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Wednesday, February 27, 2008

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Wednesday, February 27, 2008

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

Prayers.

SENATORS' STATEMENTS

CANADA'S OUTSTANDING PRINCIPALS 2008

Hon. Elizabeth Hubley: Honourable senators, every year the Learning Partnership, a national not-for-profit organization dedicated to public education in Canada, recognizes the extraordinary contributions of dynamic education leaders in Canada's public education system. This year, 33 school principals from across the country have been chosen as Canada's Outstanding Principals for 2008.

Each year, the winners of Canada's Outstanding Principals are inducted into the National Academy of Canada's Outstanding Principals. Throughout the year, these outstanding principals continue to act as champions of public education, participate in ongoing discussions about leadership issues through an online forum and continue to mentor colleagues in their home schools.

I would like to congratulate all honourees this year and, in particular, George Aiken, Principal of Kensington Intermediate-Senior High School in Kensington, P.E.I. Mr. Aiken is a highly respected educational leader and innovator and has been a teacher and administrator at Kensington Intermediate-Senior High School for more than 30 years. He is well known for his commitment to excellence in education and has been an inspiring role model for colleagues and students alike.

It is through the work of dedicated and innovative educators such as Mr. Aiken and his fellow award recipients that we will continue to build a strong public education system in this country. Congratulations to Canada's Outstanding Principals and thank you for all that you do.

THE ENVIRONMENT

REDUCTION OF PHOSPHATES

Hon. Janis G. Johnson: Honourable senators, over the last few years, Canadians in many parts of the country have witnessed an increase in the growth of blue-green algae, restricting their ability to enjoy summer vacations.

• (1335)

Part of the blue-green algae problem is attributable to phosphates used in certain detergents and cleaning products to soften water, reduce spotting and rusting, hold dirt and increase performance. However, too many phosphates in our water can lead to an overproduction of blue-green algae. Though blue-green algae occur naturally, in large quantities, they emit a harmful level of toxins. This can lead to poor water quality and force the closure of beaches in warmer temperatures.

On February 15, 2008, in a joint announcement between Minister of the Environment, John Baird; and Minister of Public Works and Government Services, Michael Fortier; the government stated its intent to take further action to reduce the growth of blue-green algae in our rivers, lakes and streams.

The government is proposing to amend regulations in order to reduce the amount of phosphates added to laundry detergents and, for the first time in Canadian history, limit the amount found in dishwasher detergents and general-purpose cleaners.

By 2010, the government will set a limit of 0.5 per cent by weight for laundry and dishwasher detergents and, where analysis indicates, in general-purpose cleaners.

Acknowledging the work of provinces like Quebec and Manitoba on this issue, Minister Baird stated in the February 15 announcement:

> It's time to act. Our Government is taking action and will be limiting phosphates in laundry and dishwasher detergents. Along with our plans to ban the dumping of raw sewage and improve sewage treatment across Canada, today's action should have a positive effect on the environment.

In addition, our esteemed colleague, Minister Fortier, went on to point out that:

> Canadians have spoken and this Government has listened. Today, we are taking real action to protect our rivers, lakes and streams from blue-green algae. . . . I know this has been an important issue in the province of Quebec and today's action is another step towards improving our waterways for the enjoyment of all.

Honourable senators, this government is committed to providing clean and safe water for Canadians. That is why, since taking office, it has supported the provinces, territories and municipalities to improve water and waste water infrastructure. It has been working on more stringent regulations with respect to waste water effluents.

As the announcement of February 15 demonstrates, this government is committed to doing much more for Canadians.

BLACK HISTORY MONTH

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today in celebration of Black History Month and to pay tribute to a Canadian political pioneer, Rosemary Brown. She was the first Black woman in Canada elected to a provincial legislature. She served British Columbians in this capacity from 1976 to 1986. In 1975, she was the first woman to run for federal leadership in Canada. Ed Broadbent defeated her on the final ballot for the NDP leadership that year.

Rosemary immigrated to Canada from Jamaica in 1951. She graduated from McGill in 1955 and went on to receive a master's degree in social work from the University of British Columbia in 1965. She was a mother of three children who proved to Canadian women they could do it all as she skilfully found a way to balance the demands of motherhood and Canadian politics.

As a member of the NDP provincial government in the 1970s, she made a committee to eliminate sexism in textbooks and educational curricula. She was also instrumental in establishing the Berger Commission on Family and introduced legislation that prohibited discrimination on the basis of sex or marital status. She was a founding member of the Vancouver Status of Women council and founding member and trainer of volunteers from the Vancouver Crisis Centre. Her importance to our country was acknowledged in 1996 when she was made an Officer of the Order of Canada.

Honourable senators, Black History Month is very important in our country and vitally important for our youth. Our young people need to learn and be reminded of the remarkable achievements of Canadian trailblazers like Rosemary Brown.

I pay tribute to Rosemary. Many women, including myself, were inspired by her. I am but one of the thousands of women and women of colour who was moved by her achievements and became involved in politics through Rosemary's work as an activist, educator and role-model.

Rosemary was strong and intelligent. She promoted justice and equality for all women in British Columbia and across Canada. She stood up for many voices in our society that never make it to the legislature or Parliament. Our country is better today because of all her work.

Honourable senators, I am proud of the way Canadians have embraced Black History Month. It speaks to the value we place on multiculturalism, a policy that makes me exceptionally proud to be a Canadian. Canada has made great progress in recognizing the contribution of Black Canadians but there is still much work to be done.

• (1340)

On the continued necessity of Black History Month, Canadian author Rosemary Sadlier has said:

> When the contributions of people of African descent are acknowledged, when the achievements of Black people are known, when Black people are routinely included or affirmed through curriculum, our books and the media, and treated with equality, then there will no longer be a need for Black History Month.

As much as I enjoy this month of annual reflection, honourable senators, I look forward to a day when we achieve this goal.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to interrupt Senators' Statements for a moment to draw to your attention the presence in the gallery of the finalists for this year's Shaughnessy Cohen Award for Political Writing: Clive Doucet, Richard Gwyn, Andrea Mandel-Campbell, David E. Smith, Janice Gross Stein and Eugene Lang.

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

Hon. Senators: Hear, hear!

BUDGET 2008

TAX-FREE SAVINGS ACCOUNT

Hon. Donald H. Oliver: Honourable senators, we all need to save money for many different things over our lifetimes. Lower taxes can help. Our government recognizes this, which is why the Minister of Finance announced in his budget a new tax-free savings account, or TFSA. This is the single most important personal savings vehicle since the introduction of the Registered Retirement Savings Plan.

Canadians will be able to set aside money and watch those savings grow tax-free throughout their lifetimes. Canadians will be able to use their TFSA savings to purchase a new car, renovate a house, start a small business or take a family vacation.

An RRSP is intended for retirement; the tax-free savings account will be like an RRSP for everything else in life. However, unlike RRSPs, there will be no tax consequences if you take money out to meet a short-term need.

Canadians from all income levels and all walks of life will benefit. Low- and modest-income Canadians will especially benefit, as no amount earned or withdrawn from the tax-free savings account will be taken into account in determining eligibility for federal income-tested benefits such as the Canada Child Tax Benefit, the GST tax credit, the age credit and the Guaranteed Income Supplement.

Seniors will have a tax-free savings vehicle to meet ongoing savings needs, something they have only limited access to once they reach age 71 and are required to begin drawing down their registered retirement savings. Indeed, seniors are expected to receive one half of the total benefits provided by the TFSA.

Honourable senators, tax-free savings accounts are an innovative idea whose time has come, and I congratulate the Minister of Finance for including those in his budget.

MURIEL MCQUEEN FERGUSSON FOUNDATION AWARD

Hon. Marilyn Trenholme Counsell: Honourable senators, as you are all aware, I have taken the opportunity to mention a past Speaker of this great chamber, the Honourable Muriel McQueen Fergusson, on several occasions.

Her fight for social justice was lifelong and constant, yielding a foundation and research centre in her name. The Muriel McQueen Fergusson Foundation and the Muriel McQueen Fergusson Centre for Family Violence at the University of New Brunswick continue her work in the struggle against family violence.

In addition to creating the research centre, the foundation, in 1985, created a national award to honour the late senator. The award recognizes outstanding contributions toward eliminating family violence. Canadian individuals, organizations or corporations whose achievements have advanced the elimination of family violence are eligible for the nomination.

Over the past 15 years, this prestigious award has recognized recipients from across Canada, including June Callwood, Dr. Peter Jaffe, Hon. Margaret Norrie McCain, Sister Cecile Renault, the Canadian Red Cross, Senator Sharon Carstairs, Margaret Newall and Madeleine Delaney-LeBlanc, the last recipient.

I wish today to invite my colleagues here in the Senate to help share this call for nominations to recognize the efforts of outstanding individuals, groups or organizations from across Canada. All nominations for the award must be received by March 21, 2008. Additional information can be obtained either from myself or from the website of the Muriel McQueen Fergusson Foundation.

Thank you, honourable senators, for this opportunity to engage Canadians in furthering the work of our beloved Senator Fergusson. Her spirit lives on in all of us.

• (1345)

[*Translation*]

QUEBEC COMMUNITY GROUPS NETWORK

Hon. Maria Chaput: Honourable senators, this weekend, the Quebec Community Groups Network is holding a conference in Montreal entitled "Community Revitalization: Trends and Opportunities for the English-speaking Communities of Quebec."

The purpose of this conference is to identify the many challenges facing the English-speaking communities of Quebec.

Only through open and frank discussion can we determine the trends, perspectives and needs of a minority community. The goals of this conference are very similar to the goals set by the organizations and individuals who attended the Summit of Francophone and Acadian Communities in June 2007. Demographic, linguistic, social, institutional and legal issues will be explored in order to assess the vitality of the community, and consequently, to determine priorities for mobilization.

As a Franco-Manitoban, I understand the many challenges facing official language communities, but I look forward to getting a better understanding of the challenges facing English-speaking individuals in Quebec. Although, on paper, their situation is similar to that of francophones outside Quebec, it is quite different for historic, demographic and social reasons.

At this conference, I plan on examining the strategies being used and analyzing the parallels between anglophones and francophones living in official language minority communities.

The discussions and debates will surely be interesting and will give us something to think about, with guest speakers including Graham Fraser, the Commissioner of Official Languages; Rodrigue Landry, the Director of the Canadian Institute for Research on Linguistic Minorities; and Jean-Pierre Corbeil, from Statistics Canada, who helped create the post-census survey entitled *Minorities Speak Up*.

I will take careful notes and I plan on sharing my experience and my impressions with the members of the Senate Committee on Official Languages.

ROUTINE PROCEEDINGS

CLERK'S ACCOUNTS

2007 ANNUAL ACCOUNTS TABLED

The Hon. the Speaker: Honourable senators, pursuant to Chapter 3:05, paragraph 5(1) of the *Senate Administrative Rules*, I have the honour to table the statement of receipts and disbursements for the fiscal year ended March 31, 2007.

BUDGET 2008

DOCUMENTS TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, Budget 2008: *Responsible Leadership*.

FINANCIAL ADMINISTRATION ACT
BANK OF CANADA ACT

BILL TO AMEND—
REPORT OF COMMITTEE PRESENTED

Hon. Joseph A. Day, Chair of the Standing Senate Committee on National Finance, presented the following report:

Wednesday, February 27, 2008

The Standing Senate Committee on National Finance has the honour to present its

SIXTH REPORT

Your committee, to which was referred Bill S-201, An Act to amend the Financial Administration Act and the Bank of Canada Act (quarterly financial reports), has, in obedience to the order of reference of Wednesday, November 28, 2007, examined the said Bill and now reports the same with the following amendments:

1. *Preamble, page 1*: Replace lines 9 to 11 with the following:

"traded companies;".

2. *Clause 1, page 2*:

(*a*) Replace lines 7 and 8 with the following:

"be prepared a quarterly financial report for" ; and

(*b*) Delete lines 14 to 16;

(*c*) Reletter paragraphs 65.1(2)(*b*) to (*e*) as paragraphs 65.1(2)(*a*) to (*d*); and

(*d*) Replace lines 32 to 37 with the following:

"(3) The appropriate Minister shall cause the report referred to in subsection (1)

(*a*) to be made available to the public within 60 days after the end of each three-month period referred to in that subsection; and

(*b*) to be laid before each House of Parliament at the first reasonable opportunity.".

3. *Clause 2, page 3*:

(*a*) Replace lines 3 and 4 with the following:

"prepared, in respect of itself and its";

(*b*) Delete lines 12 to 14;

(*c*) Reletter paragraphs 131.1(2)(*b*) to (*f*) as paragraphs 131.1(2)(*a*) to (*e*); and

(*d*) Replace lines 32 to 37 with the following:

"(3) The appropriate Minister shall cause the report referred to in subsection (1)

(*a*) to be made available to the public within 60 days after the end of each three-month period referred to in that subsection; and

(*b*) to be laid before each House of Parliament at the first reasonable opportunity.".

4. *Clause 3, page 4*:

(*a*) Replace lines 2 and 3 with the following:

"Bank shall prepare a quarterly financial";

(*b*) Delete lines 11 to 13;

(*c*) Reletter paragraphs 29.1(2)(*b*) to (*f*) as paragraphs 29.1(2)(*a*) to (*e*); and

(*d*) Replace lines 30 to 35 with the following:

"(3) The appropriate Minister shall cause the report referred to in subsection (1)

(*a*) to be made available to the public within 60 days after the end of each three-month period referred to in that subsection; and

(*b*) to be laid before each House of Parliament at the first reasonable opportunity.".

Respectfully submitted,

JOSEPH A. DAY
Chair

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

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

[*English*]

CRIMINAL CODE

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Joan Fraser, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Wednesday, February 27, 2008

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

EIGHTH REPORT

Your committee, to which was referred Bill C-2, *An Act to amend the Criminal Code and to make consequential amendments to other Acts*, has, in obedience to the order of reference of Wednesday, December 12, 2007, examined the said Bill and now reports the same without amendments.

Your committee has also made certain observations, which are appended to this report.

Respectfully submitted,

JOAN FRASER
Chair

OBSERVATIONS
to the Eighth Report of the Standing Senate Committee on Legal and Constitutional Affairs

Providing police and Crown Attorneys with the tools needed to ensure that Canadians are as safe from violent crime as possible is a worthy objective. Your committee does, however, have some serious concerns with several of the details of C-2.

Some witnesses noted that some provisions of Bill C-2 will be open to challenges under the *Charter of Rights and Freedoms*. Others raised questions about whether there were gaps or deficiencies in the current law that needed to be addressed by Bill C-2.

One example of a question about an alleged deficiency was in the area of the reverse onus on bail applications; existing provisions clearly permit pre-trial detention where shown to be necessary to secure attendance in court, to protect the safety of the public, or to maintain confidence in the administration of justice having regard to all the circumstances of the case.

We have heard that the reality is that people charged with serious offences involving firearms are most frequently detained at first instance or upon review, so it is difficult to envision where the new provisions would apply. While the Supreme Court in *R.* v. *Pearson* upheld the constitutional validity of the reverse onus for offences involving narcotics, the Court noted that this narrow class of offences shared certain characteristics including the systematic, organized and commercially lucrative nature of the offences in question. The added offences in Bill C-2 do not necessarily share these significant common characteristics.

Some witnesses had reservations about the raising of the age of sexual consent from 14 to 16. Many young persons are now and will continue to be sexually active. It is in their best interests to have access to proper health care and sexual health services. Witnesses expressed concern that, because of certain mandatory abuse reporting laws, doctors, nurses, sexual health counselors and social workers may be required to report their ''illegal activities'', thus breaking confidentiality with young people who confide in them. Because of this, young people may be much less likely to seek out sexual health services.

Some witnesses were concerned by the reverse onus provision for dangerous offender designation. The Crown would be relieved of the burden of proving the dangerous offender criteria for the third primary designated offence. Instead, the Crown would only have to prove the record of convictions for two prior primary designated offences with sentences of two years or more each, plus the fact that the third offence was a primary designated offence that would warrant a sentence of imprisonment of two years or more. This could result in someone being declared a dangerous offender despite the absence of evidence that they were dangerous or a risk to reoffend, and could lead to a Charter challenge. Such a declaration could be made following a guilty plea made by an offender who did not understand that a conviction could lead to a dangerous offender designation. The committee was told that aboriginal offenders in particular may not understand the full implication of these pleas. This could also have a differential impact upon accused persons who do not have access to counsel who are able to explain the implications of guilty pleas.

Some witnesses suggested that the permitted video recording of physical co-ordination tests set out in new subsection 254(2.1) of the *Criminal Code* should be made mandatory. This would provide the best evidence of the test results and reduce the amount of legal contestation.

A concern was raised that even if an accused person establishes beyond a reasonable doubt that he did not consume alcohol and that the breath-testing machine was defective, he will still be convicted if he cannot establish that the false test result is due to the malfunctioning of the equipment, a causal link which is impossible to establish without having access to the equipment to submit it to scientific tests.

