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OFFICIAL REPORT
(HANSARD)

Thursday, March 26, 2015

The Honourable LEO HOUSAKOS
Speaker *pro tempore*

CONTENTS

(Daily index of proceedings appears at back of this issue).

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THE SENATE

Thursday, March 26, 2015

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

Prayers.

SENATOR'S STATEMENT

BRIAN MACKAY-LYONS

ROYAL ARCHITECTURAL INSTITUTE OF CANADA—CONGRATULATIONS ON GOLD MEDAL

Hon. Wilfred P. Moore: Honourable senators, I rise today to pay tribute to Brian MacKay-Lyons, a resident of Upper Kingsburg, Lunenburg County, Nova Scotia, upon recently being awarded the Royal Architectural Institute of Canada's Gold Medal.

According to the institute, "This honour is bestowed in recognition of a significant body of work deemed to be a major contribution to Canadian architecture, and having lasting influence on the theory and/or the practice of architecture, either — through demonstrated excellence in design; and/or, excellence in research or education."

Mr. MacKay-Lyons graduated from Dalhousie University with a bachelor's degree in science in 1974, and then degrees in Environmental Design and Architecture from Technical University of Nova Scotia in 1974 and 1976 respectively. In 1982 he earned a Master of Architecture in urban design from the University of California at Los Angeles.

Through study and work abroad in Italy, China and Japan under such leading architects as Charles Moore, Barton Myers and Giancarlo De Carlo, Brian gained a wealth of experience, yet his heart lay at home in Nova Scotia.

He returned home to open his own practice in Halifax in 1985, Brian MacKay-Lyons Architecture Urban Design, which 10 years later became MacKay-Lyons Sweetapple Architects Ltd. His work has garnered much national and international attention. Over the course of his career, he has received over 100 awards, including six Governor General Medals and two American Institute of Architects Honor Awards for Architecture. His work has been recognized in over 300 publications. He remains a professor at Dalhousie University, where he has lectured for 30 years.

Mr. MacKay-Lyons sees a widening gulf between the teaching of architecture and the practice of building, or as he puts it, between the head and the hand.

This led to his creation of the Ghost Lab, an educational program that took place on his family farm at Upper Kingsburg. It was his response to academic shortcomings but also an attempt to revitalize the key ingredient of apprenticeship in the education of an architect. He approaches apprenticeship in the traditional sense of that relationship, with a mentor meant not only to teach but to inspire as well.

The essence of Mr. MacKay-Lyon's approach, in his own words, "has been to make architecture about place — its landscape, climate and material culture." To see his creations along the shoreline of Nova Scotia is to see the physical manifestation of these words. His creations are a part of the land. They do not dominate; they enhance the natural beauty. They belong there.

As one of the jury members for the Royal Architectural Institute of Canada put it, "His work is universally recognized as pure, dignified, poetic and beautiful. His work comes from an intimate connection with his communities." The institute's Gold Medal will be presented to Mr. MacKay-Lyons this summer in Calgary, and we extend the sincere congratulations of the Senate of Canada to him.

ROUTINE PROCEEDINGS

STUDY ON PRESCRIPTION PHARMACEUTICALS

FIFTEENTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE— GOVERNMENT RESPONSE TABLED

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the government response to the fifteenth report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled *Prescription Pharmaceuticals in Canada: Unintended Consequences,* tabled in the Senate on October 21, 2014.

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, I would like to draw to your attention the presence in the gallery of our former colleague and good friend the Honourable JoAnne Buth.

On behalf of the Senate of Canada and all senators, welcome back.

Hon. Senators: Hear, hear!

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I ask for leave of the Senate that Bills C-54 and C-55, which are set down for second reading at the next sitting, be placed on the Order Paper for consideration today.

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

Hon. Joan Fraser (Deputy Leader of the Opposition): No.

The Hon. the Speaker *pro tempore***:** Leave was not granted.

Senator Martin: Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: Motion No. 93, followed by Motion No. 94, followed by all remaining items in the order that they appear on the Order Paper.

NATIONAL FIDDLING DAY BILL

MESSAGE FROM COMMONS

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons returning Bill S-218, An Act respecting National Fiddling Day, and acquainting the Senate that they had passed this bill without amendment.

• (1340)

THE SENATE

MOTION TO RESOLVE INTO COMMITTEE OF THE WHOLE TO RECEIVE JOE FRIDAY, PUBLIC SECTOR INTEGRITY COMMISSIONER NOMINEE, AND THAT THE COMMITTEE REPORT TO THE SENATE NO LATER THAN ONE HOUR AFTER IT BEGINS ADOPTED

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of March 24, 2015, moved:

> That, immediately following the adoption of this motion, the Senate resolve itself into a Committee of the Whole in order to receive Joe Friday respecting his appointment as Public Sector Integrity Commissioner;
>
> That the Committee of the Whole report to the Senate no later than one hour after it begins.

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

Hon. Senators: Agreed.

(Motion agreed to.)

PUBLIC SECTOR INTEGRITY COMMISSIONER

JOE FRIDAY RECEIVED IN COMMITTEE OF THE WHOLE

(The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Michael L. MacDonald in the chair.)

The Chair: Honourable senators, rule 12-32(3) outlines procedures in a Committee of the Whole. In particular, under paragraph (*b*), "senators need not stand or be in their assigned place to speak."

Honourable senators, the Committee of the Whole is meeting pursuant to the order just adopted by the Senate to hear from Mr. Joe Friday respecting his appointment as Public Sector Integrity Commissioner. Pursuant to the order, the appearance will last a maximum of one hour.

I would now ask the witness to enter.

(Pursuant to the Order of the Senate, Joe Friday was escorted to a seat in the Senate chamber.)

The Chair: Honourable senators, the Senate is resolved into a Committee of the Whole to hear from Mr. Joe Friday respecting his appointment as Public Sector Integrity Commissioner.

Mr. Friday, thank you for being with us today. I would invite you to make your introductory remarks, after which there will be questions from senators.

Joe Friday, nominee for the position of Public Sector Integrity Commissioner: Thank you, honourable senators. I am very honoured to have been proposed for the position of Public Sector Integrity Commissioner by the Prime Minister. This nomination follows the completion of a publicly advertised process last year.

The position of commissioner is that of an agent of Parliament, one of a small number of oversight offices which exercise important and sensitive functions in the federal public administration, functions that require objectivity, neutrality and independence.

[*Translation*]

I fully understand the role of Public Sector Integrity Commissioner, and if appointed, I would bring all of my experience, skills and dedication to this position.

I would also like to point out that I understand that, as an agent of Parliament, I would be accountable directly to Parliament.

[*English*]

Our office was created in 2007 under the Public Servants Disclosure Protection Act as part of the federal government's accountability initiative. Our office provides a safe and

confidential mechanism for public servants and members of the public to disclose wrongdoing committed in the federal public service. The act also helps protect from reprisal public servants who have disclosed wrongdoing and those who have cooperated in investigations.

The position of commissioner therefore plays a central role in the accountability framework for the federal public sector. It represents a commitment to excellence in public service, and increasingly it forms part of the identity of Canada in the world as a trusted leader in good government and good governance.

As commissioner my commitment will be to represent the public interest in carrying out the important and sensitive duties of the commissioner reporting, as all agents do, directly to Parliament.

[*Translation*]

Over the past seven years at the Office of the Public Sector Integrity Commissioner, first as general counsel, then as deputy commissioner, and since January 1, 2015, as interim commissioner, I gained a clear and in-depth understanding of the structure and operation of our disclosure and reprisal protection regime, or in other words, the whistle-blower protection regime.

I also understand the importance of emphasizing and demonstrating the faith that Canadians have in public institutions and their public service, including the need to work on maintaining and consolidating that faith.

In order to meet these objectives, it is essential to use one's discretion, be familiar with how the public sector operates and take an objective and balanced approach when making decisions on key issues.

[*English*]

I understand that it can be extremely difficult for someone to come forward when they have witnessed what they think is wrongdoing. I understand that reprisal can take many forms and requires a direct and clear response to not only address an individual situation effectively but also to discourage it from happening in the future. I also understand that all parties, including those accused of having committed wrongdoing or reprisal, have the right to be treated with fairness and justice.

[*Translation*]

Because the commissioner must work as an independent decision-maker, he has a very demanding role. Many aspects of that role still have to be defined when it comes to the disclosure of wrongdoing. The Office of the Public Sector Integrity Commissioner must be able to manage expectations and perceptions using diplomacy and judgment. That being said, I know that by continuing to work toward the objectives of accessibility, clarity and consistency, the office will be able to deal with wrongdoing and complaints of reprisal and thus help strengthen the public service.

[*English*]

It has been eight years since the office was created. We have had many tangible successes in those eight years, in the tabling of case reports, in the referral of reprisal cases to the tribunal specifically created in our legislation to determine and rule upon those cases, in the conciliation of some of those cases, and we have also had success in our sustained outreach to inform Canadians about our existence and our mandate.

The true measure of our success in many ways is that we treat each case fairly, rendering decisions on issues of significant public interest and importance in a just and equitable manner.

[*Translation*]

If my nomination is approved, I intend to follow the example of my predecessor under whose leadership I am proud to have helped lay a solid foundation for the rigorous operational policies and methods we have in place today. I will continue to be guided by and build on that success.

[*English*]

My priorities are grouped under the principles I mentioned a few moments ago: accessibility, clarity and consistency. These principles, while distinct, are intrinsically linked. Accessibility that is linked to awareness and knowledge is a priority that I believe will be a permanent one for us. It is also a goal and a challenge that is shared by our colleagues in the provinces and the territories, with whom I meet on a regular basis, and it is shared by our international counterparts, many of whom I am also in ongoing communication with.

• (1350)

[*Translation*]

In simple terms, this principle means that people need to know who we are and where to find us when they need us. They need to understand that, under our laws, they can choose to make disclosures within their department or come to us. They also need to be aware of what we can and cannot do for them when they come to our office. We have to keep working on raising people's awareness, providing them with clear information and reassuring them.

