



# DEBATES OF THE SENATE

---

2nd SESSION • 41st PARLIAMENT • VOLUME 149 • NUMBER 140

---

OFFICIAL REPORT  
(HANSARD)

Tuesday, May 12, 2015

The Honourable LEO HOUSAKOS  
Speaker

## CONTENTS

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

*Debates Services:* D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756  
*Publications Centre:* David Reeves, National Press Building, Room 926, Tel. 613-947-0609

---

Published by the Senate  
Available on the Internet: <http://www.parl.gc.ca>

## THE SENATE

Tuesday, May 12, 2015

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

Prayers.

[Translation]

### SENATORS' STATEMENTS

#### FIRST WORLD WAR

##### JOINT PARLIAMENTARY SYMPOSIA IN CANADA AND FRANCE

**Hon. Serge Joyal:** Honourable senators, on Monday, May 18, the National Assembly of the French Republic is hosting a symposium in Paris to commemorate the Centenary of the First World War, the war of 1914-18.

This symposium will be held under the auspices of the Canada-France Interparliamentary Association and the Cercle France-Amériques in Paris, with the assistance of the Canadian Embassy in Paris and the French Embassy in Ottawa.

Honourable senators, let us not forget that 620,000 Canadians served their country during this war, that 424,000 of them fought on the other side of the Atlantic, and that 60,000 of them lost their lives there and were buried on French soil forever.

The first session of the symposium was held here in the Senate on November 11 and 12, 2014. This second session will bring together six Canadian and five French prominent historians who are well known for their research and publications. Among them will be Professor Desmond Morton, from McGill University, and Professor Laure Quennouelle-Corre, from the École des hautes études en sciences sociales in Paris.

The cost of the symposium, namely the travel expenses for the speakers, is covered by a contribution from the Mission du centenaire, a French government agency responsible for coordinating and supporting activities to commemorate the war of 1914-18.

The general theme of the symposium consists in assessing the transformative impact this war had on Canadian and French societies at the political, military, financial and economic, scientific and socio-cultural levels. In other words, the food for thought is as follows: war is an all-encompassing event that changes all the parameters or benchmarks of a society. It uncovers the infinite supply of human kindness, just as it can give free reign to the darkest aspects of humanity: cruelty, torture, unpunished crimes and barbarism.

The purpose of the symposium is to investigate the forces in play during the war of 1914-18.

Among other important aspects to be discussed are censorship and the use of images for propaganda in Canada and France, or how freedom of expression is manipulated in wartime; the role of French, English and American banks in financing the war, or in profiting financially from the war; and the effects of the war on science and the development of increasingly destructive weapons.

These examples show that thinking about the war of 1914-18 will help us understand our own contemporary world marked by wars in Afghanistan, Iraq, Libya, Syria and elsewhere.

The Senate and the House of Commons will be represented at the May 18 symposium. Our colleagues, Senator Claudette Tardif and Senator Michel Rivard, will be there, as will members of each party in the other place. Next Monday's symposium in Paris will open with a speech by the President of the National Assembly of France, Claude Bartolone. Jean-Marc Todeschini, Secretary of State to the Minister of Defence, will close the session.

I would like to thank the Canada-France Interparliamentary Association and Veterans Affairs Canada for their interest in this unique event commemorating the centenary of the war of 1914-18.

[English]

#### HEMOCHROMATOSIS

**Hon. David M. Wells:** I am delighted to welcome to the gallery of the Senate of Canada the president of the Canadian Hemochromatosis Society, Pat Haney from British Columbia, together with a number of his colleagues from the Ottawa and Montreal Chapters. Later today I will be hosting the first-ever parliamentary reception for the Canadian Hemochromatosis Society.

Honourable senators, on February 19, I rose to pay tribute to Marie Warder, founder of the Canadian Hemochromatosis Society. Marie founded the society 35 years ago to bring awareness to Canada's most common genetic disorder.

Hemochromatosis is an inherited disorder that results in the body being unable to get rid of excess iron. The resultant high levels can become toxic to the body.

Unlike the two thirds of Canadians who have hemochromatosis, I am very fortunate that I know I have it. I can treat it and can avoid suffering the consequences of deteriorating health. It is vitally important for Canadians, especially those in the higher-risk groups, to be aware of the warning signs and get tested.

The surprisingly simple treatment involves monitoring my iron levels through routine blood testing and then giving blood on a regular basis. This gets rid of the iron-rich blood, which is then replaced naturally with the iron-free blood from my bone marrow.

I would like to extend an additional welcome today to an ingenious team from two Canadian universities who have developed the Iron Tracker app for those with hemochromatosis, and it monitors their condition. The team is led by Dr. Gary Grewal from the University of Guelph and Professor Andrew Hamilton-Wright of Mount Allison University.

The app has been downloaded from the Canadian Hemochromatosis Society website thousands of times and is being used by sufferers around the world.

Even though hemochromatosis is the most common genetic disorder in Canada, too few people or doctors know about it.

It is estimated that 80 per cent of the 125,000 Canadians with hemochromatosis do not know they have the condition. Until recently, medical professionals were taught this was an extremely rare disorder, so some doctors may not be fully alert to the symptoms and risks.

Fellow senators, I ask you to write to our provincial colleagues to support the education of Canadians about the importance of screening for early detection to ensure early diagnosis and effective and cost-effective treatment.

Honourable colleagues, I invite you to join us at our reception this evening at five o'clock in the Speaker's Salon to bring awareness to this deadly disorder.

I ask you to recognize the Canadian Hemochromatosis Society for continuing the work of Marie Warder in supporting and increasing awareness of hemochromatosis on behalf of Canadians living with this disorder. I encourage you all to visit the society's website at [toomuchiron.ca](http://toomuchiron.ca) to become familiar with the importance of early detection. Colleagues, awareness is the cure.

Thank you.

### NATIONAL FIDDLING DAY

**Hon. Elizabeth Hubley:** Honourable senators, I am delighted to rise today to recognize Canada's first National Fiddling Day, which will take place this year on Saturday, May 16.

A sincere thank you goes to everyone in this chamber for supporting this bill and especially to those who spoke so eloquently to it.

Since the bill received Royal Assent on March 31, the Canadian Grand Masters Fiddling Association and I have been busy helping to line up events to celebrate this day.

In Prince Edward Island a group of some of our finest Island fiddlers is holding a free performance in Charlottetown, and fiddlers throughout the Island will be visiting nursing homes and holding ceilidhs to share their music.

As the day falls on a weekend, tomorrow on Parliament Hill we will celebrate Fiddlers on the Hill.

At noon, Dr. Andrea McCrady, the Dominion Carillonneur, will play a medley of fiddle tunes from the Peace Tower Carillon. It is a great excuse to get outside for some fresh air and enjoy some great music.

As well, from 4 p.m. to 6 p.m., Senator Carolyn Stewart Olsen, MP Tilly O'Neill Gordon and I are hosting a reception in the East Block Courtyard.

It will be a fun kitchen-party-style event, with over 20 fiddlers and step dancers. I invite you and your staff to come by and enjoy what I know will be great entertainment. If you are a fiddler, please bring along your fiddle.

Thank you. I hope you will all join me in celebrating Canada's first National Fiddling Day.

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

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw your attention to the presence in the gallery of Mr. Paul McDonald, Chair of the Canadian Institute of Plumbing and Heating; and Mr. Gaetan Beaulieu, Chair of the Mechanical Contractors Association of Canada. They are the guests of the Honourable Senator Plett.

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

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

• (1410)

### CANADIAN INSTITUTE OF PLUMBING AND HEATING MECHANICAL CONTRACTORS ASSOCIATION OF CANADA

**Hon. Donald Neil Plett:** Honourable senators, today is the Canadian Institute of Plumbing and Heating and the Mechanical Contractors Association joint annual Day on the Hill. Representatives from both organizations are meeting with parliamentarians all day to discuss two key issues that are affecting trade contractors across the country.

The first issue is one that I have spoken about before in this chamber, and that is the issue of prompt payment. I know from experience that there is a very serious problem in Canada of late payment for trade contractors. It has devastating impacts on private business, with major implications for employment in the trade sector and the economy at large. Delayed payments mean added costs to business through greater interest payments and can limit the ability of the contractor to carry out future business. Delayed payment means that hard-working Canadians can be out of work, all because invoices are not being paid on time.

Most jurisdictions in the industrialized world have adopted prompt payment legislation. They are asking for action to be taken at the federal and provincial levels. As many of you know, I have committed to helping them, in any way that I can, in reaching this goal federally.

Both organizations are also raising the issue of the need for uniform and harmonized model codes and regulations in Canada. The misalignment and disharmony of codes and regulations causes the following: uneven application of enforcement rules; potential dumping of non-compliant products; reduced productivity, reduced competitiveness and barriers to innovation for Canadian manufacturers and suppliers; construction delays and added costs.

Both the CIPH and the MCA are encouraging parliamentarians to help facilitate the true harmonization of technical standards, codes and regulations. Both organizations are strong supporters of the Regulatory Cooperation Council of Canada and have been active participants as they strongly believe that the council will help deliver cost savings and productivity gains and will facilitate a greater speed to market while ensuring consumer health and safety.

For more information on either of these important issues and to meet industry representatives, I encourage and welcome you all to stop by our reception this evening between 5:30 and 7:30 in Room 256-S Centre Block. I know both organizations would appreciate your support.

### **SUPERVISED ACCESS TO DRUGS**

**Hon. Larry W. Campbell:** Honourable senators, the following statement is endorsed by 124 organizations from across Canada regarding Bill C-2, An Act to amend the Controlled Drugs and Substances Act (respect for communities act):

We believe in health, human rights, harm reduction, scientific evidence and the well-being of our communities.

Bill C-2, currently before Parliament, undermines all of these by setting out an excessive and unreasonable process for health authorities and community agencies looking to open, or maintain, desperately needed supervised consumption services for people who use drugs.

Supervised consumption services are health services that provide a safe, hygienic environment where people can use pre-obtained drugs under the supervision of trained staff. They are part of a broader harm reduction approach to substance abuse and are not exclusive of drug treatment programs; they are complementary.

Supervised consumption services are also part of a continuum of care for people who use drugs. They are offered in facilities where nurses and peers work together to provide much-needed care, education and support.

Scientific evidence clearly shows that supervised consumption services reduce the risks of transmission of infectious diseases and overdose-related deaths. They improve access to health, treatment and social services for the most marginalized groups and contribute to the safety and quality of life of local communities by reducing the impact of open drug scenes.

The Supreme Court of Canada has recognized that preventing access to such critical health services violates human rights.

We strongly oppose Bill C-2 and ask our representatives to reject it and, instead of creating barriers, increase access to evidence-based prevention, harm reduction and treatment services in Canada. Our communities deserve better.

Honourable senators, due to time constraints I will not have sufficient time to read into the record every organization associated with this statement, but since I know you want to know more about this, I invite you to view the full list of names on my website at [www.larrycampbell.ca](http://www.larrycampbell.ca).

---

## **ROUTINE PROCEEDINGS**

### **ECONOMIC ACTION PLAN 2015 BILL, NO. 1**

#### **NOTICE OF MOTION TO AUTHORIZE CERTAIN COMMITTEES TO STUDY SUBJECT MATTER**

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

That, in accordance with rule 10-11(1), the Standing Senate Committee on National Finance be authorized to examine the subject matter of all of Bill C-59, An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures, introduced in the House of Commons on May 7, 2015, in advance of the said bill coming before the Senate;

That the Standing Senate Committee on National Finance be authorized to meet for the purposes of its study of the subject matter of Bill C-59 even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto; and

That, in addition, and notwithstanding any normal practice:

1. The following committees be separately authorized to examine the subject matter of the following elements contained in Bill C-59 in advance of it coming before the Senate:

(a) the Standing Senate Committee on Aboriginal Peoples: those elements contained in Division 16 of Part 3;

(b) the Standing Senate Committee on Banking, Trade and Commerce: those elements contained in Divisions 3, 14, 19 of Part 3;

(c) the Standing Senate Committee on Social Affairs, Science and Technology: those elements contained in Division 15 of Part 3;

(d) the Standing Senate Committee on National Security and Defence: those elements contained in Divisions 2 and 17 of Part 3; and

(e) the Standing Committee on Internal Economy, Budgets and Administration: those elements contained in Division 10 of Part 3;

2. The various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-59 be authorized to meet for the purposes of their studies of the those elements even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto;

3. The various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-59 submit their final reports to the Senate no later than June 4, 2015;

4. As the reports from the various committees authorized to examine the subject matter of particular elements of Bill C-59 are tabled in the Senate, they be placed on the Orders of the Day for consideration at the next sitting; and

5. The Standing Senate Committee on National Finance be simultaneously authorized to take any reports tabled under point four into consideration during its study of the subject matter of all of Bill C-59.

[Translation]

## RAILWAY SAFETY ACT

### BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-627, An Act to amend the Railway Safety Act (safety of persons and property).

(Bill read first time.)

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

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

• (1420)

[English]

## CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

ANNUAL MEETING OF THE COUNCIL OF STATE  
GOVERNMENTS' SOUTHERN LEGISLATIVE  
CONFERENCE, JULY 26-30, 2014—REPORT TABLED

**Hon. David M. Wells:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States

Inter-Parliamentary Group respecting its participation at the Sixty-Eighth Annual Meeting of the Council of State Governments' Southern Legislative Conference, held in Little Rock, Arkansas, United States of America, from July 26 to 30, 2014.

CANADA-UNITED STATES-MEXICO TRILATERAL  
INTER-PARLIAMENTARY GROUP MEETING,  
DECEMBER 1-2, 2014—REPORT TABLED

**Hon. David M. Wells:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the Canada-United States-Mexico Trilateral Inter-Parliamentary Group Meeting, held in Washington, D.C., United States of America, from December 1 to 2, 2014.

ANNUAL WINTER MEETING OF THE  
NATIONAL GOVERNORS ASSOCIATION,  
FEBRUARY 20-23, 2015—REPORT TABLED

**Hon. David M. Wells:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the Annual Winter Meeting of the National Governors Association, held in Washington, D.C., United States of America, from February 20 to 23, 2015.

U.S. CONGRESSIONAL MEETINGS,  
MARCH 23-25, 2015—REPORT TABLED

**Hon. David M. Wells:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at U.S. Congressional Meetings, held in Washington, D.C., United States of America, from March 23 to 25, 2015.