The committee is aware of the fact that Canada is entering into uncharted territory in testing for impairment caused by drugs other than alcohol. The evidence presented to the committee showed that there is no machine, akin to a breathalyzer for alcohol, which can measure accurately the amount of a drug that will cause impairment. Furthermore, there are hundreds of drugs, both legal and illegal, consumed by Canadians that have a different impact on an individual's ability to drive. It is hoped that efforts to detect and punish drug-impaired driving will reduce it, as was the case with alcohol. The fact remains, however, that for the vast majority of drugs no scientific data exist to determine the levels of consumption at which impairment actually occurs. It will be several years before such levels are determined for even the most common illegal drugs. In addition there are still relatively few — only 214 — qualified Drug Recognition Experts in Canada.

While the committee recognizes and supports the deterrent value of the criminal law, many witnesses spoke of the need for a comprehensive long-term effort in such areas as impaired driving that incorporates both deterrent legislation and public awareness and education campaigns. Such an effort, combined with comprehensive treatment and drug and alcohol cessation programs would constitute the most effective policy in attempting to reduce the number of lives lost and injuries suffered in accidents involving impaired drivers. Given the shared jurisdiction over areas such as health and education, a co-ordinated effort by the federal and provincial governments will be required.

A number of witnesses strongly urged the maintenance of at least some level of judicial discretion when it comes to the imposition of sentences. The exercise of judicial discretion is the best means of weighing the relevant principles in determining sentence in order to impose a just sanction. Most jurisdictions that do have mandatory minimums also allow for permissible departure from these minimums in extraordinary circumstances if the judge deems the departure appropriate. We are concerned by a number of aspects of mandatory minimum sentencing, including:

- The effect of mandatory minimums on aboriginal and other minorities in Canada, who are already greatly over-represented in prison;

- The fact that *Criminal Code* section 718.2(e) requires that the particular situation of aboriginal offenders be considered at sentencing, yet mandatory minimum sentences require that this principle be ignored to a certain extent;

- The shifting of discretion in the judicial process from the judiciary to the police and Crown Attorneys, who decide what charges are laid and how they are pursued, and who are not subject to public scrutiny or appeal to a higher court;

- The lack of proportionality in sentencing. As set out in section 718.1 of the *Criminal Code*, a sentence should be proportionate to the gravity of the offence and the degree of responsibility of the offender. Mandatory minimum penalties deny judges the chance to ensure proportionality of sentencing in every case;

- The fact that mandatory minimum sentences focus on denunciation and deterrence to the exclusion of other legitimate sentencing principles;

- The fact that money spent on incarcerating large numbers of people might be better directed elsewhere.

We note with concern the lack of empirical studies demonstrating that mandatory minimum penalties have proven to be effective in deterring crime or, more generally, in reducing the incidence of crime. In particular, no Canadian data were put before the committee to prove that the introduction of mandatory minimum sentences for certain offences involving a firearm in the mid-1990s has had a measurable impact on these offences.

Some witnesses noted that Bill C-2 sets out different mandatory minimum penalties depending on the kind of firearm that was used in the commission of an offence. While we can understand this distinction for offences such as weapons trafficking, there is no discernible reason to impose a different mandatory minimum penalty for offences such as attempted murder or sexual assault with a weapon, depending on whether the accused used a handgun (higher penalty) as opposed to a shotgun (lower penalty). It seems unlikely that a violent crime victim would feel less victimized because a shotgun was used against her instead of a handgun, or should accept that the perpetrator receives a lesser sentence.

It is also crucial to understand that the stated goal of Bill C-2, to reduce crime, cannot be attained without significant supporting policies, measures and resources. One of the most important of these is the provision of rehabilitation programs in prisons, including vocational training. Your committee heard evidence that even today, there is a worrisome lack of such programs in many institutions; while the prison population has risen in recent years, the budget for such programs has actually fallen 26%. In maximum security institutions, few or no programs are available. It is agreed by all witnesses that the implementation of Bill C-2 will increase the prison population again. Simply building new prison cells, while vital, is not enough. If appropriate programs are not provided for inmates, the risk increases that they will become recidivists after release.

Nowhere is the need for specialized programs more acute than in the case of aboriginal offenders, who make up a grossly disproportionate number of Canada's prison population and of those designated as dangerous offenders — in each case, about 20%. This results from problems of great complexity, but addressing these problems is both a moral and a common sense imperative.

Your committee also notes the comparative shortage of programs for other minority groups, particularly visible minorities, in the correctional system. As Canada's population becomes ever more diverse, it is increasingly important to implement specialized programs to meet the particular needs of these minority groups.

In this regard, in the 2007 National Justice Survey, about 70% of respondents stated that the three most important goals of sentencing were to provide reparations for harm done to victims or to the community, to promote a sense of responsibility or accountability in offenders, and to assist in rehabilitating offenders.

We are aware that many of the changes brought about by Bill C-2 have cost implications, not only for the federal government but for provincial governments as well. The prison system is a shared responsibility of these two levels of government, with any increase in the number of prisoners held on remand borne solely by the provinces. There may be increases in costs for the police and the courts as well, including more demands on the legal aid system. There should be a wide-ranging consultation with the provinces and other stakeholders in order to deal with the cost implications of implementing the provisions of Bill C-2.

Other Concerns:

Your committee also notes with alarm the high level of blood-borne diseases in Canada's prisons, including HIV/AIDS and Hepatitis C. While efforts have been made to eliminate injection drug use in prisons, less emphasis has been placed on harm reduction measures to protect both inmates and staff. With an increase in crowded prisons due to an increase in the prison population, we can expect a magnification in the levels of blood-borne infections. It remains to be seen how long this epidemic can be contained in our prisons.

We are concerned that Bill C-2 does not address the different age of consent to anal intercourse, as set out in section 159 of the *Criminal Code*. That age is set at 18 years of age, unless the people involved are husband and wife. This higher age of consent has been declared to be unconstitutional by the Courts of Appeal of Ontario and Québec, amongst others. If the age of consent is going to be raised to 16, then the same age should apply to all forms of sexuality. Thus, section 159 of the *Criminal Code* should be repealed.

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

Hon. Gerald J. Comeau (Deputy Leader of the Government): With leave of the Senate and notwithstanding rule 58(1)(b), I move that the bill be read the third time later this day.

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

Some Hon. Senators: Agreed.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

On motion of Senator Comeau, with leave of the Senate and notwithstanding rule 58(1)(b), bill placed on the Orders of the Day for third reading later this day, on division.

• (1350)

[*Translation*]

THE SENATE

MOTION TO EXTEND WEDNESDAY SITTING AND AUTHORIZE COMMITTEES TO MEET DURING SITTING OF THE SENATE ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

> That, notwithstanding the Order of the Senate of October 18, 2007, the Senate continue its proceedings today beyond 4 p.m. and follow the normal adjournment procedure according to rule 6(1); and
>
> That committees of the Senate scheduled to meet today be authorized to sit after 4 p.m. even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Motion agreed to.

[*English*]

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

MEETING OF ECONOMIC AFFAIRS AND DEVELOPMENT COMMITTEE AND COUNCIL OF EUROPE PARLIAMENTARY ASSEMBLY, JANUARY 17-25, 2008—REPORT TABLED

Hon. Lorna Milne: Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-Europe Parliamentary Association, regarding its meeting of the Committee on Economic Affairs and Development and the First Part of the 2008 Ordinary Session of the Parliamentary Assembly of the Council of Europe, held in London, United Kingdom and Strasbourg, France, from January 17-25, 2008.

MEETING OF COMMITTEE OF PARLIAMENTARIANS OF ARCTIC REGION, JUNE 1, 2007—REPORT TABLED

Hon. Lorna Milne: Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation to the Meeting of the Standing Committee of Parliamentarians of the Arctic Region held in Reykjavik, Iceland, on June 1, 2007.

• (1355)

[*Translation*]

TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF CONTAINERIZED FREIGHT TRAFFIC

Hon. Lise Bacon: 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 November 14, 2007, the date for the presentation of the final report by the Standing Senate Committee on Transport and Communications on its consideration of containerized freight traffic handled by Canada's ports be extended from March 31, 2008, to June 19, 2008.

[*English*]

CRIMINAL CODE

BILL C-2—PRESENTATION OF PETITIONS

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to present a petition from Ontario residents requesting the Senate to pass Bill C-2. The covering note reads:

> We have 178 signatures requesting that the Senate pass the bill to raise the age of consent from age 14 to age 16.

[*Translation*]

QUESTION PERIOD

HERITAGE

FUNDING FOR MONTREAL FESTIVALS

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, my question is for the Minister of Public Works and Government Services, to whom I extend greetings.

On Monday, he announced that two major Montreal festivals would each receive $1 million in funding, through Arts Presentation Canada. This funding had been announced in the 2007 budget, but was not available until the eve of the 2008 budget. When this program was first introduced, it was to provide $60 million in funding over two years.

Is this program ongoing, or will the organizations have to fight to obtain funding every year?

I would also like to remind honourable senators that the two festivals in question were always supported by the Liberal government.

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for her question. I shall take as notice the question that the honourable senator asks with regard to this matter, in terms of ascertaining the scope of the program.

BUDGET 2008—FUNDING FOR ARTS AND CULTURE

Hon. Céline Hervieux-Payette (Leader of the Opposition): The minister responsible for the press release is here and I have the press release in hand, so it should be possible for us to get all the details. I believe the Leader of the Government could communicate with the minister sitting beside her and ask him for the answer.

I would also like the Leader of the Government to tell us where in the budget are the huge sums of money that were to be spent on protecting and, more importantly, promoting culture. I am thinking specifically of the province of Quebec, where a number of artists enjoy international fame and where certain programs to help groups travelling abroad have been cut.

Can we have the assurance that this issue will be raised in cabinet once again? I do not believe that the cultural communities are very happy with what yesterday's budget had to offer for culture.

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, Minister Verner, the Minister of Heritage, has made many announcements with regard to culture. In fact, a large section in the budget addresses the various expenditures that have been made on matters of the arts and culture. Nevertheless, I shall obtain a definitive breakdown of all the announcements. Hardly a day goes by where there is not an announcement somewhere in the country supporting culture.

Perhaps the honourable senator is referring to last September, when Minister Verner announced that the $30 million in new funding in Budget 2007, to support local arts and heritage festivals, would be ongoing. This new national program has set funding criteria, clear objectives and is driven by community needs, so it is community-based and driven. We recently announced $1 million each for this year's Montreal International Jazz Festival and the Just For Laughs Festival.

[*Translation*]

Senator Hervieux-Payette: Honourable senators, if there is so much money in the budget for culture, then explain to me why, in my recent meeting with authorities of the International Music Competition, I learned that they are not receiving any government assistance, which they requested a number of times from the Minister of Public Works and Government Services and the minister responsible for Canadian Heritage, Ms. Verner. They have not received any response thus far.

• (1400)

We know that Quebec has a very vibrant musical culture; Quebec artists are known throughout the world. The nature of this international competition is reason enough for the government to fund it, but not only is this government not granting any money to this organization, it is not even answering its calls.

[*English*]

Senator LeBreton: Honourable senators, Quebec is well recognized as a unique and talented resource for arts and culture, of which the whole country is proud. Cirque du Soleil and how it has been engaged with the Canadian endeavour in Shanghai is an example of this resource.

In the area of arts and culture, Budget 2008 provides $32.4 million over the next five years for capital infrastructure investments and for long-term sustainability of Canada's national museums. The budget also provides $24 million over the next two years and $24 million ongoing thereafter to enhance the government's programs of excellence for the summer Olympics and Paralympic athletes. The world will be watching Canada, as we know, leading up to the 2010 winter games, and the budget provides another $24.5 million for outreach to communities across Canada for torch relays.

The announcements in Budget 2008 build on recent investments in the area of arts and culture, and I will run through them: $60 million for local arts and heritage festivals; $30 million per year for the Canada Council for the Arts; $10 million for small and mid-sized museums; $30 million for official language minority communities; $52 million for the 2008 Francophonie Summit in Quebec City; $100 million per year for the Canadian Television Fund; $100 million for the new Canadian Museum for Human Rights to be established in Winnipeg; and $5 million per year for the summer museum internship program and accelerated federal contributions for Own the Podium; to ensure that the winter Olympic and Paralympic athletes have the security of uninterrupted training.

Senator Comeau: Keep it coming!

Some Hon. Senators: Hear, hear!

Senator Cowan: Surely not.

[*Translation*]

Senator Hervieux-Payette: Honourable senators, a letter was sent to the government but it remains unanswered. I am talking about the Montreal International Music Competition. There are two competitions in Canada: one in Montreal and one in Calgary. Perhaps the one in Calgary will be given more attention. The Canada Council does not cover this type of event. This agency's budget is $1 million and it expects the government to contribute just $250,000 from all the millions of dollars the leader just talked about. I am simply asking the minister to reply to the request of the Montreal International Music Competition.

[*English*]

Senator LeBreton: I have not seen the letter to which the honourable senator refers. I would be happy to track it down, seek the minister's advice and help in ensuring that the letter has been answered.

AGRICULTURE AND AGRI-FOOD

CANADIAN WHEAT BOARD— PROPOSAL TO ELIMINATE SINGLE-DESK SELLING FUNCTION FOR BARLEY

Hon. Grant Mitchell: Honourable senators, in its efforts to kill the Canadian Wheat Board, this government has, among other things, bullied its elected board members and employees, rigged voter lists and a plebiscite question and has tried to change the jurisdiction of the Canadian Wheat Board through regulation, even though it is very clear in the law that that can only be done by an act of Parliament. It is not funny how this government finds itself so quickly ignoring laws despite the fact that it is the tough-on-crime-law-and-order government that it brags about seemingly day after day.

• (1405)

Now that two of Canada's top courts have made it very clear that this government cannot change the jurisdiction of the Canadian Wheat Board without an act of Parliament, will the Leader of the Government in the Senate admit and acknowledge before all of us that the government cannot get its own way by abusing laws and by undermining the democratic institutions in this country?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, Senator Carstairs gave me the same lecture a couple of weeks ago. Senator Mitchell knows we campaigned on marketing choice and kept our promise to consult with the Western barley farmers on how they want to market their product. A majority of producers — 62 per cent, in fact — backed greater marketing choice in last spring's plebiscite. Farmers want to see their barley sold as they see fit, and I can well understand that as they watch the price of barley and wheat escalate on the world market.

As a government, we are disappointed with the decision of the Federal Court of Appeal on February 26 that maintains the Canadian Wheat Board's monopoly. Clearly, we made a commitment to Canadian wheat and barley growers in the last campaign. We believe we should try to honour that commitment and we have done everything we can to do so. The government is committed to pursuing all avenues to deliver true marketing freedom to Western Canadian barley producers and, of course, all grain producers. Minister Ritz will therefore move ahead as quickly as possible with the legislation to give barley farmers the freedom to market their own barley directly to the buyers of their choice.

Senator Mitchell: Honourable senators, the leader makes much of this government honouring its commitment to the barley growers of Canada. Would it be that it felt the same way about honouring the commitment to the people of the Maritimes, to the people who have invested in income trusts and to the people who believed what they said in the court? Would it not be nice if the government actually honoured those commitments as well?

The real issue here, it seems to me, is that the leader is trying to avoid the fact that her government has undertaken a number of very surreptitious, deceitful, dishonest measures to undercut and, ultimately, to kill the Canadian Wheat Board.

What level of ideological obsession makes the Leader of the Government in the Senate believe that the government can undercut democratic processes, ignore laws, ignore the rule of Parliament, and ultimately ignore the rights of farmers in this country?

Senator LeBreton: Honourable senators, we were not ignoring the rights of farmers in this country. We campaigned in the last election on providing farmers in Western Canada a marketing choice for wheat and barley. We believe that there should not be a monopoly and that farmers are very capable of finding their own markets for their products.

The honourable senator is obviously of a different view. It is interesting that, as the price of wheat and barley rise, the Canadian Wheat Board has actually, I believe, sold its wheat at prices much lower than it would have been able to do so if it had sold it directly.

In any event, we do have — it is true — a philosophical difference. We believe in marketing choice; senators opposite believe in a monopoly. In view of the decision of the court, the minister will be forthcoming with legislation and, if you will recall a few weeks ago, Senator Carstairs was urging that the government do just that.

JUSTICE

CASE OF OMAR KHADR

Hon. Roméo Antonius Dallaire: Honourable senators, to use the leader's own words, she knows better than most my support for the troops in the field. It is interesting how often people raise the fact that the troops are so young. The casualties are so youthful, some as young as 19 years of age, and it is a terrible price to pay. We have been asked, do they really know what they are doing by joining the army at 18 years of age and making such a commitment? Do they fully realize the impact that that could have on their life? We are not keen on having recruiters go to high schools. Even though it is an honourable profession, we are uneasy with it.

• (1410)

Yet, the government is allowing a child soldier, who was shanghaied into an irregular force at 15 years of age, to remain at Guantanamo Bay for nearly six years and go through a criminal process there. He is a Canadian. The government has signed on to all the optional protocols of the United Nations with regard to child soldiers, yet there has been a deliberate decision, possibly by inaction, to abandon that Canadian child soldier to a process that this country has stated is illegal, against humanitarian law, against the law of armed conflict and against human rights.