[*English*]

Further in this regard, I will also focus on the continuing challenge of ensuring that our work is informed by other relevant perspectives and opinions. Our External Advisory Committee, started in 2011, will continue. It provides us with essential external points of view and allows us to be aware of the influence and effects of our actions. In this regard, an increased focus on the input and views of federal unions will be a priority for me as chair of this committee.

Looking to the internal operations of our office, we are in a position to take stock of our considerable experience and build on the lessons we have learned to date, including guidance from the courts. To that end, I have focused on making progress on our

internal policy-making process, bringing together our operations, legal and policy teams to produce directives to guide operations more directly and more strategically, and also to provide potential users of our regime with clarity on our interpretation and our application of the law. We want people to make informed choices about coming to our office. Knowing what to expect is a key part of that.

This builds on our work in recent years in creating and publicizing service standards, timelines that we have imposed on ourselves to complete initial analyses of files and also to complete investigations.

[*Translation*]

Honourable senators, I will also continue to place great importance on the standards of professionalism and excellence that our staff are expected to uphold. The work we do is hard. Our team, which is relatively small, is nevertheless stronger than ever.

When it comes to recruitment, we have demonstrated rigour and strategic vision. I have learned that, for a small organization like ours, it can be extremely complicated to attract and retain the right people.

Eight years on, our workload seems to have stabilized even though we have no control over the frequency, number or type of disclosures. By now we have shown that we can accomplish our work within the constraints of our existing budget. We are finally ready to undertake the statutory five-year review of the legislation, and when that review begins, we will be pleased to submit the observations and suggestions that have arisen from our work to date, thereby contributing to the development of potential changes to the system.

[*English*]

We are continuing to prepare ourselves for this review. Generally speaking, I can say at this point that our focus will be on improving confidentiality protection and providing support to complainants of reprisal in an effort to allow them to access the full benefit of the protections under the law.

I would say with confidence that our act is working, but I would also say that it can work better, and it is the responsibility of any commissioner to ensure that it is working to its full capacity and potential.

[*Translation*]

Our work requires a thorough understanding of the federal public service, its activities and indeed its culture. I am confident that my 22 years of experience within the federal administration will be critically important to the performance of the duties and functions of commissioner under the act.

I have proven my objectivity and my independence in the context of my work for the Commissioner's office to date, particularly when I was called upon to act as a decision-making authority in founded cases of wrongdoing. I am relying on that experience, on my judgment and on my legal training to guide me in carrying out my role as Commissioner.

[*English*]

I wish to underscore that the vast majority of public servants serve Canadians with integrity and an honourable sense of service. My goal as commissioner is to ensure that Canada's proud tradition of public service not only continues but also is strengthened and exemplified by the highest degree of respect for and compliance with standards of integrity, professionalism and respect.

[*Translation*]

Thank you.

[*English*]

Honourable senators, it would be my pleasure to answer any questions you might have at this time.

The Chair: Thank you, Mr. Friday, for your remarks. The floor is now open for questions, so let the Clerk's table know if you would like to ask a question of Mr. Friday. We have some questions here already, and we'll start with Senator Runciman.

Senator Runciman: Mr. Friday, you talked about staff, a small team. What numbers are you talking about with respect to your office?

Mr. Friday: We currently have 25 full-time employees in our office.

Senator Runciman: In talking about conducting investigations, how many of those would be classified as investigators?

Mr. Friday: Seven positions in our office are dedicated to investigations. We currently have three full-time investigators staffed, and we are in the process of filling a fourth position. That doesn't include our experienced director of investigations, who is also an investigator.

Senator Runciman: What kind of background would the investigators have?

Mr. Friday: The backgrounds vary. Central to my consideration is the experience in administrative investigations. We do not conduct criminal investigations. The standard of proof is different. The approach is different. The result of one of our investigations is a recommendation to me to make a finding of wrongdoing or not, which I am then required to report to Parliament.

So, administrative investigation experience is important, as is experience within the federal public sector. This is the landscape within which we work, and I think a thorough working knowledge of the structure and operation of the federal public sector is important, given the nature of our work.

Senator Runciman: You've been interim commissioner for six months now, or more?

Mr. Friday: Since January 1.

Senator Runciman: Oh, since January of this year. How do you see the office operating differently going forward from what has been the process in the past?

Mr. Friday: I would group my priorities under the heading of continuity because I think we have a very healthy momentum going at this time. I would like to focus particular attention on the development of policies and directives that would support consistency in our interpretation and application of the law. I think we are at a point in our existence where we have many important lessons to learn. We have some guidance from the courts.

I would like to focus attention on that as a particular priority, and I would also like to develop those policies and directives in such a way that we can publicize them so that people who are considering coming to us will have some idea of what they might reasonably expect from our office.

I recognize how difficult it is for a person to come forward to an external whistle-blowing body such as ours with a disclosure or a complaint of reprisal, and anything that I can do to make that process more certain and more predictable and clearer so that people can make informed decisions, I would very much like to focus on doing.

Senator Runciman: Do you think there is widespread recognition of the role your office can play? Is there enough knowledge out there?

Mr. Friday: I think that knowledge and awareness and understanding are an ongoing challenge for us, and I can certainly say that the discussions that I have with my provincial and territorial counterparts, and with many of my international counterparts, are focused on that very issue.

Some people use the fire station analogy, that if you need us, you should know where to find us immediately. However, we don't necessarily have to be front and centre in everyone's mind, and perhaps that is a healthy thing. If it was such that everyone needed us every minute of every day, it might speak to a larger problem in the public sector that I don't think exists.

As I said, our starting point is that we have such a proud tradition of public service in this country. Our focus really is on ensuring that that proud tradition continues and that Canadians have faith in their public institutions and in the public servants who work for them.

• (1400)

[*Translation*]

Senator Joyal: Thank you for your presentation. Could you remind us of how many complaints were received and how many investigations were launched following those complaints, since there might be a difference in those two numbers?

Mr. Friday: Every year, we receive roughly 100 disclosures of wrongdoing and 25 complaints of reprisals. Typically, we investigate 20 per cent of disclosures and one third of reprisal complaints. We are currently conducting 16 investigations into reprisal complaints and disclosures combined.

Between April 1, 2007 and March 10, 2015, we received about 800 disclosures and reprisal complaints in total; we completed 123 investigations and tabled 10 case reports.

Senator Joyal: Thank you for that information. I understand that you have the power to order the production of documents.

[*English*]

Do you have the power to order the production of documents from the administration?

Mr. Friday: We have all of the powers from section 2 of the Inquiries Act, which allow us to issue a subpoena. I'm happy to say that we have not had to use those powers up to this time. I would like to remark on the very notable level of cooperation that we have had from all departments, all deputy ministers and public servants to date.

There is a statutory obligation in our legislation that every chief executive — deputy ministers and heads of Crown corporations — has an obligation to provide us with access to premises, to documents and to information. So that obligation is acknowledged and, as I say, I'm happy to report that it has been respected.

We do have those powers, if and when we need to use them, and we would certainly not hesitate under my direction to use them appropriately.

Senator Joyal: Thank you for that answer.

In terms of your power, you mentioned the report. In your report, do you only have the power to recommend, or do you have the power to order, for instance, for compensation or reintegration, or any kind of measures that you would deem appropriate to give way to your conclusion?

Mr. Friday: In the case of a disclosure of wrongdoing, we make a finding as to whether wrongdoing occurred or not, and we are required to issue a case report to Parliament.

In the case of a reprisal, we don't make that finding. But if we, at the end of an investigation, believe there are reasonable grounds to believe a reprisal has taken place, we then apply to a specially constituted tribunal made up of three Federal Court judges who have the power to order discipline against someone who has committed a reprisal. They have remedial powers, for example, to reinstate someone into their job, to order the payment of up to $10,000 for pain and suffering, or to repay lost wages.

In the case of reprisals, we are linked into the formal judicial system, if you will.

Senator Joyal: So you are not a tribunal per se?

Mr. Friday: We are not. We have the power to make recommendations for corrective action when we make a finding of wrongdoing. We are the leading party before the tribunal, so we put forward the case.

Senator Joyal: So, you are more than just an investigator. You can take the role of a Crown prosecutor because you yourself can go before the court. Am I right in describing you that way?

Mr. Friday: In terms of the special tribunal, yes, we are the moving party before the tribunal, much like the Canadian Human Rights Commission and the Human Rights Tribunal, as I understand it.

With respect to findings of wrongdoing, our powers are limited to making recommendations, but we do that in a public case report.

Senator Joyal: So, in other words, when you go before the court, before the panel of the three judges that you mentioned, you would use the proof that you have gathered to support your plea and demonstrate in front of the court that this is a worthwhile case, and the recommendation you make to the court is based on substantive proof or elements of consideration that would lead to a favourable conclusion for the agreed party.

[*Translation*]

Mr. Friday: Exactly.

Senator Joyal: Okay. Have you used that type of tribunal since 2007?

Mr. Friday: Yes, we have sent six reprisal cases to the tribunal. In five of those cases, the parties came to a resolution with the help of a conciliation process to which they are entitled by law during an investigation. There is also the possibility for mediation at the tribunal.

I think the conciliation process is very important because it gives the parties the power to settle matters of reprisal and disputes between two people. In my view, this is a more personal approach than disclosure, for example. That may be the difference between a private interest and the public interest.

[*English*]

Senator Joyal: You raised the other point I had in mind, which is more or less the privacy surrounding a case. Of course, a person who goes in front of a panel takes the risk of going public. Am I right?

Mr. Friday: Absolutely.

Senator Joyal: So, when you go public, you might win but you have the stigma of looking like the black sheep, if I may say so, when you go back to your job. In fact, you win on one side but you lose on the other, and the net is to come to a conclusion as to where your best interests are as a human being and a job holder with family responsibilities and whatnot. That seems to be a very important human consideration to take into account when you decide to go before the panel.

