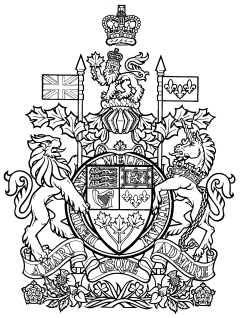

CANADA

Debates of the Senate

3rd SESSION • 40th PARLIAMENT • VOLUME 147 • NUMBER 41

OFFICIAL REPORT
(HANSARD)

Monday, June 21, 2010

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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

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

Published by the Senate
Available from PWGSC – Publishing and Depository Services, Ottawa, Ontario K1A 0S5.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Monday, June 21, 2010

The Senate met at 8 p.m., the Speaker in the chair.

Prayers.

AFGHANISTAN—FALLEN SOLDIER

SILENT TRIBUTE

The Hon. the Speaker: Honourable senators, before we proceed, I ask senators to rise and observe one minute of silence in memory of Sergeant James Patrick MacNeil, whose tragic death occurred while serving his country in Afghanistan.

Honourable senators then stood in silent tribute.

SENATORS' STATEMENTS

THE LATE SERGEANT JAMES PATRICK MACNEIL

Hon. Michael L. MacDonald: Honourable senators, another Canadian was killed today in Afghanistan. Sergeant James MacNeil, a 28-year-old soldier from Glace Bay, Nova Scotia was murdered by an improvised explosive device, IED, not far from the Canadian base in Kandahar. It was not far from where another one of our brave soldiers, Sergeant Martin Goudreault, was killed only a few weeks ago.

Sergeant MacNeil joined the military right out of high school, was a 10-year veteran, and was on his fourth tour helping the people of Afghanistan. He was a member of 2 Combat Engineer Regiment based at CFB Petawawa and was serving in the 1st Battalion, the Royal Canadian Regiment Battlegroup.

"Jimmy," as he was known by his comrades, was not only an experienced and professional soldier but also a man with a big heart and an even bigger smile. Like many of his fellow Cape Bretoners, he would never say no to a social gathering, and usually ended up being the life of the party.

Like 147 of his fellow soldiers, Sergeant MacNeil paid the ultimate price to free the people of Afghanistan and to give them the security and stability they need to grow into a safe and thriving country. Improvised explosive devices, like the ones that killed Sergeant MacNeil and so many of our soldiers, are planted to terrify innocent civilians and to maim and murder those who would help them.

On behalf of the people of Cape Breton, I can say that we are all proud of Sergeant MacNeil's sacrifice. We extend our deepest condolences to his parents, Jim and Thelma; to the rest of his family; and to his many friends, both at home in Glace Bay and at the base in Petawawa. He will be sadly missed. God rest his soul and God bless his family. May perpetual light shine upon him.

ORDER OF PRINCE EDWARD ISLAND

Hon. Elizabeth Hubley: Honourable senators, I rise today to ask you to join me in offering congratulations to three of my fellow Islanders: Father Brady Smith, of Charlottetown; Ms. Diane F. Griffin, of Stratford; and Dr. Regis Duffy, of Charlottetown. These three distinguished Islanders have been selected as this year's recipients of the Order of Prince Edward Island.

The Order of Prince Edward Island is the highest honour that can be accorded to a citizen of our province in recognition of those who have shown individual excellence or outstanding leadership in their community and in their chosen occupation or profession.

Father Brady Smith has worked tirelessly throughout Prince Edward Island and the Atlantic provinces as an ordained priest and counsellor to help individuals and families battle addictions.

Ms. Diane Griffin is a well-known biologist and naturalist who has taught, written, and developed policies on ecological issues. Her messages of conservation and wilderness protection have influenced many.

Dr. Regis Duffy has had a distinguished career as an academic and as a business person. He formed one of the top pharmaceutical and chemical companies in Atlantic Canada. His contributions to the business world, the University of Prince Edward Island and to the community as a whole are remarkable.

Congratulations to these accomplished and distinguished Islanders.

[*Translation*]

AFGHANISTAN

Hon. Michel Rivard: Honourable senators, today I would like to talk to you about an extremely serious and important subject that touches the lives of all Canadians: our country's involvement in Afghanistan.

We recognize that our soldiers are making a huge sacrifice. They are giving their time and their youth, and some are even giving their lives to try to bring down an oppressive regime and improve the lives of a people on the other side of the world.

Our soldiers' sacrifice does not just affect them. It also affects their children, their spouses, their parents and their family and friends. Our soldiers are serving their country, our country, in the name of justice and freedom.

We are helping to establish a democratic government by taking part in creating public institutions and accountable electoral processes; providing humanitarian aid, including food, supplies and vaccines; and providing basic services such as education, job training and job creation.

Thanks to the invaluable work done by our military men and women, we have succeeded in improving the lives of the Afghan people. We have made great strides in training and mentoring Afghan police and correctional officers and lawyers.

• (2010)

You will hear not only about the victories, but also about the challenges our soldiers face on a daily basis in that country. You will hear about the genuineness of a people and the openness of the communities. You will hear about the rewarding experiences of those who are helping to give the Afghans a better future. Anyone who hears about the experiences of Canadian soldiers on mission abroad always feels a sense of solemn pride.

Sadly, some soldiers have made the ultimate sacrifice. We will never forget them, and we will keep their memory alive. They gave their lives for a cause they believed in, and with their sacrifice, they have already improved the living conditions of the people they promised to help and protect.

This difficult chapter in Canada's history will forever have repercussions on the future of our country and our people, as well as on the future of Afghanistan and its people.

Honourable senators, from the bottom of my heart, I want to thank the Canadian men and women who are serving and have served in Afghanistan to improve Afghans' living conditions and make our world better.

LUCIE AND ANDRÉ CHAGNON FOUNDATION

Hon. Pierre-Hugues Boisvenu: Honourable senators, this evening I would like to congratulate the Chagnon family and the Lucie and André Chagnon Foundation, winners of the international BNP Paribas Wealth Management Award.

The Grand Prix awarded the foundation on June 17, 2010, in Paris, recognizes individual philanthropy, including personal and financial investment in projects. The winner of the Grand Prix is chosen by a jury made up of independent experts. This is the first time that a foundation from Quebec or Canada has won this international award, which is the equivalent of the Nobel Prize for generosity and social involvement.

[*English*]

I wish to draw the attention of honourable senators to the importance of the work of the Lucie and André Chagnon Foundation. Created in 1988, the foundation truly spread its wings in 2000 after the sale of Vidéotron, one of the greatest Canadian communication companies. André Chagnon chose to devote his time and 75 per cent of the family estate to the Lucie and André Chagnon Foundation.

[*Translation*]

The foundation supports overall child development, fosters healthy lifestyles and encourages young Quebecers to stay in school. Through its programs to mobilize communities and raise societal awareness, and by focusing primarily on children and their parents, the foundation contributes to the development and improvement of children's health and the prevention of poverty and disease.

Poverty and a lack of education and supervision are the main factors that make a young person more susceptible to taking a negative path in life. The child might drop out of school, which leads to delinquency, drug use and, as a result, crime.

The primary mission of the Lucie and André Chagnon Foundation is prevention. The foundation's efforts to keep children in school and away from delinquency must be made very early in a child's life. That is why the foundation's mission focuses on the causes rather than the consequences, to better prepare young people for life.

[*English*]

The important research undertaken by the foundation indicates — among other conclusions — that far too many children are not adequately prepared to begin primary school. The foundation therefore addresses the very roots of the dropout problem by working directly with parents and younger children.

[*Translation*]

Our children's education, health and safety are fundamental values we must safeguard, because our children represent our destiny as a society and our hopes and dreams for a better future.

[*English*]

Honourable senators, by educating as many young people as possible, we help the children of today to become the adults of tomorrow. These future adults will be better equipped to be engaged and responsible citizens.

[*Translation*]

The foundation's positive approach supports individual and community accountability, helping them take charge of their own economic, professional, family and social destinies. Those are the values our government is fighting for.

Honourable senators, we can be proud of the foundation's influence and of the international reputation it has earned recently. The Chagnon family has adopted an innovative approach to philanthropy over the past 10 years and is to be congratulated on substantially improving our children's and grandchildren's future.

[*English*]

MEADOWBANK GOLD MINE

Hon. Dennis Glen Patterson: Honourable senators, I attended a most remarkable event on Friday. I was at the new Meadowbank Gold Mine near Baker Lake in the Keewatin Region of Nunavut, which is roughly in the geographical centre of Canada, the so-called barren lands. However, these are not barren lands — "There's gold in them thar hills!" A musk ox and a wolf were seen along the road to the mine last week.

Honourable senators, I was there to attend the official opening of Agnico-Eagle's Meadowbank Gold Mine. What was remarkable about this event, honourable senators — and I have never been to another quite like it in my years in the North — was the camaraderie and goodwill among the mine owner, Agnico-Eagle, the Inuit organizations representing the Inuit of the Kivalliq Region and all of Nunavut, and the people of Baker Lake. It was a love-in and a celebration. How wonderful to see hugs given by the company's senior managers dressed in traditional Inuit attiqiit to the mayor, elders and community leaders.

Honourable senators, why was there such goodwill and happiness? I think it all began with the Inuit land claim agreement signed in 1993 and the obvious respect that Agnico-Eagle holds for that claim. The claim gave the Inuit the land on which the mine sits, so they receive the owners' benefit from that as well as a 5 per cent share of federal royalties. Then there are the added dividends of the Inuit Impact and Benefit Agreement signed between the company and the Inuit. The Inuit of the region will fill 35 per cent of the 390 jobs generated by that mine. The company wants and will do better than that.

The cause for celebration is that Baker Lake was an economic basket-case when I first knew it in the 1970s. The unemployment was so high in Baker Lake that it was once known as the welfare capital of the NWT, and it was plagued with myriad social problems.

That is not so anymore. Agnico-Eagle's plan to spend about $1.5 billion to build a new mine to the highest environmental standards, as required by regional boards and on which Inuit have major representation, was welcomed by the community.

The company celebrated the opening last Friday in enthusiastic and exuberant fashion. A solid gold inukshuk was poured for the occasion. Made from Nunavut gold, the gleaming 15-inch work of art is worth $1.9 million based on Friday's record high gold price of US$1,256 an ounce.

At community celebrations, delighted residents were allowed to touch and heft a gold brick, also poured especially for the occasion. It was one of 450 bricks expected to be produced this year. Each brick is worth $900,000.

There was a staged explosion of gold-bearing ore and a spectacular unveiling of a giant stone inukshuk dedicated by employees to the highly regarded chief operating officer of the company, Ebe Scherkus, who shepherded the mine through five years of its development. There was a keynote address by beloved Kivalliq Inuit Association President Jose Kusugak in which he credited the Nunavut land claim and its visionary early champion minister, the Honourable Tagak Curley.

SAINT JOHN

TWO HUNDRED AND TWENTY-FIFTH ANNIVERSARY

Hon. John D. Wallace: Honourable senators, it is my great pleasure to inform you that my city, Saint John, New Brunswick, is this year celebrating its two hundred and twenty-fifth anniversary of when it became the first incorporated city in all of Canada. In this regard, I wish to briefly outline some of the highlights of our city's rich and vibrant past.

• (2020)

History records that on June 24, 1604, the feast day of St. John the Baptist, French explorers Samuel de Champlain and Pierre du Gua de Monts arrived at the mouth of what is now the Saint John River, and on that remarkable day they named the majestic river in the saint's honour.

Upon arrival, they were greeted by the Maliseet natives whose village was located on the west side of the harbour and from where, for centuries, they traded with other First Nations people. Also, within the inner harbour, what was later known as Portland Point became a significant historic landmark as it was there that the first permanent French settlement in that part of Acadia, now known as New Brunswick, was created. Fortified by Charles La Tour, who was Lieutenant-Governor in 1631, the settlement was later occupied in 1758 by the British and renamed Fort Frederick. In 1775, it was destroyed by American revolutionaries and replaced by what was known as Fort Howe, the blockhouse of which has since been reconstructed and still exists today.

