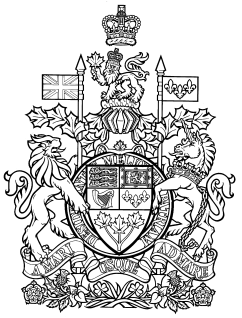

CANADA

Debates of the Senate

3rd SESSION • 40th PARLIAMENT • VOLUME 147 • NUMBER 71

OFFICIAL REPORT
(HANSARD)

Tuesday, November 30, 2010

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

CONTENTS

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

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

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

THE SENATE

Tuesday, November 30, 2010

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

TRIBUTES

THE HONOURABLE JEAN LAPOINTE, O.C.

The Hon. the Speaker: Honourable senators, I received a notice from the Leader of the Opposition, who requests that, pursuant to rule 22(10), the time provided for the consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Senator Jean Lapointe, who will retire from the Senate on December 6, 2010.

I remind all honourable senators that, pursuant to our Rules, each senator will be allowed only three minutes and may speak only once.

I will ask, if it is agreed, that the time for Senators' Statements be extended by 30 minutes so that we can continue our tributes to Senator Lapointe, not including the time allotted for Senator Lapointe's response. Any time remaining after tributes will then be used for other statements.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I am pleased to pay tribute to the Honourable Jean Lapointe. He is a great humanitarian who is deserving of our respect and deep gratitude. He is a great artist whose memorable journey has left us with lasting works and who has received and is still receiving well-deserved honours.

He is a great senator who is not afraid to speak his mind, with passion and humour sometimes, but whose words are always able to captivate his audience.

Since his appointment to the Senate on June 13, 2001, by the Right Honourable Jean Chrétien, Senator Lapointe has carried out his duties admirably, with generosity, kindness and dedication.

His experience and commitment to the disadvantaged were put to good use in the Senate.

Senator Lapointe, allow me to point out in particular the fact that you wanted and were determined to make our society better when you introduced and defended with firmness and perseverance your private member's bill to restrict video lottery terminals and slot machines to certain locations. Senator Lapointe, you clearly demonstrated your humanity and your sincere conviction in tackling some serious social problems head-on.

I am convinced that your efforts were not in vain and that your attempts to make Canadians aware of gambling addiction will bear fruit.

For my part, Senator Lapointe, I would like to tell you that I am very grateful for your affinity with and understanding of francophones in minority situations. I sensed true empathy on your part and sincere support that I will never forget. Coming from one of the great Quebecers who is so attached to his French language and an ambassador of La Francophonie through his works, I am touched by your desire to understand and promote the reality of francophone minority communities.

Senator Lapointe, do not forget that your actions, throughout your parliamentary career, have contributed to the evolution of our institution. You acquitted yourself honourably through the years you spent in the Senate. You will remain a source of inspiration for your colleagues.

I extend to you and your family my best wishes for happiness and health. I hope you will have new challenges, both personal and artistic, so that we will continue to be moved by and to enjoy your great talent for a long time.

Thank you, Senator Lapointe.

Hon. Andrée Champagne: Honourable senators, many of you have guessed that Jean Lapointe and I have been friends for more than 50 years.

I met him in his glory days, when he elegantly shared the spotlight with his singing partner, Jérôme Lemay.

Then I saw him struggle with serious and intense personal problems. It took a lot of courage and guts to finally climb out of the abyss from which some never manage to emerge.

What is more, he dedicated time and money to establishing La Maison Jean Lapointe, whose mission is to help those dealing with the same harmful addictions.

While he has always been surrounded with love, from his children, the women who have shared his life and his loyal fans, he has not been spared great sorrow either.

• (1410)

With determination, he began a new solo career. With his microphone and piano, he gave us the tunes that would be passed down from generation to generation because of their humour and tenderness.

He is also a sensitive and convincing actor. Of the dozens of leading roles he has played, his interpretation of Duplessis will certainly remain etched in memory.