[Translation]

## OFFICIAL LANGUAGES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO EXTEND DATE OF FINAL REPORT ON STUDY  
OF BEST PRACTICES FOR LANGUAGE POLICIES AND  
SECOND-LANGUAGE LEARNING IN CONTEXT  
OF LINGUISTIC DUALITY OR PLURALITY

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

That, notwithstanding the order of the Senate adopted on Thursday, November 21, 2013, the date for the final report of the Standing Senate Committee on Official Languages in relation to its study on best practices for language policies and second-language learning in a context of linguistic duality or plurality be extended from June 30, 2015, to December 15, 2015; and

[ Senator Martin ]

That the Standing Senate Committee on Official Languages be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate a report if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

## QUESTION PERIOD

### FINANCE

#### BUDGET 2015

**Hon. Céline Hervieux-Payette:** My question is for the Leader of the Government in the Senate. Every week we hear certain things — and I am not one to embarrass the Leader of the Government with questions plucked out of thin air — from knowledgeable people, such as economists and financial experts.

Last week, it was Ms. Yellen, Chair of the U.S. Federal Reserve System, who is responsible for regulating financial markets, and Christine Lagarde, Managing Director of the International Monetary Fund. This week, a number of economists, including David Parkinson, Barrie McKenna and David Burman, pointed out that the level of debt in Canada has now reached 163.3 per cent. I am sorry, Leader, but every time I talk about this the number has increased. This is a record level of debt. I am certain that you will give your usual explanation, but I will pre-empt you. I have already heard your grand statements about your government being a good manager. However, as we speak, in 2015, the former Governor of the Bank of Canada, David Dodge, is reported to have described the current situation as follows:

[English]

We have the wrong mix of policies.

[Translation]

It is usually the government that takes care of that.

[English]

We have very distorted financial markets at the moment, and one of the consequences of these very low interest rates is that there has been additional incentive for households to take on debt.

[Translation]

Canada's current interest rates make it very easy to go into debt. One just has to put down the capital, and interest rates are very low. Your government is focussing on balancing the budget, but as a result, Canadians' debt loads are rising, when instead, you should be using taxpayers' money to introduce initiatives. Do you really think that is an acceptable policy in terms of public finances?

**Hon. Claude Carignan (Leader of the Government):** Senator, as you know, the last thing we want is for Canadians to take on too much debt. That is why we are reducing taxes for the middle class and delivering benefits directly to families so that they can manage their allowances as they wish, to balance their budget or pay down debt. This year, a typical family will save up to a maximum of \$6,000. I know that the Liberal Party and your leader, Mr. Trudeau, want to raise taxes for the middle class and take away these benefits. I find that very unfortunate. Under the leadership of our government, all Canadian families with children will benefit from our most recent tax breaks, including the increase and the expansion of the universal child care benefit and the new family tax cuts.

In my view, both the NDP and the Liberal plans must be rejected, because they are based on tax hikes and a return to deficit. We advocate implementing tax cuts for the middle class and giving tax breaks directly to families so that they can manage their finances based on their own priorities. We don't want to increase red tape. Canadian families have 6,000 reasons to support our government's approach. This year alone, some \$6,000 in tax credits will be put back into the pockets of a typical family of four. I hope, and once again I am appealing to your sense of reason, that you will vote in favour of Economic Action Plan 2015.

**Senator Hervieux-Payette:** Okay, you got your plug in. I heard the ad on the radio with the line about how these measures will probably pass with the bill, but that they are not yet in force. I also saw it on television. The government has already started spending taxpayer money on advertising a budget that has not yet been passed. So much for transparency and respect for the parliamentary process.

I remind you that in 2006, the Bank of Canada was concerned because the Canada Mortgage and Housing Corporation had increased the mortgage repayment term to 40 years, and former governor David Dodge had said that this would not help our economy get back on track. In fact, the governor made so much noise that the Canada Mortgage and Housing Corporation lowered the mortgage payment term to 35 years. Then, in 2012, the Minister of Finance dropped it to 25 years. However this remains an issue. There are cranes all over Montreal, Toronto and other cities, but who will buy these homes? What's the point of extending the terms to 40, 35 or 25 years? Why force taxpayers to leave a rental home in order to buy a property at the same price with the knowledge that they will be in debt for the next 25 years? Where is the relief in this sector?

**Senator Carignan:** In 2012, the finance minister announced that the mortgage terms would be 25 years. The goal of that was to limit household debt, and, if I recall correctly, you voted against that measure.

**Senator Hervieux-Payette:** We didn't vote against the measure; we voted against the budget. Please be a little more careful and precise when you attribute something to me. Mortgages are not the only source of debt. Credit cards also contribute. Credit card debt currently represents 40 per cent of household debt — 60 per cent is the mortgage and 40 per cent is credit card debt. Banks are not doing anything about this issue.

• (1430)

How is the government going to deal with this issue and give Canadians some breathing room? When is the government going to stop putting off the debt issue and do something so that families will eventually be able to balance their budgets?

**Senator Carignan:** Senator, I would like to commend you for asking that question. I think it was the right time to ask it. I believe the answer can be found in Economic Action Plan 2015, the purpose of which is to stimulate job creation and promote growth and long-term prosperity. As promised, this will be a balanced budget that will reduce taxes for hardworking individuals and families.

The government will balance the budget while keeping the federal tax burden on Canadians at its lowest level in more than half a century. As I said before — and I will repeat it because I think it is important and because, from your questions, I think you may have missed that part of my answer — a typical two-earner Canadian family of four will receive tax relief and increased benefits of over \$6,000 in 2015 thanks to the measures introduced by the Harper government.

The budget will also stimulate job creation and growth by making Canada more competitive, allowing job-creating businesses to prosper, and making new innovative investments that build on the government's record in supporting infrastructure and developing a highly skilled workforce that will meet the changing needs of employers.

What is more, senator, the government must keep Canadians safe by supporting the Canadian Armed Forces and by protecting Canadians against the terrorist threat both at home and abroad.

I noticed that in the Liberal caucus you decided to defy your leader and announce your intention to vote against Bill C-51, which seeks to improve Canadians' safety. That is your choice.

I am getting ahead of myself here, but since you usually vote against the budgets, I was hoping that this time you might change your mind and defy your leader again by voting in favour of the budget, in favour of a real plan that will create jobs, lower taxes, and leave more money in families' pockets, instead of adopting a policy that would create new taxes — the "Trudeau tax" — and return to deficit spending. We managed to get out of that mess. I hope Canadians will consider dangerous plans like Mr. Trudeau's carefully and that they will clearly see two extremely different options being laid out before them: one option that lowers taxes, creates wealth and balances the budget, and another option that raises taxes, creates deficits and, unfortunately, includes cuts to services.

Senator, how will we achieve our goal? I believe we can achieve this together with the help of a solid Economic Action Plan and a leader who is knowledgeable in economics, has a proven track record and made Canada one of the best countries in the G7 in terms of economic growth — a leader whose government created 1.2 million jobs.

Senator, I believe that we will achieve our goal by working together and I expect nothing less from you than to vote in favour of this budget and defy your leader, Justin Trudeau, once again.

[ Senator Hervieux-Payette ]

**Senator Hervieux-Payette:** Good, now that you've finished your second ad, let's get back to the matter of household debt. This time I will quote an economist from the CIBC, who said:

[English]

Never before have we been so sensitive to higher interest rates.

[Translation]

That economist believes that right now the Bank of Canada has no choice, that we are in a vortex leading directly to economic disaster. The Bank of Canada can't raise its interest rate because millions of Canadians would suffer. The problem is that we have a segment of the population, older Canadians, who can't benefit from economic growth with good interest rates. You are forgetting some of the essential elements.

As for the budget you talked about, if you ever come up with a real budget that deals with the government's expenses, not a catch-all bill, we might be able to say what we think about everything in it. However, at this point, your refusal to split the budget and make other substantive bills basically straitjackets us.

I would like to remind you that the Liberal government before you left you a \$3-billion surplus to balance the budget. I would also like to remind you that, after paying down the deficit left by Conservative governments, we generated budget surpluses year after year. We did not do that by passing the debt onto all Canadians using an indirect method that every economist in Canada has condemned.

Since you went on at length on this issue, I will do the same. We need to remember — no need to go very far back in time — that, to balance your budget, you sold embassies and reduced the number of food inspectors. Recently, inspectors told us that companies will self-regulate. I feel for the people who will now have to think about the fact that the beef, pork or chicken they are eating was self-inspected. We know that western beef producers have lost millions of dollars.

You also made cuts by eliminating the long form census, which was an extraordinary tool that enabled all Canadian institutions to obtain useful information to help them plan better. Of course, since your Economic Action Plan is so simplistic, perhaps you do not need this census. Nevertheless, Canadian researchers are unanimous in saying that the census was needed to foster innovation, research and development in Canada.

As for voting in favour of your budget, I am waiting for a budget that will deal solely with budget matters, and I would like to know when you will split the budget into different bills that deal with items that have nothing to do with the budget.

**Senator Carignan:** Listen senator, your question — actually I don't know whether it was a question or a speech — is interesting, but I would have to talk about several elements because you are mixing up many things.

However, one thing in your speech stands out, and I believe it is important to point it out — you said that a budget does not balance itself. That is what I understood from your speech. It



takes effort and we have to come up with specific measures. The exercise of balancing a budget is important and requires that we make choices.

You mentioned a few measures, including the tax-free savings account. Did you know, senator, that there are some 600,000 seniors who earn less than \$60,000 and who currently contribute the maximum amount and will benefit from this measure? Did you know that there are 11 million Canadians who have a tax-free savings account and that most of them are low- and middle-income earners? Did you know that half of TFSA holders earn less than \$42,000 a year?

• (1440)

That is a great example of a measure for households. Tax-free savings accounts are used by seniors and by low-income families alike. It is a positive measure, and the kind of measure that should be included in a budget bill, one that is not made up of just one provision, but rather a series of measures that make up our Economic Action Plan 2015, an action plan that has been commended by a number of associations.

For example, consider Canada's Association for the Fifty Plus, a seniors' advocacy group. Members of that group have applauded the measures our government has outlined in Budget 2015, one of which involves doubling the TFSA limit from \$5,500 to \$10,000. There is also the Investment Industry Association of Canada, an organization that strongly supports the measures announced in the federal budget that aim to improve retirement savings programs in Canada, specifically by increasing the annual limit.

This is an excellent way to address the issue of household debt and to encourage saving. What is more, these are the kinds of measures that should be taken in an action plan. Accordingly, considering how concerned you are about Canadian household debt, I cannot imagine that you would even think of voting against Budget 2015.

**Senator Hervieux-Payette:** You must live somewhere where everyone sees the economy through rose-coloured glasses. If you think that a couple that earns \$60,000 a year and has to pay for housing, food, clothing, travel and income tax can afford to put \$10,000 into a TFSA, then you are living in a dream world.

I would like to read part of a quotation from Rob Carrick, a personal finance columnist, who was wondering if it is okay to have any debt. He said, and I quote:

[English]

There is no such thing as a good debt. We've deluded ourselves into believing that mortgages, borrowing to invest and student loans are a worthwhile debt.

[Translation]

Some people have analyzed the types of debt in each sector. Rob Carrick concluded by saying that:

[English]

Decades ago, when houses were more affordable —

[Translation]

— because we know that in some provinces, young people are no longer able to buy property, and I'm talking about a detached home here. He continued:

[English]

— and good jobs for young people were more plentiful —

[Translation]

— just ask young university graduates whether they're finding jobs at \$150,000 a year so they can buy a home —

[English]

— we could afford to make generalizations that some kinds of debts were good. Today, good debt is just another story we tell ourselves to justify our borrowing habit.

[Translation]

I suppose that as an employee of the Senate you have the means to put \$10,000 a year in a TFSA. However, if you want to invest your TFSA, I don't know where you would do it. If you invest at one of Canada's big banks, with 2 per cent interest, you wouldn't be any richer because with inflation, your investment at that bank would be the same as when you had invested it and it will already be taxed.

Are you trying to tell us that this is a progressive measure, when not a single economist has said that the \$10,000 limit was justified? I sat on the Standing Senate Committee on Banking, Trade and Commerce when the \$5,000 limit was proposed.

That's a significant difference because \$10,000 is a very high amount for the average Canadian family. Only the wealthy can afford to put aside \$10,000 tax free. Otherwise they will be forced to invest their money in a tax haven. It's less complicated to invest here, but there is another aspect to consider: years down the road Canada will have lost out on tax revenues because of these accounts, and no economist has confirmed that this is a good decision in the long term.

Was this decision made because of the upcoming election or because it will be good for the country in 20 years?

**Senator Carignan:** Senator, your question was about youth employment and debt. Under our government, Canada will continue to have one of the lowest youth unemployment rates in the G7. However, we believe that that rate is still too high and we would like it to be even lower.

Since 2006, we have helped over 6 million young people acquire skills, get training or even find a job, but there is still a lot of work to be done. Our plan seeks to create jobs for young people through trade, training and tax reductions.

We lowered the tax rate and employment insurance premiums for small businesses so that they have the means to hire more young people. Since 2007, we have launched two apprenticeship loans programs that have helped 500,000 Canadians upgrade their skills so that they can get better paying jobs. Those programs are the Apprenticeship Incentive Grant, which was launched in 2007, and the Apprenticeship Completion Grant, which was launched in 2009.

As I said before, in the 2014 budget, we announced funding for the creation of 3,000 paid internships in high-demand fields and the creation of 1,000 internships in small- and medium-sized businesses. You voted against all of these measures, senator.

In the 2014 budget, we created the Canada Apprentice Loan, which provides apprentices in Red Seal trades, as they are called, with access to over \$100 million in interest-free loans per year. The new Flexibility and Innovation in Apprenticeship Technical Training program provides \$13 million in funding over four years.

Our government also provided more college and university students with the loans they needed to fund their education than the previous Liberal government did. The worst thing we could do to young people would be to apply your plan to increase taxes and return to deficit spending.

I would like to draw your attention to the fact that under Economic Action Plan 2015, we will help 22,000 more students by expanding the Canada Student Loan program. We are also eliminating in-study student income from the needs assessment process. This will allow us to give loans to more than 87,000 students and provide increased support to more than 92,000 students, particularly by reducing the expected parental contribution in the needs assessment process.

All these measures need to be adopted as part of a complex piece of legislation and with the help of a budget that does not balance itself. These measures are being applauded by student movements, including the Canadian Alliance of Student Associations, which said:

We are extremely pleased to see that government is taking students' priorities seriously. The total contributions are \$419 million over four years. Students have not seen this kind of investment in financial aid in several years.

These investments build on the considerable assistance our government is providing to young Canadians. As I said, the government created the Canada Apprentice Loan.

These measures are a continuation of our actions, senator, and I hope that you will approve them because I know that you will study them in the Standing Senate Committee on National Finance.

During that study in committee, perhaps you will see the light and will want to vote in favour of Economic Action Plan 2015.

[ Senator Carignan ]

**Senator Hervieux-Payette:** Since you are again talking about students, I would like to quote what Mr. Carrick said.

[English]

The mismatch between what students are studying and job opportunities is a quiet scandal in our educational system.

[Translation]

There is not necessarily a cause and effect relationship.

• (1450)

I would also like to point out that you forgot to mention that they were loans. Generally speaking, loans are repaid.