In the years following, further settlement continued along the shores of the inner harbour, and with the arrival of the United Empire Loyalists in 1783, the communities of Parr Town and Carleton were established. In 1785, these two communities amalgamated to form the City of Saint John and, in doing so, became Canada's first incorporated city.

In 1877, most of the city was destroyed by what became known as the Great Fire, and within an astonishingly short period of three years, the entire city core was completely rebuilt by mainly Irish workers who came to Canada during the time of Ireland's potato famine. As a lasting legacy from this period, Saint John has today some of our country's most significant nationally-designated heritage sites and one of the largest and richest collections of turn-of-the-century architecture in all of Canada.

As a result of the strong presence and influence of the Loyalists, many of the architects who were involved in the city's reconstruction came from the New England region, and Boston, in particular. The rich detailing in the architecture and craftsmanship, and the strong Bostonian influence, can still be admired today in the many historic buildings that form part of our city's centre, including the elaborate brickwork, large Roman arched windows, gargoyles and intricate scroll work.

From the earliest days, Saint John has been a major shipping, shipbuilding and Atlantic coastal trading centre. In 1851, the vessel *Marco Polo*, which was known at the time as "the fastest sailing ship in the world," was built and launched in Saint John.

As honourable senators can see, Saint John has a long, rich and proud heritage. The many generations of our people have made the city what it is today — people of our First Nations, our French and English founders, the Loyalists and many other ethnic groups, particularly the Irish.

We are extremely proud of our culture, our cultural, architectural and artistic heritage. Our federal government designated Saint John as a "Cultural Capital of Canada" in 2010, an honour we share with only two other cities across the country, namely Saguenay and Winnipeg.

Our Saint John 225 anniversary celebrations will also have a significant presence as part of the national cultural capital display that will occur during this year's Canada Day festivities in Ottawa. Saint John 225 is not only a celebration of our city's history, we will also continue to celebrate and participate in the vibrant arts and culture of Saint John, including the creation of a

lasting and meaningful legacy that will honour, in an appropriate way, the efforts, passion and accomplishment of our city's residents, both past and present, so they will be remembered and respected well into the future.

Much is in store as part of Saint John 225 celebrations, and I encourage honourable senators to review the complete details that are readily available on the Saint John 225 website. I am sure honourable senators will be interested to learn —

[*Translation*]

ROUTINE PROCEEDINGS

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

YUKON LAND CLAIMS AND SELF-GOVERNMENT AGREEMENTS—2004-07 ANNUAL REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2004-07 annual report on the Yukon land claims and self-government agreements.

PUBLIC SECTOR INTEGRITY COMMISSIONER

ACCESS TO INFORMATION ACT AND PRIVACY ACT—2009-10 ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, pursuant to section 72 of the Access to Information Act and the Privacy Act, I have the honour to table, in both official languages, the annual report of the Public Sector Intergrity Commissioner for the 2009-10 fiscal year.

[*English*]

APPROPRIATION BILL NO. 2, 2010-11

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-44, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2011.

(Bill read first time.)

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

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

[*Translation*]

APPROPRIATION BILL NO. 3, 2010-11

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-45, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2011.

(Bill read first time.)

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

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

[*English*]

HUMAN RIGHTS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF ISSUES RELATED TO NATIONAL AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Hon. Janis G. Johnson: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That notwithstanding the order of the Senate adopted on March 23, 2010, the date for the presentation of the final report by the Standing Senate Committee on Human Rights on issues relating to human rights and, inter alia, to review the machinery of government dealing with Canada's international and national human rights obligations be extended from June 30, 2010, to March 31, 2011.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF ISSUES OF DISCRIMINATION IN HIRING AND PROMOTION PRACTICES OF FEDERAL PUBLIC SERVICE AND LABOUR MARKET OUTCOMES FOR MINORITY GROUPS IN PRIVATE SECTOR

Hon. Janis G. Johnson: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That notwithstanding the order of the Senate adopted on March 23, 2010, the date for the presentation of the final report by the Standing Senate Committee on Human Rights on issues of discrimination in the hiring and promotion practices of the Federal Public Service be extended from June 30, 2010, to March 31, 2011.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF INTERNATIONAL OBLIGATIONS REGARDING CHILDREN'S RIGHTS AND FREEDOMS

Hon. Janis G. Johnson: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That notwithstanding the order of the Senate adopted on March 23, 2010, the date for the presentation of the final report by the Standing Senate Committee on Human Rights on the implementation of recommendations contained in the committee's report entitled *Children: The Silenced Citizens: Effective Implementation of Canada's International Obligations with Respect to the Rights of Children,* tabled in the Senate on April 25, 2007, be extended from June 30, 2010, to March 31, 2011.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF ISSUE OF SEXUAL EXPLOITATION OF CHILDREN

Hon. Janis G. Johnson: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That notwithstanding the order of the Senate adopted on March 23, 2010, the date for the presentation of the final report by the Standing Senate Committee on Human Rights on the issue of the sexual exploitation of children in Canada be extended from June 30, 2010, to March 31, 2011.

• (2030)

QUESTION PERIOD

LEGAL AND CONSTITUTIONAL AFFAIRS

MEETING TIMES OF COMMITTEE

Hon. Sharon Carstairs: Honourable senators, my question is for the Deputy Chair of the Standing Senate Committee on Legal and Constitutional Affairs. It is my understanding that the Standing Senate Committee on Legal and Constitutional Affairs wants to sit tomorrow outside of its regular time, even though the Senate may be sitting. I am quite happy to have that occur, however, caucus meetings in this place are sacrosanct. They always have been, and I hope they always will be.

I have been informed that the Standing Senate Committee on Legal and Constitutional Affairs wishes to sit tomorrow between the hours of 12 p.m. and 2 p.m., which is the normal time for caucus meetings. May I have the assurance of the deputy chair that this meeting will not be scheduled during the time of Senate caucus?

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I need some clarification, but I have not been able to find the relevant rule. May I ask His Honour to clarify whether or not a deputy chair is a designated person of whom a question may be asked during Question Period? It is not that I am not interested in the question, but I simply wish to follow the rules.

The Hon. the Speaker: I thank the honourable senator. If he checks the *Rules of the Senate*, he will find that questions may be asked of the Leader of the Government in the Senate, of a minister sitting in the Senate, or of a chair of a Senate standing committee. However, in the spirit of collaboration, perhaps the house would agree that information could be exchanged between the sides on the subject matter.

Senator Comeau: Again, this is tricky ground. I am not even sure if I should ask this question. We heard Senator Carstairs' question, which is a valid one. It will be looked at by various individuals in a different fashion. I do not think we should proceed with new rules on the fly during Question Period, when we cannot even raise a point of order at such a time.

Senator Carstairs: With the greatest of respect, honourable senators cannot raise a point of order during Question Period, so how can the deputy leader ask His Honour for a point of order? It is clear in the *House of Commons Procedure and Practice* that a vice-chair may be asked a question. It is also quite true that in following the *Rules of the Senate*, we do not ask questions of a deputy chair.

Honourable senators have been asked to hold a meeting during caucus. Caucus is sacrosanct. I want to hear from the government as to whether it will violate this practice for the first time in my 16 years in this place.

Some Hon. Senators: Hear, hear.

Some Hon. Senators: Oh, oh.

The Hon. the Speaker: Honourable senators, order, please. All honourable senators know what the *Rules of the Senate* provide for. If the rules are to be changed, then we have a process for that with the Standing Committee on Rules, Procedures and the Rights of Parliament. Therefore, the house will move to another questioner, should there be one.

THE SENATE

COMMITTEE MEETING TIMES

Hon. Terry M. Mercer: Honourable senators, as caucus chair, I will ask the question of the Leader of the Government in the Senate. As stated by my friend and colleague, Senator Carstairs, the time set aside for caucus meetings is considered to be sacred and we try not to schedule anything to conflict with caucus meetings. Would the Leader of the Government in the Senate assure the house that there will be no direction from the government to its members of any committee to hold meetings during the time allotted for caucus?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question. I agree that time set aside for caucus is absolutely precious and should not be altered. Perhaps there was some confusion because the other place has departed these halls and national caucus will not be held on Wednesday. Possibly that led to consideration by committees to seek approval

to meet on Wednesday. With regard to Tuesday, I agree that the committee should not sit when the respective caucuses are meeting. I am sure that some reasonable solution can be found by the whips on both sides.

Senator Mercer: Honourable senators, as we go through this period of time, which will be a number of weeks that we will be here when the other place is not sitting, I assure the Leader of the Government in the Senate that it is my intention as caucus chair on this side to hold caucus meetings at the regular time on Tuesdays. I give the honourable leader a head's-up so that we do not have this problem in the future.

Senator LeBreton: Obviously, this side is in the exact same position, honourable senators, as we continue to sit in Parliament.

Further, I must put on the record that Tom Clark had better get a life because today on television he said that there was no activity in Parliament. I advised him that perhaps he should look at the other end of the hallway where there is a considerable amount of activity.

I assure Senator Mercer that this side intends to hold Senate caucus meetings on Tuesday.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTIONS

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table two responses to oral questions raised in the Senate by the Honourable Senator Fox on April 29 and May 11, 2010, concerning Industry Canada, the Marquee Tourism Events Program, and by the Honourable Senator Downe on May 11, 2010, concerning Industry Canada, the Marquee Tourism Events Program.

HERITAGE

FUNDING FOR SUMMER FESTIVALS

(Response to questions raised by Hon. Francis Fox on April 29 and May 11, 2010, and Hon. Percy E. Downe on May 11, 2010)

On May 7, 2010, the Honourable Tony Clement, Minister of Industry, reaffirmed the Government of Canada's support for the tourism industry by announcing the second year of funding for the Marquee Tourism Events Program (MTEP), part of year two of *Canada's Economic Action Plan*.

The MTEP is a two-year program that was launched in April 2009. In its first year, the Program helped a number of festivals and events sustain or increase their domestic and international reach, and improve audience appeal through marketing efforts, additional programming and new products.

Now in its second year, the MTEP will provide funding to festivals and events to stimulate the economy and help Canada become an even more vigorous player in the competitive global tourism industry. A list of events receiving funds under the MTEP is attached.

(For list of events receiving funds under the MTEP, see Appendix, p. 884.)

[*English*]

ORDERS OF THE DAY

FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS BILL

THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Nancy Ruth, seconded by the Honourable Senator Nolin, for the third reading of Bill S-4, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves, as amended.

Hon. Lillian Eva Dyck: Honourable senators, today I rise at third reading of Bill S-4, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves, as amended.

Honourable senators, today, June 21, is National Aboriginal Day, so it is quite important that we deal with this bill on this day.

This is a dangerous bill. It contains the seeds of destruction of two fundamental First Nation rights: first, the inherent rights to self-government; and, second, the inalienability of reserve lands that should be reserved for occupation by only First Nation people. I urge all honourable senators to defeat Bill S-4. It is a terrible bill.

In the testimony of the committee's witnesses, one can see that we heard from 13 chiefs who all were basically opposed to it. We had chiefs from the Assembly of First Nations, the Association of Iroquois and Allied Indians, the Federation of Saskatchewan Indian Nations, the Native Women's Association of Canada, Six Nations of the Grand River, the Chiefs of Ontario, the Mohawk Council of Akwesasne, the Atlantic Policy Congress of First Nations Chiefs, the Chief of the Serpent River First Nation, and Emma Meawasige, an Elder from the Serpent River First Nation. They all thought Bill S-4 should at least be withdrawn and amended. They did not want it. The Native Women's Association of Canada and the Quebec Native Women were opposed to it. The National Aboriginal Circle Against Family Violence issued a report that said they were opposed to this bill. They did not want this legislation. The lawyers who appeared before the committee were opposed to it, or at least said we should withdraw it and do in-depth consultation and accommodation. In other words, they said that we should listen

to what the First Nation people have to say. The lawyers were from the Canadian Bar Association and then there was Dr. Pamela Palmater, who has incredible credentials. She has a Bachelor of Laws, a Master of Laws and a PhD in the Science of Law. She panned this bill.

