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Thursday, October 2, 2014

The Honourable NOËL A. KINSELLA
Speaker

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THE SENATE

Thursday, October 2, 2014

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

Prayers.

SENATORS' STATEMENTS

REPUBLIC OF KOREA

STATE VISIT OF PRESIDENT PARK GEUN-HYE

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I rise to speak about the first state visit to Canada of Her Excellency Park Geun-hye, the President of the Republic of Korea, from September 20 to 22, 2014. The visit marked a significant milestone in Canada and Korea's bilateral relationship with the signing of the historic Canada-Korea Free Trade Agreement. President Park's state visit, following the Prime Minister's visit to Korea in March, is the first time both heads of state have made official visits to their counterpart's country within the same year, and this is the first visit by a president of the Republic of Korea since 1999.

As a proud Canadian of Korean descent, it was an honour to welcome President Park Geun-hye to Canada on September 20 with Minister Greg Rickford, Ambassador David Chatterson, Ambassador Cho Hee-yong and several leaders of the national Korean Canadian community. That evening, President Park addressed and inspired an audience of Canadian Korean leaders from Vancouver to Halifax who converged in Ottawa to welcome President Park to Canada.

I was deeply moved to witness this historic occasion, as many of the first immigrants to Canada had left Korea in the 1960s and 1970s during the presidency Park Chung-hee, the late father of Madam Park Geun-hye. Like their hopes of a Korea unified in their lifetime, it would have been but a dream to imagine a time when the Republic of Korea would be led by its first female president, which Madam Park has now become. Perhaps peace and unification on the Korean Peninsula will one day become a dream come true, as well.

Honourable senators, what an honour it was to witness the official signing of the final CKFTA on September 22. Canada has stood side by side with the Republic of Korea as an enduring and loyal friend during the fight for independence from Japan's colonial rule and during the fight for democracy against the communist aggressions of the North and the Red Army.

The Canada-Korea FTA has been forged on this firm foundation built on blood, sweat, tears and the tireless efforts of many — Canadians, Koreans and Canadians of Korean descent. Once ratified and implemented, the CKFTA will begin an exciting new era of opportunities for Canadians in many sectors. For instance, a malt barley producer in attendance at the September 22 signing event said: "Our industry is eager to see the implementation of the CKFTA. Our exports to Korea will instantly double."

Honourable senators, please join me in honouring the sacrifices of our Korean War veterans and applauding the Canadian pioneers of Korean descent for their contribution to the long-standing history and deep friendship that Canada and Korea enjoy today on the heels of the signing of this historic Canada-Korea Free Trade Agreement.

VIOLENCE AGAINST ABORIGINAL WOMEN

Hon. Lillian Eva Dyck: Honourable senators, Amnesty International and the Native Women's Association of Canada have issued a news release calling on all Canadians to help make ending violence against Aboriginal women and girls a priority for all politicians. Their organizations will be working with women's organizations and other allies across Canada to ensure that all political parties make tangible commitments to end violence against indigenous women and girls in the upcoming election.

Recently released RCMP statistics report the murder of 1,017 Aboriginal women and girls between 1980 and 2012, with more than 100 others remaining missing under suspicious circumstances or for unknown reasons.

NWAC President Michèle Audette stated:

> Each woman was somebody. She was also somebody's sister, daughter, mother, or friend and every one of them deserved to be safe from violence. They deserve more from our Government than excuses and a patchwork of underfunded and inadequate programs and services. We need solutions and actions that will make a difference in women's lives.

Alex Neve, Secretary-General of Amnesty International Canada, said:

> Instead of committing to the kind of comprehensive, concerted response that is so urgently needed, successive governments have rolled out the same piecemeal approach that has failed to provide Aboriginal women and girls the protection they need. Momentum for meaningful action is building across Canadians but we need more Canadians to speak out.

Honourable senators, 10 years ago this month, Amnesty International published its major research report, *Stolen Sisters: Discrimination and Violence Against Indigenous Women In Canada*. The report followed a nationwide campaign by NWAC to focus attention on the severe threats facing Aboriginal women and girls. At the time, all parties in the House of Commons publicly acknowledged the need for action. A full decade later, however, government response continues to fall short.

On October 4, vigils will be held in communities across Canada and around the globe to honour the lives of Aboriginal women and girls lost to violence. Each year, the number of vigils is growing as public awareness of the federal government's indifference continues. Calls for an independent national public inquiry continue to be ignored. Last year, there were over 200 Sisters in Spirit vigils across Canada. This year, I expect there will be even more, especially given the recent tragic death of Tina Fontaine, a 15-year-old girl from Sagkeeng First Nation in Manitoba, which has renewed calls for a national inquiry.

I know honourable senators may not agree with me on the need for a national inquiry, but I will continue to try to persuade them otherwise. I do, however, ask that all senators in this chamber do one thing: When you return home this weekend, please attend your local Sisters in Spirit vigil. Information can be found on the NWAC website. Please light a candle and honour those missing and murdered Aboriginal women, their families and their friends.

Thank you.

ROUTINE PROCEEDINGS

COPYRIGHT ACT
TRADE-MARKS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-8, An Act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts.

(Bill read first time.)

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

(On motion of Senator Martin, bill placed on the Orders of the Day for second reading two days hence.)

• (1340)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

NINTH REPORT OF COMMITTEE TABLED

Leave having been given to revert to Presenting or Tabling of Reports from Committees:

Hon. George J. Furey: Honourable senators, I have the honour to table, in both official languages, the ninth report of the Standing Committee on Internal Economy, Budgets and Administration regarding post-activity expenditure reports of Senate committees.

QUESTION PERIOD

FISHERIES AND OCEANS

KEEPING WHALES AND DOLPHINS IN CAPTIVITY

Hon. Wilfred P. Moore: My question today is for the Leader of the Government in the Senate. Leader, this note and question are from Ms. Caroline McNaught of Ottawa, Ontario, and she says:

> Like me, many of you have likely heard of — if not seen — the 2013 documentary *Blackfish*, which details the suffering of captive killer whales in marine parks. Earlier this year, in response to that film, a California state legislator introduced legislation to phase out and eventually ban the keeping of killer whales in captivity.
>
> In Canada, Marineland and the Vancouver Aquarium currently keep over 40 whales and dolphins in captivity — including beluga whales, dolphins, and a killer whale. These creatures are highly intelligent and social, and they ordinarily swim vast distances every day. Yet Canadian law currently allows whales and dolphins to be kept in pools to perform tricks for paying customers. Evidence has shown that this practice causes unjustifiable suffering, and that is why countries like Chile, Costa Rica, and India have banned the keeping of whales and dolphins in captivity.
>
> Many other countries have imposed restrictions on imports and exports, unlike Canada, which has minimal restrictions on imports and does not regulate exports, allowing the Vancouver Aquarium to loan belugas to SeaWorld in the U.S. for captive breeding.
>
> The Mayor of Vancouver and Jane Goodall have now called for an end to keeping the whales and dolphins in captivity at the Vancouver Aquarium, and *The Toronto Star* has been running an investigative report into the notorious conditions at Marineland.

