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OFFICIAL REPORT
(HANSARD)

Monday, June 22, 2009

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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

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THE SENATE

Monday, June 22, 2009

The Senate met at 4 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

KINGSTON GENERAL HOSPITAL

Hon. Hugh Segal: Honourable senators, a week ago in the United States Senate, Senator Mitch McConnell, the Republican senior senator from Kentucky, made a speech opposing health care reform proposals advanced by the Obama administration. In that speech, he chose Kingston General Hospital as his example of all that is allegedly wrong with Canadian universal health care.

Perhaps unwittingly, Senator McConnell distorted, misrepresented and misstated how long KGH patients might wait for surgery. I have a duty as the senator from Kingston-Frontenac-Leeds to correct him on the floor of this chamber.

Thanks to Saskatchewan NDP Premier Tommy Douglas, Conservative Prime Minister Diefenbaker and Liberal Prime Minister Pearson, we developed a tenet of national health policy that has served millions of Canadians extremely well. Nothing is beyond improvement. However, Canada has a health care system that allows total access to every Canadian citizen or permanent resident, regardless of their province or territory, and regardless of their financial circumstances.

Everyone is entitled to their own opinion, but no one is entitled to their own facts. Unfortunately, Senator McConnell's facts and statistics were absolutely incorrect. He informed the United States Senate that there is a 196-day waiting period for hip replacement at KGH. The actual number is 91 days. He stated that it takes 340 days, on average, for knee replacement surgery. The actual number is just over 100. He maintained that cancer surgeries, including brain surgery, can take upwards of three months. At KGH, the waiting period is eight days for neurosurgical cancer, 16 days for breast cancer and 49 days for prostate cancer.

Senator McConnell said that patients in Ontario may wait six months for cardiac bypass surgery. The median wait time, thanks to the outstanding work done by Dr. Keon many years ago, is actually 16 days.

I am troubled that my American colleague, in his misrepresentation of a proud institution that has served Kingston for 170 years, has compelled me to remind him that, according to the American Institute of Medicine, there are 48 million Americans without health coverage of any kind, 9 million of whom are children. Without health insurance, a total hip replacement will cost, on average, $39,299 U.S., according to Blue Cross Blue Shield. Even with health insurance, the out-of-pocket costs for Americans for deductibles and co-insurance will typically be $3,957.

I am putting on the record accurate and current facts and figures relating to the same procedures referenced by my American colleague. I add that, according to the U.S. Census Bureau, the average lifespan in his state of Kentucky is 75.2 years. According to Statistics Canada, that number is 80.4 years in Ontario and 78.3 years in Kingston. Furthermore, according to the Fraser Institute, in a recent study, the U.S. spent $6,714 per capita versus $3,678 in Canada in 2004.

Finally, while Canada is struggling to meet the ever-increasing demands and costs of our health care system, no Canadian will need ever declare bankruptcy to obtain life-saving treatment for their son or daughter. This fact makes the struggle worthwhile.

I regret that Senator McConnell found it necessary to "inform" the American public of the hazards of universal health care by maligning a most professional, dedicated and capable institution such as the Kingston General Hospital.

INUKTITUT IN THE SENATE CHAMBER

Hon. Charlie Watt: Honourable senators, today I will speak to you in Inuktitut and in English.

[*The honourable senator then spoke in Inuktitut.*]

I rise today to thank you for your support regarding the use of Inuktitut in the Senate chamber. This initiative was raised by Senator Corbin in 2006 and was championed by Senator Corbin and Senator Keon, for which I am grateful.

[*The honourable senator then spoke in Inuktitut.*]

Today is Senator Adams' birthday and day of retirement. Tomorrow, I will be the only Inuk in the Senate. I will count on the skills of the interpretation team to convey my message to honourable senators when I wish to speak to my people in the North. Some of my people do not speak English or French, and, for them, our Hansard is not very useful.

[*The honourable senator then spoke in Inuktitut.*]

For those who cannot read English or French, they can replay my Inuktitut version on the Internet. They can find this information by viewing my page on liberalsenateforum.ca. This is one of the ways that I am making our Senate more accessible to the Inuktitut-speaking community.

• (1610)

[*The honourable senator then spoke in Inuktitut.*]

I would like to thank the Clerk of the Senate, the Senate administration and the Department of Public Works for their support of this pilot project, and the interpretation team for their patience and professionalism.

[*The honourable senator then spoke in Inuktitut.*]

When we reconvene in the fall, I will look forward to speaking to you again in my mother tongue.

I thank all honourable senators for working together on this special project that is important to all of us.

[*The honourable senator then spoke in Inuktitut.*]

Honourable senators can be assured that our community is very proud.

ELECTRONIC VOTING

Hon. Stephen Greene: Honourable senators, I begin by thanking His Honour for wisely cutting me off last week during my statement on electronic voting as I approached the bewitching time limit of three minutes. No doubt, you will recall that I was waxing on the waning of voter participation in Nova Scotia and, by extension, Canada.

The Nova Scotia election on June 9 had a record low turnout of 58 per cent, despite the fact that it was an historic election with the issues clear to all voters. There were real reasons for Nova Scotians to vote this time but they did not, in record numbers, with many ridings turning out less than 50 per cent of the vote.

Last fall, there were municipal elections in Nova Scotia. Some districts like mine were given the option of electronic voting for mayor, councillors and school board officials. I voted from my laptop at about 11 p.m. one night. For the positions I had no opinion on because I did not know the people running or what they stood for, I could choose not to select, thereby voting not to vote.

The whole experience took me about three minutes — three minutes for multiple candidates in multiple elections versus the seventy minutes it took me to vote for one person in my advance poll. Electronic voting was a wonderful experience.

I have become an advocate of electronic voting by Internet, telephone or your favourite hand-held device. For some people, voting is already too tedious and time consuming for them to bother. I believe that, over time, physically going to a poll will become increasingly tedious, especially in relation to the rest of the things we do in our busy lives. I fear that our democracy is diminishing because of lack of participation. Electronic voting, coupled with proper civics education, can save our democracy.

There is a Nova Scotia company called Intelivote Systems Inc. — a world leader in electronic voting. Intelivote has managed many electronic elections in the United Kingdom and other countries, as well as Nova Scotia's municipal elections last year. It has recently won a contract to manage the electronic portion of the Romanian presidential elections later this year.

Honourable senators, the technology is proven, available and Canadian. I urge all municipal and provincial governments to run experiments on electronic voting in their next elections. Eventually, there should be electronic voting in federal elections. Electronic voting is our future; let us embrace it.

MACKENZIE RIVER BASIN

Hon. Nick G. Sibbeston: Honourable senators, last month at their annual general meeting in Inuvik, the Northwest Territories Association of Municipalities passed a resolution dealing with the protection of N.W.T. water resources from the development of oil sands in Alberta. The Dene Nation, at its leadership meeting in February, passed a similar resolution.

The resolution expresses a widely held belief that the Government of Alberta and the Government of Canada have not managed the Alberta oil sands in a sustainable way that protects the environment of downstream communities. There are concerns about both the quantity and quality of the water flowing into the Mackenzie River Basin from the Athabasca River.

Although the Mackenzie River Basin Board was established in 1997 as a result of a transboundary agreement between Canada, the three provinces and two territories within the watershed, this body seldom meets and is widely regarded as toothless. Nevertheless, the existence of this board recognizes one undeniable fact: Watersheds do not respect territorial, provincial or even national boundaries.

Although the Mackenzie River lies entirely in Canada, like most rivers, its water flows through several jurisdictions. Many of our other great rivers also cross into the United States.

Water is already a contentious issue in many parts of the world and promises to become even more so in the face of global economic development and climate change. Demand for water will rise even as changing weather patterns make some areas dryer and others wetter.

Although few people envision real conflicts with our southern neighbour, there can be no doubt that water will be a source of friction in our relationship. Lessons we learn from protecting the Mackenzie may prove valuable in future discussions with the United States.

Canada is singularly blessed with supplies of fresh water, but we are entering a period of great uncertainty. Uncertainty demands that we exercise caution in protecting this vital resource. We need to find mechanisms that will help us to protect the ecological integrity of river basins, both national and international, while still allowing development to proceed in a sustainable manner.

Honourable senators, they say that no cloud is without a silver lining. The current recession has caused hardship for many people. However, it may also give us an opportunity to rethink the pace of development in the oil sands and to create better ways to protect our most precious natural resource — water.

CBC/RADIO-CANADA

Hon. Donald H. Oliver: Honourable senators, I rise today to attempt to set the record straight on an issue that has received some attention in this chamber recently. That issue is the funding for the CBC.

Some of my Liberal colleagues have claimed that our government is not doing all it can to support the CBC. I would gently remind those Liberal friends that people in glass houses generally should not throw stones.

Honourable senators, let me make something very clear: The CBC is receiving over $1 billion of taxpayers' money this year, the highest funding package ever given to the CBC. Our government has increased funding for the CBC year after year through four budgets.

Honourable senators, it amazes me that the opposition all too often forgets about its own record in government when it goes on the attack. In 1993, the Liberal Red Book promised "stable multiyear financing for the CBC." Instead, Prime Ministers Jean Chrétien and Paul Martin slashed the CBC's budget by $414 million between 1994 and 1997. Those cuts resulted in over 4,000 lost jobs. The cuts continued after the 1997 election, with the CBC budget reaching a low of $745 million in 1998-1999. The budget is now over $1 billion.

Nine years ago, the Liberals cut regional supper-hour programming across the country. We are not just talking about budget cuts. Many senior Liberals have publicly attacked our national broadcaster on numerous occasions. Former Prime Minister Jean Chrétien even said:

> If CBC were to close its doors tomorrow morning, nobody would be in the street protesting.

The current Leader of the Liberal Party, Mr. Ignatieff, said 20 years ago:

> I see our efforts as a struggle against the assumptions by existing broadcasters, including the CBC, that their audiences are fools who can't think for themselves.

Honourable senators, like any major broadcaster, the CBC is facing challenges from a drop in advertising revenues from the global recession, and from the emergence of new media, including the Internet. However, our government made an election commitment to support the CBC and that is exactly what the government is doing.

Sixteen years ago, the Liberals made a similar election promise to support the CBC and we all know what happened next.

NATIONAL ABORIGINAL DAY

Hon. Lillian Eva Dyck: Honourable senators, National Aboriginal Day was celebrated on June 21, a day to honour the distinct cultures and significant achievements of First Nation, Inuit and Metis peoples of Canada. Today, I congratulate Sharon McIvor, who has been trying to correct discrimination against First Nations women and their children, still embedded in the 1985 Bill C-31 amendments to the Indian Act. Ms. McIvor has been trying to gain status under the Indian Act for her grandson.

The recent ruling of the B.C. Court of Appeal has verified that discrimination against women in the Indian Act with respect to status continues to exist. The Minister of Indian and Northern Affairs has stated that legislation will be drafted over the next 10 months to rectify this situation.

• (1620)

The ruling also struck down sections 6(1)(*a*) and 6(1)(*c*) of the Indian Act, and this has dire implications. Due to this ruling, Chief Wallace Fox of the Onion Lake First Nation in Saskatchewan, estimates that 80 per cent of the members of their First Nation will lose their status as registered Indians.

Over the next 10 months, we must be vigilant to create gender equity with respect to status but not by taking away status from those who were on the Indian registry prior to enactment of Bill C-31 in 1985.

Honourable senators, we are talking about the living reality of our families. The Indian Act has contributed to the breakdown of First Nations families. For example, until 1985, an Indian woman marrying a non-Indian man had to leave her home on the reserve. As a non-Indian, she could no longer live on the reserve. In other words, she had no choice. In today's world, we all believe in choices. Choices should not be denied to someone simply because they are a woman. These women, their children, their grandchildren and so on were separated from their relatives who continued to live on the reserve.

Can you imagine, honourable senators, that if you married someone who was not a Canadian, you would lose your citizenship, be asked to leave your home, and be asked to leave your nation? In essence, this is what the Indian Act did to Indian women.

Honourable senators, Ms. McIvor is appealing the recent court decision, and I commend her strong commitment, determination and steadfast spirit in fighting for gender equity in Indian status. Thank you. Meegwetch.

THE LATE DOUGLAS MATHESON

Hon. Bert Brown: Honourable senators, I rise to speak about a Second World War hero who died last week in an Alberta plane crash. Before he slipped underground with the French resistance and tunnelled deep below the German prison made famous by the failed Great Escape, Doug Matheson simply loved to fly. He started to fly more than 70 years earlier, beginning with his neighbour's plane at the age of 12.

His commitment to perfection as a pilot was evident after he signed up to fly Spitfires in the war, but the war put to the test even the best of pilots. Mr. Matheson was shot down in 1942 over German-occupied France while escorting a formation of American bombers. Mr. Matheson's son recalled that a young German soldier, who was also somewhat wounded, had helped to care for Mr. Matheson and moved him away from the air raids and saved his life a number of times. Mr. Matheson's son said the two of them remained good friends until that fellow died a few years ago.

When British soldiers came to free the town, Mr. Matheson, still severely wounded, was ferried back and forth on a stretcher to help negotiate the surrender.

Once back in Edmonton, Mr. Matheson spent the long months of recovery reading in bed. Over time, he went to law school and ultimately was appointed an Alberta Court of Queen's Bench judge.

Fellow aviator Stan Reynolds said, "He had a strong sense of civic duty, was heavily involved with politics after the war" and, "coming on the heels of seeing what happens with war, he was passionately patriotic."

Edmonton Centre MP Laurie Hawn said he enjoyed Mr. Matheson's company as both a politician and fellow flying enthusiast. Hawn said that Mr. Matheson "was always full of life and wisdom and was just an interesting guy to be with on all counts."

Mr. Hawn said that Mr. Matheson was committed to staying healthy so he could continue to fly and added that the senior stayed fit enough to pass frequent physicals, the last of which was several weeks before his death. Mr. Matheson's last flight was Monday, when he headed out in his Beechcraft Bonanza to fly over Alberta's Badlands for a few hours before returning to Edmonton. When he did not come home, search and rescue planes were dispatched. His downed plane was spotted on Tuesday and his body was found among the wreckage on Wednesday. A report on the cause of the cash could take up to one year.

ROUTINE PROCEEDINGS

CANADA NOT-FOR-PROFIT CORPORATIONS BILL

THIRD REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE PRESENTED

Hon. Michael A. Meighen, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Monday, June 22, 2009

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

THIRD REPORT

Your committee, to which was referred Bill C-4, An Act respecting not-for-profit corporations and certain other corporations, has, in obedience to its order of reference of June 10, 2009, examined the said bill and now reports the same without amendment. Your Committee appends to this report certain observations relating to the Bill.

Respectfully submitted,

MICHAEL A. MEIGHEN
Chair

(*For text of observations, see today's* Journals of the Senate, *p. 1171*.)

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

Senator Meighen: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(b), I move that the bill be placed on the Orders of the Day for third reading later this day.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Claudette Tardif (Deputy Leader of the Opposition): No.

(On motion of Senator Meighen, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

HUMAN PATHOGENS AND TOXINS BILL

NINTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE PRESENTED

Hon. Art Eggleton, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Monday, June 22, 2009

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

NINTH REPORT

Your committee, which was referred Bill C-11, An Act to promote safety and security with respect to human pathogens and toxins has, in obedience to the order of reference of Tuesday, June 2, 2009, examined the said Bill and now reports the same without amendment but with observations, which are appended to this report.

Respectfully submitted,

ART EGGLETON
Chair

(*For text of observations, see today's* Journals of the Senate, *Appendix, p. 1185*.)

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

(On motion of Senator Eggleton, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

[*Translation*]

CITIZENSHIP AND IMMIGRATION CANADA

NOTICE OF MOTION TO GRANT TO HIS HIGHNESS THE AGA KHAN THE HONOURARY TITLE OF CITIZEN OF CANADA

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That,

Whereas His Highness the Aga Khan, leader of the worldwide Ismaili Muslim Community, is a beacon of humanitarianism, pluralism and tolerance throughout the world;

Whereas in addition to the spiritual leadership he provides to the worldwide Ismaili community, the Aga Khan is also actively involved in humanitarian and development projects throughout Asia and Africa;

Whereas Canadians are grateful for the Aga Khan's efforts in Afghanistan where today the Aga Khan Development Network is a vital partner in our efforts to secure and improve the lives of Afghan citizens;

Whereas Canada is proud to have partnered with the Aga Khan to build the Global Centre for Pluralism in Ottawa which will promote ethnic, cultural and religious tolerance in Canada and worldwide;

Whereas Canada has previously acknowledged the contributions of other leading champions of human dignity, granting them honourary Canadian citizenship;

Therefore, the Senate of Canada resolves to bestow the title "honourary Canadian citizen" on His Highness the Aga Khan.

[*English*]

APPROPRIATION BILL NO. 2, 2009-10

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-48, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2010.

(Bill read first time.)

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

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 57(1)(b), I move that the bill be read the second time later this day.

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

Hon. Senators: Agreed.

(On motion of Senator Comeau, bill placed on the Orders of the Day for second reading later this day.)

• (1630)

[*Translation*]

APPROPRIATION BILL NO. 3, 2009-10

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-49, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2010.

(Bill read first time.)

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

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 57(1)(b), later this day.

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

(On motion of Senator Comeau, bill placed on the Orders of the Day for second reading later this day.)

[*English*]

INTER-PARLIAMENTARY FORUM OF THE AMERICAS

CONGRESS OF THE REPUBLIC OF PERU AND TRADE KNOWLEDGE WORKSHOP, MARCH 23-27, 2009—REPORT TABLED

Hon. Percy E. Downe: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Inter-Parliamentary Forum of the Americas to the Congress of the Republic of Peru and Trade Knowledge Workshop, held in Lima, Peru, from March 23 to 27, 2009.

[*Translation*]

QUESTION PERIOD

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table nine answers to oral questions. These questions were raised by Senator Cowan on March 5, 2009, regarding Fisheries and Oceans, statements on website; by Senator Munson on March 12, 2009, regarding Public Safety, Royal Canadian Mounted Police; by Senator St. Germain

on March 12, 2009, regarding Public Safety, Royal Canadian Mounted Police; by Senator Jaffer on March 12, 2009, regarding Public Safety, Royal Canadian Mounted Police; by Senator Dyck on March 12, 2009, regarding Public Safety, Royal Canadian Mounted Police; by Senator Callbeck on May 6, 2009, regarding Fisheries and Oceans, Agriculture and Agri-food, lobster industry; by Senator Tardif on May 26, 2009, regarding National Defence, training in French available to troops at Canadian Forces Base Borden; by Senator Chaput on May 26, 2009, regarding National Defence, availability of Canadian Forces training in French; and by Senator Robichaud on May 27, 2009, regarding Fisheries and Oceans, federal financial support for the Atlantic lobster fishery.

FISHERIES AND OCEANS

STATEMENTS ON WEBSITE

(Response to question raised by Hon. James S. Cowan on March 5, 2009)

The press release in question, issued on March 3rd, 2009 under the title "Statement by Fabian Manning, Senator" was not authored by employees of Fisheries and Oceans Canada (DFO), nor was the news release approved or authorized by the Department.

Additionally, the Department was not billed for the distribution of the news release by Marketwire and no amount was paid by DFO. The Department did not transmit or distribute the news release to any parties through any commercial means whatsoever.

DFO will not be billed, and will not pay for the cost of using Marketwire for the distribution of this news release. Additionally, the news release was never published on any DFO website.

PUBLIC SAFETY

ROYAL CANADIAN MOUNTED POLICE

(Response to questions raised by Hon. Jim Munson, Hon. Gerry St. Germain, Hon. Mobina S. B. Jaffer, and Hon. Lillian Eva Dyck, on March 12, 2009)

The Royal Canadian Mounted Police (RCMP) National Recruiting Program established a diversity recruiting section to ensure that the recruiting program is compliant with the RCMP Employment Equity Action Plan, and to maintain the necessary coordinated focus on diversity recruiting (women, aboriginals, and visible minorities) to ensure a diverse workforce that is representative of the communities policed by the RCMP.

The National Recruiting Program organizes special recruitment drives such as "Women's Forums" and "Diversity Forums" in various communities aimed at reaching members of the designated groups to maintain adequate representation, and incorporates diversity recruiting into the training of recruiters, and also into the National Recruiting Advertising Campaign which includes posters, brochures, book-markers, radio commercials and magazine advertisement directed at diversity groups. The regular member recruiters across Canada are representative of the designated diversity groups (women, visible minorities and aboriginals) to add legitimacy to an already effective program. These events also create mentoring opportunities between applicants and RCMP employees who are members of these designated minority groups. At a recent diversity forum in Montreal, more than 500 people attended to speak to recruiters about joining the RCMP.

The records on workforce representation indicate that women and visible minority regular members represent 19.9 per cent and 7.1 per cent respectively; both diversity group's representation presently exceed the Canadian workforce labour market availability estimates for police officers of 17.1 per cent for women, and 5.3 per cent for visible minorities.

The labour market availability is established through analysis of Census Canada data supplied by Human Resources and Skills Development Canada in relation to the number of qualified persons in the Canadian labour market for each diversity group, by regions across Canada. The methodology used to determine RCMP labour market availability for police officers includes the qualification standards of minimum age of 18 years at time of recruitment, completion of grade 12 education, and Canadian citizenship, which results in a lower availability than that of the general Statistics Canada labour market availability which is determined with the minimum age set at 15, no education level, and landed immigrant status.

The proportion of women and visible minority regular members has steadily increased over time. In 1993, there were 1,542 women (9.6 per cent) versus the present establishment of 3,665 (19.9 per cent). In 1993, there were 274 visible minorities (1.7 per cent) versus the present establishment of 1,316 (7.1 per cent).

The RCMP recognizes that women are under-represented in the senior executive ranks.

The RCMP has three categories of employees: regular members, civilian members and public service employees. The senior executive (comprising the top four levels of the RCMP) total 137 positions. Of those 137 positions, 14 (7 regular members, 5 civilian members and 2 public service employees) or 10.2 per cent are occupied by female members. As can be expected, the numbers can fluctuate. For example, through retirements last year, four female regular members at the senior executive level left the RCMP, thereby dropping the percentage from 13.1 per cent to 10.2 per cent.

The RCMP became subject to the *Employment Equity Act* in 2002. The RCMP Employment Equity Implementation Project (initiated between 2003 and 2006) included an employment equity review which culminated in the Employment Equity Action Plan (2006-2009).

The Employment Equity Action Plan (2006-2009) addressed the findings of the Employment Systems Review completed in 2006. The Employment Systems Review did not find specific systemic barriers to the advancement of women in the RCMP. Rather, historical trends and lack of organizational goals and objectives influenced the outcomes.

The RCMP's short term objectives, as it related to employment equity for all designated groups were amended in February 2007 to measure key initiatives and address any barriers to the promotion of women to the executive ranks. Recent data shows that the number of women is increasing and they participate equitably in promotion, development, and acting appointments.

The Employment Equity Compliance Division of the Canadian Human Rights Commission conducted a compliance review of the RCMP covering the period for November 8, 2001 up to February 2007. The findings of this compliance audit determined that all nine statutory requirements were met.

Among many initiatives, the RCMP's Executive/Officer Development and Resourcing group is responsible for identifying qualified candidates for consideration for succession planning senior executives. The senior executives are drawn from a pool of qualified candidates (EX-01, Inspectors and Superintendents) who are supported for the Senior Executive Development Program.

The Senior Executive Development Program

The Senior Executive Development Program identifies, assesses and pre-qualifies candidates for eligibility for senior executive (EX-02/Chief Superintendent) positions based on the senior executive organizational competencies. This program is available to regular members and civilian members only, as Public Service Employees are evaluated and screened through other means according to the *Public Service Employment Act*. To date, there are 24 supported candidates of which one is a woman.

