officials at Human Resources and Social Development Canada to do everything possible to expedite an answer.

Hon. Terry M. Mercer: I rise on a supplementary question. Senator LeBreton talks more and more about the $100 a month that families receive. She will have a difficult time answering those of us who sit on the Standing Senate Committee on Agriculture and Forestry, who travelled around the country during our study on rural poverty. In every location that I attended, I asked the same question of people and witnesses. I asked people what effect the $100 per month had on child care in his or her community. Honourable senators, with only one exception, the answer was that the $100 per month had no positive effect. In fact, one young woman in Charlottetown who told us that the one effect that the $100 a month had was that her child care fees went up by $100 a month.

This is not working. We are trying to help people who need help. Let us be realistic. The program is not working. Let us try to find a program that does work and let us get on with the job.

Senator LeBreton: Honourable senators, I cannot comment on what someone might have said to the committee studying rural poverty. I have a background in rural Canada myself, and rural Canada has not changed very much. There is diversity in the country and rural Canada's child care needs are often different from those in urban Canada or in our major cities.

The $100 per month payment to children under age six was never described as a benefit to pay for child care spaces. It was to give families more choice. I have encountered, especially in some of our ethnocultural communities, grandparents who provide child care to their grandchildren while their children are employed in the paid workforce. This is a huge benefit to the grandparents who gladly provide the care for the grandchildren without remuneration. The $100 per child benefit for child care is helpful to the grandparents who receive it from their children.

I know of grandparents who care for their grandchildren without payment, and this $100 for each child has allowed the grandparents to receive a little bit for their efforts.

Senator Mercer: Can you believe that?

Senator Tkachuk: It is obvious the $1,200 is not important to someone like you, but it is important for many people.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, have the honour to table a delayed answer to an oral question raised by Senator Spivak on April 9, 2008, concerning Gatineau Park, private housing development.

NATIONAL CAPITAL COMMISSION

GATINEAU PARK— PRIVATE HOUSING DEVELOPMENT

(Response to question raised by Hon. Mira Spivak on April 9, 2008)

> The Minister of Transport, Infrastructure and Communities, who is responsible for the National Capital Commission, has indicated that the government would not intervene because the proposed development is on a private property.
>
> The suggestion by the Minister that the local or regional municipalities could impose a development freeze in the park is because the matter of property and civil rights within a province are matters within provincial rather than federal jurisdiction.

• (1420)

[*English*]

USHER OF THE BLACK ROD

APPOINTMENT OF MR. KEVIN MACLEOD

The Hon. the Speaker: Before proceeding to Orders of the Day, honourable senators, it is my high honour to advise the Senate that I have received a certified copy of Order-in-Council P.C. 2008-602, dated March 26, 2008, attesting that Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, has appointed Kevin MacLeod, Esquire, of Ottawa, Ontario to be Usher of the Black Rod, effective May 26, 2008.

POINT OF ORDER

Hon. Yoine Goldstein: Honourable senators, I have a point of order. During the course of Question Period, his honour ruled the question that I put out of order. Because of the respect that I have for the position of Speaker and specifically because of the respect I have for the person who currently occupies the position, I sat down, which was an appropriate thing to do, and tried to pose a somewhat different question.

However, the matter may come up again, and my point of order deals with what the rules say in this connection. Rule 22(4) of the *Rules of the Senate of Canada* reads:

> When "Senators' Statements" has been called, senators may, without notice, raise matters they consider need to be brought to the urgent attention of the Senate. In particular, Senators' statements should relate to matters which are of public consequence and for which the rules and practices of the Senate provide no immediate means of bringing the matters to the attention of the Senate.

I respectfully submit that rule permitted me to ask my question. Lest there be any doubt in this respect, I respectfully refer to the provisions of rule 23(1), which reads:

> During the time provided for the consideration of the daily Routine of Business and the daily Question Period, it shall not be in order to raise any question of privilege or point of order.

With great respect, that provision applies to all senators, including the Speaker. That having been said, and as the matter is now disposed of in terms of today's Question Period, I request a ruling in this connection so that in the future, senators may be guided properly as to the proper subject matter of questions.

The Hon. the Speaker: I thank the honourable senator for raising this point of order, as well as for the manner in which he has raised it.

This was indeed the first time the Speaker ever intervened, to my recollection, during Question Period; however, because of recent rulings around the Question Period process, the chair has become quite familiar with the procedural jurisprudence and literature. The intervention was made today because it was clear to the Speaker that his duty, pursuant to rule 18, required the Speaker to preserve order and decorum. The chair heard the question about committee business addressed to the Leader of the Government, which is not within her purview. It was specific to a committee as the chair heard the question, and that is why the chair intervened to say that the question should have been asked of the chair of the committee.

I would hasten to add, honourable senators, that the *conditio sine qua non* of honourable senators being able to ask committee chairs questions is the presence of the committee chair in the chamber during Question Period, as obviously the import of the presence of the Leader of the Government or a minister who is also a senator during Question Period.

On the point of order, the ruling is there was no breach of the rule during Question Period, and the explication is the Speaker was relying on the authority and the duty imposed by rule 18.

Senator Goldstein: With great respect, the Speaker ruled on the point of order and I therefore have nothing further to say in that connection and will of course abide by the ruling. However, with respect, I must draw to your attention rule 18 that reads:

> The Speaker shall preserve order and decorum in the Senate. In doing so the Speaker may act without a want . . .

The Hon. the Speaker: Order. Honourable senators, the ruling was made by the Speaker, and either it is accepted or not accepted and sustained by the house. We can all have time to reflect upon

the substance of it. I know Honourable Senator Goldstein has raised it because he, as all honourable senators, is interested in the good governance and functioning of the chamber.

ORDERS OF THE DAY

JUDGES ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Di Nino, seconded by the Honourable Senator Andreychuk, for the second reading of Bill C-31, An Act to amend the Judges Act.

Hon. Gerry St. Germain: Honourable senators, I rise to speak on Bill C-31, which was tabled in this place on April 15. This bill will enable the appointment of 20 new judges for provincial and territorial superior trial courts.

Hon. Gerald J. Comeau (Deputy Leader of the Government): I will ask my colleague if he might possibly delay his comments on Bill C-31 because I understand that Senator Joyal wants to speak at this time. I apologize to Senator St. Germain. This item came up only a few minutes ago.