Why is the government still allowing that to happen?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, at the beginning of the honourable senator's question, he spoke about the Canadian government's recruitment of young people into the forces. Recruitment in the Canadian Forces is, of course, voluntary. We are very happy with our recruitment. As the

honourable senator knows, recruitment numbers in the Canadian Forces have increased markedly across the country, most particularly in the province of Quebec.

I dare say that anyone who signs up for the Canadian Forces fully understands the scope of the challenge they face.

Mr. Khadr was put into the situation he faces by another government, and I did not hear people at that time urging that he be sent back to Canada. Mr. Khadr faces serious charges. The Government of Canada has sought and received assurances that he is being treated humanely. Departmental officials have visited Mr. Khadr several times and will do so again in the future.

As I stated in an answer to a question in December, any questions regarding whether Canada plans to ask for the release of Omar Khadr from the facility at Guantanamo are premature and speculative, as the legal process is still under way. I believe Senator Dallaire asked me a question on this subject previously, and I believe I tabled a detailed answer to that question by way of Delayed Answers, although I am not absolutely sure of that.

Senator Dallaire: I have not asked a question on this subject previously, and I have been extensively involved with that case and with the judicial process. The judicial process is now at the stage of going to court.

Mr. Khadr was arrested and held prisoner in an illegal U.S. forces base, against all the protocols that we have accepted with regard to irregular troops below the age of 18. We did initiate processes with regard to that, but the actual judicial process for what they were going to do with him had not been established. The process has now been established for a year. I have been called forward on that, and the matter is well in train. Everyone else has pulled their nationals out of Guantanamo Bay because we know they are being tortured there.

We allowed this kid to stay in the military structure of an ally that tortures prisoners. We know that, and they have said it themselves before their Senate committees. Yet, the government is doing nothing.

Do not tell me about the Canadian Forces being voluntary. We know that. Volunteers are not accepted until they are 17, and we do not send them into operations until they are at least 18 and trained.

What are we doing letting a 15-year-old stay in jail until he is 21, and then, once the process is in motion, acting as if he is criminally responsible? We agreed in front of the UN that child soldiers ought not to be held criminally responsible. We agreed that child soldiers should be demobilized, rehabilitated and reintegrated.

Why is the government not getting that ex-kid out of Guantanamo Bay and into our judicial system as every other country has done?

• (1415)

Senator LeBreton: The fact is that Omar Khadr faces very serious charges. The Government of Canada has sought and received assurances that he is being treated humanely. There have been several departmental visits with Mr. Khadr and the department will continue to monitor the situation. Other than that, there is not much more I can add.

When I began the answer, I was talking about our own service because the honourable senator's long preamble talked about recruiting. Therefore, obviously, I felt that I should respond to that part of the question as well.

Senator Dallaire: The mere fact we agree that Omar Khadr is being criminally charged is against everything this government has previously signed on to. In the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, we agreed that boys or girls who are locked into combat at the age of 15, 14 or 13 are not held criminally responsible. They are, in fact, moved to a process of demobilization or rehabilitation and reintegration. We do not even have a judicial court for our own kids below the age of 18. The honourable senator cannot tell me that this 15-year-old is being held accountable for criminal charges when we totally disagree with the concept of holding a child soldier criminally responsible for charges in an operational theatre.

The honourable senator is still not telling me why Omar Khadr is not being brought home to sort out the problem here. He is a Canadian, by the by. Why does the honourable senator refuse to acknowledge that these criminal charges are illegal in the international humanitarian law of armed conflict and why are we not holding the Americans accountable for that?

Senator LeBreton: The honourable senator refers to Omar Khadr as "a child soldier." I doubt that most people would consider the activities that he was involved in as normal. The fact is Mr. Khadr faces serious charges.

There have been many examples of this family seen on our public television taking positions that most Canadians find difficult to understand. However, in any event, Omar Khadr is in Guantanamo, and the government is monitoring the situation. We have sought and received assurances that he is being properly treated. Any questions with regard to his release or return to Canada are, in our view, premature.

NATIONAL SECURITY AND DEFENCE

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY—RESEARCHER ASSIGNED TO INVESTIGATE AID TO AFGHANISTAN

Hon. Terry Stratton: Honourable senators, I would like to address my question to the Chair of the Standing Senate Committee on National Security and Defence. In the *Ottawa Citizen* on February 6, and in a correction posted by that same newspaper on February 8, that newspaper wrote about a senior researcher being employed by the committee to research funds being expended in Afghanistan. Will the committee table a report in this chamber with respect to that research and its results?

I know the honourable senator was quoted in the newspaper article. However, does he not feel that such research should go through the committee and, hence, a report to this chamber?

Hon. Colin Kenny: Honourable senators, the last time the honourable senator asked this question it was in regard to whether the researcher had been in Afghanistan for six months and we clarified that he had not.

As far as having something to report, sadly, the researcher had nothing to report. The whole point of the discussion with the *Ottawa Citizen* was that we had a very senior researcher who, over the course of six months, was unable to get any information from CIDA regarding development in the province of Kandahar.

We subsequently called the minister before us and she was unable to provide any information. We then offered her the opportunity to answer the question in writing. Her response was so unintelligible that we felt obliged to put it in the report that was tabled last spring. We could not believe that a minister of the Crown could write a letter that was so inarticulate and that provided so little information on such a serious subject.

• (1420)

Senator Stratton: If I may, the honourable senator has thrown a lot of accusations today. Can the honourable senator substantiate those accusations for us? Is there a report of some kind that we can refer to? Subsequent to that report being tabled, there were newspaper articles about a senior researcher spending six months on this matter.

Does Senator Kenny not think that it would be appropriate to supply the name of the researcher?

On the other hand, if the honourable senator is saying that the researcher could not find anything, who was the researcher? Was the researcher indeed employed for six months? How much was he paid? Does the honourable senator not think this chamber has the right to know?

If the honourable senator decides to throw around accusations, he should defend on his side what that researcher did in the first place.

Senator Kenny: I would encourage Senator Stratton to read Hansard, because part of his question today was answered when it was asked the last time. The name of the researcher is Brigadier-General James Cox, Retired. He is an employee of the Library of Parliament. He kept the committee apprised on an ongoing basis — in fact, virtually on a weekly basis — of the lack of cooperation, assistance and information on the part of CIDA, the Canadian International Development Agency.

Having served for such a long period of time in the Canadian Forces, the researcher was astonished that so little could be done by a department in an area where Canada had troops in the field. Mr. Cox regularly advised the committee of that. The committee provided a fulsome report on this subject, which evidently the honourable senator has not read. I would encourage him to read reports that are tabled in the chamber.

Senator Stratton: I would also ask the honourable senator to look at the situation from over there. To publish information with respect to the work being done there by various government organizations and NGOs is not advisable. That work should remain confidential. If specific details are published, then the Taliban is being supplied with that information.

Senator Kenny: Honourable senators, I am embarrassed at the quality of questions coming from the honourable senator on the side opposite. His government has issued lists of development projects taking place in places other than in Kandahar. The government regularly talks about the projects that are going ahead in different parts of Afghanistan. The problem is that the lists are very bare in the province of Kandahar, where our troops are and where we have responsibility.

HEALTH

BUDGET 2008—FUNDING FOR INCREASING HEALTH CARE PROFESSIONALS

Hon. Marilyn Trenholme Counsell: Honourable senators, my question goes back to the budget and to health issues. I refer to the statement by Dr. Brian Day, the President of the Canadian Medical Association, in his news release issued very shortly after the budget yesterday. "Health Gone Missing?" is the title of the news release.

Honourable senators, I want to say that I am in no way lobbying for the Canadian Medical Association or indeed for Canadian doctors or any other health care group. However, I believe one of the reasons that I am here is to lobby for health care and the health promotion of my fellow Canadian citizens across this great country.

• (1425)

We know that there is a growing shortage of physicians and all other health care workers, and this was not addressed. In the budget, there was some talk about pollutants in foods, about health foods and health food products and more regulations regarding these products. There was supposed to be a review of the expenses that can be deducted in order to obtain a tax credit. There was mention of reorganizing the delivery of health care for Aboriginals — that is a good thing — and there was a noteworthy and significant reference to mental health.

We have to thank the Senate for that — Senator Kirby, Senator Keon and all honourable senators who worked on that great report.

However, the purpose of these five projects is to study and offer ways in which the relationship between homelessness and mental health can be improved. There is not really much discussion in terms of helping the mental health crisis and the sick people in this country.

The Hon. the Speaker: If the honourable senator would come to the question, and the Honourable Leader of the Government would quickly respond, we might be able to squeeze this question into the time remaining, according to my watch.

Senator Trenholme Counsell: Approximately 5 million Canadians in this country do not have a family doctor. In my own province, there are 75,000 people without a physician. There is an enormous lack of all health care professionals. That is the main reason for the wait list.

My question is for the Leader of the Government: Why did the Government of Canada choose to ignore the need of Canadian families for family doctors, not to mention specialists, and the dire need of our health care system for more nurses and all other health care professionals?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, the short answer is that family doctors and trained professionals cannot exist without the proper post-secondary structure to get people into the universities and to train them in these areas. Snapping our fingers today will not produce any doctors. The budget has set aside significant amounts of money in the area of education, science and technology.

The last time I looked, health care is very much tied to the field of science and technology. In two years, the government has invested incredible sums of money in the health care field. In this particular budget, we have addressed the problem where the problem exists; the education system is the place to start.

[*Translation*]

POINT OF ORDER

Hon. Pierre Claude Nolin: Honourable senators, as you know, I always find it regrettable to have to raise a point of order but I must do so. The Honourable Speaker has acted contrary to the rules by permitting the honourable senator to continue asking her question and, definitely, by allowing the answer. The question period is to last 30 minutes. No extension is possible. I simply hope that we have not established a precedent that will result in question periods lasting longer than 30 minutes.

Hon. Fernand Robichaud: Honourable senators, I believe that the Honourable Speaker has always conducted himself admirably. We know that, when a senator rises, we give him a certain amount of time to express himself and that we also give the person to whom the question is directed time to give a brief answer. If we must count the seconds it will be more difficult to make things work well. I am certain that the Speaker of the Senate will act accordingly in most cases.

[*English*]

The Hon. the Speaker: I thank the Honourable Senator Nolin for raising the point of order. What is written is written; he is absolutely right. The rule book, which is the standing orders of this house, says exactly that. Maybe we will ask our table officers to rise a minute or so before the 30 minutes expire.

• (1430)

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. Terry Stratton moved the third reading of Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts.

He said: Honourable senators, before I begin my speech at third reading of Bill C-2, I wish to thank the witnesses who appeared before the Senate Legal Committee, some 55 of them, over a period of four intensive days. When one hears the words of the witnesses from the Elizabeth Fry Society, the John Howard Society, the police and the RCMP, as well as witnesses who are victims of crime, one truly hears heart-wrenching stories on both sides of the issue with respect to victims and with respect to criminals being rehabilitated. One must tip one's hat to those individuals who work in those fields because they give far more than most people understand. The emotional sacrifices they make with respect to their jobs is truly amazing. I could not do that. For all honourable senators, and committee members in particular, I commend those individuals.

Honourable senators, I am pleased to speak at third reading of Bill C-2, the proposed tackling violent crime act. The bill has had a long journey commencing as five separate criminal law reform bills that were introduced in 2006 in the previous session of Parliament. They were then introduced in one bill in this session as Bill C-2. As a confidence measure and as the first bill of this session, the government's message is clear: Safeguarding Canadians and Canadian communities against violent crime is our top priority. Canadians across the country have spoken in support of Bill C-2 and of the government's commitment to tackle violent crime. Honourable senators, I am pleased to say this chamber heard that message and we have worked tirelessly over the past few weeks to realize Canadians' expectations.

Bill C-2 proposes much needed criminal law reforms with four objectives: To get tough on serious crime; to strengthen our laws that deal with drug- and alcohol-impaired driving; to protect vulnerable 14- and 15-year-olds against adults who seek to sexually exploit them; and to better protect all Canadians against dangerous and repeat violent offenders, many of whom are sexual offenders. Some statistics show that 70 per cent to 90 per cent of repeat violent offenders are sexual predators.

As I mentioned, the committee worked tirelessly to deliver Bill C-2 and the record reflects this effort. Your Standing Senate Committee on Legal and Constitutional Affairs held extensive hearings on the bill over the last three weeks and received testimony from 55 witnesses, as I said before, who spoke to all aspects of the bill. It is fair to say that while many of the witnesses spoke in support of the bill's different components, not all witnesses did so. Despite some differences of opinion about the best way to address violent crime in Canada, all witnesses agreed with and shared in the objectives of Bill C-2. All of them condemn violent crime and all of them support efforts to tackle such crime.

Let us consider the key components of Bill C-2. First, the impact of gun crimes cannot be overstated. From the often lethal impact on victims and families, to the pervasive diminishment of our cherished Canadian way of life — a safe and secure way of life for which Canada is renowned — gun crime affects us all. Bill C-2 addresses serious gun crime by providing tougher minimum mandatory prison sentences and by strengthening the bail regime.

With respect to increased minimum mandatory sentences, Bill C-2 targets serious and repeat firearm offenders. Specifically, new escalating mandatory minimum sentences of five years on a first offence and seven years on a second or subsequent offence are proposed for each serious offence committed with a restricted or prohibited firearm or in connection with organized crime, which includes gangs. These offences are attempted murder, discharging a firearm with intent,

sexual assault with a weapon, aggravated sexual assault, kidnapping, hostage taking, robbery and extortion. I am sure all honourable senators would agree that these offences are among the most serious.

Increased mandatory minimum penalties of three years on a first offence and five years on a second or subsequent offence are also proposed for offences that do not involve the actual use of firearms. This would apply to firearm trafficking or smuggling, or the illegal possession of a restricted or prohibited firearm with ammunition. These new penalties reflect the sentencing goals of deterrence, denunciation and separation of serious offenders from society.

Bill C-2 also proposes to change the bail regime so that persons charged with serious firearms offences bear the burden of demonstrating why they are not a bail risk. Otherwise, they will be kept in pre-trial custody. This reverse-onus scheme would apply to those charged with certain serious offences committed with a firearm, weapons trafficking, smuggling or other indictable offences committed while prohibited from possessing weapons.

Second, Bill C-2 will greatly assist police in the investigation of impaired driving — a crime that causes more deaths and injuries than any other crime. The Criminal Code prohibits driving while impaired by alcohol or a drug. However, a serious challenge has been the detection, investigation and successful prosecution of drug-impaired drivers. Under Bill C-2, police will be able to require drivers who are suspected of having a drug in the body to perform sobriety tests at the side of the road. If the driver passes the sobriety test, that person is quickly on their way. If the driver fails the test, the police will then proceed to the second step and demand that the person undergo an evaluation by an officer specifically trained in classifying the family of drugs that is causing the observed signs and symptoms of drug impairment. The third step is a demand for a bodily substance sample that is analyzed in a lab for the presence of a drug identified by the evaluating officer as causing the observed impairment. This step is the safeguard for the accused driver. If the identified drug is not present, the prosecution will not proceed. It is important to recall that these reforms will give police a new tool to investigate the existing offence of drug-impaired driving. They do not criminalize the mere presence of a drug in a driver; evidence of impairment to drive remains the focus of the trial.

Bill C-2 will also simplify the investigation of alcohol-impaired driving by giving the police more time in which to make a demand for a roadside breath test. This will be especially helpful in collision situations where police arrive on the scene and the driver is no longer behind the wheel. Importantly, Bill C-2 will simplify trials where a person is charged with having blood alcohol content, or BAC, over 80 milligrams per 100 millilitres of blood or over 80, as it is known. Where a person has blown over 80 on an approved instrument, the defence to the charge will be restricted to scientifically valid defences. Until now, the courts have ignored the results produced by the approved instrument when the driver claims to have had very little to drink, typically two beers — the so-called two-beer defence.

The defence experts state that such low consumption could not have produced a result over 80. This has been so even where the prosecution has proven that the instrument was correctly used and in proper working order both before and after the breath sample was taken.

• (1440)

Bill C-2 also proposes other welcome reforms, including creating new offences of being over 80, or refusing to provide a breath sample where the person's operation of the vehicle has caused a collision involving bodily harm or death, offences punishable in the same way as impaired driving causing bodily harm or death.

In this way, Bill C-2 removes the current incentive for a person involved in a serious collision causing bodily harm or death to refuse to provide a breath sample so that the certificate of blood alcohol content — BAC — cannot be produced as evidence of impairment.

Finally, Bill C-2 increases the mandatory minimum fine for a first offence from $600 to $1,000; the minimum jail time for a second offence will be increased from 14 to 30 days; and for a third offence, the minimum jail time will be increased from 90 to 120 days.

The age of protection is next. Bill C-2 also proposes to increase the age at which young persons can consent to engage in sexual activity with another person aged from 14 to 16 years.

Honourable senators, this was an issue that attracted considerable comment before your committee, so I wish to be very clear about what these reforms do and do not propose. They do propose to protect 14- and 15-year-olds against adult sexual predators. They do not prevent 14- and 15-year-olds from engaging in consensual sexual activity with peers. The reforms put the onus on the adult, the person who is five or more years older than the 14- or 15-year-old, who is seeking to engage in sexual activity with that young person.