Does that mean when you go in front of the panel, you have the support or the will of the aggrieved person with you during the process to be sure you get the decision you were seeking?

Mr. Friday: I would certainly agree with your point, senator. During the investigation of a disclosure of wrongdoing, the process is highly confidential. Confidentiality, c'est un pilier de notre régime.

In the case of reprisal, if we are taking a case before a public tribunal, there is indeed a difference and I would agree that a party would want to take that into consideration and we would actually ensure that parties understand what limits exist, if any, on confidentiality. The issues are somewhat different in a disclosure and a reprisal, but I would state — and perhaps I'm showing my background in alternative dispute resolution — that the option of conciliation in a reprisal case is one that I believe should be taken seriously. It offers the possibility of private settlement.

I fully accept, however, that in any particular case, the parties may wish to proceed to a full tribunal hearing and have the benefit of a full tribunal judgment and an order of the court.

Senator Joyal: I'm sorry. I have another question, maybe on the second round.

The Chair: We'll come back on the second round, if we can. Senator Batters, you're up next.

• (1410)

Senator Batters: Could you please tell us what your vision of the organization is, and, projecting into the future, how you would want to leave the organization at the end of your seven-year mandate as the Public Sector Integrity Commissioner. On this question, I'm looking for, as another man with your name would have said to me, "Just the facts, ma'am." You had to know that was coming at some point.

Mr. Friday: Thank you, honourable senator. If I may, I can assure honourable senators that Joe Friday is my real name.

Perhaps I could answer that question by saying if I could change one thing, it would be to remove the stigma from the term "whistle-blower." It's a term that some people choose not to use and some people do.

I don't believe it's a derogatory term. I think it's a term of honour. The connotations of that word are, I think, within our culture, still to a certain extent very negative. There are connotations or associations with ideas of disloyalty as opposed to loyalty, with dishonesty as opposed to honesty, with weakness instead of strength.

My vision would be to, if I can use this word, normalize the act of whistle-blowing.

I should underscore that our office is not an ombuds office. We do not represent a party. We represent the public interest at all times. I'd like to say that we advocate on behalf of whistle-blowing, not on behalf of a whistle-blower.

To the extent we could change those perceptions and turn whistle-blowing into pro-social behaviour as opposed to anti-social behaviour, I would like to do that. I'm hoping that, with our sustained focus on outreach, on information, on giving people what they need to understand in order to use our services to their full extent and by making consistent defensible, reasonable and just decisions, this would go a long way to doing that.

But in seven years, when my term is over, if I can have moved thinking about whistle-blowing further, I would be very satisfied.

Senator Batters: Great, and best of luck with those laudable objectives.

Senator Marshall: Mr. Friday, thank you very much for being here. Could you speak to us regarding the history of the office and, specifically, the work that was done by the Auditor General? There were a couple of bumps in the road for the office, and I was wondering if you would share your perspective on the 2010 audit and also the work done in 2014. I realize that the areas reviewed were very different in the two different years, but I'd like to know specifically whether the office has moved past that now and, if so, how they did it. If you have not, then what else do you have to do to move past that very difficult period?

Mr. Friday: Thank you for the question. In 2010, the Auditor General of Canada issued a report that focused on our first Public Sector Integrity Commissioner and concluded that there were not only some more personalized issues with respect to behaviour and management style, but also some issues with respect to the operations of the office.

Our second Public Sector Integrity Commissioner, Mr. Mario Dion, whom I was privileged to be not only general counsel to, but also deputy commissioner to, immediately upon his arrival initiated a review process where all closed files were opened and reviewed. As a result of that, a number of files were reopened for investigation, and a number of files were reopened for an initial analysis.

As well, following that, in 2014, the Auditor General made observations with respect to purely operations, with respect particularly to some delays in time. Since that time, and I am extremely proud of this, having worked closely with Mr. Dion, we have instituted service standards. We have given ourselves 24 hours to respond to a general inquiry under our act. We have given ourselves 90 days to complete a case analysis, and the case analysis phase results in a recommendation to investigate or not. And when an investigation is launched, we have given ourselves one year to complete that investigation. Our target was to meet those deadlines within 80 per cent of our cases. As of last week, I can proudly tell you that we are above the ninetieth percentile and have consistently been that way.

As well, we have instituted a series of case review meetings that I chair with my general counsel, my director of operations and our executive director, and we look at the status of each and every active case to ensure we are on top of it.

We have also increased our staff since the time of the initial Auditor General report. There was a high turnover. Our turnover rate last year was under 8 per cent. So I think that we have moved well beyond the issues that were identified, and I honestly believe and I'm proud to say that we are continuing with the processes we have in place to ensure that those kinds of problems simply cannot arise again.

We are, I assure you, extraordinarily sensitive to those operational realities and are taking continuing action to stay on top of all our files and to respect the service standards we have imposed on ourselves.

Senator Marshall: I find that events such as audits tend to destabilize an organization, especially where your office is a small office. You said you have around 25 employees. Do you feel now that the office is stabilized and that you have gone into a regular operational mode?

Mr. Friday: Yes**,** I would say without question that I'm absolutely honoured to able to lead the team we currently have, a team of dedicated professionals working in an area that I think is very difficult. I have regular conversations with people who say that they cannot imagine working in our field with the stresses, with the tensions, with the issues we deal with. So I recognize how difficult it can be to work in the field of whistle-blowing. It's not only operationally and legally difficult, but also emotionally difficult. We have very carefully chosen our current complement of dedicated professionals. Our HR plans are to continue to staff in an anticipatory way, so that when people do leave, and we certainly don't expect everyone will stay for the entirety of their career in a small organization such as ours, we are doing this in anticipation of being able to pre-identify the right fit for a specialized, difficult, but extraordinarily important area of work.

Senator Marshall: Thank you very much.

Senator Fraser: Mr. Friday, welcome to the Senate. It's nice to hear from you, and I have been very interested in what you have been saying. I am sorry; you would have seen me flitting about for a few moments there. It was a parliamentary thing I had to deal with, and I apologize for what must have looked to you like discourtesy, but I think it's very important that you are here and that we hear what you have to say.

I was very interested in your opening statement, and you made a few points that I would like to come back to.

Let's start with this business of the staff because you have just been talking about that. You have just told the Senate that your turnover rate is way down, which is terrific. That's very good

news. But in your opening statement, you said it was difficult to attract and retain staff. Could you perhaps reconcile those two statements for us?

Mr. Friday: Certainly. I think it goes to the point I was trying to make moments ago, and that is that it's a difficult area within which to work. I have worked with colleagues who have come to our office with preconceptions or presumptions that are not actually accurate. For example, a very fundamental one, is that we are not a personal representative. We don't actually fill an ombuds role. I think it is the case that some people do not recognize in advance the personal emotional component of dealing with people who have thought long and hard about making a very difficult decision and then dealing with not only the evidence and the issues that they deal with, but also the personal toll, if you will.

• (1420)

The difficulty is in identifying the right people and providing, in a small organization, the ability for them to continue to grow and develop. As you might discern, in a group of 25 people, there are not many options for movement up and development. We give people tremendously useful experience to bring to another job.

Part of my job is to work within the confines of a small organization to try to find opportunities for continuing development; so one that I did mention in my opening remarks, our policy suite initiative, is one that I'm delighted to be leading and very proud of. It allows us to bring our legal services group together with our operations group — in our case, our analysts and investigators — and our small policy group in order to work together to bring the benefit of some very impressive brainpower to bear on putting forward policies and developing documents and tools that will not only support our work internally, but will give us something to go out into the world with to help address the other major issue of ours. That is, of course, awareness, understanding and confidence in our mandate and in our office.

Senator Fraser: Thank you for that answer. One of the other things you said in your opening statement was that in the current review process, one of the things that you think is necessary — I hope I'm paraphrasing you properly here — is to increase the protection for confidentiality. This would be confidentiality of complainants.

I wonder if you could tell us a little more about that. What problems has your office's experience led you to discover?

Mr. Friday: Senator, on the issue of confidentiality, again I would start by underscoring the fundamental importance of confidentiality in any whistle-blowing regime.

We have an exemption under the information legislation which allows us to not disclose information. The wording of that legislative exemption is, in my view, worthy of some clarification and some more specificity. More particularly, I would like to see our exemption expressly extend to information that is in the hands of our case analysis team, not only the investigative team. Although that is part of the investigative process, I think some clarity around that concept would be very helpful.

We'd also like to include, if possible, in any review of the law, a statement that recognizes the confidentiality of the reprisal process. While a reprisal case could find itself, as we were discussing earlier, before the specially constituted tribunal that was created under our legislation, the open court principle — which I respect as a member of the bar — is also one that does not necessarily live completely comfortably with the idea of confidentiality of information. We would like to protect the confidentiality of information during the reprisal investigation phase.

Currently, our protection exists with respect to the disclosure investigation side and not the reprisal investigation side. While I think there are some very interesting philosophical issues, my orientation is certainly to have as much clear protection for the confidentiality of information as is legally possible.

Senator Fraser: Obviously, these are two fundamental principles that you have to reconcile.

Mr. Friday: That's right.

Senator Fraser: Are there other countries or other jurisdictions that have useful lessons for us?

Mr. Friday: I think there are many interesting lessons to be learned from a number of different countries. In June of this year I had the great honour of being a keynote speaker at the Organization for Economic Cooperation and Development on whistle-blowing regimes. At that meeting, there were a number of countries with more experience than ours — for example, the United States and the United Kingdom — and there were also a number of countries who were in the process of developing proposals for whistle-blowing systems and whistle-blowing legislation.

We are looking to those countries that have a longer history as a whistle-blowing regime to share information and lessons learned with them. For example, last year or the year before, I can't quite remember, we were — "we" being the former commissioner and myself — meeting our counterparts in the United States to compare notes and to share lessons learned.