My question, leader, it's the question of Ms. McNaught: "Would this government support amending our animal cruelty provisions to phase out and eventually ban keeping whales and dolphins in captivity in Canada?"

[*Translation*]

Hon. Claude Carignan (Leader of the Government): Thank you, Senator Moore, for your question. You too have the option of introducing a bill if you think something needs to be fixed and that some legislative measure could be the cause of the problem.

Our government is committed to protecting the environment. Since we formed government, we have created two national marine conservation areas, three marine protected areas, three national wildlife areas, two national parks and one national historic site. We believe that the creation of these marine areas and protected areas will really help protect other marine species that could be at risk, including the ones you mentioned.

[*English*]

Senator Moore: Leader, are you suggesting that the program of your government is to eventually ban keeping whales and dolphins in captivity and that they should be released in these wonderful natural parks that you've created?

[*Translation*]

Senator Carignan: The government's position when it comes to the conservation of marine areas involves creating parks or marine protected areas that help protect marine species, including the whales you mentioned. Senator, if you think this situation needs to be corrected, you always have the option of introducing a Senate private member's bill to take corrective action. The Senate could then examine it, as it does all other bills.

[*English*]

Senator Moore: I have a supplementary question. I realize that any senator can bring in a bill, leader. I'm asking you, what is the position of your government with regard to the eventual banning of keeping whales and dolphins, cetaceans, in captivity in Canada?

[*Translation*]

Senator Carignan: Senator Moore, the government's legislative intentions are made public in due form as our bills are introduced. As you know, the details of the government's legislative intentions are revealed either through the Speech from the Throne, delivered here in this chamber, or through the introduction of legislation.

You can check the government's intentions by looking at the relevant legislative instruments.

[Senator Moore]

[*English*]

Senator Moore: I recall the Speech from the Throne with respect to protecting marine-sensitive parklands — I guess we can call them that, that is, the real estate in the waters, but I'm asking about the cetaceans, the whales and the dolphins, and whether or not you would be prepared to include them in your environmental legislation and policies. Are you saying this will lead to a phase-out — not an immediate ban — but a phase-out and a ban of keeping whales and dolphins in captivity in Canada?

You may not have the answer to that today, but I don't think the answer is to tell me to bring in a bill. I'm asking you about the policy of your government, and I respect what you've done so far. I think it's going in the right direction. I'd like you to follow up on that and let me know, if you can't do it today, what the policy is. Maybe it hasn't been thought of. This issue has come to light in the recent past, so maybe you haven't had a chance to look at it. If you have not, I understand, but I'd like you to take a look at it, come back and let us know what the policy of the government is with regard to that question.

[*Translation*]

Senator Carignan: As I said earlier, our government is taking action to protect the environment, marine areas and humpback whales. You've probably heard about the important decision — based on scientific data — that was made on the humpback whale population, which continues to grow. I've spoken about this already, because we are seeing a constant increase in the number of humpback whales. These whales remain protected as a result of solid provisions in the Fisheries Act and in the Species at Risk Act. Our government is also taking action by creating protected areas. If you believe that a piece of legislation can improve that protection, I invite you to introduce a private member's bill so that we can debate it.

• (1350)

[*English*]

FOREIGN AFFAIRS

HONG KONG—POLITICAL SITUATION

Hon. Jim Munson: Honourable senators, we've been talking about Hong Kong and the desperate or difficult situation. Yesterday I asked about China warning foreign diplomats to stay away from "Occupy Central," to stay away from the protests, and it's an official note. Many of the diplomats in Hong Kong are saying they were surprised to receive such a letter. Did Canada receive a letter? If so, what was in it and what is Canada's reaction?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): Thank you for your question. I checked and the Consulate General of Canada in Hong Kong has not received the letter you mentioned.

[*English*]

Senator Munson: Thank you for that. Of course, tens of thousands of demonstrators are still on the streets of Hong Kong, in "Occupy Central" and outside the government offices, still with the threat of going into those government offices. The Chief Executive Officer of Hong Kong has said that basically they may talk, but there's an editorial in the *People's Daily* that says if it continues, the consequences will be unimaginable.

These are the same words that were used 25 years ago, about a week before the massacre in Tiananmen Square. What is this government's reaction to these kinds of statements from the *People's Daily*, which is a mouthpiece for the Communist Party? How does Canada view this kind of threat to its people?

[*Translation*]

Senator Carignan: As I've said in response to your questions all week, we are concerned about the situation in Hong Kong and we will continue to closely monitor the events as they unfold.

Canada's position is clear: we support the development of democracy in Hong Kong and we believe that continuing to follow the "one country, two systems" approach is essential for ensuring Hong Kong's stability and prosperity.

As I said, we consider universal suffrage to be a fundamental right that is consistent with the democratic aspirations of the people of Hong Kong.

What is more, our government takes the safety and security of Canadians abroad very seriously. We urge Canadians in Hong Kong to consult the website www.travel.gc.ca for up-to-date information and to register with the Registration of Canadians Abroad service to receive the latest travel advisories.

I would also like to point out that Canadians in need of emergency assistance are asked to call the toll free number 613-996-8885 or send an email to sos@international.gc.ca, day or night. We are determined to provide the best possible consular services to Canadians who might need them as a result of these events.

[*English*]

Senator Munson: One further question for clarification: Does the government have any travel warning? I asked that, too, yesterday. You talked about Canadians on the ground. It's a good thing to note that they have somewhere to go to or call. Flights leave Vancouver and Toronto every day going to Hong Kong either on business or on holidays, and they're full. Should Canadians be travelling to Hong Kong at this time?

[*Translation*]

Senator Carignan: Until very recently, no. I invite people to go to www.travel.gc.ca to stay informed in case the situation changes.

[*English*]

Hon. Joan Fraser (Deputy Leader of the Opposition): It's very encouraging to hear the Leader of the Government say in this place, as vigorously as he just did, that we support essentially full democratic rights for the people of Hong Kong. I'm very glad to hear that assurance. The question is: Have we made similar forthright representations to the Government of China?

[*Translation*]

Senator Carignan: Thank you for your question. We have been clear and forthright on this issue: Canada supports the democratic aspirations of the people of Hong Kong. Canada holds Hong Kong's rule of law and good governance in high esteem, and we will publicly state, loud and clear, right here in this chamber, to anyone listening, including the Chinese government, that we think universal suffrage for the election of the Chief Executive in 2017 and all members of the legislative council in 2020 is important. These are tangible indicators of the democratic aspirations of the people of Hong Kong.

[*English*]

Senator Fraser: I repeat, leader, that it is truly good to hear you speak so straightforwardly about this important matter here, in one of the two chambers of the Parliament of Canada. That is very good. My question, however, was: Have we taken any steps to inform the Government of China in a formal way of our views on this very important and increasingly alarming matter?

It is one thing to expect representatives of the Government of China to read the newspapers, or maybe even Hansard. It is quite another to take steps to inform that government formally, through a note, through calling in the ambassador — there are various ways it can be done — but it is quite separate from simply informing Parliament. Parliament speaks to the people of Canada, but are we speaking also to the Government of China?