Specifically, these reforms say to that adult: If you engage in any sexual activity with the young person, you are committing a sexual assault against that young person. The reforms do not focus on whether the young person purported to consent to that exploitive activity. This is entirely consistent with the Criminal Code's existing age of consent of 18 years with sexual activity relating to prostitution, pornography or other relationships involving authority, trust or dependency, where a young person's alleged consent is completely irrelevant.

These reforms do say to sexual predators, here in Canada or abroad, who want to target 14- and 15-year-old Canadian youth via the Internet, because of our existing age of consent that our youth are off limits.

Dangerous offenders: Finally, Bill C-2 proposes Criminal Code reforms to the dangerous offender provisions as well as to the peace bonds that place severe restrictions on high-risk offenders released into the community when no longer under sentence.

The objective is to protect Canadians from repeat violent and sexual offenders who, despite our very best efforts, are either unwilling or unable to stop their destructive behaviour. Simply stated, they are all about public safety.

The proposed dangerous offender amendments include a requirement for prosecutors to declare their intention to bring a dangerous offender application on a third qualifying designated

offence. This requirement will ensure that Crown prosecutors across the country consistently and specifically consider whether to bring a dangerous offender application for all offenders who meet these criteria.

A presumption that the offender meets the dangerous offender criteria on conviction for a third qualifying primary designated offence: As with any presumption, this is a rebuttal presumption. That is, clarification of how a designated dangerous offender will be sentenced, either with an indeterminate prison term or with a long-term offender's supervision order, consistent with the decision of the Supreme Court of Canada in *R. v. Johnson*. This amendment is necessary to clear up confusion following the *Johnson* decision regarding who is a dangerous offender and how he or she is to be sentenced.

Provisions for a second hearing where a dangerous offender who is initially sentenced to a long-term offender supervision order, rather than an indeterminate jail order breaches a condition of that order: This hearing focuses only on whether that dangerous offender could be resentenced to an indeterminate sentence.

Finally, the bill includes amendments to toughen the section 810.1 and 810.2 peace bonds, doubling their duration to 24 months and clarifying that the court may impose a broad condition. These reforms will ensure that police and justice officials are better able to manage high-risk individuals who are released into the community after the expiration of their full sentence.

Honourable senators, Bill C-2 proposes an extensive set of criminal law reforms, the objective of which is clearly to better protect Canadians in their homes and communities. I believe public safety is a priority issue for all honourable senators, and I urge you to support the bill.

Hon. Jerahmiel S. Grafstein: I have a question for the Honourable Senator Stratton.

Hon. Fernand Robichaud (The Hon. the Acting Speaker): Will the honourable senator accept a question?

Senator Stratton: Yes.

Senator Grafstein: Before I start, I want to commend the committee for its report. They laboured under difficult and impaired circumstances to prepare this report. In the circumstances, it is very elucidating.

I should like to ask some questions, since the honourable senator is here on behalf of the government to defend this measure.

I want to refer to the sections dealing with impaired driving not respecting the use of alcohol, which opens up a wide new range.

As I understand it — and if I am incorrect Senator Stratton will correct me — if someone fails to take these new tests under this section or refuses to take the test, the individual is guilty of an impaired driving offence and subject to prosecution.

Let me understand this measure, because this provision affects practically every Canadian. If you take a look at the statistics that I am familiar with, at least two to three out of seven Canadians are on medication of some nature on a daily basis. Many medications, based on publicized requirements, have side effects. Many of them have side effects that have not been fully measured based on scientific evidence.

If an individual who is not a criminal drives a car and is not aware of the consequences, because the side effects of the medication he or she is taking are not fully tested — and Senator Keon will confirm this — and refuses to take the test, or does some of these tests, that person could be found guilty of an offence on those measures alone.

Let me give you an example: Suppose the individual cannot stand on one foot for a period of time or walk 12 feet. I would like all senators to step outside and do these tests; my bet is that half the senators in this chamber would fail those two tests.

It seems to me that this measure is extraordinary on the basis of its uncertainty. The Criminal Code requires the onus of clarity, so that someone who is subject to an offence can clearly understand at the outset of the offence that he or she is probably guilty. This does not give any comfort to an innocent Canadian who uses drugs for proper purposes that are legal and can be protected from the onslaught of this bill. Can the honourable senator make a comment about that?

Senator Stratton: Yes, honourable senators, I would be happy to do so. There is a 12-step process when an individual is stopped. First, he or she has to determine the reason for being stopped. Usually, the reason involves erratic driving or a crash of some kind. The police have reason, first, to pull the person over. The police do not pull a person over willy-nilly, without something to pull the person over for.

Having said that, the police go through a series of questions before an individual is required to hop on one foot, believe me. The police officer would ask the person if he or she is taking drugs. If the person's answer is yes, then, if the officer determines that the dangerous driving may have been caused by the effect of drugs, the person is taken to the hospital for an examination. A doctor's examination can determine if the drugs were the cause of the accident or the erratic driving.

• (1450)

Remember that when a prescription is dispensed, it often includes a notice to patients not to drive while taking the medication because it might cause drowsiness. Doctors alert patients to this warning as well.

It is likely that someone taking prescribed medication can be impaired. We must be careful. We have a responsibility, to drive safely and our ability to drive is a responsibility, not a privilege. We must heed the warnings on our prescription bottles.

Senator Grafstein: Is there any statistical evidence to demonstrate that people taking legal drugs who may become drowsy or who may not have clear sight present a threat on our roadways? If so, senator, is that threat so overwhelming that it requires an amendment to the Criminal Code?

Remember, the law does not take into account small measures.

Senator Stratton: Is that a question?

Senator Grafstein: Yes, that is a question.

Senator Stratton: We are not after the person on prescription drugs. That is not the issue, but if that person is found to be driving erratically, or becomes involved in an accident, then that person has every reason to be questioned by the police.

We are after the people who are taking illegal drugs such as marijuana and I think there are about five categories of illegal drugs. The police want to charge the people who are impaired and driving under the influence of illegal drugs.

Senator Grafstein: I will read from paragraph 4 on the second page from the Standing Senate Committee on Legal and Constitutional Affairs. It says that there are hundreds of drugs, both legal and illegal, consumed by Canadians, that have a different impact on the individual's ability to drive.

Correct me if I am wrong, but the bill does not make the honourable senator's distinction between legal and illegal drugs. It is the consequence of the use of those drugs that this section is meant to capture.

Senator Stratton: As citizens of this country, we must realize that if a person is taking a prescription drug that causes drowsiness or some other effect, then that person has no business behind the wheel.

Senator Di Nino: Hear, hear!

Senator Stratton: If a person is involved in an accident or is pulled over for erratic driving, the police have a right to question that person. Remember, driving is a responsibility and not a privilege.

Hon. George Baker: Honourable senators, would the Honourable Senator Stratton admit that, as Senator Di Nino has repeated many times as he has been part of the R.I.D.E. Program and has filled us in on how that great program works, whereby all drivers are stopped, there is no observation of driving at all. That is the first thing that I would like Senator Stratton to verify, namely, that these organized stops happen during Christmas time, New Year and at various other times throughout the year. This occurs throughout our country, in fact, six provinces include the right to stop an individual arbitrarily for purposes of section 253 of the Criminal Code in their highway traffic acts. In this case, the driving is not observed.

Second, would the honourable senator also verify that people are not automatically taken to the hospital for observation? Would the senator verify that, in fact, the minister himself and the previous Liberal administration publicized the fact that in this case the legislation is designed to capture those who are not just on illegal drugs but those who are on legal drugs, including prescription drugs, that could impair a person's ability to drive? Could the honourable senator verify that, please?

Finally, would the honourable senator recognize that this is in the investigative stages? This whole procedure is new to Canada and new to a great part of the world.

Senator Oliver: That is right.

Senator Baker: This procedure is new and we need time to make it work properly.

Senator Stratton: The honourable senator is right; this will take time.

Senator LeBreton: It is the same with roadside tests for drunk driving.

Senator Stratton: I will quote from the statistics, which I love to do. I wish to refer you to the submission from Director Lynn Barr-Telford from the Canadian Centre for Justice Statistics, presented to us on February 14, 2008. At that time, Ms. Barr-Telford told us that the rate of impaired driving offences dropped 68 per cent between 1981 and 2006. That tells the Canadian public and this chamber that we are doing something right, through education and penalties, such as stopping drivers at checkstops during the Christmas holidays. That is my response to the honourable senator's second question.

The real issue is this: Does the honourable senator honestly believe that if a person's response is "yes" to taking prescription drugs that the police officer will arrest that person? Does the honourable senator really believe that? I do not.

Senator Baker: Honourable senators, the police have no right to arrest that person immediately. The police have a right under this law to detain that person without legal counsel and without activation to the Charter for a reasonable period of time that is demonstrably justified under section 1 of the Canadian Charter of Rights and Freedoms.

No one is arrested, but there is a detention that takes place for the purpose of conducting these roadside physical coordination dexterity tests. No, the person is not arrested, but certainly, if the person admits to taking drugs and that specific drug could impair his or her driving, the officer must, under this legislation, follow the next step, which is the physical coordination test. If the person fails that test, then he or she must pee in a bottle.

Senator Stratton: I submit, is that not the intent of this law? If a person were taking a medication that clearly states that the patient must or should not drive while taking it, would honourable senators not think that is what the police are supposed to do?

Hon. James S. Cowan: Honourable senators, all of us share a desire to make our society safer, to protect our citizens, particularly those most vulnerable, to deter and prevent criminal activity and to punish, in an appropriate way, such activity when it occurs.

Senator Di Nino: We all agree with that.

Senator Cowan: There can be no disagreement or argument about those goals. This debate ought to be solely about how best to achieve those objectives.

None of us should be satisfied with the status quo, with the measures we have in place to protect our citizenry or to punish and hopefully rehabilitate those who offend. Neither should we respond in a knee-jerk and ill-considered manner to the politics of fear and sensationalism.

• (1500)

In its thoughtful presentation to our committee, the Canadian Bar Association laid out a set of principles for legislative change that they believe, and I agree, will lead to a safer society and a constitutionally sound criminal law. These principles are as follows:

- Legislative change is necessary when there is a new or unaddressed development in society — for example, the rise of problems related to identity theft, or when a serious omission or a deficiency in the current law has been empirically demonstrated.

- Available resources and the efficient operation of our courts are important considerations, and unnecessary litigation and constitutional challenges should be avoided.

- The public is protected when police and prosecutors have adequate resources to enforce current laws and when the resource implication of changing current laws and adding complexity to them is considered.

- When crime does occur, a proportionate response that balances all sentencing goals in the Criminal Code will ultimately reduce further crime when offenders return to the community.

- Finally, trial judges are in the best position to determine an appropriate response to a particular crime, as they have the unique opportunity of observing all participants and hearing all the evidence first-hand.

Unfortunately, honourable senators, this bill has much more to do with political posturing than it does with making good criminal justice policy. It reminds me in many ways of a previous C-2 — the much vaunted Accountability Act — touted by the government as the most significant piece of legislation with respect to accountability and transparency in Canadian history. Indeed, its mere passage would clean up Canadian politics.

Honourable senators, we know now, more than 14 months later, that many of the parts of that act have not even been brought into effect by this government. Others have proven to be ineffective or hobbled by a whole slew of unintended consequences.

Therefore this bill, grandiosely styled "tackling violent crime," is at its root in many respects a simplistic, ideological piece of political propaganda. Once again, the Harper government is more focused on appearing to make positive change than on producing legislation that will actually make that change.

Some Hon. Senators: Smoke and mirrors.

Senator Cowan: Smoke and mirrors, I agree. This, honourable senators, is not responsible government. The Canadian public must not be fooled. Rhetoric and exaggerated claims of cleaning up our streets, solving the fiscal imbalance, or increasing accountability in government must be closely scrutinized.

As senators, we have a responsibility to inform Canadians of the actual impact of the legislation we pass. Time and again in committee, we heard evidence that nothing in this bill really does anything to make our society safer, with one notable exception: If this bill passes, and if the prosecutors take full advantage of its provisions, more Canadians will spend more time in jail. Obviously, those persons will not be in a position to reoffend against the society outside of that jail so long as they are incarcerated, although it is clear that many of them will use their jail time to perfect their skills and a large percentage of them will reoffend when they are released back into society.

While the government has made some effort to provide the financial resources necessary to deal with the increased prison population that will inevitably result from these measures, we heard evidence that the government's estimates as to the numbers of additional persons who will be incarcerated are woefully understated.

Honourable senators, I want to take a few minutes to comment on one aspect of the bill — that is, mandatory minimum sentences. The bill seeks to add a number of offences for which mandatory minimum sentences are prescribed and to increase the length of sentences for some offences that are already subject to the minimum mandatory sentence regime.

In 1995, Parliament amended the Criminal Code to introduce a number of mandatory minimum sentences for a specific set of crimes. One would have expected that before expanding and extending the mandatory minimum sentence regime, the government would have undertaken or commissioned some research to assess the effectiveness of this mechanism as a means of reducing or deterring crime.

Honourable senators, no research or other evidence was provided by the government or by any witness appearing before the Standing Senate Committee on Legal and Constitutional Affairs to support the government's contention that mandatory minimum sentences are an effective tool to deter criminal activity. Instead, the government seeks to rely purely on anecdotal evidence to support its position.

Honourable senators, almost without exception, the evidence before the committee was that mandatory minimum sentences simply do not work as a means to deter or prevent criminal activity. It is not the length of the sentence but, rather, the fear of being caught that is the real deterrent to those contemplating a breach of the criminal law. The Canadian Bar Association, the Barreau du Québec and several leading Canadian and international criminologists all testified to this fact.

We also heard concerns expressed about the disproportionate impact that mandatory minimum sentences have upon minorities, particularly Aboriginals. Aboriginals make up approximately 3 per cent of the Canadian population, yet represent 20 per cent of the male and 30 per cent of the female prison population of this country.

This phenomenon exists not only in Canada but also in other countries such as Australia. Indeed, we heard evidence that at least in one Australian jurisdiction consideration is being given to repealing certain aspects of their mandatory minimum sentence provisions because of their disproportionate impact upon the Aboriginal population.

Honourable senators, regretfully, one is left to conclude that a large part of the legislative regime proposed by this bill is driven by the right-wing, ideological distrust of our judicial system held by this government. Canada has a highly qualified and widely respected judiciary. This legislation removes much of the judicial discretion that has been the hallmark of our sentencing regime.

The Criminal Code of Canada contains a balanced set of sentencing principles, set out in sections 718 and 718.1 of the code. As I noted earlier in quoting from the submission of the Canadian Bar Association, trial judges are in the best position to determine an appropriate response to a particular crime, as they have had the unique opportunity of observing all participants and hearing all of the evidence first-hand.

Similar sentiments were expressed by the Barreau du Québec, the British Columbia Civil Liberties Association, the Criminal Lawyers' Association and several leading criminologists who have testified before the committee.

Unfortunately, honourable senators, the focus of this bill is almost exclusively on punishment and retribution, to the disregard of the other principles of sentencing set out in the code. Throughout the testimony presented to our committee, many alternative solutions for reducing crime were presented, yet this bill ignores virtually all of those alternative solutions in favour of simple punishment.

We heard persuasive testimony that the costs inherent in an increase in mandatory minimum sentences could be spent more effectively if focused on crime prevention instead of punishment. The Canadian Bar Association, the Canadian Council of Criminal Defence Lawyers, L'Association Québécoise des avocats et avocates de la defence and the John Howard Society all testified that our money would be better spent dealing with the root causes of crime.

If we are to extend the mandatory minimum sentence regime, surely we would be wise to retain some sort of judicial override to enable a trial judge, subject of course to the review of our appellate court structure, to intervene in exceptional circumstances to vary the mandatory minimum sentence, thus avoiding an unjust and disproportionate sentence.

As Professor Julian Roberts, a noted criminologist from Oxford University, testified:

> Nearly everywhere, even in South Africa where they are particularly tough, they allow some degree of judicial discretion, and that puts Canada out on a limb.

One unintended consequence of removing the discretion from the trial judge is to place that discretion in the hands of the police and the prosecutors, from whose decision there is no appeal.

Honourable senators, perhaps the cruellest irony of all is that Canadians will be misled by this government, as they were in the case of the Federal Accountability Act, to believe that the passage of this bill will magically make our society safer. As Professor Anthony Doob of the University of Toronto said in response to a question from our colleague, Senator Andreychuk:

> . . . in the long run, whatever you do on this bill, do not fool yourself into thinking that you have done anything at all that will make any of us any safer. Whatever decisions you make will be for reasons that should not include public safety.
>
> . . . in the end this will not address the issues. This will make people feel as if Parliament has done something, and that feeling will be wrong.

• (1510)

Honourable senators, let me quote the words of Kirk Tousaw, the Chair of the Drug Policy Committee of the British Columbia Civil Liberties Association, who appeared before us the other day.

I am sorry that the Leader of the Government in the Senate finds that the views of the Civil Liberties Association are so amusing to her. Perhaps she would do them the courtesy of listening to the quote before she laughed at it.

The Hon. the Acting Speaker: Order.