• (2040)

This bill should be defeated. I will keep saying that over and over again.

Even the matrimonial real property report prepared by the minister's representative, Wendy Grant-John, said that the Department of Justice should confirm compliance with both the charter and section 35 of the Constitution Act. In other words, is this bill against the constitutional right of First Nations to inherent self-government and treaty rights? This compliance has not been confirmed. It is unconstitutional and some chiefs said they will oppose it. However, they lack the resources to take it to court to challenge it.

In her report, Wendy Grant-John also said to evaluate the First Nations Land Management Act program and assess any shortfalls. We had a chief from Saskatchewan, from the Muskoday First Nation, who said that the First Nation Land Management Act works well. The only problem is that it is not resourced. First Nations are waiting for the resources to implement matrimonial real property laws through this act, which we already passed. Apparently, it has expired, but it can be reopened. Therefore, we have a solution that was already in place.

In addition, this is the third time this bill has gone through Parliament; it has not made it yet. In May 2009, the Native Women's Association said that "NWAC views this legislation as an attempt to erode the land base of First Nations." It will divide up the reserve land so that it is no longer land that is occupied only by First Nations or Indian people who are registered under the Indian Act.

NWAC was opposed.

The Assembly of First Nations dealt with it in July 2008. They had an annual general assembly and passed resolutions. At that time, it was called Bill C-47. The chiefs and the assembly rejected Bill C-47 because it did not fulfil the duty of the Crown to consult and to accommodate the views and interests of First Nations. They wanted the government to withdraw Bill C-47 and provide First Nations with resources to develop and implement a meaningful process properly that respects First Nations jurisdiction and existing First Nation processes addressing matrimonial real property.

Honourable senators, all the chiefs from across Canada were opposed to the bill. How much clearer can it be?

In her report, the chair of the Standing Senate Committee on Human Rights indicated that the chief from the Federation of Saskatchewan Indian Nations described the bill as "encouraging." However, we must also recognize that the chief said,

> We must ensure that legislation developed does not take away from the human rights issue and put it against the rights of First Nations people. I am here to serve notice that Saskatchewan is treaty based. Therefore, it is natural that we want to ensure our collective rights are met and respected. I ask that we have more time to assess this possible conflict to ensure that our collective rights will be met when MRP legislation is put in place.

That is from Chief Marie-Anne Day Walker-Pelletier, Federation of Saskatchewan Indian Nations.

The chair also indicated that the chiefs from the Atlantic Policy Congress of First Nations Chiefs thought the bill was positive, but they also go on to say:

> Our member chiefs do not support Bill S-4 as it currently stands. [APC] passed a resolution in their last meeting in May expressing their non-support for this bill due to their serious concerns with its potential impacts.

Honourable senators, they do not want it.

The chair indicated that she thought Bill S-4 strikes an appropriate balance between protecting rights of individual Canadians and accommodating the collective interests of First Nations. However, almost all the First Nations who testified stated that balance was not met.

Dr. Palmater probably said it best when she said:

> A fundamental difference in world view is involved. The principle behind Bill S-4 is protecting Aboriginal women. Aboriginal people look at the entire community. We talk about a bill protecting individual rights; Aboriginal people talk about protecting communal rights, which include the individuals. The situation is not either/or. The ministerial representative specifically said this is a false dichotomy perpetuated repeatedly by Canada to push forward individual rights over collective rights.

Honourable senators may recall from my questions at committee report stage that there may be problems with amendments to the bill that include the principle that the collective interests of First Nations can now be ruled upon by a judge. I do not think that is appropriate. That principle will further erode the section 35 constitutional rights of First Nations to govern themselves. Dr. Palmater agrees. I contacted her for her professional legal opinion and she agreed that it was not a good thing to do. She said:

> By adding these provisions, we are requiring First Nations to defend the title to their reserve lands over and over again. We are requiring that First Nations appear in courtrooms to defend their treaty rights and constitutional rights at their expense. There are no other constitutional rights that must be defended over and over again but those of First Nations. Canada has already stated that section 35 protects the inherent right of self-government. Bill S-4 does not protect any of those rights but, instead, belittles them and reduces them to mere consideration for judges who must decide how to dispose of reserve property.

Honourable senators, as I said before, this bill is unconstitutional; it goes against section 35 of the Constitution.

Bill S-4 ought to be defeated because the evidence given to the Human Rights Committee from the witnesses overwhelmingly showed that, first, the Government of Canada did not fulfill its duty to consult and accommodate First Nations. Even the minister's representative stated that in her report, namely, that she did not fulfil the duty to consult and accommodate.

Second, the imposition of federal MRP legislation on First Nations is unconstitutional. It violates section 35 of the Constitution Act. Virtually all the chiefs who appeared as witnesses mentioned this point specifically. I know I am repeating myself, but I am doing it deliberately so that honourable senators get the point.

Third, the implementation of Bill S-4 contravenes the sections of the Indian Act that guarantee the inalienability of lands for Indians.

Fourth, the enactment of Bill S-4 may help some First Nations women and men to achieve a fair settlement upon divorce, including those leaving abusive relationships.

The Hon. the Speaker: Order! I must remind honourable senators to respect the chamber as a chamber of debate and not a chamber for side conferences.

Some Hon. Senators: Hear, hear.

Senator Dyck: Thank you, Your Honour.

The enactment of Bill S-4 may help some First Nations women and men to achieve a fair settlement upon divorce, including those leaving abusive relationships, but, with poverty being so prevalent among First Nations people, they will not be able to afford a lawyer anyway. We are putting middle-class white-society values upon First Nations reserves, many of which live below the poverty line and some of the witnesses said that, on their reserves, half are on welfare.

Fifth, other options are available. We talk about a legislative gap, but other options are available. I already talked about the First Nations Land Management Act. To say that we leave First Nations women helpless if we do not pass Bill S-4 is dishonest. The false dichotomy articulated by the minister of there being only two options — leave Aboriginal women and children helpless or enact Bill S-4 — ignores the existing mechanisms that address MRP and the creation of better ways to help First Nation people leave abusive marriages or those that are simply not working out.

• (2050)

Even those First Nation women who have been forced to leave the reserve and who were in abusive relationships did not want legislation. That is what the National Aboriginal Circle Against Family Violence said, and the report was commissioned by INAC. In the report, they said that they want sentencing circles and restorative justice that brings responsibility to the community, not to the courts. In addition, they want actions that respect First Nations sovereignty with little implementation of legislation from the provincial or federal governments, although they recognize that such involvement would be very difficult to avoid.

In terms of this idea of individual rights versus collective rights, I will quote again from Dr. Palmater:

> I cannot think of many Aboriginal women who would sacrifice their Aboriginal and treaty rights, the inherent rights of their First Nations to be self-governing, or the reserve and titled land rights of their children and grandchildren for seven generations into the future, for their own immediate needs. That is why you see Aboriginal women willing to forego their immediate right to be registered under Bill C-3 in order to ensure that the Indian Act is amended to protect the future rights of their children and grandchildren.

This bill does not look ahead into the future. It is looking at what is happening now. In the long run, it will have a very negative impact.

When I first found out that First Nations women do not have any legal rights to matrimonial real property on reserves, I, too, was astounded and thought we ought to have the same rights as non-First Nations women who live in the rest of Canada. I thought provincial laws or divisions in matrimonial real property should apply just as they do for personal property. Then I heard from several chiefs and from the witnesses before the Standing Senate Committee on Human Rights that this bill and its two predecessors would erode the integrity of First Nations reserves and that, as First Nations lose the rights to be the sole occupants of reserve lands, they also lose their sovereignty. That is one heck of a huge loss.

While this bill does not impose provincial law, it does impose federal legislation which gives non-First Nations rights to reserve land. That contravenes the Indian Act and by so doing, it creates a more severe problem for the community as a whole.

While an individual First Nation woman or man may benefit from Bill S-4 and get the exclusive right to occupy the matrimonial home, she or he runs the risk that there may not be a reserve for her grandchildren, as the quote from Dr. Palmater stated.

In addition, Dr. Palmater said:

> Bill S-4 contains legal remedies that would have been exercised through the courts, knowing that the majority of Aboriginal women on reserve will not be able to access the courts or lawyers needed to assess them. This results in an empty shell of a legislative right of protection.

It looks as though you will protect them but you are not really. It is an empty shell.

The individual rights set out in Bill S-4 are based on the assumptions that the First Nation woman can afford a lawyer; that she can find a family lawyer — and we were told they are hard to come by these days — that she lives near to a family lawyer and not up North, where there are no courts or lawyers; and that, with respect to the division of assets, that her home is not owned by the band. In many cases and in Saskatchewan, all of the homes are owned by the band.

In many cases, all of those assumptions are false. If all of those assumptions are correct, then she may get a fair settlement. However, this fair settlement can also be secured in other ways

that do not put the community land's — that is the reserve land — integrity at risk.

There are other options. First, if she is in an abusive relationship, she can call the RCMP and have her husband removed from the reserve. Several witnesses told us that. Second, her band may have some alternative dispute mechanisms or mediation services that can help her during the divorce. We had a couple of examples of that, as well. Third, if she does have access to federal compensation orders, the Assembly of First Nations can tell her how to access that. The report from the AFN says that is true. Therefore, if they happen to be well off enough off to own a house, she may not get the house but she will get the money.

Fourth, her band may have its own matrimony real property policies, either through traditional customs — we heard about some of those — self-government agreements, or First Nation Land Management Agreements. We heard witnesses tell us about those kinds of things that operate traditionally or through the First Nations Land Management Agreement.

Finally, after June 2011, if she feels she has been discriminated against because of her gender, she can lodge a human rights complaint against the band through Bill C-21, which we passed here two years ago.

There are alternatives; we are not leaving people completely and totally helpless.

Honourable senators, we ought to defeat Bill S-4. Legitimate First Nation organizations and chiefs, male and female, are opposed to Bill S-4 for good reasons. It is unconstitutional, threatens the inalienability of reserve lands and is an empty shell that promises to help First Nations women and children but it is simply a promise. Bill S-4 ignores existing remedies that help resolve matrimonial real property disputes, particularly the First Nations Land Management Act.

I will give honourable senators a couple of examples of what two of the witnesses said with regard to what goes on if we do not have Bill S-4, which are the kinds of things that happen now. We heard from Chief Lawrence Paul who said:

> The Criminal Code overrides the Indian Act. We have RCMP detachments under First Nations. If family violence occurs, the RCMP is called. If no one will open the door, the door is kicked down. They listen to the parties and cart one party off to jail. A court order will be put into effect, and the male or female may be made to stay away from the residence for a period of time.
>
> The Criminal Code protects everyone, regardless of race, sex or colour. Women on my First Nation are protected. It boils down to one thing: The land and the Constitution. It will end up in court cases.

Chief Marie-Anne Day Walker-Pelletier, from the Federation of Saskatchewan Indian Nations, said:

> If there was violence taking place between a husband and wife in my community, the husband would be removed. We have our own policing on the four reserves. The women and children would stay because usually the kids are in school. Once the husband has left, any charges are dealt with.
>
> In my community, I have an unfunded wellness team that deals with families. It has well trained members who work with women, children, men, young adults and youth.
>
> A family is a family and we do not want to create division. Children want their parents. When the husband returns to the community, we have mediation and a wellness team formulates plans.

They have mechanisms in place to deal with abusive situations and to deal with what happens to the women and children.

To conclude, honourable senators, I will repeat what I said at the beginning: Bill S-4 is a dangerous bill. It contains the seeds of destruction of two fundamental rights: First, the inherent right to self-government and, second, the inalienability of reserve lands. I urge all honourable senators to defeat Bill S-4.

The Hon. the Speaker: Do any honourable senators wish to ask a question?

Hon. Patrick Brazeau: Will the honourable senator take a question?