I think there are many ways to address issues of shared concern, and we will certainly be looking to our counterparts internationally to reconcile those potentially opposing principles you have just identified.

Senator Fraser: Are you in a position yet to share any of the lessons about how they do it?

Mr. Friday: I am not in a position at this moment to be able to do so, and don't have it at hand at the moment; but we are certainly focusing on our own regime and how it fits within the larger structure of the public sector.

I think a very fascinating issue is how one develops a whistle-blowing regime that is appropriate to a particular socio-economic or socio-political culture. So our conversations with other countries continue in that regard. But given that we

have significant protection in our act already for confidentiality, it is a matter of clarifying that as opposed to having to address any major gaps in the legislation. It really is a question of strengthening a principle that is universally acknowledged as being a pillar of a properly functioning, effective whistle-blowing regime.

Senator Meredith: Mr. Friday, welcome to the Senate on this wonderful Thursday afternoon. You speak of the complement of your office and I'm curious as to what percentage are women, visible minorities or Aboriginal?

Mr. Friday: Senator, I'm not sure if I have that information off the top of my head. I could certainly provide you with a breakdown of those numbers, but I can tell you that every employment equity group as identified by the Treasury Board employment equity policy is represented currently in our office.

Senator Meredith: Do you see that changing in terms of percentage? You have mentioned 25 employees currently. You spoke as well of people leaving. How do you plan to ensure you have a well-rounded group of employees that represent the face of Canada?

• (1430)

Mr. Friday: Our formally adopted human resources strategy speaks specifically to the necessity of our hiring practices taking into account diversity in our office.

It's very important for us, not only as a public sector organization but also as a public sector organization with our particular mandate, to be as reflective of Canadian society as we possibly can. I admit the size of our office can make that perhaps more difficult, given that we have such a small size that the numbers we hire in any given year are relatively low, but it is, I assure you, a part of the formally adopted human resources strategy of the commission.

Senator Meredith: Which you fully support?

Mr. Friday: Absolutely.

Senator Meredith: What is your current budget? We're in a fiscal restraint by the Treasury Board, and various departments are going through cuts. How do you see that impacting upon your department?

Mr. Friday: We have a budget for the 2015-16 fiscal year of $5.4 million. We will actually be lapsing some funds this year, and that is due particularly to some gaps in the organization. For example, my position as deputy commissioner has not been filled yet, and the former commissioner left at the end of December, so there was another gap there.

We have also been trying to reduce our reliance on outside contracting assistance. We have the authority under our act to hire specialized assistance if and when we need it, and we have done that in the past. From time to time we need, for example, an investigator with a specific skill set or expertise in a particular area, such as forensic accounting or a specialized area like that.

We have been trying, and I think successfully, also as part of our formal human resources strategy, to identify those potential gaps in expertise and to hire with them in mind so that we can continue to reduce reliance on outside experts. But at this time we are proving ourselves able to manage in the coming year within the budget envelope that we have been given.

If for example, and as I mentioned earlier, we don't have any control over the type or the number or the complexity of files that come to our office, we are very cognizant of the fact that we could find ourselves quite quickly in a budget deficit position. We're trying to be proactively strategic in that regard, forecasting to the extent we can and, as I said, trying to ensure we have a fully rounded, capable staff ready to take on all and any challenges.

I might say the challenge is particularly daunting given that our jurisdiction is the entire federal public sector of approximately 375,000 public servants. That includes all departments and agencies and all parent Crown corporations.

To date, as I say, we have been able to work within that budget. I'm hopeful that we will be able to continue to do so. If not, I would have no hesitation, of course, in making my best case to get a budget increase, also recognizing the obligation on me as commissioner to manage responsibly.

Senator Meredith: Mr. Friday, you spoke to my colleagues already with respect to the complaint process. Can you just walk us through that process?

We're going through a process right now in the Senate, as you're fully aware, of the AG's report that is pending, and all of us are concerned about reputation and the alleging of some impropriety. How do you, in your commission, ensure that both sides are protected when you do your investigation, to ensure that, again, credibility is not destroyed, reputations are not destroyed by inaccurate information that has become public?

Mr. Friday: Senator, I would say that the two key pillars of our regime are the one I mentioned earlier — confidentiality — and the protection of the right to natural justice and procedural fairness.

These two fundamental principles inform all of our work. We have confidentiality obligations or restrictions on ourselves as employees of the commission as well, very strict restrictions against sharing any information. We protect confidentiality throughout the investigation process to the extent we can, to the extent provided by law.

From time to time, in any investigation, in our office or elsewhere, the rights of someone accused of wrongdoing or committing reprisal rub up against the right of a witness or a discloser to have their confidentiality protected. We take our direction from the courts in this regard. They become very complex issues of legal analysis, but that balance between protection of confidentiality, which takes into account the importance of anonymity from a personal, emotional perspective but also, as you rightly point out, in terms of

reputation and future employability. We have to balance those against the rights of any Canadian to know the case against them and to have enough information so that they can meet the case that is being put against them.

It's a balance that we are acutely aware of and that we pay close attention to in each and every case.

Senator Meredith: How would you deal internally with your employees? Again, they are human; they make mistakes in an investigation. What is your internal mechanism to deal with that?

Mr. Friday: From the perspective of —

Senator Meredith: Through their investigation, they make an error in judgment and so forth. What are your internal policies with respect to dealing with that?

Mr. Friday: We have a comprehensive review process. All case analyses, and these would be analyses that recommend whether or not an investigation should be launched, and all investigations have an investigator and a legal counsel assigned to them, and they are completed under the direction of our experienced director of operations. There is a sign-off process at every step of an analysis or an investigation, including when we will fill the position of deputy commissioner, my former position, and then the recommendation comes to me and I make the final decision as to whether I accept an investigation report or a case report in whole or in part. I also exercise the power to send something back for further investigation or further analysis.

We are very careful in ensuring that the rigour of an investigation is protected and upheld without unnecessarily imposing such a heavy administrative burden on an investigation that we are not serving anyone's interest because we are simply taking too much time to do our work.

The balance of timeliness and rigour is one that is central to our work, one that we're acutely aware of, one that we have actually had the opportunity to discuss in group retreats. It is that fundamental to the healthy life of an investigation such as ours, or the healthy existence of an investigative body such as ours.

Senator Meredith: Mr. Friday, thank you so much for your time. Welcome, again.

• (1440)

Senator Joyal: Mr. Friday, once you have had adjudication by a board or panel of judges, as you mentioned in your answer to my question, or once you have completed a conciliation approach, do you still monitor the aftermath of those decisions?

Mr. Friday: Under our law, when a conciliation is successful, the file is closed. After the tribunal rules on a case that comes before it, that case is also closed. We do advise parties to our cases that the door is always open. If further reprisal were to take place, we would investigate that afresh.

We understand the difficulties in dealing with these cases as if they can be opened and closed without any ongoing ramifications or consequences, but I would say we are acutely sensitive to the possibility of ongoing or repeated reprisal. Formally, legally speaking, our jurisdiction ends with the closing of a file.

Senator Joyal: What kind of effort do you make to have your services known within the public service, because recruitment is ongoing and so on? I think there is a need to make sure that any civil servant is made aware that you exist and that you are there to support them in maintaining the integrity of the service.

[*Translation*]

Mr. Friday: I completely agree.

[*English*]

Last year, we had more than 50 speaking or presentation engagements. We have spoken to the majority of executive committees of departments in the federal public service.

On the side of innovation, we have produced a video that we released in December. It's an animation that explains our role, our mandate and our services. We posted it on our website and we posted it on YouTube. I'm happy to say we have had thousands of hits on that.

We actively seek out opportunities to make presentations. I, personally, brief newly appointed Governor-in-Council appointees on their obligations under our legislation. For example, just yesterday two of our legal service unit members briefed a Department of Justice legal team on the legalities of our legislation.

Our outreach and engagement strategy is fundamental and will remain a top priority for us. We have to be known if we expect to be used.

Senator Fraser: Going back to your opening statement, Mr. Friday, I was very pleased to hear you say that in the external advisory committee you deal with that you wanted to put more stress on relations with unions. There is a terrible tendency nowadays to demonize unions. In fact, in my view they are essential partners, so I am glad you are recognizing that, but I wonder whom else do you consult in that context.

Mr. Friday: Our external advisory committee was created in 2011 as a way to have access to essential external perspectives. For the members, we have a senior representative from the Treasury Board, and it is the Treasury Board that is responsible for the administration of the internal disclosure regime. We have two senior officers who are responsible directly within their organizations for administering the internal regime. We have the executive director of the Association of Professional Executives. We have the Public Service Alliance. We have the Professional Institute of the Public Service of Canada. We have the Association of Canadian Financial Officers. We have the Canadian Association of Professional Employees. We also have

a representative of the tribunal that I mentioned. We have a law professor from the University of Ottawa. I chair the committee and we have two members of our staff from our corporate and policy and engagement areas on that committee as well.

The Chair: Thank you very much for being here today.

Honourable senators, the Committee has been sitting for one hour. In conformity with the order of the Senate, I am obliged to interrupt proceedings so that the Committee can report to the Senate. I know you will join me in thanking Mr. Friday for his time here today.

Mr. Friday, you may take your leave.

Hon. Senators: Hear, hear.

The Chair: Honourable senators, is it agreed that I report to the Senate that the witness has been heard?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** Honourable senators, the sitting of the Senate is resumed.

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Michael L. MacDonald: Honourable senators, the Committee of the Whole, authorized by the Senate to hear from Mr. Joe Friday respecting his appointment as Public Sector Integrity Commissioner, reports that it has heard from the said witness.

MOTION TO APPROVE APPOINTMENT ADOPTED

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of March 24, 2015, moved:

> That, in accordance with subsection 39(1) of the *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46, the Senate approve the appointment of Joe Friday as Public Sector Integrity Commissioner.