After decades of turmoil, in better days, he found a way to pick up the pieces and reconnect with loved ones.

His appointment to the Senate did indeed surprise me, almost as much as my own appointment surprised me. However, between the two of us, I think I win the award for attendance. In the Senate, I got to know an extremely sensitive side of Jean Lapointe, who was not always able to control his displeasure, as we saw many times in this chamber, in televised interviews and in newspaper articles.

My dear Jean, as you return to your beloved bohemian life full-time, I wish you health, leading roles that will provide you with wonderful challenges, serenity and especially lots of love to inspire you to write us many beautiful new songs.

In your words:

In songs we learn about life
In songs we learn many lessons
In lessons we learn how to read
But in our beds we live love songs
And in love we write songs

Farewell Jean!

Hon. Rose-Marie Losier-Cool: Honourable senators, I will use all my time to talk about my dear colleague, Senator Lapointe, which should make him happy, as he stood up a few years ago to speak out against the practice of certain senators who apparently take advantage of tributes to others to talk about themselves.

Today, I bid farewell to a politician who continues to fight against video lottery terminals, to a philanthropist who founded La Maison Jean Lapointe, but also to an actor, and especially, especially, a singer whose songs I still listen to today. His songs were the inspiration for my thanks and tribute to him, so I am sure that he will love what I have to say, even if it does not rhyme.

We all have a role in life, we come, we go.
Like all those crooner types
Who were born in Naples,
He was a gift from above.
He shared his words, his language, his magic,
His mindset not always moderate.
In a vast, snow-covered country,
I remember the good ol' days of music,
Gone, long before the TV flickered.
There are enough who believe
That a song could never change anything.
But if we all sang together?
Songs are lessons about life.
They give us hope of moving forward.
The possibilities are endless.
Every song is a new lesson.
Every step a new connection,
Moments of sheer happiness.
Everyone can play the jester.
Playing with someone's life.
With their silly somersaults,
And their big feet tripping them up,
Combatting false masters, now that is freedom,
In word and in action!
And in the landscape,
On the other side of the clouds?
Behind every cloud is a sun,
Enticing us to sing.

And thanks to you, Senator Lapointe:

They will see a wonderful country,
And their minds will fill with memories.

Hon. Claude Carignan: Honourable senators, it is difficult to pay tribute to Jean Lapointe without playing some sort of game, and I had the idea, like many others, I think, to create a sort of riddle by referring to 15 French song or album titles in my speech.

I invite you to pick out the references.

Jean Lapointe has a unique "Profile," but the man I want to pay tribute to today is not the comedian who has made me "laugh until I cried"; not the actor who, in the Duplessis series, helped give "One Voice, One Story" to one of the most important figures in the history of Quebec; not the composer, the "Jester" "with no makeup," who wrote messages of love and hope; not the performer who played the "Showman at the Olympia"; not the senator, Jean Lapointe, with an "S."

The man I wish to pay tribute to here today is a wonderful friend to people struggling with various addictions, including alcohol, drugs and gambling, a man who understands, as his own song lyrics say, that "Everyone has a Story," a man who encourages those people to grow, even inviting them to express themselves, saying "Sing me your Song," a man who has helped and supported others by saying, "Let's Sing Together."

In 1982, Jean Lapointe very generously joined the fight against alcoholism by lending his name to a drug treatment centre that would become La Maison Jean Lapointe.

In 1983, he issued a call of hope to people struggling with addictions with the following words, "Bring your sick flowers; we will put them in the sun. Yes, now is the time for sick flowers to come back to life and experience a summer like no other."

In 1984, my father was one of those flowers, who, like hundreds of others, responded to the call to experience "a summer like no other" after spending some time at Maison Jean Lapointe.