Senator Dyck: Yes

Senator Brazeau: Senator Dyck, I thank you for that speech. On this special day, National Aboriginal Day, I have to say I am quite surprised to hear a little bit of what I heard today. However, in any event, it is true we had chiefs who came to committee and basically opposed the bill.

Yet let us consider that they are the same chiefs who have also rejected this matrimonial real property process regime. They rejected Bill C-21, to provide human rights for First Nations peoples on reserve.

• (2100)

They also rejected any attempt at reforming or bringing amendments to the Indian Act that would bring about more accountability and transparency. The honourable senator knows as well as I do that it is difficult to have individuals — in particular, Aboriginal women who have been affected by a lack of matrimonial property regime and the shame they may have felt, the abuses, the hurt, the pain and the sorrow — to come before cameras and parliamentarians to tell their story and be re-victimized.

The same chiefs talked about the inherent right to self-government and how this bill would oppose or go against that. However, this piece of legislation, if passed, would offer the opportunity to every First Nations community across Canada to develop their own MRP regime. The honourable senator said that this piece of legislation is unconstitutional. How is it unconstitutional when, first, it is enabling and, second, it gives the opportunity to every First Nations community to develop its own matrimonial property regime?

Finally, we talk about consultation. We have been consulting on this since 2006. How long do we have to consult and talk about more money until we offer Aboriginal women equality rights in this country?

Senator Dyck: I am surprised by the Honourable Senator Brazeau. The women of the National Aboriginal Circle Against Family Violence, who were abused, said they do not want this kind of legislation. They want to go back to their communities. It is about family and community. We are not pitting one person against another, as goes on in the courts during divorce settlement.

Why would we need this? We do not need this. If we put this in, there are no resources attached for the First Nations to develop their own MRP. There are resources attached to developing some kind of centre of excellence and we do not need that. We have wise people; we have our elders. If the resources were in that bill, they could do it; but without resources, how will they be able to do it? Where will they get the money to hire the lawyers? That is why they are opposed to it. It is an empty shell. There is no money to develop it.

First Nations land management seemed like a good option. There was money there, but now there are 60 First Nations lining up to get them and they do not have the resources and now, apparently, that act is dead, so that option is closed.

The honourable senator asks why the bill is unconstitutional. Obviously it is unconstitutional because First Nations have the right to self-government. One does not walk in and say, "This law shall apply if you have your own government." How would we like it if the Germans came over and said, "Canada, we want you to enact this law"? It is the same bloody thing.

Senator Brazeau: I have a supplementary question. Senator Dyck mentioned there are no resources or money. It is always a question of money. She was in committee, as well as I was, and the Assembly of First Nations and the Native Women's Association of Canada both received $2.7 million from the federal government. Aboriginal leaders always say that they are in the best position to consult with their own people, yet, when a question was asked of one of those chiefs if they had been consulted by the AFN, the response was no. Where did the money go?

The second part of my question is this. Senator Dyck talked about the president of the Native Women's Association of Canada rejecting this bill. I think she was quoting the former president. However, the new president, the day after she appeared before committee, was interviewed on APTN. When asked about the bill, she responded that they are willing to go with the bill the way it is, as long as the government is willing to put in some non-legislative measures in terms of dealing with the lack of housing and adequate access to justice.

Senator Dyck: Senator Brazeau talks about the money that was given to INAC and NWAC, the millions of dollars. So what? That was given for the consultation. They got the consultation, and the minister totally ignored it. So, who is to blame here? The money was laid out, but the whole consultation was totally flawed in the first place. There were three options. What kind of consultation is that? They could take provincial law; provincial law plus something else — the incorporation of their tradition; or go with this, the federal law. There was no option. There was no questioning.

"What do you want?" would be the question to ask. That is consultation. You ask what I want, I tell you, and then you accommodate it. One may not get everything, but some kind of compromise is made. That did not happen, and if the minister has misspent his money, then that is the minister's own tough luck. However, if they want to set this up, along with a process that works, then assign some money to it. The First Nations Land Management Act works. Why do they not fund that?

With respect to the Quebec Native Women, they may have said that because the situation in Quebec is different. The government is taking a one-size-fits-all approach; however, it does not fit all of Canada. It is a bad bill, period.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak on Bill S-4, An Act respecting family homes on First Nation reserves. In 2003, I was a member of the Senate Human Rights Committee which studied property rights for women on reserves. In a report entitled *A Hard Bed to Lie In: Matrimonial Real Property on Reserve*, the Senate committee addressed the need for legislation to be drafted so that Aboriginal women would have access to the necessary resources to ensure that they could protect themselves and their families.

Seven years later, I stand before you with Bill S-4. Unfortunately, this bill has been unsuccessful in filling the legislative gap that would still exist even if this bill was accepted and implemented. Not only does Bill S-4 fail to provide adequate support for women who are placed in vulnerable positions, it also oppresses entire communities and infringes on the constitutional rights guaranteed to First Nations people. Essentially, this bill raises the hopes and expectations of First Nations, but fails to provide the desired outcome.

Many of the ideas advanced in this bill are honourable, but practically speaking, very few will materialize. In my presentation this evening, I will highlight three specific areas of concern which demand our attention.

To begin, I will address our government's failure to fulfill its duty to consult. I will then proceed to discuss the lack of resources available to Aboriginal people living on-reserve, focusing specifically on women. I will conclude by discussing the condescending and paternalistic undertones of Bill S-4, paying particular attention to the instatement of a verification officer. Finally, I will propose an amendment to this bill.

In the 2004 case *Haida Nation v. British Columbia (Minister of Forests)*, the Supreme Court of Canada outlined principles that were set out to help guide consultations to ensure that the Government of Canada engages in effective and efficient consultations with the First Nations people. These principles can be described as follows: First, shared commitment — consultation will be based on a commitment to cultivate a climate of good faith, mutual respect, reciprocal responsibility and efficiency. Second, sound decision-making — the consultation process will ensure that the results of meaningful consultation are sustainable. Third, transparency — effective and efficient consultations must be timely, accessible, inclusive of all potential stakeholders, and be based on clear, open, two-way communication and accountability.

Most of the witnesses who appeared before the committee stated that they had not been consulted. Contrary to the principles set out in the Haida case, First Nations members did not have a meaningful opportunity to consult with their government.

Furthermore, the consultation process was flawed in a very important way. In 2006, the Minister of Indian and Northern Affairs appointed Chief Wendy Grant-John as the minister's representative to examine the issue of matrimonial real property rights on reserves. After working closely with several First Nations representatives and community members, Chief Wendy Grant-John advanced several recommendations to help ensure that a proper consultation process occurred. She stated:

> Situating matrimonial real property issues within the legal, social and cultural context in which they are experienced by First Nations families, including the particular experience of First Nation women, is an important reference point for the recommendations I have made.

• (2110)

When drafting Bill S-4, the guidelines that emerged from the Haida case were overlooked, as were the recommendations provided by Chief Wendy Grant-John, who was the minister's representative. As a result, Bill S-4 is an example of how we have failed to fulfill our duty to consult, and this is one of the several reasons why this bill should be rejected.

Not only did Chief Wendy Grant-John advance recommendations regarding how a proper consultation process can be undertaken, she also focused on ensuring that women were no longer silenced. One of her objectives was to highlight current issues pertaining to the disproportionate and negative effect the current matrimonial real property system was having on women. She stated that:

> . . . the impacts of the lack of matrimonial real property protections have been greater for First Nation women overall than for First Nation men due to the current social roles and ongoing impacts from past discriminatory provisions of the Indian Act that excluded First Nations women from governance and property.

The unfavourable circumstances that women who live on reserve are currently confronted with, and will continue to be confronted with, even if this bill is passed, can be demonstrated in the following example.

Imagine a woman who comes home to find that her husband has changed the locks on their home, leaving her and her children with nowhere to go. In section 21 of Bill S-4, there exists an emergency protection clause that ensures that this woman must go to court, obtain a lawyer and obtain an order to re-enter her house. However, this order will protect her only for 90 days. After those 90 days, this woman is left in the same position she was in initially, and she and her children once again have no place to go.

What do we say to this woman? Do we assure her that within those 90 days, she can apply for an extension? What happens if she does not have the money, the transportation or the ability to access justice and extend her order from a remote area? What recourse does this woman have?

Honourable senators, the reality is that Bill S-4 does not place women in favourable positions. It only raises expectations of women. It does not relieve their pain and suffering; it simply postpones it for a period of 90 days.

As I stated previously, Chief Wendy Grant-John's objective was consistent with the initial objective advanced by the Standing Senate Committee on Human Rights. Unfortunately, Bill S-4 fails to meet that objective, as it does not reflect the interests of the women it primarily seeks to protect.

This failure became clear after hearing testimony from several female First Nations representatives, many of whom were concerned about whether they would have adequate protection as well as access to the necessary resources required for them to ensure that they, along with their children, were protected.

More specifically, although Bill S-4 may appear to be a feasible solution to matrimonial and real property issues for the average Canadian, it fails to acknowledge the fact that many Aboriginal people are subject to different financial and geographic circumstances.

Only last Tuesday, Minister Chuck Strahl stood before the House of Commons during Question Period and stated that Bill S-4 would give Aboriginal people the same amount of key rights as the rest of Canadians. He then proceeded to state that the members of the Liberal Senate did not care about Aboriginal rights, and they were hesitant to sign off on this bill. These statements were not accurate.

Honourable senators, we have all been seriously studying this bill. Bill S-4 cannot provide Aboriginal people with the same rights as other Canadians because it does not provide them with the tools needed for this to be the case. Until legal aid, adequate housing and funding for native child and family services is made available, Aboriginal people will continue to be treated as unequal to the rest of us. Once again, this bill raises expectations of women but fails to deliver their desired result.

I asked Minister Strahl what a woman residing on a remote reserve in the North should do once her 90-day emergency protection order expires. Where will she find a place for her and her family to live in light of the housing shortage? Where does she find legal representation when lawyers in the area are scarce? How does she finance a lawyer in the case that she is fortunate enough to find one?

We heard testimony from Dr. Pamela Palmater, who is an Aboriginal woman that lives off-reserve and who holds a PhD in law. Even she could not afford the legal fees that were required to take her ex-husband to court for child support. She went on to state:

> I am in far superior position to most of my large extended family, or those who live on reserve. Imagine, you have all of these remedies but you cannot access them.

We also heard from Chief Jody Wilson Raybould, a chief from British Columbia, who stated:

> . . . the remedies proposed in Bill S-4 rely heavily on access to provincial courts. Legal aid systems are chronically under-funded, and are not meeting current needs, let alone the future demand created by the adoption of this bill. Due to the significantly lower income levels on reserves, it will be difficult for many couples to access existing or new remedies.

Aboriginal women will not have access to the resources they need to protect themselves and their families. At this time, it is irresponsible and ineffective to implement this bill, as it will be unable to generate the positive effects it intends to.

Something that is perhaps even more pressing is how this bill will be implemented and how individual bands will go about adopting these new provisions.

During our committee meeting, Minister Strahl stated that a Centre of Excellence will be established to help different First Nations communities institute this legislation in an individual and culturally sensitive manner. Minister Strahl stated that the Centre of Excellence will be a great resource for First Nations members.

I, too, agree that this centre indeed will be a valuable resource. However, when I inquired about where the centre would be located, how proactive would it be, how much money was set aside to fund it and what its mandate was, I was disappointed. This disappointment ensued after I realized that this proposed Centre of Excellence was without a budget, without a mandate and without a location. To me, this is another example of our government raising expectations of women but failing to follow through.

The fact that the First Nations people were not properly consulted, coupled with the fact that there are not adequate resources in place to ensure the bill is successfully implemented, is troubling. What is even more troubling, however, is the paternalistic and condescending undertones of this bill.