Thus, what is the government's contribution and how much scholarship money have you given to students? Students who complete a university degree in a province other than Quebec come out approximately \$30,000 in debt. They will have to find a good job if they want to contribute to a TFSA, buy a house and feed their families.

Can you tell us whether the last \$400 million that you mentioned will go to students? Will their debt be forgiven or will they have to repay it?

**Senator Carignan:** Senator, those who use the program, namely students, realize that it is an extremely important investment that will help them. They are probably old enough to remember that the Liberal government cut many billions of dollars in transfers to the provinces, especially the Canada Social Transfer, which eliminated many hundreds of millions of dollars from funds for post-secondary education.

[English]

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw your attention to the presence in the gallery of Dr. Tri, Ms. Lam, Mr. Phuong and Mr. Pham. They are community leaders from the Vietnamese Canadian Federation representing Calgary, Edmonton and Toronto. They are the guests of the Honourable Senator Ngo.

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

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

## ORDERS OF THE DAY

### TOUGHER PENALTIES FOR CHILD PREDATORS BILL

#### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator Fortin-Duplessis, for the second reading of Bill C-26, An

Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts.

**Hon. Larry W. Campbell:** At the outset, honourable senators, I have to state that all members of the other place and this place share the same view: Protection of children must be a priority. Sex crimes against children are repugnant and everything should be done to prevent victimization. Where we differ is how we go about this.

Bill C-26 recycles many of the same failed Conservative policies — minimum sentences, reduced judicial discretion and relaxed privacy standards — that have attracted so much recent scrutiny.

So said Michael Spratt.

While I realize that the Conservatives in the other place dislike science, the fact is that there is little or no empirical evidence that provides support for minimum sentences in reducing crime or making communities safe.

Albert Einstein once said “insanity is doing the same thing over and over and expecting different results.”

How many times does this government have to be reminded by the Supreme Court that there are rules? How many times do we have to see supposedly “Charter-cleared legislation” struck down by the courts? When will they learn that the Criminal Code has a “totality principle”? It states that an individual’s overall sentence should not be overly harsh or crushing. The Constitution bans “cruel and unusual punishment.”

While some may welcome this harshness, given the abhorrent nature of the crimes, there have to be stopgaps in place. The Conservative government will have none of that. The fact is that this Conservative government does not like or trust judges. They appoint them but they don’t trust them. When will they ever learn, as a song once went, or will we continue the revolving door of legislation followed by rejection from the courts?

The problem is that prison sentences without some kind of treatment means that the problem does not go away. You can lock people up, but without help they will become more criminal and more dangerous.

For a government that prides itself on running efficiently — ignore the unemployment, the stagnating economy, the loss of jobs, et cetera — stacking sentences is not cost-effective. Incarceration without treatment or help is expensive. With treatment and help, recidivism drops. People can and do reintegrate into society.

This bill would also create a database of high-risk sex offenders. Who will operate this database? The RCMP will. Members of the RCMP have testified that they are not able to perform their duties now because of increasing workload. Six hundred members were transferred to anti-terrorism from organized crime. Where will the

members come from to run this data bank? I fear that we’re putting so much pressure on the RCMP, our national police force, that it will collapse under the weight.

Bill C-26 limits judicial discretion. It mandates that sentences in certain situations be served consecutively. The rationale for judicial discretion was succinctly put by Sopinka J. in *R. v. McDonnell* (1997), 1 S.C.R. 948, where the Supreme Court held:

... the decision to order concurrent or consecutive sentences should be treated with the same deference owed by appellate courts to sentencing judges concerning the length of sentences ordered. The rationale for deference with respect to the length of sentence, clearly stated in both *Shropshire* and *M. (C.A.)*, applies equally to the decision to order concurrent or consecutive sentences. In both setting duration and the type of sentence, the sentencing judge exercises his or her discretion based on his or her first-hand knowledge of the case;

In other words, let the punishment be based on evidence.

Mr. Harper is quoted as saying:

We do not understand why child predators do the heinous things they do and, in all frankness, we don’t particularly care to.

We should all care — every single one of us. Prevention, treatment and penalties to fit the crime would result in less rather than more child sex offences because, as I said at the start, these bills are classic examples of Einstein’s insanity proposition.

I hope that these issues will be explored in committee. Without changes or amendments, I will not support this bill.

**Hon. Donald Neil Plett:** I’m wondering whether the senator would take a question.

**Senator Campbell:** Absolutely.

**Senator Plett:** Thank you. You talked about Conservatives being deniers of science, and I’m certainly no scientist, but I can do some math. Would you agree that if a child predator is in prison for 24 years rather than 2 years he has less of an opportunity to prey on children?

**Senator Campbell:** I would agree with you on that. But I don’t want to be around in 24 years when you let him out, and you will have to let him out. That’s the issue that I have. There are instances where, as far as I’m concerned, you can lock them up and throw away the key. There are crimes that are simply so bad and so horrible that we cannot take a risk of having somebody back out on the streets. But the fact of the matter is that that’s not the majority. The fact of the matter is that before we get to that point we should be looking at some way of doing something to prevent this from happening again.

Now, if we do the 24 years on this guy and we have treatment ongoing, perhaps he won’t come out as a beast. But I personally wouldn’t want to take a risk on that.

**Senator Plett:** What would you say to the fact that we still, even after treatment, have a recidivism rate of over 50 per cent with child predators?

**Senator Campbell:** I don't believe that.

**Senator Plett:** Statistics. Thank you.

• (1500)

[Translation]

**Hon. Ghislain Maltais (Acting Speaker):** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

(Motion agreed to and bill read second time.)

[English]

#### REFERRED TO COMMITTEE

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

(On motion of Senator Plett, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

#### CRIMINAL CODE

##### BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Boisvenu, seconded by the Honourable Senator Batters, for the third reading of Bill C-452, An Act to amend the Criminal Code (exploitation and trafficking in persons).

**Hon. Mobina S. B. Jaffer:** Honourable senators, I rise today to share my concerns regarding Bill C-452, An Act to amend the Criminal Code (exploitation and trafficking in persons). As you are all aware, exploitation and trafficking are issues near and dear to me. I have worked closely with senators and members of Parliament every time a bill of this nature has been introduced. The truth is we are never finished with protecting the most vulnerable people of our society.

The welfare of women, children and the most marginalized members of communities is sometimes in the hands of lawmakers, and this is especially true when it comes to the victims of exploitation, sexual exploitation and human trafficking. Unfortunately, Bill C-452 before us does not do nearly enough to support victims or improve our capacity to find the perpetrators committing these awful crimes. In fact, what the bill does do is compromise the integrity of our judicial system by

denying the accused the presumption of innocence and by binding the discretion of a judge to impose an appropriate sentence, all this with no real benefits for victims.

The crime of trafficking in persons and its related offences are codified in Canadian law in sections 279.01 to 279.04 of the Criminal Code of Canada. It is an indictable offence, which means that as a society, we as Canadian parliamentarians have decided that human trafficking is one of the most serious crimes that one can commit. Depending on the case, the crime of human trafficking can result in minimum sentences of five or six years and, in some instances, can result in a life sentence.

Honourable senators, the seriousness with which we treat human trafficking is warranted and necessary. We can all agree that human trafficking is the modern term for slavery. I have said in this chamber before that human trafficking and slavery are one and the same. It is an assault on human dignity, a disturbing abuse of basic human rights and a violation of the natural laws that are afforded to every human being.

As with many offences, the offence of human trafficking is made up of a number of elements. Currently, according to section 279.01, in order to convict an accused person of human trafficking, the Crown must prove two elements: First, the Crown must establish that the accused has recruited, transported, transferred, received, held, concealed or harboured a person, or that the accused exercised control, direction or influence over the movements of a person. Second, the Crown must prove that the accused has executed one of these actions for the purpose of exploiting that person or facilitating their exploitation. Importantly, there is no form of valid consent for any of these actions.

In legal terms, the first element is the *actus reus*, the act of the crime. The second element is the *mens rea*, the intent to commit the crime. Normally, where there is no *mens rea*, the moral blameworthiness of the accused is much lower. An important addition to the trafficking-in-persons section of the Criminal Code is the definition in section 279.04 of "exploitation" and the Crown's obligation to prove it. Exploitation is defined as causing another person to provide or offer to provide labour or service, which, if not provided, would threaten their own safety or the safety of someone known to them.

Factors used to determine whether someone has been exploited are the use of threats, force, coercion, deception or the abuse of a position of trust, power or authority. It is of great importance to note that the offence of human trafficking as it currently appears in the Criminal Code must be proven by the Crown beyond any reasonable doubt, as is the case normally in offences of a criminal nature. This burden of proof is the response to the long-standing common-law principle of the presumption of innocence.

Canadians have given such primordial importance to this principle enshrined in section 11(d) of the Charter of Rights and Freedoms, which reads:

11. Any person charged with an offence has the right

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal . . .

The Charter, as with the rest of the Constitution, is the law that governs all laws. This means that the laws we pass in this chamber must be in accordance with the Charter. At the Senate Legal Committee, we heard from Tony Paisana, Executive Member, Criminal Justice Section, Canadian Bar Association. On behalf of the CBA, Mr. Paisana explained the importance of the presumption of innocence. He said:

The presumption of innocence is a fundamental cornerstone of our criminal justice system. It is a time-honoured principle that is enshrined in the constitution. Allow me to quote a well-known legal maxim originating from the 6th century:

The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof.

For well over 1,500 years, we've understood that proving a negative is an elusive concept that should not normally form part of defending a criminal charge, particularly one as serious as this. Yet, in our submission, Bill C-452 proposes to do just that — force an accused to muster evidence of a negative, even though the Crown may not have proven the central features of the human trafficking offence.

Senators, Bill C-452 proposes to make a fundamental shift in this constitutionally enshrined procedural guarantee. It proposes to shift an important aspect of the burden of proof onto the accused, no longer abiding by the principle of the presumption of innocence. The text of the bill is as follows:

... evidence that a person who is not exploited lives with or is habitually in the company of a person who is exploited is, in the absence of evidence to the contrary, proof that the person exercises control, direction or influence over the movements of that person for the purpose of exploiting them or facilitating their exploitation.

In practical terms, if this bill is passed, the Crown will not have to prove all the elements of the offence of human trafficking. All that the Crown will have to do is prove beyond a reasonable doubt that the accused lived with or was habitually in the company of an exploited person. That in itself will be enough evidence to automatically prove the remaining element, which is the intent to exploit. In other words, once it is proven that a person lives with or is habitually in the company of an exploited person, it must then be concluded that the person's intent was to exploit or facilitate exploitation of the victim.

• (1510)

In legal terms, the Crown must only prove the *actus reus* element of the offence, when normally the Crown must prove the *actus reus* and *mens rea* beyond a reasonable doubt.

The Canadian Bar Association's submissions included an example showing the troubling reality that this presumption presents. Senators, the example goes as follows:

Ms. Smith is hired as a cleaner for a local janitorial service. She works six days a week and often takes double-shifts to make ends meet. She usually works

alongside Ms. Martinez, a 17 year old young lady from Guatemala. As the more experienced worker, Ms. Smith supervises Ms. Martinez's work and breaks. Ms. Martinez is an illegal immigrant who was trafficked to Canada by their mutual employer, Mr. Jones, but Ms. Smith has no knowledge of that situation. Ms. Martinez is unpaid, and has been threatened with harm if she does not continue working. Again, Ms. Smith is unaware of this arrangement and assumes that Ms. Martinez works for pay as she does.

The police discover Ms. Martinez's exploitation and arrest Mr. Jones and Ms. Smith at the workplace. The Crown can prove that Ms. Martinez was being exploited by Mr. Jones and that Ms. Smith spent over 60 hours a week with Ms. Martinez on the job.

If Bill C-452 was law in Canada, there would be a rebuttable presumption of guilt against Ms. Smith because she was not exploited but was habitually in the company of Ms. Martinez, a person who was exploited. If Ms. Smith was unable to produce evidence to the contrary, the Crown could prove that Ms. Smith exercised control, direction or influence over the movements of Ms. Martinez for the purpose of exploiting her or facilitating her exploitation. If Ms. Smith could not produce evidence to the contrary, then she would be liable to a mandatory minimum penalty of five years' imprisonment. Honourable senators, I remind you that the Charter ensures that:

Any person charged with an offence has the right . . .

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal . . .

This section, 11(d), imposes the requirement for an individual to be proven guilty beyond a reasonable doubt. It also imposes this burden to prove guilt on the Crown. When an individual is arrested and charged, their constitutionally enshrined right to life, liberty and security is paralyzed by the state. It is indeed the state — the police and the government's lawyers — that have decided to take away a person's freedom. So it is not surprising that the state has the responsibility to prove its case beyond any reasonable doubt.

In a criminal trial, the Crown makes its case first. If the Crown does not fulfill its duties of proving its case, then the accused does not even need to respond with a defence. If the Crown leaves reasonable doubt in its evidence and arguments, then the accused cannot be convicted.

Honourable senators, this is very important. This means that the Crown must make its case, convincing the judge or the jury beyond a reasonable doubt, even before the accused responds by testifying or calling other evidence.

I would like to restate the importance of this requirement: The presumption of innocence means that in order to be found guilty of a criminal offence, the Crown must prove beyond a reasonable doubt, before the accused makes their case.

In practice, this means that if the Crown does not put forth evidence that convinces the judge or jury beyond a reasonable doubt, then the defence does not even need to respond because a reasonable doubt exists and the accused cannot be convicted. If a law allows an accused to be convicted even if there is a reasonable doubt, then that law is unconstitutional.

Bill C-452 proposed a presumption that allows for an individual to be convicted of human trafficking or exploitation even though there may be reasonable doubt as to their actual culpability.

Let me explain. A presumption like the one found in Bill C-452 imposes what is called an “evidential burden” on the accused. With an evidential burden there is a basic fact and a presumed fact. Proof of the basic fact substitutes proof of the presumed fact.

Honourable senators, let me remind you again of the actual text of the bill, which states:

For the purposes of subsections (1) and 279.011(1), evidence that a person who is not exploited lives with or is habitually in the company of a person who is exploited is, in the absence of evidence to the contrary, proof that the person exercises control, direction or influence over the movements of that person for the purpose of exploiting them or facilitating their exploitation.

To break it down, the basic fact is living with or habitually being in the company of an exploited person. The presumed fact is the intent to exploit. As we have seen before, the basic fact represents the *actus reus* and the presumed fact represents the *mens rea* in this particular offence.

According to this type of presumption, if the basic fact is proven beyond a reasonable doubt, then it is mandatory to conclude that the presumed fact is true. There is no discretion for the judge or jury to decide if they believe this conclusion. The judge or jury may very well have reasonable doubt as to whether there was intent to exploit.

Take the example of Ms. Martinez. There are many reasons why an individual may be living with or be habitually in the presence of an exploited person. What if the victim of the exploitation has roommates who are not aware of the exploitation that is going on? What if the victim of the exploitation interacts on a daily basis with family members and friends of the perpetrator?