Senator St. Germain: I am pleased to yield the floor.

Hon. Serge Joyal: By yielding to me, Senator St. Germain almost put me in a conflict of interest situation.

Honourable senators, I want to use this opportunity, on the introduction of Bill C-31, to share with you a serious concern. Bill C-31 seems to be a simple bill. If honourable senators have it on their desks, it is a single-page, three-line bill. As Senator St. Germain started to say, it essentially adds 20 judges to the pool of the current 30 judges provided for in the Judges Act. There is always a pool of judges that can be called upon for specific duties, and that pool presently in the Judges Act contains 30 judges. This bill would bring that number to 50. The bill reads:

> (*b*) fifty, in the case of judges appointed to superior courts in the provinces other than appeal courts.

This text is the bill. I want to commend Senator Di Nino for his speech that covered many aspects of this bill. When Senator Di Nino introduced this bill on April 17, almost one month ago, he mentioned the following:

> There is no doubt, honourable senators, that our country boasts one of the best justice systems in the world. Our courts are respected around the globe for their impartiality, independence and highly qualified judiciary.

Those were the exact words of Senator Di Nino.

Senator Di Nino covered an important group of principles when he made that statement.

• (1430)

Senator Di Nino made very specific reference to a Supreme Court of Canada case, referred to as the *Ref. re Remuneration of Judges of Provincial Court of PEI*, the P.E.I. reference case of 1997. Many honourable senators know of that case. It is the case that more or less called upon Parliament to change the remuneration system of judges to maintain their independence. This Supreme Court decision is a landmark decision. The court stated very clearly that judicial independence is an unwritten norm recognized and affirmed by the preamble of the Constitution Act, 1867.

In particular, its reference in its preamble is to a constitution similar in principle to that of the United Kingdom, which is the true source of our commitment to this foundational principle. In other words, judicial independence is a constitutional principle. On this constitutional principle, the court went on to say that judicial independence has now grown into a principle that extends to all courts, not just the superior courts of this country.

All the court systems of Canada are protected by the principle of judicial independence. The independence protected by section 11(d) of the Charter is the independence of the judiciary from other branches of government and bodies which can exercise pressure on the judiciary through power conferred on them by the state. It protects the court from pressure from other branches of government, the legislature and the executive government. Judicial independence has also two dimensions: the individual independence of a judge and the institutional or collective independence of the court of which that judge is a member. In other words, a judge is covered by that principle, and the institution of the court, as such, is protected.

We all know, honourable senators, that in section 11(*d*) of the Charter, and I quote:

> Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

This is a fundamental principle. We know that this principle had already been entrenched earlier on in the Constitution, 1867, by section 99(1), which provides that:

> . . . the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

We are involved in the removal of a judge. Of course, tenure is up to 75 years to maintain the independence principle.

Those are the principles covered in the Constitution, the Charter of Rights and Freedoms and in the way they have been interpreted by the court.

Honourable senators will ask why I am lecturing today on the principle of judicial independence. I draw your attention to this point because in the House of Commons earlier on this year, there

were statements made that question the principle of judicial independence. I will quote those statements, because I prefer to use the exact words used at that time.

It might sound funny, honourable senators, but I do not write out my speeches. I try to collect the materials and make a reasoned argument to share with you. Sometimes it is not easy, so I ask for leniency, senators.

The statements made in the House of Commons by the Prime Minister on February 14, 2007, are the following:

> Mr. Speaker, what is clear is that the honourable member certainly has a plan to audition for a new role.
>
> The former minister of justice announced important changes last year which would ensure that when we select judges the police have input into the selection of judges in this country.
>
> We want to make sure that we are bringing forward laws to make sure we crack down on crime and make our streets and communities safer.
>
> We want to make sure that our selection of judges is in correspondence with those objectives.

This was the Prime Minister of Canada, honourable senators. It is a very serious statement. That statement was restated by the Minister of Justice on another occasion, with the words "to be tough on crime."

Honourable senators, I am not questioning the agenda of the government to be tough on crime by introducing legislation to amend the Criminal Code. As a matter of fact, we have debated Bill C-2 recently, which contained five groups of amendments to the Criminal Code. That is not the question.

The question here is that we have the statement by the Prime Minister of Canada that he wants to select judges who will be tough on crime.

That might seem for some —

Senator LeBreton: There is a process in the provinces. That is nonsense, and you know it.

The Hon. the Speaker: Order.

Senator LeBreton: Do not put misstatements on the record.

Senator Joyal: I am not making misstatements, honourable senators; I quoted, verbatim, the words of the Prime Minister.

As the honourable senator has opened the door, the government announced three major changes to the appointment process for judges. That appointment process, honourable senators, was introduced by former Justice Minister Ramon Hnatyshyn — I have it here — *A New Judicial Appointments Process*, published in 1988 by the Department of Justice Canada.

Any one of you can look into the process that was made at that time under the chairmanship of former Prime Minister Brian Mulroney. It was a new approach and commended generally by all those who were concerned with the impartiality and independence of judges.

In 1991, the same government made changes to the process. How? They improved it. They requested that the selection committee classify the candidates from highly recommended, recommended, to not recommended. When you have a pool of candidates, of course, you want to pick the best from those who are highly recommended, recommended or not recommended.

Those changes were brought forward in 1991, and in 2005 the then government introduced a code of ethics for the members of the selection committee. What I want to outline, honourable senators, is that the process was evolving and improving along the way.

As the Honourable Leader of the Government in the Senate mentioned, there were changes made to the selection process announced by the Prime Minister before he made that statement in the chamber. Those changes are the ones to which I wish to draw your attention. What were those changes?

First, those changes were not the result of consultations. They were not the result of input from the judiciary committee. They were not changes brought about by the recommendation put forward by the selection committee, which has been in existence since 1989. They were not changes brought forward or recommended by the Canadian Bar Association. They were not changes brought forward or proposed by academia — those who study our judicial system in universities and come forward regularly with suggestions to improve the judicial system of Canada. Honourable senators, the changes were the result of a political decision made by the government.

• (1440)

I draw your attention to that point, honourable senators, because it is an important factor. They were political changes under the initiative of the government. What were those changes?