In sections 8 through 16, Bill S-4 calls for a verification officer, which is frankly an Indian agent by another name. Dr. Pamela Palmater described the purpose of a verification officer as follows:

> The job of a verification officer is to ensure that the community referendum plan and process is suitable to the officer. At all stages of the First Nations law-making process, the verification officer can withhold his or her approval, which would prevent the First Nation from completing the next stage of the process. Even once the law-making process had been completed the verification officer must certify the "conduct" of the referendum process before the laws are deemed validly approved. The underlying assumption being that First Nations are not capable of respecting human rights.

• (2120)

The inclusion of a verification officer and a certification process has been described by various witnesses who presented on Bill S-4 as akin to reinstituting Indian agents. John Borrows, a respected indigenous scholar, wrote that the federal government, in earlier times, consistently undermined the liberties and freedoms of First Nations by placing Indian agents in supervisory roles in their communities and that positive change has come about in First Nations as a result of their continued resistance to these impositions.

The 1996 report of the Royal Commission on Aboriginal Peoples explained that the Superintendent-General of Indian Affairs had a vast array of powers to intervene in almost all areas of daily reserve life, and the majority of these powers were granted to Indian agents. This report described Indian agents as "all powerful" because of their control over local, financial and judicial matters.

The Hon. the Speaker: I must inform the honourable senator that her 15 minutes have expired.

Senator Jaffer: Do I not have 45 minutes?

The Hon. the Speaker: Is the senator asking for an additional five minutes?

Senator Jaffer: For clarification, I am the critic on this bill and I thought I had 45 minutes.

The Hon. the Speaker: I think Senator Dyck had 45 minutes.

Senator Jaffer: May I have an additional five minutes?

The Hon. the Speaker: Is that agreed?

Hon. Gerald J. Comeau (Deputy Leader of the Government): Five minutes.

Senator Jaffer: While some Indian agents demonstrated integrity, there were many problems with other Indian agents.

Honourable senators, two years ago our Prime Minister stood before Canadians and apologized for the assimilatory foundations and attitudes of superiority upon which residential schools were created. I believe that the Prime Minister took a step in the right direction, and we need to follow his lead in saying that we have to change the ways in which we work with Aboriginal people.

MOTION IN AMENDMENT

Hon. Mobina S. B. Jaffer: Therefore, honourable senators, I move the following amendment:

> THAT Bill S-4 be not now read a third time but that it be amended as follows:
>
> THAT Bill S-4 be amended, on page 5, by adding after line 17 the following:
>
> "**2.1** For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the *Constitution Act*, 1982.".
>
> THAT Bill S-4 be amended, on page 43, by adding after line 10 the following:

"REVIEW AND REPORT

57.1 (1) Within five years after the day on which this Act receives royal assent, a comprehensive review of its provisions and operations shall be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

(2) The committee referred to in subsection (1) shall, within a year after a review is undertaken under that subsection or within any further time that may be authorized by the Senate, the House of Commons or both Houses of Parliament, as the case may be, submit a report on the review to that House or both Houses.".

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

Some Hon. Senators: Question.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: In my opinion, honourable senators, the nays have it.

And two honourable senators having risen:

The Hon. the Speaker: Do the whips have advice?

Hon. Consiglio Di Nino: According to rule 67(2), I request that the vote be deferred until tomorrow.

The Hon. the Speaker: Pursuant to the rule cited by Senator Di Nino, either the government whip or the opposition whip has the right to ask for deferral until tomorrow.

The vote is deferred until tomorrow.

CANADA-COLOMBIA FREE TRADE AGREEMENT IMPLEMENTATION BILL

THIRD READING

Hon. Consiglio Di Nino moved third reading of Bill C-2, An Act to implement the Free Trade Agreement between Canada and the Republic of Colombia, the Agreement on the Environment between Canada and the Republic of Colombia and the Agreement on Labour Cooperation between Canada and the Republic of Colombia.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise to speak at third reading on the Canada-Colombia free trade agreement. Whenever a free trade agreement is entered into by our country, it is always beneficial for all Canadians. We are all aware of the human rights challenges in Colombia. Concern was shown by witnesses who appeared before the House of Commons committee about entering into a free trade agreement before carrying out a human rights assessment. Similar to environmental impact assessments, the objective of human rights impact assessments is to identify potential impacts before they occur in order to avoid, mitigate or minimize them should they occur rather than trying to correct them after they occur.

Given the seriousness of human rights violations, prior assessment of potential human rights impacts is doubly important. The agreement concerning annual reports on human rights and free trade between Canada and the Republic of Colombia simply provides for the identification and, possibly, penalization of potentially irreparable harm after it has already occurred.

Moreover, in order to assess impacts of the Canada-Colombia free trade agreement once it is in effect, as proposed by the amendment, there must be baseline data regarding the human rights situation prior to its implementation.

The amendment precludes the collection of pre-implementation baseline data, making it difficult, if not impossible, to determine whether the Canada-Colombia free trade agreement has had positive, negative or neutral human rights impacts.

In addition, the amendment provides that annual reporting on human rights impacts will be conducted by government agencies; in other words, the very parties that negotiated the Canada-Colombia free trade agreement. The amendment does not specify what, if any, binding and actionable findings the reporting agencies will be mandated to make. Even if the scope of the assessment is focused, the annual reports run the risk of being simply pro forma formalities without any accountability to Parliament, Canadians or Colombians to address the human rights impacts they identify.

On May 25, 2010, the House of Commons Committee on International Trade heard testimony from Dr. James Harrison, an internationally recognized authority on human rights impact assessments of free trade agreements that the amendment had three major flaws and several other potential ones.

The amendment proposes that human rights impacts be assessed after the implementation of the Canada-Colombia free trade agreement rather than prior to its implementation. The amendment proposes that the impact assessments be conducted by the Canadian and Colombian governments rather than parties that are independent or arm's length from them. The amendment does not make it clear whether the proposed annual human rights reports will permit binding recommendations that Canada and Colombia must act on or simply be pro forma formalities, that is, non-actionable annual reports.

In addition, Dr. Harrison expressed concerns regarding the unspecified scope of the proposed reporting procedure, which ran the risk of being an extensive but superficial overview rather than a focused and in-depth assessment that would enable specific and targeted corrective measures.

• (2130)

Finally, the amendment states that no new government resources will be required for its implementation. Given the complexity of carrying out a human rights impact assessment, both in Canada and Colombia, on an annual basis, including

engaging civil society actors in both countries as part of that process, the credibility of such reporting process, without the allocation of additional financial or human resources, would be highly questionable.

Honourable senators, next year when we see the human rights report under this agreement, I suggest that we have the report studied by the Standing Senate Committee on Human Rights. We should study that report for two reasons: First, to assess the reports we have received under this agreement and second, to also suggest what kind of human rights agreements we should enter into in the future.

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

Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Di Nino, seconded by the Honourable Senator Tkachuk, that Bill C-2, an act to implement the free trade agreement between Canada and the Republic of Colombia, be read a third time.

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

Hon. Senators: Agreed.

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

EMPLOYMENT INSURANCE ACT

BILL TO AMEND—SECOND READING

Hon. Nicole Eaton moved second reading of Bill C-13, An Act to amend the Employment Insurance Act.

She said: Honourable senators, I am proud today to rise to speak to Bill C-13, this government's legislation to support military families.

Permit me to begin with a history of how this bill came about for those of you who do not know. The member of Parliament for Nepean-Carleton was canvassing one afternoon late last year when he knocked on the door of a Canadian Forces member named Lieutenant-Colonel James Duquette. Mr. Duquette proceeded to recount a negative experience he had had with his Employment Insurance parental benefits. Mr. Duquette's son was born by emergency caesarean section four days before he was being deployed to the Golan Heights.

He spent the first two nights of his son's life sleeping in a chair by his wife's hospital bedside. The third night was spent at home together as a family. The next morning, Lieutenant-Colonel Duquette deployed.

The only thing that got him through his deployment was knowing he would get to spend time with his son upon his return — or so he thought. When Mr. Duquette returned, he was shocked to learn that his eligibility period to collect parental benefits had expired.

Mr. Duquette had paid EI premiums and had to leave his family to honourably serve his country, but the current EI system did not have any provisions for people like him.

Recognizing immediately that the current system was unfair to Canadian Forces members like Mr. Duquette, the member of Parliament brought this issue to the attention of the Minister of Human Resources and Skills Development. The result is this legislation, Bill C-13, the fairness for military families act.

Honourable senators, I would like to thank the MP for Nepean-Carleton for immediately acting on a constituent's concerns, and I would like to thank the Minister of Human Resources and Skills Development for taking decisive action in a timely manner to correct this problem.

As a nation, we value freedom, not just for ourselves but for people around the world. Canadians understand that upholding our national values comes at a price. That price is often paid most directly by the members of our military and their families. There is no question that Canadians support our troops and appreciate their sacrifices. You can see the evidence on countless bumper stickers and lapel pins and you can see it in the crowds that gather when one of Canada's sons or daughters has made the ultimate sacrifice, and is returned to a mourning nation.

Canadians hold their military members in great esteem and want them to be treated fairly. In the Speech from the Throne this government made a commitment to stand up for those who defend our country by striving to create an even better future for our families and communities. These men and women accept many risks. They accept the disruption that their profession inflicts upon their personal and family lives. Our government wants to ensure that members of the Canadian Forces have the opportunity to bond with their children by taking advantage of Employment Insurance parental benefits.

Honourable senators, given the unique demands of military life, we recommend a change to the rules to improve access of military personnel to EI parental benefits. Members of the Canadian Forces pay EI premiums just like other Canadians. We want to ensure that when they are obliged to deploy because of an imperative military requirement, they can still access EI parental benefits when they come home.

The Employment Insurance program provides parental benefits to individuals caring for a newborn or a newly adopted child. These parental benefits play an important role in supporting parents during the first year of a child's life. The benefits provide income replacement to support a parent who stays home during his or her child's first year, while at the same time facilitating the parent's eventual return to the labour market. The benefits allow the parent to bond with his or her child. They help to provide a foundation for the family by enabling parents to balance the demands of work and family more effectively.

Canadian Forces members, including reservists, are eligible for benefits under the Employment Insurance Act as long as they meet the eligibility criteria. Their eligibility for benefits is the same as for any worker in Canada. What do these benefits include?

Provided they meet the eligibility requirement criteria, Canadians Forces personnel are entitled to regular benefits if they lose their job voluntarily, as well as maternity, parental,

sickness and compassionate care benefits. The existing EI Act entitles parents to 35 weeks of parental benefits. One parent can take all 35 weeks or the parents can divide the weeks.

Under the current rules, parental benefits may be paid during the 52 weeks following the week of the birth of one or more children or the adoption of a child or children. The window for parental benefits can be extended when a child has to spend an extended period of time in hospital. This measure was designed to make the EI system fairer and give claimants some flexibility when they face circumstances beyond their control.

Members of the military can also find themselves in situations that are beyond their control. Canadian Forces members who are deployed overseas are unable to access EI parental benefits during their assignment. Since these assignments typically last from nine to 16 months, deployed parents can miss crucial time with their children.

Those circumstances must be taken into account by the Employment Insurance Act. This government believes that if they are ordered to return to duty while on parental leave, or if their parental leave is deferred as a result of an imperative military requirement, they should not lose the benefits. That is what this bill before us is meant to address.

• (2140)

It amends the Employment Insurance Act to extend the EI parent eligibility window by the number of weeks that a Canadian Forces member's parental leave is deferred or interrupted because of an imperative military requirement. In plain language, this bill means that a Canadian Forces member who is ordered to return to duty while on parental leave, or whose parental leave is deferred, a result of an imperative military requirement, will no longer risk losing out on the weeks to which he or she is entitled.

The amendment that was passed by unanimous consent in the House of Commons ensures the bill applies not only to Canadian Forces members who start a parental benefits claim after the bill receives Royal Assent but also applies to Canadian Forces members who could benefit right now.

Colleagues, this legislation will be welcome news for members of the Canadian Forces. It will apply not only to those serving abroad but to all forces members who must delay or cut their leave short for imperative military requirements. It will ensure Canadian Forces members have the same opportunity to bond with their children and establish a foundation for their children's growth, development and learning as other Canadians who are eligible for EI.