[*Translation*]

Senator Carignan: Canada holds productive discussions with China about many issues any time the opportunity arises, and will continue to do so. As you know, because of the way embassies work — you are very familiar with that — I am sure that the messages conveyed here will be transmitted to the right people in due course.

[*English*]

Hon. James S. Cowan (Leader of the Opposition): Following up on the points my colleagues have made, the world of diplomacy is not something I know a great deal about, and there are some in the chamber who know more than I do about it. But it's my understanding that there are certain formalities, processes and practices that are traditional and understood, and the significance of which are understood in the diplomatic world. There is a great difference between making a public speech in one's country and actually delivering a formal note calling in an ambassador, as Senator Fraser has said.

As the Leader of the Government in the Senate, you alluded to being sure that this message has been communicated in the regular discussions that have taken place between your government and the Government of China. Can you assure us that that has been done with respect to this particular issue?

[*Translation*]

Senator Carignan: I can assure you that Canada holds productive discussions with China about many issues any time the opportunity arises, and will continue to do so.

On behalf of Canada, the members of this government support the democratic aspirations of the people of Hong Kong. Canada holds Hong Kong's rule of law and good governance in high esteem.

We reaffirm our support for universal suffrage in the 2017 election of the Chief Executive and the 2020 election of legislative council members.

• (1400)

[*English*]

Senator Cowan: You are not prepared to confirm that that has been communicated officially from the Government of Canada to the Government of China; is that correct?

[*Translation*]

Senator Carignan: Canada holds productive discussions with China on many issues and will continue to do so any time the opportunity arises.

[*English*]

IRAQ—COMBAT MISSION

Hon. Don Meredith: In light of the situation that is taking place with ISIS, can the Leader of the Government in the Senate update this chamber as to what the government has done thus far and what it intends to do in terms of further commitments to alleviate and to assist with our NATO allies on the ground currently in terms of their combat mission and in terms of attacking ISIS?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): Senator, as you know, the Islamic State of Iraq and the Levant is a terrorist caliphate that is a threat not only to the region, but also to Canada. If we allow it to continue to proliferate, it will be a serious threat to the national security of our country and the safety of Canadians. Therefore, we will continue to work with our allies to thwart the establishment of an Islamic state group that is raping and pillaging its way through the Middle East, committing acts of genocide against minorities, beheading western journalists, kidnapping women and selling them as slaves, and planning attacks that threaten the security of our country. Our government's actions will ensure that these reprehensible acts are condemned and punished.

[*English*]

Senator Meredith: The media is reporting that, potentially tomorrow, the government will be making a decision with respect to our further involvement and our fighter pilots.

Can the Leader of the Government give this chamber a further update as to whether this will take place?

[*Translation*]

Senator Carignan: It is a counterterrorism military campaign undertaken by the Obama administration in close collaboration with our NATO, Arab and international allies. As you know, the United States recently requested an additional contribution from Canada — a request that we are presently examining as we consider extending our non-combat mission currently underway.

[*English*]

Hon. Jane Cordy: Honourable senators, we're finding out that the 2014 budget for ammunition for the military has been reduced from $153 million to $94 million. That's a significant cut in funding for ammunition. It's a 38 per cent cut, and it has caused other departments to take a look at the lack of money and the lack of ammunition.

My question is: Are we prepared? Do we, in fact, have the resources to go to Iraq and fight in light of all of the cutbacks that have taken place in DND, specifically in relation to ammunition?

[*Translation*]

Senator Carignan: For the time being, senator, that is a hypothetical question. National Defence reduced its inventory of ammunition after the Afghanistan mission, which obviously makes sense. Providing resources is part of our commitment and our responsibility. I believe that you opposed this mission in Iraq and that the reduction was due solely to the ending of the Afghanistan mission.

[*English*]

Senator Cordy: I did oppose the Canadian military going to Iraq, and I was proud of Prime Minister Chrétien to have made that decision in light of the criticism that he received from Mr. Harper and the Conservatives — or the Reform Alliance. I'm not sure what they were at the time.

Anyway, my question is not a hypothetical question. The budget was in fact reduced from $153 million to $94 million. That's not hypothetical; that's a fact.

You said my question was hypothetical. Does this mean that the budget will be brought back up for the ammunition? If we're going to send our military to another country and ask them to do air attacks — we're sending them into combat — they certainly have to be prepared. That's my question. It's not hypothetical, so perhaps the leader could answer it.

[*Translation*]

Senator Carignan: Senator, I want to be accurate, rest assured. As was the case in Libya, Eastern Europe, Afghanistan or any other mission where the Canadian Armed Forces have been deployed, we will provide them with everything they need to get the job done.

[*English*]

ORDERS OF THE DAY

ADJOURNMENT

MOTION ADOPTED

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of October 1, 2014, moved:

> That when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, October 7, 2014 at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

DIVORCE ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Segal, for the second reading of Bill S-216, An Act to amend the Divorce Act (shared parenting plans).

Hon. Anne C. Cools: Honourable senators, I rise to speak to second reading of Bill S-216, An Act to Amend the Divorce Act (shared parenting plans). Bill S-216 will amend the Divorce Act to enact shared parenting plans that will set out the responsibilities and authority of each spouse regarding the care and upbringing of children of the marriage. This bill will require the court to satisfy itself, before granting a divorce under the act, that reasonable arrangements have been made for the parenting of any child of the marriage.

I ask colleagues to support this bill, and I thank Senator Hugh Segal for seconding it. I laud him for that.

• (1410)

Honourable senators, in 1984 then-Liberal Justice Minister Mark MacGuigan intended that shared parenting would be the result of his Bill C-10, An Act to amend the Divorce Act. To this end he employed the well-established principle in the legal phrase "the best interests of the child." Minister MacGuigan's Bill C-10 died on the order paper when Parliament dissolved on July 4, 1984. The September 4 federal election returned a Progressive Conservative majority government under Prime Minister Brian Mulroney. The new Justice Minister John Crosbie revamped Bill C-10 and in 1985 introduced his own Bill C-47, An Act Respecting Divorce and Corollary Relief. Minister Crosbie's Bill C-47 retained "the best interests of the child" as a conceptual legal framework. It received Royal Assent on February 13, 1986, as the new Divorce Act. The legal phrase "the best interests of the child" is used five times in the Divorce Act in two sections, 16 and 17. Section 16, the act's child custody section headed "Custody Orders," uses it twice, in subsections 16(8) and 16(10), known as the "friendly parent rule." Section 17, headed "Variation, Rescission or Suspension of Order," uses it three times in subsections 17(5), 17(5.1) and 17(9).

Honourable senators, Minister MacGuigan was a legal scholar and had been the Dean of the University of Windsor Law School, and a professor at York University and at U of T law schools. He well knew the legal phrase "the best interests of the child" and its pedigree in the sovereign's *parens patriae*, in the Law of Equity and the Courts of Chancery. He used it in his Bill C-10, as did Minister Crosbie, to vest the children of divorce with the protection which is their lawful due, owed to them by the superior courts and their judges.