Pro-actively, the Executive/Officer Development and Resourcing group has reached out through senior executives to identify women at the EX-01, Inspector and Superintendent ranks and prepare them for senior executive responsibilities. Of note, the RCMP has 42 female regular member officers (Inspectors and Superintendents) who have between 20 and 24 years of service, 25 of whom have 25 years or more. Within the next 6 to 8 months, 8 women will be ready to become Inspector and Superintendent. The next 18 to 24 months, there will be 18 women ready and within the next 2 years, there will be 9.

Officer Candidate Development Program

The Officer Candidate Development Program evaluates and pre-qualifies regular and civilian members interested in a commission to the rank of Inspector or an appointment to the EX-01 group and level. Currently, there are 88 candidates on the eligibility list of which 11 (12.5 per cent) are women. The current Officer Candidate Development Program cycle for 2009 has a total of 224 applicants, 27 (12.1 per cent) of which are women.

The Full Potential Program

This is an accelerated development program which develops employees who have been identified and are supported as having leadership potential for more senior level positions. The Full Potential Program is one of the organization's strategies in support of the government-wide initiative to foster a corporate culture that is more reflective of Canada's diverse workforce. Once graduated from this program, there is an expectation that the employees will participate in the Officer Candidate Development Program.

This Full Potential Program has continued to gain strength over the years. Specific to women, the Full Potential Program has increase women participants from 29 per cent in 2006 to 43 per cent in 2007 and 47 per cent in 2008.

Officer Candidate Developmental Contracts

Officer Candidate Developmental Contracts are individualized/customized efforts to enhance the competencies of potential candidates in the Officer Candidate Development Program and prepare candidates for entry into the senior manager level (EX-01, Inspectors and Superintendents). In 2008, the Officer Candidate Development Program Cycle had 11 individuals on development contracts. Two (18.2 per cent) of these are women.

Mentorship Program

Volunteer senior managers and executives, coach and mentor Full Potential Program and Officer Candidate Development Program candidates. Currently there are 66 mentors, 20 per cent of whom are women.

Women are actively encouraged to participate in these programs and they will be monitored to ensure women participate equitably. Ultimately, the long-term goal of the RCMP is to ensure its workforce is fully representative of all groups that make up the community it serves.

The National Recruiting Program created a "Visible Minority Recruiting Strategy" and "Aboriginal Recruiting Strategy" which will be implemented in 2009-10. It details strategies for targeting cultural groups within Canada and outlines specific action plans for implementation.

Diversity recruiting is incorporated into the training of recruiters so they are more sensitive to the concerns and questions that applicants who are members of minority groups might have. The National Recruiting Advertising Campaign also incorporates images of minority groups and targets certain ethnic publications to be more inclusive. These marketing pieces include posters, brochures, bookmarks, radio commercials and magazine advertisements and are directed at diversity groups. Radio advertisements were translated into 31 aboriginal dialects and broadcasts in their communities. This campaign was a pilot and if determined successful, it will be implemented across Canada showcasing a variety of other languages.

The *Public Sector Equitable Compensation Act* applies to the Treasury Board of Canada as employer for departments and agencies listed in Schedule I and IV of the *Financial*

Administration Act, to separate agencies as employers for departments and agencies listed in Schedule V of the *Financial Administration Act*, to the Royal Canadian Mounted Police and to the Canadians Forces.

FISHERIES AND OCEANS

LOBSTER INDUSTRY

(Response to question raised by Hon. Catherine S. Callbeck on May 6, 2009)

Fisheries and Oceans

Currently, Fisheries and Oceans Canada (DFO), other federal departments and provinces are providing a range of support for long-term viability of the Atlantic lobster fishery. These support initiatives are outlined in detail below.

On June 10, 2009, the Minister of Fisheries and Oceans announced $65 million in new funding to help the Atlantic lobster industry adapt to the extraordinary market conditions created by the global recession. This funding includes:

- $15 million in immediate, short term support to assist qualified low-income harvesters severely harmed by the collapse in market demand for their products. Available only during this particularly difficult year, eligible lobster-dependent fishers will be compensated for a portion of their lost income caused by reduced landings; and,

- $50 million in longer-term financial assistance to support industry to develop and implement sustainability plans. This amount includes $15 million specifically for those who work in low-income areas and have experienced significant losses due to chronically low lobster landings.

On May 22, 2009, the Minister announced that the Government is directing $10 million from the Community Adjustment Fund (CAF) to the Atlantic provinces and Quebec for activities to improve marketing, assist in innovation and develop products and technologies in the lobster industry. This funding will be provided through the Atlantic Canada Opportunities Agency and Canada Economic Development for Quebec Regions. CAF provides $1B nationally over two years to quickly help create jobs and maintain employment in communities impacted by the current economic downturn, particularly single-industry communities dependent on the resource and manufacturing sectors. CAF will support activities such as community transition plans that foster economic development, science and technology initiatives, and other measures to promote economic diversification.

At the same time, the Minister also announced that federal and provincial governments and industry will collaborate in a lobster development council to increase domestic and international market access and support the industry in reaching the eco-certification standards necessary to increase their global markets.

On February 27, 2009, the Atlantic lobster industry received a significant marketing boost of $455,008 primarily provided under the Canadian Agri-Food International program and with contributions from Nova Scotia, New Brunswick and Prince Edward Island. This funding has resulted in world class market promotion of Atlantic lobster in international markets.

Canada's Economic Action Plan (the 2009 federal budget) provides measures which improve access to credit in response to the tightened credit market, which may benefit fish harvesters or others in the lobster value chain:

- A $250M capital injection in Business Development Bank of Canada (BDC) to increase capacity to provide more lending in the market;

- A $100M injection in BDC for a time-limited working capital guarantee;

- A Business Credit Availability Program that will include an estimated $5B in new financing to be delivered through enhanced co-operation between BDC, Export Development Canada (EDC) and private sector financial institutions;

- An increase of BDC's paid-in capital limit to $3B so that BDC can benefit from future capital injections; and,

- Management of a new Canadian Secured Credit Facility to purchase term asset-backed securities backed by loans and leases on vehicles and equipment.

A Stronger, Safer, Better Canada (the 2007 federal budget) raised the lifetime capital gains exemption for fish harvesters to $750,000 from $500,000.

The 2008 Supreme Court of Canada (SCC) decision in the case *Saulnier vs Royal Bank of Canada*, DFO's Notice and Acknowledge system and recent Budget announcements are influencing greater access to capital. Together, these protect lenders' interests in a licence from initial financing to potential payment default and give lenders confidence in lending. From the time of lending through to the completion of legal proceedings available to deal with loan default, the combination of the Notice and Acknowledgement system and the *Saulnier* decision should provide registered financial institutions comfort when lending to harvesters that the licence and associated quota cannot be transferred without their acknowledgement. This is a significant improvement in terms of security for lending institutions.

In April 2007, the Government announced its Ocean to Plate approach to commercial fisheries management. The vision is a seafood sector in which all stakeholders, including

government agencies and those involved in all levels of the seafood value chain, work towards a common goal of a sustainable, economically viable, and internationally competitive industry that can adapt to changing resources and market conditions and extract optimal value from world markets. To support this approach, DFO is working with Agriculture and Agri-Food Canada (AAFC), the Canadian Food Inspection Agency (CFIA), other federal departments and agencies as well as participants along the seafood value chain (provinces, territories, harvesters, processors, distributors, retailers and others) to jointly improve sustainable resource use, competitiveness and long-term economic viability of the seafood industry.

The Ocean to Plate approach includes supporting industry led market development strategies through AAFC's Seafood Value Chain Roundtable (SVCRT). The SVCRT is an industry-led forum with representatives from across the seafood value-chain and is chaired by industry, AAFC and DFO. Its purpose is to enable collaborative development of long term strategies to enhance competitiveness.

DFO is aligning its policies and programs to support fisheries to be more viable, including through self-rationalization to reduce over-capacity, as well as to respond to stock changes in the fishery and economic and market access pressures.

Self-rationalization is important to address harvesting over-capacity and leave more viable enterprises for remaining fishers and stronger economic returns in resource dependent communities. To support self-rationalization, DFO is providing flexibilities in its licensing approach which reduce capacity without the harvester necessarily leaving the fishery. These flexibilities include: the option of voluntarily combining two licences with both harvesters on a common vessel and 150 per cent of the traps normally permitted for a single licence ("stacking"); or, allow for same scenario by only requiring that one of the two licence holders be on board the vessel ("flexible partnerships"). Selected harvesting allows lobster licence holders to harvest other species such as snow crab, thereby reducing the lobster fishing effort. Licensing stacking has been in place since 2008 and flexible partnerships since 2007.

Agriculture and Agri-Food

The Canadian Agriculture and Food International (CAFI) program provided the Lobster Industry, through the Fisheries Council of Canada, with $328,750 in the 2008-09 fiscal year for activities related to Market Research, Promotional Material, and Trade Shows. The Lobster Industry, through a national association, is eligible to apply for federal contribution funding through CAFI's successor — AgriMarketing. The AgriMarketing Program aims to enable Canada's agriculture, food and fish and seafood industry to identify market priorities and to equip itself to succeed in global markets.

AAFC has the mandate for international market development of Canadian seafood. In 2003, AAFC established an industry-led Seafood Value Chain Roundtable (SVCRT) that is chaired by an industry, AAFC and DFO representative and has full seafood value-chain membership. Its purpose is to enable collaboration among its members towards the development of long term strategies to enhance the competitiveness of the sector. In 2006, AAFC funded a lobster benchmarking study at the request of the SVCRT which led to a number of industry recommendations to improve the sector's competitiveness, notably creation of a lobster marketing council, a generic lobster marketing campaign and eco-label. These initiatives were supported at an AAFC funded lobster industry summit in 2007 which led to the creation of the Lobster Round Table (LRT). Currently, the Lobster Round Table is spearheading an industry-led discussion to resolve some of its underlying structural issues through the exploration of a lobster marketing agency and eco-labeling.

OFFICIAL LANGUAGES

RIGHTS OF FRANCOPHONE MILITARY PERSONNEL

(Response to question raised by Hon. Claudette Tardif on May 26, 2009)

The Canadian Forces recognize the importance of supporting both Official Languages and are committed to improving their performance on this issue in order to enhance the training available to our troops across the Canadian Forces and at Canadian Forces Base Borden.

The Canadian Forces have taken a number of concrete steps to support both Official Languages across the board and further develop French-Language training. For example, the Canadian Forces are currently building the cadre of linguistically-qualified instructors, educators and service providers so that more courses can be offered in French.

The Canadian Forces have also increased the amount of training available to Francophone students through the use of alternative sources. For instance, the Forces are sending a significant number of troops to community colleges to become geomatics technicians, cooks and vehicle technicians.

The situation at Borden continues to improve, and efforts are ongoing to enhance French-language services and training for Canadian Forces members and their families.

QUALITY OF FRENCH TRAINING FOR MILITARY PERSONNEL

(Response to question raised by Hon. Maria Chaput on May 26, 2009)

Canadian Forces leadership is committed to ensuring full compliance with its responsibilities under the *Official Languages Act* and has already undertaken significant efforts to increase the availability and quality of training and course materials in both Official Languages.

Currently, a significant translation initiative is underway. The Canadian Forces spent over $5 million in Fiscal Year 2008-2009, in partnership with the Public Works and Government Services Translation Bureau, on course material for Canadian Forces training centers across Canada. Spending will be maintained through Fiscal Year 2012-2013 to ensure that training materials are available to troops in their Official Language of choice.

As part of the ongoing coordinated translation initiative, course material at Borden has been submitted for translation with the aim of offering all training in both Official Languages. Moreover, material developed for any new course must be in bilingual format before that course may be delivered. The translated material that has been returned to the Canadian Forces is of extremely high quality and will enable our troops to learn, train and prepare in the Official Language of their choice.

Increasing overall awareness and education of the Official Languages program is key to achieving the Canadian Forces' mission. Leadership at all levels is engaged and is committed to ensuring that the Official Languages goals are met and applied throughout the Canadian Forces.

FISHERIES AND OCEANS

STATE OF LOBSTER INDUSTRY

(Response to question raised by Hon. Fernand Robichaud on May 27, 2009)

Currently, Fisheries and Oceans Canada (DFO), other federal departments and provinces are providing a range of support for long-term viability of the Atlantic lobster fishery. These support initiatives are outlined in detail below.

On June 10, 2009, the Minister of Fisheries and Oceans announced $65 million in new funding to help the Atlantic lobster industry adapt to the extraordinary market conditions created by the global recession. This funding includes:

- $15 million in immediate, short term support to assist qualified low-income harvesters severely harmed by the collapse in market demand for their products. Available only during this particularly difficult year, eligible lobster-dependent fishers will be compensated for a portion of their lost income caused by reduced landings; and,

- $50 million in longer-term financial assistance to support industry to develop and implement sustainability plans. This amount includes $15 million specifically for those who work in low-income areas and have experienced significant losses due to chronically low lobster landings.

On May 22, 2009, the Minister announced that the Government is directing $10 million from the Community Adjustment Fund (CAF) to the Atlantic provinces and Quebec for activities to improve marketing, assist in innovation and develop products and technologies in the lobster industry. This funding will be provided through the Atlantic Canada Opportunities Agency and Canada Economic Development for Quebec Regions. CAF provides $1B nationally over two years to quickly help create jobs and maintain employment in communities impacted by the current economic downturn, particularly single-industry communities dependent on the resource and manufacturing sectors. CAF will support activities such as community transition plans that foster economic development, science and technology initiatives, and other measures to promote economic diversification.

At the same time, the Minister also announced that federal and provincial governments and industry will collaborate in a lobster development council to increase domestic and international market access and support the industry in reaching the eco-certification standards necessary to increase their global markets.

On February 27, 2009, the Atlantic lobster industry received a significant marketing boost of $455,008 primarily provided under the Canadian Agri-Food International program and with contributions from Nova Scotia, New Brunswick and Prince Edward Island. This funding has resulted in world class market promotion of Atlantic lobster in international markets.

Canada's Economic Action Plan (the 2009 federal budget) provides further measures which improve access to credit in response to the tightened credit market, which may benefit fish harvesters or others in the lobster value chain:

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- A $100M injection in BDC for a time-limited working capital guarantee;

- A Business Credit Availability Program that will include an estimated $5B in new financing to be delivered through enhanced co-operation between BDC, Export Development Canada (EDC) and private sector financial institutions;

- An increase of BDC's paid-in capital limit to $3B so that BDC can benefit from future capital injections; and,

- Management of a new Canadian Secured Credit Facility to purchase term asset-backed securities backed by loans and leases on vehicles and equipment.

As well, *A Stronger, Safer, Better Canada* (the 2007 federal budget) raised the lifetime capital gains exemption for fish harvesters to $750,000 from $500,000.

The 2008 Supreme Court of Canada (SCC) decision in the case *Saulnier vs Royal Bank of Canada*, DFO's Notice and Acknowledge system and recent Budget announcements may influence greater access to capital. Together, these protect lenders' interests in a licence from initial financing to potential payment default and give lenders confidence in lending.

In April 2007, the Government announced its Ocean to Plate approach to commercial fisheries management. The vision is a seafood sector in which all stakeholders, including government agencies and those involved in all levels of the seafood value chain, work towards a common goal of a sustainable, economically viable, and internationally competitive industry that can adapt to changing resources and market conditions and extract optimal value from world markets. To support this approach, DFO is working with Agriculture and Agri-Food Canada (AAFC), the Canadian Food Inspection Agency (CFIA), other federal departments and agencies as well as participants along the seafood value chain (provinces, territories, harvesters, processors, distributors, retailers and others) to jointly improve sustainable resource use, competitiveness and long-term economic viability of the seafood industry.

The Ocean to Plate approach includes supporting industry led market development strategies through AAFC's Seafood Value Chain Roundtable (SVCRT). The SVCRT is an industry-led forum with representatives from across the seafood value-chain and is chaired by industry, AAFC and DFO. Its purpose is to enable collaborative development of long term strategies to enhance competitiveness.

As an initiative of the SVCRT, a Lobster Symposium was held in the fall 2007. It brought together the lobster industry to discuss the various challenges it faces. Following the symposium, a Lobster Roundtable was created to consider actions to address challenges identified at the Symposium. The Roundtable's membership reflects the Ocean to Plate approach and comprises federal and provincial governments, harvesters and their associations and processors. Together they have identified priorities to promote economic prosperity and long-term sustainability, including responding to changes in market demands (i.e. eco-certification).

The Atlantic Alliance for Fisheries Renewal's 2009 *Action Plan for Fleet Rationalization* has its overall objective the reduction of harvesting capacity by up to 30 per cent. The Alliance states that this objective is necessary to address economic viability, stock rebuilding and sustainability objectives. The Alliance comprises the Fish, Food and Allied Workers Union, the Maritime Fishermen's Union, the Alliance des pêcheurs professionels du Québec, the Gulf Nova Scotia Bonafide Fishermen's Association, the Gulf Nova Scotia Fishermen's Coalition and the Northumberland Fishermen's Coalition.

DFO is aligning its policies and programs to support fisheries to be more viable, including through self-rationalization to reduce over-capacity, as well as to respond to stock changes in the fishery and economic and market access pressures.

Self-rationalization is important to address harvesting over-capacity and leave more viable enterprises for remaining fishers and stronger economic returns in resource dependent communities. To support self-rationalization, DFO is providing flexibilities in its licensing approach which reduce capacity without the harvester necessarily leaving the fishery. These flexibilities include: the option of voluntarily combining two licences with both harvesters on a common vessel and 150 per cent of the traps normally permitted for a single licence ("stacking"); or, allow for same scenario by only requiring that one of the two licence holders be on board the vessel ("flexible partnerships"). Selected harvesting allows lobster licence holders to harvest other species such as snow crab, thereby reducing the lobster fishing effort. Licensing stacking has been in place since 2008 and flexible partnerships since 2007.

[*English*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, pursuant to the order adopted June 17, I leave the chair for the Senate to resolve itself into a Committee of the Whole to hear from Ms. Karen E. Shepherd respecting her appointment as Commissioner of Lobbying.

COMMISSIONER OF LOBBYING

KAREN E. SHEPHERD RECEIVED
IN COMMITTEE OF THE WHOLE

On the Order:

> The Senate in Committee of the Whole to receive Ms. Karen E. Shepherd respecting her appointment as Commissioner of Lobbying.

(The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Senator Losier-Cool in the Chair.)

[*Translation*]

The Chair: Honourable senators, rule 83 of the Rules of the Senate of Canada states:

> When the Senate is put into Committee of the Whole, every senator shall sit in the place assigned to that senator. A senator who desires to speak shall rise and address the Chair.

Is it the pleasure of the honourable senators to waive rule 83?

Some Hon. Senators: Agreed.

The Chair: I remind honourable senators that, pursuant to order of June 17, the committee will meet for a maximum of one hour and 30 minutes.

[*English*]

I would now ask the witness to enter.

(Pursuant to Order of the Senate, Karen E. Shepherd was escorted to a seat in the Senate chamber.)

The Chair: Honourable senators, the Senate is resolved into a Committee of the Whole to hear from Ms. Karen E. Shepherd respecting her appointment as Commissioner of Lobbying.

[*Translation*]

Ms. Shepherd, thank you for being with us here today. I invite you to begin your introductory remarks, which will be followed by the senators' questions.

Karen E. Shepherd, Commissioner of Lobbying: Madam Chair, honourable senators, it is a privilege to have been nominated for the position of Commissioner of Lobbying and to appear before you to consider my candidacy for this important position. I would like to make some introductory remarks to highlight various aspects of my career. I would also like to share with all of you my experience to date in administering the lobbyists' registration regime, my role as Interim Commissioner, and the duties and obligations of this independent parliamentary office in serving both Parliament and Canadians.

[*English*]

First, let me tell you a little about myself. I was born in Montreal, Quebec. I have been married for 19 years. My husband is an assistant professor at Carleton University and teaches in the fields of program evaluation, ethics and public administration.

In terms of my academic career, I attended Concordia University where I obtained my Baccalaureate of Arts with a major in economics and a minor in administrative studies. This degree was a cooperative program, and as such, my first work term in the summer of 1985 was as an analyst with Employment and Immigration Canada. It was with this experience that I knew I wanted to move to Ottawa and start a career with the federal government. I regarded my decision as the right choice for me as Canada's federal government provided me with several challenging and exciting opportunities. I saw great value in using my training to serve Canada and Canadians. This thinking has been unwavering on my part.

[*Translation*]

I moved to Ottawa in May of 1987 to begin my career as a federal public servant. I soon realized that my objective was to become a leader and executive in the public service so I enrolled in the Masters of Arts in Public Policy and Administration at Carleton University. Not only did I learn the fundamental concepts and practices that would form the basis of training, I gained practical work experience in the co-op program. The combination of theory and practice was ideal and I consider this training pivotal to success in my career.

[*English*]

As you have likely learned from my resume, I worked in a number of federal departments prior to joining the Office of the Registrar of Lobbyists in 2004. These include Industry Canada, the Office of the Auditor General, Revenue Canada Customs, Energy Mines and Resources, and Employment and Immigration. I have performed a variety of functions at both the officer and executive level and have gained significant experience in operations, policy, program management and human resources. Each of these experiences have provided me with important knowledge, abilities and experience, which have served me well in my executive functions and in my role as Interim Commissioner of Lobbying.

• (1640)

Since joining this office, I have gained an in-depth knowledge of the Lobbying Act, the *Lobbyists' Code of Conduct*, and managing the institution responsible for this important legislation. It is my view that the Lobbying Act and the role of the commissioner is to support the integrity of government decision making by ensuring that those who are active in lobbying the federal government are behaving in an ethical and transparent manner.

[*Translation*]

Some of the key developments that I have been involved with have strengthened the integrity of the office. I have created or improved the building blocks necessary for effective lobby legislation including the Lobbyists Registration System, education and outreach function, and supporting effective compliance.

[*English*]

The registry is the primary tool used by the office to maintain transparency in lobbying activities conducted at the federal level. Prior to assuming the role of Director of Investigations, I was primarily responsible for the day-to-day management of the registry and for ensuring that lobbyists were provided with efficient service to register and report on their activities. It was also necessary to ensure that lobbyists complied with both the act and its spirit in order to provide Canadians with the most reliable information. The amendments, which came into force in 2005 and in 2008, required lobbyists to disclose either additional or different information. I was involved in these implementation strategies and preparing developmental updates to incorporate the new legislative and registration requirements.

Regarding education and research, I believe that it is important to educate people regarding the act and its requirements rather than rely exclusively on enforcement measures to achieve compliance. In this respect, I have developed a number of interpretation bulletins or advisory opinions to ensure that those subject to the act are clear about their obligations. Although these documents are not legally binding, they provide lobbyists and others interested in lobbying legislation with how the commissioner intends to implement the act. I have developed

and delivered several training sessions and made presentations to lobbyists, public officer holders, parliamentarians and others interested in the federal lobbying regime. I have represented the office in both national and international forums to explain lobbying legislation and how it is administered.

[*Translation*]

Although education is important, maintaining an effective compliance system cannot be understated. As such, I have been involved with developing, implementing and ensuring that the necessary enforcement approaches and processes were in place in order to be consistent with the requirements of the act. Such processes have included conduct of administrative reviews and investigations, submitting initial investigative reports to Parliament, verifying monthly communication returns and assessing applications to the five-year lobbying prohibition.

[*English*]

I have been a key player in establishing the office's overall governance structure. I know it well and I have worked to ensure that it has the necessary resources to effectively carry out the responsibilities bestowed upon it by Parliament. In this respect, I have laid much of the groundwork with respect to the office's human resources policy, establishing financial controls and creating the administrative systems necessary to carry out our regular reporting and monitoring functions.