It will help to keep our military families strong. When Lieutenant-Colonel James Duquette appeared before the standing committee in the other place with his wife Anne, he stated the following:

> . . . this affects . . . young families across the forces . . . the benefits that would bring to the families as a whole, you can't put a value on that.

His wife added:

> Whether it's the mother or the father who is overseas, to give them the chance to bond with their child when they come home would be incredible.

Further on she stated:

> This change . . . will help many military families today and in the future . . . Please support our troops and the families that await them at home.

Honourable senators, Canadians are proud of the members of the Canadian Forces. The bill before us will make a real difference in the lives of military families. I urge all honourable senators to join me in supporting this bill.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker *pro tempore*: Honourable Senators Carstairs.

Hon. Sharon Carstairs: Will the honourable senator take a question?

Senator Eaton: With pleasure.

Senator Carstairs: I have no difficulty with this bill. It is a good thing that it has done in terms of parental benefits, but it is a narrow bill. There are huge problems faced by the spouses of those who serve in the Armed Forces, who leave their employment and go abroad with the member of the military. When they return to this country, if the appointment abroad has been more than two years, they find themselves not only unemployed because they have left their employment but also ineligible to collect EI because they are outside the two-year window. Can the honourable senator tell us why the government has not made those changes in this bill if it is genuinely committed to doing good things for military families?

Senator Eaton: What the honourable senator is referring to as unemployment when they go abroad is part of regular EI benefits. This bill focuses specially, tightly, and, as the honourable senator says, narrowly on a special EI benefit.

Senator Carstairs: That is exactly my point. Why was the government so unwilling to broaden the eligible benefits for our military families and why did the government significantly limit itself to this narrow provision?

Senator Eaton: This specific focus was done purposely. I believe the honourable senator refers to something that can be discussed at another time. It involves a much wider part of EI, which is the regular benefits. This bill is specific to parental benefits, and we should focus on those benefits.

The Hon. the Speaker *pro tempore*: Is there further debate?

Hon. Percy E. Downe: Honourable senators, I join the debate on Bill C-13, an Act to amend the Employment Insurance Act.

This bill extends access to parental benefits for members of the Canadian Forces to a maximum of 104 weeks instead of 52 weeks, if the member's parental leave is deferred, or if the member is recalled to duty in the first year that a child is born or adopted. This change ensures that Canadian Forces members can benefit from the programs to which they are entitled.

This bill, in many ways, is a housekeeping matter. Canadians serving overseas ask for flexibility. They ask that our laws and programs respond to their needs, and, in this case, we are simply rectifying a problem.

Members of the Canadians Forces and their families deserve this fairness. They deserve the best support system and programs in the world. It is one small change, but it is a move in the right direction.

The House of Commons Standing Committee on Human Resources, Skills and Social Development heard testimony on this bill from those who have had firsthand experience being denied parental leave because of their service to Canada.

They discussed the challenges faced by military families when a member leaves a family behind to serve overseas. They expressed their strong support for the bill. They are, honourable senators, the voice of many.

I believe that there is consensus on this bill because it is a policy change that all can agree on.

However, there are questions, honourable senators, on whether this bill needs to go much further. I believe that all Canadians who are called to duty overseas on behalf of the Canadian government should also be included in this bill: RCMP members, civilian police who serve, as well as public servants and diplomats who put themselves in harm's way to participate in international missions, all in the name of Canada. All those groups are excluded. All those people also leave their families to serve Canada.

Honourable senators, this bill falls short of the assistance that is required for the RCMP, other police forces and public servants. However, this change is only one of many that are required in the government's approach to Canadian Forces members and veterans.

The government talks about fairness for military families. Indeed, they have called this bill the "Fairness for Military Families Act." However, the government needs to provide much more support to members of the Canadian Forces and their families and Canadian veterans and their families after they leave the Canadian Forces.

Where is the fairness for the reservists and their families? Where is the fairness on Agent Orange compensation? Where is the fairness for medically released qualified veterans seeking employment in the federal public service? When can we expect action on those and many other issues about fairness?

Members of the Canadian Forces and veterans look to the Government of Canada for real support. They do not want broken promises, and they do not want platitudes — they want action.

Beyond supporting the health and safety of our troops, members of the Canadian Forces and veterans seek post military employment and career assistance. They want efficient service, health care and good communication with the government. They want the government to listen and respond to their needs.

• (2150)

With the creation of New Veterans Charter in 2005, the Government of Canada was to make a better effort in responding to the diverse and complex needs of our veterans, while continuing to deliver quality services. This takes a serious commitment and more than just talk.

We cannot pass housekeeping laws and think we have solved the problems suffered by our Canadian Forces members and veterans. Look at the example in the Public Service Commission that I mentioned earlier. It is a case where a well-intentioned program was put in place, but not managed or implemented effectively.

Honourable senators will recall that since 2005, qualified medically released Canadian Forces veterans have been eligible for priority employment appointments to the federal public service. These new provisions have created important career opportunities for veterans, but unfortunately there are low participation levels in most federal government departments.

I recently learned, in a follow-up to a question I asked at the Senate Finance Committee of the president of the Public Service Commission, that only one federal department, the Department of National Defence, was really participating in hiring eligible medically released veterans.

To make matters worse, in 2007-08, 67 veterans had their priority status expire without finding work. I ask honourable senators this: Why are 67 medically released veterans who want to work for the federal government, who are willing and able to work, being left waiting — waiting for independence; waiting for the opportunity to support themselves and their families, the very families who had to bid farewell to their loved ones not knowing what would happen next? They took these steps with the understanding that Canada would take care of its own. Were they misled? These medically released veterans have been injured — in many cases, seriously — serving Canada.

All qualified veterans would have found work if all federal departments were actively participating in the program. In a federal workforce of 380,000 positions across Canada, jobs could have been found for all.

Honourable senators, this bill responds to a need expressed by military families. It is my hope that the government will expand the bill and prove by their actions that they are listening and responding to the needs of our Canadian Forces and our veterans, members of the RCMP and police forces, and others who serve Canada overseas.

Senator Eaton: Will the honourable senator take a question?

Senator Downe: Yes.

Senator Eaton: It is my understanding that this bill deals specifically with Canadian Forces personnel because they are compelled by law to go on mission. Is it the same for police forces and members of the public service? Are they compelled by law to leave their families?

Senator Downe: That is a very good question. The honourable senator is absolutely correct in that the military have to go on mission. However, the same applies to reservists, and reservists can volunteer to serve. The RCMP is asked to go on mission; sometimes they volunteer. Municipal police forces sometimes volunteer as well.

However, the point of my speech — which I am sure the honourable senator understood — is that once personnel are on the ground overseas, they are all serving Canada and why would they not be covered? Why would the person beside you have a different category of benefit than you would have, when you are both serving the same country?

Senator Eaton: It is because they have a choice, whereas if one is a member of the military or a reservist in the military, then one has no choice, by law.

Senator Downe: That is the honourable senator's interpretation. As honourable senators know, there was a proposed amendment to this bill in the House of Commons, which was not accepted by the government. In the interest of fairness, and given the title that has been given the bill, that would be expanded to include everyone who is serving Canada.

Senator Eaton: Honourable senators, it is my understanding, being a neophyte in this place, that we are not allowed to promote bills that would cost money. This bill expands the period of time in which military families can apply for parental rights. If we decide to enlarge the bill and add other things, that would involve Senator Gerstein.

Senator Downe: The honourable senator is quite right about the Royal Prerogative, but I am sure she heard in my speech that my reference was to the government expanding the bill. I do not think I ever mentioned the Senate changing the bill. I am proposing this, but it is for the consideration of the government to expand the bill so that indeed the title, "Fairness for Military Families," would match the reality. The current bill does not do that.

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

Some Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

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

NATIONAL SENIORS DAY BILL

SECOND READING—DEBATE ADJOURNED

Hon. Marjory LeBreton (Leader of the Government) moved second reading of Bill C-40, An Act to establish National Seniors Day.

She said: Honourable senators, I am pleased to speak today in support of Bill C-40, An Act to establish National Seniors Day.

For most of human history, people who are older have been held in high regard. In many cultures, including our own Aboriginal culture, the word "elder" is a term of immense respect. It refers to those whose wisdom and experience are valued by the community.

The government believes the time has come to set aside a day to formally express our respect for our elders and show our appreciation for the contributions seniors make to their families, communities, workplaces and society in general. Such a day of recognition gives us the opportunity to thank our seniors for all they have done and are doing for us.

By passing this legislation, we will be honouring the commitment made in the 2010 Speech from the Throne. This commitment to create a National Seniors Day reflects Canadians' values, including standing up for the people who built and defended this country and have made it the wonderful place we call home.

National Seniors Day will be an occasion not only to honour the contributions of seniors, but to recognize that seniors are a growing segment of our population. By 2036, more than 1 in 4 Canadians will be a senior.

Of course, Canadian seniors are a diverse group. Their attitudes, interests and beliefs vary. They come from different backgrounds, speak different languages, and have different perspectives on a host of issues, including how they wish to spend their retirement years. However, what they all have in common is a desire to continue to contribute. Seniors are leading active lives, whether caring for their grandchildren, volunteering in the community, or lending their expertise in the workplace. Whatever they choose to do, they are showing that growing older does not mean slowing down or losing interest in the world around them.

Consider their importance in the volunteer sector. Volunteers over the age of 65 add tremendous social and economic value. Studies show that seniors are considered to be the top volunteers because of the number of hours they put in — each an average of more than 230 hours annually. In financial terms, the replacement value of all the volunteer work in Canada is estimated at about $14 billion, so the value of senior volunteers is obvious.

• (2200)

Honourable senators, their contributions go far beyond dollars and cents. Seniors are promoting greener living in their communities, helping in hospitals, teaching in daycare centres,

coaching sporting activities, acting as leaders in their places of worship and spearheading literacy programs. The list of their activities is almost endless and Canadians of all ages benefit as a result.

The Government of Canada has long recognized the significant role that seniors play in our country. The government has demonstrated its commitment to promote healthy and secure aging. Let me briefly outline a few of the many actions the government has taken on behalf of seniors.

On the financial front, the most important support we provide to seniors is through public pensions. Canadians receive almost $70 billion through Canada's public pension system each year. Today, more than 4 million seniors receive Old Age Security benefits and over 3.5 million seniors receive Canada Pension Plan retirement benefits.

Since 2006, the government has introduced measures to support seniors that provide approximately $1.9 billion annually in additional tax relief for seniors and pensioners. These measures include provisions for pension income splitting, enhancement to the amount of the age credit and the pension income credit. As well, the age limit has been raised from 69 to 71 for maturing Registered Pension Plans and Registered Retirement Savings Plans.

To ensure that issues of importance to seniors are brought to the attention of the government, in 2007, we appointed a Minister of State for Seniors and created the National Seniors Council. In 2004, the New Horizons for Seniors Program was launched to make it easier for seniors to participate in social activities and contribute to their communities. When the Conservative government came to office in 2006, we increased that program by $10 million, from $25 million to $35 million. Budget 2010 saw the government further enhance funding for this program by $5 million, for a total of $40 million annually.

Through Budget 2008, the government invested $13 million over three years in a Federal Elder Abuse Initiative. This initiative includes a national advertising campaign to help seniors and others recognize the signs and symptoms of elder abuse and access information about available support. As I said in the Senate a few weeks ago, this program will continue again this fall.

Finally, *Canada's Economic Action Plan* has committed a one-time investment of more than $2 billion over two years, 2009 to 2011, to build new social housing and renovate existing stock. As part of this investment, $400 million is earmarked for the construction of housing for low-income seniors. This funding will help to ensure that Canadians on fixed incomes can live with independence and dignity, close to their family and friends. This funding builds on the government's 2008 commitment to provide $1.9 billion for housing and homelessness programs for low-income Canadians.

Creating a national seniors day is another way that we, as a government and as a people, can support our seniors. It will help us raise awareness of the importance of seniors' contributions and build intergenerational understanding. It is another example of how our government is working with people of all age groups to meet social and economic challenges.