Since 1986, the Divorce Act has vested the children of divorce with statutory rights in relation to their parents, particularly their bonds of affectionate and financial care. These two cares are wholly bonded, as is the parent and the child. It is a truism to say that the child's first interest of the "best interests of the child" must be the child's own relationship with his own two parents, both mother and father; in the child's physical and affectionate sustenance; uncertain that the then new term "shared parenting" would endure in the jurisprudence, Minister MacGuigan had employed the well-tested phrase "the best interests of the child" with its known origin in the jurisprudence in the Law of Equity in the British Lord Chancellor's Courts of Chancery and Equity.

My Bill S-216 follows his and Minister Crosbie's lead, both of whom I knew.

I also note that my Bill S-216 relies on the recommendations of the 1998 report of the Senate and House of Commons Special Joint Committee on Child Custody and Access after Divorce, on which I served. Its famous and well-supported report *For the Sake of the Children* recommended shared parenting and the continuing and meaningful involvement of children with their parents post-divorce.

Honourable senators, Bill S-216 uses the term "shared parenting" in its title, but its text employs the term "parenting plan." It also uses the phrase "the best interests of the child" six times to be consistent with the Divorce Act as presently composed. My bill is a small, well-cast amendment that does not attempt to rewrite the Divorce Act because such a rewrite is a purview of the Justice Minister, our good friend Peter MacKay.

Shortly, I shall explain the origin and the pedigree of this legal phrase "the best interests of the child" and its high place in the high jurisprudence which form our 20th century approach that is called "the welfare of the child."

Honourable senators, in 1968 Canada enacted its first federal Divorce Act. Until then, divorce was rare, difficult and expensive and proceeded in most provinces pursuant to the old British 1857 Matrimonial Causes Act, except in Quebec and Newfoundland, where divorce was by individual private bill proceedings in Parliament, whose petitions began in the Senate. Divorce bills were introduced, debated and voted in the Senate, then adopted untouched in the Commons and given Royal Assent by the Governor General. Each divorce bill's proceedings in both houses was particular to the couple, identified by name in the petition and the bill. These Senate divorce bills ended in the 1968 Divorce Act, the proceedings of which hardly mention the word "children."

Honourable senators, in 1996 Liberal Justice Minister Allan Rock introduced Bill C-41, An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Canada Shipping Act. His bill created the Federal Child Support Guidelines, a wholly new child support scheme. To this end, his bill proposed to repeal sections 15(8) and 17(8) of the Divorce Act, which had been Minister Mark MacGuigan's and John Crosbie's equality reforms in child support. Section 15(8) reads:

> An order made under this section that provides for the support of the child of the marriage should
>
> (*a*) recognize that the spouses have a joint financial obligation to maintain the child; and
>
> (*b*) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

The same wording is in section 17(8) that varies the orders.

Honourable senators, these sections had been Minister Crosbie's reforms on the joint obligation of both spouses to the post-divorce financial support of their children. In repealing these sections, Minister Rock's Bill C-41 replaced this "equality system" with a new child support scheme called Federal Child Support Guidelines. These guidelines set the child support payment amounts based on the income of the non-custodial parent, mostly fathers. The income of the custodial parent, mostly mothers, was not factored into the guidelines' calculated amounts, claiming that the custodial parent's financial contribution was assumed. These Federal Child Support Guidelines hailed the pre-eminence of the financial over the affectionate duties of parents and impaired judicial independence and the judicial role in setting these now predetermined child support amounts. These amounts set by calculation tables and wholly based on the non-custodial parent's income were actuated as regulations, what we call subordinated legislation, in the bill's regulatory framework. This so-called uniformity in payments created a new court duty to enforce child support payments, even unto staying the divorce. Such was the quest for the uniform child. Remember, they were seeking uniformity in child support payments.

Honourable senators, Bill C-41 was a well-publicized and supported Senate fight for fairness and balance in the Divorce Act. Our late colleague Progressive Conservative Senator Jessiman and I, as a Liberal, upheld divorce's children. I laud him, I thank him, and today I uphold his memory. I also thank his able assistant Janelle Feldstein for her devoted work with him for the children of Canada.

He and I upheld the need of Canada's children of divorce for the financial and emotional support of both parents, both mothers and fathers. We held that a divorce decree severs the marital relationship between spouses but not the parental bond between parent and child. We upheld the child-parent relationship as subsisting and enduring, that the parent-child bond is permanent, and that no statute can dispossess children of their parents, nor parents of their children. This is very important.

Honourable senators, Senator Jessiman and I had relied on the ancient common law and the King's Royal Prerogative to protect the children, ever mindful of the Queen's absolute royal power called the *parens patriae* in the Law of Equity that is owed to all children. In Britain, this had been delegated to the second-most powerful person after the King, the Lord Chancellor in his Courts of Chancery and Equity in its unique jurisdiction to protect the vulnerable, mostly children. The Lord Chancellor, as the Keeper of the Great Seal, in his Chancery Courts had replaced the ancient King's courts of wards and liveries. These were from a time knights were killed in the service of the King and the children were left with properties. As wards of the King, he protected them and their properties, which were delivered to them when they reached majority.

• (1420)

Honourable senators, I shall now trace the Chancery or Equity Courts, and these powers, in Canada. In 1837 in Upper Canada, a Court of Chancery was established, with like powers to the British Court of Chancery. Its statute, the Act to establish a Court of Chancery in this Province, in section II, said, at page 765:

> *And be it further enacted by the authority aforesaid*, That the said Court shall have jurisdiction, and possess the like power and authority as by the laws of England are possessed by the Court of Chancery in England, in respect of the matters hereinafter enumerated, that is to say: . . .; in all matters related to infants, ideots and lunatics, and their estates, . . .

Black's Law Dictionary, sixth edition, defines the *parens patriae*, at page 1114:

> *Parens patriae* originates from the English common law where the King had a royal prerogative to act as guardian to persons with legal disabilities such as infants.

The 1959 Jowitt's *Dictionary of English Law*, volume 2, also defines it at page 1294:

> The sovereign, as *parens patriae*, has a kind of guardianship over various classes of persons, who, from their legal disability, stand in need of protection, such as infants, idiots, and lunatics.

Continuing the relevant definitions, Jowitt's volume 1 defines the maxims of equity at page 726:

> . . . equity acts in *personam*; equity acts on the conscience; equity will not suffer a wrong to be without a remedy; equity follows the law; equity looks to the intent rather than the form; equity looks on that as done which ought to be done; equity imputes an intent to fulfill an obligation; equitable remedies are discretionary; delay defeats equities; he who comes to equity must come with clean hands; he who seeks equity must do equity; equity regards the balance of convenience; where there are equal equities the law prevails; where there are equal equities the first in time prevails; equity, like nature, does nothing in vain; equity never wants (*i.e.*, lacks) a trustee; equity aids the vigilant; equality is equity.