Honourable senators, this is what I have done. This is the past. Now let me speak to you briefly about how I understand our priorities and challenges for administering the act and managing the Office of the Commissioner of Lobbying.

[*Translation*]

The Registry is our "bread and butter." It is the office's primary tool for ensuring transparency in lobbying activities. Therefore, it will be important to continue improving its functionalities in order to make it more user-friendly and also technically capable of supporting the increasing demands being made on it.

[*English*]

Despite all of our efforts in the areas of education outreach, there is still much more that can be done to ensure that lobbyists, public office-holders with whom they communicate, and others interested in lobbying activities better understand the rationale and requirements of the act. It will be important to finalize and implement our communications strategy and develop the necessary tools and products to maximize our outreach efforts aimed at our various audiences. This will assist registrants to better understand the reporting requirements and reduce their difficulties when reporting their lobbying activities with our office. I regard it as one of my principal responsibilities to reach out to parliamentarians, public servants, and indeed the public about this legislation and to demystify lobbying activities. Lobbying is a legitimate and democratic activity that should not be diminished by misunderstanding.

With respect to compliance, one of my key priorities will to be review and refine our case management of new and outstanding compliance files in order to be more efficient in administering the act. I will also respect new guidance by the Federal Court of Appeal regarding the application of the conflict of interest provisions of the *Lobbyists' Code of Conduct*. Similarly, I believe it will be a core responsibility to provide lobbyists with additional guidance on other rules contained in the code in order to enlighten potential areas of breach for purposes of clarity.

In closing, let me emphasize that I have found performing in the role of Interim Commissioner to be exciting and challenging. My goal has been to implement and administer the Lobbying Act in a way that builds confidence of parliamentarians and Canadians by working always to ensure transparency and integrity in government decision making through a well functioning and independent office of Parliament. Should Parliament decide to entrust me with the distinct honour of being Canada's first Commissioner of Lobbying, I can assure you that I will continue to work hard to earn your trust and to make certain that this office continues to offer professional and loyal service to Parliament and Canadians.

[*Translation*]

Thank you, honourable senators. I am now pleased to take your questions.

[*English*]

Senator Oliver: Thank you very much Ms. Shepherd. Welcome and congratulations. I would like to ask you a question about education and about your role in future changes.

When reading letters to the editor in *The Globe and Mail* and other Canadian newspapers, you often see letters where ordinary Canadians are saying, "Our lobbyist law has no teeth;" "Not enough is disclosed;" "We really need to have a lot more information about what these lobbyists are saying and doing."

What role will you play when it comes time to giving advice to the executive and to Parliament about possible new amendments?

Second, in regard to the important role you play in relation to the education of people, you say that you do give advisory opinions but they have no legally binding force and effect. Do the lobbyists accept your advisory opinions, which are like some of the advisory opinions that Canada Revenue Agency hands out?

Ms. Shepherd: In terms of your first question regarding the education mandate by the act, the act is explicit in that it is to develop and implement an educational and outreach program to ensure that lobbyists, public officer holders with whom they communicate and the public as well understand the requirements and the rationale of the act. We are currently working at finalizing our outreach strategy, and the Canadian public is one of the groups we will be aiming at and figuring out which of our tools are best aimed at reaching that particular audience.

All of our information tools — and we have tried a variety of different methods, including multimedia tutorials this year in terms of helping lobbyists even register on our site, which is available 24-7 — are about getting that message out.

• (1650)

Unfortunately, when something about lobbying appears in the paper it is always the nasty story that makes it, not the good that is being done. What I recognize, in terms of the importance of this

legislation and the role I can play in administering it, is ensuring that the Canadian public sees the value of the legislation. Through our activities, we are shining a light on the transparency and accountability of those lobbying federal public office-holders, and contributing to the confidence the public should have in the integrity of government decision-making.

When the act comes up for review, I hope to play an active role. I would welcome being invited back to both houses to talk about my experience in what I have seen with the legislation and how the Lobbying Act changes are working.

At this point it has been less than a year, so it is early to comment on some aspects. I can see when the act comes up for review in a year or so there would be value in coming forward and administering the act. I look forward to doing that.

In terms of the interpretation bulletins, they are not legally binding, but in issuing them they are based in terms of the enforcement, interpretation or administration of the application of the act. Lobbyists, I would say, view those bulletins positively. In fact, they come with issues saying they need something on a particular issue in terms of specific guidance.

While the bulletins are not legally binding, they are a clear indication of how I intend to administer the act. We have one interpretation, for example, on the significant amount of time, which refers to the 20 per cent rule. You will often hear references to that in the public speak. That is how well-known the interpretation bulletin is. I think it is positive.

[*Translation*]

Senator Poulin: Thank you, Ms. Shepherd, and congratulations on your nomination to this key federal government position. You are probably aware that the Law Society of Upper Canada has established a committee of Ontario lawyers in order to review amendments to the Lobbying Act and to ensure that the changes are well understood and properly implemented. Please tell us how you will cooperate with the Law Society of Upper Canada.

Ms. Shepherd: Quite honestly, we were not approached by the Law Society of Upper Canada to discuss these issues but I can comment on this. All changes to the Lobbying Act so far have strengthened it. The law has only been in force for one year and so I suggest that we not make further changes for the time being.

Senator Poulin: According to media coverage, it seems that the new regulations, which were implemented after the legislation was amended, make the lobbying registration procedure much more complicated than before. What are the main changes in the regulations?

Ms. Shepherd: First of all, lobbyists always say that there are too many changes. One change made to the regulations states that it must be indicated that it is not just a public office holder, but a designated public office agent. That is one of the changes.

Before, it was possible to say that this legislation did not affect individuals; now, it is similar to saying "and/or"; it is acceptable under the Competition Act. Now, the amendment makes it consistent with the Competition Act and the regulations concerning transfers.

Another amendment has to do with the monthly report that needs to be produced. In order to do that, there needs to be communication with public office holders. And as you have indicated, newspapers such as the *Hill Times*, mentioned last week that our office does not want abbreviations or acronyms, in order to be more transparent. Lobbyists are being asked to avoid using acronyms because, for example, when someone uses an acronym like PWGSC, it means something in the federal government, but not to ordinary Canadians.

However, most lobbyists agree with the rules, which give their work some legitimacy. We tried to put a registration system in place. We were so proud to have people want to register, since it is now easier to search the registry.

In addition, we have designated customer service agents for lobbyists, who provide professional and useful advice to make registration easier.

Senator Brazeau: Thank you, Ms. Shepherd, for being here. It is clear to me that the Prime Minister made an excellent choice in appointing you, and I wish you the best of luck in your new position.

[*English*]

When you appeared before the committee of the other place, you mentioned that you were working on areas of education and outreach. Can you please elaborate on what you mean by that?

Ms. Shepherd: When asked about education and outreach, any time one starts a new job, the questions are, who does one meet with within the first 30 days, within the next 90 days and within the first year? That is one part of the strategy; who to meet with to get the message out clearly.

For example, as you see in our annual report — we have a number of lobbied departments — in getting the message out, I want to meet with the public-office holders of these departments and verify whether the tools they are receiving from me are sufficient to deliver the message within their departments.

We have recently completed a survey of the website as well. Depending on the results of the survey in relation to the tools we are using, we will update the strategy accordingly. We have used a number of techniques and technologies to deliver the message; what others can we use? Which conferences should I proactively try to attend?

As the honourable senator said, I will look at how to deliver the message more effectively to Canadians.

• (1700)

Senator Brazeau: In your opinion, do you foresee an opportunity for public office-holders, lobbyists and the general public to participate in this type of outreach?

Ms. Shepherd: As I have indicated through the survey in terms of what they are seeing on our site, definitely. I would welcome comments from parliamentarians as well; if there is a better way of getting our message out, any ideas would be more than welcome.

Senator Housakos: Ms. Shepherd, I would also like to congratulate you on your nomination. Although we must recognize that you have been in this job in an acting capacity over the last year, can you provide us a sense of the challenges that you have faced in this role, given that it is a relatively new designation coupled with various legislative changes that have come into effect in recent years?

Ms. Shepherd: In terms of the registry, the new disclosure requirements and the monthly reporting with respect to volume require that we do a major overhaul of the system, almost creating something from the start. One of the implementations was to bring that new system in on time. It was not only brought in on time, but it was brought in within budget and without any major difficulties.

The initial registrations are scrutinized, so to speak, and validated by the office before they are put on the site. The monthly communication entries, because of the sheer volume, go directly onto the site. We have noticed in our verification of the entries, or as public office-holders check the site and report to us that there is over-reporting. One of the challenges in the education mandate is to ensure that individuals understand who should be covered. For example, they should not be registering communications with directors general, an EX3 level, when the act designates assistant deputy ministers and above. Getting education out really needs to be disclosed to them in order to facilitate registration.

The other challenge in this particular act regarding the registration is that no transition time was given. When the act took effect in 2005, there was a two-month transition period for lobbyists to update the registrations and to provide information. This time around, there was not.

The challenge for those who were registering was to get information in quickly, and if they did not fully understand the disclosure requirements, we had to go back and forth with them. My office staff and I pride ourselves on continuing to provide efficient service in a timely manner.

On the enforcement side, with the new changes that had come in, it was no longer necessary to have reasonable grounds to initiate an investigation. I can now initiate one with reason to believe non-compliance with both the act and the code. Those changes required that we re-evaluate our processes and create new ones. For example, there is a prohibition on lobbying and the ability for those who are subject to the prohibition to apply for exemptions. That required us coming up with a new exemption. That was one of the challenges, trying to enforce all of the new changes and then actually implement the act at the same time.

Senator MacDonald: Ms. Shepherd, congratulations on your nomination to this position.

The Conflict of Interest and Post-Employment Code for Public Office Holders was introduced in February 2006, and it prohibited certain public officer-holders from lobbying for a period of five years after leaving public office. In my view, this is a significant step forward in terms of accountability and shutting the revolving door between government and the lobbying industry.

Can you explain to us the rationale of this code and why it is an important tool to maintaining transparency and accountability in government?

Ms. Shepherd: The Lobbying Act established a prohibition on the five-year ban in July 2008 as well.

Senator MacDonald: Thank you.

Ms. Shepherd: Can I refer to that one?

Senator MacDonald: Yes, you can.

Ms. Shepherd: As I understand it, and as you said with respect to the revolving door, the idea was that there are those who, because of the positions they hold, may gain advantages or benefits from personal contacts in terms of the work they perform during that tenure. Parliament, in its wisdom, decided that the five years was one way of ensuring that they could not benefit from advantages or personal contacts during that period.

Senator MacDonald: There has been some controversy over it in public, and I am wondering how much feedback you get from the lobbying industry in regards to these restrictions.

Ms. Shepherd: At this point, some are obviously affected by the culture of it. I have not received many comments personally. I have only received nine requests since the Lobbying Act came into force.

Senator Callbeck: Thank you, Ms. Shepherd, for appearing today, and I congratulate you on your nomination for the Commissioner of Lobbying. You certainly have extensive service in the public service.

The 2007-08 report of the Office of the Registrar of Lobbyists states that the number of active registered lobbyists had stabilized and has actually fallen. Since that time, we now have an independent office; we have increased staff; and the financial budget has increased. Back in 2007-08 it was $3.4 million; in the last budget it was $4.5 million. Therefore, it has gone up roughly about a third.

What will this office be doing with these extra resources that it was not getting done before the Federal Accountability Act?

Ms. Shepherd: The reason we received additional resources was to increase the necessary staff on the investigation side and on the registration side.

In terms of going forward, one of the things that has been happening since I have joined the office is we have been in constant "build mode" in acquiring the necessary resources.

The seven-year mandate will allow us to move forward with the registry and continue to make improvements to it. Education and outreach is now an official mandate, so there will be resources and the necessary tools in terms of getting the message out.

On the enforcement side, it is all about having the processes and procedures in place so that we can better manage our case file management system and get the decisions out.

Senator Callbeck: The mandate has not changed. You still have the registration, education and enforcement side; is that right?

Ms. Shepherd: The education mandate is now an official mandate as opposed to something that we had considered a priority in the office. Education is all important in terms of better compliance.

With respect to enforcement, changes to the act mean that "reason to believe" is now at a lower threshold for me to initiate an investigation. Once I initiate an investigation, I can compel not only witnesses but also documents.

The act, in my opinion, has been strengthened in terms of acquiring an official education mandate and it has increased in terms of the new disclosure requirements and improving the compliance measures accessible to me.

Senator Callbeck: In other words, the act has been strengthened rather than adding anything new.

Ms. Shepherd: I would say, yes, it has been strengthened.

• (1710)

Senator Mercer: Thank you, Ms. Shepherd, for being here and congratulations on your nomination.

I have a couple of comments and questions. You talked a lot about education and outreach. I would hope that part of the process you engage in would go beyond trying to educate parliamentarians, senior government officials and the general public to structuring some of your education tools to young Canadians and using the education system that is in place. Teachers are out there begging for materials, looking for tools to help educate young people about how government works, and this is part of how government works. I encourage you to look at that. Perhaps you could comment.

In my two other lives, I have been in industries heavily regulated either by the Canada Revenue Agency or Elections Canada. The only time we saw an improvement in understanding on both sides of the fence, whether it be the regulator or the person being regulated, was when consultation took place. Indeed, previous Chief Electoral Officer Jean-Pierre Kingsley put in place an ad hoc committee of representatives from all registered political parties that he met with on a quarterly basis to hear their input as to how they were living under the imposed rules and to receive suggestions as to how they could be improved. One of the problems is that the good intentions of parliamentarians in bringing this forward may not be practical on the ground as this process unfolds.

I would encourage you to think about it. If you have, you could perhaps tell us, because I would encourage you reach out beyond us to perhaps — as Senator Poulin suggested — the Canadian Bar Association and other people involved as well.

This is a relatively new industry in terms of regulations. It is not a new profession; it has been around for a long time. As we progress, it might be an idea to not only look at licensing but also at developing an accreditation program. Unfortunately, some people out there who purport to be lobbyists have no knowledge of the system, no background. If you are a consumer of a lobbyist and I tell you that I am a lobbyist in a financial field, I would be lying because I am the wrong guy, but how does the consumer know that? How does an association, business or community group that wants to lobby government determine that fact, other than perhaps by trial and error, which can be costly? I would hope that down the road you can give thought to developing an accreditation process for lobbyists.

Ms. Shepherd: Your first point as to educating young Canadians is excellent. I think young Canadians are intuitive. In terms of interacting with the public servants, I have done orientation programs since being appointed to this role and have explained the benefits of opportunities and challenges the federal government faces as a whole. However, in my own experience, having been in a small agency for five years, this is something they may want to look at.

We need to demystify lobbying, that it is not a bad thing. You see things in the paper, but lobbying actually plays an important role in terms of sound policy-making.

Your second point concerned consultation. The act recognizes free and open access to government and that lobbying is a legitimate activity. You should know who is lobbying public office-holders, but the regulations should not be so strict that it stops this legitimate activity from occurring. The role and responsibility given to me by Parliament is more than just that. In administering the act, I am to ensure a fair balance and that legitimate policy-making activity occurs. I have been on the other side of the fence with people relying on for policy-making. They valued the input.

Accreditation is an interesting thought. We have had lobbyists come to us asking for accreditation. Some are proud and quite happy with the lobbying legislation because it legitimizes their business, and they have talked about accreditation. It is something we can think about.

One difficulty with accreditation, for example, is universities and medical doctors who register themselves, and they do not see themselves as lobbyists. The act does not define that as lobbying per se, but whether it is the activity — I am not sure how easy it would be, but it is something we can look into.

Senator Andreychuk: Ms. Shepherd, I would add my congratulations to you on this nomination.

You indicated and referred a number of times to the principles of the act, one being that, in the public interest, open access to the government is important.

You also indicated that the act talks about the legitimacy of lobbying. I wondered if you could give me your analysis of the changes that were put in both the Lobbying Act and the Financial Administration Act to do with contingency fees. It would seem to me that lobbying per se, the ability to interact with government and give one's point of view, is important; but where the rubber hits the road is how much you get paid for that, not that you have the access. There would seem to be much activity surrounding the changes on this contingency issue. Can you speak to why that was important, why the amendments were made and to the analysis of why they were brought in to prohibit contingency fees? Does this get at the root problem of some of the perceptions of the negativity around lobbying?

Ms. Shepherd: In terms of the facts of the case, prior to the last amendments, receiving a contingency fee was not against the Lobbyists Registration Act. The lobbyist was required to disclose that they were receiving it. The breach would have been if they were receiving a contingency fee and did not declare it.

While it was not against the law for the Lobbyists Registration Act, Treasury Board policies prohibited paying contingency fees to those lobbying or trying to obtain funds for them.

With the changes to the Lobbying Act and the Financial Administration Act, if you are consultant lobbyist, you can no longer be paid a contingency fee in order to lobby. The act now requires them to declare that they are not receiving it. The act extends even further. The clients can no longer pay it. It is prohibited in the act. It would be a breach of the act not only for the lobbyists to receive the contingency fee but for the client to pay it. It has gone further that way.

Senator Andreychuk: What I am trying to get at is this: Was it the actual payment? Many people lobby without a fee. They do it because of public interest. They do it because they believe in a cause or they believe a certain venture should proceed. Was the issue the payment of money or was it the contingency which led to a certain kind of activity occurring in Ottawa that now will be totally prohibited? What is your analysis of why we went this very bold step to say no to contingency fees?

• (1720)

Ms. Shepherd: I must be honest. I had not looked at the whole analysis except for the fact that contingency fees were seen as a negative issue. There was a question in terms of receiving the money. We have a *Lobbyists' Code of Conduct*, for example. In some respects, I am glad that one of our previous dilemmas has been taken away. The previous lobbyists' registration act said: Contingency fees are fine; just be sure to declare them.

However, given that it is now against government policy, when I look at one of the professionalism principles in the act, perhaps they are breaching the code knowing there is a policy saying that they cannot receive the funds in that manner from a contingency point of view.

I hope I have answered your question.

Senator Andreychuk: It started to answer it.

Senator Wallace: Once again, Ms. Shepherd, congratulations on your nomination. I was impressed to see that one of your goals in your CV is your desire to play a part in changing the public sector environment. We all know the public sector is undergoing considerable renewal.

Your position is a new position. If you look five or ten years down the road, where do you see your office at that point in time? Do you see it changing or not changing? What do you see when you look in the crystal ball?

Ms. Shepherd: If I only had that magic wand.

I have been with the office since 2004. Since then, it has been constantly building. I have been involved with three different versions of the act in terms of administering it. My crystal ball looking down the road is to work with this Lobbying Act for a while.

Regarding changes in government, demands for transparency have increased. I think the Lobbying Act, through its increased disclosure requirements, has come far in increasing transparency.

Looking down the road, have we used our education mandate to the fullest? Do people require the rationale and the requirements of the act? For example, sometimes I give outreach programs. One of the messages I try to deliver is that it is conceivable that the individual is in compliance with the act and not registered. As the honourable senator indicated, if lobbyists are engaged in volunteer work, they are not paid. We need to deliver those messages. When I look down the road five or seven years, I want to know if people clearly understand what the Lobbying Act is about. Is the message out there that this is a legitimate activity but it must be done in a transparent manner?

Seven years down the road, despite having enforcement tools, I hope that I will use them less because the message will be out there, the lobbyists will register and public office-holders — as they are doing now — will look increasingly at the registry. Public office-holders might check the monthly communication logs to see if their names are there and if things are reported properly. People now question these things.

Before the lobbyist comes to meet with a public office-holder — and I have had the anecdotal evidence; I have been told this personally — they check the registry to ensure that when Mr. Smith comes to see them, he is registered and he is registered for the activities he is supposed to be lobbying on.

Senator Wallace: You see that as part of your role to deliver that message and the educational side of it?

Ms. Shepherd: Very much so.

Senator Joyal: I wish to address a more pointed issue, namely, what is the definition of a "designated public office holder?" In the act, it refers to that essential definition of people who are targeted in the act. It does not seem that there is any complete definition of what is a "designated public office holder." How will you identify those people? How will you make it known that someone is a "designated public office holder" — that is, the person who is the subject of the act? How will you keep the list up

to date? As I understand the act, after a lapse of five years, a person's name disappears from the list. Can you explain to us your approach in relation to that concept of a "designated public office holder?"

Ms. Shepherd: In the front page of the act, there is a definition in terms of "designated public office holder." They are those people who are in minister's offices or in minister of states' offices, and their staff. For the public service, it is those who are at the assistant deputy minister level and above, as indicated in the first part of the Financial Administration Act. The act also talks about an additional 11 designated public office-holders designated by regulation, primarily to cover those in the Armed Forces. There have also been some Governor-in-Council appointments in the Privy Council Office.

In terms of comparable rank, I have issued an interpretation bulletin that indicates that if they are at the EX-4 level or higher, which is the lowest level for the assistant deputy minister; or receiving the equivalent salary range and reporting to a designated public office-holder, which is a deputy minister; then they are considered to be a designated public office-holder. I have also issued an interpretation bulletin for those who are acting in those positions. If they have acted for more than four months in a given year, then they are considered to be a designated public office-holder.

In terms of maintaining a list, there is no mandate in the act for the office to maintain such a list. To be honest, we were going through things and debating whether we should do so. That type of list would be almost impossible to keep because I have no mandate to compel departments to continue to give me that information to put on the site. That type of list would cause enforcement problems for the office. If the list was not up to date and someone was breaching the act in terms of the communication with the monthly reporting, for enforcement reasons there are concerns about trying to maintain a list personally.

I started outreach with departments. I was at a department not long ago. In providing education on the designated public office-holder and having these office-holders see the responsibilities of the act and the consequences for them, senior people around the able said, We should put a list on our website and keep it up to date. It is best for me to encourage departments to prepare that list so that lobbyists know who the designated public office-holder is.

In terms of delivering the messages, for any changes that I have made with respect either to comparable rank or to the interpretation bulletin on an acting appointment, I have sent out more than 150 letters to deputy heads saying, Here is the change; inform your people accordingly so that they are aware of their obligations.

Senator Joyal: From your answer, I understand that no Crown agency, Crown corporations or any other people at that comparable level are included in the act?

Ms. Shepherd: Those who are Governor-in-Council appointments who are in charge of a Crown corporation are covered as a public office-holder. It could affect an initial registration. However, you are correct. In terms of a Crown corporation with a GIC at the head, while that is a public office-holder, they are not a designated public office-holder under the act.

Senator Joyal: If someone lobbied an ambassador of Canada or if someone occupied a similar function in the foreign service of Canada, they are not covered by the act?

Ms. Shepherd: We have had questions about ambassadors and, because of the different role that they play; we are still looking at that question.

Senator Joyal: You have not made a decision on that subject?

Ms. Shepherd: Not formally, no.

Senator Joyal: In your answer to my first question, you said that you have issued an interpretation bulletin. According to section 10(1) of the act, "The Commissioner may issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of this act, other than under sections 10.2. . . ."

How many interpretation bulletins have you issued since you have been in your function?

Ms. Shepherd: I am trying to remember the number. I do not have an exact number. I have revised a number of them in terms of communicating with a public office-holder and a designated public office-holder, so I would say probably a handful.

• (1730)

Senator Joyal: I beg your pardon?

Ms. Shepherd: I think a handful. I could come back with the exact number.

Senator Joyal: I understand that those bulletins would be on your website where the public could visit to try to understand the way you interpret the act.

Ms. Shepherd: Yes.

Senator Joyal: On issues of reporting to Parliament following an investigation, you have the capacity under the act to initiate investigations, report to Parliament and recommend sanctions. I will read section 14.02 of the Lobbying Act:

> 14.02 The Commissioner may make public the nature of the offence, the name of the person who committed it, the punishment imposed and, if applicable, any prohibition under section 14.01.