Mr. Lapointe, thanks to your generosity, you have saved the lives of hundreds of people. For some people, the reawakening lasted only a summer, while for others, like my father, who passed away in 1989, the reawakening lasted a few years, but this interlude of sobriety allowed his loved ones to get to know the real man, and it allowed families to enjoy some peace and to realize that "It is a Beautiful World."

Honourable Senator Lapointe, you must have "Heard this Somewhere," these simple, but profound words: "thank you" and "goodbye."

Hon. Céline Hervieux-Payette: Honourable senators, my first meeting with my dear friend Senator Lapointe goes back to the days of Les Jérolas when, as a young producer, I hired them — Jean Lapointe and his friend Jérôme Lemay — as the opening act for Félix Leclerc. The event was a resounding success, especially since it was a fundraising dinner for the Liberal Party. His career was off to a good start.

Within this noble institution, it is clear that bonds of friendship are formed based on shared values and objectives. One shared objective that is not always at the forefront, but which has cost our friend Senator Lapointe dearly, is his faith in Canada. Senator Lapointe has always stood up to Quebec and has never joined the Quebec separatist movement. He has always stood his ground, even when his close friend Félix had different ideas. He has always defended Canada.

We are all the richer for having Jean Lapointe in our midst. He has 300 songs and over 30 films to his credit. Few of us here can boast such creativity.

• (1420)

Today, I would like to give him a little gift. I will reintroduce his bill amending the Criminal Code to limit the devastation caused by video lottery terminals and I will become its sponsor.

I would like to say a few words about the professionalism of Senator Lapointe regarding his commitment to this cause. He has undertaken extensive studies of the resulting damages; he has wonderful research files and I hope that I will be able to borrow them, so that we will not have to start all over again. I hope that our colleagues on the other side will see the light and support this bill which, in my opinion, has extraordinary worth in terms of reducing the poverty and misery of thousands of people who are addicted to video lottery terminals.

I would also like to thank him. At the start of my seal campaign, he was not entirely convinced that it was a great cause. I had to plead my case. He pleaded this case with his son and eventually wrote us a song, putting great experts like Brigitte Bardot, Pamela Anderson and Paul McCartney in their place. His sense of humour, which shines through in his songs as well as his career in general, allows us to put things into perspective.

A big thank you, Senator Lapointe, for having supported this cause. I am certain that you will continue to do so. The fight is not over; sealers from the Magdalen Islands and Newfoundland as well as the Inuit people still need Jean Lapointe to help me with this battle, in which we are up against Europe, after all. This is not a small-scale battle.

For me, the memories are memories from here. I am sure that we will still spend time together as friends. I will continue to count on his sound advice as I appreciate his good judgement on things in general. At the beginning, people asked me what an artist was doing in the Senate and I told them it is essential that the Senate have talented people like Senator Lapointe because these types of people have heart and spirit and are very sensitive.

Thank you for everything, Senator Lapointe. See you soon.

The Hon. the Speaker: Honourable senators, since the fire alarm is ringing, I must suspend the sitting.

(The sitting of the Senate was suspended.)

• (1500)

(The sitting of the Senate was resumed.)

Hon. Lucie Pépin: Honourable senators, today we mark the upcoming departure of a fellow senator for whom I have the highest regard.

An African proverb states, "Wood may remain ten years in the water, but it will never become a crocodile." We could say the same about Jean Lapointe, the artist. His nine and a half years in the Senate did not turn him into a politician. He remained the same artist we admired on stage and on television.

"Senartist" Lapointe, as he has dubbed himself, is a guy who takes a no-holds-barred approach and expresses his true opinions. Our distinguished colleague was not one to engage in doublespeak or to conform.

He wanted nothing to do with partisanship. As we saw in an interview last weekend, "Senartist" Lapointe most often voted according to his conscience and his own understanding of the issues.

Senator, thank you for your frequent reminders that, in the Senate, toeing the party line should not be the norm. Above all, senators must be free spirits.