So let us start this year and designate October 1 of each and every year National Seniors Day, as well as the International Day of Older Persons. In so doing, we will join other countries, such as the United States and Japan, in honouring our seniors.

In closing, I emphasize that National Seniors Day is more than a symbol. This day is not a substitute for concrete action to help seniors. In that regard, our government's record speaks for itself.

The establishment of National Seniors Day will help raise public awareness about seniors' contributions to shaping this country, and all that they continue to accomplish. The day will also bring into focus the importance of encouraging seniors' continuing participation in the economy and in society.

I urge my fellow senators to make this day happen. Let us show our country and the world the respect we feel for older Canadians. Please join with me in supporting Bill C-40, which creates National Seniors Day on October 1 each and every year henceforth.

(On motion of Senator Carstairs, debate adjourned.)

[*Translation*]

CRIMINAL RECORDS ACT

BILL TO AMEND—SECOND READING

Hon. Pierre-Hugues Boisvenu moved the second reading of Bill C-23A, An Act to amend the Criminal Records Act.

He said: Honourable senators, I want to speak to you today and sponsor this bill, which follows through on a commitment that is deeply important to us — reforming the Canadian pardon system.

Tonight, victims of crime and their families are still waiting for greater justice. Like their fellow citizens, they are waiting for us to act immediately, with respect and caution.

The Prime Minister spoke about this issue a few weeks ago. He is a man of his word, a wise man who acts courageously and swiftly.

[*English*]

Honourable senators, we know that the legislation before us today is the result of all-party agreement in the other place to ensure that these reforms are passed without delay. I want therefore to acknowledge the important role that compromise and balance have already played in the reform that our government proposes.

[*Translation*]

Bill C-23A would change Canada's pardon system to make it more balanced, to protect society better, to defend the reputation and integrity of our justice system and to ensure that victims' rights and interests are better recognized. I want to remind you why this bill is of vital importance.

We need this bill right now in order to prevent notorious criminals from easily receiving pardons in the coming days and weeks. Many Canadians are now wondering if the current system

just rubber-stamps pardons. Others want to know whether there are enough protective measures in place. These are the questions we must consider carefully in order to put victims' needs and public safety first.

Currently, this does not seem to be the case. Generally speaking, people found guilty on summary conviction are eligible for a pardon three years after completing their sentence on the condition that they are not found guilty of another offence during that period.

In these cases, individuals are granted a pardon automatically and the board has absolutely no discretionary power to deny these requests. For people found guilty of a serious offence, the waiting period is slightly longer, at five years. Applicants must show that they were on good behaviour during that period. The applications are accepted or refused based on the same criteria, regardless of the nature of the crime.

The National Parole Board is not authorized to say whether a pardon might bring the administration of justice into disrepute and it is up to us to remedy this situation. Nor can the board take into account the nature, seriousness or duration of the offence and that is an affront to justice in the eyes of Canadians.

• (2210)

[*English*]

We heard, for example, from victims such as Sheldon Kennedy who, along with many other Canadians, questions the fairness of a pardon system that can seal a criminal record even for a serious sex offender after just three years. We heard from other victims who raised the same legitimate concern.

[*Translation*]

Bill C-23A will ensure that no pardon is granted that would bring into disrepute the administration of justice in Canada.

A person who is convicted of a sex offence against a minor and sentenced to imprisonment of less than two years will not receive a pardon within five years. An offender convicted of a criminal offence and sentenced to more than two years will not receive a pardon within ten years. Henceforth, the most dangerous criminals will wait longer before being eligible to apply for a pardon. First, the ineligibility period will increase from five to ten years for those found guilty of a serious personal injury offence, including manslaughter. Second, the ineligibility period for an offence punishable on summary conviction is increased from three to five years and for a criminal offence to ten years.

[*English*]

For offences that will now carry a five- or 10-year waiting period before pardon admissibility, the changes proposed in Bill C-23A would allow the National Parole Board greater discretion in assessing the merits of the application. We need to give the board the tools it needs to ensure that our system of justice does not fall into disrepute.

[*Translation*]

To determine whether granting the pardon would bring the administration of justice into disrepute, the board will consider factors such as the nature, gravity and duration of the offence. It will also take into account the circumstances surrounding the commission of the offence and the applicant's criminal history. These are not currently considered.

Henceforth, an offender who wishes to obtain a pardon will have to satisfy the board that the record suspension would contribute to his or her rehabilitation in society as a law-abiding citizen. Although we must study all proposed changes, we must work quickly and not give in to cynicism about the merits of reforming the pardon system.

Honourable senators, it is not just because of the most notorious cases, the more sensational cases, that I am pushing for the adoption of Bill C-23A. I am also thinking of those who have remained silent for too long, the victims who have been forgotten because dangerous criminals are granted a pardon too soon, automatically, and without deserving it.

We can never undo what has already been done or completely right the wrong, but we can at least make a firm commitment not to give an automatic pardon to those who are not entirely rehabilitated, those who are too often at risk of reoffending and victimizing more people.

Honourable senators, I am among those who believe in rehabilitation. However, there are many other criminal justice principles in Canada. They are legal principles that were used in both ancient and modern history and that are both practical and theoretical.

Denouncing crime is an integral part of our justice system. It is also part of the rehabilitation process. A criminal record plays a real role, and its suspension should not be automatic.

[*English*]

We believe in the possibility of a second chance for those who clearly demonstrate that they are ready to be productive and respectful of the law, but Canadians do not believe that a pardon should be an automatic rubber stamp. We should have more safeguards in place. As the Victoria *Times Colonist* wrote, the previous legislation "fails to make morally relevant distinctions. . . . It imposes the most lax of standards on officials. And it offends our sense of propriety." Victims of crime have a right to expect more, as do all Canadians.

[*Translation*]

Currently, criminals can be fast-tracked to an automatic pardon. In 2005, 97 per cent of pardons requested by criminals were granted. And it gets worse. In 2006, the rate was 98 per cent; in 2007, 99 per cent of criminals were granted a pardon. More than 25,000 requests are made each year.

Having crimes so easily pardoned discredits our justice system. Even worse, it ignores the suffering of victims of crime. Some people have spoken about the importance of judicial and administrative discretion in our justice system. But how is that possible when it is obvious that pardons are currently granted automatically?

[*English*]

Those numbers raise some troubling questions for many Canadians, especially in light of the pardon granted to Graham James and the revelation that Karla Homolka will also be eligible to apply for one very soon.

[*Translation*]

This bill will apply only to the most serious cases. However, its scope is not limited to the most famous or widely reported cases. It will cover other violent crimes and some individuals who commit sexual crimes. I want to emphasize that this bill will have no effect on most of the criminal population or even most pardon applications. It will focus on the most dangerous 10 per cent or so of criminals, whether their cases have received extensive media coverage or not.

Honourable senators, to dispel any notion that this bill is unkind to criminals, I want to repeat that it will affect no more than 10 per cent of criminals — just 2,500 of 25,000 applications.

Honourable senators, I am proud to belong to a Parliament that believes Canadians have the right to feel safe in their homes and communities. This Parliament has listened to the people, particularly to victims of crime, and has taken steps to protect them.

[*English*]

The government is cracking down on drugs, gangs and guns. We are making sure that serious criminals do serious time. We are putting more police officers on the streets of our communities. In the case of pardons, we have moved quickly and responsibly to bring forward reforms that are firm but also fair and balanced.

[*Translation*]

Victims of crime finally have a voice in Parliament. We want to implement a new philosophy and we must do so. The rights of victims, those who have been seriously harmed and thus have suffered for a long time, must take precedence over those of criminals. Protection of society must become the guiding principle, the cornerstone of our justice system. We support rehabilitation, but a record suspension must be earned.

The bill before us today is about protecting victims and society and promoting rehabilitation.

Our public safety and justice philosophy is merit-based. For the justice system to work, and for people to believe in it, we must safeguard its reputation. Our philosophy in passing this bill is clear: it is not for the state or correctional services to pardon criminals; it is for the victims of crime, their family members and loved ones.

The role of the government is to help criminals reform and to protect the public. The government may suspend or temporarily erase a crime committed under very strict conditions. This government decision, the possibility of a pardon, is not a right; it is a privilege granted by society.

In life, a person must prove that he or she is deserving of a privilege, and must wait a long time while demonstrating this proof. With criminals, it is a matter of proving that they have truly been rehabilitated.

I cannot stress enough how important it is to take immediate action. While seeking to reform the pardon system in Canada, the government has realized that we can no longer wait for some of the proposed changes. That is why the government divided the former Bill C-23 in two, so that we would be able to refuse pardons to the notorious and dangerous criminals who will soon be eligible for pardon.

The first part will enable us to implement the most important aspects of pardon reform as quickly as possible. We will not stop there. We will follow through on our commitment to reform the system.

• (2220)

In the fall, we will continue our efforts to implement all the reforms set out in Bill C-23.

[*English*]

This government is prepared to take the necessary steps to ensure that Canadians can have confidence in our justice system.

[*Translation*]

Honourable senators, this bill will give the penal system and the National Parole Board the tools they need to process pardon applications with greater emphasis on context, that is, considering all the factors. More importantly, it will prevent dangerous criminals from obtaining pardons they do not deserve.

Honourable senators, I am honoured to invite you to support the bill before us here today and work with the government to make Canada's pardon system more balanced, to ensure that it provides greater protection for the public and, more importantly, that it is more credible.

[*English*]

Hon. George Baker: Honourable senators, I listened carefully to Senator Boisvenu. I congratulate him on the work he has been doing with the ministers of the Crown on several pieces of proposed legislation. I imagine that some elected members are wondering where the honourable senator gets so much power to initiate bills in the other place. I congratulate him for giving the first speech on this bill, although it passed the House of Commons. Normally, we teach our students and, Your Honour taught your law students, that a bill has first reading, second reading and then referral to committee for consideration of the clauses, followed by a report stage in the House of Commons and then third reading. Well, this bill did none of that. Therefore, no speeches exist that I can read in preparation for my response to the honourable senator. There is no legislative review. There is no departmental summary or anything like that. Allow me to explain to honourable senators why there were no speeches in the House of Commons on Bill C-23A — a rather strange way of passing legislation.

In the House of Commons, all the motions were deemed to have been put. As Senator Boisvenu said, the bill originally came into the House of Commons as a different bill. There was trouble at

second reading, and an understanding was reached that certain parts of the bill had to meet a timeline because certain people would be up for pardon next month. On July 5, 2010, I believe, Karla Homolka will be eligible for a pardon under the existing system.

All the parties came together and the Government House Leader put a motion, with unanimous consent, on the portion of the bill dealing with changes to the categories of ten years, five years and three years to qualify to apply for a pardon after a sentence has run out. The change is to add a test for consideration by the National Parole Board, for the first time. To date, the consideration has been the behaviour of the applicant since conviction.

That test was put in the bill three times, and lists the factors to determine whether it would bring the administration of justice into disrepute. In the House of Commons on June 17, 2010, the minister said:

> . . . for the purposes of printing Bills C-23A and C-23B, the Law Clerk and Parliamentary Counsel be authorized to make any technical changes or corrections in those bills as may be necessary to give effect to this motion; and
>
> that Bill C-23A be deemed to have been reported from the Committee without amendment, deemed concurred in at report stage and deemed read a third time and passed.

For the purposes of printing Bill C-23A and Bill C-23B, the law clerk and the parliamentary counsel will be authorized to make any changes or corrections in those bills as may be necessary to give effect to this motion and that Bill C-23A would be deemed to have been reported from second reading, deemed to have been sent to the committee, deemed to have come from the committee without amendment, deemed to have been reported, and deemed to have passed at third reading.

It was an extraordinary procedure. The Speaker said:

> The Chair has grave reservations about this practice. Given the unanimity, I will let it go ahead, but in my view, there are other ways of doing this that might be easier.