Britain, by its 1873 Supreme Court of Judicature Act, merged its common-law courts with its equity courts. By this union, the British superior or high courts were vested and endowed with the royal equity power to protect children and the vulnerable.

Honourable senators, here at home, the Ontario Judicature Act, 1881, merged Ontario's equity and common-law courts. This vested the Chancery Courts powers to protect children, as an inherent power in our high and superior courts. This act used the exact words as Britain's 1873 act, sections 25(10). The Ontario act, sections 16(9) and (10) say, and they replicate the British words:

> (9) In questions relating to the custody and education of infants, the Rules of Equity shall prevail.
>
> (10) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.

The rules of equity prevail. This is a vast area of law, not as well-known as it should be. Honourable senators, I come now to the hailed 1893 case, *Queen v. Gyngall*, the defining judgment in Britain's Queen's Bench Division, Court of Appeal, with its famous legal phrase, "the best interests of the child." By their 1873 merger, this division had been vested with the chancery and equity powers, and the *parens patriae*. This masterful judgment was led by Master of the Rolls, the very famous Lord Esher, who said at page 239:

> But there was another and an absolutely different and distinguishable jurisdiction, which has been exercised by the Court of Chancery from time immemorial. That was not a jurisdiction to determine rights as between a parent and a stranger, or as between a parent and a child. It was a paternal jurisdiction, a judicially administrative jurisdiction, in virtue of which the Chancery Court was put to act on behalf of the Crown, as being the guardian of all infants, in the place of a parent, and as if it were the parent of the child, thus superseding the natural guardianship of the parent. The present case arises after the Judicature Act, and the proceedings are in the Queen's Bench Division. The effect of that Act is, as I have often said, not to invent a new jurisdiction or to create new rights, but to alter the mode of procedure; and, there having been before two independent jurisdictions, one common law and the other equity, the Act in effect provides that, if a person proceeds in the Queen's Bench Division under the common law jurisdiction, and it turns out that the case raises questions to which the Chancery jurisdiction is applicable, the Queen's Bench Division judges are not to send the suitor to a Chancery Court, but are to exercise the Chancery jurisdiction themselves.

Citing Lord Chancellor Cottenham in *re: Spence*, Lord Esher said at page 240:

> . . . This Court interferes for the protection of *infants*, qua infants, by virtue of the prerogative which belongs to the Crown as parens patriae, and the exercise of which is delegated to the Great Seal.

Lord Esher continued at page 241:

> How is that jurisdiction to be exercised? The Court is placed in a position by reason of the prerogative of the Crown to act as supreme parent of children, and must exercise that jurisdiction in the manner in which a wise, affectionate, and careful parent would act for the welfare of the child.

Lord Esher quotes Lord Justice Lindley in another case, *re: McGrath* at page 242-243:

> ". . . The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word 'welfare' must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded." The Court has to consider, therefore, the whole of the circumstances of the case, . . .

• (1430)

Honourable senators, Lord Justice Kay noted, at page 247:

> . . . Lord Hardwicke, professing not to go upon guardianship and disclaiming wardship, puts it upon this: that the Court represents the King, as parens patriae.

Lord Justice Kay continues, at page 248:

> This statement of the jurisdiction shews that, arising as it does from the power of the Crown delegated to the Court of Chancery, it is essentially a parental jurisdiction, and that description of it involves that the main consideration to be acted upon in its exercise is the benefit or welfare of the child.

It is very interesting. The court developed a difference between parent and children.

He continued at page 251:

> So again and again in such cases, where the child was not of very tender years, the practice has been that the judge himself saw the child, not for the purpose of obtaining the consent of the child, but for the purpose, and as one of the best modes of, determining what was really for the welfare of the child.

And added at page 252:

> Denman, J., thought it right to see the child.

This is 1893. The stage for the 20th century approach to children is being set legally.

In this final quote from *Queen v. Gyngall*, Lord Justice Kay expressed the sensitive, well-established, and perhaps the most known words about the law of children. He said, at page 252:

> As I have stated, the superintending power in respect of infants, which Lord Eldon said the Court of Chancery had always exercised by delegation from the Crown as parens patriae, must be exercised as the Court may think for the best interests of the child.

I have been wanting and intending for many years to put this case on the record here. Very few people know where to find that statement now, but there it is. Mark MacGuigan would have known a lot of this. He was a legal scholar. I knew him well.

Honourable senators, the "best interests of the child," this most famous phrase, and its pedigree, were introduced into the Canadian divorce law by Ministers Crosbie and MacGuigan. They introduced it into the lexicon and law of Canada's Divorce Act, to provide clarity in judicial and curial obligations to the children. This phrase describes the special separateness of the child, from the parent, and the legal nature of the child as an individual human entity. The most common sin with children has always been the blending of the child's interests with the mother's interests in a false unity. The Lord Chancellor's Courts of Chancery in the 19th century did much to advance the welfare of the child and its language. This is at a time when children were viewed as little adults and worked in ugly, ugly industrial settings, like chimneys. That is one of the great contributions to world jurisprudence that these English courts made.

In the 1890s in Toronto, nightly one could count several hundreds of children begging in the streets. They were then described as ragamuffins — street urchins, street arabs — a wide variety of names. One writer, one night counted 700 children in one small area, at the time when child welfare was beginning to develop in Toronto. The genius of Ministers Crosbie and Mark MacGuigan was that they were in the forefront of placing certain rights of the child into legislation — this was revolutionary — mindful that the only federal legislation that even touched children's rights were the Divorce Act and the old Juvenile Delinquents Act, now the Young Offenders Act. The child is its own person. It is a child, but it is its own person, a separate being from its parents, with distinct needs, but yet those needs are for those parents. The child's legal disabilities until majority are also privileges. These disabilities are privileges that vest adults with justified duties towards the children. It is as this separate vulnerable being that the child so desperately needs the care of its own two parents, which care is joined in both financial and affectionate spheres. We must be mindful, colleagues, that the legal phrase "the best interests of the child" is not poetry. Nor is it an earnest expression of humanity. It is the term of a "judicially administrative jurisdiction."

Honourable senators, I come now to an American defining judgment in the New York Court of Appeal. On July 15, 1925, in *Finlay v. Finlay*, Justice Cardozo relied on the British case *Queen v. Gyngall*. In his judgment, Justice Cardozo said at page 938:

> The jurisdiction of a state to regulate the custody of infants found within its territory does not depend upon the domicile of the parents. It has its origin in the protection that is due to the incompetent or helpless.

Justice Cardozo continued at page 940:

> We find no sufficient reason for discarding this historic remedy and establishing in its place, or even as a supplement, a remedy of action. The difference is more than formal. The chancellor in exercising his jurisdiction upon petition does not proceed upon the theory that the petitioner, whether father or mother, has a cause of action against the other or indeed against anyone. He acts as parens patriae to do what is best for the interest of the child. He is to put himself in the position of a "wise, affectionate, and careful parent" (Reg. v. Gyngall, supra), and make provision for the child accordingly. He may act at the intervention or on the motion of a kinsman, if so the petition comes before him, but equally he may act at the instance of any one else. He is not adjudicating a controversy between adversary parties, to compose their private differences. He is not determining rights "as between a parent and a child," or as between one parent and another.