Concerning the "punishment imposed," what variety or diversity of punishment does the act allow?

Ms. Shepherd: As I see the punishment under the act, there is a breach of an act, and there is a criminal sanction for that action. In terms of anything further on 14.02, I would have to give it more thought.

May I go back to the comment on the ambassadors? If the ambassador fits within the definition as I have indicated, then he or she would be subject in terms of being a designated public office-holder. That is if he or she meets the criteria in terms of the salary level and whether he or she reports to a designated public office-holder.

Senator Joyal: So, your judgement is based on his or her salary.

Ms. Shepherd: If the person meets the criteria as indicated in my comparable rank as being an EX-4 level, or the equivalent salary range of that level, and reporting to a designated public office-holder, yes I would deem that person to be a public office-holder.

Senator Joyal: Is a consul general equivalent to that category in the foreign service of Canada?

Ms. Shepherd: I would have to check where a consul general fits in terms of the criteria to be able to answer that question thoroughly.

Senator Day: Ms. Shepherd, you mentioned three different pieces of legislation. My recollection is that before the Lobbying Act came along as part of the Federal Accountability Act, there was another piece of lobbyist legislation that was in existence but had not been proclaimed. You were in the department in 2004-08. Were you part of coming up with the new initiatives that appear in the Lobbying Act that we now have before us as legislation?

Ms. Shepherd: The responsibility for the act was with Treasury Board, but our office was consulted on some of the experiences we had with the legislation, which I believe contributed to where the government ultimately came out.

Senator Day: Thank you. I am trying to get background. Senator Joyal and I were both involved in the Accountability Act, and you are the first commissioner without any adjectives attached to that word under the Accountability Act, or you will be, assuming that you are confirmed in this position.

Ms. Shepherd: Yes, I will be the first commissioner.

Senator Day: Thank you.

With respect to the monthly reporting of communications or that scheme, I am interested in the verification by the designated public office-holder. What criteria do you have to determine when and if you will ask for verification?

Ms. Shepherd: That is one of the processes of verifying the monthly reporting. I believe that when the act came into force on July 2 to the end of March, we verified roughly 6 per cent of the entries. We found the majority of those were over-reporting. More than 90 per cent were over-reporting. Lobbyists are very much using the monthly report.

In terms of the designated public office-holders verifying the entries, we have tried to make life simple for them when sending the letters and verification. We are actually attaching the entry for them to come back to us.

The criteria now is trying to do a certain number each month and watching for particular trends or so on. One thing we did in the last round was to go after assistant deputy minister levels, so trying to figure out different techniques in terms of verifying the information. If we noticed there was a specific maybe potentially hotter issue, then we would try to verify more of those entries.

In terms of us going out to designated public office-holders and asking them to verify, we are actually getting letters or phone calls from designated public office-holders saying there is a mistake in the entry because the name is spelled incorrectly or there is a wrong date or they are noticing that perhaps a meeting did not occur but it was a letter. Again, that gets back to our education mandate of letting lobbyists know that only oral and arranged meetings have to be reported in those monthly communication entries.

Senator Day: You have a group of people within your department who looks for hot public policy items and then designates those particular office-holders for verification.

Ms. Shepherd: That is one of the tools being used and, yes, we have one dedicated person. One thing she has taken on quite seriously is going through and literally printing out all the communication entries in a month and flipping through to see patterns or things that she notices.

The other thing we are conscious of doing in terms of going out to designated public office-holders is trying to minimize the number of times we are going out and asking someone to verify in terms of the issues or frequency of meetings.

Senator Day: Are you providing guidelines to the designated public office-holders as to what information they should maintain in order to verify when you ask for verification?

• (1740)

Ms. Shepherd: Nothing under the act gives me the mandate to do so in terms of them needing to keep it.

However, perhaps indirectly, we are doing the education and outreach with certain departments, explaining the rationale and requirements of the act and showing them exactly what the lobbyist is required to do and report on. Then, if I was to come to them, it would be to indicate what is on the monthly report that they must maintain.

I am aware that there are departments looking at putting their own best practices into effect in terms of how to best maintain that information so they can verify it when we come knocking on the door, so to speak. One of the powers the requirements in the Lobbying Act gave me, aside from the ability to verify in the event I was to find that someone was not getting back to me, was the ability to put forward their names via a report to Parliament.

Senator Day: You also indicated that the designated public office-holders will sometimes voluntarily come to you. Does that suggest they are looking at all monthly returns by lobbyists and seeing where they are named, even if you have not asked them to verify that?

Ms. Shepherd: With the awareness of the act, yes, some are looking. I could not say how actively they are looking or how they are searching. From letters I have received or via phone calls the registration unit is receiving, I know about them saying there is an error.

Senator Day: My final question is in respect to the five-year prohibition on lobbying. I know how designated public office-holders are determined, either statutorily or through regulation. We have had a discussion on that and you are talking about the acting people in positions and increasing the number of designated public office-holders.

There is another category of individuals called "designated members of the Prime Minister's transition team." Do you recall that? First, I would like to know if the designation is done the same way. Do you play an active role in that designation, or is it done statutorily or through regulation? Who does the designation, and do you maintain a list of those designated members of the Prime Minister's transition team who have a five-year prohibition?

Ms. Shepherd: In order to become subject to the act, the Prime Minister must decide to designate the individuals on the transition team. I would need to become aware that the Prime Minister has actually designated them in terms of keeping a list in house.

Therefore, I do not play a role in the designation process; I need to be informed that the Prime Minister has decided to designate individuals.

Senator Day: Are you aware of any guidelines, and do we have a list now? Can I find a list somewhere of who has been designated by the Prime Minister?

Ms. Shepherd: It is up to the Prime Minister in terms of who has been designated.

I would have to check privacy rules as to whether such a list exists and is accessible.

Senator Day: You are enforcing the act.

Ms. Shepherd: Yes.

Senator Day: If anyone is lobbying who should not be lobbying, you should know who they are.

Ms. Shepherd: Yes.

Senator Day: The only way you would know that is by following a list of people who are prohibited from lobbying for five years.

Ms. Shepherd: Yes. I am currently aware of those who have been designated because I have been so informed. However, you raise a good point as to how, in the future, I could go about ensuring I am informed if that occurs.

Senator Day: That is something you will follow up on, is it not?

Ms. Shepherd: For future administrations, yes.

Senator Day: Thank you.

Senator Grafstein: Ms. Shepherd, welcome to the Senate.

I was interested in the difference between lobbying where the office-holder receives information or is lobbied, versus when a designated officer, in effect, seeks information that may benefit the designated person that the minister or the designated officer reaches out to. I will give a specific example.

Let us assume that the Minister of Finance receives a designated lobby from an association dealing with issues affecting their industry, or the minister decides to call that lobbyist and seek their advice. Are both of them caught by this act?

Ms. Shepherd: There are two parts to that question. In terms of an initial registration, communicating with a public office-holder to amend legislation or a regulation — basically, changing the state of play — is captured by the act because it is communicating with a public office-holder; it would be a registerable activity in terms of determining whether an initial registration is filed.

To answer your question, communication with a designated public office-holder such as the Minister of Finance would be a registerable activity.

With the new requirement of monthly reporting, if the individual lobbied the Minister of Finance to request a meeting and the meeting was oral and arranged and had to do with trying to change the state of play or, as you said, the bill or legislation going forward, that would have to be reported monthly. If the Minister of Finance was to call and ask the individual to come in and comment on the legislation or the proposal, it would be covered in the initial registration, as I indicated. However, there would be no requirement to report it monthly, unless it was about a financial benefit. In that case, it would not matter who initiated the call or the meeting.

Senator Grafstein: If a labour leader, a farm leader or a leader of a banking association contacts a minister, either at their request or at the minister's request, that lobby has to be filed; is that correct?

Ms. Shepherd: It would be considered a registerable activity. There are different rules for consultant lobbyists and for in-house organizations or corporations. That particular activity or meeting would need to be factored into whether the organization or the corporation needs to register.

There is a threshold which would trigger in terms of hitting a significant amount of one person's time. Therefore, that would become a registerable activity and would need to be looked at in terms of whether a registration is required.

Senator Grafstein: I wish to be clear. This should obviously be a warning to anyone who deals with any public office-holder: If a minister — again, the Minister of Finance — decides it has become a practice before a budget to go and seek the views of the stakeholders who will be affected by the budget before he concludes what the budget should be, that is a lobby and must be filed. Am I clear on that?

Ms. Shepherd: I want to make sure I am clear of the question as well.

Senator Grafstein: Every Minister of Finance in the last decade or so has been actively sought stakeholders' advice about what form the budget should take, which is all private and confidential until the budget is announced. The minister, pursuant to his duties, goes out and elicits opinions from these various stakeholders: the unions, pension boards, banks, financial institutions, labour unions, farmers, et cetera. He seeks their opinions and views.

In the course of that exchange, they tell him their views. They say, "We do not want you affect our industry or our farming communities. We do not want you to affect our unions. We do not want you to affect our pensions." It is a grassroots exchange.

From those exchanges, the minister, in effect, tables a budget. Is all that activity now covered by this legislation?

Ms. Shepherd: It was always covered by the legislation if it was "communicating" to change the state of play. However, a number of factors also affect it in terms of whether the individual is actually paid. If you are talking to most of the associations, the individuals are paid to communicate on those activities.

• (1750)

If the activities are public forums, there is an interpretation bulletin and exemption in the act that talks about communicating. If the activity is already public, it needs to be registered.

However, in terms of looking at when the minister goes out and talks, there are a number of factors that need to be determined as to whether that registration is required. For example, if the minister goes out and talks to the farmer, you would look at whether the farmer is paid.

The activity, as you have described it, is probably a registerable activity because it looks like it is changing the state of play or having an impact. The next factor, if it is for an in-house organization or corporation, is whether — taking that activity that is now registerable — it adds up to a significant amount of time that triggers the organization or the corporation having to register.

Senator Grafstein: To be continued; thank you.

Senator Atkins: Ms. Shepherd, I extend my congratulations and my sympathy.

You have accepted quite a balancing act between rules and regulations, and the bottom line is that it adds up to red tape. If I were running in the next election, one of the pieces of the platform that would be at the top of my list is deregulation and eliminating red tape.

Can you tell me, in good conscience, that you can live with the kind of pressure that will be on the commission in terms of whether they are getting the extended value, and are they vulnerable to reductions of red tape in any manner or form?

Ms. Shepherd: Can I make sure I am clear on your last point? I understand the importance of red tape, but in terms of administering the act that Parliament has passed, I have no problem.

Senator Atkins: However, there will be pressure. Do you think it stands up to those pressures? That is the simple question.

Ms. Shepherd: Sorry, to be sure I am clear, pressures in terms of trying to deregulate or pressures in terms of being able to administer the act Parliament has passed?

Senator Atkins: Administer the act.

Ms. Shepherd: There will be pressures, whether it is on the five-year prohibition or, as we have seen in the recent papers, the disclosure requirements and where we are hanging tough on the transparency side. It will not to be easy, but yes, I feel, in good conscience, that I can live up to the challenges. I have a good team in place, a lot of support and sound legal counsel that I count on, as well. Yes, I am confident.

Senator Atkins: You had better be ready.

Ms. Shepherd: I do not know, as someone said, if you are ever ready, but I am definitely prepared.

The Chair: Thank you, Ms. Shepherd. Honourable senators, I know you will join me in thanking, sincerely, Ms. Shepherd.

Hon. Senators: Hear, hear.

[*Translation*]

The Chair: Honourable senators, is it agreed that the committee rise and that I report to the Senate that the witnesses have been heard?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Rose-Marie Losier-Cool: Honourable senators, the Committee of the Whole authorized by the Senate to hear from Ms. Karen Shepherd regarding her appointment as Commissioner of Lobbying reports that it heard the witness.

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, pursuant to rule 27(1), I would like to inform the Senate that when we proceed to Government Business, the Senate will address the items in the following order: second reading of Bill C-48, second reading of Bill C-49, followed by other items according to the order in which they appear on the *Notice Paper and Order Paper*.

COMMISSIONER OF LOBBYING

MOTION TO APPROVE APPOINTMENT ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of June 17, 2009, moved:

> That in accordance with section 4.1 of the Lobbying Act, Chapter 44 of the Statutes of Canada, 1985, the Senate approve the appointment of Karen E. Shepherd as Commissioner of Lobbying.

(Motion agreed to, on division.)

[*English*]

APPROPRIATION BILL NO. 2, 2009-10

SECOND READING

Hon. Irving Gerstein moved second reading of Bill C-48, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2010.

He said: Honourable senators, the bill before you today, Appropriation Act No. 2, 2009-10, provides for the release of the remainder of supply for the 2009-10 Main Estimates. I have been here only a few months and already I have had the honour of introducing several appropriation acts. My speeches on each of these bills have contained by necessity, similar language, the language of the government supply process.

Already, I am coming to realize that these speeches have the potential to grow tiresome in the delivery, let alone in the listening. I truly appreciate the rapt attention of my colleagues, many of whom have sat through innumerable similar presentations during their parliamentary careers.

We often hear reference to the power of the purse; and truly, the authority to direct public funds is a great power. We must also bear in mind the famous credo, "With great power comes great responsibility." Rarely has this statement been more true than today, given the global economic challenges we face.

Responsible scrutiny and stewardship of the public purse is among our most vital functions as senators, and can make a tremendous difference in the lives of all Canadians. That is why I am certain that all honourable senators will give their closest attention to this legislation.

• (1800)

The 2009-10 Main Estimates, which were tabled in the Senate on February 26, 2009, seek a total of $236.1 billion dollars in government expenditures. These estimates were discussed in some detail with Treasury Board Secretariat officials in their appearance before the Standing Senate Committee on National Finance on March 4, 2009. I wish to express my sincere appreciation to the constant parade of Treasury Board officials who came before the Finance Committee to explain these matters. The supply process is pretty arcane stuff, and it would be nearly impossible for parliamentarians to give thorough and thoughtful consideration to supply bills without the expert counsel of these officials.

The Main Estimates 2009-10 describe $235.8 billion in budgetary spending, which includes the cost of the servicing the public debt; operating and capital expenditures; transfer payments to other levels of government, organizations or individuals; and payments to Crown corporations. The remaining $350 million is attributable to non-budgetary expenditures that affect the composition of the government's financial assets, such as loans, investments and advances.

Of the $235.8 billion in budgetary expenses contained in the Main Estimates, votable expenditures constitute $85.6 billion. The remaining $150.2 billion represents statutory spending, such as benefits for the elderly and Employment Insurance. These forecasts of statutory spending, previously approved by Parliament, are provide for information purposes only.

This year's non-budgetary expenditures of $350 million include both voted, non-budgetary spending authorities amounting to $78.6 million, and statutory non-budgetary expenditures of $271.4 million, already approved by Parliament under separate legislation. The non-budgetary spending of $350 million contained in Main Estimates 2009-10 represents a forecasted decrease of $506.7 million compared to the 2008-09 Main Estimates.

The grand total of voted or appropriated items in the Main Estimates 2009-10 is $85.7 billion. Of this amount, Appropriation Bill No. 1, 2009-10, sought authority to spend $26.8 billion. The balance of $58.9 billion is now being sought through Appropriation Bill No. 2, 2009-10.

Should honourable senators require further information, I will certainly do my utmost to provide it.

Hon. Joseph A. Day: Honourable senators, permit me to thank my colleague and friend Senator Gerstein on his remarks in providing a succinct overview of the Main Estimates.

Honourable senators will know that Bill C-48 deals with the balance of main supply. We are being asked to vote at this time on $58 billion. I normally look at the schedule to the Main Estimates, which we received some time ago, and compare the draft schedules to the schedule that appears on the bill. I have done so and have found them to be identical. Honourable senators will recall that one year or so ago, the Finance Committee found that not to be the case, and we were thanked by the House of Commons for our due diligence in discovering the discrepancy.

Honourable senators, there are two schedules attached to Bill C-48. One schedule is for one fiscal year. The second schedule is in respect of certain government departments and agencies that are entitled to have appropriation over a two-year period. Honourable senators are being asked to approve about $5 billion for Canada Revenue Agency, Parks Canada Agency and the Canada Border Services Agency. They have a two-year period within which to spend the money as outlined in the schedule.

I remind honourable senators that once the bill receives second reading, it will not be referred to committee, which is the usual process for a bill. Last week, the Finance Committee dealt with a report on the Main Estimates, which we have been studying for some time now. The report supports Bill C-48. The Finance Committee is charged with the study of the Main Estimates throughout the year and it will continue to do. The committee

filed an interim report, which provides the Senate with an overview and certain aspects of the Main Estimates. That should provide honourable senators with sufficient comfort to deal with Bill C-48 at this time.

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

(Motion agreed to and bill read second time.)

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

(On motion of Senator Gerstein, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

APPROPRIATION BILL NO. 3, 2009-10

SECOND READING

Hon. Irving Gerstein moved second reading of Bill C-49, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2010.

He said: Honourable senators, before we repair to our respective homes throughout this great land to spend much-needed time, I beg your indulgence for the introduction of a very important supply bill. Bill C-49 provides for the release of supply for the Supplementary Estimates (A) 2009-10. It seeks Parliament's approval to spend $5.3 billion in voted expenditures. These expenditures were provided for within the plan set out by the Minister of Finance in his January 2009 Budget. It bears mentioning that we would not normally see the Supplementary Estimates (A) until the fall. However, I do not need to explain to honourable senators that we live in what might be euphemistically called interesting economic times. The need for a timely and fulsome response to the global recession compelled the Finance Minister to table the 2009-10 budget far earlier than is customary. Hence, every subsequent step in the supply process has also been advanced.

Supplementary Estimates (A) 2009-10 were tabled in the Senate on May 14, 2009, and were referred to the Standing Senate Committee on National Finance. These are the first supplementary estimates for the fiscal year that will end on March 31, 2010.

The Supplementary Estimates (A) were discussed in some detail with Treasury Board Secretariat officials in their appearance before the Standing Senate Committee on National Finance on June 2, 2009. The 2009-10 Supplementary Estimates (A) describe $6.6 billion in budgetary spending, including $5.3 billion in voted appropriations requiring the approval of Parliament.

These voted appropriations include $822 million for the Department of National Defence to help finance the extension of the Afghanistan mission. These funds will ensure the safety and operational effectiveness of Canadian troops, provide basic infrastructure to support enhanced air operations and address certain expenses relating to the end of the mission.

• (1810)

There is $141 million for advanced funding to the Department of National Defence for major capital equipment projects. There is also $140.8 million for funding to National Defence to acquire medium-sized military trucks to transport troops and supplies.

There is $188.6 million for funding to Health Canada. These monies will help stabilize the Non-Insured Health Benefits program, primary care services, and fund a direct investment in the construction and renovation of the infrastructure for First Nations and Inuit health services.

There is $177.5 million for Indian and Northern Affairs Canada to support investments in First Nations infrastructure for school construction as well as water and waste water projects.

There is $121.9 million for Public Works and Government Services Canada for infrastructure projects. These include improvements to accessibility of federally owned buildings, repairs to federal bridges and custodial assets and a plan for the future of the Quebec City Armouries.

There is $117.2 million for funding to Natural Resources Canada to support the EcoEnergy Retrofit program for homes.

There is $100 million for funding to Canadian Heritage to support production of drama, children's and youth documentary, variety and performing arts programs under the Canadian Television Fund.

The funding to be authorized in this bill also includes major horizontal initiatives, which are initiatives that affect more than one organization. For example, there is $349.2 million for planning and operations related to policing and security of the 2010 Olympic Winter Games and Paralympic Winter Games; and $131.5 million for the continuation of the Homelessness Partnering Strategy to promote strategic partnerships, housing solutions, and stable supports and to help homeless Canadians to move towards self-sufficiency.

These Supplementary Estimates (A) also include a net increase of $1.6 billion in budgetary statutory spending previously authorized by Parliament. These adjustments to projected statutory spending are provided for information purposes only. They are mainly attributable to the following forecast changes.

There is nearly $2 billion for the Office of Infrastructure Canada to support the Infrastructure Stimulus Fund to accelerate and increase the number of construction-ready provincial, territorial and municipal infrastructure projects. There is also $500 million dollars for Industry Canada to accelerate repairs and maintenance at post-secondary education institutions under the Knowledge Infrastructure Program.

A decrease of $905.5 million is due to a revised forecast of transfer payments to provincial and territorial governments that include: $489 million for payments to Ontario related to the Canada Health Transfer; $299.8 million for alternative payments for standing programs; $74.2 million for a transitional adjustment

payment to Nova Scotia; $66.6 million for Youth Allowances Recovery; $66 million for Incentive for Provinces to Eliminate Taxes on Capital; and a decrease of $1.9 billion for Fiscal Equalization.

There is also a decrease of $2.368 billion in the forecast by Finance Canada of public debt charges due to a significant downward revision in forecasted interest rates and lower than expected inflation.

The 2009-10 Supplementary Estimates (A) also reflect $52.5 billion in non-budgetary spending. Of this, $247.8 million in voted appropriations is attributable to Canada's participation in the Global Trade Liquidity Program, a funded trade finance program designed to help address specifically the liquidity constraint on global trade finance.

It is also noteworthy that statutory non-budgetary spending is expected to increase by $52.3 billion due to forecast changes for Canada Mortgage and Housing Corporation, including: $50 billion for funding to stimulate housing construction through increased investment in insured mortgage pools under the Insured Mortgage Purchase Program; $1.3 billion for advances under the National Housing Act; and $1 billion for funding to stimulate housing construction through low-cost loans to municipalities for improvements to housing-related and community infrastructure.

In summation, honourable senators, Appropriation Act No. 3, 2009-10 seeks Parliament's approval to spend a total of $5.3 billion in voted expenditures. Should you require additional information, I will be pleased to try to provide it.

Hon. Joseph A. Day: Honourable senators, the Deputy Chair of the Standing Senate Committee on National Finance, Senator Gerstein, has given you a good overview of the proposed expenditures that appear in the Supplementary Estimates (A).

It is important to keep in mind that these estimates are one of three supplementary estimates that go along with the Main Estimates upon which we have just voted second reading. Two others will be coming. Supplementary Estimates (A) include many, but not all, of the initiatives that appeared in the January budget. There are also budget implementation acts, one of which we have seen in Bill C-10. Another budget implementation act plus two other supplementary estimates will follow in due course.

There are two ways the government obtains parliamentary authority to spend. Honourable senators will recall when we dealt with the report last week from the Standing Senate Committee on National Finance that we expressed concern about the government advertising programs for which the government had not yet received parliamentary authority either through statutory authority or the estimates. If honourable senators look at Bill C-49, which was provided to us earlier, clause 3(2) has provisions for each item in Schedule 1 and Schedule 2 that were deemed to have been enacted by Parliament on April 1, 2009. With the approval of this bill, in effect, the government is asking for forgiveness and indicating this will be backdated to and be effective as of April 1, 2009.

Honourable senators, the $5.3 billion that we are being asked to approve in this appropriation act will come out of the Consolidated Revenue Fund. As we would have expected, there are two schedules. I have checked those two schedules against the estimates for Supplementary Estimates (A). The two schedules conform to the schedules we studied and that form the subject of our report that has already been debated here in the chamber.

The final point I want to remind honourable senators of is one that Senator Gerstein has brought to our attention. However, it is extremely important for us to keep in mind. We are voting for $5.3 billion, but there are also statutory expenditures. Main Estimates provide us with information on those statutory appropriations that have already been approved previously. Statutory expenditures are referred to in this bill and for information.

We approved $53 billion in statutory spending previously, of which $50 billion will go to CMHC to buy mortgages. This money supplements $75 billion we were already informed of. Therefore, CMHC alone is spending $125 billion to buy mortgages in the marketplace. Honourable senators, if anything ever went wrong with many of these mortgages, we would have to approve that as expenditure. We have already agreed to it statutorily. We should be aware of this risk.