Some honourable members agreed, followed by:

> . . . Bill C-23A deemed reported from the committee without amendment, deemed concurred in at report stage and deemed read a third time and passed

That was probably a first for the House of Commons in sending a bill to the Senate so that the Senate can pass it before rising for the summer. I have no doubt that will happen. Apparently, a committee meeting is planned for tomorrow to hear from the minister, departmental officials and the National Parole Board on Bill C-23A. The first thing I want to point out is that no material was available for research on the bill except the honourable senator's speech today.

Honourable senators, I have noticed something over the years when the legal experts in this place read a bill. Senator Joyal, Senator Nolin, Senator Rivest and Senator Carignan, for example, read a paragraph in English and then they read the French. Then they read a paragraph in French, followed by a paragraph in English. They read the entire bill. As I was listening to the honourable senator a moment ago, I was doing the same thing, and noticed a rather interesting phenomenon in the bill. We are talking about a pardon. A normal pardon is given by the sovereign, such as a king or queen or government, to forgive someone for their transgressions. The Criminal Code has section 748, which deals with pardons. The English version says, "pardon," and the French version says, "pardon." As honourable senators read through those sections dealing with pardons, they will find various pardons: a free pardon is granted by cabinet to wipe out an entire offence; a conditional pardon; and a Royal Prerogative pardon, found at section 749 of the Criminal Code, also wipes out everything.

"Pardon" in French is "pardon" in the Criminal Code. That brought me to think about the provision in the Quebec Charter of Human Rights and Freedoms, and Canada has its Charter of Rights and Freedoms. Section 18.6 in the Quebec Charter deals with pardons. It says that someone cannot be removed from their employment or be discriminated against in obtaining employment because of a criminal offence for which a pardon has been granted.

• (2230)

In that case, in the English the word was "pardon"; in the French it was "pardon." I looked at this bill, and, sure enough, the English version says "pardon." However, the French version says "réhabilitation." That involves a completely different interpretation. There is a great lesson in that, honourable senators, because the pardon that we are talking about in this bill is an administrative pardon. It is not the same as a pardon that we would recognize being used in normal terms that has come down through the centuries and is contained in section 748 of the Criminal Code.

In 2000, we brought in regulations so that today an employer of someone who will be looking after vulnerable persons such as children, seniors, and so on, has the prospective employee sign a form. That form is then sent to the police. The form contains not only that person's criminal record but also the details of any pardon that they received under the administrative pardon of this bill that we are dealing with here today.

If one is charged with a criminal offence and appears before a court and pleads guilty, before the judge passes sentence he or she says, "You were pardoned for an offence 10 years ago." By legislation, the hard copy is set aside by the police and by the RCMP and it is kept in a file. That is a hard copy, but a CD is not a hard copy. Therefore, the pardon and the details of it are on CPIC. The details of the pardon are also on another registry called the National Criminal Database, which is used for search warrants, third party information, hearsay, and so on. Therefore, the "pardon," as it is developed, is as the French version of this bill states, and not the English version.

My understanding is that Senator Boisvenu intended to change the word "pardon" in the original bill to a different term. Is that correct, senator?

Senator Boisvenu: Yes.

Senator Baker: Yes; he is nodding his head. I think that proposition would be very agreeable if the word was changed to a different term. That is the first observation that I have about this bill.

If honourable senators have a free evening and want some interesting reading, I recommend the case of Judge Richard Therrien of the Quebec Court, 2001, Supreme Court of Canada. Judge Therrien went to the Supreme Court of Canada because he had been removed as a judge as a result of a criminal offence that he had committed in 1970, for which he had received a pardon. When he went before the council doing the hiring and they asked the question, "Have you ever been convicted of a criminal offence," he paused. They then asked, "Well, have you ever been in trouble with the law or with the bar?" He said, "No." Someone found out that he was pardoned. They had missed this in their investigation, so they fired him as a judge, and he took his case to the Quebec Superior Court, then to the Quebec Court of Appeal and then to the Supreme Court of Canada. The Supreme Court of Canada ruled that for an administrative pardon, which we are talking about here today, he had no right to deny that he had any criminal offences in the past, all because he had a pardon. He had used that section; that is why I remembered that it was section 18.6 of the Quebec Charter. He said that it violated the Charter, but the Supreme Court of Canada said that it did not violate the Charter because he had no right to deny the record that was held there.

In looking at the bill, the other point that I thought was interesting, and some senators might find this interesting, is that the National Parole Board is given the power for the first time — and, it is a good thing to be given this power — to determine whether or not to give someone a pardon and not to give the pardon if it would bring the administration of justice into disrepute, as Senator Boisvenu repeated.

Honourable senators, that is a pretty high standard. How about, ". . .shock the conscience of the community"? Would that not be better? What about, ". . . justice as determined by the National Parole Board"? What would be "just"?

When you say ". . . bring the administration of justice into disrepute," in this particular respect, I remember five years ago, in June — in fact, I think it was this week in this chamber. Senator Biron stood up and made a statement. He then went on CTV news with the statement. It concerned the decision of a provincial court judge in Quebec that when Karla Homolka was to be released, on July 5, 2005, the judge, on application of an Attorney General from Ontario, would come under section 810 of the Criminal Code. That section is an interesting section of the Criminal Code. Under that section, she was a danger to society. The judge imposed a recognizance on her. The recognizance was very detailed. It said, "You must report to the police every day. You must report within 72 hours of you leaving an area or leaving your place of residence. There will be no communication with anyone in any communities where any of these offences took place. You are not to associate with anyone consuming alcohol or a drug." That would be interpreted to mean a continuation of the sentence. When an order is as detailed as that, it is like being on probation. That provincial court judge ruled that that recognizance would apply and that if any portion of it was violated, the person would then serve three years in jail. I think I have these details fairly correct.

Senator Biron took opposition to the fact that these matters had previously been decided. In other words, his thesis was that an independent judicial inquiry had been made into the deal between the Crown and the defence in the *Homolka* trial in which she was promised 12 years in prison if she pled guilty to manslaughter, with no conditions after. As honourable senators know, the average term for manslaughter runs 10 to 15 years, so that sentence was in between. Of course, they jumped at it; they had a week to accept it.

• (2240)

There was outrage when this deal became public. The Attorney General of Ontario appointed an independent inquiry by a justice of the Superior Court of Ontario who determined that the Crown's actions were okay; they met the legal, justifiable conditions of the law at that time.

Senator Biron commented on this fact that the provincial judge did not have the authority in this case to impose additional conditions upon her release. There was an uproar in the House of Commons, as honourable senators would expect, over this statement from a senator. She was released on July 5, 2005, under those conditions, still on sentence.

The Quebec Superior Court determined in November that the provincial court judge was wrong. Immediately, the Minister of Justice for Quebec appealed it to the Quebec Court of Appeal, so that it would not disturb the recognizance. The court of appeal ruled that the recognizance could not stand. I remember it was before Christmas.

Here is my point, from looking at this item in a cursory fashion. The National Parole Board has to determine whether it can refuse the pardon if it will bring the administration of justice into disrepute. Is that not the problem all along? Some people would say it would have been the administration of justice.

The standard of bringing the administration of justice into disrepute would be a high standard. In so doing, it would perhaps not prevail in that it would bring the administration of justice into disrepute because of what had happened before. I think there should be a lower standard. Perhaps the one that I suggested shocked the conscience of the community or that, in the opinion of the National Parole Board, it would be unjust.

I am using those phrases, as Your Honour knows, because both of those terms are in section 24(1) and section 24(2) of the Canadian Charter of Rights and Freedoms. Section 24(1) allows a judge in the name of justice to make a decision. Section 24(2) is to do with bringing the administration of justice into disrepute if evidence is admitted after they have had Charter violations.

There is one saving portion of that which certain senators know about, and that is this: The wording in English, as it is here in this bill, is "would bring the administration of justice into disrepute."

It is a pretty high standard. In other words, you will have the parties that will just go through. It says "would bring the administration of justice into disrepute."

The French version, according to Chief Justice Lamer, is interpreted as "could bring the administration of justice into disrepute," which is a lower standard. That is the standard he recommended in all his judgments. However, some of the senators might look at the wording in this bill because perhaps the same error has been made here. Perhaps we can use the French version to solve any problems that might arise from the height of the bar of "would bring the administration of justice into disrepute."

I congratulate Senator Boisvenu again for the great work he has done, and to ask him to explain when he comes to the committee why he did not change the word "pardon" in English to what he originally had proposed, which was something along the lines of "take it off the record."

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

Some Hon. Senators: Question!

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

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

[*Translation*]

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate, I move that Motion No. 59, standing in the name of Senator Fraser on the *Order Paper and Notice Paper* on page 26, be moved up.

[*English*]

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. John D. Wallace: Pursuant to notice of June 17, 2010, I move:

> That the Standing Senate Committee on Legal and Constitutional Affairs have the power to sit on Tuesday, June 22 and Wednesday, June 23, 2010, even though the Senate may then be sitting, with the application of rule 95(4) being suspended in relation thereto.

Honourable senators, that is the motion and I feel I should add to that in view of the comments that were made by Senator Carstairs earlier, directed to me in Question Period. I was surprised by her indignation that there is a possibility that the committee could be sitting while caucus meetings would be scheduled. Senator Fraser and I had lengthy discussions from last Friday through to today about that matter. Senator Fraser, Senator Carignan and I are members of the steering committee and I thought there was complete agreement on that issue.

However, for whatever reason, it appears there has been a change, or there is not agreement on the other side regarding that item at this point. That being the case, however, we have to move this forward, rather than continuing to debate this motion, especially in view of the fact that Senator Fraser is not here — and I, for one, would never put words in her mouth.

On Tuesday, June 22, between 12:00 and 1:30, all members of the committee will be available for caucus meetings.

The Hon. the Speaker *pro tempore***:** Is there further debate? It has been moved:

> That the Standing Senate Committee on Legal and Constitutional Affairs have the power to sit on Tuesday, June 22 and Wednesday, June 23, 2010, even though the Senate may then be sitting, with the application of rule 95(4) being suspended in relation thereto.

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

(Motion agreed to.)

(The Senate adjourned until Tuesday, June 22, 2010, at 2 p.m.)

APPENDIX

HERITAGE

FUNDING FOR SUMMER FESTIVALS

(Response to questions raised by Hon. Francis Fox on April 29 and May 11, 2010 and Hon. Percy E. Downe on May 11, 2010)

(*See p. 866*.)

Tourism Event/Manifestation touristique

2010 Grey Cup Game and Festival
Calgary Stampede
Canada's Largest Ribfest
Carnaval de Québec
Charlottetown Festival
Cisco Ottawa Bluesfest
Crankworx
Dauphin's Countryfest
Festival de montgolfières de Gatineau
Festival des traditions du monde de Sherbrooke
Festival d'été de Tremblant
Festival du Voyageur
Festival International de Jazz de Montréal
Festival juste pour rire
Festival Western de St-Tite
Festivent ville de Lévis
Fort Festival Series
Globalfest
Grand Prix de Trois-Rivières
Interior Provincial Exhibition
International de montgolfières de Saint-Jean-sur-Richelieu
International Plowing Match and Rural Expo
Luminato
Niagara Wine Festival
Norfolk County Fair and Horse Show
Old Home Week
Pacific National Exhibition
Québec City's Summer Festival
Red River Exhibition
Régates Molson Dry de Valleyfield
Rexall Edmonton Indy
Rodéo du Camion
Royal Agricultural Winter Fair
Royal Manitoba Winter Fair
Royal Nova Scotia International Tattoo
SaskTel Saskatchewan Jazz Festival
Shaw Festival
Sound of Music Festival
Stratford Shakespeare Festival
TD Canada Trust Vancouver International Jazz Festival
The Saskatoon Exhibition
Thousand Islands Playhouse
Tim Hortons Shuffle Blues & Jazz Festival
Vélirium - Festival international et championnats du Monde de velo du montagne
Whoop-up Days
Winnipeg Folk Festival
World Ski and Snowboard Festival

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