He then cites his source, *Regina v. Gyngall*. He continues:

> He "interferes for the protection of infants, qua infants, by virtue of the prerogative which belongs to the Crown as parens patriae." . . . . The plaintiff makes no pretense of invoking this paternal jurisdiction. . . . He invokes the jurisdiction of a court to settle a dispute. Equity does not concern itself with such disputes in their relation to the disputants. Its concern is for the child.

I repeat: Equity's concern is for the child. These two judgments reveal that the superior court judges' involvement is not to adjudicate conflicts between spouses in a divorce case, but to decide the best interests of the child in these circumstances.

Honourable senators, shared parenting, which permits the child to have the benefit of the affectionate bond of both parents, should be upheld by the courts. Truly, in the best interests of the child, shared parenting should be part of the process in divorce grants. Bill S-216 will achieve the practice of shared parenting. This tiny bill, a mere four clauses in two and a half pages, will amend the Divorce Act, section 11, titled "Duty of court," which defines the court's duties to children in its grants of divorce. My bill will amend this section to correct this well-known section 11 deficiency, which enlists the full coercive powers of state to enforce the child support monetary and financial sections.

• (1440)

The whole power of state is placed behind the enforcement of child support, but an equal state power is not behind the custody and access sections, the human affection relations section of the Divorce Act. This is unfair and cruel. The affectionate duty of parents to children cannot be ranked lesser or greater than their financial payments duty. Parents owe children both duties. No statute should rank one higher or lower than the other. These two duties are united in the legal phrase "the best interests of the child." This section 11 deficiency, a large imbalance in the Divorce Act, is an imbalance in justice itself.

Honourable senators, Bill S-216 will correct this legal imbalance that has caused great injustice to divorced families and incalculable heartbreak and pain. My bill will provide balance between the Divorce Act's child support and child custody access and parenting regimes. It will amend section 11 on divorce grants. Section 11(1) states:

> In a divorce proceeding, it is the duty of the court
>
> (a) to satisfy itself that there has been no collusion in relation to the application for a divorce and to dismiss the application if it finds that there was collusion in presenting it;
>
> (b) to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made . . .

Section 11 is absolute. No reasonable child support arrangements, no divorce. But it lacks an equal court duty to stay the divorce grant if no reasonable parenting arrangements have been made. The judicial duty in child support arrangements is much more hefty than the judicial duty in parenting arrangements. The parental financial and monetary duties have been made superior to the parental affectionate duties. This section means a duty of the court to stay the divorce grant if reasonable parenting arrangements have not been made. Clearly, it is needed.

Honourable senators, Bill S-216 will give the court and the judges the just and statutory power they need. It will amend section 11(1) by adding the new clause *(a.1)* after paragraph (a) to mandate the court:

> (a.1) to satisfy itself that reasonable arrangements have been made for the parenting of any children of the marriage, having regard to their best interests, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made;

Honourable senators, the 1998 Special Joint Committee Report*, For the Sake of the Children*, was conclusive and compelling. It recommended shared parenting. Canadians had strongly supported the committee's work and have expected

change in the Divorce Act to correct the inequalities and the well-known defects. The then-Liberal government had so promised and did so several times, first in the May 1999 response of the Minister of Justice, in her paper, *Government of Canada's Response to the Report of the Special Joint Committee on Child Custody and Access: Strategy for Reform*. Nothing happened. Change was again promised in the October 12, 1999 Throne Speech read by Governor General Adrienne Clarkson, here in the Senate, where she said, on page 2 of Senate Debates, that the government:

> . . . will work to reform family law and strengthen supports provided to families to ensure that, in cases of separation or divorce, the needs and best interests of children come first.

This promise of change was repeated again in the next Throne Speech, now the third time, on January 30, 2001. The Governor General read, on page 8 of Senate Debates:

> The Government will work with its partners on modernizing the laws for child support, custody, and access - to ensure that these work in the best interests of children in cases of family breakdown.

The media was most critical of the inaction on the report of the joint committee, which went on for quite some time, a couple of years. I shall cite one editorial.

In the July 28, 2001 *National Post* editorial, headed "Obstruction at Justice," the editor wrote:

> If the minister is committed to creating "positive outcomes for children" and if she genuinely respects Parliament, she should accept the conclusions of *For the Sake of the Children* and immediately introduce legislation incorporating them . . . To dither, obfuscate and mouth saccharine platitudes about children while thwarting the will not just of Parliament, but of Canadian citizens, is an affront to democracy.

Colleagues, shared parenting and Bill S-216 are long overdue. The courts and the judges need to be strengthened. We must support them in their duty already vested in them by the law of equity and the *parens patriae*.

Honourable senators, I wish again to laud Senator Jessiman in our great Senate fight here on Bill C-41, which proposed to repeal the Divorce Act sections 15.1(8) and 17(8), the sections that prescribe that, post-divorce, both spouses had obligations to financially support the children of the marriage according to their means. We won that point. Minister Rock accepted the Senate's amendment to this bill, and we reinstated the principle of joint child support obligations, which is now section 26.1(2) of the Divorce Act, in the Federal Child Support Guidelines, under the heading "Principle." It states:

> The guidelines shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation.

[Senator Cools]

Honourable senators, I shall now provide some insight as to why shared parenting is so important for families and why we need to uphold and clarify the true role and power of the judges in this as so much misunderstanding had arisen about the meaning of the term "the best interests of the child." I shall cite some case law that revealed the need for clarity in the meaning of this legal phrase. In the Supreme Court of Canada's 1993 judgment, *Young v. Young*, Madame Justice L'Heureux-Dubé, in her dissent, wrote, on page 7:

> The role of the access parent is that of a very interested observer, giving love and support to the child in the background.

At page 41:

> The need for continuity generally requires that the custodial parent have the autonomy to raise the child as he or she sees fit, without interference with that authority by the . . . non-custodial parent.

Again, at page 47:

> . . . the non-custodial spouse with access privileges is a passive bystander who is excluded from the decision-making process in matters relating to the child's welfare, growth and development.

Again, at page 49:

> . . . men as a group have not yet embraced responsibility for child care.

In his 1995 article in the Supreme Court law review, titled, *In the Best Interests of the Child*, Nicholas Bala, Queen's University law professor, wrote at page 461:

> ,. . . she offers an explicitly feminist analysis,. . .

• (1450)

Bala continued at page 455:

> Justice L'Heureux-Dubé . . . wrote a lengthy dissenting judgment in which she emphasized that the best interests of the child are served by protecting the position of the custodial parent . . .

As I said, great misunderstanding had arisen around the meaning of ''best interests of the child'' as though different persons could think it meant different things, whereas in point of fact, the precedence and jurisprudence are quite clear that the judge in such cases is to look at the child, not the dispute or the conflict between the parents. The judge's focus is the child.