A basic fact may rationally tend to prove a presumed fact, but that tendency is not proof beyond a reasonable doubt. Applied to Bill C-452, living with or being habitually in the presence of may tend to prove intent to exploit, but there are enough other scenarios that this connection is not necessarily true. There is in fact a reasonable doubt.

Senators, the Supreme Court of Canada has ruled that a reasonable doubt is not based upon sympathy or prejudice but rather upon reason and common sense. A reasonable doubt must be logically connected to the evidence or the absence of evidence. It does not concern itself of a frivolous doubt.

There are many rational and common-sense reasons for a person to be living with or habitually in the company of an exploited person — too many for the constitutional violations that this bill before us suggests we make.

It is true that the accused may bring evidence forward to rebut the presumption. The problem arises when the accused does not have that evidence. Mr. Paisana from the Canadian Bar Association said it very clearly:

The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof.

For well over 1,500 years, we’ve understood that proving a negative is an elusive concept that should not normally form part of defending a criminal charge, particularly one as serious as this. Yet, in our submission, Bill C-452 proposes to do just that: force an accused to muster evidence of a negative, even though the Crown may not have proven the central features of the human trafficking offence.

Honourable senators, the courts must search for the truth, but also for fairness. The imbalance of power and resources between the parties in a criminal trial and the potential for the state to arbitrarily take advantage of that imbalance are precisely why the Crown must prove its case beyond a reasonable doubt first, without the accused needing to bring forward any evidence. If Ms. Martinez could not produce evidence to rebut the presumption, she would be sent to prison for a minimum of five years.

According to Bill C-452, the Crown does not have to prove all the elements of the offence of human trafficking in order to put someone in prison for it. This is a crystal clear violation of the presumption of innocence. The only possible way for the proposed presumption to be upheld as constitutional is if it satisfies a section 1 analysis. Section 1 of the Charter will uphold a *prima facie* unconstitutional law that is demonstrably justified in a free and democratic society.

The test first asks if the legislative objective is legitimate. If it is, then the law must be rationally linked to the objective and must minimally impair the Charter right, and the effect of the law must be proportional to the legislative objective.

• (1520)

Proponents of the evidential shift in this bill will refer you to the Supreme Court decision called *R. v. Downey* and will use it as an example of when a presumption like the one we are discussing here was upheld by the court. However, it is of the utmost importance to remember that in *Downey*, the presumption itself was found in violation of section 11(d) of the Charter.

In fact, the entire bench agreed that the presumption of innocence was violated. It was at the section 1 analysis where a divided bench then decided that this violation could be justified.

Normally, lower courts are bound to the Supreme Court's decisions. This is how the principle of *stare decisis* works in our common law system. So you may think that a court would uphold the presumption in Bill C-452 because it must follow the *Downey* decision.

However, just last year we learned in the *Bedford* case that the Constitution is not subordinate to *stare decisis*. Lower courts may revisit matters when new legal issues are raised if the common law on that matter has evolved or if there is a significant change in circumstances or evidence.

Honourable senators, *Downey* was decided 23 years ago. Not only would a constitutional challenge of this presumption include new evidence — social science evidence similar to that used in *Bedford* — but the law surrounding the section 1 analysis has changed since then. For example, these days a section 1 analysis would likely involve a closer look at rational connection.

The courts will ask not only if the law is generally rationally connected to its purpose but also, in the case of a presumption, if the basic fact of the presumption is rationally connected to the presumed fact.

Justice McLachlin, as she then was, expressed in her dissent that the presumption in *Downey* is so over-broad that it becomes arbitrary. In clauses that shift the onus of proof, the rational connection must pass a high-level threshold. Justice McLachlin wrote that the over-breadth and arbitrariness of the presumption made it irrational.

Her dissent over two decades ago is important in looking at Bill C-452 because, as you may know, the Charter law of over-breadth and arbitrariness has significantly developed since then. Our Constitution is a living tree that evolves along with the progressive changes in society.

Honourable senators, I will quote again Mr. Paisana from the Canadian Bar Association, who explained this to our committee very well:

First, proponents of the bill suggest that because the language used in this bill was upheld in a decision called *Downey* from about 20 years ago, that it will again survive constitutional scrutiny. *Downey* was a case with a similarly worded presumption which formed part of the former living off the avails offence. As you all know, of course, that offence was struck down recently in the *Bedford* decision.

In *Downey*, the Supreme Court split four to three, ultimately upholding this similarly worded presumption. The current Chief Justice, who was of course the driving force behind the *Bedford* decision, dissented in *Downey*, finding that the presumption was unconstitutional. Chief Justice McLachlin's reasons were prophetic. They referred to themes which were later repeated in the *Bedford* decision, including the fact that an offence will become unconstitutional when it has the potential to capture innocent bystanders who associate with victims of crime.

The second point we will make is that the Chief Justice explained in her dissent in *Downey* that the presumption as worded suffers from a lack of internal rational

connection. While it's true that some people habitually in the company of victims of exploitation will be responsible for that condition, it does not always work out that way. There can be many individuals who are habitually in the company of an exploited person who either have no knowledge of the exploitation or have no control over it. . . .

The third point we make is that this presumption does not minimally impair the right to be presumed innocent, which is another aspect or feature of a section 1 analysis. The presumption will invariably capture people who are not the focus of the objective of the human trafficking offence. Innocent bystanders, including co-workers or co-tenants with no knowledge of the victim's exploitation, would be captured by this legislation. This means the legislation suffers from what we call over-breadth and would therefore not be saved under section 1. As the Chief Justice explained, legislation that is over-broad is, by definition, irrational.

Another witness who came to speak to us was Mr. Leo Russomanno. He represented the Criminal Lawyers' Association and also spoke to the constitutionality of the presumption in Bill C-452.

About the *Downey* decision and the irrationality of the presumption, he said:

If you look at Chief Justice McLachlin's analysis under section 1, rational connections, she says that the majority fails to conduct a comprehensive rational connections analysis. What the majority did in that case was to look at external rationality and not internal rationality. External rationality, as she mentions in paragraph 64 to 66 of the *Downey* judgment, deals with whether or not the effect of the legislation would be connected to the purpose of the legislation itself. Internal rationality relates to whether or not the presumed facts are rationally connected to the actual facts.

One can easily come up with examples, as one did with "living on the avails" in the *Bedford* case, of individuals who would be caught up within this provision who are not necessarily in a position of exploitation, and they would be effectively required to prove their innocence or have the onus of raising a reasonable doubt, when virtually the entirety of our criminal justice system operates in the exact opposite way.

Mr. Paisana's and Mr. Russomanno's reminder that the living-on-the-avails clause that was struck down in *Bedford* for violating section 7 of the Charter is helpful in understanding how the courts will analyze this presumption in Bill C-452 today.

Let me elaborate. Previously, the Criminal Code had a provision that an individual who "lives wholly or in part on the avails of prostitution of another person" is guilty of an indictable offence. Another provision created a presumption that read:

Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution . . .

This particular presumption was not challenged in the *Bedford* decision, but it is intrinsically tied to the living-off-the-avails provision that was challenged. The provision was found to be contrary to the section 7 guarantee to security of the person.

A short section 1 analysis explained that because the provision captures non-exploitive individuals like drivers, bodyguards, receptionists and accountants that work with prostitutes, the law is not minimally impairing.

The provision was also found to be disproportionate because the “effect of preventing prostitutes from taking measures that would increase their safety, and possibly save their lives, outweighed by the law’s positive effect of protecting prostitutes from exploitative relationships.”

This section 1 analysis would most certainly be revisited in a constitutional evaluation of the presumption in Bill C-452. Different Charter rights are being violated — section 11(d) instead of section 7 — but the same section 1 issues are present.

That is, in the same way that the *Bedford* living-on-the-avails provision was disproportionate for capturing innocent bystanders, the presumption in Bill C-452 catches innocent bystanders.

It is clear that we cannot pass a law that is so over-broad that it easily captures innocent bystanders. We cannot pass a law that is so over-broad that it loses its rationality. The shift in the onus of proof in Bill C-452 is unconstitutional, and it will not be upheld in court.

At the same time, our legal system cannot leave the victims of exploitation without any safeguards. That is also clear. There are too many vulnerable victims in our criminal justice system — women, children, victims of sexual and physical violence. Their rights must be upheld, and we must find ways to protect their interests after they have experienced unimaginable trauma.

Presently, these victims testify through closed-circuit television or by other procedural means of admitting evidence. Our common law has evolved to accommodate.

What I would like to see happen next, honourable senators, is for us to find ways to protect these victims before they even become victims of unimaginable trauma.

We must craft law and implement policies that have real impacts on crime prevention and the victims of these crimes. A narrow-minded focus on hard criminal law is naive. That is why I fully and wholeheartedly support section 5 of Bill C-452, which adds human trafficking and exploitation to the list of offences liable to forfeiture of proceeds of crime procedures.

The International Labour Organization reports that forced labour in the private economy generates US\$150 billion annually in profits and \$99 billion from commercial sexual exploitation alone.

[ Senator Jaffer ]

Human trafficking is a highly sophisticated global enterprise. At any given time there are 4.5 million victims worldwide forced into sexual exploitation, and there are another 14.2 million exploited for labour in industries such as agriculture, construction, domestic work or manufacturing. Canada holds its fair share of this industry, unfortunately, within its very own borders and via Canadian criminals travelling abroad.

• (1530)

Forfeiting the property and profits from the perpetrators of these offenders is just a start. Even this provision of the bill will not change anything for the girls, women and other vulnerable people being victimized every day in Canada if it is not followed by a meaningful plan to provide aftercare and to strengthen preventive justice.

Aftercare is about more than the criminal law. It is about school, education, relationship-building and health.

We say that we are a sophisticated, developed nation here in Canada, but “developed” does not mean that we are done. Yes, steps have been taken and legislative progress has been made. Every time this issue has come before us, I have spoken about the fundamental values of human dignity that we as Canadians hold close to our identity. And yet, I walk the streets of the Downtown Eastside Vancouver and the women and children I see there are not benefiting from all the laws we’ve passed. I keep seeing the same girl, the same woman in the same alley, but each time I see her, her eyes are darker and her face is paler. We keep promising that the next law will make lives better. Senators, this is just not the case.

I cannot bring myself to believe that the eradication of human trafficking and exploitation is a partisan issue. Of course it is not. We are all here today believing strongly in the same fundamental goal: to harshly criminalize perpetrators of trafficking and to deliver justice to the victims.

This bill will not fulfill its goal if it is not accompanied by resources: resources in the police force working here in Canada and abroad; resources to properly train our police officers and to modernize our data-sharing systems; and especially resources to support victims of these crimes to come back into a safe, healthy and fulfilling life.

The forfeiture of proceeds provision in this bill is a start, but we cannot leave this issue here. Surely we are able to do more for vulnerable Canadians.

[Translation]

Senators, I will let my colleagues speak about clause 3 of this bill. In a nutshell, this clause imposes consecutive sentences on individuals who are found guilty of trafficking and exploitation. Of course, offenders must be given a harsh sentence for these heinous crimes. That sentence must be founded in law and determined on the basis of the circumstances. That is why our justice system has historically left it up to judges to impose sentences. Judges are the ones who are most familiar with the circumstances of the case.



My main concern with regard to the consecutive sentences imposed by this bill is that the presumption in this bill creates an opportunity to blame innocent people.

[English]

Honourable senators, you all know that the criminal law is a careful balance of individual rights and freedoms on the one hand, and the safety and security of the public on the other. It is not an easy task to undertake, but it is one that we have decided to tackle.

Bill C-452 does not strike that right balance. Unfortunately, the victims of human trafficking and exploitation will not see any real benefits. Not enough instances of these crimes are successfully investigated because of a lack of proper social infrastructure and communication between agencies, levels of government, policing communities, NGOs and academia.

The presumption proposed in the bill has an honourable intention and that is to take down barriers for victims testifying against their abusers. Unfortunately, the denial of the presumption of innocence is not the correct balance. Too many other innocent bystanders will become criminalized when, all the while, we could very well have made other procedural assurances and changes that would attain the common goal.

Years of constitutional litigation will ensue on this matter and, quite frankly, it will take away from the real issue, which is the lives and well-being of victims.

Honourable senators, I would like to see a legislative initiative in the chamber that is a genuine and well-thought-out effort to combat human trafficking, not just the criminal law as a blunt tool. Bill C-452 is not that.

Senators, when I spoke at second reading on this bill, I set out all the different experiences around the world that I have had on human trafficking and how I have been part of rescuing girls who have been trafficked, not just in Canada but around the world. This is an issue that is very close to my heart.

When I first studied Bill C-452 on my own, I thought this bill will help victims. But after having heard from the witnesses at the Standing Senate Committee on Legal and Constitutional Affairs, I am very discouraged, because I believe that we have once again raised expectations for the victims that we will be there to help them and that there will be something for them not to be exploited. Once again, we will raise expectations. They will come to court and open up and share their pain with the judges. Then, because of the law that we have drafted, the perpetrators will go free. Once again, we will have let the victims down.

On second reading, I spoke passionately about the great need to protect the most vulnerable trafficked people. Today, as a parliamentarian, I feel that I am once again failing those victims.

Thank you very much.

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

**The Hon. the Acting Speaker:** Debate has concluded. Are honourable senators ready for the question?

**Hon. Senators:** Question.

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

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**An Hon. Senator:** On division.

**The Hon. the Acting Speaker:** On division.

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

## CANADIAN HUMAN RIGHTS ACT CRIMINAL CODE

BILL TO AMEND—TWENTY-FOURTH REPORT  
OF LEGAL AND CONSTITUTIONAL AFFAIRS  
COMMITTEE—MOTION IN AMENDMENT—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Batters, for the adoption of the twenty-fourth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity), with amendments), presented in the Senate on February 26, 2015;

And on the motion in amendment of the Honourable Senator Mitchell, seconded by the Honourable Senator Dyck, that the twenty-fourth Report of the Standing Senate Committee on Legal and Constitutional Affairs be not now adopted, but that it be amended by deleting amendment No. 3.

**Hon. Donald Neil Plett:** Colleagues, I rise today to speak to Senator Mitchell's amendment to the Standing Senate Committee on Legal and Constitutional Affairs Committee's report on Bill C-279. I am truly disappointed that Senator Mitchell has introduced this amendment as the committee's report was passed unanimously. The chair gave members the opportunity to append observations, yet each and every senator, including Senator Mitchell, declined. This bill would already be at third reading, but, unfortunately, it has been delayed.

Senator Mitchell has proposed that we amend the committee's report to remove one of the three amendments I introduced at committee. I will first explain the amendment and then address each point that Senator Mitchell made in his speech on this issue.

Bill C-279 amends the Criminal Code, adding the term "gender identity" as an identifiable group in the hate crime and hate speech sections. I have spoken in favour of these amendments repeatedly. As we know, the trans community suffers violence and harassment to a greater extent than the rest of society.