Senator Cowan: Let me quote the words of Kirk Tousaw, the Chair of the Drug Policy Committee of the British Columbia Civil Liberties Association:

> The civil liberties that Canadians enjoy and that form the cornerstone of our democracy are rarely more at risk than when the government acts in the area of criminal justice policy. Changes to the criminal law should, at minimum, be contemplated only when there exists a demonstrable social need for the change; and they should be implemented only after very careful consideration of the need and the effects of the policies at issue.
>
> Unfortunately, Bill C-2 fails on both counts. The proposed legislation does not respond to any actual or perceived need in the Criminal Code, as many others, including criminology professor Neil Boyd, have noted before this committee. Perhaps worse, the process by which this bill was pushed through the House of Commons, and the attempt by the government of the day to pressure this body into quickly passing the bill, demonstrates significant disregard for the principles of careful consideration, reflection and debate over deeply important issues.

Honourable senators, for these and a host of other reasons, I cannot support the bill in its current form. In conclusion, I commend for your careful consideration the observations appended to the report tabled earlier this afternoon by Senator Fraser, which were agreed to by committee members on both sides of the house.

Some Hon. Senators: Hear, hear!

The Hon. the Acting Speaker: Will Senator Cowan accept a question?

Senator Cowan: Of course.

Hon. Gerry St. Germain: Honourable senators, I certainly do not take the presentation of Senator Cowan lightly. I think we all are serious in what we do in this particular house, as they were in the other place. The honourable senator made reference to the bill having been pushed through the other place. The government does not have a majority in the other place, so to say that pushing took place is something of an extreme description.

My question relates to the B.C. Civil Liberties Union representative who stated that demonstrable need for change is required. There is an epidemic of grow-ops in the province of British Columbia's drug trade. It is a sad commentary. I know there are some who want to legalize grow-ops, but I am not one of them.

Senator Campbell: Think of the B.C. economy.

Senator St. Germain: I should be thinking of the economy. However, right across the border — and I am not saying that we should emulate the United States of America — they have laws that stipulate that if you are caught in possession of drugs, your sentence is directly related to the amount of drugs with which you are arrested. The criminal element travels back and forth and sees no borders. They make a mad rush for our Canadian border, whether in helicopters, airplanes or vehicles, to escape the American authorities simply because they have mandatory minimum sentences for these drug offences. We have criminal and gang activity. Murders are committed on almost a daily basis in the metropolitan area of Vancouver. Why would the honourable senator or his side of the house be opposed to trying to bring those elements under control, to improve life and remove danger from British Columbia society and all Canadians?

Senator Cowan: I thank Senator St. Germain for his thoughtful question. I will clarify the comment about the bill being pushed through the House of Commons. Those were not my words. Those were the words of the gentleman from the B.C. Civil Liberties Union.

I agree with the honourable senator. Intuitively, one would think that a longer sentence would deter criminal activity, but I will leave others to refer to one notable exception, if they wish. However, all of the evidence that we received and all of the studies to which we were referred say that the fear of being caught is the deterrent. The length of the sentence has no deterrent effect. There are literally no credible studies anywhere that would support that proposition. I agree that it is intuitively correct that if the sentence is made tougher, that will act as a deterrent to people who are thinking about committing the crime, but the evidence we heard was that it is not the length of the sentence but the fear of being caught that is the deterrent.

The issue really, senator, is, if that is so, what measures are really appropriate and need to be made and what changes need to be made to the Criminal Code to deal with the kind of situation that all of us abhor? No one is defending the rights of criminals to carry on their activity. Everyone is looking to make our society safer. I thought I made that point clear at the outset of my speech. We all share those goals. The argument is about whether or not the measures that have been introduced here will have the effect that we would hope that they would have, and I express doubt, based upon the evidence that I heard, that they will. I hope that I am wrong and the honourable senator is right, but the evidence presented to us from criminologists and others who know far more about this than I have said that that simply is counter-intuitively not correct.

Senator St. Germain: How do we reconcile the fact that criminals are making the run for the border? The grow-ops are in Canada. There are some across the border, but by no stretch of the imagination in the numbers that we have in Canada. As well, if the deterrent is merely the fear of being arrested and not the sentence, why would criminals make a run for the border? The American arrest process is not that much different from the Canadian. If that is the fear, what would be the difference of being arrested in Washington or British Columbia? The sentence must have some impact, from my perspective. Perhaps the honourable senator can explain that to me.

Senator Cowan: I certainly do not have knowledge compared to the knowledge that Senator St. Germain might have about the situation in his province, and I defer to him in that regard. It may well be that these people feel they have a better chance of carrying on their activities in British Columbia without getting caught than they do in the United States.

As I said in my speech, honourable senators, we had no evidence to the contrary. I started my work on this bill in exactly the same position as Senator St. Germain, saying it makes sense to me that if you increase the penalty and make it tougher, that will have a deterrent effect. However, none of the evidence that we received supported that position. One would assume that if the proponents of the bill had evidence to the contrary, they would have presented it to the committee, but they did not, so we are left to assume that that evidence does not exist, in which case the only explanation I can offer is that these people may feel that they have a better chance of avoiding detection and being caught.

• (1520)

My final point is that the statistics are very clear. The U.S. has, as the honourable senator has said, a tough sentencing regime and has many more examples of mandatory minimum sentences than we do in Canada. However, criminal activity in the U.S. is far higher than in Canada. Perhaps Senator Bryden may remember the specific number. However, the level of incarceration is seven times as high in the U.S. as it is in Canada. If incarceration is the answer, their incidence of criminal activity ought to be lower and it is not.

There may be a variety of sociological and other reasons that play into this. One of the points that struck me through this study is that this is a very complex issue and to look at amendments to the Criminal Code alone, and to say this will provide a solution, is far too simplistic. There is a range of other problems in education and in dealing with poverty. All of us heard evidence, and I think all of us who heard that evidence would agree that this is part of a much larger puzzle that needs to be addressed not only at the federal level but at the provincial and municipal levels as well.

Senator Stratton: If the honourable senator recalls, the Minister of Justice said that this is just one part of addressing the issue. Throughout the hearings, I referred to this as a three-legged stool

which is a reference to the milking stool of the old days. That reference is based on a three-legged approach with the first being help in the community and in society, which this government has tried to do; the second leg would be putting more police on the ground, because that is obviously part of the problem; and the third leg is this bill.

The honourable senator stated that Aboriginals are overrepresented in our prisons. That is true. However, remember that Aboriginal victims are overrepresented in our society and that is the tragedy. I have a real problem with remote reserves. They really bother me.

We have been told that the solution to this, ultimately, is education. However, that will not be a short-term solution. A solution will take years. We all know and have known that for years. One can now see the changes in the Aboriginal community. They are taking responsibility for what they are doing and doing things that I think are really good to see and watch. One sees young kids gaining education at ever greater rates. The problem is that this is a very slow process.

Bill C-2 really addresses reoffenders. They are violent and the statistic we heard was 90 per cent of reoffenders are sexual offenders. Why would we not go after them? We are not going after a kid that has done wrong and is put in the slammer. We are going after the reoffenders. The evidence presented was that there are 50,000 predators online at any given time throughout the world.

With these people trying to make contact with a child for sexual purposes, does the honourable senator not think we should go after them? They are the people who reoffend. They are the problem. They are the folks that the bill is going after.

Senator Cowan: Honourable senators, I do not disagree with anything Senator Stratton said. I think what we have here is a public relations exercise cobbled together in an omnibus piece of legislation. Fine, I will take Senator Tkachuk's word that the proposed legislation is comprehensive. It is certainly comprehensive.

There are many parallels here with the Federal Accountability Act. We will have a series of unintended consequences from putting this together. If the government had been more precise in dealing with the situations that the honourable senator wanted us to deal with, that would have been much easier. Instead, they cobbled this bill together in their comprehensive legislation. I think they end up with something that will not do what they claim; that beginning as soon as this bill receives Royal Assent, suddenly, our streets and our citizens will be safer.

Regretfully, I do not believe that will be so. I hope I am wrong, but I do not think I will be.

Hon. A. Raynell Andreychuk: The honourable senator used the word "irony." When I approached Bill C-2, I was concerned about the proportionality in sentencing and I was also concerned about mandatory minimum sentences and their use.

The irony I found in the testimony was that when the honourable senator referred to section 718 of the Criminal Code, the purpose of sentencing and proportionality, we later added 718.1, then we added 718.2 and the amendments were — this is where I find the irony — in 1995, 1997, 2000 and 2001. The concerns about proportionality did not start with Bill C-2. They have been embedded in the sentencing.

Professor Doob, from the University of Toronto, was making a plea to look at the whole issue again. He urged us to pass Bill C-2; his concern was more for the criminal justice system, and I think the honourable senator and I agree in that regard.

I also asked Professor Doob if he believed it is unconstitutional to have mandatory sentences. I do not have the transcript at hand, but he spoke to that issue. He went back to the amendments of 1995 and those that followed. One must reflect on the governance of the day.

The question he answered that resonated with me is that Parliament has the right to put in sentencing principles and to guide the courts. The courts, inevitably, will continue to answer whether they think we have drawn the line inappropriately and unconstitutionally. That is where we gave great latitude to those who are worrying whether the bill will pass the constitutional test.

Most representations pointed out that the mandatory sentences were already there and that the same arguments had been made previously. Therefore, Bill C-2 is not the trigger for mandatory minimum sentences. The triggers were set in the 1990s.

Does the honourable senator believe that Professor Doob's testimony goes to the heart of the fact that we constantly have to address this parliamentary right to set sentencing principles and impose what they believe is right? Meanwhile, should we be mindful that the courts may in time disagree with us?

Senator Cowan: Certainly, I defer to Senator Joyal on the constitutional matters and I am sure he will address those issues later this afternoon. However, what the honourable senator said supports the position I put forward when I spoke a few moments ago. We already have sentencing principles embedded in the Criminal Code. They were embedded by Parliament and we have judges who apply the system. I object to the fact that, for apparent ideological reasons, the government is taking away the power that those judges have. That leaves the application of strict principle; the judge has no discretion. Even when left with some discretion, the judge would say, "In these circumstances — having regard for all the circumstances — this minimum mandatory is inappropriate." It then drives that decision back to the prosecutors and the police. I would argue that we are better served by having the judges apply those principles.

• (1530)

If Parliament wishes to change the principles that will be applied by the courts, that is fine; that is perfectly legitimate. Perhaps the balance needs to be changed. As Senator Andreychuk mentioned, within the past 10 years there have been several modifications to those sections of the Criminal Code. That is entirely appropriate. However, it is inappropriate to say, "No more will the judges have that power to exercise the discretion" which, as a judge, you would want to exercise. The honourable senator was a judge. She was the one who heard the witnesses and saw the evidence. To simply say, "No longer does it

matter what you, as a judge, think. It is simply a matter of looking down a chart and indicating the number." I think that is inappropriate. That is the objection I have to that provision.

I will leave it to the Honourable Senator Joyal to address the constitutionality of this issue. It is my understanding that the courts have said, within certain parameters, mandatory minimum sentences are acceptable. The issue will be whether these mandatory minimum sentences for these offences meet that test. I do not know the answer to that.

Senator Andreychuk: The honourable senator characterized this in a certain way and I will make my question short.

For ideological purposes — or perhaps it was practical, sound responses to communities —the previous government put in mandatory minimums. Professor Doob said that Parliament and government has the right to set parameters. Judges do not have an unfettered discretion; they have the discretion granted to them.

Parliament has the right to change the breadth and the scope of the discretion. Mandatory sentences were put in and tested. Perhaps some of us, ideologically, did not want them but the government in the 1990s, when I sat in this chamber, took away minimums. Was I right or were the people of Canada, through their government, right? Time will tell, will it not?

Senator Cowan: I understand and appreciate that point.

I think it was in 1995 that we introduced those mandatory minimum sentences. We now have 12 years of experience with them. No one is disputing the right of parliamentarians to impose mandatory minimum sentences. They have that right and we will see whether or not that meets the test; the courts will decide that.

Surely the point is that, after 12 years, before we go further down that road, should we not know, to the best of our ability, whether mandatory sentencing works? We do not know. Indeed, the evidence we have indicates that it does not work. Mandatory sentencing may achieve some other purpose, but if the purpose is to deter criminal activity, the evidence that we heard was that it does not work.

If I am serving a mandatory minimum sentence, clearly I am not in a position to reoffend against anyone other than my fellow prisoners. The uncontradicted evidence we heard was that it does not deter people from criminal activity. We discussed this a moment ago with Senator St. Germain. To deter people from criminal activity is the point. Its purpose is not simply to punish those who do.

Senator Andreychuk: I have a subtext to that. Was it not fair that we could not get information because, after 1995, no one collected statistics, despite the recommendation to do so? We do not have that evidence because it was not collected. We, again, have made our point in our observations that statistics should be maintained. One would hope that, this time, this government will respond and start to collect statistics.

Senator Cowan: As usual, we agree.

Senator Andreychuk: Thank you.

Hon. Bert Brown: Honourable senators, my question to the Honourable Senator Cowan is that if the honourable senator sincerely believes he has the evidence to prove that mandatory sentences — or any length, or increase or decrease of sentencing — do not have any effect, then, in reality, do we need any laws at all? If there is no difference between a police officer stopping someone for wavering while driving or on suspicion of drug impairment or violent crime and there is no other choice for him but to let him go, then there is no sense at all.

If an officer makes an arrest for any one of the crimes mentioned, then that is proof of success, unless there has been no one who ever went to prison in this country who did not reoffend. If anyone was ever deterred from repeating a crime, then it is proof that law and punishment works. In regard to this bill, is the concern only to the degree of how many people we have who reoffend, and whether we want to worry about whether drunken drivers, child molesters or violent criminals who use guns have a sentence that deters them?

We are not arguing about whether or not we want laws to protect the rest of our society, our children, our friends and our loved ones. We are arguing about whether, when someone repeats and commits violent crimes with guns, or repeats with drunken driving, that there should be mandatory sentencing. That is what we are arguing about. We are not arguing about the rest. It does not matter how many experts are brought in to say that mandatory sentences do not work. It is obvious that some people in this country who have been incarcerated to one term or another have not reoffended, unless it can be said that anyone who has ever been convicted in Canada automatically reoffends, regardless of the sentence or term.

It is totally illogical to say that the evidence says people do not respond to a length of a mandatory or longer term.

Senator Fox: Are you are saying there is no evidence?

Senator Brown: The honourable senator is saying that no one has ever been deterred by our criminal system in the past. No one has ever stopped doing criminal acts because they were arrested and deterred for whatever length of time. We are talking about whether we lengthen that length of time or whether we stop judges from allowing people to drive drunk and kill some of our friends or children.

Some Hon. Senators: Question!

Senator Brown: Judges who say, "I will give him a slap on the wrist. I will give him a minimum sentence. I will give him six months' probation" or whatever have been an outrage in this country for many years. It is not whether judges are competent or have ability but whether they are being too lax in sentencing. That is what this bill is all about.

Senator Cowan: I will make two comments in response to Senator Brown. First, I did not say that there was no evidence to say that mandatory sentences did not work. I simply said there was no evidence brought before the committee that would indicate that that was so. It may well be there are individuals who were deterred from committing a crime because of the sentence that would be imposed if they were caught. That may be so.

Intuitively, as I said in my response to Senator St. Germain, I agree with that. That makes sense. However, the evidence that we had indicates that intuition is wrong. It is not the length of the sentence that is important. I agree with the honourable senator: One would think it would be important. It is whether or not you will get caught. That was the evidence we had before the committee. If there was other evidence that the honourable senator is aware of, we did not have it.

The other point about the problem with the system is that the judges are too lax. We have an appellate court structure in this system, honourable senators. If the Crown feels that the sentencing judge has imposed too lenient a sentence, there is the capacity to appeal the matter again and again. That is a system that I think better protects and better balances the criteria set out in the Criminal Code.

• (1540)

All of us, I am sure, could point to an instance in our own community where we feel, based upon some newspaper report, that the judge is wrong. "How could that person be out on the street after two years or whatever? Look at what he did. Is that not terrible?" The fact of the matter is that you and I are reading those newspaper reports or watching that television program, not sitting on the bench in a courtroom, trained to analyze the evidence and apply the sentencing provisions set out in the Criminal Code, to apply an appropriate sentence, having regard to all of the circumstances and to the issue that is before the court.

Hon. Lillian Eva Dyck: Would the honourable senator take another question?

Senator Cowan: Surely.

Senator Dyck: As you might imagine, my questions relate to the Aboriginal population. As the honourable senator probably knows, up to 80 per cent of Saskatchewan's prison population is Aboriginal. As Senator Cowan pointed out in his summary, as in the report, the percentage of Aboriginals incarcerated is about 20 per cent all across Canada.

I have listened to various comments about child molesters. Of course, we all want to punish child molesters; we do not anyone to suffer at the hands of a child molester.

Of the list of witnesses who appeared before the committee, were, let us say, 20 per cent from the Aboriginal population? Did the committee hear from people like the Aboriginal Healing Foundation, or from Aboriginal judges or elders who would have related their perspective on whether punishment would work?

It is ironic that this bill coincides with the ongoing Indian residential school settlement claims. We all know that many Aboriginal children were molested while they were in residential schools; we also know that a high proportion of Aboriginal people who are within the criminal justice system are re-enacting what happened to them.