Interestingly, in the same case, Mr. Justice Sopinka said the polar opposite. He wrote, at page 15:

> The best interests of a child are more aptly served by a law which recognizes the right of that child to a meaningful post-divorce relationship with both parents. The "rights" must be distributed between the custodial and the access parent so as to encourage such a relationship.

Honourable senators, I come now to another judgment: Ontario Court General Division June 27, 1991. The case was *Oldfield v. Oldfield*. About the father's relationship with the children, Justice Robert Blair wrote, at page 237, paragraph 5:

> That this is a loving and caring relationship is apparent. Clearly, it is "in the best interests of the children" to see that that relationship continues. If they are allowed to go, it is equally obvious that the nature of his access relationship will change.

The mother wanted to move the children to France, which would change the nature of the father's access.

About the wife's desire to move with their children to France, for her expected new marriage, Justice Blair wrote, at page 238, paragraph 6:

> Is it "in the best interest of the children" to make an order which effectively defeats this prospect and leaves them in the daily care of a mother who loves them dearly but who is shackled by her discontent?

The wife was allowed to move to France with the children; but the marriage never occurred. In consequence, the husband's child support payments were increased to finance the children's trips to Canada for visits with him. Justice Blair, in another judgment, on February 10, 1995, said, at paragraph 18:

> Someone has to pay for their passage. The reality is that it cannot be Ms. Marechal alone, given her limited income and the discrepancy between her income and that of Mr. Oldfield. I have come to the conclusion, in the circumstances, that the costs of their travel to and from Canada must be factored in to the overall expenses of their upkeep.

Honourable senators, I just have three pages left. May I have permission?

The Hon. the Speaker: Is it agreed?

Some Hon. Senators: Agreed.

Senator Cools: Honourable senators, the objective of my bill is to strengthen the court and the judges, and to clarify and support their legal and judicial role in the Divorce Act. Insufficient, defective and unclear statutes will inevitably plunge the judges into difficult and muddy waters. As senators, we have a duty to avoid this and to give them well-drafted statutes that are clear and allow them to do their work well. Sadly, for many years the field of family and divorce law was afflicted by much ideological warfare. Many excellent judges were damaged by this. I say that family relations in divorce, ever delicate, are not wise forums for ideological disputes. As senators, our first duty is to give the judges good laws that allow them to do that which they are constitutionally ordained and trained to do in their own rites of judicial independence, thereby to adjudicate the causes of the children. The focus is the children, not the differences between husband and wife.

Honourable senators, I come now to my conclusion. Bill S-216 will also amend the Divorce Act to provide for parenting plans. It will add a new subsection 16.1 after section 16. Subsection 16.1 has 7 sub-subsections. Subsection 16.1(1) reads:

> 16.1(1) In this section, "parenting plan" means a plan that sets out, in whole or in part, the responsibilities and authority of each spouse with respect to the care, development and upbringing of a child of the marriage, providing for matters such as . . .

The matters are listed very carefully. Subsections 16.1(1) to (7) lay out the parenting plan and the principles that it must recognize. The parenting plan occupies two pages of my two-and-a-half page bill.

These subsections rely on the legal phrase "the best interests of the child" and employ it six times. Honourable senators, I shall read some of my bill's subsections on parenting plans.

Subsection 16.1(4):

> (*a*) the purpose of the plan is to serve the best interests of the child as determined by reference to the condition, means, needs and other circumstances of the child;

Subsection 16.1(4):

> (*c*) the dissolution of the parents' marriage does not alter the fundamental nature of parenting, which remains a shared responsibility, nor does it sever the enduring nature of the parent-child bond;

Subsection 16.1(4):

> (*d*) the child has the right to know and be cared for by each parent, including the right to have a personal, meaningful and ongoing relationship with each parent on a regular basis;

Subsection 16.1(4):

> (*e*) the child has the right to spend time with, and communicate with, other persons with whom the child has a significant relationship, such as grandparents and other relatives;

Subsection 16.1(4):

> (*g*) each parent retains authority and responsibility for the care, development and upbringing of the child, including the right to participate in major decisions respecting the child's health, education, and moral or religious upbringing.

Honourable senators, a parenting plan may be included in an application for a custody or access order brought by one or both spouses under the act. My bill sets out to describe and depict the principles that will govern good parenting plans and arrangements. The parenting plans intended by Bill S-216 will contain all that "a wise, affectionate and careful parent" would do for their child.

Honourable senators, I wish to record here the excellent work that our Law Clerk and his staff did on this bill. It was two years in the making, and I took advice from great scholars like Dr. Julien Payne and those I have known for years. I know this file well. I have done much work on it. I wish to note here the quality of the work that was done by our personnel at the Law Clerk's office. The Law Clerk then was Mark Audcent, who worked on it, as did Michel Patrice, Melanie Mortensen and Janice Tokar. The quality of their work was stupendous. It is an area of law that can polarize the most balanced persons very quickly, but it is an area of law that has been so disfigured.

Honourable senators, as we saw, child support and spousal support payments become means of transferring wealth from men to women on the grounds that, for hundreds of years, women were oppressed.

• (1500)

Whether or not that is true is a different matter, but society cannot make innocent individuals pay for historical inhumanity.

Family and divorce law is such a vast subject that I had to do many hours of work to crush all of this content into this small speech. Forty-five minutes is nothing in the history of the jurisprudence, or trends in divorce or children's rights.

The main fact I wanted senators to grasp is that the judges who were under these burdens quite often need to be reinforced, supported and given the kinds of laws that steady them in their observations, their knowledge of precedents and jurisprudence past, to allow them to find their way into the future, and to justice and fairness.

[Senator Cools]

Honourable senators, I sincerely believe that it is possible to be fair and just even in the midst of conflict. We have a body of law called the law of equity, which essentially tells us that we must do precisely that, to find the true and just peace.

I thank all honourable senators for listening. This is a subject matter that has been very close to my heart for many years. I offer this bill to colleagues in the hopes that they will study it with great care, and that we will do the duty that we, as members of Parliament, owe to the children of this land.

I thank my colleagues very much. I thank you again.

(On motion of Senator Cools, for Senator McCoy, debate adjourned.)

[*Translation*]

CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Pierre-Hugues Boisvenu moved second reading of Bill C-479, An Act to amend the Corrections and Conditional Release Act (fairness for victims).

He said: Honourable senators, I am very proud to speak today to the nine major amendments that Bill C-479 would make to the Corrections and Conditional Release Act.

[*English*]

First of all, I would like to highlight the important contributions of the sponsor of this bill in the other place, MP David Sweet.

[*Translation*]

In addition, over the past year, the Minister of Justice, Mr. MacKay, and the Minister of Public Safety, Mr. Blaney, have shown remarkable and ongoing leadership in advancing victims' rights. The ministers held consultations with victims of crime and their advocates, in every province and territory in the country. Although the objective of these consultations was to discuss the draft victims bill of rights, currently under consideration in the other place, the comments and suggestions received during the consultations are still being studied today in order to provide more support to victims.