The bill also adds "gender identity" to the Canadian Human Rights Act as one of the prohibited grounds of discrimination. This is important as we know that the trans community, as a population, is underemployed, underpaid and has a more difficult experience obtaining housing.

However, there are two things to keep in mind. First, the term "gender identity" has been interpreted in other jurisdictions to include terms such as "gender-fluid," "agender," "cross-dresser" and several other identities. This, combined with the fact that this legislation would apply to all sex-specific facilities in federal jurisdiction, is where many have concerns. The criteria for access are purely based on self-identification.

My amendment deals with subsection 15(1) of the Canadian Human Rights Act, which speaks to exceptions or where "it is not a discriminatory practice."

• (1540)

This amendment addressed the widespread concern that this bill in its original form would have allowed any individual to self-identify as the opposite sex and gain unrestricted access to sex-specific facilities in federal jurisdiction. This includes abused women's shelters, change rooms, shower rooms, et cetera.

Some reporters, and in fact two of my colleagues opposite, have irresponsibly perpetuated the myth that this amendment would somehow ban transgender people from using the bathroom of the gender they identify with. When Senator Jaffer spoke to this motion, I asked her to point out where in my amendment it is indicated that a trans person would now be banned from using the bathroom of the gender they identify with. For a lawyer, I assumed this should not be a difficult task. However, she was not able to point out this supposed "ban." In her speech, however, Senator Jaffer read a letter from a mother of a transgender child who stated, "Gender and sex are not the same thing." I agree. Like this mother, I understand the difference between gender and sex. Colleagues, this amendment does not speak to gender-segregated facilities; it speaks to sex-segregated facilities.

Currently, there is no legislated right for anyone to use the bathroom of their biological sex or the gender they identify with. However, with the addition of "gender identity" to the Canadian Human Rights Act, without this amendment, operators of sex-specific facilities would never be able to restrict or limit access.

One compelling example of how this would be problematic came from a witness who testified at our committee. Suzanne McLeod is the operator of a health facility on a First Nations reserve. As part of this facility, she operates a shelter for men and women, separately. With a relatively high transgender population in the community, they also have trans men and women using their services. Her concern was that the women who come to this shelter are often abused at the hands of a man. She stated:

... it's important that within that first 7 to 14 days that individual does not come in contact with another male person because the male is typically the perpetrator. That just re-traumatizes the experience. Even if that male is kind ...

Ms. McLeod would not have the flexibility to separate the trans women from the biological women in her facility. If she did, she could find herself in front of a human rights tribunal on charges of discrimination, with no defence. This was confirmed at committee by the shelter's legal counsel. My amendment gives the shelter that legal defence and protection.

Again, colleagues, this amendment offers the operator of a facility a legal protection if they are to restrict an individual from a sex-specific facility, on a case-by-case basis, for the purposes of protecting those in a vulnerable situation. This in no way bans transgender people from using the bathroom of the gender they identify with. The bathroom that trans people use now will be the same bathroom they will use after this law passes, with this amendment.

Now I will address each of Senator Mitchell's arguments for removing this important amendment. Senator Mitchell stated:

First, it's inherently discriminatory. Trans people are who they are. A trans man believes in their heart of hearts as deeply as any of us believes about our gender that they are a man. A trans woman believes, as deeply as any of us believes in our gender, that they are a woman and that it would be inappropriate for them to use a washroom that does not correspond to their gender identity.

I disagree that this amendment is in any way discriminatory. This is new ground. "Gender identity" would be the first prohibited ground of discrimination that is purely based on self-identification, and it has implications for access to personal facilities. So there cannot be a direct comparison to other prohibited grounds.

Senator Baker and Senator Mitchell were rather complimentary to a witness we heard from at committee, renowned lawyer Michael Crystal, who was highly supportive of this legislation in principle. Mr. Crystal recently pointed me in the direction of some case law from our highest court that deals with the balance of competing interests in human rights legislation. In this case, for example, the competing interests would be those of the transgender community and those of women or young girls in shelters, bathrooms or change rooms who may feel uncomfortable sharing an intimate space with a biological male.

Mr. Crystal specifically pointed me to the case of *Dickason v. University of Alberta*, in which Justice Cory recognized the existence of a “balancing mechanism” in human rights legislation. Justice Cory stated:

Current human rights enactments seek to broaden the impact of individual rights, yet they strive to provide a balancing mechanism so that the many competing interests of society can be accommodated.

Honourable senators, it is this very notion of a balancing mechanism that informs my amendment, as it will permit the front-line decision makers the discretion they will need to uphold the rights of transgender individuals while ensuring the sense of safety and well-being of vulnerable populations in federal facilities.

Senator Mitchell’s second point was based on a mischaracterization of the amendment. He stated:

... it really is difficult to understand how it will actually work. There was a very powerful picture in a newspaper article of, clearly, a woman, a transwoman. It turned out she was a transwoman. I don’t mean to be patronizing, but she was very attractive. If you walked by her on the street, you would not for a moment believe that she was anything other than a woman. That is who she is. She’s pictured in a men’s washroom with urinals across the way. That transwoman, under the force of this amendment, would have to use that men’s washroom. How would that work?

Again, of course she would not be forced to use a men’s washroom. This amendment speaks to high-level dispute resolution if this were to get to a human rights tribunal. As Senator Mitchell implied, no one would ever know that this trans woman was not born a woman, so his concern is a non-issue. There is not a ban on the use of washrooms implicit in this amendment. Brae Carnes, the individual Senator Mitchell is referring to, will use the same bathroom that Brae Carnes uses now, regardless of whether this amendment passes.

However, since Senator Mitchell used an example of an individual at the far end of the gender identity spectrum, he should consider the other end of the spectrum, with equal protection under the law — for example, a large biological male with no intention of physically transitioning. That person has every right to identify as a female, but this individual’s presence would clearly cause more concern in a women’s-only space than someone like Senator Mitchell described. However, the “gender identity” provision encompasses both individuals and provides equal access to all women’s facilities. Access will not be policed or monitored, as some have suggested. All this does is offer a defence for dispute resolution at a human rights tribunal.

The next point that Senator Mitchell made was to counter the claim that a child could see something inappropriate. He stated that we already have legislation that covers inappropriate activity by whomever in a washroom or any other public facility. “Inappropriate activity” is in fact not codified in the law. I spoke before about the biological male identifying as a female at

Evergreen College in Washington State, who was changing in the woman’s change room and was reportedly “sprawled out nude” in a women’s sauna. There is nothing illegal about that. However, a mother and her six-year-old daughter understandably felt uncomfortable and asked the college if the individual could use a separate changing room. The college was not able to accommodate this request because of the state law. A spokesperson for the college said:

The college has to follow state law. . . . The college cannot discriminate based on the basis of gender identity. Gender identity is one of the protected things in discrimination law in this state.

• (1550)

Senator Mitchell claimed that it is implicit in this amendment that the trans person would be the aggressor, whereas that’s almost never the case. I agree with him: That is almost never the case, and it is not implicit in my amendment. He states:

It will hold accountable law-abiding transgender people for the potential . . . of inappropriate actions in a bathroom or a locker room by somebody who might not even be transgender. It could just be somebody who has decided that they will infiltrate a locker room inappropriately.

Senator Mitchell hit the nail on the head. That is exactly my point. If somebody who wishes to inappropriately infiltrate a sex-specific facility and the manager presumes the person is falsely claiming to be transgender, with this amendment the manager would have the discretion to ask this person to leave.

Senator Mitchell then raised the case of Suzanne McLeod from Siksika First Nations women’s shelter. On Senator Mitchell’s blog, he states:

One witness who is a women’s shelter official said that her shelter had concerns with trans women being allowed into their facility in that they might be a threat to other women there. Currently, one other shelter I spoke to indicated that they consciously hire men so that woman can have the experience of understanding that all men are not violent toward them or lacking in respect.

What Senator Mitchell should remember from Ms. McLeod’s testimony is that she never suggested that a trans woman would be a threat to other women. While the women’s shelter Senator Mitchell communicated with has the right to employ men if they so choose, many women’s shelters that recognize the importance of women’s-only spaces for vulnerable women require the discretion that this amendment would afford them. In fact, the Elizabeth Fry Society stated in a report in 2012:

Women are . . . homogenous and have varying needs be it culture, context such as sex workers seeking respite from men in women-only space, or needs related to the diversity of women and their needs. Accommodation of those differences is part of meeting basic human rights.

As the Supreme Court case law I referenced earlier suggested, it is important to have a balancing mechanism in human rights legislation to accommodate for competing interests, while ensuring the sense of safety and well-being of vulnerable populations in federal facilities.

Could I have five more minutes?

**The Hon. the Acting Speaker:** A few minutes, senator.

**Senator Plett:** The Supreme Court has also concluded that we should not wait for a situation to arise, but to be proactive so as to avoid such problematic situations. The court has instructed legislators to use express language when creating such exceptions or defences to a specific right. University of Ottawa Professor Ruth Sullivan said this about the Supreme Court of Canada's case of *Bhinder v. CN*:

While the courts must respond to the need for balance among society's competing interests, interpretive doubts must be resolved in a way that advances the overall purpose of the legislation, which is the promotion and protection of rights. For this reason, exceptions and defences found in human rights legislation are strictly construed.

Constitutional expert Gerald Chipeur, who also testified at committee on behalf of Siksika Health Services, said this about the amendment:

In the absence of this amendment, federally regulated organizations would not be in a position to accommodate the needs of women who desire single-sex facilities. This amendment is not about denying a benefit to a minority. Instead, this amendment is an initiative supported by section 15(2) of the Charter of Rights and Freedoms, which protects any "... program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Michael Crystal said this about the amendment:

Change does not always come about with one stroke of a legislator's pen. I believe that the time has come for transgender rights to be included in our human rights legislation and this compromise is an acceptable position and is supported by our current jurisprudence.

Colleagues, I would strongly urge you to vote against Senator Mitchell's amendment to the committee report and to accept the committee's recommendation to move this bill to third reading, with all three amendments.

(On motion of Senator Batters, debate adjourned.)

[ Senator Plett ]

## NATIONAL SICKLE CELL AWARENESS DAY BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. Jane Cordy** moved second reading of Bill S-227, An Act respecting National Sickle Cell Awareness Day.

She said: Honourable senators, I must start by thanking Lanre Tunji-Ajayi, President of the Sickle Cell Disease Association of Canada. This bill would not be before you today without her passion and dedication to improving the lives of Canadians living with sickle cell disease. I am honoured to work with her to introduce Bill S-227, an act respecting a national sickle cell awareness day.

Honourable senators, May 5 was the Sickle Cell Disease Association of Canada's advocacy day on Parliament Hill. I was pleased to meet with Dr. Robert Klassen from CHEO, Princess Sanusi, whose 16-year-old son has sickle cell disease, and Kemoh Mansaray, a nurse from Edmonton who has friends and family who carry the sickle cell gene.

In the evening, along with Senator Meredith and MPs from all political parties, I attended the Sickle Cell Association's reception on Parliament Hill. During the reception several people told their personal stories about dealing with sickle cell disease. It was a moving experience to hear about the challenges of living with sickle cell. It was also very touching to see the optimism in the room that things would improve because so many people were working together.

We heard one mother's experience with her young child crying because of extreme pain in his arm. She and the father thought he must have injured it in a fall, but they couldn't find any sign of bruising or swelling. They brought him to the hospital for examination by a doctor. An X-ray came up negative and the parents were told by the doctor to take their son home and give him Tylenol. After three days of their child continuing to cry in pain, they returned to the hospital. This time they were blessed. The doctor on duty that day had just learned about sickle cell disease, and acting on this new knowledge he ordered a blood test. The boy's test came back positive for sickle cell. The parents were both carriers of the sickle cell gene and had not even heard of sickle cell disease before that day. Now that the child's doctors and his parents are aware of his condition, a suitable treatment and pain management plan has been put in place.

• (1600)

We also heard from Adeniyi Omishore. Adeniyi is only 16 years old and he is waiting for a hip replacement. The bones in his hip have been damaged because of sickle cell. His mobility has been diminished so that he needs a walker or a wheelchair to move. He is a very courageous young man, who spoke openly about the challenges of being a teenager affected by this disease. You can't play soccer, you can't play hockey and you can't play baseball. You miss a lot of school because of the intense pain and because of time spent in the hospital for treatment. Yet this young man remains upbeat and positive. He is truly an inspiration.

Honourable senators, these are just two Canadians' stories of many about living with sickle cell disease. According to the Sickle Cell Disease Association of Canada, between 3,500 and 5,000 Canadians live with the debilitating and sometimes life-threatening sickle cell disease. Although the numbers will vary from one province and territory to another, they report that one in every 2,500 children in Canada will be born with this condition. In the United States, sickle cell disease is actually the most common genetic disease.

Honourable senators, I would like to take a moment to talk a little bit about what sickle cell disease is, who has sickle cell disease and how does one get sickle cell disease.

Sickle cell disease, or sickle cell anemia, refers to a group of inherited red blood cell disorders. The three most common forms of sickle cell disease in North America are hemoglobin SS, or sickle cell anemia, hemoglobin SC disease and hemoglobin sickle beta thalassemia.

Sickle cell disease is caused by an abnormal form of hemoglobin, the molecule in red blood cells which carries oxygen throughout the body. With sickle cell disease, the red blood cells become deformed and the abnormal hemoglobin is not able to work properly. Normal red blood cells are doughnut-shaped and they easily move through the body's blood vessels, delivering oxygen to the organs. In patients with sickle cell disorder, the red blood cells become stiff and sickle-shaped. The sickle-shaped blood cells do not function like healthy red blood cells. The deformed cell does not flow easily through the blood vessels and can get caught up in the vessels and break apart. This can result in clogged blood vessels and low red blood cell count, known as anemia.

A normal, healthy red blood cell can carry out its job for 120 days, whereas a sickle-shaped cell has a lifespan of only 20 days. The double blow of clogged blood vessels and low red blood cell count drastically hampers the body's ability to deliver adequate oxygen to the organs. The continued starvation of oxygen to the body's system most commonly manifests itself as severe pain, especially in the bones, but it can also cause damage to shoulder and hip joints, or chest pain from acute chest syndrome. This is why Adeniyi, the 16-year-old boy I spoke about earlier, has to have a hip replacement.

There can also be damage to the lungs and the heart — such as heart failure or pulmonary hypertension — to the kidneys, liver and eyes, and also stroke, leg ulcers and infections. Because it can damage just about every organ in the body, sickle cell disease is known as a multi-system disorder.

Anyone can have sickle cell disease, but for an unknown reason, it is drastically more prevalent in people who have descended from Africa, the Mediterranean, the Caribbean, the Middle East, Southeast Asia, the Western Pacific region, South America and Central America.