There were four major changes. The first was to change the classification system of "highly recommended," "recommended" or "not recommended" introduced in 1991, to "recommended" or "not recommended." That change is an important one. In other words, they fish in the pond and chances are that they may have a person who is highly recommended, but they may also have someone who is recommended.

The system does not assure that the candidate selected is the best candidate of the pool.

The second change was that the judge who was a member of the selection committee lost their vote. In other words, honourable senators, we are selecting judges; we are not selecting anyone but the person whose main task will be to interpret the law. The second change brought into the system is that the judge will be there still — the judge is the most learned member of the committee on the operation of a court, and we want to choose the best candidate to be a judge. However, we remove the vote of that person on the selection committee.

The third change was to add to the selection committee a representative of the law-enforcement community. To bring the police into the selection of judges is new ground.

The fourth change that was not announced, per se, but that was acted upon by the government is the following: When the then Minister of Justice, Allan Rock, appointed judges, he made the commitment that he would only appoint judges recommended by the committee. The government has decided it will no longer be bound by the committee recommendation; they can appoint someone from outside the recommendation system I have described. This decision is based, essentially, on section 3 of the Judges Act, which lays out the conditions for someone to be appointed — I quote from memory — a good-standing member of the bar for 10 years. Senator Oliver knows that section well.

We are now going outside the pool. There has already been a precedent where a lawyer who did not go through the process was appointed.

Former Minister Rock pledged not to appoint a judge from outside the pool during his tenure. Honourable senators will ask, What are those changes brought into the impartiality of the system and the independence of the judges by the Prime Minister "to make sure we crack down on crime and make our streets and communities safer"?

What are those objectives: "To make sure we crack down on crime and make our streets and communities safer"?

In other words, members of the selection committee now must bear in mind that the objective of the government is to have judges who will be tough on crime. What will the committee's role be, in practical terms? The committee will have the responsibility to vet the ideology of the candidate in relation to criminal law.

The perception is created that the government has this impact in mind. If the Prime Minister announces that he will appoint judges who will be tough on crime, what is he doing? He is giving judges the terms of reference for how they should adjudicate a case.

Among the 1,066 judges, honourable senators, who are part of the judiciary that fall under the responsibility of the federal government, only 2 per cent of the cases those judges will deal with are criminal cases. That is useful information in this context. I checked in the province of Quebec last year, and of all the cases heard by the Superior Court of Quebec, only 45 cases in the whole year were criminal cases. Why? Most of the cases are dealt with at the provincial court level.

In other words, we are changing the system for 2 per cent of cases. We must ask: What is the benefit of all those changes?

What were the comments or reactions to those changes of all those people who are neutral observers — I am not one, honourable senators — or analysts of our judicial operation in Canada?

Let me quote Professor Peter Russell, professor emeritus of political science at the University of Toronto. He is the co-editor of the most up-to-date book on appointing judges in Canada. The book is called *Appointing Judges in an Age of Judicial Power*. What does he state about those changes? I quote from page 6 of his testimony on Tuesday, March 20, 2007 in the other place:

> . . . the reforms recently introduced by the federal government have weakened an already faulty federal system. The worst thing they have done is remove the advisory committee's function of identifying who are the best candidates, who are the highly qualified.

He goes on:

> . . . the Conservative government reforms have weakened the capacity of the committees to assess qualifications by taking voting power on the committees away from one judicial member, the judge.

He goes on:

> . . . in . . . transforming the committees into ideological certifying bodies rather than bodies responsible for identifying the most qualified candidates for the judiciary. . . .

The system has been weakened. He continues on in his testimony. I would like honourable senators to read it.

When I mention that there is concern among the academic community, there is also concern from the Canadian bar. The former president of the Canadian Bar Association, J. Parker McCarthy, testifying on the same issue, concluded his remarks with the following:

> In conclusion, the recent changes to the appointment process mostly do not serve Canada well. We urge this committee to recommend that the changes to the appointment process listed, in the letter we have sent to the committee and distributed to you, be reversed.

I know time is short, but I could quote Professor Sebastien Grammond from the University of Ottawa. I could also quote Professor Ziegler, professor emeritus of law at the University of Toronto, who testified the day before with exactly the same conclusions. I could also quote the former Chief Justice of Canada, Antonio Lamer, who testified on Wednesday, April 18, 2007. In his testimony he stated:

> . . . but the perception that there can be a bias is not minimal.

• (1450)

What is the bias? The bias is that we are establishing a system that does not appear to protect the impartiality and the independence of the court. Honourable senators, this is a very serious comment, because there are at least two instances where the selection process that has been implemented is the model that the Parliament of Canada should follow. Those changes should be brought into the judicial system of Canada.

The first example of those changes is the one that the Province of Ontario has brought forward. I will use the text from the Ontario Court of Justice Act in this example. Those changes were brought forward in 1994 in the appointment process of the Province of Ontario. Section 43 of that act states:

> 43.(1) A committee known as the Judicial Appointments Advisory Committee in English and as Comité consultatif sur les nominations à la magistrature in French is established. . . .

Further, in section 43.(3), it speaks to the composition of the committee:

> . . . the composition of the Committee as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

Turning to terms of office:

> 43.(4) The members of the committee hold office for three-year terms and may be reappointed.

The chair of the committee has a term of three years, and the Attorney General shall recommend, to the Lieutenant Governor and council, an appointment to fill a judicial vacancy.

Honourable senators, the key sentence in that section states:

> . . . only a candidate who has been recommended for that vacancy by that Committee under this section.

There is an overall list of conditions about how that committee should function. They issue a yearly report of what they have been doing; I have it here. In other words, there is, in two places in Ontario, a system that is a model system. There is another country from which we derive our constitutional principles which has also established such a system: namely, the Parliament of Westminster, in an act of Parliament called the Constitutional Reform Act, 2005. That act came into effect three years ago.

Part 3 of that act — 23 and following — provides for the appointment of judges. Some honourable senators will be interested in that. For the first time it states that a recommendation may be made only by the Prime Minister to Her Majesty, in consultation. Those honourable senators who know British law will be aware that it is rare for the position of Prime Minister to be mentioned in an act of Parliament.