Honourable senators, apart from that one point, this bill is a supply bill. The Senate is not a chamber of confidence, but we understand and appreciate the importance of supply to the government.

Hon. Anne C. Cools: Will the honourable senator take a question?

Senator Day: Yes, I would be pleased.

Senator Cools: On page 2 of the bill, clause 3(2), which you referenced, states:

> The provisions of each item in Schedules 1 and 2 are deemed to have been enacted by Parliament on April 1, 2009.

This is an extraordinary clause. Could this house have some greater explanation on the phenomenon of deeming something to have been enacted months ago?

• (1820)

Senator Day: I brought it to the attention of senators because it came to my attention when I read the bill and it is obvious on its face what it means. It means that the expenditures that are here will be deemed to have been approved as of April 1, which is the first day of the fiscal year. That covers the advertising for these household renovation projects and a many other projects that we have seen advertised. Those items are backdated and will be covered by this bill when it is approved and receives Royal Assent.

I cannot give the honourable senator any more information than that, but I can tell her that it has been brought to my attention and we do have the estimates for the rest of the year and we will be asking questions.

Senator Cools: When the Treasury Board Secretariat officials were before the Senate committee, did they specifically address this clause or did a minister of the Crown specifically address this clause?

Senator Day: I had the opportunity to look at Bill C-48 and the same provision appears in that bill, on which we just did second reading. We did not have these bills, nor did we have the wording of the bills when representatives of Treasury Board were before us to deal with the estimates. We had Schedule 1 and Schedule 2 in draft form in the Main Estimates. They are identical in these two bills. The wording was not something we had to look at before these bills were before us today.

Senator Cools: I understand that because the bills just arrived a few moments ago. However, I wonder if the phenomenon had been addressed at all in committee. These are extraordinary powers. I understand the honourable senator to say that this clause is totally new to him and I conclude that it is totally new to the members of the committee. At any point did the committee give agreement to such a phenomenon?

Senator Day: "Totally new" may be a bit of an overstatement. If these appeared in supply bills in the previous year, I might not have focused on that particular provision, because I had not been concerned about the government advertising something for which it had not received parliamentary approval. That was a concern that was raised in our report and I made mention of last week here in this chamber and then, when I was reading the act just in the last hour or so, that clause jumped out at me because of that.

Whether I read this article in previous years I do not know, but I can tell honourable senators that the clauses tend to be pro forma. I would not be surprised if my honourable colleague, Senator Gerstein, were to tell me that that clause was in the bill in a previous year.

Hon. Terry M. Mercer: I have another question for Senator Day and it goes back to my speech last week, when the honourable senator reported on the pre-study of this and my frustration with the fact that it is June 22, we are receiving this and Senator Cools has drawn our attention to clause 2 and its retroactivity.

In light of this issue raised by Senator Cools, would the honourable senator still say that pre-study is beneficial, because it was not beneficial since you did not have the final wording in front of you as you were quizzing officials?

I too am concerned about the government advertising something that has not received approval, as should all Canadians. I would suggest to our honourable colleagues across the way that if this had happened prior to 2006, when friends of ours were in power, they would have been all over this and would have been very critical of Mr. Martin or Mr. Chrétien.

Does pre-study now withstand the test of time? The test of time is only about a week.

Senator Day: First, these bills were passed by the House of Commons last Friday. It is partly a convenience for us to have asked for the time to be shortened to deal with these today; otherwise, we would have had to sit Friday afternoon to receive the bills. After sitting Friday, the bills would have received the normal two days notice and we would have been dealing with them anyway. I do not see anything wrong with shortening the time to deal with the bills on second reading today and, as you have heard from Senator Gerstein with respect to Bill C-48, the normal time dealing with it at third reading will be tomorrow.

Second, with respect to the question of the pre-study, it is only partially a pre-study; it is an opportunity for the Finance Committee to look at what the government intends to spend prior to receiving the bills. The Senate is under tremendous pressure to pass bills, especially bills that authorize governments to spend, as we saw with Bill C-10 and on which we had to do a post-mortem. That is much less desirable than from time to time doing a pre-study in order to allow us to understand the bill and communicate that to our colleagues in the chamber. The National Finance Committee learns and communicates the main issues contained in the bill.

Having in mind how the fiscal cycle works, we cannot change how they act in the other place. However, we can find ways of doing the job that we should do and doing the best job we can under the circumstances. Performing a pre-study of supply bills and studying the estimates before the bill comes to us is an appropriate and effective way to do things.

Senator Cools: Perhaps the honourable senator could clarify that the study of the estimates is not a pre-study in the sense that we know pre-studies of bills. The study of the estimates is precisely that, a study of the estimates, which are then followed by the appropriation bills.

It is not technically, or in a parliamentary manner, correct to say that the study of the estimates is a pre-study of the bill. Perhaps that could clarify some of the confusion. They are two separate processes deeply interrelated, but one definitely precedes the other.

There is a variety, a plethora of traditions as to how to deal with these. The honourable senator and I have talked about these matters. The committee reports must absolutely be adopted before the supply bills be permitted to go ahead. It is not a pre-study of a bill in the old terms that Senator MacEachen and many of us used to object to. It is a different process.

Senator Day: I am grateful to my mentor in National Finance, the Honourable Senator Cools, who is absolutely right and her comment is absolutely right. I likened it — and I was using my words carefully if you look through the record — it to a pre-study and the fact that we study certain aspects of the bill before it arrives but we do not study the whole bill, which would be a pre-study obviously. This is a helpful measure we use only with respect to supply bills because of the supply cycle that exists in the House of Commons.

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

An Hon. Senator: Question!

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

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

(On motion of Senator Gerstein, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

• (1830)

MARINE LIABILITY ACT
FEDERAL COURTS ACT

BILL TO AMEND—THIRD READING

Hon. Leo Housakos moved third reading of Bill C-7, An Act to amend the Marine Liability Act and the Federal Courts Act and to make consequential amendments to other Acts.

He said: Honourable senators, it is my pleasure today to speak to Bill C-7. I am pleased to inform this chamber that this bill has enjoyed broad support from both sides of the aisle. We heard this during second reading debate and again during committee stage.

This bill is a wonderful example of the good work this chamber and the Standing Senate Committee on Transport and Communications can accomplish when we put politics aside and work to benefit Canadians.

This bill makes a number of important changes to the pollution liability and compensation regime in this country. This includes increasing the compensation from about $500 million available today to about $1.5 billion for a single accident. Allowing Canada to ratify two international conventions protects passengers who travel on ferries, cruise ships and tour boats in Canada with compulsory insurance.

This government strongly believes in the polluter-pays principle. The changes made to the Marine Liability Act in Bill C-7 respects this. I am sure all honourable senators will agree that polluters should pay for the damages they cause.

I was encouraged to hear the support for the bill from my honourable colleagues in the committee, and in particular from Senator Mercer. This is a good example of Parliament working together to pass a timely piece of legislation.

I urge all honourable senators to support the bill so it can finally become law.

The Hon. the Speaker: Is the Senate ready for the question?

Hon. Senators: Question.

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

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

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. John D. Wallace moved third reading of Bill C-14, An Act to amend the Criminal Code (organized crime and protection of justice system participants).

He said: Honourable senators, I am very pleased to join the third reading debate on Bill C-14, An Act to amend the Criminal Code in respect of organized crime and protection of justice system participants.

By now, we are all well familiar with the proposed amendments contained in this bill. These amendments address four principal areas: first, making all gang murders automatically first degree; second, creating a new offence to target drive-by and other reckless shootings; third, creating new offences to target the assaults of peace officers which cause bodily harm or aggravated assaults of such persons; and, fourth, strengthening the "gang peace bond" provisions.

Honourable senators, Bill C-14 has been the subject of extensive debate both in the other place and here in this chamber. The discussions of this bill before the Standing Senate Committee on Legal and Constitutional Affairs provided a further opportunity to discuss the proposals in greater detail, as well as to hear evidence as to why these reforms are needed. A couple of specific issues arose during the committee deliberations, and I would like to expand on those now.

The first issue relates to proposed section 244.2, which is targeting "drive-by and other reckless" shootings. As the Minister of Justice explained in his remarks before the committee, this offence is targeted at those who intentionally shoot their firearm, appreciating that doing so might put the life or safety of another person at risk and proceed in the face of that risk. This offence will not capture inadvertent shootings or instances where the firing of a gun was accidental, nor will it catch the situation where the person clearly did not turn their mind to the risk.

Honourable senators, I think it is important that we all understand what "recklessness" really means in a criminal context, as I think there is some confusion with respect to its meaning. This has, in turn, led to some questions with respect to who might be caught by this new offence.

Recklessness, as a standard for criminal liability, has been a concept known to Canadian courts for some time. In 1985 in the case of *R. v. Sansregret*, the Supreme Court of Canada described recklessness in the following way:

> In accordance with well-established principles for the determination of criminal liability, recklessness, to form a part of the criminal *mens rea* —

— or criminal intent —

> — must have an element of the subjective. It is found in the attitude of one who, aware that there is danger that his conduct could bring about the result prohibited by the criminal law, nevertheless persists, despite the risk. It is, in other words, the conduct of one who sees the risk and who takes the chance. It is in this sense that the term "recklessness" is used in the criminal law . . . .

This approach was recently reiterated by the Supreme Court of Canada in 2005 in its decision in *R v. Hamilton*. Similarly, Professor David Paciocco, one of Canada's foremost criminal law experts, has described recklessness in the following way:

> A reckless actor does not intend the prohibited consequence but sees the risk that it will occur and unjustifiably goes ahead despite the risk. The subjective fault emerges from the deliberate and knowing decision to take the risk.

That quote comes from the Saskatchewan Law Review of 1995 in an article entitled *Subjective and Objective Standards of Fault for Offences and Defences*.

As honourable senators can see, recklessness requires a subjective appreciation of the risk. This must be contrasted with the fault requirement for negligence in the criminal context. For those offences, such as careless use of a firearm — which is in section 86 — dangerous driving causing death — which is subsection 249(4) of the Criminal Code — or criminal negligence causing bodily harm — which is section 221 — it is not necessary to prove intention or a subjective appreciation of a prohibited consequence.

With this in mind, it should be clear to all honourable senators that the objective behind the proposed new shooting offence is to punish those who subjectively appreciate the risk and, despite the risk, still go ahead and shoot anyway. It will not punish inadvertence or negligence. The standard of proof required for this new offence is higher, and rightfully so.

A further issue raised during the committee deliberations on this bill related to the definition of "firearm." A concern was expressed that the proposed new shooting offence would punish those who intentionally fire a pellet gun into a building while being reckless as to whether it was occupied. In this respect, it should be pointed out that the term "firearm" is defined in the Criminal Code and includes any barrelled weapon capable of causing serious bodily injury or death.

The important point to bear in mind is that the device must be capable of causing serious bodily injury or death. If a pellet gun has the capacity to cause serious bodily injury or death and someone fires it, appreciating the risk to another person's safety, then this new offence may apply. If it does not have the capacity to cause serious bodily injury, then it will not be considered a firearm and the proposed shooting offence in Bill C-14 of course would not apply.

Viewed in this light, and taking into consideration the level of fault required to prove recklessness, I am confident that the offence is an appropriate one and targets those who consciously appreciate the risk to the life or safety of another that their actions will cause. Indeed, this approach mirrors the approach of many of the serious offences in the Criminal Code that involve the use of a firearm.

• (1840)

Honourable senators, Bill C-14 is an important and welcome piece of legislation that will provide additional tools in the fight against organized crime in Canada. Is it a panacea to organized crime? Of course not. A broad approach is necessary, which combines both legislative and non-legislative elements. Bill C-14 is one piece of the puzzle, as are other bills currently before Parliament, including Bill C-15, which would crack down on criminal organizations and their involvement in the commission of serious drug offences; as well as Bill C-26, which is targeting auto theft and the trafficking in property obtained by crime.

In addition, investments in crime prevention and community-based programs are of course also necessary. That is why the Government of Canada is taking steps in this regard. For example, the Youth Gang Prevention Fund of approximately $11.1 million was established under the broader National Crime Prevention Strategy designed to help communities prevent youth crime and to focus specifically on guns, gangs and drugs.

In addition, approximately $64 million was allocated in 2007 as part of the National Anti-Drug Strategy, which is being used in part to support law enforcement efforts to combat the drug trade that, of course, is frequently linked to organized crime.

Therefore, it is clear that through the combination of legislative and non-legislative measures, the Government of Canada is working to curb the tide of violence and harm perpetuated across Canada by organized crime, including street gangs. Together with the provinces and the territories, the government will continue to take steps to improve these responses.

Canadians expect us to work together to develop responses to those issues that impact on their lives on a day-to-day basis. With Bill C-14, we have done this. I wish to conclude by thanking all honourable senators for their work on this important piece of legislation and urge its quick passage into law.

Hon. George Baker: Honourable senators, I wish to say a few words concerning this bill. Before I begin, I would like to make reference to the two new members on the Standing Senate Committee on Legal and Constitutional Affairs, Senator Wallace and Senator Dickson, who are present here now.

Senator Wallace is a well-known and respected lawyer from the province of New Brunswick. He has great history in corporate law and is a relatively young man with a brilliant legal mind.

Of course, sitting with him is Senator Fred Dickson. Senator Dickson is perhaps known throughout Canada as being the foremost authority on the ownership of the ocean floor. He is a recognized expert in that law. The first time I heard his name mentioned was when Newfoundland passed a law to extend its jurisdiction following the discovery of offshore oil and gas.

Newfoundland passed a provincial law laying out their jurisdiction, and they tailored it so that it would conform with the Continental Shelf and extensions thereof, just like the Law of

the Sea. We were looking one day at this law, and the name Fred Dickson came up. One person analyzing it said, "My goodness, look at what the Nova Scotia legislature has done; it has indications that perhaps the legal mind of Fred Dickson had something to do with the legislation." I asked, "Why do you say that?" The analyst said that the Newfoundland legislation goes out to the Continental Shelf and extensions thereof for jurisdictional purposes, but the Nova Scotia law is not restricted just to that. The Nova Scotia law says that they are laying their jurisdiction to the extent of exploitability. The analyst said that in today's modern terms, that means extending it right across the Atlantic Ocean to capture the beaches of North Africa. That is the brilliance of Senator Dickson. I do not know if that is correct or not, but that is what they say.

Honourable senators, I want to make a brief reference to this bill. Senator Wallace has made reference to the fact that some of the senators on the committee were concerned that the bill would capture people it should not capture; that is, it would capture BB guns and pellet guns in the definition of "firearm." That is true. Some people were very concerned about that. The reason they were concerned is because under existing case law, a BB gun and a pellet gun, as Senator Wallace has just pointed out, if they inflict serious bodily harm, are barrelled weapons or barrelled instruments, as the definition says, from which a projectile is fired that can cause serious bodily harm.

In reviewing cases to illustrate my point, there is the case of *R. v. Cripps*. Some young men bought a pellet gun for $59 from Wal-Mart. They returned to their home, and they were shooting at things in the window, with the window open, of course. One of the shots they took went through the driver's side of a car and hit a Mrs. Betty Roy of Welland in the eye. The police were called, and the young men were charged with three offences: criminal negligence causing bodily harm, possession of a weapon for a purpose dangerous to the public peace without lawful excuse, and using or handling a firearm in a careless manner contrary to section 86(1) of the Criminal Code.

In that judgment, as in every single other judgment, the expert said — and Senator Watt is listening carefully because he is the one who brought up the objection to this point because many young people in the North use pellet guns and BB guns.

Paragraph 26 of *R. v. Cripps* states:

> Mr. Staniek —

— who is an expert —

> — found that the rifle met the definition of "firearm" in s. 2 of the *Criminal Code*. There can be no quarrel with that finding.

There is case after case. What did the judge do? The judge gave the young man who was charged — unfortunately, he was studying law at the time — a conditional sentence.

Now turn to the next case. It is the case of two groups of young people, one with a BB gun, the other one with a pellet gun, and they start shooting at each other. One of the boys is hit in the eye. There is no damage, but the parent reports it to the police, charges are laid, and again possession of a weapon for a dangerous purpose, a BB gun, to wit a BB gun; aggravated assault, assault with a weapon, to wit a BB gun; assault causing bodily harm, use of a firearm in a careless manner, to wit a BB gun; discharging a firearm with intent to wound, maim or disfigure.

• (1850)

Do not forget, senators, that the punishment under this bill is four years in jail minimum. What happened in this case? Well, this court gave the young man one year in jail. The B.C. Court of Appeal overturned and entered an acquittal. Honourable senators may reference this case in *R. v. D (M.G.)*, [2008] Carswell, B.C., 2749.

In the past six months there was one case where a young man had a BB gun in the trunk of his car and he got four years in jail for it. Why? First, he had quite a record; and second, he had breached his bail conditions. He had breached probationary conditions and when it was all added up, he was given four years in jail. The defence said two years in jail; the Crown said five years in jail; the judge said four years in jail.

The point is, no matter which one of these cases you talk about, now it will be four years in jail, no matter the circumstances.

The Legal and Constitutional Affairs Committee has done a remarkable job, since I have been here, to point out these matters, and they did so with another case. I hope someone will speak on the effect of minimum sentences here during the third reading of this bill. Not only do you get four years in jail, but there is an immediate order given to take your DNA.

We received a bill, honourable senators, last fall before this place rose, and senators were concerned. The chair of the Legal and Constitutional Affairs Committee will bear me out in the truth of this statement. Assault with a weapon, which was one of the designated offences, could be arrived at from simply throwing a pencil at someone. That is assault with a weapon, so you cannot have that as a primary offence and automatically take DNA. How long ago was that? That was in December when the Standing Senate Committee on Legal and Constitutional Affairs warned the government of that. The bill passed in a hurry. What happened in March, three months later? Well, Justice Cohen of the Ontario Court of Justice said this in *R. v. S (C.)* [2009] Carswell, Ontario, 1390. She said this at paragraph 42:

> Under this legislation, a 12-year-old who grabs a baseball hat off a playmate and runs away with it can be found guilty of robbery and be required, pursuant to a mandatory order, to surrender his or her DNA to the state.

Justice Cohen went on and said:

> Under this legislation, a 12-year-old involved in a consensual schoolyard scuffle in which one of the participants receives a minor injury must be subject to a DNA order on a finding of guilt.

The judge in this case refused to make the order, contrary to law, by coming to the conclusion that it was a violation of section 7 of the Charter of fundamental rights and a violation of section 8, illegal search.

I do not know if this is being appealed. It does not say so anywhere I could find. The offence in this piece of legislation is as follows:

> Every person commits an offence
>
> (*a*) who intentionally discharges a firearm into or at a place, knowing that . . . another person is present in the place . . .

I have left out an "or" and the "or" is ". . . being reckless as to whether another person is present in the place."

For all the judges who have made these determinations on pellet guns and BB guns, they will no longer have an option. The person goes to jail for four years and their DNA is automatically captured by an order; however, senators, I think what will happen is what happened in the case of Justice Cohen, and that is the court will simply decide this violates the Charter and the minimum sentence shall not apply. That will be a matter then, I imagine, for the Supreme Court of Canada.

Hon. Serge Joyal: Honourable senators, I cannot resist the invitation of Senator Baker to share some reflections on one aspect of the bill that my honourable colleague Senator Wallace did not mention in his report and general comments on the bill. Section 8 of the bill amends section 244.2 of the Criminal Code and introduces additional mandatory minimum sentences of four years for the first offence and seven years for the second offence, up to a maximum of fourteen years. Senator Baker has raised the issue of what I would call inappropriateness of mandatory minimum sentences in the specific context of the use of BB guns or pellet guns.

There is no doubt in my mind that if such a case came to a court, the defence lawyer would certainly argue section 12 of the Charter, which is cruel and unusual punishment, because the judge would have no choice other than to impose the mandatory minimum four years.

I should take some time to reflect upon that concept of minimum mandatory sentencing because we will see it come back. We saw it in 1995, those of us who were on the committee, or in the other place, or observing the trends of Parliament. We saw it in 1995 when Parliament was preoccupied with that approach to criminal law.

I want to raise that because the imposition of mandatory minimum sentences seems to be an easy way to try to fight organized crime. In other words, clean the streets; put them all in prison and everyone will be happy and secure and sleep well at night. However, is the concept of mandatory minimum sentencing effective? Is it really cleaning the streets?

I was struck when the Minister of Justice appeared last week before the committee and repeated 13 times, "We have to send the right message. We have to send the right message." It was almost an incantation. You appeal for the message, and then the reality realizes itself.

I was, in a way, puzzled by that because as you know, fighting organized crime is not an easy issue. All the studies that have been made available to us, either through the Department of Justice or through the criminologists who have studied the nature and the impact of mandatory minimum sentences, have not concluded "effectiveness" in "cleaning the streets."

• (1900)

I want to read two of those studies. One was done by the Department of Justice. It was conducted by prominent criminologist Julian V. Roberts from the Centre for Criminology, University of Oxford. This is not a person without credentials in terms of studying minimum mandatory sentences either here or in the Commonwealth countries. His study is entitled *Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models.*

Dr. Roberts studied minimum sentences in most of the Commonwealth countries with which we share legal tradition in criminal law. I would like to from quote his conclusion on page 35, which states:

> This report has demonstrated that while mandatory sentences of imprisonment proved popular in the 1990s across a number of common law jurisdictions, closer examination of the laws reveals that many countries allow courts the discretion to sentence below the minimum when exceptional circumstances exist.

I underline "when exceptional circumstances exist." I continue:

> This usually means that courts are permitted to consider mitigating factors relating to the offence or the offender, in some cases, as long as the judge provides written reasons for doing so. In addition, while the general public appears to favour the use of mandatory sentences for offenders convicted of the most serious offences and repeat offenders, there are important limits on public support for strict mandatory sentencing laws. When the public is provided with more information regarding the law and the circumstances surrounding the offence and the offender, the tendency is not to favour punitive sanctions such as mandatory minimum sentences.

This study was commissioned by the Department of Justice and is available on their website.

Honourable senators, I want to draw your attention to another study, this time by the Research and Statistics Division of the Department of Justice, commissioned by Professor Thomas Gabor, Department of Criminology, Ottawa University; and Nicole Crutcher, from Carleton University. What do they conclude from their study? I will quote from page 32, which states:

> There is a conspicuous absence of Canadian research on MMS, given the number of infractions carrying such penalties and the number of private members' bills, in the last two years, seeking to introduce MMS. Especially noteworthy is the lack of any systematic evaluation of the

> ten, four-year MMS for certain offences involving a firearm introduced with the enactment of Bill C-68 in 1995. Also noteworthy is the absence of evaluations of mandatory sentencing provisions relating to impaired driving. . . .
>
> The level of public awareness of these penalties also must be ascertained, as such awareness is a precondition of deterrent and denunciatory effects. . . .

People do not know that it has no deterrent effect. That is essentially what it states. I continue:

> Deterrence will therefore be more in evidence in relation to those offences usually committed by more casual or opportunistic offenders. . . . From a utilitarian point of view, incarcerating occasional, non-violent offenders, for substantial periods, constitutes a colossal waste of justice system resources.

Those are the academic conclusions or non-conclusions on the effectiveness of mandatory minimum sentencing. There are other aspects to it, however. One is its impact on criminal procedure as such. I tried to raise this question with the minister, asking him what impact this bill would have on the plea bargaining techniques that Crown attorneys use when they are faced with a list of criminal allegations and criminal offences and they have to negotiate with a defence lawyer about which one they might want to bargain for, about which one the accused will agree to and about which one they will not accept.