In Canada, the Sickle Cell Awareness Group of Ontario conducted a study that showed 32 out of 40 African Canadians are carriers of the sickle cell trait. This does not mean that they have a sickle disorder, but they can pass it on to their children if both parents are carriers of the sickle cell trait.

Sickle cell disease is not contagious. You cannot catch it. You inherit it from your parents. To have sickle cell disease, a person must inherit one sickle cell gene from one parent and one sickle cell gene from the other. If a child inherits a sickle cell gene from one parent and a healthy gene from the other, they will be a carrier of the sickle cell trait and may pass it on to their children but will not have, and never will have, sickle cell disease themselves.

There is no known cure for sickle cell disorders. Treatment consists of managing symptoms of the disease through penicillin to fight infections in children, blood transfusions and a drug called hydroxyurea. Both transfusions and hydroxyurea can have serious side effects, but research is finding that lifestyle changes can have a positive effect on quality of life.

Because of the lack of oxygen travelling throughout the body, including to the brain, children with sickle cell disorders often struggle in school with fatigue, loss of concentration and memory lapses. It is important for teachers to be aware of these symptoms and tailor their teaching accordingly.

Infections can also be a major complication of sickle cell anemia, especially during childhood. Early diagnosis is extremely important so that children can be closely monitored by family and medical personnel.

Because of its relative rarity, most clinicians have limited experience and expertise with sickle cell disorders. When patients come in with conditions associated with sickle cell disease, doctors may not think to test for the disease. This was the case with the parents of the young boy experiencing extreme pain in his arm on their first visit to the hospital. This lack of awareness of the disease among medical staff can lead to misdiagnosis and ineffective treatments. In some cases, because of the persistent pain and desire for pain management medications, it is not uncommon for doctors to dismiss the patient as one just wanting painkillers, especially if the patient is a teenager or young adult.

Something as easy as a simple blood test at birth would help prevent misdiagnosis and would provide medical personnel with the information needed to properly treat the patient. Universal screening for sickle cell disorders now occurs in every state in the United States. In Canada, newborn screening is available in Ontario, British Columbia, Yukon, New Brunswick, Prince Edward Island and Nova Scotia, and in the city of Montreal, but not the rest of Quebec.

Honourable senators, shouldn't every newborn in Canada have access to this screening? The screening provides so much information to the health care provider and to the patient. Early diagnosis would mean ongoing care from birth. The Sickle Cell Association of Canada is aggressively advocating for a national newborn screening program. A national approach to the disease is something that is sorely missing in Canada. Guidelines for universal screening would identify sickle cell disease and other blood disorders, and would also identify carriers.

Optimal treatment and management of sickle cell disease requires knowledge and understanding of the disorder, not only by medical personnel but also by the patient and their family.

Managing sickle cell disease is a lifelong process. The logical first step is early, proper diagnosis. When a child is born with sickle cell disease, it's impossible to predict which problems will develop, when they will start or how bad they will be.

During the first six months of life, infants have a high level of fetal hemoglobin in their blood, which protects them from the red blood cells sickling. But dangerous complications of sickle cell may develop quickly between ages six months and five years, after levels of fetal hemoglobin decrease. Infection is a major concern for children with sickle cell disorders and an immediate regimen of daily penicillin is required to help manage infection.

Older children and adults with sickle cell disease may have few problems or they may have a pattern of ongoing complications, such as organ failure or stroke, which can shorten their lives. Stroke affects around 10 out of 100 children who have sickle cell disease. Screening all newborns will provide families and their doctors with the information needed to develop a plan of action to manage the disease. Honourable senators, this can save lives and improve quality of life.

Universal screening for sickle cell disorders of all Canadians will also provide doctors and researchers with the ability to track the disease and, because it is genetic, it can be tracked.

• (1610)

It will also provide those who are planning a family with valuable information about their risk of having children with sickle cell disease. Screening of newborns will also eliminate the mystery surrounding patients with the disorder and will establish early recognition and management of the disease. The longer a child goes undiagnosed the greater the chance of permanent organ damage or episodes of severe pain, stroke or possibly death.

Honourable senators, as June 19 of each year is recognized as World Sickle Cell Awareness Day by organizations such as the African Union, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the United Nations to promote awareness of the disease around the world, Bill S-227 would add Canada's voice to this important cause by marking June 19 as "National Sickle Cell Awareness Day" in Canada.

We are a diverse country and many Canadians can trace their roots to sub-Saharan Africa, India, Saudi Arabia and the Mediterranean — all regions where the sickle cell trait is common. It is important for Canada to recognize this and to develop strategies and policies which reflect the ever-evolving health care needs of our citizens. The Sickle Cell Disease Association of Canada is doing great work to further the awareness of the disease, particularly among parliamentarians.

The people that I have met and that I have had the pleasure to get to know with the Sickle Cell Disease Association of Canada are very positive, upbeat people. They just want Canadians to be more aware of sickle cell disorders. They want newborn screening to detect sickle cell at birth. They want treatment that will

improve the quality of life of those with sickle cell and their families, and they would like to see a national strategy for sickle cell disease.

Bill S-227, which would mark a sickle cell awareness day, is just a small start. It is just a start but, as Senator Meredith who was also at the reception will tell you, those present are excited and hopeful about this bill. They are excited because it means that people, particularly parliamentarians, are listening. As I said to those present, having a day to increase awareness may be a small step but it is a positive one.

Honourable senators, I am hopeful that you will see the positive change that this bill can make in the lives of those Canadians living with sickle cell disease, and I am hopeful that you will help make a national sickle cell awareness day a reality with the passage of this bill.

Thank you.

**Hon. Don Meredith:** Senator Cordy, thank you for that eloquent speech. This is a topic that is near and dear to my heart. I would like to speak to the bill as well in support, so I will adjourn the debate in my name.

(On motion of Senator Meredith, debate adjourned.)

## CANADA REVENUE AGENCY ACT

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

**Hon. Percy E. Downe** moved second reading of Bill S-226, An Act to amend the Canada Revenue Agency Act (reporting on unpaid income tax).

He said: The purpose of this bill, "Fairness for All Canadian Taxpayers Act (measuring the tax gap to fight overseas tax evasion)" is to give the government the tools to fight overseas tax evasion and, if passed, this bill will tell the government how much revenue the Government of Canada is actually collecting as opposed to how much we should be collecting, the difference being the tax gap — the actual money lost to overseas tax evasion.

In these tight fiscal times, where every dollar counts and programs are being cut or reduced and benefits to veterans are facing fiscal review, the Government of Canada does not know how much revenue it should be collecting. Are we losing \$3 billion to overseas tax evasion or \$30 billion? I don't know, you don't know and, more importantly, the government doesn't know.

The Canada Revenue Agency's justification for this refusal to measure the tax gap may be partly found in their attitude toward the tax gap itself. They simply do not understand the value of it. This tax gap analysis would disclose the amount of dollars owed but not paid by overseas tax cheats to the federal government, an amount which would no doubt astound Canadians and could further expose the agency's failing efforts to combat overseas tax evasion.

[ Senator Cordy ]

Canada's revenue agency does not have much company in its dismissive attitude toward calculating the tax gap. The United States, the United Kingdom, Denmark, France, Belgium, Slovenia, Mexico, Luxembourg, Israel, Estonia, Turkey — the list goes on and on — all produce estimates of their tax gap. They see it as, in the words of the United States Internal Revenue Service, a means of enabling “government to make better decisions about tax policy and the allocation of resources for tax administration.”

Such an attitude even extends to the State of California, one of many states in the United States that estimates the tax gap. In California's case they estimate their tax gap at \$10 billion U.S.

This is not an endeavour these agencies take lightly. Her Majesty's Revenue and Customs agency in the United Kingdom, their equivalent of our revenue agency, produces yearly estimates of their tax gap, calling them a “foundation” of their policy and which enables the agency to measure the effectiveness of all its programs. In fact, it even looks to other countries' estimates of their tax gaps for other policies that might be worth adopting by the U.K.

Similarly, the Swedish national tax agency uses their tax gap estimate as a means of risk management, helping to determine the best allocation of their agency's resources.

And still Canada refuses to measure the tax gap.

In addition to identifying how much tax revenue we are losing, to measure the tax gap is to measure the performance of our revenue agency. This may be the reason we don't have tax gap measurement in our country, because the Canada Revenue Agency does not want Canadians to know what a lousy job they're doing in failing to fight overseas tax evasion.

In the words of Oxford economist Paul Collier in his testimony before the House of Commons Finance Committee, attaching a number to the amount of tax revenue not collected “would certainly concentrate the mind if you realized that you were losing a lot of money.”

The government can only be assured it is dedicating enough resources to the fight against overseas tax evasion when it knows the actual size of the problem. This bill will address that problem.

Honourable senators will know that the issue of the Canada Revenue Agency's efforts to fight overseas tax evasion has been a cause of growing concern for many Canadians for several years now, ever since information about what has become known as the “Liechtenstein affair” came to light. Since then, Canadian taxpayers have been questioning what is going on and why the CRA has not convicted a single person in this affair, particularly given the millions of dollars in taxes that were avoided.

Canadians are also concerned about the difference in treatment between domestic and overseas tax evasion. The revenue agency does a very good job of catching and punishing Canadians who keep their monies and earnings in Canada and try to avoid paying taxes. Check the site of the Canada Revenue Agency.

• (1620)

There are all kinds of convictions for domestic tax evasion: a real estate agent in British Columbia, a house painter in New Brunswick, a doctor in Saskatchewan. But none is listed for overseas tax evasion.

To recap, in 2006, a former employee of the LGT Bank in Liechtenstein smuggled out documents showing how the bank assisted its clients in avoiding taxes in their home countries. Even more importantly, he also had a list of those clients from around the world, including over 100 Canadian citizens.

All of this information was given in 2007 to tax authorities the world over, including our own Canada Revenue Agency. No lengthy investigation by Canadian officials was conducted to acquire this information. It is because of a lucky break that the CRA had the list of clients handed to them on a silver platter. What the agency did, having been presented with this information, is rather underwhelming. In contrast to the response in other countries — hearings on Capitol Hill, police raids in Munich, people charged all over the world — the response in Canada has been very passive, to the point where questions are being asked about the competence of the CRA.

The CRA has admitted that the information they were handed showed that the amounts in Canadian-held Liechtenstein bank accounts totalled over \$100 million, ranging from a minimum of \$500,000 in one account to another account that had over \$12 million.

When this story first broke, the federal government was full of promises and tough talk. Then National Revenue Minister Jean-Pierre Blackburn said:

People realized that it's a question of time before we get them . . . I tell them, “We'll get you, we'll find you.”

He called tax evasion a huge problem for this country, vowing:

If somebody owes us something, we have to get it.

As time went on, however, the results fell short of the tough talk. In 2013, the Canada Revenue Agency claimed to have recovered only \$8 million in back taxes on the money hidden by Canadians in Liechtenstein. The agency described the project as basically finished. One would have thought that finishing the project would have required actually collecting all of the money that Canada was owed.

Speaking of the money owed, not one penny has been assessed in fines. That is because, unlike for domestic tax evasion, not one charge has been laid. In the years since this information has come to light, not one of these Canadians who hid their money abroad to avoid paying tax in Canada has faced criminal penalties in Canada or overseas, and, again, the CRA considers the matter “basically finished.”

Recently, we were reminded of the leaks of documents related to the activities of the Hong Kong and Shanghai Banking Corporation in Switzerland, again including over 1,785 accounts held by Canadians when this information was leaked.

As always, simply maintaining bank accounts overseas is not against the law, but if that account is used to hide assets in order to avoid taxation, then that is a different matter. As long as you pay your fair share, you can keep your money wherever you want. But hiding money to avoid paying taxes is a serious problem, and one that will not go away on its own.

A good example of what a government can accomplish when it takes tax evasion seriously is what happened in Australia. That country was able to hit the ground running in response to the development in Liechtenstein because, in 2006, the Australian government combined elements of eight different agencies under Project Wickenby, “to protect the integrity of the Australian financial and regulatory systems . . .” By cracking down on the use of illegal tax havens, they gave themselves the objective of recovering AU\$500 million in the first six years. They actually collected \$660 million by the end of the six years, and, by January this year, they have collected AU\$928 million, again exceeding the target.

In addition, the Australian tax office report credits Wickenby with “improving taxpayers’ willingness to comply with their taxation obligations.”

This, in simple English, means that people who were thinking of moving the money offshore had second thoughts when they saw their friends and neighbours charged, convicted and fined, unlike in Canada.

Tax revenue is the underlying foundation of every aspect and activity of government, from search and rescue to trade promotion to keeping the lights on in this very chamber. Put simply, if government cannot fund, the government cannot function. As a result, whenever a government advances a new policy or program, the first questions asked are, what will this cost, and where will the money come from?

But how the government raises the money is every bit as important as how it spends it, and, although there is a long list of revenue sources for the government, the majority of funds pass through the Canada Revenue Agency. So it follows that the CRA plays a unique, important role in the functioning of the Government of Canada and, as such, must be subject to a high level of scrutiny to ensure that it is managed in a competent manner.

It used to be that the Canada Revenue Agency didn’t attract a great deal of attention, either from the public or from the government. As a branch of government to turn a profit, there has always been a temptation to simply let it go about its business. If it’s not broken, don’t fix it.

The tax system, like all of government in a democracy, relies on the consent of the public in order to function. In turn, that consent is based on Canadians’ confidence that everyone is paying their fair share and being treated equally. No one enjoys paying taxes, but most recognize that they are, to use a phrase attributed to Oliver Wendell Holmes, the price we pay for a civilized society, and most are willing to pay their fair share if they are certain that it is their fair share and that others are doing the same.

The need for that certainty, honourable senators, is what drives this bill.

This bill would require the Canada Revenue Agency to provide a report of all convictions for tax evasion, specifying which ones are for overseas tax evasion. The convictions themselves are part of the public record, so compiling the report should be a simple exercise. Compiling them all in a single report would show Canadians the seriousness, or lack thereof, with which the government takes tax evasion and the length it would go to combat it.

The other main feature of this bill relates to the mandate of the Parliamentary Budget Officer and the responsibility of government to his office. In this case, such responsibility is embodied in the legal obligation of the CRA to cooperate with the Parliamentary Budget Officer in fulfilling his mandate “to provide independent analysis to the Senate and the House of Commons on the state of the nation’s finances . . . and upon request from a committee or parliamentarian, to estimate the financial cost of any proposal for matters over which Parliament has jurisdiction.”

The current state of affairs suggests an obvious failure on the part of the CRA to come to terms with a problem that is costing Canadians billions of dollars in lost tax revenue. As a result, we risk an erosion of confidence in our taxation system at a time when every dollar counts.

Therefore, and in the face of an agency clearly unwilling to respect the mandate of an officer of Parliament, this bill seeks to cut through the stalling and delaying tactics of the CRA by instructing the agency to provide the Parliamentary Budget Officer with the data he requires to fulfill his mandate.