My guess would be that punishment, in this case, does not work. Although it is good to get tough on crime, we must also be serious about rehabilitation.

In the witnesses that appeared before the committee, was there a perspective that would represent the Aboriginal culture, that would indicate whether they were in favour of this bill or whether they thought there were flaws with it?

Senator Cowan: I wish to thank the honourable senator for that question, which is a very important one. I do not have the list of witnesses in front of me; hence, I shall have to rely on my recollection. Perhaps my colleagues will help me if I miss someone here.

We had a senior officer from the Royal Canadian Mounted Police, who was an Aboriginal and who had spent a large part of his career dealing with these issues. We heard from the Aboriginal Legal Services of Toronto. I know that Senator Merchant was particularly diligent in questioning a number of witnesses — not just those two witnesses — because of her experiences in Saskatchewan as well.

I think all of us agree, even in the discussion we have had this afternoon, that whether this bill is good or bad, it is only one part. If it is good, as the government would contend, it will not solve the problem that the honourable senator and I are discussing right now. There are many more things; perhaps there are some circumstances that are peculiar to the Aboriginal population, which do not affect the rest of the population, that need to be addressed. This government and other governments are struggling with that issue.

No one would pretend, whether or not they agree with this bill — and I think Senator Stratton made this point when he asked me a question a few minutes ago — that, in and of itself, this bill will solve the problem. There are a variety of other issues to deal with.

The Hon. the Speaker: Senator Cowan's 45 minutes has elapsed. Continuing debate with the Honourable Senator Joyal.

Hon. Serge Joyal: Honourable senators, I understand that, according to the tradition in this chamber, we alternate from one side to the other. As Senator Cowan has just spoken, if there is another speaker on the other side, I would certainly wait until that person has been given preference.

Honourable senators will recall that there were two bills prior to Bill C-2. We started the debate on one related to the age of consent and another one, Bill C-27, in relation to dangerous offenders.

When Bill C-2 was referred to us, I tried to put the bill in the broader perspective of changes that it would bring to the Criminal Code on five accounts. The first was minimum sentencing — and I listened carefully to the statement made by Senator Cowan and to the questions raised by Senator Brown and others.

Honourable senators, one thing that we must keep in mind is that the Department of Justice itself does not believe in the effectiveness of minimum sentencing. I repeat: The Department of Justice does not believe in the effectiveness of minimum sentencing, so much so that the legislative summary prepared by the Department of Justice states:

> . . . existing research generally does not support the use of mandatory minimum sentences for the purpose of deterrence . . .

That was your question, Senator Brown.

The legislative summary goes on to say:

> Incarcerating offenders for longer periods results in increased prison costs, which are not necessarily offset by any reduction in crime rates and recidivism.

That refers to your point, Senator St. Germain.

The legislative summary also says:

> . . . mandatory minimum sentences disproportionately affect Aboriginal offenders . . .

That is for you, Senator Dyck.

Honourable senators, when you are called upon to study a bill that deals with minimum sentencing and the proponent department tells you that they do not believe too much in its effect on crime reduction and that it creates additional social problems, as one of my learned professors would say, "You put your glasses on your desk."

The other statistics that we were given at the committee hearing are the statistics coming from the Canadian Centre for Justice Statistics. We heard from the director there. This is not a lobby group; this is not the BC Civil Liberties Association, to which some of you do not seem to afford much credibility.

What does the Canadian Centre for Justice Statistics tell us generally about crime rates in Canada, to try to understand which problem we are addressing here? Are we addressing a problem that has reached tremendous proportions and calls for immediate intervention?

Honourable senators, according to the Canadian Centre for Justice Statistics' figures released on October 17, 2007 — a very recent set of statistics — the national homicide rate dropped 10 per cent in 2006. In 2006, the crime rate was 27 per cent lower than in 1991. The 2006 crime rate was at about the same level as in 1979. The rate of victims of firearm-related violent crimes remained stable between 2003 and 2006.

Another statistic, honourable senators, is that the rate of homicides committed with a firearm in 2006 was 47 per cent lower than in 1977. Let us look at other statistics: The rate of other sexual offences declined by 44 per cent between 1993 and 2003. I am not saying that a sexual offence is not serious, but I am saying that currently in Canada we are not caught in a crisis on crime. I am as offended and infuriated as anyone when I listen to or read a crime report in the media. However, if we are called upon to legislate in this respect, then we must know the social context so that we may address the situation.

• (1550)

Let us look at other facts. The second element of Bill C-2 addresses the issues of impaired driving. What are the statistics on impaired driving? Recent statistics on impaired driving show that the rate of impaired driving offences was up 68 per cent between 1981 and 2006.

I am not saying that an impaired driver who kills a family of five is not a criminal and should not be punished. However, if we are to address this issue properly, we must understand which existing measures work and which ones do not work. Before we change something fundamental in the Criminal Code, we must understand the impact of that change on the social fabric of Canada. For instance, if we are to address impaired driving with drugs, we must understand the impact of drugs on drivers.

Honourable senators, read the observation appended to the report on Bill C-2 presented in the Senate today. It states:

> The fact remains, however, that for the vast majority of drugs no scientific data exist to determine the levels of consumption at which impairment actually occurs. It will be several years before such levels are determined for even the most common illegal drugs.

Honourable senators, we do not have all the information. Refraining someone under the influence of drugs from driving is a good intention. No one will argue that, but if we want to include drug-impaired, as we have alcohol-impaired, then we must understand the biological phenomenon, and scientists tell us that they do not understand this phenomenon.

Based on the facts that no study and no statistics show that there is a real crisis, and given the lack of fundamental information relevant to some of the offences that this bill will create, the next question is this: What is the impact of those measures on minorities? We all know that the Canadian prison system is equivalent to a minority issue. When I mention minority issues, as was stated by Senator Cowan, Senator Dyck and others, I mention Aboriginals, women and people of colour. Honourable Senator Oliver attended the meeting of the Legal Affairs Committee when we heard from Howard Sapers, the Correctional Investigator of Canada.

Senator Oliver quite properly asked four questions about the impact of the coloured population in Canada's prisons but he did not receive the information he wanted because the statistics were not available. Appropriately, he requested those facts to help the committee have a better understanding.

I will quote from the brief prepared by the Criminal Lawyers' Association, who appeared before the committee on February 7, 2008:

> Mandatory minimums disproportionately affect minorities. The research and available data support no other conclusion.
>
> The aboriginal community in particular is already grossly over-represented in the prison population.

We have legislation in that respect. The brief continued:

> Parliament has recognized this gross disparity by enacting s.718(2)(*e*) —

— which Senator Andreychuk quoted from the Criminal Code —

> which requires judges determining fit and proper sentences to give consideration to the circumstances of aboriginal offenders.

Under this bill, with its mandatory minimum sentences, we will prevent judges from using section 718(2)(*e*) in making those determinations. We will put more Aboriginals directly in prison and not submit them to healing circles.

Honourable senators, I was appalled when I heard the testimony of Mr. Sapers, the Correctional Investigator of Canada. He does not have a lobby group behind him; he is an officer appointed to ensure that the correctional system in Canada functions properly. What did he tell us with respect to the functioning of the Canadian correctional system in respect of the Aboriginal population? Mr. Sapers said:

> . . . I identified the following specific barriers to reintegration in the areas of access to programs: long waiting lists for programs in most regions, resulting in programs being provided late in the offender's sentence, well beyond his or her parole eligibility dates; waivers, postponements and withdrawals of applications for National Parole Board hearings because of lack of program access; a shortage of program facilitators and program officers, especially those with the skill sets required to deliver Aboriginal-specific programming; limited access to programs in the community, especially for women and Aboriginal offenders; limited or no anti-gang programming in most institutions, meaning that, by default, reliance on segregation is quickly becoming the norm in this area; delays in the evaluation and national implementation of Aboriginal-specific programming; and a chronic shortage of Aboriginal-specific core programming in maximum security institutions, which means that Aboriginal offenders cannot carry out their correctional plans and transfer to lower security institutions where the programming may be available.

With a total budget of $1.8 billion, Correctional Services of Canada allocates only $27 million for core programming, or 1.5 per cent of its total budget, while the Aboriginal population represents 30 per cent of the prison population.

Honourable senators, we are being called upon to legislate Criminal Code issues that will increase problems and not help to solve them if those areas of Bill C-2 are not on par with the proper investment and training in the prison system, no matter the good intentions. I do not question good intentions to fight crime in society; it is a duty of government to do so, and taxpayers are well founded to keep the government so accountable. However, we must know exactly what we are doing. This bill will have unintended consequences on the social programs across the country; it has major flaws in respect of the Canadian Charter of Rights and Freedoms.

Let me put forward two examples. The first example respects the age of consent. Everyone is against sexual predators — we are all agreed. However, this bill will not help to solve that problem; instead, Bill C-2 will create a two-class status for this criminal offence. A 14- to 16-year-old who marries with parental consent will be allowed to have sexual intercourse. The person will receive proper recognition from a court of justice because he or she is married. However, that will not apply to a couple in a common law relationship because the bill states "marriage." We know that half of the couples in Canada live common-law and among youth probably 60 per cent live in common-law relationships.

Senator Grafstein: It is over 50 per cent.

Senator Joyal: The bill does not cover parental acceptance of youth living in a common-law relationship. In fact, they would be accused of complacency because they know that their child is engaging in sexual intercourse under a common-law situation.

Honourable senators, I request five minutes longer.

• (1600)

Hon. Senators: Agreed.

Senator Joyal: The situation remains the same for a parent consenting to a sexual relationship between their 15-year-old child and his or her 21-year-old partner. If parents do not provide consent under this bill, that is not a defence. That is only a defence if parents consent to marriage.

Honourable senators understand what will happen. There will be a challenge of discrimination based on age. The case will go to the Supreme Court, and then we will accuse the court of activism. We will create the other problems that we want to address.

Senator Grafstein: Over-judicialization.

Senator Joyal: In respect to the government, this amendment was not brought by the government. It was brought by the chamber in the other place, and I want that to be fully recognized.

Let me give honourable senators another example. Dangerous offenders get three strikes, which seems to be fine. We all want to put dangerous offenders behind bars such as the Clifford Olsons of this world. Another example is Robert Pickton, from British Columbia. We were all scandalized by that case, but listen to this bill: Three strikes for any offence that deserves more than two years in prison.

Honourable senators, I urge you to look at the Criminal Code and make a list of all the offences that require a sentence of more than two years in prison. That means that if someone commits an offence at the age of 19 and commits a similar offence at the age of 39 — 20 years later — and another one at the age of 49, he has committed three strikes and now he is a dangerous offender, with a lapse of 20 years and 10 years between offences. He then goes to prison for an unlimited period of time.

Honourable senators, we have already heard of examples of detention for unlimited periods of time. I look to Senator Nolin with respect to security certificates. The Supreme Court said clearly that a person cannot be detained for an unlimited period of time for a crime that he has not yet committed but is believed he might commit in the future. That is preventive detention; that is not detention because the person has committed a crime.

This bill does not provide that, after a certain period of time, the person must be brought back before the judge and the judge must evaluate the condition of rehabilitation, their psychiatric condition, their social condition, and so forth, in order to make it fair to detain that person continuously. Last year, a decision of the Supreme Court re-established those principles of fundamental justice.

Honourable senators, on Friday, February 15, I received an email from Professor Ned Franks. Some honourable senators may know Professor Franks. He appeared as an expert witness on the Federal Accountability Act. He has participated in numerous Royal Recommendations on behalf of the federal government. He has published 13 books. He is a professor emeritus of political science — and I am sure our friend knows him very well — at Queen's University.

Senator Segal may listen with interest to what he wrote in his email:

> I have been following the silliness over the Senate and the crime bill with great interest, not least because I do not find that the evidence supports the government's contention that the proposals in the bill will reduce crime rates and protect the public. I also strongly suspect that the cost of implementing the provisions of the bill will be quite daunting and that the provinces will bear much of the burden of an increased prison population.

This raises several questions in my mind. First, has the Senate invited the provinces to comment on prospective costs related to provincial jail policing, et cetera, and the bill in general? Has the Senate asked for or received any cost estimate from the government? Has the Senate invited Sampson and others from the Sampson panel to comment on the relation between the proposals and the content of the bill? Has the Senate asked the government why it has buried the Sampson report?

You will understand, honourable senators, why I cannot support this bill.

Senator St. Germain: Honourable senators, having been a police officer, not a university professor, and worked and lived on the streets for a period of time, I think there is another perspective, and I do not know if it came out at the hearings of Bill C-2.

I understand the passion Senator Joyal has for these particular issues, especially as they relate to the Charter of Rights and Freedoms and our Constitution.

However, I do not know if any statistics have been established. Any police officer that I talk to today says that they do not lay charges any more like they used to in the 1980s and the 1970s, the period of time from which the honourable senator quoted figures on, simply because they do not have the time. They have the same amount of policemen per capita, but it takes them five to ten times longer to deal with charges, as they all have to be Charter-proof. As a result of that, charges are not laid in the same manner they were prior to 1982.

I do not know if there are any statistics established on this. I am not being critical. I am making an observation based on the fact that I still have much contact with police departments; I have sat on the Vancouver Police Foundation and completed various works of charity that have kept me close to that community.

This is what I want to bring up. For 12 years, I have sat here and listened to the government of the day speak on what they plan to do on Aboriginal issues and budgets and listened to Speeches from the Throne and what have you. The honourable senator presents the case that this minority government, which has been in power for two years, should be doing something in regard to healing circles and that type of thing. Why is it that the previous administration did not do this?

This is not a partisan issue. Let us get this straight. There was nothing done, and we are not doing anything now, either, in this regard. I do not hear anyone speaking of this other than in heated and emotional debates. I am not saying that what we are doing is correct. I will say to Senator Bacon that it is wrong. We should be doing something for the 30 per cent of Aboriginal people who are incarcerated and do not have a proper parole system, as Senator Dyck pointed out.

When will we have the courage to stand up and do something instead of making eloquent speeches? The time has come that we do something now for our Aboriginal peoples in relation to education, housing and health.

• (1610)

Senator Fox: Amend the bill.

Senator St. Germain: If I submitted a bill like that, you would reject it, Senator Fox. I know what you guys are about in that part of the country.

Having said that, I am serious, Senator Joyal. Why is it that we only bring these things up at a heated moment like this, on something that is related to the subject but is a subject all of its own and should be dealt with separately?

Hon. Joan Fraser: Would Senator St. Germain take a question?

Senator St. Germain: Yes.

Senator Fraser: We heard evidence about the cost of keeping a prisoner in prison, and it varies according to the level of security. However, say for the sake of argument that it works out to about $94,000 per year.

Do you think it might be more effective to take the money we would have spent on 100 more prisoners and put it into preventative programs? We could take the $9 million and put it in programs for Aboriginals and toward hiring more police officers; we would have the money to do both. Do you think that would be a more effective way to tackle crime?

Senator St. Germain: Certainly, I think the government of the day has allocated funding for more police officers, and I think you have to give the government credit for that. There is no question that I would be open to any suggestion that would help the plight of our Aboriginal people.

I worked with several senators from the other side, including Senator Peterson and Senator Hubley and various others. I am not saying that other people have not before us sincerely tried to rectify the wrongs that have been imposed on our First Nations people. If that idea would work, I would certainly look at it. I would look at anything, because it is a disaster.

We just had an incident on the Yellow Quill reserve, which was a terrible disaster. This was brought on by a history of mismanagement of reserves, of welfare, of residential schools;

the list goes on and on. We have destroyed these people. We have killed them. We have killed the spirit in them. If we could reinvigorate the spirit in these people, I would do anything, whether it is your suggestion or money. I am not sure that money is the only solution, but my mind is open to anything and everything that would help these people.

Hon. Francis William Mahovlich: I am addressing this question to Senator St. Germain. An ounce of prevention is worth a pound of cure, as the old saying goes. If this bill goes through, it seems like we will build more prisons than we will schools. Does the honourable senator agree?

Senator St. Germain: Honourable senators, there is no question that there are no schools in this particular bill, but the fact remains that prevention is definitely an area that we should be working towards. It is a credible idea, but it does not deal with the situation we are debating right now. We are talking about a portion of the Criminal Code dealing with penalties, and so on. However, the honourable senator is correct that education is the foundation and one of the steps.

Senator Mahovlich: Education is deterrence. If you are going for deterrence, we do not need jails but education.

The Hon. the Speaker: Are there any further questions or comments?

[*Translation*]

Hon. Francis Fox: Honourable senators, I rise to participate in the debate on third reading of Bill C-2.

I would like to start with two tributes. First, to the Chair of the Committee on Legal and Constitutional Affairs, Senator Fraser, for all the work she has done so that the Senate can fully play its role as legislator, proposing amendments and returning an amended and greatly improved bill — and God knows it needed improvement — to the other House. She did not have the opportunity to do so, for obvious reasons.

My second tribute is to the witnesses who appeared before the committee. I think it was Senator Stratton who mentioned that 55 witnesses have appeared before us in the past few days to share their views on the bill. They knew the constraints the committee was under, but still came because they had important things to say about this bill, which most of them thought had deficiencies and major flaws. Some may have even found it to be an abomination of a bill, if it were not amended.