For the specific issue of judicial appointment, the Parliament at Westminster, in 2005, put in place an overall system of appointment whereby they recommend only the number of candidates to fill the positions available. If the Lord Chancellor refuses the candidate, he must put in writing why he does so. In other words, the merit-vetting procedure is foolproof at Westminster.

Honourable senators, as Senator Di Nino has said, the judicial system of Canada enjoys a tremendous reputation around the world and tremendous respect by Canadians. As a matter of fact, if one questions Canadians about which position in our society is most respected by Canadians, judges are always at the top. In other words, Canadians trust the system as being both independent and impartial. This is a foundational principle of our democracy.

Honourable senators, when we are called to add to the number of judges, although I understand there is a pressing necessity — that is probably what our friend Senator St. Germain will call upon — I can inform the Honourable Senator St. Germain that, as of January 2008, there were 31 vacancies still to be filled. We will have 24 more now. Those vacancies exist already. I understand that this bill is urgent. I do not want to delay it. However, there is no doubt that, if we are called to add to the number of judges, there is a fair concern, honourable senators, that we question ourselves about how they will be appointed and whether or not they are serving the principles of independence and impartiality so rooted in our Charter and Constitution and are the safeguards of a democratic system such as the government in Canada.

Hon. Terry M. Mercer: Would the honourable senator permit a question?

Senator Joyal: If there is time available to do so.

Senator Mercer: I am curious. Senator Joyal is much more learned than I in this area. He said there were 1,066 federal judges. We talked about their impartiality and independence. Maybe he could give us a history lesson. Over the years, how many judges have been found to be in breach of the impartiality or independence aspects of their jobs? Have there been many?

Senator Joyal: As honourable senators know, there is a structure in the judiciary of Canada called the Council of Judges. That body has the responsibility to maintain the professional quality and the disciplinary responsibility that judges have in assuming their responsibilities. If a complaint is to be made against a judge on the grounds of impartiality, that would be the way to address the complaint.

If the council of the magistrates recommends at one point that a judge be removed from his or her position, then section 99 of the Constitution is triggered. The example I have in mind, if my memory serves me well, is that most of the time it does not reach the floor of this chamber or the other place when a judge is informed about the disciplinary conclusion of a complaint by a panel of judges who would hear the complaint and receive the reply of the judge who is the object of that complaint. Most of the time the judge will act in an honourable way — namely, by resigning — before a formal recommendation is made.

Senator Mercer: Is the honourable senator suggesting that the system that has evolved over the years has worked and served Canadians quite well?

Senator Joyal: Senator Mercer raises an appropriate point. We have not done it in this place, but in the other place, about two and a half years ago, a subcommittee of their Legal and Human Rights Committee studied the improvement of the appointment process. They came forward with a report that was almost to the point of being adopted. However, there was a dissolution of Parliament and the report was left on the table. On our side, we have not looked into the issue of how the system should be improved. Incidentally, honourable senators, the first

Minister of Justice of the new government, former Minister Toews, concurred in all those recommendations to strengthen the appointment process that we have had in Canada.

There is a concern among parliamentarians generally that we should review our system. Since there are statutory models now in Ontario and at Westminster, there is no doubt that we could look to those models and determine best approch for Canada to adopt in order to improve the process and ensure that those principles of impartiality and independence are maintained.

Honourable senators will understand that it is as important to be sure that a judge who presides over a case is impartial and independent as it is to choose a judge who will not fall under the dictate of a political power somewhere, such as that he must be tough on crime.

Justice must be applied the way it was written in the Criminal Code and not under considerations that are not part of one's rights as a citizen to be judged, as the Charter says, with an impartial and independent judge. This is a Charter right, not just an objective of general policy. This is a fundamental right of Canadians. We are dealing with something very serious here. As we are concerned in this chamber with respecting the Charter of Rights and Freedoms and upholding the values within it, this is a fundamental value that we must uphold, honourable senators.

• (1500)

Hon. George Baker: A fascinating speech has been given by the honourable senator. I ask Senator Joyal one simple question that comes to mind. If one were to select prospective judges who are tough on crime, then how could a defence lawyer ever be considered? In the criminal law, two people are in a courtroom with the judge in a trial by judge alone; a Crown attorney and a defence lawyer. The Crown attorney has a great history of being tough on crime because that is the job of the Crown attorney, but the job of the defence is to defend, even if the client is the defence lawyer's worst criminal. That is that person's job. Does the honourable senator agree that perhaps we would not have had such judges as Justice Lamer and the other great judges we have seen over the years if the principle were that a judge be selected from a group of people who are tough on crime?

Senator Joyal: That is the overall perception that is created by the statement that judges must be tough on crime. The impression we create, like it or not, is that someone controls the judges and can give them orders. We know that is not the way the process operates.

I sat in the other chamber in the 1970s when there was the so-called "judges' affair." I do not know if anyone else here remembers that. It involved three ministers of the Crown. I do not want to name any of them, because one of them is still functioning in a high position, and I respect that too much to mention his name. Three ministers of the Crown were alleged to have phoned a judge to try to bring a point of view in a case. Senator Mahovlich said "persuade"; I tried to put it in softer terms. I will say they phoned to provide additional information. Of course, those calls created a big fuss in the media. Can I use the word "fuss"? Is that parliamentary? There were daily questions for almost a month, and calls for the resignation of those three ministers.

The honourable senator's question could lead to the impression that the system has been rearranged so that now the judges have a political mandate. Therefore, the presumption of not guilty — or if found guilty, the capacity of rehabilitation, which has an impact on the sentencing under the principles in the Criminal Code — will be tempered in some way because the judge must appear tough on crime. I would add something to that impression. What if the judge wants a promotion? If a judge is in the Superior Court, the law of nature says that judge expects perhaps one day to move to the top, and the top is the Supreme Court of Canada. In other words, it could be seen as influencing the way that a judge assumes responsibilities in adjudicating either on guilt or on the sentence.

Honourable senators will understand that these changes are fundamental. They touch also on the capacity to be a candidate and to file the form. I have a copy of that form here. The form talks about languages, among other things. Some of you might want to look at the answers they must give when filing the form. I know there is a whole debate about the bilingual status of the next appointee to the Supreme Court of Canada. It touches on many other elements in the appraisal of the best candidate. In other words, it refers as much to the candidate as it refers to the judges.