This bill is about the right of Canadians to know that the tax system is fair and fairly administered. That fairness and confidence in that fairness must be the cornerstone of government policy and its laws in particular.

As in all things, justice in our taxation system must be seen to be done. This bill seeks to bring some much-needed transparency to the system so that Canadians might see for themselves what the results are.

Colleagues, there is something seriously wrong with the Canada Revenue Agency, and we have a responsibility to ensure that those Canadians who work hard, pay their taxes and play by the rules are treated the same as all other Canadians. A double standard cannot be allowed to continue to exist, allowing some Canadians to hide their money overseas and pay no taxes, while the rest of us in Canada have to make up the shortfall.

Colleagues, I seek your support for this bill.

(On motion of Senator Martin, debate adjourned.)



• (1630)

## NATIONAL DAY OF THE MIDWIFE BILL

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Unger, seconded by the Honourable Senator Smith (*Saurel*), for the second reading of Bill C-608, An Act respecting a National Day of the Midwife.

**Hon. Jane Cordy:** Honourable senators, it is my pleasure to speak today to Bill C-608, An Act respecting a National Day of the Midwife. Since 1991, May 5 has been recognized as the International Day of the Midwife. Originally sponsored by the World Health Organization, International Day of the Midwife is now celebrated by more than 50 countries. Bill C-608 proposes to add Canada to the list of countries around the world that recognize May 5 as the International Day of the Midwife. I believe this would be a positive thing.

Honourable senators, before I speak about the importance of midwives and a national day of the midwife in Canada, I'd like to refer to the interesting and excellent question posed to Senator Unger by Senator Ringuette. She referred to the term "midwife" as being used in some countries for a person who also assists in death. Like Senator Unger, I had not heard the term "midwife" used in this way before, so I did some research. In fact, death midwifery or death consultant is a relatively new practice here in Canada. It is unlicensed and unregulated, but it is, in fact, in Canada.

My office contacted Tonia Occhionero of the Canadian Association of Midwives for a response to Senator Ringuette's question. In her reply, Ms. Occhionero stated:

All provinces where midwifery is regulated have identical laws that protect the use of the term "midwife" and "sage-femme."

By law, a midwife is defined as a registered health care professional who provides primary care to women during pregnancy, labour and birth, including conducting normal vaginal deliveries, and providing care to mothers and babies during the first six weeks postpartum.

Ms. Occhionero does not believe that there will be confusion between the burgeoning practice of death consultancy and the intent of Bill C-608. She went on to say in her response:

Regardless, the bill states a National Day of the Midwife — midwife being a legally protected term for a registered health care professional who provides primary care to women during pregnancy, labour and birth.

We do not feel that individuals who provide end of life support will associate themselves with this proposed National Day since the term midwife is protected by law to mean one thing only.

It was indeed a very interesting question posed by Senator Ringuette and I thank her for her diligence. I would hope that this question will be raised again at committee hearings.

Honourable senators, midwifery in Canada provides an evidence-based, woman-centred, safe and cost-effective choice for expectant families. Midwives are health professionals who provide primary care to expectant mothers and their babies during pregnancy, during the birthing process and during the postpartum period. Midwives are experts in normal births and reduce the high rates of medical interventions.

Ontario statistics show that in 2013-14, midwifery services were chosen in 13.5 per cent of all births in the province. Statistics in Ontario show that births by Caesarean section were down 12.6 per cent when midwives were used. Midwifery services were also shown to reduce induced labours by 6.2 per cent, use of epidurals by 34.4 per cent, and episiotomies by 9.8 per cent. All this adds up to savings in health care costs and a stronger and possibly more desirable option for expectant mothers.

Midwifery services vary greatly across the country, with a number of jurisdictions — New Brunswick, Newfoundland and Labrador, and Prince Edward Island — not having any practising midwives. The Yukon Government does not recognize the profession of midwifery, however, there are two practising midwives in the territory whose services are paid for out-of-pocket.

Ontario currently has the most robust midwifery program in the country, accounting for well over half of the practising midwives in Canada. All other jurisdictions have varying degrees of midwifery services offered in only a limited number of areas. Nationwide, only 2 to 5 per cent of Canadian women have access to midwifery services. In my province of Nova Scotia, there are nine registered midwives working in a clinical capacity.

In total, there are just over 1,300 practising midwives in Canada. This is a small number relative to the demand for midwifery services across the country. Nowhere in Canada is the need for midwifery services more apparent than in our Aboriginal and First Nations communities. Ellen Blais, Co-chair of the National Aboriginal Council of Midwives, stated in her testimony before the House of Commons Health Committee about the traditional importance of the midwife within the Aboriginal community:

Aboriginal midwives have always worked in the community, carrying the cultural knowledge for safe childbirth, yet our work has become almost invisible over the past 100 years due to the medicalization of childbirth.

Honourable senators, in too many Aboriginal communities across Canada, child-bearing women have very little or, in many cases, no access to maternity or midwifery services. These services have been moved off the reserves and into larger urban centres. Most women in these communities must leave home and travel to

larger centres, sometimes over 1,000 kilometres away, to give birth. Typically, the mother is required to be away from her community, her family and her friends for weeks while waiting to give birth and the follow-up care for the mother and the baby. Obviously, this situation is not ideal and can be stressful and emotionally taxing on the mother, her baby and her family.

A 2013 UNICEF report found that Canada ranked 22 out of 29 developed countries for infant mortality rates. This is a shocking statistic. The low ranking is attributed to the higher rates among Aboriginal mothers who are often forced to travel to give birth outside their communities.

Honourable senators, it should be no surprise that Canadian midwives are held in high regard by maternity care providers worldwide. In fact, Canada will be hosting the thirty-first International Confederation of Midwives Triennial Congress in Toronto in June 2017. Over 4,000 midwives and maternity care providers from around the world are expected to be in Canada for the event. The aim is to provide a forum where the advances in maternity, newborn and women's health care can be shared, evaluated and monitored. It is also a great opportunity to show the world the good things that midwives are doing here in Canada.

Honourable senators, studies have shown that midwifery services provide a whole range of benefits to health care systems. It is also clear that the health and well-being of expectant mothers can be greatly improved with the choice of midwifery, especially in our Aboriginal and First Nations communities where access to maternity care services is almost non-existent.

Bill C-608 could be a good first step and could provide the tools to help communicate the benefits of midwifery services and to showcase the role of the midwife in Canada and the important work that midwives do. Recognizing a national day of the midwife will go a long way to promoting midwifery on a national basis. Hopefully the bill will motivate jurisdictions to provide midwifery services to the 95 per cent of expectant women who do not have such access today.

I look forward to the opportunity to examine the issues of this bill in committee.

**Hon. Mobina S. B. Jaffer:** Honourable senators, I have a question for Senator Cordy.

[Translation]

**The Hon. the Acting Speaker:** If Senator Cordy agrees, you can ask her a question.

[English]

**Senator Cordy:** Yes.

**Senator Jaffer:** Earlier you told us what Senator Unger had said, which is important in the province that I come from. I was wondering, in your speech, you spoke mostly about services

provided in areas where there are no services. But this can also be a way whereby women, if they don't need hospital services, could deliver even in urban areas, in a home. In that way they would have a much safer, infection-free delivery, and also they would not have to deal with hospital services, which would free up our hospitals for other treatment.

Did you find anything in urban areas on this issue?

• (1640)

**Senator Cordy:** I did find that most of the services are provided in the urban areas. I also found that all expectant mothers want more choice. They want the choice of using a midwife, particularly if it's a risk-free pregnancy. Of course, we know if there are risks, then somebody else would be called in.

I gave you the statistics of things that have been reduced — costs to the health care system — by women who used a midwife. Certainly, I think it's the choice, the options and providing for women in urban as well as rural areas in Canada. We need more midwives in Canada. We need more provinces to accept that midwives are a relevant and important part of the health care system in our country.

I spoke a lot about Aboriginal communities in areas far removed from urban centres and the challenges that they're facing. There's an interesting article in this month's *Reader's Digest* about midwives in an Aboriginal community outside of Winnipeg. It was quite interesting to have read that just today. But, indeed, the importance of midwives in an urban centre is extremely important for expectant mothers and their families. It is also important because it offers choices while at the same time saving money for the healthcare system.

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

**Hon. Senators:** Question.

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

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

[ Senator Cordy ]

**STUDY ON CHALLENGES AND POTENTIAL  
SOLUTIONS RELATING TO FIRST NATIONS  
INFRASTRUCTURE ON RESERVES**

**EIGHTH REPORT OF ABORIGINAL PEOPLES  
COMMITTEE ADOPTED**

On the Order:

Resuming debate on the consideration of the eighth report of the Standing Senate Committee on Aboriginal Peoples entitled: *Housing on First Nation Reserves: Challenges and Successes*, tabled in the Senate on February 17, 2015.

**Hon. Dennis Glen Patterson:** I move adoption of the report.

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

**Hon. Senators:** Agreed.

(Motion agreed to and report adopted.)

**THE SENATE**

**MOTION TO STRIKE SPECIAL COMMITTEE ON SENATE  
TRANSFORMATION—DEBATE CONTINUED**

On the Order:

Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Cordy:

That a Special Committee on Senate Transformation be appointed to consider;

1. methods to reduce the role of political parties in the Senate by establishing regional caucuses and systems to provide accountability to citizens;
2. methods to broaden participation of all senators in managing the business of the Senate by establishing a committee to assume those responsibilities, and to provide for equal regional representation on said committee;
3. methods to allow senators to participate in the selection of the Speaker of the Senate by providing a recommendation to the Prime Minister;
4. methods to adapt Question Period to better serve its role as an accountability exercise; and
5. such other matters as may be referred to it by the Senate;

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

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

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

That the committee be empowered to report from time to time and to submit its final report no later than June 30, 2015.

**Hon. Stephen Greene:** Ladies and gentlemen, first of all I would like to thank Senator Ringuette for putting forward this motion. The purpose of her motion is to ask the Senate to appoint a special committee to look into Senate transformation, and then Senator Ringuette gives examples of what she means by “transformation.”

The transformation of anything is a very powerful and strong objective. It is usually impossible, although it does occur when there is sufficient leadership and commitment. An example could be the free trade agreement between the U.S. and Canada.

Yes, transformation can happen, but it requires leadership, determination, perseverance and sometimes courage, unless you are a caterpillar transforming into a butterfly.

But transformation of the Senate? Is it harder to achieve and more complex than the free trade agreement? Some would say so. There is certainly a lot of inertia to be overcome.

As we know, Senator Nolin, beloved by both sides, not only believed that transformation of the Senate was possible, he was prepared to act on his beliefs. He put forward motions and inquiries last spring that had, as their objective, the transformation of the Senate. If we had had the courage last spring to turn his motions into actions, the transformation of this place would be under way now.

I believe that transformation or, what I prefer to use, “modernization” of the Senate into something better, something that serves the needs of Canadian democracy and the Canadian people living in this century, is not only exactly what we need, but what we simply must have. Our credibility as an institution is at stake, and so is Canadian democracy.

We must listen to what Canadians want. A recent Ipsos Reid poll says that 86 per cent of Canadians want the Senate to be abolished or reformed. This leaves 7 per cent saying that they aren’t really sure and 7 per cent responding that they like the Senate just the way it is. You have to wonder what that last 7 per cent is smoking.

This poll, it seems to me, is a clarion call for action. Canadians want reform of this chamber. Moreover, they are telling us that we must reform it or it could be abolished. Since I believe that if Canada did not have an upper house we would have to invent one, our duty is clear to me. I note that Kenya abolished its Senate in 1966 but brought it back in 2010 in the interests of stable government. We must transform. We must modernize. If not we, then who?

I believe that when Canadians tell us they want the Senate reformed, they are telling us two things. First, they are saying that we have to rid ourselves of any vestiges, examples or opportunities for corruption of any kind. They want this place to be an example of integrity, and they want it fully transparent. But they are also telling us something even more important. I believe they are telling us that we have to be useful. They are in essence saying: Where's the value for my \$90 million?

I have done some comparative research and, while it is difficult to compare upper house legislatures because of different historical, political and legal variables among countries, I can say that a comparison with the House of Lords or the Australian Senate is not good for us.

Since 1960 we've averaged about two amended bills per calendar year. In the Trudeau-Clark-Turner years, we were exceptionally compliant, averaging less than one per year. During Mulroney, we averaged about three per year, and during Chrétien-Martin about four per year. Now we've slipped backwards to about two per year, which has been our average since 1960.

In order to really understand these statistics you have to probe. Deeper analysis reveals that we amend more legislation when the Senate majority is not the same as the house majority. This explains why we amended more often under Mulroney, when the Liberals were the majority in this place. It explains why in a three-year stretch in the early Chrétien years, when the Conservatives were the majority in this place, we amended 14 times, almost 5 per year. Now that we Conservatives are the majority again in both houses, the Senate has become compliant. Yet in the first 60 years of Confederation, we amended about 25 per cent of all bills. What a wild bunch we were back then.

The idea to be taken from this analysis is the impact of partisanship on the work of this chamber. When the Senate majority is different than the house majority, we amend more often — no matter who is in power.

How do we compare with the House of Lords and the Australian Senate? I think we have to plead no contest. The House of Lords amends about 64 per cent of the bills that come before it, which is about 40 per year, while the Australian Senate amends about 30 per cent of the bills that come before it and makes more than 100 amendments every year.

Now I realize that a lot of reform is going on behind the scenes. Thanks to Senator Housakos' and Senator Dawson's communications committee, we have an excellent set of proposals before us.

The Internal Economy Committee has been working diligently on expenses, rules and various other policies for more than a year. All of these largely administrative things represent true progress, but they are not more important than the changes that would enable us to perform better our most important duty, which is the review of legislation — in other words, our sober second thought. This is our primary residence, if you will.

We must understand that amending legislation is only part of what we do here. We examine all legislation more deeply and thoroughly than they do in the other place. We canvas more witnesses from a broader spectrum than the other place. We don't act in a hurry like the other place often does. We give the other place a kind of substantive legal cover for its political and governmental actions. We are an important step, and a necessary step, in the progress of legislation towards Royal Assent. Without us, the Governor General would have to take the other place's word for it.

• (1650)

And, as Senator Baker often reminds us, what we say in this chamber or in committee is frequently of assistance to the judiciary in determining the legislative will of Parliament.

Now, what do I mean by "Senate modernization"? Every senator has his or her own view on it, and I intend to use the opportunity presented by Senator Ringuette's motion to explain my view of it.

Senator Ringuette presents four paragraphs of objectives that in her view represent the core objectives of transformation. The first says:

1. methods to reduce the role of political parties in the Senate by establishing regional caucuses and systems to provide accountability to citizens;

If Senator Ringuette actually means to reduce the role of political parties in the chamber, I have a problem. But if she means she wants to reduce partisanship in this chamber, I am in agreement.