The irony is that for a bill called the ''Tackling Violent Crime Act,'' our first witness was the Minister of Justice, and the first thing he did was put a gun to our heads and say that unless we passed this bill before March 1 without amendment, in accordance with a motion adopted in the House of Commons, he would return to his party leader and recommend that this be a confidence matter.

I will quote the minister's response — so there is no ambiguity — when I asked him the following question:

> Is the minister telling us in advance that he would not accept amendments from this committee should we succeed in pointing out gaps, shortcomings or undesirable consequences in his legislation?

He replied:

[*English*]

> I believe we have got it right, and I am asking you to pass this bill without any substantial amendments.

[*Translation*]

That was the situation when we began examining this bill. In my opinion, it was an attack on Canada's parliamentary institutions. That is the first point I would like to make. Others are going to talk about the very technical parts of the bill. They have already done so, and I share their opinion.

I add that when they drafted our Constitution, the Fathers of Confederation chose a bicameral system which gave a legislative role not only to the House of Commons but also to our chamber, the Senate. Today, this is self-evident, a truism, but it was questioned as recently as three weeks ago, before the Senate committee.

Senator Prud'homme: Section 17.1 of the Constitution.

Senator Fox: Thank you, Senator Prud'homme. In the act which established the Confederation, the Senate was given responsibility for reviewing the work of the elected chamber, to create the best possible legislation, in the interests of all Canadians. Since 1867, the constitutional conventions have been recognized, and our parliamentary system now has the benefit of 140 years of experience, if I may put it that way. In my opinion, our institution's parliamentary responsibility has never been so denigrated as in the past month.

The Minister of Justice ought to be the protector of the Canadian Constitution. Yet, he came to tell us, as I said earlier, that he did not intend to respect the spirit of the supreme law of the land. As if that were not enough, he referred to a motion introduced in the House of Commons on February 11, telling the Senate that the debate had to end by March 1.

Senator Prud'homme: Terrible!

Senator Fox: Honourable senators, in my opinion, this is unacceptable. It is an affront to our democratic institutions and our traditions.

Honourable senators, my colleagues have raised or will be raising a number of concerns during this debate. I would like to talk about two points in particular: mandatory minimum sentences and the elimination of judges' discretion to let the punishment fit the crime.

With regard to mandatory minimum sentences, I would like to give an example. Senator St. Germain mentioned his experience in British Columbia with marijuana grow-ops.

• (1620)

I also had an experience, honourable senators, when I had other roles in a previous government, which led me to visit the only federal prison for women at the time, in Kingston. As minister responsible for that sector, I met with three inmates there, young women between 21 and 23, who were serving minimum sentences

of seven years — and no one is condoning this — for crossing the border with a small amount of marijuana. Under the provisions of our Criminal Code at the time, the minimum sentence was seven years. I had received a letter from the judge in charge of that case, after he handed down the sentence, in which he said that it was appalling — and this is the second time today I have used that word — to think that he had no latitude and no choice other than to sentence these three young women, who should have been at Queen's University, not in the Kingston prison. He said that if he had had a choice, considering the entire case, the last thing in the world he would have done was to send them to prison for seven years.

I want to use the argument by Senator Andreychuk, who, in response to Senator Joyal, agreed that the Department of Justice itself says there is no evidence that minimum sentences deter people from criminal activity. She said, "We could not get information because no one collected statistics." If we do not know, then we should instead follow the example of other countries, including England, Australia and South Africa, which, in legislating minimum sentences established what is called a permissible departure clause, which allows a judge to look at the facts and decide whether or not, subject to appeal to higher courts, applying the mandatory sentence is appropriate. With minimum sentences, no latitude is given to the court. The court has no choice but to impose that sentence, regardless of the situation.

We would have stood to gain by introducing this type of clause. It shows a lack of confidence in Canadian judges to say that we are taking away from the trial judge in every case any possibility of reducing the sentence.

Allow me to cite — perhaps Senator Joyal has already done so — a short excerpt from the Criminal Lawyers Association position paper:

[*English*]

> For example, in England when dealing with certain firearm offences, judges are required to apply mandatory minimum sentences unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so. Clauses of this nature are also in use in Scotland, Australia and South Africa.

[*Translation*]

We are refusing to provide this type of latitude, which exists in some very civilized countries, surely as civilized as ours, that certainly have as many problems with crime as we do but where they nevertheless say, let us give judges a certain amount of discretion when judging any individual's case.

Furthermore, most of the experts we heard explained that minimum sentences are not a deterrent and that it is the fear of being caught red-handed that makes criminals think twice about breaking the law. This provision seeks to put citizens in jail without ever addressing the underlying reasons for committing the crimes or the issue of the rehabilitation required to return them to society after they have served their sentences.

The one thing I learned when I was Solicitor General in the 1970s is that those who go to prison get out one day and if they are not given the means to rehabilitate themselves, they will return to prison in short order. The bill does not provide any measure to deal with that.

The government will increase the burden on the system and on Canadians without having made an effort to consider other options focused on prevention rather than incarceration.

I would like to quote from the presentation given by Elizabeth Fry Society representatives, who spoke of the "three strikes you're out" system to which Senator Joyal referred. They cited a study by the Rand Corporation — since Senators Mahovlich and St. Germain have spoken about schools — which refers to the California experience. I am convinced that Senator St. Germain, who stated that he is not partisan in this debate, would accept the results of a study — not one of our own — undertaken by the Rand Corporation, which has a great deal of credibility. This study was conducted in 1996, following the entry into force of the third strike provisions in California. It showed that the portion of the government budget allocated to the correctional system had increased from 9 per cent to 19 per cent and that, because of this increase, the government had to reduce by 40 per cent its envelopes for essential resources such as education, health, workplace safety and environmental and social services.

This proposal will have consequences. I agree with Professor Waller of the Institute for the Prevention of Crime, who appeared before the committee and concluded, among other things:

[*English*]

> The Minister of Justice stated that Canadians have told us they want to see action. I could not agree more, but what they are looking for is action that works.
>
> It is action that is evidence-based, not action taken out of the air to try to meet some situation about which we all feel terrible and emotional, that we regret or that we think ought to be punished. It has to be evidence-based action. Otherwise, this is purely a smokescreen that will eventually dissipate and Canadians have been comforted for a short time by this type of legislation. Finally, we will see that this legislation does not work.

[*Translation*]

Speaking of the minister, he told us that he had listened to what police officers and provincial attorneys general had to say about Bill C-2. I am glad that the minister is giving the viewpoints of the Association of Chiefs of Police due consideration, and I recognize the very important work that police forces do in our society. Nevertheless, I would like to know why he ignored these same people when they told him to keep the gun registry because it is working, and when they told him not to do away with the importer's responsibility to identify weapons entering the country.

I would like him to listen to them on both of these issues. It is all very well to make things illegal and punish people, but this bill completely ignores preventive measures.

Honourable senators, this bill's provisions will have a significant impact on our legal and penal systems. It would have been prudent to include, at the very least, a provision to study the effects of these amendments later on, but the bill falls

short there, too. We were within our rights to expect more than that from a justice minister who told the Senate that the work was done well and was in no need of improvement.

[*English*]

If the Senate had been allowed to do its work, if it had not had the guillotine of a potential election ready to chop off our heads if we dared propose amendments, we could have made this a better bill. I would like to think that, working together, we could have made a bill that both sides of this house could have actually supported. It would have been a better bill for Canada and it would have been a better bill all around.

However, the government wanted its bill. The government did not want to hear and act on evidence from those in the know. They wanted action and, in doing so, they not only turned a deaf ear to any evidence brought forward by the experts at our hearings but also came very close to going beyond the Constitution to threaten the Senate should it dare make amendments to this legislation which we all know is terribly flawed.

[*Translation*]

Yes, we are against any form of violent crime. I do not want anyone to tell us, as they have, that if we propose amendments or delay this bill, it means we support — and that is a bit of a stretch — sexual predators or violent crime.

Senator Prud'homme: That is ridiculous!

Senator Fox: I think that Senator Prud'homme, who spent a few hours with the committee, although I will not make him tell us what he did not say, was shocked to see this kind of thing.

Honourable senators, we had an opportunity to present an excellent bill. We missed that opportunity. It turned into an attempt to silence our country's democratic institutions.

• (1630)

[*English*]

Hon. Marcel Prud'homme: I wish to ask the honourable senator a question.

The Hon. the Speaker: Senator Fox will have to receive an extension on his time as his 15 minutes has expired.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Are you asking for an extension?

Senator Fox: Yes.

Senator Comeau: No more than five minutes.

The Hon. the Speaker: Five more minutes.

[*Translation*]

Senator Prud'homme: Honourable senators, I do not understand why, just because a person strongly opposes a bill, as I do, someone can put a gun to his or her head. All honourable senators know my opinion on the matter. I cannot accept the comments made by Minister Van Loan.

The minister told us that he is entitled to his opinion like any other citizen. I did not react fast enough, but I could have risen and said, yes, it is true that Mr. Van Loan is a citizen like everyone else; that he is entitled to his opinions on the Senate, except that when he speaks, he is also a minister of the Crown. As such, he speaks on behalf of the Crown. I was not quick enough that day.

My only question here today, which is causing my dilemma, has to do with the fact that I am against the bill, but I think it will be very difficult to vote against it. Who will vote for or against it without going against the current will of the government? It is a problem for others, I think, as much as it is for me. But I do not know, since I do not belong to any of the political parties of this place. Not to worry, I will speak to another bill tomorrow. I say this to calm those who are worried about the leadership and who are watching me. Can you help me in my dilemma? How can one be justifiably against it and not vote because the House of Commons decided that we should give in? I have a very hard time giving in, so you can imagine my predicament.

Senator Fox: I do not know if I can provide Senator Prud'homme with the kind of answer he is looking for, but I think that right now, there is a credible threat that this bill will be deemed a matter of confidence and will trigger an election if we do not pass it. It is our duty to protest this way of doing things.

Senator Prud'homme has a great deal of international experience, but how will he explain Canada's democratic institutions to people in other countries in light of the fact that, despite our Constitution, which has been in place since 1867 and which confers certain powers on the Senate and the House of Commons, a government can completely ignore those powers, say that the Senate does not exist, and force the Senate to pass its bills? I think any senator would be hard pressed to prove that we live in a democratic country that obeys its own Constitution.

Senator Prud'homme: Honourable senators, I have one final supplementary question. I hope that the government authorities over here count the votes very carefully, because I have no qualms about telling everyone that if there is a vote, I will vote against this bill. I suggest that you add up your votes very carefully, because I do not want you to be taken by surprise. If there is a vote, I will vote against the bill. Do the math with that in mind. I cannot predict what will happen, because I was not in on the negotiations between the two major parties.

[*English*]

Hon. Mobina S. B. Jaffer: Honourable senators, I also rise today to speak on Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts.

The question of crime and punishment is at the very heart of life in a civil community. It represents the most basic and profound responsibility entrusted to parliamentarians. The definition of behaviour that is harmful to the community and the creation of fair and effective sanctions are matters of first principle. Without respected and respectable criminal sanctions, the order that is a precondition for everything else we do as a society cannot be effectively maintained.

Honourable senators, the issue I address today is the question of mandatory minimum sentences. There are already about 40 offences in the Criminal Code for which a mandatory minimum sentence of imprisonment must be imposed. The government would significantly expand the number of offences to which such minimums would apply.

Let me say first that the Criminal Code provides a detailed set of sentencing guidelines in section 718 to 718.2. It is interesting to return to them from time to time, especially when a particular sentence comes to the attention of the media or becomes the subject of comment by politicians.

Sections 718 states:

> The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (*a*) to denounce unlawful conduct;
>
> (*b*) to deter the offender and other persons from committing offences;
>
> (*c*) to separate offenders from society, where necessary;
>
> (*d*) to assist in rehabilitating offenders;
>
> (*e*) to provide reparations for harm done to victims or to the community; and
>
> (*f*) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Section 718.1 states:

> A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

These sections, honourable senators, are qualified in section 718.2, however, by other principles the court is obliged to consider. Section 718.2(*b*) to (*e*) read as follows:

> (*b*) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (*c*) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (*d*) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (*e*) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Honourable senators, I wish only to make this simple observation: Our law respecting sentencing presently requires the courts to work upward from a presumption that deprivation of liberty is to be avoided. Incarceration is the last resort and not the first.

The philosophy reflected in the Criminal Code obliges the court to take a temperate approach. It virtually guarantees that sentences will generally reflect the least degree of punishment consistent with the overall principles of sentencing. In line with this philosophy, the courts, in particular the appellate courts who guide the trial courts, have articulated principles that reserve the highest sanctions for the worst sort of offenders within any given class of offence.

Mandatory minimum sentences run quite contrary to these principles which we, as legislators, have prescribed. They take away the means by which courts do justice in individual cases. They upset the presumptions set out in the principles of sentencing and create a patchwork of exceptions that appear arbitrary. "One size" never fits all human beings. This is not a cookie-cutter approach. This is to have the effect of being arbitrary.

If Parliament wishes to modify the emphasis in sentencing, a far more rational approach would be to modify the basic principles while leaving the discretion to the judges to do justice in individual cases in light of those modified principles.

Instead, the government proposes the crude mechanism of overriding the existing sentencing principles for classes of offence that they have chosen. This means that, instead of all offences being treated consistently and the punishment fitting the crime, the crime defines the punishment, regardless of whether it is fitting. This reduces the judicial role to nothing more than reading aloud; in my opinion, to bean counting.

Honourable senators, our judges are not bean counters. I believe that we have a highly-qualified judiciary, possibly the best in the world. One hears from some quarters that it may be a good thing to reduce judicial discretion. The implication is that judges are not hard enough on criminals. It is difficult to see how judges can be faulted for following the guidelines that they have been given. However, that guidance makes it absolutely clear that everything short of imprisonment must be considered.

• (1640)

Apart from riddling the law with exceptions to established sentencing principles, thus rendering the law contradictory if not incoherent, there are a number of other serious drawbacks to mandatory minimum sentencing.

It is often said that one advantage of mandatory minimum sentences is firm and consistent sentencing. In practice, however, the possibility of a mandatory minimum sentence often results in charges being stayed or withdrawn, or a plea negotiation to a different or lesser charge because prosecutors consider a mandatory minimum to be too harsh. When this happens, decisions regarding appropriate punishment are transferred from the judiciary to the Crown in a process that is far less consistent and far less open to public scrutiny than any exercise of judicial discretion.

It must be remembered that judges do their work in public and that their decisions are subject to appeal. Honourable senators, that is not true of discretion transferred to the Crown. In many cases as well, mandatory minimum sentences give the accused no incentive to plead guilty, which inevitably results in longer and more costly trials.

Needless to say, to the extent that mandatory minimum sentences lengthen periods of incarceration, they also divert scarce public funds away from other, in my view, more useful crime prevention and law enforcement initiatives.

There is significant evidence from other jurisdictions that mandatory minimum sentences have had a disproportionate effect on minority groups. I reiterate that the sentencing principles found at section 718.2 of the Criminal Code require the court to consider that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders. Mandatory minimum sentences completely negate these important considerations.

There is, moreover, no persuasive evidence that mandatory minimum sentences are effective in deterring crime. Several jurisdictions, including Michigan and the Northern Territory of Australia, have had negative experiences with mandatory minimum sentences. The negative impacts include an unacceptably high number of examples of fundamental unfairness, wrongful convictions and increased incarceration rates for ethnic minorities, Aboriginal people and women. There has been no discernible deterrent effect. Senator Cowan has already covered that issue.

There are several studies by various government commissions in this country to the effect that we already have problems with systemic racism and the enforcement of our criminal law. Mandatory minimum sentences exacerbate these trends and run directly contrary to the fundamental principles of sentencing I have outlined.

All the available evidence suggests that mandatory minimum sentences are an idea whose time has come and now gone. Public opinion polls universally show that reflexive public support for such notions as three-strikes-you-are-out sentencing dwindles when respondents are asked to consider the consequences in individual cases.

Jurisdictions that have tried mandatory minimum sentencing are now repealing or amending those punitive laws. Michigan, having tried mandatory minimums, has moved back to flexible, judicially-tailored sentencing as a result of several factors, including a shift in public opinion from strict sentencing as a result of the attention attracted by widely publicized examples of excessive punishment for minor repeat offences; and to a consensus among criminal justice professionals that mandatory sentences tend to increase prison populations even while crime rates are declining.

In brief, mandatory minimum sentences are yesterday's response to serious crime. They have been tried and they have failed in jurisdictions not unlike our own. There is no cogent evidence that they reduce crime rates. Such laws do little to promote public confidence in the sentencing process because they too often result in notorious sentences that appear manifestly harsh and oppressive.

Honourable senators, we should not repeat mistakes others have made before us. We should, rather, learn from those mistakes.

In closing, I restate that the way to modify sentencing is to adjust the principles of sentencing, if necessary. It is not to introduce a patchwork or a mosaic of exceptions to our existing temperate principles, or to remove from judges the ability to do justice in each individual case.

Mandatory minimums directly contradict the existing principles of sentencing and inevitably and needlessly create injustice. They negate the very objectives they purport to promote.