Therefore, it is fundamental that when we deal with changes that impact on the principles of impartiality and independence of the judiciary, we do so with the conviction that we want to respect the characteristics that have made the judiciary in Canada so respectful of the principle of democracy and so respected by a large majority of Canadians in every province. I think that honourable senators will want to look into that principle when considering this bill.

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

Some Hon. Senators: Question!

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time?

On motion of Senator Di Nino, bill referred to Standing Senate Committee on Legal and Constitutional Affairs.

BUDGET 2008

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Comeau, calling the attention of the Senate to the budget entitled, Responsible Leadership, tabled in the House of Commons on February 26, 2008, by the Minister of Finance, the Honourable James M. Flaherty, P.C., M.P., and in the Senate on February 27, 2008.

Hon. Lowell Murray: Honourable senators, let me thank the Deputy Leader of the Government for placing this notice of inquiry regarding the 2008 budget on the Order Paper. This inquiry provides an opportunity for honourable senators to weigh in on matters of concern to them. Since the inquiry relates to the budget, it also provides the latitude for honourable senators to intervene on a wide range of public policy.

As it happens, the two subjects that I wish to touch on this afternoon are related to financial matters. I will tell you what the two are so that those who are not interested may vacate the premises. First, I intend to refer to precedents and authorities on the question of whether tax bills are confidence measures, and second, I want to refer to several issues of federal-provincial fiscal relations, in particular as they concern the Province of Ontario.

I take issue, as several honourable senators have already done publicly —

Senator Banks: Your Honour, several conversations are happening around me, and I cannot hear Senator Murray.

[*Translation*]

Hon. Fernand Robichaud (The Hon. the Acting Speaker): Honourable senators, if you wish to carry on discussions, I would ask that you do so outside so that we can all hear Senator Murray's wise words.

[*English*]

Senator Murray: I am grateful and flattered for the intervention of Senator Banks and for your own reminder, Your Honour.

I take issue, as several honourable senators have already done publicly, with the statement of Finance Minister Flaherty that Bill C-10 should not be amended because, "A tax bill is a confidence bill. We all know that."

I do not intend to discuss the substance of Bill C-10. If I ever do, I would do so after it returns, as I presume it will, from the Standing Senate Committee on Banking, Trade and Commerce where it is now being studied. I would say that Minister Flaherty's statement to the effect that a tax bill is a confidence bill is wrong. Parliamentary history in Canada and Britain contradict his statement.

• (1510)

Obviously, the government is free to declare any matter one of confidence, but confidence does not automatically attach to any measure unless it is explicitly stated that that is the case.

For the record, I want to refer and draw the attention of honourable senators to, though not to quote at any length, the most authoritative writings on this subject by Dr. Eugene Forsey, who wrote abundantly on this and related parliamentary subjects long before and considerably after his relatively brief tenure as a member of the Senate.

His article, "Government Defeats in the Canadian House of Commons, 1867-73," first appeared in the *Canadian Journal of Economics and Political Science* in August 1963 and is to be found in *Freedom and Order: Collected Essays* by Dr. Forsey, published in the Carleton Library series in 1974.

I will not take honourable senators through all the precedents he cites, but I will read one paragraph in which he says:

> To sum up, Sir John A. Macdonald's Government, in the first four sessions of the Dominion Parliament, was defeated five times on Government bills, twice on Government resolutions preparatory to bills, and twice on resolutions from Supply.

Dr. Forsey goes on to say that:

> . . . only three of the motions on which the Government was defeated were moved by an Opposition member. . . .

The others were moved by members of the House of Commons who were normally supporters of the Macdonald government. Prime Minister Sir John A. Macdonald always referred to those people as "loose fish, shaky fellows."

Dr. Forsey goes on to say that there are very few loose fish left, but in minority situations in the House of Commons, what we have are loose shoals of fish, parties that cannot be depended on by any government.

His comment on that, and I will put that between quotation marks as well, is:

> This could force a minority Government to hark back to Macdonald's commonsense position of simply accepting defeats on any question except censure or want of confidence or some measure which he considered vital to his policy.

Somewhat more recently, Dr. Forsey, by then retired from the Senate, was commissioned by a House of Commons committee — the famous McGrath Committee — the committee on House of Commons procedure, appointed in 1985 under the chairmanship of the Honourable James A. McGrath. The document is entitled *The Question of Confidence in Responsible Government*, and it is available to honourable senators at the Library of Parliament.

What Dr. Forsey says that is relevant to our consideration today is found from page 144 to 147. At page 144:

> A Government defeated on any motion, even a motion to adjourn, can choose to take that defeat as decisive; that is, as a vote of want of confidence, entailing either the resignation of the Government (making way for a new government in the existing Parliament), or a request to the Governor General for a dissolution of Parliament by the existing Government.

On page 146 he says something directly relevant to our consideration:

> A "money measure", whether a taxation measure or an estimate, and whether or not it is part of the contents of a Budget, is not necessarily a matter of confidence, and defeat on it does not necessarily entail either resignation or request for a dissolution. The Government may treat such a defeat as a matter of confidence, and resign or ask for a dissolution, but it is not obliged to do so.

Before that passage — and this may amuse some honourable senators — he refers to precedents, some of which some people here are old enough to remember, including the defeat of the Pearson government in February 1968 on the third reading of an income tax amendment bill. Then he comes to a more recent example, in which he says:

> On December 20, 1983, clause 6 of the Income Tax Act amendment bill was defeated 67 to 28 in Committee of the Whole. Although there were howls from Messrs. Neilsen and Mulroney for its resignation or dissolution, the government. . .

That would be the Trudeau government.

> . . . carried on but without clause 6. In other words, they accepted the defeat.

The only thing I have to add to that, honourable senators, is that if the government wishes to take one amendment to Bill C-10 — one possible amendment, perhaps, to one clause in a 281-clause bill of over 500 pages — I suppose that is their right and they would then defend the resulting dissolution and election, if that is what happens.

However, I think it almost goes without saying that confidence would not arise from the Senate amending the bill. This is not a confidence chamber. Confidence would arise if the government chose to treat the subsequent Commons vote as a matter of confidence.