Honourable senators, one of our witnesses last week was a lawyer by the name of Mr. Michael Spratt, CLA Designate of the Criminal Lawyers' Association. What did he say to a regarding the impact of the presence of mandatory minimum sentencing when the Crown attorney has to deal with the defence lawyer to decide on which aspect the allegation will move to trial? I want to quote from his testimony where he said:

> I believe that minimum sentences do two things, neither of which is particularly advantageous: The first is that they remove discretion from the hands of judges and put it in the hands of prosecutors, who have the discretion to withdraw some charges and proceed on others. As a result, there is a great incentive for an accused who is facing a charge that carries a mandatory minimum to bargain with the Crown to avoid a trial or adjudication of the charge and plead guilty to an included offence. That is problematic because it is a misplacement of discretion. A judge should have that discretion. If we are worried about the exercise of discretion, a member of the judiciary who is accountable to appellate review is a safe place to put that discretion.

That is the first weakness in terms of criminal procedure.

Mr. Spratt outlined a second weakness. He stated:

> Conversely mandatory minimum sentences may also result in more charges making their way to trial. If one is faced with a charge which carries a mandatory minimum sentence, especially if your criminal conduct is towards the lower end of the spectrum, there is no incentive to plea bargain because you know what sentence you will get. There is actually an incentive to proceed to trial, because after trial, if convicted, you will not face any more than the mandatory minimum because your conduct is on the lower end of the spectrum. Therefore, we have this plea bargaining problem as well as a potential backlog in the courts through charges that could have been resolved earlier but simply are not, because of the mandatory minimum sentence.

Honourable senators, there are many aspects to the mandatory minimum sentence that need to be reviewed before we continue to put that in the Criminal Code. I repeat: This seems to be popular because it is a simple quick fix: "Let us put them in prison; let us clean the streets and everyone will be safer."

Honourable senators, we had the opportunity to hear from two other witnesses from the RCMP. Mr. Todd Shean represents the Canadian Association of Chiefs of Police and is the Director General for the RCMP's Drugs and Organized Crime Branch. He is someone with a real background in fighting criminal organizations.

What did Mr. Sean state? He said the following:

> Police services are constantly being challenged to adjust to the following two contrasting trends in today's criminal world: increasing violence between gangs and increasing infiltration into the legal economy by organized crime.

In other words, there is increased violence among gangs and there is also infiltration into the normal economy of our society.

He continued by stating:

> These high-level actors in organized crime are becoming more strategic.
>
> They are trying to pass themselves off as businessmen and investors in addition to learning more about how to protect themselves following each major investigation.
>
> . . . we believe that our economies and free enterprise must be protected against increasing attempts by the higher echelons of traditional organized crime to enter the market place as economic actors, but according to the rules of the criminal underworld. These senior organized crime figures operate by intimidating rivals, taking over contract awards and acquiring monopolies.

He continues:

> The challenge is to find legislative tools and methods to curb this phenomenon, which requires large amounts of police resources over very long periods, sometimes with mixed results.
>
> . . . we need to discourage support for organized crime by facilitators, such as certain lawyers, notaries, accountants, tax professionals, real estate brokers and foreign exchange dealers, who have been corrupted by members of organized crime or who fail to report law-breaking. Second, we need to encourage partnerships between the various law enforcement and regulatory organizations in sharing information.

• (1910)

In other words, honourable senators, there is no quick fix to organized crime. We can pile into the code a maximum of mandatory minimum sentences and we will be no more effective in fighting the second invasion of the economy, the legal profession, the accountants, the tax expert, the notaries, the lawyers and the judicial process.

I also draw to your attention that by approving this bill, our committee raised important issues, and when we vote on this bill, we should not content ourselves that we have solved the problem. The problem is much more systemic. In fact, by resorting to mandatory minimum sentences, we might add more problems than we solve.

The Hon. the Speaker *pro tempore***:** Senator Grafstein, on debate? Senator Joyal's time is finished.

Hon. Jerahmiel S. Grafstein: I will speak briefly, and perhaps Senator Joyal can respond.

Honourable senators, as I listened to my honourable colleagues, Senator Baker and Senator Joyal, I recalled that when I spent time on the Standing Senate Committee on Legal and Constitutional Affairs, we were concerned with these measures as they apply to the Constitution. Senator Baker alluded to that in one of his cases by Madam Justice Cohen. She felt that the Constitution was a prophylactic against a measure that she seemed to say exceeded constitutional limits.

Senator Joyal raised the issue as well, as did Senator Baker, with respect to section 12 of the Charter of Rights and Freedoms:

> Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Senator Joyal gave us an example of how mandatory penalties, in effect, distort the prosecutorial process. This point perhaps raises another question, and that is section 11(d) of the Charter, "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal." This section presupposes that the judge is independent and impartial. In fact, if a judge's discretion is ripped away from that judge when dealing with issues affecting punishment, how independent or impartial can the judge be?

I raise a question that perhaps Senator Baker, Senator Wallace or Senator Joyal might respond to. I wonder whether the law officers of the Crown gave the committee their opinion that this law was salutary on the one hand, and within the confines of the Constitution. Perhaps I can ask Senator Joyal, Senator Baker or Senator Wallace to respond to that narrow question.

The Hon. the Speaker *pro tempore***:** On debate.

Senator Baker: There was no discussion, to my recollection, concerning the constitutionality of the provision. However, the honourable senator is absolutely correct. I imagine that upon a challenge, this particular provision, as it pertains to the facts that I outlined and the facts that Senator Joyal outlined, could violate not only section 7, fundamental justice; but section 8, search; section 11(d), independent tribunal; and section 12 as well.

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

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

TOBACCO ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Wilbert J. Keon moved second reading of Bill C-32, An Act to amend the Tobacco Act.

He said: Honourable senators, I am pleased to speak in support of second reading of Bill C-32, an act that will bring amendments to our Tobacco Act.

Honourable senators, Bill C-32 was tabled in the House of Commons on May 26, 2009, and was analyzed by the House of Commons Standing Committee on Health in June. Bill C-32 was approved by the House of Commons on June 17, and is now before this chamber for our examination and consideration.

Honourable senators, this proposed legislation addresses the need to stop the marketing and advertising of tobacco products to young people, in particular, products that may be designed to entice them to start smoking. Bill C-32 deals with several important issues — flavouring, minimum packaging and advertising. And advertise the tobacco companies must, because every year they must replace 37,000 customers that their product killed the year before.

The good news, honourable senators, is that the number of smokers in Canada has decreased. Ten years ago, 25 per cent of people over age 15 were smokers. That number has now dropped to 19 per cent. Through other measures, we have been able to reduce the prevalence of smoking among young people. By teaching young people about the dangers of smoking, by restricting the sale of tobacco to youth and by adding health warnings to cigarette packages, we witnessed a sharp decline in the rate of smoking among youth in the first part of this decade.

However, there are still too many young people experimenting with tobacco. As we know all too well, tobacco use can have serious long-term health consequences. Research has shown that teenagers are prone to addiction from nicotine. Based on the annual Canadian tobacco use monitoring survey, those who have ever tried smoking a whole cigarette by age 20 go on to become smokers at some point in their lifetime.

The bill before this chamber today will update the Tobacco Act by banning marketing tactics that may entice young people to smoke.

• (1920)

The Tobacco Act currently prohibits most advertising but allows it in publications that have an adult readership of at least 85 per cent. Over the last couple of years, there has been a marked increase in advertising for tobacco in these publications, including newspapers, magazines and free entertainment weeklies. A number of these publications are easily accessible to young people; they can be picked up from curb-side boxes in city cores and suburbs alike.

This spill-over of advertising to young people is, of course, unacceptable. Honourable senators, Bill C-32 will eliminate this avenue of advertising and protect those who might be seduced by slick advertising that glosses over the harm that tobacco can do.

This legislation will also prohibit tobacco manufacturers from adding flavours to little cigars known as cigarillos, as well as to "blunt wraps" and cigarettes, which can mask the true taste of tobacco and be appealing to a first-time smoker. There has been a dramatic rise in the number of flavoured cigarillos in the marketplace. Flavours include chocolate, cherry and grape, to name a few. Other additives including probiotics, sugars and sweeteners, vitamins and minerals, fruits and vegetables, and colouring agents are also being added to tobacco products.

Health Canada's research shows that wholesale numbers for little cigars, which are almost all flavoured, increased from 53 million units in 2001 to 403 million units in 2007.

Another clear enticement for young people is the low cost associated with some products.

The Tobacco Act already requires that cigarettes be sold in packages containing at least 20 units. The amendments in Bill C-32 will require that cigarillos and blunt wraps be subject to the same requirement. This will put an end to the industry practice of selling these products individually or in "kiddy packs" that are attractive to youth. This measure raises their price, making them less affordable for young people.

The establishment of minimum quantities, along with a ban on flavours and spill-over advertising, can help reduce smoking by preventing young people from starting. I also point out that the amended Tobacco Act, through a Governor-in-Council authority, will provide Health Canada with the flexibility to amend the list of banned additives in relation to any tobacco product. This amendment will allow for swift action to be taken should it be found that other additives are serving as an inducement to youth tobacco use.

The intent of Bill C-32 has received broad support from public health leaders, tobacco control non-governmental agencies and even some members of the industry.

During analysis of the bill by the members of the Standing Committee on Health, two amendments were made to this legislation to address technical requirements without compromising the intent of the bill.

First, a concern was raised that provinces, territories and some federal departments will not be able to require special marketing of cigarettes for purposes such as education or addressing contraband. Amendments made to clause 4 and clause 5 of the bill address this concern and ensure there is no conflict with other federal legislation.

Second, the schedule of prohibited additives in Bill C-32 is not intended to ban functional ingredients that are required for the manufacturing of tobacco products. Concerns were raised by the tobacco industry that the schedule will impact and look at the feasibility of making their cigarettes. For example, it will be difficult for them to use existing cigarette papers, and filter paper will no longer be able to look like a cork. The amendment to the schedule will fix these technical requirements.

As I conclude, I remind honourable senators that tobacco still kills 37,000 Canadians every year, as I mentioned earlier. The tobacco companies have to campaign vigorously to replace those 37,000 people. They advertise vigorously among the youth to do this.

Bill C-32, before us today, is about preventing children and youth from going down a path that can seriously harm their health. By preventing young people from taking up smoking, we can continue to reduce the overall prevalence of smoking in Canada. I hope honourable senators will join in the passage of this bill.

Hon. Senators: Hear, hear.

The Hon. the Speaker *pro tempore***:** Debate?

(On motion of Senator Tardif, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. John D. Wallace moved second reading of Bill C-26, An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime).

He said: Honourable senators, I am pleased to speak today about Bill C-26, which targets the widespread problems of auto theft and trafficking in property obtained by crime.

The bill was passed by the House of Commons, with one amendment to the penalty scheme of the motor vehicle theft offence, which I will discuss in more detail shortly. During its study of Bill C-26, the Justice Committee had the opportunity to hear from a number of witnesses, including officials from the Department of Justice, Statistics Canada, law enforcement, the insurance industry and the construction industry. All witnesses were generally supportive of the bill.

Despite the impressive achievements that have been made by law enforcement programs across Canada, auto theft remains one of the most pervasive forms of property crime in Canada. While there has been a downward trend in auto-theft rates in the last decade, it is still one of the highest-volume offences in Canada. In its December 2008 report on motor vehicle theft, Statistics Canada reported that approximately 146,000 motor vehicle thefts were reported to the police across Canada in 2007. This averages out to about 400 thefts per day across Canada.

Motor vehicle theft comes at a high financial cost for owners, law enforcement and the insurance industry. The Insurance Bureau of Canada estimates that auto theft costs Canadians more than $1.2 billion each year.

Motor vehicle theft also carries a public safety cost for Canadians, as stolen vehicles are often involved in police chases or dangerous driving, which can result in injury or death to innocent bystanders. A study carried out by the National Committee to Reduce Auto Theft reported that, in the period of 1999-2001, 81 people were killed as a result of auto theft and another 127 people were seriously injured. In cities such as Regina or Winnipeg, where auto theft rates are extremely high and the auto theft subculture is strong, stolen cars are often driven dangerously by young offenders with complete disregard to the lives and safety of others.

Canadians deserve better and this government is committed to improving the public safety for all Canadians.

In a report published in 2004, Statistics Canada estimated that roughly 20 per cent of stolen cars are linked to organized crime activity. Organized crime groups participate in the trafficking of stolen autos in at least three ways: First, they operate "chop shops," where stolen vehicles are disassembled and their parts are trafficked, often to unsuspecting customers. Second, organized crime is involved in the process of altering a car's legal identity through changing its vehicle identification number, VIN. Third, high-end, late-model luxury sedans and sport utility vehicles are exported from Canadian ports to foreign ports in areas such as Africa, the Middle East and Eastern Europe.

• (1930)

As you know, honourable senators, Bill C-26 proposes reforms in three key areas: first, the creation of a distinct offence of theft of a motor vehicle; second, a new offence for altering, obliterating or removing a vehicle identification number, known as a VIN; and, third, new offences for trafficking in, and possessing for the purpose of trafficking, property obtained by crime, including the importing or exporting of such goods.

The creation of a distinctive offence of motor vehicle theft would send a strong message that the criminal justice system is serious about fighting auto theft in Canada. This would be a hybrid offence, giving the Crown prosecutor discretion to proceed by way of indictment or summary conviction, depending on the particular circumstances of the case. The maximum penalty on indictment would be a maximum of 10 years imprisonment, or 18 months imprisonment on summary conviction.

It is true that there are many offences in the Criminal Code that already address motor vehicle theft, such as theft, fraud, joyriding and possession of property obtained by crime. However, the creation of a distinct offence is an important measure that would help assist prosecutors. This is because a problem currently facing the courts is that very often a prosecutor is unaware that the offender is a career car thief. Normally, the offender is simply charged with theft over $5,000 or possession of property over $5,000, and there is no indication on the available record as to the type of property that was stolen.

The result is that the prosecutor and the judge do not necessarily know when they are dealing with a repeat offender or a car thief involved with organized crime. A distinct offence of motor vehicle theft will help to give the courts a clearer picture of the nature of the offender for bail hearings and sentencing purposes.

Bill C-26 targets repeat auto thieves by imposing a mandatory minimum penalty for those convicted of a third or subsequent offence. This penalty sends a message that the criminal justice system will not tolerate auto theft. The inclusion of a mandatory minimum penalty in the proposed offence is a step in the right direction for restoring public confidence in our criminal justice system.

When Bill C-26 was reviewed by the Justice Committee, the Parliamentary Secretary to the Minister of Justice introduced a motion to amend subsection 333.1(2) so that the mandatory minimum penalty would apply when the prosecutor proceeded by indictment for a third and subsequent offence, whether or not the previous two offences were proceeded with by indictment or by summary conviction. This would give the prosecutor the choice on a third offence whether to seek the mandatory minimum penalty and proceed by indictment or, if the facts of the case warrant, to proceed simply by summary conviction.

This is a proportionate and appropriate response to the issue of repeat offenders and gives those who are prosecuting these cases the flexibility to seek the mandatory sentence when, in their opinion, such a penalty is warranted.

The second related area addressed by Bill C-26 relates to a car's vehicle identification number, or VIN. The tampering or removal of a VIN is a common way for criminals to mask the identity of a stolen vehicle, thus allowing it to be easily sold or trafficked to new owners.

There is currently no offence in the Criminal Code that directly prohibits tampering with a VIN. Like trafficking, the current Criminal Code provision that is used to address VIN tampering is the general offence of possession of property obtained by crime, in section 354.

With Bill C-26, we are taking deliberate and clear steps to prohibit and punish this behaviour. The proposed amendment would make it an offence to wholly or partially alter, obliterate or remove a VIN on a motor vehicle without lawful excuse. Under the new offence, anyone convicted of tampering with a VIN could face imprisonment for a term of up to five years on indictment, and up to six years imprisonment and/or fine of not more than $2,000 on summary conviction.

The VIN offence also contains an express statutory exception to ensure those who must remove a VIN as part of regular maintenance or repair work that is done for a legitimate purpose do not have to worry about facing any criminal liability.

Taken together, the two new offences of motor vehicle theft and VIN tampering will provide law enforcement with a scheme of tailored provisions that respond to auto theft. They will also assist prosecutors by ensuring the previous convictions for these offences are clearly documented on their criminal record.

Finally, Bill C-26 is proposing new offences that target the trafficking in property obtained by crime or the possession of such property for the purpose of trafficking it. The proposed offence of trafficking in property obtained by crime will target all the participants in the chain of transactions that occur following a typical break and enter.

For example, when a thief breaks into a home, the first thing he usually does with the goods is to sell them to a fence, who buys them at a significant discount, adds a mark-up and then sells the stolen property at a profit either to pawnshops, legitimate businesses or directly to customers who have ordered a specific item such as a high-end bicycle or electronics. In the theft cycle, it is the fence who provides that avenue to pursue the financial incentive, which motivates the thief to commit the crime in the first place.

Another salient example of trafficking is chop shops, where automobiles are stolen for parts, dismantled and then trafficked. It is a lucrative business for organized crime and one what adversely affects the legitimate retail industry.

Stolen parts are easily fenced and are often sold to unsuspecting customers or garages. It is far easier to traffic in automotive parts than in entire vehicles, especially when exporting by sea. Indeed, selling automotive parts can also be done more lucratively than selling an entire automobile because parts from cars that are more than five years old are often worth much more than the vehicle would be worth if it were sold whole.

At the present time, the general offence of possession of property obtained by crime, section 354, which carries a maximum of 10 years imprisonment for property valued over $5,000, is the principal Criminal Code offence used to address trafficking in property obtained by crime. There is no specific trafficking offence that adequately captures the full range of activities involved in trafficking, such as selling, giving, transferring, transporting, importing, exporting, sending or delivering stolen goods.

The current theft and possession provisions also do not recognize the organized nature of activities involved in dealing in property that is obtained by crime. Returning to the example of auto theft, chop shops often sell as little inventory as possible to avoid detection and to minimize the risk of multiple counts in the event of a raid.

The offence of possession of property obtained by crime does not capture the fact that the chop shop operation processes far more than motor vehicles than are normally seized during a raid. As well, often the police can only charge the person who is in possession of the property at the time of the raid. In many cases, none of the other players can be fully prosecuted using the existing theft or possession offences.

To better combat organized crime's involvement in trafficking in property obtained by crime, including commercial auto theft, it is necessary to target all of the middlemen, including the seller, the distributor, the person chopping the car, the transporter and the person arranging and organizing these transactions. These new offences go to heart of what motivates property crime generally and are meant to address the chain of criminal acts that yield the financial benefit which make property crime ultimately so lucrative.

The new trafficking offence would define "trafficking" quite broadly to include the selling, giving, transferring, transporting, exporting from Canada, importing into Canada, sending, delivering or dealing with in any other way, as well as offering to do any of the above, with property obtained by crime. This definition addresses the numerous means by criminal enterprises to assimilate their illegally acquired goods into the legitimate market.

• (1940)

Bill C-26 also creates an offence of possession of property obtained by crime for the purpose of trafficking to capture this activity even at its initial stage where the goods have not yet started to move through the trafficking chain.

When considered along with the existing Criminal Code provisions dealing with simple possession and the forfeiture provisions with respect to the proceeds of crime, it is clear that we will be creating a comprehensive scheme to address trafficking in property obtained by crime which could make it more difficult for enterprise crime to financially prosper in Canada.

The trafficking offences have a stronger penalty scheme than currently exists in the offence of possession of property obtained by crime. In cases where the value of property exceeds $5,000, the maximum penalty would be fourteen years imprisonment. Where the value is less than $5,000, the maximum penalty would be five years imprisonment on indictment or six months imprisonment and/or a fine not exceeding $2,000 when proceeded with by way of summary conviction. This penalty scheme properly captures the additional blameworthiness of those who enable profit to be made from stolen goods. It sends exactly the right message and demonstrates that such enterprise crimes will not be tolerated.

Bill C-26 also proposes an important amendment to provide the Canadian Border Services Agency with the necessary authority to detain property using the administrative powers available to deal with prohibited goods, which now include stolen cars about to be exported from Canada, in order to determine whether they are stolen and to allow the relevant police agency to recover them.

Honourable senators, the government is committed to taking the necessary steps to help fight property crime, especially auto theft. This legislation is a strong measure that will help to restore confidence in the criminal justice system. Canadians want to see this legislation passed, and I urge honourable senators to support this bill's passage into law as quickly as possible.

(On motion of Senator Tardif, debate adjourned.)

CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Wallace, seconded by the Honourable Senator Duffy, for the second reading of Bill C-15, An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts.

Hon. Consiglio Di Nino: Honourable senators, I am pleased to rise today to speak briefly in favour of Bill C-15.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I want to reserve 45 minutes for the critic on our side. We have no objection to Senator Di Nino speaking as long as the time is reserved.

Senator Di Nino: I believe it is essential to refer to the Standing Senate Committee on Legal and Constitutional Affairs Bill C-15, An Act to amend the Controlled Drugs and Substances Act and to make related consequential amendments to other Acts. The bill proposes amendments to strengthen the Controlled Drugs and Substances Act provisions regarding penalties for serious drug offences by ensuring that these types of offences are punished by the imposition of mandatory minimum penalties. I believe these amendments will contribute to improving the safety and security of communities across Canada.

Honourable senators, the courts have made it abundantly clear that unless Parliament takes action, as proposed in this bill, to set a mandatory term of imprisonment, conditional sentences will continue to be available for the most serious offences, provided that the other prerequisites to the availability of a conditional sentence in the Criminal Code are satisfied. As an example, conditional sentences are not available if the sentence imposed is more than two years imprisonment.

In 2001, the Alberta Court of Appeal in the case of *R. v. Rahime* considered six conditional sentences that had been imposed on persons involved in selling cocaine. The good news is that the court set three years as a starting point for trafficking in more than minimal amounts of cocaine. The bad news is that the court upheld conditional sentences for all six offenders. The court stated that the settled principles of sentencing, "preclude appellate imposition of general sentencing rules which could have the effect of mandating a sentence of two years or greater for commercial trafficking in cocaine and barring that class of offence from the purview of the conditional sentences regime." Since that time, conditional sentences for trafficking in the most dangerous drugs have become routine.

Let no one doubt that the availability of conditional sentences does not undermine deterrence. In the recent Alberta case of *R. v. Bibby*, the court imposed a conditional sentence on a person who had trafficked on three occasions in ecstasy and once in cocaine. Ironically, the trial judge, as one the reasons not to impose a sentence of incarceration stated, "the accused Bibby is afraid of going to jail and will do anything to avoid it." Apparently, Mr. Bibby was prepared to traffic in drugs because he was certain he would not go to jail if caught.

Honourable senators, we must make it clear that the intention of Parliament is that all persons who engage in the drug trade for profit should go to jail, subject to the limited exceptions, as provided for in Bill C-15, of those who are involved in the trade only to finance their own addictions.

Honourable senators, the new penalties will not apply to possession offences or to offences involving all types of drugs. The mandatory minimum penalties apply only to Schedule I — cocaine, heroin, meth — and to Schedule II — cannabis. Other drugs, like steroids and barbiturates, are listed in Schedules III to VI.

Moreover, the minimum penalties apply only where there are certain aggravating factors. I will not go through all the provisions but for the most dangerous drugs, such as cocaine, heroin and methamphetamine, the aggravating factors are: the offence is committed for the benefit of, at the direction of, or in association with organized crime; the offence involved violence or threat of violence or weapons or threat of the use of weapons; or the offence is committed by someone who was convicted in the previous 10 years of a designated drug offence. If the offence occurs in the presence of youth, or if youth are present, or the offence occurs in a prison, the minimum is increased to two years. Surely, honourable senators will agree that this is an appropriate minimum sentence for such conduct. I urge honourable senators to give Bill C-15 second reading so that the important measures it contains can become law quickly.