I think that reducing the role of political parties would be a non-starter for many people in this chamber. Moreover, I think political parties are a good thing. They help you organize your beliefs around an actionable ideology or plan. They aid in consistent thinking and I would not vote for a proposal that would bar senators from attending the caucus of their choice. This should be up to individual senators.

But partisanship — generally a good thing — is a different matter. Partisanship can interfere with our role of sober second thought.

When is partisanship a good thing and when not? Let me compare partisanship with a bottle of wine. We've all had wine. We all know what it is. One, two or even three glasses of wine can be a good thing. It is not only healthy for you, but it can also make you the life of the party, which is good for everyone. A little

partisanship is also a good thing. It is even healthy for you in that it helps you organize your thoughts, and it prods you to act on them. It can make you the life of your political party and make you well known in your community.

But have too much wine and pretty soon you can't think straight. Have too much partisanship and pretty soon you can't think straight. With too much partisanship, you begin to confuse argument with fact, and pretty soon you believe "my party, right or wrong," and that's when sober second thought goes right out the window.

In other words, someone who is what I call a "drunk partisan" is someone who is willing to suspend their intellect in order to support their party's actions. They are willing to defend the indefensible and support the unsupportable, and they will refrain from arguing points they believe in if they think it might upset someone on their own side.

I believe that when senators enter those doors down there, they should enter as a senator first and party member second. They should bring their talents, knowledge, political background and experience to the examination of legislation in the context of their own economic, social and political beliefs about what is good for Canada. I would like to see something in our code along these lines.

So, if Senator Ringuette means a kind of extreme partisanship when she writes "political parties," I am on the same page as she. But if she means to do away with political parties in this chamber and wants to sit in a quasi-independent state like the other side, I oppose that. I point out that while the other side might be an independent group, they are not a group of independents. They almost always vote as a group, the same as we do.

Now for regional caucuses, which Senator Ringuette wants to use as a method to break the role of parties or partisanship. Certainly there is implied support for regional caucuses in the Constitution, which mandates the senators to represent regions.

I have thought about regional caucuses for a long time. I think they can work really only in the Maritimes, which would exclude Newfoundland, a province very different from the other three and a region, actually, of its own. Regional caucuses, in my view, are not vehicles that could curtail partisanship in this chamber.

Why do I think regional caucuses could work only in the Maritimes? It is because the three Maritime provinces share common, almost identical, problems. What is written about one can be claimed for the other two. No other three provinces are as similar.

Just look at a map of Canada for proof. Seven of ten provinces have vast northern regions from which to extract wealth. B.C., the West, Ontario and Quebec, and Newfoundland has gigantic Labrador, whereas the three Maritime provinces have nothing like that.

Since it stands to reason that common problems should beget common solutions, for best results I believe that our common problems should be tackled regionally rather than provincially.

A good topic for study for a Maritimes regional caucus could be the creation of a single strategic plan for economic development, one that encompasses all three provinces and one that each government could sign onto.

In my view, it is about time there was a Maritimes caucus. I don't really know if it would do much, but it should be tried.

The second paragraph of Senator Ringuette's motion is as follows:

2. methods to broaden participation of all senators in managing the business of the Senate by establishing a committee to assume those responsibilities, and to provide for equal regional representation . . .

This is a laudable ambition, of course, but, unless I am mistaken, I believe we already have a committee in the Standing Committee on Internal Economy, Budgets and Administration, except that the representation is not regional. Perhaps Senator Ringuette can tell us if she means something else.

The third paragraph of her motion is:

3. methods to allow senators to participate in the selection of the Speaker of the Senate by providing a recommendation to the Prime Minister;

As honourable senators might know, I agree with this. For my arguments in favour of the Senate selecting our own Speaker, please see my speech in this chamber on March 10, 2015.

While I understand why the Prime Minister had to act quickly on the passing of Senator Nolin — and I certainly praise his selection of Senator Housakos, whose communication skills are wonderful — I do believe the Senate should hold consultative elections for Speaker one day.

The fourth paragraph of Senator Ringuette's motion reads as follows:

4. methods to adapt Question Period to better serve its role as an accountability exercise;

I don't think there's anyone in the chamber who dislikes Question Period more than I, unless it is Senator Baker. I am for getting rid of it. It does not belong in our chamber except in the instance when we have a senator in cabinet. When a cabinet member is a senator and not a member of the House of Commons, the Senate is the only place his or her work can be publicly questioned. Other than that, it is a distraction from the legislative work we are supposed to be doing.

Moreover, as useless as Question Period is, it takes up a greater proportion of our time than the proportion of time it takes up in the House of Commons. On that basis, an observer from Mars would think that Question Period is more important in the Senate than it is in the house. For me, this alone signifies that we have to make some changes.

Senator Ringuette's notion of improving Question Period to better hold the government to account is a contradiction of her paragraph 1, where she wants to diminish the role of parties or partisanship. By enhancing Question Period as an accountability exercise, we are adding to the role of parties and inflaming partisanship. I believe Question Period gets in the way of our ability to fulfill our mandate.

With the Duffy trial on the airwaves, I believe that we need, more than ever in the Senate's history, to prove our value. I believe we can show our value in two ways. The first is the obvious one of fulfilling our mandate of sober second thought. The second, less obvious, is to really show that we are different from the House of Commons, that we are not a copycat institution and, therefore, irrelevant. What better way to show that our function is different than if we have a different form.

Last week a friend of mine in Nova Scotia who runs a public affairs company sent me an email about the impact of the Duffy trial and how the Senate is being scrutinized more than ever by Canadians.

He wrote:

Senators should imagine they were not a Senator, and look at the institution from the outside. Perhaps, when the dust settles, men and women of good character will try to reform the Senate into a useful body - it is not perceived so today.

I believe my friend makes an excellent point and that we must get moving on a change agenda that creates a chamber that is useful to Canadians and is perceived to be so. In my view, we need to make the Senate identifiably different from the House of Commons. We should completely shake things up. We should not be afraid to experiment. In the words of one of the greatest presidents, "the only thing we have to fear is fear itself."

Here are some modernizing ideas that you should not fear, although I have no doubt some of you will find them a little crazy:

First: We should no longer sit across the aisle from each other. Instead, we should sit regionally or by precedence or by province or alphabetically. In other words, we should sit by any variable that would break partisan delineations. We could sit semicircle, like they do in a few other Westminster-style Commonwealth countries. This would demonstrate that we are different from the house, that we are political but, when in this chamber, we are less partisan than members of the house. It would be a good advertisement that we have a different function. As we know, form follows function. I believe that the form we currently employ, sitting two sword lengths apart, does not enable our function.

Second: We should amend our Senate calendar so that it suits the timelines of our work. Our current calendar suits the house, not the Senate. We could look at sitting two consecutive weeks of five days a week, Monday to Friday, followed by two weeks off. I'm sure we all have ideas on this.

Third: We should, all of us on both sides, always unanimously vote for the government's budget after amendments are proposed and discussed.

**An Hon. Senator:** Five minutes.

**Senator Greene:** I will be less than five minutes.

• (1700)

It's a stupid conceit, I believe, to think that this chamber would ever turn down a government's budget, no matter whose it was, so why does the opposition always pretend otherwise? In my view, chanting "on division" is a moral copout.

Fourth: We should tackle the thorny issue of selection of senators and make recommendations to the government and to the Governor-General. I would like to see a committee on that. We have a stake in this issue.

Fifth: We should televise or webcast the chamber as soon as possible. We should better publicize our excellent committee work on bills and on reports. We should develop a "speakers' bureau" of willing senators and send them into schools across Canada.

We should elect our own caucus officers, with the exception of the Leader of the Government in the Senate, as the Prime Minister needs to have the confidence in someone to manage his legislative agenda in this place.

The digital world is upon us with a vengeance. New apps are coming fast and furious. It's difficult to keep up with them. I believe that the chamber is the perfect place to conduct digital experiments. For example, we should commission an app to allow for digital voting in this chamber. We all have iPads, tablets or smartphones that can be used for many purposes, so why not for voting in this chamber? We could even affix a score board so the voting would be immediate and visible to all. It's difficult for the House of Commons to conduct experiments like this. We should show the way.

I am a student of history and I love tradition, but tradition without utility cannot and should not survive unless in a museum.

There is no reason why this place, the Senate of Canada, can't be the foremost and most admired legislative body in the world, a place known for its integrity, openness, democracy and transparency. Our Senate has the potential of being a great institution, but it's up to each of us to make it so. We must show that we perform a unique and essential service to Canadians, and that we have a completely different function from the House of Commons.

We are on trial now. We need to show that we're a vital component of Canadian democracy. Let us, every single one of us, engage in a debate on Senate transformation or modernization. Senator Nolin's legacy deserves nothing less.

I wish again to thank Senator Ringuette for putting forward her motion. While I can't agree with some of the things in her motion, she has performed the valuable service of sparking debate. While I

tend to support the central reason for her motion, which is that a committee on Senate transformation or modernization be struck, I cannot support the motion as presented.

Let us throw open the doors and let the sunshine in. Thank you.

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

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

In the absence of electronic voting, I take it you don't like listening to us chant "on division." We can oblige; we can have standing votes on every bill, if that is what you'd prefer.

**Senator Greene:** Well, no, I wouldn't prefer that in the interests of efficiency.

In terms of the "on division" chant with regard to the budget, I just don't think there is a place for it. I think the chamber should unanimously support every single budget after there has been a discussion on amendments, observations, et cetera. To think otherwise — I think it makes us look ridiculous.

**Hon. Pierrette Ringuette:** First of all, thank you very much for taking the time to read out the motion and put forth your thoughts and suggestions. I certainly agree with all the suggestions that you have made.

But in your speech, you indicated in regard to Question Period that I was looking for it to be about government accountability, that's not what I was indicating. I was indicating that our best work is performed in committees, and I think that each and every one of us can sit on two or three committees. However, there are more committees than that.

I find that we are individually lacking knowledge of what is going on. And that the half hour we're using every day should be used not as a Question Period, per se, for government accountability, but to get a report on activities — to find out what is going on — from the chair of each committee, so that we would be more informed.

Would you agree with that approach, senator?

**Senator Greene:** Yes, I would.

**Senator Fraser:** This is not pro forma. I do want to speak to your remarks, Senator Greene, not all of which do I find myself in agreement with, but some I do. So I would like to move the adjournment of the debate.

(On motion of Senator Fraser, debate adjourned.)

(The Senate adjourned until Wednesday, May 13, 2015, at 1:30 p.m.)

---

## CONTENTS

Tuesday, May 12, 2015

	PAGE		PAGE
<b>SENATORS' STATEMENTS</b>		<b>QUESTION PERIOD</b>	
<b>First World War</b>		<b>Finance</b>	
Joint Parliamentary Symposia in Canada and France.		Budget 2015.	
Hon. Serge Joyal . . . . .	3327	Hon. Céline Hervieux-Payette . . . . .	3331
<b>Hemochromatosis</b>		Hon. Claude Carignan . . . . .	3331
Hon. David M. Wells . . . . .	3327	<b>Visitors in the Gallery</b>	
<b>National Fiddling Day</b>		The Hon. the Speaker . . . . .	3334
Hon. Elizabeth Hubley . . . . .	3328		
<b>Visitors in the Gallery</b>			
The Hon. the Speaker . . . . .	3328	<hr/>	
<b>Canadian Institute of Plumbing and Heating</b>		<b>ORDERS OF THE DAY</b>	
<b>Mechanical Contractors Association of Canada</b>		<b>Tougher Penalties for Child Predators Bill (Bill C-26)</b>	
Hon. Donald Neil Plett . . . . .	3328	Bill to Amend—Second Reading.	
<b>Supervised Access to Drugs</b>		Hon. Larry W. Campbell . . . . .	3335
Hon. Larry W. Campbell . . . . .	3329	Hon. Donald Neil Plett . . . . .	3335
		Referred to Committee . . . . .	3336
<hr/>		<b>Criminal Code (Bill C-452)</b>	
<b>ROUTINE PROCEEDINGS</b>		Bill to Amend—Third Reading.	
<b>Economic Action Plan 2015 Bill, No. 1 (Bill C-59)</b>		Hon. Mobina S. B. Jaffer . . . . .	3336
Notice of Motion to Authorize Certain Committees		<b>Canadian Human Rights Act</b>	
to Study Subject Matter.		<b>Criminal Code (Bill C-279)</b>	
Hon. Yonah Martin . . . . .	3329	Bill to Amend—Twenty-fourth Report of Legal and	
<b>Railway Safety Act (Bill C-627)</b>		Constitutional Affairs Committee—Motion in	
Bill to Amend—First Reading . . . . .	3330	Amendment—Debate Continued.	
<b>Canada-United States Inter-Parliamentary Group</b>		Hon. Donald Neil Plett . . . . .	3341
Annual Meeting of the Council of State Governments'		<b>National Sickle Cell Awareness Day Bill (Bill S-227)</b>	
Southern Legislative Conference, July 26-30, 2014—		Second Reading—Debate Adjourned.	
Report Tabled.		Hon. Jane Cordy . . . . .	3344
Hon. David M. Wells . . . . .	3330	Hon. Don Meredith . . . . .	3346
Canada-United States-Mexico Trilateral		<b>Canada Revenue Agency Act (Bill S-226)</b>	
Inter-Parliamentary Group Meeting,		Bill to Amend—Second Reading—Debate Adjourned.	
December 1-2, 2014—Report Tabled.		Hon. Percy E. Downe . . . . .	3346
Hon. David M. Wells . . . . .	3330	<b>National Day of the Midwife Bill (Bill C-608)</b>	
Annual Winter Meeting of the National Governors		Second Reading.	
Association, February 20-23, 2015—Report Tabled.		Hon. Jane Cordy . . . . .	3349
Hon. David M. Wells . . . . .	3330	Hon. Mobina S. B. Jaffer . . . . .	3350
U.S. Congressional Meetings, March 23-25, 2015—		Referred to Committee . . . . .	3350
Report Tabled.		<b>Study on Challenges and Potential Solutions Relating</b>	
Hon. David M. Wells . . . . .	3330	<b>to First Nations Infrastructure on Reserves</b>	
<b>Official Languages</b>		Eighth Report of Aboriginal Peoples Committee Adopted.	
Notice of Motion to Authorize Committee to Extend		Hon. Dennis Glen Patterson . . . . .	3351
Date of Final Report on Study of Best Practices for		<b>The Senate</b>	
Language Policies and Second-language Learning in		Motion to Strike Special Committee on Senate	
Context of Linguistic Duality or Plurality.		Transformation—Debate Continued.	
Hon. Claudette Tardif . . . . .	3330	Hon. Stephen Greene . . . . .	3351
		Hon. Joan Fraser . . . . .	3355
		Hon. Pierrette Ringuette . . . . .	3355









---

**Published by the Senate**

**Available on the Internet: <http://www.parl.gc.ca>**