I will leave that there, and honourable senators who feel they need or are interested in more information can consult the documents to which I have referred.

The second matter I want to deal with briefly has to do with federal-provincial fiscal relations as they affect Ontario. I took the occasion of Senators' Statements last week to make some comments about the possibility that Ontario may, within a couple of years, be eligible for equalization. I expressed the hope that none of us should be spooked, as some people seem to be, by that possibility. There have been eight provinces receiving equalization, and it is down to six. It may be five and it may be more as the relative fiscal capacity of provinces rises above or falls below the national average. That is the way it is supposed to work.

In the discussion in the media and elsewhere, some commentators continue to refer to the equalization program as if it were a transfer from the non-recipient provinces to the recipient provinces.

Honourable senators, it cannot be emphasized often or strongly enough that equalization is a federal program financed by the tax revenues raised in all provinces from all taxpayers and not just in the richer provinces. This is something that Premier McGuinty, among others, does not seem to understand, if one was to judge by his public statements.

I must say that the Minister of Finance, Mr. Flaherty, when he spoke Monday at the Economic Club of Toronto, made this very point:

> Equalization is not some sort of initiative where one province sends money to another province. It is a federal program which is paid for with taxes paid by all of you and me to the Government of Canada. It is constitutionally mandated in our Constitution, our obligation to make sure that there are reasonably comparable services, social services and so on, across the country.

This issue should not be confused, as it has been in the media and elsewhere, with the so-called gap that exists between Ontario and the federal government. This talk of a gap has been ongoing for some years at the instance of Premier McGuinty and his colleagues.

This so-called gap is, I think, $21 billion: the difference between the revenues that come from taxpayers in Ontario and the expenditures that the federal government makes to the Province of Ontario. The gap exists, but as Mr. Flaherty said in his speech, that gap is "a reflection of Ontario's prosperity." That is the so-called gap. Indeed, before Mr. Flaherty and his colleagues took office, the Department of Finance, in early January 2006, based on figures from between 2003 and 2005, put out a chart showing that the so-called Ontario gap is essentially a reflection of Ontario's prosperity.

• (1520)

They have not brought these numbers up to date, at least not publicly. However, I have spoken to some people who follow these matters closely, and I will give you an educated guess as to what the components of this so-called gap are. We are talking about $21 billion. I am told that fully 30 per cent of that amount is accounted for by the fact that Ontarians have higher personal and corporate incomes on average and, therefore, pay higher personal and corporate tax revenues into the federal treasury.

Another 16 per cent is accounted for by the fact that less is going into Ontario by way of income-sensitive transfers such as the OAS/GIS, which is based on income; the Canada Child Tax Benefit; the GST credit; Employment Insurance, which I will come back to; and grants to Aboriginals. These transfers to people are greater in the cases of provinces where the incomes are lower. A good 16 per cent is accounted for by below-average income-sensitive transfers to persons.

Another 16 per cent is accounted for by the fact that Ontario, as we speak, is not receiving equalization. Some 20 per cent is accounted for by Ontario's per capita share of federal debt repayment. Another 9 per cent is accounted for by below-average other spending, including immigration transfers and labour market development agreements. It is said that in 2004-05, some 2 per cent was accounted for by below-average Canada Health Transfer and Canada Social Transfer cash.

The Government of Ontario has had some valid grievances, at least on their face. One that has been addressed is the cost that the Government of Ontario incurs in respect of the integration of immigrants.

[*Translation*]

The Hon. the Acting Speaker: Honourable senators, Senator Murray's time is up. Would the honourable senator like to request more time?

Hon. Gerald J. Comeau (Deputy Leader of the Government): Five minutes.

Hon. Senators: Agreed.

[*English*]

Senator Murray: I thank honourable senators for allowing me to continue. The government has been involved in negotiations with a view to correcting the problem of Ontario's grievance of transfers for integration of immigrants. In the 2007 budget, the government decided that there would be equal per capita cash for the Canada Health Transfer and the Canada Social Transfer. I will forbear to elaborate on the potential damage that this will do to the poorer provinces in the future. Some of us have spoken about this already, but the present federal government buckled under and gave in to Ontario's complaint that it was receiving less cash per capita under the Canada Health Transfer and the Canada Social Transfer. This was because since the 1970s, the government had been equalizing the tax-points transfer for the poorer provinces, but that is another issue. The main point is that the government has met Ontario more than halfway. It has gone all the way and accepted Ontario's argument.

Ontario might have a valid argument with regard to regional variations in Employment Insurance. I will not develop that argument but it is likely valid. The Government of Ontario ought not to ruin a good argument by gross oversimplification and exaggeration by talking about a $21-billion gap, most of which, as Mr. Flaherty has said and the facts demonstrate, is a reflection of Ontario's relative prosperity.

On motion of Senator Banks, debate adjourned.

[*Translation*]

THE ESTIMATES, 2008-09

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (A)

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of May 13, 2008, moved:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2009.

Motion agreed to.

[*English*]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

FIFTH REPORT OF COMMITTEE ADOPTED

Leave having been given to proceed to Other Business, Reports of Committees, Item No. 3:

On the Order:

> Resuming debate on the motion of the Honourable Senator Keon, seconded by the Honourable Senator Di Nino, for the adoption of the fifth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (use of Aboriginal languages in the Senate Chamber), presented in the Senate on April 9, 2008. —(*Honourable Senator Stratton*)

Hon. Terry Stratton: Honourable senators, I am pleased to rise today to speak to the fifth report of the Standing Committee on Rules, Procedures and the Rights of Parliament. As honourable senators are aware, the report deals with the use of Aboriginal languages in the Senate chamber. I greatly appreciate the intent behind recommendation put forward in the document, which is one of inclusion and respect. I also value the unique position that Aboriginal languages, the languages of Canada's First Nations, hold in Canada. The use of these languages predates any other on this soil we call home.

[*Translation*]

However, the Constitution is explicit on the use of both official languages, French and English, in Canada. When Senator Nolin spoke on April 17, 2008, he reminded us that section 133 of the Constitution Act, 1867, established the use of these two languages in Parliament.