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

Hon. Senators: Agreed.

(Motion agreed to.)

ROUGE NATIONAL URBAN PARK BILL

THIRD READING—DEBATE ADJOURNED

Hon. Nicole Eaton moved third reading of Bill C-40, An Act respecting the Rouge National Urban Park.

She said: Honourable senators, it is a privilege for me to speak at this time in support of Bill C-40 establishing Rouge National Urban Park.

Honourable senators, this proposed legislation enables creation of a remarkable new entity and the first of its kind in Canada, a national urban park located within the Greater Toronto Area, Canada's largest and most culturally diverse metropolis. In so doing, our government has put in place key strategies that will guide the new national urban park category and Rouge Park is the first such designation. This proposed legislation achieves three things.

First, it contributes tangibly to the application of the Government of Canada's National Conservation Plan. The bill's provisions and the draft management plan flowing from it speak to the three priority areas outlined in the 2014 National Conservation Plan as follows: Conserving Canada's lands and waters; restoring Canada's ecosystems; and connecting Canadians to nature and to Canada's network of protected heritage areas.

Second, it enables enhanced protective measures for Rouge Park. The bill assigns clear priority in respect of protection of nature, culture and agriculture. There will be prohibitions of mineral extraction and hunting will not be allowed. The removal of plants, animals and other natural and cultural resources will also be prohibited. Penalty and fine structures similar to those in place in other national parks will be applied for those who pollute, harass wildlife or poach.

Most importantly, Bill C-40 and the draft park management plan provide the means for equivalent or higher degrees of protection than under provincial statutes and policies, both now and in the future as the park expands.

• (1450)

It provides a fair deal for farmers. Agriculture and farming are key components of the Rouge National Urban Park. Following expropriations in the 1970s, farmers were faced with the reality that only one-year farm leases were offered. This restrictive measure provided an unlevelled, if not fallow, playing field for farmers, making it nearly impossible to plan past the next 12 months. Bill C-40 provides the means for long-term leases, and with it better conditions for business planning and crop management for Rouge Valley farmers.

Colleagues, these are the immediate highlights of this legislation. Allow me to share more of the broader story with you.

The legislation before us today will establish Rouge National Urban Park as the newest category of protected areas managed by Parks Canada, alongside national parks, national historic sites and national marine conservation areas. It will thus carry on in 2015 the distinguished legacy begun in 1885 with the creation of Banff, Canada's first national park, and continued with the establishment of the first national historic site Fort Anne, Annapolis Royal, Nova Scotia as well as the recognition of the first marine conservation area, in 2001, Fathom Five National Marine Park of Canada and the deep and sparkling waters of the mouth of the Georgian Bay.

Honourable senators, this will be a national park unlike any other; an urban park in the heart of Canada's largest metropolitan area. Through this new and ground breaking designation, Parks Canada will be able to build on the Rouge

of today, which owes its very existence to the collective and co-operative efforts of local visionaries and stewards, citizenship organizations, governments and countless volunteers. The Government of Canada is proud to pay tribute to their nearly three decades of hard work and determination to create one of the largest urban parks in the world.

[*Translation*]

Furthermore, we must definitely recognize the hundreds of municipal and provincial stakeholders, First Nations members and the thousands of individuals who contributed to the vision and planning of the first national urban park in Canada.

[*English*]

As honourable senators will observe, Bill C-40 provides a legislative framework that will enable Parks Canada to manage the park's natural, cultural and agriculture resources while recognizing the opportunities and challenges that its urban context brings.

This new designation status of national urban park will allow Parks Canada to provide the strongest protections ever for this unique place, encompassing such a remarkable mix of landscapes, including: deep river valleys and glacial features, 1,700 species of plants and animals, precious class-one farmlands and a rich assemblage of archaeological resources. These include heritage buildings and cultural landscapes, with aspects ranging from local to national significance, including Bead Hill National Historic Site, an archaeological site comprising the only known remaining and intact 17th century site in Canada of the Seneca indigenous people, as well as the Toronto Carrying-Place trail, also known as the Humber Portage and the Toronto Passage, which was a major portage route in Ontario, linking Lake Ontario with Lake Simcoe and the Northern Great Lakes.

Parks Canada's long-standing commitment to First Nations' involvement in protected heritage places will also play an important role in Rouge National Urban Park. The link to our First Peoples is a truly historic one, as the name Toronto is derived from the Mohawk term *toron-ten*, meaning the place where the trees grow over the water.

National designation of the Rouge will facilitate collaboration between Parks Canada and the First Nations, providing opportunities for indigenous communities to celebrate their historical roots in the park and renew their connection to its landscape and waterways.

Colleagues, we readily recognize that Parks Canada's achievements in the realm of conservation are applauded worldwide. The agency is committed to bringing its more than 100 years of conservation knowledge and expertise to this new national urban park.

This chamber knows that the Government of Canada made a commitment in Canada's Economic Action Plan 2012 to invest $143.7 million over 10 years and $7.6 million annually thereafter to make Rouge National Urban Park a reality.

[Senator Eaton]

[*Translation*]

During the hearings conducted by the Standing Senate Committee on Energy, the Environment and Natural Resources as part of its study of this bill, an expert witness explained how this type of park and the legislation to create it are different and why they are needed.

[*English*]

Larry Noonan, Chairman of the Altona Forest Stewardship Committee, has been involved with the Rouge community for 40 years. His testimony gives voice to some of the reasoning around the creation of a national urban park and what makes it so unique:

> Some people have questioned why we need a different act for the Rouge. Bill C-40 was written specifically for an urban park. When individuals state that national parks with infrastructure disturbances have ecological integrity and that, therefore, urban national parks should have the same standard, this is misleading.
>
> The Rouge wilderness sections are fragmented by many things, from highways to villages to gas pipelines to the largest former garbage dump in the Greater Toronto Area. Seventy-five per cent of the current Rouge Park is disturbed, as opposed to 4 per cent of Banff National Park.
>
> When examined in this light, it is clear to see that a new act is needed for urban national parks, one which contains sections such as strategies and timelines that are appropriate for their unique position as parks inside an urban setting. That is Bill C-40.

One would think that, on the basis of all this effort, with so much progress being made as we break new ground to bring about Canada's first national urban park, the road going on before us would be anything but fraught. But, as we know from what we've heard with respect of the debate at second reading of this bill in this chamber, and from witness testimony we gleaned at committee, there are potential roadblocks that could threaten to diminish the degree of success that Rouge National Urban Park aims to achieve.

Despite its having reached and signed a memorandum of agreement with Canada in early 2013, Ontario has since taken the view that unless and until three amendments are made to the proposed legislation, they will not see their lands, which, as Senator Eggleton pointed out to us at second reading, amounts to 44 per cent of the park's land mass.

[*Translation*]

Senator Eggleton also brought surprising clarity to Ontario's position by shedding light on its three main concerns.

[*English*]

Those are: their insistence on what they term "ecological integrity"; the province's demand for a larger park, 100 square kilometres in size, versus its current size of 58 square kilometres;

and third, Ontario's insistence on there being greater certainty in clause 8 of the proposed bill, regarding the appointment of an advisory committee on the park's management.

Additionally, Ontario has also insisted that nature be prioritized over farming to the detriment of agrarian pursuits. I will speak to the important matter of farming again in a few moments.

One might wish to acknowledge Ontario's rigour in its role as the defender of the park's ecological integrity. One might consider the province's insistence on greater certainty for oversight of the park's management as noble and a protection of its interests. But sadly the facts suggest otherwise.

Again, despite its undertaking in the memorandum of agreement signed in January 2013, Ontario is the only jurisdiction that has yet to provide any feedback on the draft management plan for the park. This is despite a broad, widespread four-month consultation process that is the most extensive public engagement process in Parks Canada's 103-year history, that saw outreach to the public, stakeholders, organizations, government officials, First Nations communities, and comments gleaned from community events, public open house meetings in Toronto, Scarborough, Markham and Pickering, and online survey results.

• (1500)

Through this engagement process, and since our government announced its intention to establish this park in the 2011 Speech from the Throne, the views and perspectives of over 11,000 Canadians have been heard. More than 150 organizations engaged in the process. In short, it seems everyone has much to say about the proposed management plan — everyone, that is, except the Ontario Liberal government. It seems as if the Ontario government has a preoccupation with environmental stewardship at any cost. Yet, they have been silent with respect to comment on the draft management plan. What might be worth considering then, in the face of this, is the ongoing and considerable impact of Ontario's environmental overreach undertaken in the name of ecology.

Consider, if you will, these stories in the public domain: Billions of taxpayers' dollars have been, and will continue to be, wasted for decades to come because of the Liberal government's blunder in wind energy; the government has rushed into this without any business plan, ignoring even the advice of its own experts that could have substantially reduced costs, the result of which is contributing to hugely escalating hydro bills and to the loss of 300,000 manufacturing jobs in Ontario. As a consequence, Ontarians are now locked into 20 years of paying absurdly inflated prices for inefficient and unreliable wind power, which still must be backed up by fossil fuel energy, meaning natural gas.

Add to this the Smart Meter fiasco in which the installation of hydro meters in 4.8 million homes — yes, it's environmental overreach, which is what their objection to this bill is — and businesses across Ontario is costing ratepayers nearly double what the government originally budgeted. Ontario's Auditor General revealed that it cost $1.9 billion to install Smart Meters, yet Ontarians were originally told the cost would be closer to $1 billion. The Auditor General also found that the energy ministry failed to undertake cost-benefit analysis for the program before it was approved by cabinet. This is no sterling record in the domain of ecological protection — except for such reckless pursuits having achieved continued and resounding success in costing Ontario taxpayers more money, and lots of it.