[*English*]

Indeed, having participated in these consultations myself, the victims of crime have claimed loudly and clearly that they want to be more integrated into the process of the criminal justice system. They no longer have the title of spectator and, as such, will never be forgotten again. They want to fully and concretely participate in the process.

[*Translation*]

Thanks to the will and determination of these victims, the objective of Bill C-479 is being realized. I am also proud to say that this bill will make it possible to continue the excellent work that has been done by the ministers and our government since 2006, by recognizing fundamental rights for victims of crime.

There are two key components to Bill C-479, the fairness for victims of violent crime act.

The first focuses on strengthening the voice of victims of violent crime and providing additional support to victims in the parole process.

The second seeks to modify parole and detention review dates, giving the Parole Board of Canada the option of increasing the interval between parole hearings for violent offenders.

Both of these components will make it possible to act on the changes that victims, their families and advocates like the Federal Ombudsman for Victims of Crime have urged for many years. It's about time to bring these to fruition.

I remind honourable senators that this bill will primarily apply only to violent offenders.

As I've said many times in the past, I don't think that any definition could ever convey the scope of these crimes and the trauma these victims experience. These are heinous crimes that are often premeditated and always senseless.

I'd like to point again to two statistics from the 2007 Sampson report, which underscored the alarming trends on violent crime. I remind senators that this report was the basis for this reform of the Canadian prison system, which focuses on holding criminals accountable as part of their rehabilitation process.

This report, named after its author, the former Ontario minister of correctional services, Rob Sampson, cited changing offender profiles. Nearly 60 per cent are now serving sentences of less than three years and the vast majority of them have a history of violence. One in six now has known gang or organized crime affiliations. One in four criminals in Quebec has ties to organized crime and, as a result, this province has the dubious record of having the highest organized crime rates in the country.

I am participating in today's debate on behalf of victims of crime. I have been advocating on their behalf for more than 10 years. I am also speaking on behalf of the thousands of Canadian families who have had the misfortune of having a loved one murdered.

I am sure that many of my colleagues have never attended a hearing before the Parole Board of Canada. Allow me to tell you the story of some of the families who have gone through that difficult experience. I always try to put myself in the victims' shoes, or those of their loved ones. For each one of them, this is a traumatic, difficult and often defining experience. Victims and their loved ones do not take part in the process because the law compels or allows them to, they do it out of love and, above all, to ensure that justice is served.

I am talking about the family of Cathia Carretta, who was brutally murdered by her ex-husband, Jean-Claude Gerbet; the Jarry family, whose son, Simon, was shamelessly murdered in 1999 at the age of 18; and the Dion family, of Windsor in the Eastern Townships, whose son, Stéphane, was savagely murdered just shy of his 14th birthday in 1992. All of those families, and many others as well, have one thing in common: they describe their experience with the Parole Board of Canada as challenging and difficult and, more than anything, they feel that the rights of criminals grossly exceeded their own.

Take the case of serial killer Clifford Olson, who killed 11 innocent young victims. For more than a decade, he filed application after application with the Parole Board of Canada. In most cases, he did not show up. When he testified, he did so to victimize the families yet again. It was like a game to him, and it gave him power over the families of the victims.

[*English*]

There are dozens of families who have had hard experiences living through every occasion and with a huge amount of stress, knowing they had to request to attend the hearing only to learn at the last minute that everything was postponed or simply cancelled.

[*Translation*]

When they returned home, those families had to wait for the criminal to submit another application for parole. This harassment went on for years, and the victims' loved ones had to once again appear before the board, submit their statements and go through a whole range of emotions, often only to find that the hearing had been cancelled again. Why did this happen? Because right now, the law gives all the rights to the criminals in the parole hearing process.

• (1510)

I could tell you about that professor in Montreal, Valery Fabrikant, who murdered four of his colleagues. For years, decades, he continued to harass the victims' families by abusing the rules of the PBC, which are still set up in the criminals' favour.

These examples clearly show the intent of this bill in terms of statements by victims and their families and in terms of the modification of the parole review process.

I would like to give you an overview of nine changes that Bill C-479 would make. If the PBC refuses to grant parole to a violent offender, the offender could have to wait for up to five years before he can submit another application. The PBC will make sure that it understands and meets the needs of victims or their families in order to assist them at the hearing. The PBC will ensure that victims or their families are at the hearing, and if they are not there in person, it will take the appropriate measures to ensure that they can still watch the proceedings.

[*English*]

The Parole Board of Canada must consider the declaration of the victim or his family in its decision relating to the release of the criminal.

[*Translation*]

The PBC will offer victims or their families a number of alternate methods of submitting their statements. The PBC will share with victims or their families any information considered as part of the review.

[*English*]

The Parole Board of Canada will cancel a conditional release hearing in the case of a criminal that repeatedly refuses to attend.

[*Translation*]

The PBC will provide victims or their families with the transcript of the parole hearing.

Finally, the PBC or Corrections Canada will inform victims or their families when an offender is to be released on temporary absence or statutory release.

The bill would extend mandatory review periods for parole. This means that if an offender convicted of a serious violent offence were denied parole, then the PBC would have to review the case within five years rather than within two years, as is now the case.

[*English*]

The Parole Board of Canada should be more concerned with the needs of victims of crimes and their families in order to be present during the hearings and be witnesses of the process.

[*Translation*]

When making its decisions, the Parole Board would be required to give more serious consideration to any victim impact statement presented by victims or their loved ones.

The Parole Board would be required, if requested, to provide victims with information about the offender's release on parole, statutory release, or temporary absence. It would also be required to provide victims with information about the offender's correctional plan, including the progress made in meeting the plan's objectives and any offences the offender may have committed during his incarceration.

Honourable senators, let's make the changes proposed in Bill C-479 happen. These are changes that have been requested by victims' families, because there are hundreds of tragic stories similar to the ones I shared today. Violent offenders have committed unspeakable crimes. These victims, their families and our communities should be confident that these offenders are truly on the road to rehabilitation, and if not, that the Parole Board of Canada has the tools to delay their release.

[*English*]

In implementing the changes that I am proposing in Bill C-479, we would show respect to victims and their families. Furthermore, such changes have been adopted elsewhere, such as in California, New Zealand and the United Kingdom.

[*Translation*]

In closing, please allow me to read into the record once again this paragraph from a March 2, 2012 editorial from *The Hamilton Spectator*:

> The Parole Board of Canada has a responsibility to victims of crime. For those victims, the parole board is virtually the only source of information about the status of the person who committed the crime against them. Some local victims . . . don't feel well-served by the board. That must change.

I've read dozens of quotes like this in Quebec newspapers, and every time, I've wondered why the PBC did not consider the rights of criminals and those of victims or victims' families to be equal.

Honourable senators, these are all of the reasons why I did not hesitate to sponsor Bill C-479, An Act to Bring Fairness for the Victims of Violent Offenders. This measure will give the Parole Board of Canada the necessary and essential tools it needs to better serve victims, their families and all Canadians.

Thank you.

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

(The Senate adjourned until Tuesday, October 7, 2014, at 2 p.m.)

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