[*English*]

My concern is that the recommendations in this report stray too close to constitutional matters and set a precedent that, with far-reaching and unintended consequences, could prove to be difficult to deal with. As honourable senators are aware, there is nothing to prevent a colleague from speaking in another language in this chamber. In fact, there have been times when senators have used other languages, as recently as April 30 when Senator Watt spoke on this report.

On these occasions, interpretation has not been available. As a result, we have missed out on knowing immediately what has been said, although the translated version is printed in the *Debates of the Senate* for distribution the next day.

• (1530)

My understanding is that this is the approach taken in the Indian lower house, the Lok Sabha, where the language used is generally either English or Hindi. If a member speaks in a regional language, an English translation is incorporated in the official transcripts.

Is this adequate? The committee believes it is not, indicating in its report that:

> The use of an Aboriginal language cannot be separated from the capacity of others to understand what is being said. If a senator is to be permitted to speak in an Aboriginal language in the Senate, then your committee believes that facilities must be available to ensure that his or her remarks are translated so that other senators can understand, in English and in French, what is being said. At the core of the Senate's role is the opportunity to discuss and debate issues and communication is a two-way street.

Here is where the committee crosses over from allowing the use of an Aboriginal language as a courtesy to giving it a status that is close to one of our two official languages. Through practice and

precedent we could be, in effect, expanding the existing constitutional right to the use of English and French in the Senate to include Inuktitut.

If our intent is to discuss and debate issues on the two-way communication street, perhaps we should be exploring other means than the one that wanders very close to the constitutional territory to which Senator Nolin has alluded.

As part of that same discussion, Liberal senators suggested that there is a precedent for using Inuktitut in the judicial system. Senator Rompkey stated:

> . . . there is no reason why it should not be used in the parliamentary system.

Senator Segal responded to his comments by asking him whether:

> . . . the right to interpretation before the courts, which goes all the way back to the Diefenbaker Bill of Rights in 1960, confirms, that it is in his view, the same right as one's ability to speak in an official language in this chamber.

I wonder if Senator Rompkey has had an opportunity to think that one through yet. When he has, I believe all of us in this chamber would like to hear his response.

The argument in favour of using Inuktitut is not only that we currently have two senators for whom it is their first language, but that we will likely have more. As the report stated:

> The concentration of speakers in Inuktitut in Nunavut, establishing a critical mass in support of the language, combined with the probable impact of efforts to foster future use of the language, make it likely that there will be a continuing presence in the Senate of Inuit senators whose contribution would be significantly enhanced by the opportunity to engage in deliberation using their first language.

[*Translation*]

However, the use of Inuktituk in the Senate is merely one topic of debate at this point. The committee clearly wants the Senate to go even further and add other Aboriginal languages, along with Inuktituk. Just imagine the interpretation logistics involved, as each language would have to be simultaneously interpreted in French, English and perhaps other languages.

[*English*]

It is one matter to have the two languages we currently have in the Senate, which we are constitutionally entitled to use, but the application of the recommendations of this report will result in the use of three languages in the immediate future, and potentially several more in the not-too-distant future. It has the potential to make Nunavut's quadrilingual assembly look like a cakewalk.

Indeed, if we were to adopt the use of an Aboriginal language in the Senate alongside English and French, it would be inappropriate to stop at Inuktitut, especially if the rationale is the discussion and debate of issues.

Cree and Ojibway are flourishing Aboriginal languages with approximately 80,000 and 45,000 speakers respectively in Canada. Some 15,000 Canadians speak Dene. In contrast, close to 30,000 Canadians speak Inuktitut. These figures are from a book by Eung-Do Cook and Darin Howe entitled *Aboriginal Languages of Canada*.

The question then arises where to draw the line. If we are prepared to use Inuktitut in the Senate of Canada, then why not Cree, Ojibway, Dene or other Aboriginal languages? Should such decisions be made on the basis of population, geography, or perhaps to support a language struggling for survival?

Has the committee fully considered the practical implications of what it is suggesting? For example, the initial pilot project involving the use of Inuktitut in the Senate Chamber may require up to four interpreters — those working from Inuktitut to English or French; and English or French to Inuktitut — with back-up personnel as needed. Qualified personnel may also be required for recording of proceedings in English, French and Inuktitut. Would this be contracted out or would staff be put on salary?

If contracted out, what would we pay for the services of professionally trained interpreters who are willing and able to drop their other work on short notice and present themselves at the interpreters' booths upstairs?

The committee does not seem to have given thought to this, including the need for reasonable notice and intention to speak Inuktitut, as well as the provision for a senator's remarks in English and in French. The report further states:

> It is understood that following approval of this proposal, arrangements will have to be made to obtain the services of qualified interpreters, to modify the interpretation facilities to accommodate the additional interpreters and to ensure that simultaneous interpretation into English, French and Inuktitut can be undertaken. There will be initial costs, and these should be carefully monitored. Your committee believes, however, that the phased approach outlined above provides the most cost-effective approach available to meeting the probable needs of Inuit senators.

[*Translation*]

Honourable senators, the committee believes that the plan it has outlined in one short paragraph could work, but that is not enough to convince me to support its recommendations and to spend taxpayers' money on it.

[*English*]

Before there is any approval of this proposal, presumably through the acceptance of the committee's report, a thorough investigation of the requirements and the costs involved, initial and ongoing, is necessary. Only then could we even begin to consider the pilot project.

Honourable senators, while the intent and goodwill behind this report is highly commendable, it will bring about a policy shift with very complex administrative consequences.

Prior to embarking on such a journey, I wish to know whether the Rules Committee has explored other options that might achieve the same goal of facilitating communications in Aboriginal languages. If so, what are they? If not, why not? Honourable senators, it is my opinion that this is also a matter which warrants further study.

On the question of this report, meanwhile, my advice to this chamber is not to support the recommendations as they are currently stated. The precedent it sets will inevitably clash with the reality of how the Senate operates.

There is always room for improvement and the notion of greater inclusion of First Nations in this chamber is one I heartily support. However, I do not believe that this road is one we should travel at this time.

• (1540)

Hon. David P. Smith: Would the honourable senator accept a question?

Senator Stratton: Yes.

Senator Smith: I would like to point out three things and ask the honourable senator if he could advise us if he is aware of them.

First, in our report, we are not suggesting that there be a *Hansard* version in the Aboriginal languages, along with English and French. To suggest that somehow it is sort of a creeping equal status would not be the case at all where there is no *Hansard* in the Aboriginal language.