Now, let's turn from appearances and look instead at reality to the tenets of the already-approved memorandum of agreement to see what its provisions have to say regarding ecological stewardship. Clause 2.09 of the agreement commits to "develop written policies in respect of the creation, management and administration of the Park that meet or exceed provincial policies. . . ." In direct relation to this, opponents to this proposed legislation continue to cite Ontario's Greenbelt Act, 2005 as the principal statute applying to ecological matters around provincial lands. Minister Aglukkaq added a great deal of clarity in her appearance at committee when she compared Bill C-40 to the provincial statute. She said:

> As much as we respect Ontario's Greenbelt Act, there is simply no comparison to be made. Bill C-40 is by far much stronger. In contrast with Bill C-40, Ontario's Greenbelt Act does not provide any law enforcement mechanisms to protect the park's resources, does not put any limits on the development of infrastructure, allows aggregated resource extraction, allows hunting, and contains loopholes that allow dumping of contaminated soil and the killing of endangered species.
>
> To summarize, Bill C-40 will provide Parks Canada with the strongest-ever legislative framework in the Rouge's history, one that applies to the entire park, protects nature, culture and agriculture; takes into account the realities of the fourth largest urban area in North America; respects all agreements, commitments and dialogue with all public landholders contributing lands to the national urban park; and fulfills the vision of the Rouge Park Alliance by creating a much-enhanced protected area.

Colleagues, even opponents to this proposed legislation had to concede that the Greenbelt Act is silent in respect of any mention whatsoever of the notion of ecological integrity; and the Greenbelt Act does not contain provisions that prioritize nature.

How is it then that Ontario's Minister of Economic Development, Employment and Infrastructure, Brad Duguid, in a disappointing display of political brinksmanship, can state to the Federal Minister of the Environment that if his suggested amendments are not adopted, he would maintain his position that "the provincially controlled lands are better protected under the current provincial legislation."

What a baffling paradox it is that Ontario, so bent on protection of ecological integrity, would, if it does not get its way, opt to see land protected under its own statute that contains no provisions to ensure that which the province seeks, namely ecological integrity, and choose to offer no comment as yet on a

proposed management regime from which any such protections could flow. I guess it's perhaps the same kind of logic that brought about ill-conceived decisions on wind energy, gas plant contracts and Smart Meters.

[*Translation*]

A fundamental point here is the distinction between "legislation" and "policies." Ontario seems to want the bill to include provisions and policies that meet or exceed existing provincial legislation. However, this is simply not the place for that.

[*English*]

In committee, this point of clarification was made several times to various witnesses. It bears reiterating that it is the management plan from which means of both ecological and other forms of protection will come. This plan integrates the four cornerstone elements of the park concept by conserving natural heritage, connecting people to nature and history, supporting a vibrant farming community, and celebrating the cultural heritage of this special place. The plan also embeds nine guiding principles developed by partners and stakeholders. As I've mentioned, this key piece is currently in draft form and is unfortunately still awaiting input or comment from the province, which is most regrettable as this lack of dialogue around it impedes progress.

Honourable senators, it bears stating for the record that under the proposed management plan there are no fewer than 12 areas of ecological protection policies inherent to Rouge Park, none of which were in place under the province. These include the provision of sustainable, long-term funding to support the management, protection and operation of the park; stability for farmers through provision of long-term leases; full application of the provisions of the Species at Risk Act; prohibition of hunting on all lands; effective enforcement of the prohibition on waste dumping; and the implementation of equivalent fines and penalties, such as those rendered in National Parks, for illegal activities such as poaching.

[*Translation*]

The protections for this park in Bill C-40 are better than those provided for in any other existing provincial law.

The province of Ontario should be nothing but encouraged by this legislation. Ontario should also get a boost from the benefits that Rouge National Urban Park will bring to agriculture.

[*English*]

It must be emphasized that the park's tradition of agriculture is a unique feature among nationally protected heritage areas. The presence of working farms is integral to the future success of Rouge National Urban Park. People will continue to live and work in the park's agricultural landscape as many families and First Nations communities have done for hundreds of years.

Honourable senators, indeed, good things do grow in Ontario. Let's all bear that in mind as, after all, the agri-food sector is Ontario's second-biggest economic driver. Farmers in the park have been living on yearly leases since the lands were expropriated forty years ago. Anyone who knows farming will tell you that it is the most complex of any multi-generational, home-based business.

Bill C-40 will, for the first time in nearly two generations, enable long-term leases for the farming community. This is being applauded by the park's farmers. The York Region Federation of Agriculture represents 700 farm businesses in York Region and Toronto, including those 40 farms in what will ultimately be the Rouge National Urban Park.

• (1510)

The federation is clear in its position with respect to Bill C-40. I quote:

> We believe that this Bill provides the best protection of the 7,500 acres of Class 1 farmland and sustainable farming activities in the Rouge National Urban Park while at the same time improving the ecological health and preserving the cultural heritage of the area.

The federation is equally clear as it admonishes the province, stating:

> What the . . . farmers want and need from you, Minister Duguid, is your support for the transfer of the Provincial lands to Parks Canada and your support for Bill C-40 and its swift passage in the Senate, without amendments.

So, colleagues, you can see that the efforts at achieving progress are made, that the means exist to overcome what the province feels are sticking points. We remain hopeful that the continued diligence of Parks Canada's dedicated officials will result in the current impasse being surmounted. Yet, we remain committed to moving forward. We are putting the legislation forward with a small selection of described parcels and, with it, the authority to add lands through an order-in-council process.

As I conclude, honourable senators, would you not agree that great cities have great parks? Central Park in New York, London's Hyde Park, the beautiful Bois de Boulogne in Paris, Phoenix Park in Dublin, Vancouver's Stanley Park, as well as Mont Royal Park in Montreal. Now, with the passage of Bill C-40, there will be a unique and groundbreaking national park within Canada's biggest city.

[*Translation*]

There is no better place to showcase and share our natural, cultural and agricultural heritage than in the Greater Toronto Area.

[*English*]

The unique blend of nationally significant natural, cultural and agricultural landscapes in this wonderful place offers unparalleled opportunities for connection, learning, stewardship, engagement and volunteering. To support this undertaking, there is a robust

and collaborative management plan that maps the practical steps to making the dream of Rouge National Urban Park a reality, specifically designed to protect this diverse landscape in the heart of our nation's largest urban centre.

Finally, Your Honour, Alexander Graham Bell once said:

> Leave the beaten track behind occasionally and dive into the woods. Every time you do so you will you be certain to find something that you have never seen before.

Honourable senators, we have before us a bill that will enable us to indeed dive into the woods and find something that has not been seen before, Canada's first national urban park, a place of which we can all be proud as federal, provincial and municipal legislatures, as stakeholders and nature enthusiasts, as agrarian and First Nation peoples and as new Canadians longing to experience and learn more about the place they have chosen to call home.

Colleagues, I commend this legislation to you and urge you all to support it. Thank you.

(On motion of Senator Eggleton, debate adjourned.)

CANADA PENSION PLAN
OLD AGE SECURITY ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Wallace, seconded by the Honourable Senator Patterson, for the second reading of Bill C-591, An Act to amend the Canada Pension Plan and the Old Age Security Act (pension and benefits)

Hon. Pana Merchant: Honourable senators, I speak in support of Bill C-591. This bill proposes to end the receipt of Old Age Security benefits and CPP benefits paid to people found to have murdered or killed by manslaughter the individual whose death resulted in those benefits being paid. Currently, Canadian law prohibits one from profiting from one's crime, so sections 44.1(1)(*a*), (*b*) and (*c*) just reflect the law. Bill C-591 purports to amend the Canada Pension Plan and the Old Age Security Act to align them with a common-law practice of *ex turpi causa*. The principle of law *ex turpi causa*, which means that a person may not seek a remedy arising from their own illegal acts, is not strictly applicable because these people are not seeking a remedy but are instead receiving payment pursuant to legislation, but the thinking of *ex turpi causa* has application.

There are four survivor benefits to which the bill would apply. First is the survivor's pension, a monthly payment to the surviving spouse or common-law partner of a deceased CPP contributor. Second, there is the orphan's benefit under CPP, a monthly benefit for dependent children of deceased contributors. Third is the death benefit, a one-time lump-sum payment of up to $2,500, usually to the estate of a deceased contributor. Fourth is the Old Age Security Act allowance, a monthly benefit for low-income survivors.

I inquired of the John Howard Society. I inquired of the Elizabeth Fry Society. Both of these organizations are dedicated to reforming people who have found themselves on the wrong side of the law. The following response came from the Canadian Association of Elizabeth Fry Societies:

> For women who have been convicted of killing abusive partners in situations where they were either not able to avail themselves or not given an opportunity to argue self-defence or for whatever other reason it was reactions to violence that may not have been deemed defensive, may have been more force than was deemed necessary in the circumstances, it seems an unfair process to deny them access to Canada Pension or Old Age Security.

Honourable senators, although I support the legislation, it is not without the observation of the vitriolic inclusion in Bill C-591 of proposed subsection 44.1(4) and proposed subsection 21.1(4), dealing respectively with the Canada Pension Plan and the Old Age Security Act. These subsections enact a backdating, retroactive effect by which individuals who have been receiving Old Age Security payments and CPP payments in these circumstances will owe to the Crown all of the money they have received, which could be money already spent or accumulated over many decades.

Colleagues, there is something innately unfair about legislation that says that money an individual received legally and spent is retroactively, by legislation, made illegal and ordered repaid, the philosophy being that we do not retroactively punish in this country.

• (1520)

This discomfort for society regarding retroactive laws which create a debt so unnerved some within the third arm of governance, the judicial arm, that the issue of this lack of fairness found itself before the Supreme Court by way of a case decided in 2005.

The Supreme Court held in *British Columbia v. Imperial Tobacco*, 2005, that Parliament, and by extension the legislatures, could pass retroactive laws of this kind, but the fact that it is legal does not address that it is unfair.