Honourable senators, Canadians, in particular our youth, need and deserve the protection that the provisions of this bill will provide. Let us do our part and send this bill to committee now.

Some Hon. Senators: Question!

Senator Tardif: I move the adjournment of the debate.

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

Some Hon. Senators: No.

The Hon. the Speaker: I will put the question formally.

It was moved by the Honourable Senator Tardif, seconded by the Honourable Senator Fraser, that debate be adjourned to the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will all those in favour will please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will all those opposed 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: There will be a one-hour bell unless it is agreed otherwise.

Hon. Joan Fraser: Thirty minutes.

The Hon. the Speaker: Honourable senators, the vote will take place at 8:20 p.m. Call in the senators.

• (2020)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Bacon	Hubley
Callbeck	Jaffer
Campbell	Joyal
Carstairs	Losier-Cool
Chaput	Lovelace Nicholas
Cook	Massicotte
Cordy	Mercer
Cowan	Milne
Dawson	Moore
Day	Munson
Downe	Pépin
Dyck	Peterson
Eggleton	Poulin
Fairbairn	Poy
Fox	Ringuette
Fraser	Robichaud
Furey	Tardif
Grafstein	Watt
Hervieux-Payette	Zimmer—38

NAYS
THE HONOURABLE SENATORS

Andreychuk	Lang
Atkins	LeBreton
Brazeau	MacDonald
Brown	Manning
Champagne	Martin
Cochrane	Meighen
Comeau	Mockler
Di Nino	Nancy Ruth
Dickson	Neufeld
Eaton	Oliver
Eyton	Rivard
Fortin-Duplessis	Segal
Gerstein	St. Germain
Greene	Stratton
Housakos	Tkachuk
Johnson	Wallace—33
Keon	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Carstairs, P.C., for the second reading of Bill S-209, An Act to amend the Criminal Code (protection of children).

Hon. Sharon Carstairs: Honourable senators, I rise today to speak to Bill S-209, which in various forms has been before this chamber for nearly 10 years.

In Senator Wallace's comments, he referenced legislation in New Zealand. However, despite his comments that we need to examine this legislation more carefully, in reality the whole of clause 1 in this legislation has been entirely modeled on the New Zealand legislation, trying to ensure protection for parents so that behaviour whose primary purpose is to protect children from harming themselves is ensured in this legislation. One just needs to read clause 1 of this bill. It reads:

> . . . is used only for the purpose of
>
> (a) preventing or minimizing harm to the child or another person;
>
> (b) preventing the child from engaging or continuing to engage in conduct that is of a criminal nature; or
>
> (c) preventing the child from engaging or continuing to engage in excessively offensive or disruptive behaviour.

All of that proposed legislation in fact comes from the New Zealand model. When he asks us to look further at the New Zealand model, I am afraid I am somewhat confused because I do not know what else we could incorporate from the New Zealand model that we have not already done.

Senator Wallace was correct when he said that the changes that were made to this bill at committee stage were never seen by those people who had given witness to this bill. Perhaps that can be done when this bill goes to committee this time round.

Senator Wallace also addressed the decision of the Supreme Court of Canada of 2004 and took some satisfaction with this decision as ameliorating section 43 of the Criminal Code. Unfortunately, while I believe the Supreme Court of Canada tried to do the best they could with this legislation, it has, according to some experts, had very unintended consequences.

Dr. Joan Durrant, a professor at the University of Manitoba who specializes in children's issues, has said that the decision of the Supreme Court has actually led parents to believe that they have more rights as a result of this decision because the Supreme Court, these parents believe, has now given them blanket permission to spank their children.

I do not believe that this was the intention of the Supreme Court of Canada when it made the decision it did, but if that is how parents are interpreting it, then it is very sad indeed.

The other issue that I have found very problematic of the judgment of the Supreme Court of Canada is that of the ages set by the judges. They said in their decision in 2004 that one should not use corporal punishment on a child under two and one should not use corporal punishment on a child over twelve. With the greatest respect to our Supreme Court — and I have wonderful respect for our Supreme Court — I do not understand the difference between the behaviour of a child who is one year old — 364 days — and the behaviour of a child who is two, one day older; nor do I understand the difference between the behaviour of a child or the maturity of a child who is 12 years old as opposed to a child who is 13 years and one day.

• (2030)

I think that is an extremely unfortunate aspect of what the court had to say. I cannot find any magical maturity that occurs in one day. We all know that children mature at very different rates, that one 12-year-old is not like another 12-year-old, and that one 13-year-old is far less mature than another 11-year-old. That is the nature of the way that children grow in our society.

It is difficult for me, honourable senators, to understand why Canada has chosen to violate the United Nations Declaration on the Rights of the Child, which prohibits corporal punishment. I also am quite frankly stunned when I read constitutions like the one in Ethiopia, which specifically forbids corporal punishment of children in the constitution of the country and yet, in our country, we still permit it; we still have section 43 of the Criminal Code.

Honourable senators, it is 2009. Many European nations prohibit corporal punishment and, believe it or not, chaos among their young children has not resulted. They have abolished corporal punishment and they have replaced it with other forms of discipline.

I spent 20 years of my life teaching children. I believe in discipline. I disciplined my children in the classroom. I disciplined my own children, but I did not believe it was necessary to hit them. Of course, my oldest daughter always said to me: "Mom, you didn't have to hit us. All you had to do was use the voice." Besides that, it was not considered necessary to use a form of corporal punishment.

Yes, honourable colleagues, children do need to learn discipline, and they particularly need to learn self-discipline, the discipline that comes from within. Adults need the same kind of discipline. In my view, all we teach by hitting a child is that if you are bigger and stronger, and therefore you can hit, then when I get to be bigger or stronger, I can hit. I do not think that is the message we want children to learn. I want them to learn that, no, you do not get your way because you are bigger and stronger and you use your fists, knees, feet, arms or hands, or any other way, to inflict corporal punishment on another human being.

It is time, honourable senators, for this legislation to be changed and for Canada to enter 2010 as so many other nations throughout the world, without our citizens having the right to hit their children.

Some Hon. Senators: Hear, hear!

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

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

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

LIBRARY AND ARCHIVES OF CANADA ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Pépin, for the second reading of Bill S-201, An Act to amend the Library and Archives of Canada Act (National Portrait Gallery).

Hon. Consiglio Di Nino: Honourable senators, I am pleased to continue debate on Bill S-201, An Act amending the Library and Archives Act. As honourable senators may know, in 2001, the previous Liberal government announced a plan to create a national portrait gallery and to locate it in the former American Embassy building on Wellington Street in Ottawa.

Senator Grafstein and Senator Segal have both presented eloquent observations on this matter. I urge all honourable colleagues with an interest in the national portrait gallery to review those extensive presentations. I will limit my brief comments to the issue of the permanent location of the proposed gallery.

A national portrait gallery would be only our sixth such institution, joining the ranks of our other national museums, such as the National Gallery, the Canadian Museum of Nature, the Science and Technology Museum, the Canadian Museum of Civilization and the Canadian Museum of Human Rights in Winnipeg.

National museums are the only institutions in Canada with explicit mandates to preserve and portray the heritage of the entire country. They are required to ensure their relevance and accessibility for all Canadians. They play a leadership role for the Canadian museum community and provide a national context for the collection, preservation, presentation and promotion of Canada's rich and diverse heritage. Yet, the overwhelming majority of these institutions are physically located in Ottawa.

Perhaps the proposed national portrait gallery would be more accessible to Canadians, and better able to fulfill a mandate of nation building, if located in another city, such as Montreal,

Halifax or Saskatoon. Several other countries have established national institutions in cities other than their capital. In Australia, the National Railway Museum is in Adelaide; the National Aviation Museum is in Melbourne; and the National Maritime Museum is in Sydney. Similarly, national institutions are distributed across Germany and the United Kingdom as well. In my humble opinion, this is perhaps a better model for preserving and portraying national heritage across the country rather than housing all national institutions in a centralized location.

Honourable senators will remember the debates on where to locate the Canadian Museum of Human Rights. I was quite happy when Bill C-42 was passed by Parliament and that the museum is now established in Winnipeg. The arguments on where to locate national historic institutions such as the national portrait gallery are fundamentally the same as those expressed during the debates on the establishment of the Museum of Human Rights, and I will put forth a few.

Canada is a very large country with many regional differences and customs.

All Canadians need to be and feel part of Canada.

The often-heard criticism of the predominance of Central Canada has some validity. The geographical extremes of Canada cause many Canadians living in different parts of the country, at times, to feel like lost cousins.

A relatively small yet symbolically important step in lessening the sense of being left out would be, and indeed should be, locating or establishing national institutions across our great land.

As honourable senators are aware, a national designation ensures the financial stability of an institution. The federal government will contribute to operating costs and ensure the long-term viability of the institution. Establishing national institutions in cities across our great country is an example of nation building, which must be embraced if the country is to remain strong and united. It would go some way to defuse those frustrations that create friction among communities, particularly in a country as large as Canada.

• (2040)

In closing, while I applaud Senator Grafstein's efforts, I do not believe a national portrait gallery or other similar national institution should be limited to the city of Ottawa. Establishing national permanent institutions in cities other than our capital would be helpful in ensuring that all regions can rightfully feel an important part of Canada.

The Hon. the Speaker: Are there questions and comments to Senator Di Nino?

(On motion of Senator Stratton, debate adjourned.)

[Senator Di Nino]

STUDY ON ISSUES RELATING TO FEDERAL GOVERNMENT'S CURRENT AND EVOLVING POLICY FRAMEWORK FOR MANAGING FISHERIES AND OCEANS

FIFTH REPORT OF FISHERIES AND OCEANS COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Munson, that the fifth report of the Standing Senate Committee on Fisheries and Oceans, entitled *Crisis in the Lobster Fishery*, tabled in the Senate on June 9, 2009, be adopted and that, pursuant to rule 131(2), the Senate request a complete and detailed response from the government, with the Minister of Fisheries and Oceans and the Minister of Human Resources and Skills Development being identified as minister responsible for responding to the report.

Hon. Ethel Cochrane: Honourable senators, I wish to comment on the recent report of the Standing Senate Committee on Fisheries and Oceans entitled *Crisis in the Lobster Fishery*.

We have read the news about plummeting lobster prices and depressed markets, but there has been little attention paid to the devastating effects that is having on our people and communities. I read an article recently in the *Coaster*, a community paper in Newfoundland and Labrador. It quoted Keith Lawrence, a lobster fisherman from the south coast of the island:

> I can't understand how our politicians don't seem to realize the negative economic impact this crisis will have on rural Newfoundland. I haven't heard a word from our local MHA, our federal MP or our Premier.

Honourable senators, I share his concern as do many others in this room and across the country. It was in that context that the Committee on Fisheries and Oceans felt compelled to invite testimony from people who are living through these extremely challenging times in the lobster fishery.

On May 26, the committee convened a panel discussion on lobster that included representatives from the Prince Edward Island Fisherman's Association; the Fish, Food and Allied Workers Union; the Maritime Fishermen's Union; and the Gulf Nova Scotia Bonafide Fishermen's Association. The discussions were honest and straightforward. They presented a frank picture of the dire situation in which many lobster fishers find themselves this season.

Honourable senators might be surprised to know that lobster is Canada's most valuable seafood export, with annual export sales of $1 billion. About 80 per cent of this exported lobster is destined for the United States.

The lobster industry employs approximately 50,000 people in the four Atlantic provinces and Quebec. Among those directly affected by the current downturn are roughly 10,000 licensed owner-operators and 15,000 deckhands who fish on the boats less than 45 feet in length. Another 25,000 workers are employed on shore and in processing plants.

Ed Frenette of the Prince Edward Island Fishermen's Association explained to the committee that the 2008 season was a difficult one. In his province, shore prices dropped 20 per cent last year with small-sized canner lobsters getting $4 per pound and live lobsters — or markets, as they are called — earned $5 dollars per pound. While taking a hit in market prices for lobster was bad, it was made all the worse when simultaneously production costs soared 37 per cent over the previous five year average due to dramatic cost increases in bait, fuel and gear.

This year, the price for lobster has declined even further. Recently, harvesters have been getting $2.75 per pound for canner lobsters and $3.50 for market lobsters. Mr. Frenette suggested that the obvious cost-price squeeze:

> . . . will inevitably result in the bankruptcy or elimination of the solid number of Prince Edward Island's inshore fishing enterprises.

Earle McCurdy, President of the Fish, Food and Allied Workers Union estimates that:

> . . . our landed value — in other words, the amount of money paid to fishermen this year for their landings in Newfoundland and Labrador alone — will probably be down $100 million compared to last year.

I am sure honourable senators can appreciate that $100 million cannot disappear from small coastal communities without creating severe hardship by those living there and trying to earn a living.

Some industry observers have labelled the current situation "the perfect storm." A number of problems — the recession here at home and in the U.S., the surplus of lobsters in the American market and access to credit by processors — have conspired to produce 20- to 30-year lows for lobster prices. Indeed, there are reports that lobster prices could slide even lower — to about $2.75 per pound — in parts of the region.

Honourable senators, our panel informed us that the break-even point for lobster harvesters is about $5 per pound. At $2.75 or even $3 per pound, harvesters are working for nothing; they are losing money.

As I mentioned earlier, I read an article the other day that quoted lobster fisherman Keith Lawrence from Boxey, a community on the south coast of Newfoundland. Mr. Lawrence has been harvesting lobsters for 28 years. He said:

> For the past three years, fishers have gone from making about $6 a pound down to $3 a pound for lobsters. In what other industry have workers lost half their income during the last three years? Some of us are not going to earn enough this year for a winter EI claim. The earnings are just not there at $3 a pound.

That, I must tell you, is the big fear. That is precisely the issue that is foremost in the minds of Canadians engaged in the lobster fishery.

As honourable senators may know, fish harvesters are in a unique position when it comes to EI benefits. Unlike people in other sectors, their eligibility for benefits is based not on hours worked, but on earnings. It is also important to recognize that in many of these communities, such as Boxey, the lobster fishery is an important source of income. People in these small communities do not enjoy the same job prospects that exist in cities. The reality is that there are very limited opportunities to earn other income.

Calling to mind this "perfect storm" scenario, I would add another factor. The Alberta jobs that many people in my region depended on to supplement their seasonal income from the fishery have dried up. The days of being able to hop on a plane and get a job at a work camp in Alberta are all but gone.

I raise this point only to illustrate that with the rock bottom lobster prices and diminished prospects for other income, some lobster fishers will simply not have the opportunity to earn enough money this year to qualify for Employment Insurance benefits. This is the major short-term issue.

With this in mind, our committee recommended, as Senator Rompkey said, that the Government of Canada act immediately to implement changes to the Employment Insurance program to address the problems created by low lobster prices. There are two specific things that the committee wants to see happen. First, we want fish harvesters to claim for EI benefits based on 2008 earnings. Second, we want to see EI fishing benefits extended by five weeks.

• (2050)

I wish to emphasize that these changes would be good for fishers, but also for the resource. Without such measures, we risk what Earle McCurdy called "the desperation fishery." After all, if people have no other option they will put extra stress on the resource to earn what they can; it is common sense. He explained that:

> Even if you are not making money on an operational basis, at least you are establishing the basis of having an income for the winter. That is not doing anything for the individual harvesters or the bottom-line economics; it is continuing to draw from the fund. . . . That puts more pressure on the resource and it adds to an over-supplied market; we already have too much inventory. Therefore, it is kind of a worst-case scenario.

Honourable senators, I want to note that our federal Minister of Fisheries and Oceans, Gail Shea, is very active on this file and I commend her for that. On May 22, just days before the committee's hearings, the minister announced $10 million in support of the lobster industry. These much-needed funds will be used to improve marketing, assist in innovation and develop products and technologies. While this money is welcomed and needed — and our panel seems to agree that there is much work to be done in the areas of marketing and eco-labelling — it addresses the longer-term issues.

Certainly, the committee's hearings revealed that short-term concerns are most pressing at this time. Quite simply, we were told that the need is for government to find a way to put money in the hands of lobster harvesters so they can feed their families, keep their homes and save their fishing enterprises from declaring bankruptcy.

I was pleased and encouraged therefore, to see Minister Shea respond once again to the needs of lobster harvesters. The announcement on June 10 of an additional $65 million includes $15 million in short-term support to assist qualified low-income harvesters; and $50 million in longer-term financial assistance to support industry as it develops and implements sustainability plans. This money is a good first step and we will be looking closely at all the details.

Honourable senators, the message from lobster harvesters is a clear one and I think Earle McCurdy said it best, "You have to survive the short term to participate in the long term." That is one of the main messages of our report, and we call on the government to take action to ensure the survival of our fishery.

[*Translation*]

Hon. Fernand Robichaud: Honourables senators, I would like to congratulate Senator Cochrane on her speech. She accurately described the current state of the fishery, as it was presented to us by the representatives of the various fisheries groups that appeared before the Standing Senate Committee on Fisheries and Oceans.

What people need to understand is that the fishery is facing a catastrophic situation, because if a fisher does not catch enough to qualify for employment insurance, the family's entire income security is jeopardized. Also worth noting is that people who fish are spread out all along the coastlines of New Brunswick, Quebec, Prince Edward Island, Nova Scotia, and of course, Newfoundland and Labrador. There is not the same degree of concentration that exists in other industries, but the problem still exists and it is very serious.

Some measures have been announced — and they have been very well received by the fishing community — but the situation remains urgent. What people want — and again, I support what Senator Cochrane just said — is to allow the government to make the necessary changes to ensure that fishermen are eligible for employment insurance based on the data from 2008. It is perhaps not so much a problem of how much is caught, but rather the value attributed by the departments, which will mean that certain fishermen will not qualify to receive employment insurance benefits.

Honourable senators, for my remaining time, I propose that the debate stand until the next sitting of the Senate.

(On motion of Senator Robichaud, debate adjourned.)

[*English*]

FOURTH REPORT OF FISHERIES AND OCEANS COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Watt, that the fourth report of the Standing Senate Committee on Fisheries and Oceans entitled *Nunavut Marine Fisheries: Quotas and Harbours*, tabled in the Senate on June 4, 2009, be adopted and that, pursuant to rule 131(2), the Senate request a complete and detailed response from the government, with the Minister of Fisheries and Oceans being identified as minister responsible for responding to the report.

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

(Motion agreed to.)

[*Translation*]

BUDGET IMPLEMENTATION BILL, 2009

STUDY ON ELEMENTS DEALING WITH EMPLOYMENT INSURANCE—SIXTH REPORT OF NATIONAL FINANCE COMMITTEE— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion by the Honourable Senator Day, seconded by the Honourable Senator Banks, for the adoption of the sixth report of the Standing Senate Committee on National Finance, entitled: *The Budget Implementation Act, 2009*, tabled in the Senate on June 11, 2009.

The Hon. the Speaker: Honourable senators, are you ready for the question?

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I move the adjournment of the debate.

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

(On motion of Senator Tardif, debate adjourned.)

[*English*]

NATIONAL SECURITY AND DEFENCE

BUDGET—STUDY ON NATIONAL SECURITY POLICY— FOURTH REPORT OF COMMITTEE ADOPTED

On the Order:

> Resuming debate on the motion by the Honourable Senator Wallin, seconded by the Honourable Senator Gerstein, for the adoption of the fourth report of the Standing Senate Committee on National Security and Defence (*budget—release of additional funds (study on the national security policy)*) presented in the Senate on June 11, 2009.

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

(Motion agreed to.)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

EIGHTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eighth report of the Standing Committee on Internal Economy, Budgets and Administration, entitled: *Senate Policy on the Prevention and Resolution of Harassment in the Workplace (2009)*, presented in the Senate on June 16, 2009.

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

(Motion agreed to.)

STUDY ON STATE OF EARLY LEARNING AND CHILD CARE

FIFTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE ADOPTED

On the Order:

> Resuming debate on the motion by the Honourable Senator Eggleton, P.C., seconded by the Honourable Senator Rompkey, P.C., for the adoption of the fifth report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled: *Early Childhood Education and Care: Next Steps*, tabled in the Senate on April 28, 2009.

Hon. Wilbert J. Keon: Honourable senators, I rise to speak on the report tabled by the Standing Senate Committee on Social Affairs, Science and Technology, entitled: *Early Childhood Education and Care: Next Steps.*

I would like to begin by thanking retired senator Marilyn Trenholme Counsell for her leadership in this study. She has been the impetus behind this work. I would also like to thank Senator Eggleton, who served as chair of the committee, as well as senators who have been involved in this study. I also wish to acknowledge the hard work of the scribes and staff who made this report possible. I would like to express my gratitude to the people who came before the committee to testify.

Like all of us in the chamber, I realize how vitally important children are to our society. They hold our future in their hands — the future of our families and of our nation. I am also well acquainted with the significance of their first years and how they will grow and develop later in life.

As you are aware, we have also just completed a report on population health that describes the impact of multiple factors and conditions that contribute to the health of Canada's population, known collectively as the social determinants of health. These determinants include such factors as income, social status, education, working conditions and social support networks.

The population report looks at the effects of these determinants on the disparities and inequities in health outcomes that continue to be experienced by identifiable groups or categories of people within the Canadian population.

We have found that early childhood development is probably one of the most important determinants of health. Prenatal and early childhood development establishes the foundation for a person's subsequent health and overall well-being. As the report states:

> Prolonged and intensive stress in childhood can disrupt early development of the brain and compromise functioning of nervous and immune systems. Children brought up in adverse environments are predisposed to social maladjustment and difficulties in school as well as to a range of health problems later in life including coronary heart disease, hypertension, type diabetes II, substance abuse, and conditions affecting their mental health.

• (2100)

The implication is that if one can ensure that a child's prenatal and early years are healthy, then the possibility of that child growing into a healthy and productive adult is much greater. Of course, the prenatal and early childhood stages are but one phase in our life-long growth. We have come to recognize the need for a population health approach that provides continuity through life course stages — from parenting to prenatal, through adulthood, to young, middle and frail phases of aging.

This involves ensuring that personnel and social, economic and environmental determinants of health are adequately addressed for all Canadians at all stages of their lives. Furthermore, it will require our health and social care system to be working efficiently so that Canadians are able to get the service they need when they need them.

The work of the committee was originally inspired by Canada's ranking in a comparative study of early childhood education and care among the member nations of the Organisation for Economic Co-operation and Development, OECD. Although the OECD identified a number of strengths, the overall evaluation of Canada's services, excluding those delivered in Quebec — which I must say are superior to the rest of the country — was generally negative and a "patchwork of uneconomic, fragmented services within which a small child care sector is seen as a labour market support, often without a focused child development and education role."

We know that quality early childhood education and care sows the seeds for lifelong well-being, that every dollar invested in early childhood education and care means much less spent on health care and social programs later in life, and that this investment reaps immeasurable dividends in terms of healthier, happier, better adjusted, more productive citizens.

However, Canada spends relatively little on early childhood education and care when compared with other nations. In the OECD study Canada was last among 14 reporting member countries. Moreover, other countries were further along in accessibility of services, coordination among stakeholders and service providers, and community participation.

While money spent is an indicator of how well a country's early childhood education and care practices work, it is not the only factor. We must remember that. In fact, one of the most impressive countries in terms of well-run, coordinated,

integrated programs is Cuba, a poor country, and far from being wealthy for sure. Cuba has developed a network of polyclinics that provide both overall wellness training and health care services integrated with education, sport and social services. Early childhood education and care services range from comprehensive prenatal care to training grandparents on how to counsel their grandchildren. Indeed, the average Cuban earns one tenth or less than the average Canadian, yet their health and early education outcomes are equal to ours. Indeed, their overall health status is the same as ours.