Second, is the honourable senator aware that in our report we are not suggesting, with regard to the Inuktitut pilot project, that it be available at all times, but that there will be reasonable notice given? We will have some agreement on how much notice is necessary. Our senators want to do it on a cost-effective basis and there will be reasonable notice given.

Third, with regard to other Aboriginal languages, all of those senators in the house were canvassed — I think there is a total of seven, including our two Inuktitut speakers, who have some ability in an Aboriginal language — and they all agreed they might only use it once or twice a year when there might be visiting officials from their communities. That would show respect and honour them, and they would be quite content with something like a two-week notice period to keep it on a very cost-effective basis. We are quite aware of the costs that were incurred in Yellowknife in the North West Territories assembly, and we are also aware that in Nunavut, it was done on a much more cost-effective basis. That is why we went to Nunavut to see how they did it.

Was the honourable senator aware that all of these points are factored into our committee's report?

Senator Stratton: Yes; I will go a little further than that this time.

Yes, I am aware. I guess the question would be then, why not in *Hansard*? That would be a logical step. Why not in another language other than Aboriginal? If someone in this chamber said, okay, they have the right to speak Inuktitut — which I completely agree with — why not me, if I am Russian, Polish, Ukrainian, Chinese, et cetera, and speak some other language? Why would they not have the right to do the same thing, have the same kind of interpretation and the same kind of record in Hansard? We have opened the door to allow that to happen.

In my view, it would be a question of privilege on the part of that senator — on special occasions, with guests — to be able to speak to a Russian delegation in Russian and have it recorded and interpreted. Why would that not happen? I would see that as a logical progression as we move down here. That is what I worry about — what then happens to those costs?

Senator Smith: May I ask a supplementary question?

The Hon. the Speaker: Senator Stratton would have to ask for an extension of his time.

Senator Stratton: Five minutes.

Senator Smith: I am wondering if the honourable senator is aware of the fact that our committee — very early on, when we got into this subject matter — discussed that very point thoroughly. Everyone agreed that Aboriginal languages that are from this country, from this soil, are in a special, unique category that should be respected.

It was no disrespect to Senator Di Nino giving a speech in Italian or Senator Andreychuk giving a speech in Ukrainian. That is not what this is all about. It is about treating the Aboriginal communities of this country in a special way — not a constitutional way, but a special way — that does show respect, which we felt they do deserve, in a cost-effective way as well.

Senator Stratton: I guess my answer is the same. I agree with you that the Aboriginals communities have a particular right. However, once that door is open, someone could bring forward a question of privilege and say I demand the right to speak in the language of my homeland; Russian, Italian, et cetera. How would you say no?

Senator Smith: The Speaker would say there is no basis for it.

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

Some Hon. Senators: Question!

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

Hon. Senators: Agreed.

Some Hon. Senators: On division.

Motion agreed to and report adopted, on division.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Banks, for the third reading of Bill S-224, An Act to amend the Parliament of Canada Act (vacancies). —(*Honourable Senator Brown*)

Hon. Bert Brown: Honourable senators, I rise today to speak to Bill S-224. This bill reminds me of a platform of one of the current American candidates for president in the fall elections — "Where there is hope, there can be change."

I understand Democratic Reform Minister and Government House Leader Peter Van Loan stated in his testimony before the Standing Senate Committee on Legal and Constitutional Affairs recently that the Conservatives could not support Senator Moore's Bill S-224, the filling of parliamentary vacancies bill, because it entrenches an undemocratic Red Chamber.

Once again, in the hope that even in this chamber, change is possible, I will present an amendment to Bill S-224. With the adoption of this friendly amendment, we, honourable senators, would be reaching out to a Prime Minister sincerely dedicated to a democratic Senate.

With all due respect to the author, Senator Moore, and Senator Milne as seconder, I hope honourable senators will vote for this Bill S-224 with the amendment I will table. If the provinces elect senators-in-waiting, this Prime Minister will fill the vacancies. I am that proof.

MOTION IN AMENDMENT

Hon. Bert Brown: Therefore, honourable senators, I move:

> That Bill S-224, an Act to amend the Parliament of Canada Act, vacancies, be amended in clause 1, on page 1:
>
> (*a*) by replacing lines 8 to 12 with the following;
>
> **"13.1** Within 180 days after a vacancy happens in the Senate, the Prime Minister shall recommend to the Governor General for appointment to fill a vacancy a person who is fit and qualified, and in doing so shall have regard to;
>
> (*a*) in the case of a vacancy related to the Province of Alberta, any consultation that has taken place under the Senatorial Selection Act of that province; or
>
> (*b*) in the case of a vacancy related to any other province or territory, shall have regard to any consultation that has taken place within the past six years in a provincially held consultation for persons to represent that province or territory as members in the Senate."; and
>
> (*b*) by replacing lines 16 to 19 with the following:
>
> "within 180 days after the day of that assent, recommend to the Governor General for appointment to fill the vacancy a person who is fit and qualified, and in doing so shall have regard to
>
> (*a*) in the case of a vacancy related to the Province of Alberta, any consultation that has taken place under the Senatorial Selection Act of that province; or
>
> (*b*) in the case of a vacancy related to any other province or territory, within the past six years any consultation for persons to represent that province or territory as members in the Senate.

I table this motion in two languages, French and English.

Senator Comeau: Hear, hear!

On motion of Senator Banks, debate adjourned.

[*Translation*]

URBAN MODERNIZATION AND BUSINESS DEVELOPMENT BANK BILL

SECOND READING—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Fitzpatrick, for the second reading of Bill S-226, An Act to amend the Business Development Bank of Canada Act (municipal infrastructure bonds) and to make a consequential amendment to another Act.—(*Honourable Senator Eyton*)

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, Senator Eyton is preparing his remarks on this bill. He is unable to be in attendance at this time and we do not wish to lose the momentum of this bill. I propose that the adjournment stand in the name of Senator Eyton.

The Hon. the Speaker: Honourable senators, is it your pleasure to adopt the motion?

Some Hon. Senators: Yes.

Order stands.

The Senate adjourned until Thursday, May 15, 2008, at 1:30 p.m.

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