The Canadian Association of Elizabeth Fry Societies response also observed the following:

> And in any event individuals who have been in prison for manslaughter or murder who come out of prison still will require state care of some sort and it's really just being illusory at best to be saying that they won't be eligible for pensions or security benefits when in fact they will then have

to be taken care of by provincial or territorial social assistance plans if they have inadequate incomes in other areas.

That observation made, this act passed unanimously in the other place.

Honourable senators, I support this legislation and urge you all to similarly give your support, but I am particularly uneasy about the retroactivity issue, the philosophy again being that we do not retroactively punish in Canada.

I urge that at committee stage we hear from witnesses of perhaps divergent opinions, and that whatever other views emerge flowing from committee hearings — it may be that one side or the other, or the entire committee — that an amendment is deemed appropriate.

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

An Hon. Senator: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Martin, bill referred to Standing Senate Committee on Social Affairs, Science and Technology.)

THE SENATE

MOTION TO TAKE NOTE OF THE CASE OF SERGEI MAGNITSKY—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Andreychuk, seconded by the Honourable Senator Greene:

That the Senate take note of the following facts:

(*a*) Sergei Magnitsky, a Moscow lawyer who uncovered the largest tax fraud in Russian history, was detained without trial, tortured and consequently died in a Moscow prison on November 16, 2009;

(*b*) No thorough, independent and objective investigation has been conducted by Russian authorities into the detention, torture and death of Sergei Magnitsky, nor have the individuals responsible been brought to justice; and

(*c*) The unprecedented posthumous trial and conviction of Sergei Magnitsky in Russia for the very fraud he uncovered constitute a violation of the principles of fundamental justice and the rule of law; and

That the Senate call upon the government to:

(*a*) Condemn any foreign nationals who were responsible for the detention, torture or death of Sergei Magnitsky, or who have been involved in covering up the crimes he exposed;

(*b*) Explore and encourage sanctions against any foreign nationals who were responsible for the detention, torture or death of Sergei Magnitsky, or who have been involved in covering up the crimes he exposed; and

(*c*) Explore sanctions as appropriate against any foreign nationals responsible for violations of internationally recognized human rights in a foreign country, when authorities in that country are unable or unwilling to conduct a thorough, independent and objective investigation of the violations.

Hon. A. Raynell Andreychuk: Honourable senators, yesterday I detailed the life and death in a Russian prison of Sergei Magnitsky.

Sergei Magnitsky was only 37 at the time of his death. He was a son, a husband and the father of two very young children. Tragically, he was also the victim: of an illegal persecution brought against him by the same Interior Ministry officials he had exposed for corruption; of a high-level campaign to cover up the corruption he had exposed; and of the negligence of prison officials to his deteriorating health. There were also clear signs that Mr. Magnitsky had suffered beatings and potential torture shortly before his death.

These facts have been noted by international human rights groups such as Amnesty International and Human Rights Watch. They were also noted by Russia's very own Investigative Committee, and the Kremlin's Human Rights Council.

On her mission to Russia in 2011, United Nations High Commissioner for Human Rights, Navi Pillay, raised concerns related to the case of Sergei Magnitsky. She named him as one of three "eminent human rights defenders, lawyers and journalists [who] have been brutally murdered or died in custody." She added that "the investigations and legal processes surrounding their deaths have been untransparent, inconclusive and shrouded in controversy."

But Mr. Putin insisted that Sergei Magnitsky died because of a heart attack.

Instead of acting to reverse the miscarriage of justice, the persecution of the young anti-corruption lawyer was continued. Sergei Magnitsky was tried posthumously. Accused of financial fraud by the same officials he had implicated in massive corruption, he was convicted more than three years after his death.

Parliaments around the world have condemned these injustices. I note, in particular, two resolutions passed overwhelmingly in the European Parliament; a motion passed unanimously in the British House of Commons; the passage of the Magnitsky Act with a 92-to-4 vote in the United States Senate; a unanimous resolution by the Dutch Parliament; a resolution passed by the Parliamentary Assembly of the Organization for Security and Co-operation in Europe; and similar resolutions passed in Sweden, Italy and Poland.

Just yesterday, a motion almost identical to the one before the Senate was introduced in the other place by the Honourable Irwin Cotler. This motion in the other place was adopted unanimously by all parties.

In this way, parliamentarians in Canada are joining with others around the world demanding justice for Sergei Magnitsky. That is because, in rules-based democracies, and among human rights advocates, Sergei Magnitsky has become a household name. His story has become emblematic of what can happen when state corruption and self-interest are placed above human rights and the rule of law.

The campaign for justice being waged in Magnitsky's name has become an international rallying cry for efforts to bring human rights violators to justice, wherever they are.

The Senate's adoption of this motion will join us with fellow parliamentarians in like-minded countries. It calls upon the Government of Canada to condemn and explore sanctions against those involved in Sergei Magnitsky's detention and death, and the cover-up of those crimes.

But it goes further than that. It also calls upon the Government of Canada to explore sanctions as appropriate against any foreign national responsible for violating international human rights. Importantly, the motion calls upon the government to take these actions when authorities are unwilling or unable to conduct thorough, independent and objective investigations of such violations themselves.

Honourable senators, let us maintain Canada's reputation for upholding international human rights. Let us send the strongest possible message that we oppose human rights violations, no matter where they take place. I would urge the Senate to act in a timely manner in this important motion.

Thank you, honourable senators.

Hon. Joan Fraser (Deputy Leader of the Opposition): Would Senator Andreychuk take a question?

Senator Andreychuk: Yes.

Senator Fraser: First, let me say that, clearly, what happened to Mr. Magnitsky is appalling, crying out for condemnation all over the world.

I just wonder about this particular motion's second portion, if you will, when we call upon the government to condemn any foreign nationals who were responsible for his detention, torture or death, or who have been involved in covering up the crimes, and that we encourage sanctions against any such persons.

It's not that I think it would be a bad thing to sanction those acts, but how are we supposed to know who did those acts? Are we not, in other words, engaging here in a bit of empty rhetoric?

• (1530)

Senator Andreychuk: No, because I think what we are still appealing for is some internal ability to find out who did what. If you look at the number of investigations that were done within Russia, the people who were responsible in the prisons, one of them was removed but no full action or proper investigation was made. The people are known; they've been identified in Russia.

The point is that it's very much like the International Criminal Court. You cannot stand behind and say, "I was ordered to do it." You cannot say, "I had an official position. I was only following orders." This is really exploring it.

Granted, we haven't got the measures, but no one has really stopped to assess it. So we're calling on the Canadian government to start that process of investigation to see if it leads somewhere where we can, in fact, impose sanctions against those people.

Take the person who was in the prison who has been identified by Russians. Should he want to come to Canada as an immigrant would we not want to know that? I think there are ways and means. It's unexplored territory.

I should say there was a bill in the United States. And there was a similar bill introduced here that went to restitution that had some of the same problems. Sanctions are another way of looking at it.

Mr. Cotler and I have been working with Mr. Browder and others who have been giving their full time to this, to find ways and means to get at those perpetrators who think they can get away with this kind of action in a country that seems not to adhere to the rule of law.

Senator Fraser: Thank you.

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

NORTHERN FOOD SECURITY

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Moore, calling the attention of the Senate to Northern Food Security.

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, I want to begin by thanking Senator Moore for bringing this subject to our attention.

The matter of northern food security, or lack of same, is arguably a national scandal to which we in the south pay far too little attention. When you think about it, it is unthinkable that in this country, as recently as 2010, a McGill University study found that 70 per cent of Inuit pre-schoolers live in homes without adequate nutrition. We know what inadequate nutrition does for the development of children: it stunts their development, including their mental development.

By allowing these things to continue, we are condemning another generation to inadequate development thanks to inadequate nutrition. When you think that in Labrador, which is far from the farthest, most distant element of our North, it can cost $40 to $45 to buy a chicken in a supermarket, you can understand why so many children and adults suffer from inadequate nutrition in the North.

It is a vast subject and one worthy of far more attention than I can give to it today. Today, I want to draw our attention to the fact that we don't know enough. Not only do we not pay attention but, when we do pay attention, we still don't know enough.

Interestingly, yesterday the Senate Liberal caucus had one of its open caucus meetings on Arctic sovereignty. Oh, we're all very keen, aren't we, to preserve Arctic sovereignty? But, in so doing, how much attention do we pay to the condition of our Inuit fellow citizens? Not enough, I suggest to you.

The bureaucratic and other barriers that exist to block a decent understanding of what is going on are sometimes, frankly, impossible to understand or accept. There are bureaucratic and institutional barriers that are based on our life here in the safe, rich, well-fed south.

I draw to your attention, for example, a report last year from the eminent Council of Canadian Academies, which noted that a major finding of their work is the importance of:

> . . . lived, northern experience and traditional knowledge in defining and addressing the issues surrounding northern food security.

They say:

> . . . the direct experience and knowledge of northern peoples are exceedingly important sources of evidence needed to address the issues. Therefore, the lack of a comprehensive review of northern food security derived from the first-hand experience and knowledge of northern peoples is a major knowledge gap. . .

Yes, it is a major knowledge gap. One would have hoped that this particular study would have helped to fill that gap. Unfortunately, and I'm quoting again, "Council methodology precludes direct stakeholder consultation. . ."

For their study they did consult Aboriginal organizations but, because of their methodology, they couldn't go down to the ground and actually speak to the people who live with this experience.

If we have not learned by now that we ignore at our peril Inuit knowledge, then I don't know when we ever will. It was the Inuit, remember, who told us where *Erebus* is. They've been trying for years to tell us where *Erebus* is. For the longest time nobody bothered to listen because of course Inuit knowledge wouldn't be as useful as people sitting in the south theorizing, would it? We need to know so much. We are so wilfully ignorant. It is truly a national scandal.

There is much more to say about this topic, but time grows late. Therefore, I move the adjournment for the balance of my time.

(On motion of Senator Fraser, debate adjourned.)