Senator Baker: Honourable senators, in the last two bills the Senate has addressed in which we have been under time constraints, one of which was imposed by a decision of the Supreme Court of Canada due to the eight-month delay in introducing the bill and the three-and-a-half months it took in the House of Commons. That left us with two-and-a-half weeks to deal with a bill that dealt with the Charter of Rights and Freedoms.

We are now under another time restriction. After hearing witnesses, we have been given three days in order to make amendments and to pass all the necessary stages under our parliamentary rules for dealing with the bill adequately, as the law dictates. The fact of the matter is, honourable senators, this gives us no time to make amendments. It is physically impossible to meet those time requirements and give the bill the judgment that it should be given.

Honourable senators, in times like this, it should be the House of Commons that should be under the gun and not the Senate of Canada.

Some Hon. Senators: Hear, hear!

Senator Baker: As I passed Senator Grafstein's chair this afternoon, I noticed that he had an argument drawn up to support a bill that he has introduced in the house. The first quote that he has on his paper references a Federal Court of Canada decision that highlights His Honour, Senator Andreychuk and Senator Bryden.

What do these three people have in common? They were all members of a special committee of the Senate that reported in 1999 on the security provisions in our law, which was commonly referred to, I believe, as the Kelly report. The deputy chair of the committee was Senator Bryden, and His Honour and Senator Andreychuk sat on that committee.

Senator Segal: Hear, hear!

Senator Baker: That report is the most referenced report of any parliamentary committee, including the House of Commons and the Senate. I include the House of Commons in this reference but, to be quite honest, I did a search one day through the electronic versions of how to access case law and I could not find one House of Commons committee that was repeatedly referenced by the courts in Canada.

Senator Segal: Shame!

Senator Comeau: Shame!

• (1650)

Senator Baker: However, there are many Senate committees. Senator Grafstein was using this committee to support his argument. The Federal Court of Canada said that the Senate Special Committee said that the definition of "terrorism" is an ever-changing phenomenon. Lower on the page, Senator Grafstein quotes the Supreme Court of Canada in *Suresh*, referencing the committee again, because that was overturned by the Supreme Court of Canada. Later, to buttress his argument, Senator Grafstein quotes the Supreme Court of Canada as saying that, after examining the committee report, it is up to Parliament to provide a more definitive or direct definition of "terrorism." That is in the immigration legislation and, in their analysis, they applied it to the Criminal Code as well. I note that Senator Grafstein then uses case law from this year to show that it is being referenced today to ground decisions in the Federal Court of Canada.

In a recent decision, Justice Rutherford, of the Ontario Superior Court of Justice, struck down a section of the Criminal Code that another committee of this place, chaired by Senator Smith, recommended that they could not put this in the definition in the Criminal Code. The government did and now we have the Ontario Superior Court of Justice striking it down.

About four months ago, their application for leave to appeal was refused by the Supreme Court of Canada. Honourable senators, these references to committees of the Senate are an indication of how closely our committees are followed by the courts.

Do honourable senators recall Mr. Richard Mosley, a rather famous bureaucrat, a deputy minister, who was appointed a judge of the Federal Court of Canada? An argument was put forward for his recusal. Why? Because the chair of the committee, I presume Senator Smith, had referenced Mr. Mosley. I will read from the *Khawaja* case. Mr. Greenspon's letter cites the chair of the Senate committee having described the judge's role. Judge Mosley said that Bill C-36 was key in the drafting of the anti-terrorism bill. He said that Mr. Greenspon asked, in consideration of the constitutional question before the court and the circumstances and focus on the case, that the judge recuse himself from any further hearing on the application.

Honourable senators can see how far this goes. Even what the chair says in introducing a witness is addressed in some of these court decisions to have Mr. Mosley recuse himself from the entire case. The court faced the question of whether Senator Smith was correct or incorrect in what he said. The judge, of course, ruled that he was incorrect and refused to recuse himself from the case.

I mention this to say that everything done by Senate committees is reflected in our court decisions. It can be seen in case law on a daily basis, but you cannot see this of committees of the House of Commons. I suppose there is a logical reason — having spent 29 years in the House of Commons, I know well that the House is a place of politics, not law-making. The Senate is a place of law-making and it is here that we examine the government's proposed legislation. Our courts and our lawyers go to the Senate to find out what the proposed legislation means and the intent of the government and, at times, what is wrong with the law and the defences that are available under legislation.

It is said that this is a place of sober second thought and that the Senate must show deference to the lower chamber as the deciders of fact in that they are elected just as the foundation of every quasi-judicial body in this country has founded deference to the trier of fact. However, in these circumstances, the House of Commons should, in the future, think twice before it puts this chamber under the gun and does a great disservice to the law in this country.

Senator Grafstein: Honourable senators, I will be brief in touching upon two points. One point raised by the Honourable Senator Joyal is the question of the role of the Senate as it relates to constitutional matters.

There has been real and fair criticism that the courts have usurped parliamentary responsibility in law-making, which is a valid point. However, it is only made more valid if both Houses of Parliament decide that they cannot deal with matters of constitutional complexity and are prepared to allow the courts to deal with these matters.

On the one hand, it is inappropriate for us to criticize the courts for being politically activist, which I have some question about because at times the courts do not show the proper restraint, which surely was not the intent of Mr. Trudeau when we passed the Charter. On the other hand, it is unfair for the courts to say that we cannot deal with constitutional matters when we pass legislation, perhaps on division, about which a majority of committee members claim serious and substantive constitutional questions. We cannot have it both ways.

Some senators will recall that when we rush to judgment, following Senator Baker's point, we are always wrong. I refer to the terrorism bill and the extradition bill. The latter passed all stages in the House in a day or so. It came to the Senate and we were compelled by the leadership on this side — we were the government at the time — to pass the bill. Senator Joyal and I took a careful look at the bill and others joined us. Ultimately, we were compelled by our leadership to pass the bill, but not after two or three months of debate in this chamber to elucidate the issues. Senator Joyal and I decided that at third reading, having opposed the bill at every stage because it was unconstitutional, we would not appeal to the goodness and graciousness of this chamber but, rather, that we would appeal to the Supreme Court of Canada. We couched our arguments in a way that would deal with the Supreme Court of Canada. We sent the relevant Hansard to the Supreme Court of Canada and, lo and behold, the Supreme Court of Canada upheld our position and ruled that piece of legislation unconstitutional because it allowed a Minister of Justice to return a Canadian to a death state.

Here, we have a similar circumstance. We are now imposing on the courts to correct the mistakes that this chamber makes. Those senators on the other side that choose to do this, fine. That is their will, their right and their privilege but it places the Senate in an invidious position of forcing the courts to clean up the mess of Parliament when, on the face of the report, we know that there

are serious, substantive and egregious constitutional arguments. I will not repeat the arguments of Senator Joyal, Senator Baker or Senator Cowan; however, at the end of the day, beware, *caveat emptor*. This is the wrong way to go. Many of us will hold our noses. Many of us will disappear. Many of us will abstain. Some will vote against this bill, but I cannot believe there will be one senator in this place that will leave the Senate feeling that his hands are clean.

• (1700)

Hon. Tommy Banks: Honourable senators, I think there will be a vote forthcoming. It will be very short; it might be a voice vote. I intend to vote against this bill and wish to place that on the record. I do not know how anyone sitting here having heard the arguments today and read the attachments could do otherwise.

Hon. Charlie Watt: Honourable senators, Bill C-2 would amend the Criminal Code in order to tackle violent crimes. To achieve this goal, the bill provides new guidelines for detecting impaired drivers, raises the age of consent for sexual activities, provides stiffer sentencing for repeat dangerous offenders, provides mandatory minimum sentences for offenders, and reverses the onus of proof when one is declared a dangerous offender.

Here are some concerns that emerged from the Senate committee hearings. The effectiveness of Bill C-2 is based upon whether there are statistics and data to support an amendment, either locally or internationally.

With respect to the constitutionality of reverse onus in the case of dangerous offenders, if there are any impact studies on those proposed amendments, no satisfactory answers have been provided to support those concerns. On the contrary, many witnesses were skeptical and expressed doubt that those amendments would in fact make a difference in tackling violent crime.

Many witnesses were of the opinion that Bill C-2 is not a panacea to reduce crime. This goal must include education, information, communication, campaigning, treatments, programs and rehabilitation.

What transpired from those hearings is that there are no rehabilitation programs available in maximum-security prisons, and financial resources for programs have been reduced by 26 per cent in the past year. There is an additional problem for Aboriginal people: There are no specific programs adapted to Aboriginal peoples taking into account their culture and traditions.

Honourable senators, I fully understand the complexity of this situation, but I strongly believe that to adopt Bill C-2, without any substantive studies, data or statistics backing it up, is not wise. Criminality is a serious matter, and we have to act responsibly in order to ensure the safety of all Canadians.

Honourable senators, another important point that I want to bring to your attention regarding Aboriginal peoples is this: At the hearings, it was stated that Aboriginal people represent 21 per cent of the incarcerated population across Canada. This is an impressive number. However, we cannot ignore the fact that many Aboriginal people are not very familiar with the criminal justice system, particularly Inuit people in the North. They do not even know that they have the right to full defence and they do not know the consequences of pleading guilty. There are no rehabilitation programs available to them, and, as I mentioned before, financial resources have been reduced by 26 per cent in the past year. In remote areas, financial resources are not available at all.

Honourable senators, I am very concerned about adopting Bill C-2. As we already have a number of people incarcerated as repeat offenders, what will happen to those people? Will they be considered dangerous offenders under Bill C-2? We were told at the Standing Senate Committee on Legal and Constitutional Affairs that, yes, they will be considered serious offenders and that this would create a massive problem.

In my view, adopting Bill C-2 is not in the best interests of the public at large. I, for one, will vote against this bill.

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

Hon. Senators: Question!

The Hon. the Speaker: It is moved by the Honourable Senator Stratton, seconded by the Honourable Senator Gustafson, that the bill be read the third time now. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: The Chair has been asked to put the question more formally, which I will do.

All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Senator Stratton: Thirty-minute bell. There are committees sitting. They are in the Victoria Building, so we will have to suspend committees and get senators back here on time.

The Hon. the Speaker: The vote will take place at 5:40 p.m. Is it agreed, honourable senators? Do the whips agree that the vote will take place at 5:40 p.m.?

Senator Stratton: Agreed.

The Hon. the Speaker: Call in the senators. Does the Chair have permission to leave?

Hon. Senators: Agreed.

• (1740)

Motion adopted and bill read third time and passed, on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Angus	Meighen
Brown	Nancy Ruth
Cochrane	Nolin
Comeau	Oliver
Di Nino	Segal
Gustafson	St. Germain
Johnson	Stratton
Keon	Tkachuk—19
Kinsella	

NAYS
THE HONOURABLE SENATORS

Banks	McCoy
Campbell	Merchant
Cowan	Milne
Dyck	Moore
Fox	Murray
Fraser	Prud'homme
Joyal	Spivak
Massicotte	Watt—16

ABSTENTIONS
THE HONOURABLE SENATORS

Adams	Grafstein
Bacon	Harb
Bryden	Hervieux-Payette
Callbeck	Jaffer
Chaput	Mahovlich
Cook	Mitchell
Cools	Munson
Corbin	Pépin
Cordy	Peterson
Dallaire	Phalen
Dawson	Sibbeston
Day	Smith
Downe	Stollery
Eggleton	Tardif
Fairbairn	Trenholme Counsell—31
Furey	

AGRICULTURAL MARKETING PROGRAMS ACT

BILL TO AMEND—SECOND READING

Hon. Leonard J. Gustafson moved second reading of Bill C-44, An Act to amend the Agricultural Marketing Programs Act.

He said: Honourable senators, I am pleased to rise in support of the proposed legislation. Our livestock producers across the country, the people who put meat on our tables and produce 23 per cent of farm cash income receipts, need their government to take action to help them get through the perfect storm that is threatening their livelihoods.

Canadian livestock producers know their business. They are resilient. They adapt to their economic environment and they are productive. These should be the keys to ongoing success, but other factors have come into play.

Since 2003, cattle producers have had to cope with the fallout of the BSE crisis and have also been hit with drought in some areas of the country. On November 19, the industry received the long-awaited good news that the U.S. border was opening to older cattle. This was also good news for our world-famous genetics industry, which can, once again, gain access markets to the south. I might say at this point that good breeding stock went both ways, both into Canada and into the U.S., and did a great deal for the livestock industry.

However, as we know, a number of other pressures have come to bear. The rise of the Canadian dollar has adversely affected the earnings of this export sector of Canadian agriculture. Record high feed and input costs have increased the cost of production, while the normal cycle of production and prices have troughed.

Honourable senators, this is a "perfect storm." The government, in fact, all Ministers of Agriculture across Canada, have taken the situation facing our livestock producers very seriously. They are determined to get help to the livestock producers through existing programs quickly.

The Government of Canada has done the following to address the crisis: First, the new AgriInvest program is delivering $600 million in federal funding to kick-start producer accounts. These payments are now being made to our producers. These accounts will help farmers weather small drops of cash flow.

The government will make more help available with interim payments and targeted advances under AgriStability, the new margin-based program. AgriStability includes many improvements requested by the livestock sector such as border eligibility criteria for negative margin coverage; the Targeted Advance Payment mechanism to respond to disaster situations; and a better method of valuing inventories.

Together, these changes are helping to ensure the program is more responsible to losses in the livestock sector. This is real action to give the livestock industry some of the help that is needed.

Targeted Advance Payments have already been triggered for hog producers in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia.

• (1750)

Interim payments are available for those who are not eligible for the TAP payment. We all know that producers have to be able to access the program payments in a timely fashion. That is why the government is fast-tracking deliveries of payments through existing programs.

The Minister of Agriculture and Agri-Food is working with the provinces to fast track payments for the 2008 AgriStability TAP payments, the 2008 interim payments and 2007 final payments. In fact, from late 2007 through 2008, nearly $1.5 billion in cash payments are expected to flow to the livestock producers through existing and new programs.

Honourable senators, the bill we have before us today is about enhancing the Advance Payments Program under the Agricultural Marketing Program Act. Those enhancements will provide real help for producers by removing the BRM security requirements for livestock producers so they may use their animals as collateral to access advance payments of up to $400,000 — a major move for the industry — and by increasing the amount of the emergency advance available for situations causing severe economic hardship. The increase will be from $25,000 to $400,000, $100,000 of that which will be interest free.

In addition to this legislation, this government is also investing $50 million in the Cull Breeding Swine Program to provide a per-head payment for each animal, plus a reimbursement to cover the slaughter and disposal costs. These measures will help to restructure the industry and make it more competitive.

As well, the government will work with industry and review meat inspection user fees to assess their impact on competitiveness in the sector.

The Government of Canada is also working to reduce costs and increase competitiveness under Canada's enhancement feed ban. One of the biggest problems faced by producers is the increase in price for feed while prices for their livestock have gone down. This complements the federal government's commitment of $80 million to help the industry adjust to new feed standards.

Honourable senators, there is no doubt that the livestock sector is in difficulty. Amending the Advance Payments Program under the Agricultural Marketing Program Act is one tool that will help livestock producers weather the storm. The Cull Breeding Swine Program is another. It will assist hog producers in dealing with current pressures and in preparing for the future.

On the theme of preparing for the future, government and industry have also been working together to identify ways to help industry position itself to be competitive in the long term, including increasing pork and beef sales abroad and bringing innovative feed grain inputs and products to market more rapidly.

Honourable senators, in rising to support this bill, I have given you a snapshot of the problems facing the industry and the decisive steps this government has taken to help our livestock producers get through a very rough period. The legislation before us is an important part of a comprehensive strategy that will provide assistance in the short term and help hog producers plan for the future.

Honourable senators, I urge you to pass Bill C-44 and demonstrate your full and immediate support for this struggling industry.

Hon. Robert W. Peterson: Honourable senators, I am pleased to rise today to speak in favour of Bill C-44, an Act to Amend the Agricultural Marketing Programs Act and ask for your support.

On November 27 of last year, the Canadian Pork Council appeared before the Standing Senate Committee on Agriculture and Forestry. They advised us of the "perfect storm" facing hog producers in the form of high feed costs, low hog prices and a rapidly rising dollar. We were told that losses per pig are now exceeding $50 per head. Thus, a 500-sow operation is losing over $25,000 per month. Trade credit is at the limit, operating credit from financial institutions is no longer available, equity is disappearing and there is growing desperation in rural Canada.

Canadian hog producers need time to adjust and assess their options. Without some form of interim financial support, the industry faces certain collapse. Many of the best and most efficient operations are thinking of calling it a day, hoping to exit with some pride before they are forced into bankruptcy.

Bill C-44 amends the Agricultural Producers Marketing Act to improve cash advances for livestock producers. While these changes may not address all the concerns of livestock producers, they will provide useful tools to them to help through the current crisis.

This is not a time for words; it is a time for action. I urge honourable senators to join with me in supporting this legislation.

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

Hon. Senators: Yes.

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 Gustafson, bill referred to the Standing Senate Committee on Agriculture and Forestry.

The Senate adjourned until Thursday, February 28, 2008, at 1:30 p.m.

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