In contrast, Canadian early childhood education and care efforts are often fragmented and lacking coordination, as well as cooperation among the different players. The various sectors that are concerned with children's well-being frequently operate independently from one another — for example, various levels of government, federal, provincial-territorial, municipal departments within each level of government — finance and agriculture — educational institutions, health care providers and, of course, families.

The encouraging news is that Canada's provinces and territories are already responding to the OECD challenge. Many excellent initiatives are in place regarding inter-ministerial cooperation curricula, community participation and parental involvement. There is a greater level of investment, not only in child care spaces but also in parental support, parenting programs and training for early childhood educational staff.

The current federal government has put in place a number of initiatives: The Universal Child Care Benefit, which provides all families with $1,200 per year for each child under the age of six; a tax credit to promote physical fitness among children under the age of 16; an increase in maximum annual Child Disability Benefits to $2,300 from $2,000; a new $2,000 Child Tax Credit amount for every child under 18, providing $1.5 billion in new tax relief to families; $550 million for the Working Income Tax Benefit for low-income Canadians; and a new long-term savings plan for parents of children with severe disabilities.

Honourable senators, federal investments for early childhood development have increased to the highest level in Canadian history but, of course, there is still much work to be done.

The committee has called for the federal government to champion the cause of early childhood education and care with the following recommendations: for the Prime Minister to appoint a minister of state for children and youth under Human Resources and Social Development Canada, with the responsibility of working with provincial and territorial governments to advance quality early learning, parenting programs and chide care; the creation of a national advisory council on children comprised of parliamentarians, communities leaders, parents and representatives of other relevant organizations to advise the minister of state and, through the minister of state, other ministers on how best to support parents and advance quality early learning and child care; for the Government of Canada to call a series of meetings of federal, provincial and territorial ministers with responsibility for children and youth, beginning within one year to establish a pan-Canadian framework to provide policies and programs to support children and their families and a federal-provincial-territorial council of ministers responsible for early learning and child care parenting support programs to meet annually to review Canada's progress with respect to the other OECD countries and to share best practices; for the Government of Canada, in collaboration with provincial and territorial counterparts and researchers, to create an adequately funded, robust system of data collection, evaluation and research, promoting all aspects of quality human development, including the development of curricula, program evaluation and child outcome measures.

In closing, I want to read a couple of lines from this report to demonstrate the real hope we have for our children, those who will carry Canada in the future:

> Working together, at all levels of government, we can be "A Canada Fit for Children." We can support parents in the home, in the community, and in the workplace, to raise the healthiest children and the smartest children, ready to become the next generation of proud Canadians. There can be no greater investment. Families are the fundamental building blocks of our nation and each child, considering all talents or challenges, deserves an opportunity to reach his or her potential.

We must not lose sight of the fact that most important things in a child's life are good parents, particularly in the first year of life when development is so rapid, so profound, so enduring, and some nations have lost sight of this fact.

For example, Sweden, which at this point in time has the most well-developed early child development program in the world, is seeing some serious spinoffs with dropouts from school, drug addictions and so forth in the teen years. The big defect in their program seems to be that the children were deprived of their parents in the first year of life. We must not lose sight of this fact.

Loving, dedicated parents are the most important component in the development of a child. Governments have been dismal failures at parenting.

(Motion agreed to and report adopted.)

• (2110)

ABORIGINAL PEOPLES

BUDGET—STUDY ON FEDERAL GOVERNMENT'S RESPONSIBILITIES TO FIRST NATIONS, INUIT AND METIS PEOPLES—EIGHTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eighth report of the Standing Senate Committee on Aboriginal Peoples (*budget—release of additional funds (study on matters generally relating to the Aboriginal Peoples of Canada)*) presented in the Senate on June 18, 2009.

Hon. Gerry St. Germain: Honourable senators, I move the adoption of the report standing in my name.

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

(Motion agreed to and report adopted.)

[*Translation*]

FOURTH WORLD ACADIAN CONGRESS 2009

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Losier-Cool calling the attention of the Senate to the fourth World Acadian Congress (2009), scheduled to take place from this August 7th to the 23rd, in the Acadian Peninsula, in the province of New Brunswick.

Hon. Fernand Robichaud: Honourable senators, I am pleased to rise this evening to speak about the World Acadian Congress brought to our attention by the honourable Senator Losier-Cool.

She has already spoken to us about the many activities organized for the thousands of visitors who will travel to the Acadian peninsula this summer. A complete program of activities has been organized for the enjoyment of those who visit Acadia. You will agree, honourable senators, that welcoming 40,000 visitors between August 7 and 23 is no small feat. However, I know very well that, with their usual hospitality, Acadians will rise to the challenge.

This year marks the 15th anniversary of the first World Acadian Congress and the first time that it will be held on the Acadian Peninsula. Acadians from northeastern New Brunswick and from all over will gather for two weeks to celebrate who we are and to share our cultural heritage with fellow Acadians and our other visitors. The historic village of Caraquet will be particularly busy as will the towns and villages on the peninsula where activities related to the 2009 congress are taking place.

The World Acadian Congress is a huge family reunion for the Acadian people. It is a party for brothers, sisters, cousins and all who wish to participate.

In addition to many cultural activities, there will be conferences and seminars where the survival, dynamism, energy and vitality of the Acadian people will be discussed, studied and analyzed and where the resilience of a people will be celebrated.

This fourth congress is a big family reunion, as I said, where the creations of artists will be celebrated, where Acadian businesses will show off their know-how and where our young people will have a special place.

Those who participate in the congress will enjoy an unforgettable experience. They will also learn about the special ways Acadians have of doing things and they will understand that this group of people has survived over the years, thrived and adapted to today's world.

That is what happened with traditional Acadian cuisine.

As senators know, Acadians come from a relatively modest background and have dispersed throughout the Atlantic provinces, Canada, the United States and Europe. Over the centuries, they developed a very special cuisine passed down by previous generations. They worked the land and fished to put food on the table. Depending on where they live, Acadians prepare fish and seafood or vegetables and meat.

Acadian cuisine is known for its simplicity and diversity. Recipes have been passed down via oral tradition, which is why Acadian dishes vary so much geographically and regionally and why some dishes are found in just one region.

Acadians from Baie Sainte-Marie say that râpure is the most popular dish in Acadia.

Those from southeastern New Brunswick say that poutine râpée is the quintessential Acadian dish.

Honourable senators, poutine râpée is not to be confused with Quebec-style poutine. It is totally different. It is real poutine. Allow me to explain.

Basically, poutine râpée is a mixture of shredded potato with the water squeezed out and cooked mashed potato. The mixture is shaped into balls with pork fat or other diced meat in the centre. The balls are closed up and lightly floured, then cooked in water, of course, for a couple of hours. Poutine râpée is served hot with brown or white sugar or, as some prefer, molasses.

And then there is cod, a species of fish prized in northeastern New Brunswick, where I was born.

When there was plenty of cod, it was on every family's menu. None of it was wasted. I can assure my listeners that everything was used, even the heads and tongues, the liver and the gots de morue, which is cod stomach stuffed with cod liver and onions and cooked for a long time to ensure tenderness.

Salted cod is delicious. Dried on fish flakes — which we do not see any more — it was easy to prepare. Depending on how much salt it contained, the fish would be soaked in water to desalt it the night before. To remove even more salt, the water could be changed before or during the cooking process.

Once the cod had been desalted, it was cooked through until tender. Anyone who suffers from heartburn would clutch their stomachs upon hearing about the side dishes. The cod would be served with slices of salt pork, sautéed until crispy and brown, and the fat used to fry the cod. My mouth is watering just thinking about it. Obviously, the meal would not be complete without boiled potatoes.

There are other specialties: chicken fricot is a chicken soup from northeastern New Brunswick. When communities would get together to work, a big chicken fricot would serve the crowd.

How about mioche au navot? This mixture of mashed potatoes and turnips was often combined with chopped cooked lardons and the rendered fat. My but it was good, and we would load up our plates.

Not to mention barley soup. Our version starts with a stock made with pig's feet, simmered with every vegetable imaginable, and is a meal on its own.

We also have our meat pies. The tourtière that is known to people from other regions is a variation of our meat pies.

In addition to sweet pies of every flavour, the most popular desserts are a sweet roll commonly known as "pets de sœur" and another dessert called "poutines à trou". "Pets de sœur" are made from leftover pie dough shaped into little rolls. I do not know how else to describe them. They are made from dough covered in butter and brown sugar, then baked in the oven. They are delicious.

"Poutines à trou", which are especially popular in southeastern New Brunswick, are made from balls of dough stuffed with apples and raisins, served with maple syrup or corn syrup. Cranberries are often added when they are in season, for a bit of variety. A hole is left open in these little balls of dough, which is why they are called "poutines à trou".

Honourables senators, I could go on and on, but I will refrain, because I would like to point out that we also have lobster, snow crab, mussels and oysters. We also have clams, often served fried or steamed. We also serve many kinds of chowder — clam chowder, fish chowder, seafood chowder — which are all absolutely delicious

• (2120)

And why not enjoy all that wonderful food with family? The organizers of the World Acadian Congress want to encourage people to create new ties by promoting large family reunions. These family get-togethers will take place all over the peninsula. More than 90 such reunions are planned on different dates in various locations. Reading the list of family reunions is a bit like reading the alphabet. You have the Arsenaults, the Boudreaus, the Cormiers, the Doirons, the Friolets, the Gallants, the Hachés, the Jeans, the Landrys, the Melançons, the Robichauds, of course, the Savoies, the Trahans and the Vienneaus. And there are others: the Béliveaus, the Chiassons, the Comeaus, the Frigots, the Godins, the Héberts, the Leblancs and the Légers, and I could go on.

Before I conclude, honourable senators, I would just like to say that we have more similarities than differences. It is just that we have different names and we cook differently.

Some of you who grew up in fishing and farming communities in Gaspé or Newfoundland may have recognized or, at the very least, remembered some of these dishes or variations on them. Our ancestors may have already understood, as we do today, that simple cuisine brings out the true taste of food. Sometimes it is the little things that best show our affection. By taking an interest in other people and their customs, we can make marvellous discoveries.

Honourable senators, might this summer be an ideal time to learn more about Acadia? If so, rest assured that Acadians will give you a warm welcome. We will be happy to share our history and our culture, our stories and our cuisine, our small pleasures and our legends. Perhaps you will see the phantom ship on Chaleur Bay or the will-o'-the-wisps.

You know, my grandfather saw the phantom ship on Chaleur Bay and the will-o'-the-wisps, those flames that dance in the middle of the night. Who knows, you might even see the Richibucto ghost, who will be living it up on the peninsula.

As the saying goes, we all have the same history; only the details are different. You are all invited. Come see us; we're expecting you.

On that, I wish you all a happy St. Jean Baptiste Day and a happy Canada Day!

(On motion of Senator Mockler, debate adjourned.)

[*English*]

THE SENATE

MOTION TO URGE GOVERNMENT TO ENGAGE IN CONSULTATIONS ON SENATE REFORM— ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Segal, seconded by the Honourable Senator Brown:

That the Senate embrace the need to consult widely with Canadians to democratize the process of determining the composition and future of the Upper Chamber by urging the Government to:

(*a*) invite all provincial and territorial governments in writing to assist immediately in the selection of Senators for appointment by democratic means, whether by holding elections to fill Senate vacancies that might occur in their province or territory or through some other means chosen by them;

(*b*) institute a separate and specific national referendum on the future of the Senate, affording voters the chance to choose abolition, status quo, or an elected Upper Chamber; and

(*c*) pursue the above initiatives independently of any legislation that it may introduce in this Parliament for reforming the existing term and method of appointment of Senators.

Hon. Bert Brown: Honourable senators, I intend to speak on this motion tomorrow. I would like to reserve the balance of my time.

(Order stands.)

VOTING AGE IN CANADA

INQUIRY—DEBATE CONCLUDED

Hon. Consiglio Di Nino rose pursuant to notice of June 16, 2009:

That he will call the attention of the Senate to issues relating to the voting age in Canada.

He said: Honourable senators, I am quite aware of the time, but I seek indulgence so as to discharge a commitment I made to a number of young Canadians to speak on this issue before we rise for the summer.

In late January 2008, a number of honourable senators received and email from a student named Charbel Andary. He was then a fourth year political science student and had written us to regarding his proposed master's thesis on assessing the voting age in Canada. Mr. Andary's articulate argument in favour of lowering the current voting age from 18 years to 16 years was so compelling that I introduced an inquiry which was debated in this chamber. The issue, I felt, needed further exploration, and who better to turn to than those who would be most impacted by such a change — high school students.

[*Translation*]

As part of a project called "Old Enough to Vote?" students who were studying civics in eight schools were invited to share their opinions. When I visited each school, I listened to creative presentations by the students who debated both sides of the question, "Should the voting age in Canada be changed?" The presentations were followed by an open discussion.

In addition to visiting schools, we asked students to participate in a Facebook group and an on-line survey conducted by Apathy is Boring, a national non-partisan project that uses art, the media and technology to promote civic participation and encourage young people from all backgrounds to become involved in their communities and in the democratic process.

[*English*]

The report summarizes the finding of these discussions, drawing upon what students said and the accompanying material some schools submitted. The opinions expressed presented the views of the students. The project ran from November to April 2009 with school visits occurring between January and March with the support from The Dominion Institute and Apathy is Boring.

A large majority, perhaps two thirds of the students I met with, were either not interested or opposed to a lowering of the voting age. Indeed, 65 per cent at one school and 60 per cent at another were opposed to a lowering of the voting age. Moreover, a 2008 survey conducted for The Dominion Institute found that 65 per cent of Canadians between the ages of 18 years and 25 years, just a little older than those we met and talked with, were against the lowering of the voting to the age of 16 years.

In my opinion, the school board's curriculum, and by this I do not mean the teachers, is not preparing tomorrow's leaders well in the area of civics. Many students certainly felt that the schools are not sufficiently engaging them or getting them involved. This might explain why the students did not have much interest in the subject. An online poll conducted by Apathy is Boring in conjunction with the school visits indicated a higher percentage of youth respondents advocated for lowering of the voting age — 63 per cent, in effect, were in favour of lowering the voting age to 16years whereas 37 per cent were against and advocated for an increase in the current age or were ambivalent.

• (2130)

I was surprised at many who advocated an increase of the voting age.

The fact that the respondents did not have to substantiate their responses as did the students in schools which were visited might explain the difference between my own findings as well as those of the Dominion Institute in the online survey.

Frankly, honourable senators, I was impressed with these young Canadians. Their knowledge of issues was, by and large, superior to that of most Canadians. Those of us who have been knocking on doors for a long time would be able to give that opinion. There was genuine interest there. However, I think they lacked confidence in themselves.

Given the lack of interest in lowering the voting age by those most affected, I do not believe that changes should be made to the current age requirement — at least not at the present time. Further investigation as to why youth are disengaged on the topic of civics and how the system could work better to encourage young people to be interested in public policy and government is obviously needed. If we fail to properly educate today's youth, how can we expect them to be effective leaders of tomorrow?

Perhaps the answer lies in vibrant organizations such as Apathy Is Boring and the Dominion Institute that are run by engaging young adults and are better able to reach out to youth. If so, we should find better ways to support such organizations and to create innovative approaches to better inform and involve this "always on" generation.

I would like to thank the schools, the teachers and mostly the students who participated in this project. For a more in-depth look at the project and its findings, I encourage honourable senators to review the report that I prepared entitled *Old Enough to Vote?*, for which I ask permission to table.

The Hon. the Speaker *pro tempore***:** Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** Honourable senators, if no other senator wishes to speak, this motion will be considered debated

Hon. Terry M. Mercer: Honourable senators, I had hoped to talk on this item later. I do not want to take up too much time, but I think Senator Di Nino's inquiry is interesting.

I wish refer to a statement made by Senator Greene earlier today — a second attempt at this statement — and I refer to the last Parliament and to Senator Harb's bill on mandatory voting, which I supported. I also draw your attention to the fact that prior to the last provincial election in Nova Scotia, the Leader of the Liberal Party in Nova Scotia, Stephen McNeil — a dynamic young man who, some day, will be premier of Nova Scotia — raised the subject of lowering the voting age. For those of us who are members of the Liberal party, we were nervous that this might have sidetracked some attention. However, it drew no focus during the campaign.

Honourable senators, Senator Di Nino's inquiry, Senator Greene's statement and Senator Harb's bill of a few years ago all point to one thing, namely, the need to sit down and talk about this issue. In the most recent election held in this country, which was in Nova Scotia a couple of weeks ago, there was the lowest voter turnout ever. It is becoming quite embarrassing. Many of us in this chamber — and Senator Di Nino has done so quite a few times — have travelled to countries around the world, to new democracies to observe their elections and to help them conduct democratic elections to ensure that they are free and open. However, here in our own country, which is considered to be a developed country with a mature democracy, our numbers continue to go down. It is time we all sat down and talked about this. It is time that this chamber, with the help of the other chamber, puts something together. We have to talk about this in a non-partisan way and figure out how to get young Canadians engaged and how to get that other group of Canadians who are not voting engaged in the political system.

Honourable senators, I believe that one of the best methods is to engage young people at the school level. One of the things that used to exist — and some senators over there would remember this; I know Senator Segal would — was the organization known as the Young Progressive Conservatives. Indeed, it was a good organization. A charter member of that organization was Senator Dickson. Many of us on this side were members of the Young Liberals. There used to be a group of young democrats. We, as political parties, have allowed this practice to slip. The evolution of what happened on your side then came along, through the Reform Party, which did not have provincial organizations and did not have youth wings. They felt that everyone should be part of one larger party. However, banning the idea of youth wings meant that youth did not have the opportunities that they should have.

In our own party, we struggle with ensuring that there are opportunities and we encourage young people to participate. When I speak to groups of young people, as I try to do as often as possible, I encourage them to get involved in their political party of choice. I tell them that my party is the best party, but I recognize that a few will stray and join your party and the New Democratic Party, perhaps even the Bloc.

Honourable senators, it is important that we find a way to get this job done together and to face the fact that it is our responsibility both in this place and in the other place to talk about this problem and to engage our provincial brothers and sisters to do the same thing.

The Hon. the Speaker *pro tempore***:** If no other senator wishes to speak, honourable senators, this debate is considered debated and it will drop off the Order Paper.

(Debate concluded.)

HUMAN RIGHTS

COMMITTEE AUTHORIZED TO STUDY ISSUE OF SEXUAL EXPLOITATION OF CHILDREN

Hon. A. Raynell Andreychuk, pursuant to notice of June 9, 2009, moved:

> That the Standing Senate Committee on Human Rights be authorized to examine and report upon the issue of the sexual exploitation of children in Canada, with a particular emphasis on understanding the scope and prevalence of the problem of the sexual exploitation of children across the country and in particularly affected communities; and
>
> That the committee submit its final report to the Senate no later than March 31, 2010, and that the committee retain all powers necessary to publicize its findings for 180 days after the tabling of the final report.

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

(Motion agreed to.)

BANKING, TRADE AND COMMERCE

STUDY ON CREDIT AND DEBIT CARD SYSTEMS—COMMITTEE AUTHORIZED TO DEPOSIT REPORT WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. Michael A. Meighen, pursuant to notice of June 16, 2009, moved:

> That notwithstanding the Order of the Senate adopted on March 3, 2009, that the Standing Senate Committee on Banking, Trade and Commerce which was authorized to examine and report on the credit and debit card systems in Canada and their relative rates and fees, in particular for businesses and consumers, be empowered to deposit a report with the Clerk of the Senate between June 18, 2009 and June 30, 2009 inclusive, if the Senate is not sitting; and that the report be deemed to have been tabled in the Senate.

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

(Motion agreed to.)

NATIONAL SECURITY AND DEFENCE

QUORUM FOR SUBCOMMITTEE ON AGENDA AND PROCEDURE—MOTION—DEBATE ADJOURNED

Hon. David Tkachuk, pursuant to notice of June 18, 2009, moved:

> That it be an instruction to the Standing Senate Committee on National Security and Defence that it adopt a motion to provide that its Subcommittee on Agenda and Procedure may only convene provided that it meets its quorum of three members and that one member from each recognized party is present.

He said: Honourable senators, the majority of members on the Standing Senate Committee on National Security and Defence have, over the objections of the minority, passed a motion to set the size of the steering committee at five rather than three members. This is in contrast to the usual practice in the Senate. A five-member steering committee is unusual and, indeed, in this current session, no other subcommittee consists of more than three members.

On those very rare occasions when a committee has had a steering committee of more than three members, there is usually a good reason. To provide a recent example, the Energy Committee, in November 2007, unanimously agreed to enlarge its steering committee to facilitate the participation of Senator Spivak, an independent senator. At some point thereafter, a fifth member was added to prevent a tied vote.

In almost every instance, a steering committee consists of three members: the chair, the deputy chair and another senator from the majority. The Senate rules state that the quorum for a meeting of any steering committee is three. Given the current composition of the Senate, this guarantees that a member among a minority must be in attendance at any steering committee meeting, since the chair and the deputy chair are usually from different parties.

• (2140)

In other words, the rules requiring a three-person quorum have been understood to mean that business cannot be conducted by a steering committee unless a member of the minority party is present or, at least, there is a consensus. This protects the minority from the tyranny of the majority, and it ensures that the chair cannot deliberately convene a steering committee meeting at a time that is not convenient for members of the minority due to conflicting commitments, which may include Senate business.

The usual practice ensures that a chair must give proper notice to senators from the minority as to the time and place of a meeting and the anticipated agenda. In short, the system that is in use in virtually every other Senate committee protects the rights of the minority.

The majority on the Standing Senate Committee on National Security and Defence, against the wishes of the minority, has chosen to adopt a five-member steering committee with three members from the party that is in the majority and two members from the minority. Given that three members constitute a quorum for a steering committee, this resolution means that business can be conducted in the absence of any representation from the minority party.

It also bears mentioning that this is a committee of nine senators, not including ex officio members. The usual reason we have a subcommittee is for the purposes of efficiency. Having more than half the regular members on the committee as members of the steering committee hardly meets the test of efficiency, but it does make it easier for the chair to get his way or for the majority party to get its way.

When the chair of the Standing Senate Committee on National Security and Defence calls steering meetings, he usually does so with no notice and with no indication of what is on the agenda. At least, there have been no notices given to the minority members of the steering committee now.

With a five-member steering committee, if the chair wants to get his own way, he only needs to leave the Chamber with two other members of the majority party, hold a discussion in the antechamber and call it a steering committee meeting.

As an example of what we seek to avoid, I cited the recent example of the Standing Senate Committee on National Security and Defence's decision to travel in early July. Minority members of the committee were not consulted at all on the travel dates. The dates were chosen unilaterally by the chair. In fact, the chair knew that minority members could not travel on the dates he selected. The chair and the other majority members of the committee forced these dates on the minority members through a motion in committee with no notice or consultation whatsoever.

Similarly, no notice of agenda items were given for the steering committee meeting when the chair first attempted to force through his plans to have the committee travel in early July. The deputy chair was at that time able to put the brakes on the chair's plan because her participation was mandatory at any steering committee meeting. This is no longer the case, so the chair and the other majority members can run roughshod over the will of the minority on any matter.

Honourable senators, under the resolution adopted by the chair and the majority members of the Standing Senate Committee on National Security and Defence, there never has to be any consultation whatsoever with minority members of the committee on any issue. When the majority on a committee automatically gets its way on any issue without any obligation to even consult the minority, then that committee ceases to be a committee.

My motion is about protecting minority rights, and I urge all honourable senators to support these rights by supporting this motion.

Hon. Tommy Banks: Honourable senators, the characterizations and descriptions that Senator Tkachuk has just finished describing are questionable in the minds of some of us, and I wish to respond to them, now that I have heard them. I therefore move the adjournment of the debate.

(On motion of Senator Banks, debate adjourned.)

(The Senate adjourned until tomorrow at 2 p.m.)

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