• (1540)

[*Translation*]

THE SENATE

MOTION TO URGE GOVERNMENT TO REMOVE INVESTOR AND STATE ARBITRATION MEASURES FROM THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT—DEBATE ADJOURNED

Hon. Céline Hervieux-Payette, pursuant to notice of December 15, 2014, moved:

> That, whereas the free trade agreement with the European Union contains rules to protect investments accompanied by a dispute settlement mechanism between states and investors through arbitration (ISDS);
>
> Whereas the introduction of such rules could undermine the ability of the Canadian Federal Parliament as well as Provincial and Territorial assemblies or parliaments to legislate, particularly on social, health and environmental issues, exposing the federal, provincial and territorial governments to paying substantial compensation to investors who feel aggrieved by new measures;

> Whereas there is already another interstate dispute settlement mechanism for investment, inspired by the Dispute Settlement Body of the World Trade Organization,
>
> The Senate of Canada urges the Government to revise Chapters 10 (Investment) and 33 (Dispute Resolution) of the free trade agreement negotiated with the European Union in order to remove the investor / state dispute settlement mechanism from the agreement.

She said: Honourable senators, on this beautiful Thursday afternoon, I would like to talk to you about the free trade agreement signed with Europe and, of course, share some of the serious reservations I have about certain sections. Given that most of the documentation I had on this was in English, you will understand why I would like to share my thoughts in English.

[*English*]

In October 2013, Prime Minister Harper announced to great fanfare a free trade agreement with Europe without the actual text. The Comprehensive and Economic Trade Agreement, CETA, did not appear in writing for another year.

During that time, the government bragged about jobs and growth, yet it denied Parliament the opportunity to check those claims. When the final text was released, it became obvious that this was done to build up uninformed support for CETA.

Contained within the investment rules, Chapter 10, Investment, and Chapter 33, Dispute Resolution, is an investor-state dispute settlement arbitration system referred to hereafter as investor-state arbitration. This system will enable foreign companies to bypass our courts and resolve their issues behind closed doors in non-transparent tribunals rigged in favour of large corporations.

Honourable senators, the Harper government is signing away Parliament's authority to regulate and conduct policy on behalf of the Canadian people. The investor-state arbitration mechanism has caused a major public outcry to the tune of 900,000 signatures on a petition protesting the Canada-EU agreement. An open consultation held by the European Commission received 150,000 responses.

Negotiations between the U.S. and the EU on the investor-state arbitration mechanism have been placed on hold in response to 400 official protests. Finally, both houses of the French Parliament have passed resolutions forbidding the adoption of treaties containing this arbitration mechanism; yet in Canada we are so desperate for free trade that there was no public discussion of this issue prior to signing.

The Harper Government has been painting a black-and-white picture of "arbitration or no CETA" in an area that is, in fact, a big grey zone. We can have free trade without sacrificing our democracy, but only through openly informed debate and public discussion.

Investor-state arbitration is a relic of the post-Second World War years, appearing in a treaty between West Germany and Pakistan in 1959. I don't remember it. I can tell you I was too young. The intention was to assure German investors that they did not have to worry about the weaknesses of the developing Pakistani court system and its ability to ensure the rule of law. This band-aid solution was never meant to be used between countries with properly run courts or where the rule of law was well established. Both Canada and the European Union have established the rule of law and have courts that function very well.

As the Prime Minister has discovered time and again in the Supreme Court, the rule of law is alive and well in Canada, yet investor-state arbitration allows foreign companies to bypass Canadian courts at all levels whenever they feel — and I quote the CETA text — "legitimate expectations" have been infringed upon by Canadian governments.

A report was funded by the Dutch government, an EU member, and numerous Canadian and European NGOs titled *Trading Away Democracy*. In that analysis, they strongly advocated for the rejection of any Canada-EU agreement text that includes investor-state arbitration.

An article from *The Economist* magazine published on October 11, 2014 — I keep coming back to that subject in Question Period — entitled "Investor-state dispute settlement: The arbitration game" explained the record increases in global investment arbitration cases as, and I quote *The Economist*:

> Companies have learnt how to exploit ISDS clauses, even going as far as buying firms in jurisdictions where they apply simply to gain access to them. Arbitrators are paid $600-700 an hour —

A bit more than senators.

> — giving them little incentive to dismiss cases out of hand; the secretive nature of the arbitration process and the lack of any requirement to consider precedent allows plenty of scope for creative adjudications.

Investor-state arbitration cases have increased from 2 in 1995 to 56 in 2013, according to the database of the United Nations Conference on Trade and Development. In 2013, the largest award for a case was $2.3 billion paid to Occidental — a "poor" company that makes billions of dollars — an oil company, by the Government of Ecuador due to Ecuador's lawful termination of an oil concession contract. In response to this situation, UNCTAD began to monitor the abuses, and it published its finding in June 2013, the same year as Prime Minister Harper's unplanned and unexpected announcement of CETA.

In the UNCTAD *World Investment Report* of 2013, five recommendations to resolve investor-to-state arbitration were presented. The most significant of these is the replacement of the investor-to-state arbitration with an international investment court complete with its own body of law.

Despite being announced and issued after the United Nations report, CETA does not incorporate the United Nations' recommendations. If we were to approve CETA and five years later develop an international investment court under the WTO, or some other organization, we would then have to wait 20 years before those laws and that court system would apply to CETA. This is due to the fact that CETA's investor arbitration mechanism contains a strict "survival clause" that makes no exception for the development of an international investment court.

Arbitration advocates contest that the agreement was negotiated in the best interests of Canadians, which for our part begins with the interest of large multinational corporations and companies, and that it is impossible to re-open the agreement. However, on October 22, 2014, the current president of the European Commission, Jean-Claude Juncker, officially opposed this arbitration mechanism. The Commissioner of the European Commission, Mrs. Cecilia Malmström, stated in November 2014 in Berlin that, and I quote, "there can be minor clarifications and adjustment."

So while the Harper government claims that there can be absolutely no changes to CETA, Europeans are being told a different story. In fact, the European Commission has launched an initiative to reform investor-state arbitration for their free trade negotiations with the United States.

It is the impression of many Canadians that Prime Minister Harper, when he signed CETA, believed that the Europeans would not alter the investor-state arbitration for the U.S., meaning that in good faith Canada signed these investment rules under the impression that we would have the same system on both sides of the frontier between Canada and the U.S., yet it seems that the Americans will have a better or a more transparent investment system than Canadians.

• (1550)

I must also remind you that the Australian Parliament asked one specific commission, the Productivity Commission, to examine the cost and benefit of investor-state arbitration. The commission's thorough report was released in December 2010, and it recommended that Australia should seek to avoid the inclusion of investor-state arbitration in their trade agreements. The result was that the free trade agreement between Australia and the United States did not include the investor-state arbitration mechanism.

If Parliament is to pass CETA with the investor-state arbitration system, then I'm going to make sure that you understand all the facts and the full consequences of such a decision. Investor-state arbitration abuse has grown. Major countries have begun to question the need for it and, in some cases, have removed it from their trade and investment agreements.

The United Nations advocated for its replacement with an international investment court, a real legal system. Academics and professionals criticize the system, and I encourage all my colleagues to do your duty and look at the evidence as many Canadians and Europeans have done.

[Senator Hervieux-Payette]

If both Canadian and EU citizens believe that the arbitration mechanism should be removed or amended, then that is what should occur. We should encourage Canadians to believe that they are in control, and the best way to achieve this is to tell them that an arbitration mechanism and the agreement are not inseparable. Liberty and freedom are impossible without a strong Parliament. Both Canada and the European Union stand out as beacons of freedom and democracy. We should be cautious not to trade it away, especially as senators.

However, when we empower foreign corporations with the ability to bypass the legal system that Canadians use and rely on, we set a dangerous precedent. Many governments and politicians work tirelessly to make Canada independent from a parliament in a foreign country, so I encourage you not to throw those efforts away for the sake of boosting trade.

I would like to quote from a March 25 article about the application of this clause by a company from New Jersey that was proposing to operate in Nova Scotia.

[*Translation*]

Bilcon, for example, is asking for $300 million in damages because it was not given permission to go ahead with the project for environmental reasons. The Nova Scotia government must wait for the final decision of the tribunal, which would side with the American company and obviously force Nova Scotians to foot the bill. The only outstanding item is the final amount of the award. The company is asking for $300 million.

We have several examples, but that is the most recent decision. I learned about it yesterday and I wanted to share it with you.

Thank you, colleagues.

Some Hon. Senators: Hear, hear!

(On motion of Senator Andreychuk, debate adjourned.)

[*English*]

ADJOURNMENT

MOTION ADOPTED

Leave having been given to revert to Government Notices of Motions:

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(g), I move:

> That when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Monday, March 30, 2015 at 6 p.m. and that rule 3-3(1) be suspended in relation thereto; and
>
> That committees of the Senate normally scheduled to meet on Mondays have the power to sit on Monday, March 30, 2015, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Serge Joyal: Would the honourable senator entertain a question?

Senator Martin: Yes.

Senator Joyal: As you know, our usual practice is to meet on Tuesday afternoon. Could you explain to the chamber why we would be sitting on Monday evening next week?

Senator Martin: I had a discussion with the deputy leader opposite. We received two bills earlier this week, Bill C-54 and Bill C-55, which are not yet on the Order Paper, and they are two very important bills that we need to —

Senator Fraser: Appropriations bills.

Senator Martin: — adopt before the end of the fiscal year. Senator Day is the critic for both bills, and he is not in the chamber. If you will recall, I asked for leave to bring those two items onto the Order Paper so that perhaps the sponsor of the bills could begin the debate today.

In any event, the timeline is such that we do require these bills to be adopted before the fiscal year ends, so Monday's sitting will be necessary.

I ask all honourable senators to understand this important timeline and adopt this motion as requested.

Senator Joyal: Thank you, honourable senator.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Monday, March 30, 2015, at 6 p.m.)

CONTENTS

Thursday, March 26, 2015

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