Everyone knows that artists are very humane individuals who are quick to recognize and oppose injustices. Senator Lapointe, with his kind and generous nature, is no exception. He demonstrated this here by acting as a guardian angel to the general public, minorities and the underprivileged. It was in the spirit of protecting the weak that he tabled his bill to remove video lottery terminals from certain locations.

We know that the senator always wanted to limit the time devoted to tributes and so we can best pay tribute to him by keeping them brief.

I stand as a witness that Senator Lapointe did not like long speeches. When I was Speaker *pro tempore*, he would often rise to ask a senator to shorten his or her remarks.

My dear senator, I will stop here just for you and close by wishing you much happiness in your return to the stage. I hope that what lies ahead will be just as rewarding as your already rich career.

Fair winds, dear artist.

Hon. Jean-Claude Rivest: Honourable senators, I would like to say to Senator Lapointe that, as is often said, by what things a man sinneth, by the same also shall he be punished. You asked that tributes be short and the fire alarm has resulted in the longest tributes we have heard in some time.

Jean, quite simply, on behalf of Quebecers and French Canadians who have followed your career, I would like to give a very simple tribute to the artist first of all.

I would also like to thank you for your participation in and commitment to the political life of the Senate, and also for your extraordinary efforts in social advocacy. We have rightfully talked about Maison Jean Lapointe.

One thing is certain: all Quebecers love Jean Lapointe. They love Jean Lapointe for his contributions as an artist and they also love the man who, in spite of woes and misery, has experienced greatness. For this, all Quebecers owe him a debt of gratitude because we followed the journey of the man, Jean Lapointe, as well as that of the artist. Jean Lapointe's great humanitarian values have made an impression on all of us.

I would also simply like to remember two of Senator Lapointe's great and close friends, Félix Leclerc and Raymond Devos, who are two of the greatest artists we have ever known in the francophone world, and who were cut from the same cloth as Jean Lapointe. Félix and Raymond are probably both a little sad that you are leaving the Senate, Félix perhaps less so because of his political opinions. Nevertheless, I am certain that Félix Leclerc and Raymond Devos, like all Quebecers, are very pleased that, in a few days, Jean Lapointe will once again be a full-time artist, the artist who knows how to make us cry and laugh, but most of all who continues to move us.

Farewell, artist.

Hon. Francis Fox: Honourable senators, it is with great pleasure that I take the floor today to speak about the career of a man who left his mark on his era as an artist, humorist, author, singer-songwriter and actor. The entire francophone population of Canada has enjoyed his remarkable talents.

He has received many awards: a Genie for his supporting role in *One Man* and a Jutra award for *Le dernier tunnel*. We all remember his brilliant turn as Duplessis in the series by the same name. And, as we know, his movie career is not over.

Jean Lapointe's efforts to help our society progress and improve began before his appointment to the Senate. One initiative to his credit is the founding of La Maison Jean Lapointe. It was an honour for me to preside over the annual oyster lunch to raise money for the foundation for three consecutive years. That organization has helped many people overcome their struggle with addictions to alcohol, drugs and gambling.

As a senator, his bill on video lottery terminals helped to advance the debate on gambling addictions throughout Canada. I have no doubt that his efforts will one day pay off. He will go down in history as the one who led the charge on this important issue.

Jean, for your social commitment, for your ongoing efforts to advance your initiatives and for your contributions to this caucus, we all owe you a debt of gratitude.

Let me tell everyone else, those who have not had the pleasure of being in the Liberal caucus, that when Jean Lapointe spoke to the caucus, everyone listened — especially when he sang his message.

If I may speak on behalf of everyone here, Jean, you are loved and respected by us all. And speaking of those who love you, I would like to salute your family, your staff and your friends, who are with you here today to celebrate your time in the Senate, just one part of your rich career.

With that, Jean, I say "Sing us your Song," for you still have much to say, much to do and much to contribute. We will miss you dearly.

Goodbye for now and good luck.

• (1510)

[*English*]

Hon. Bill Rompkey: Honourable senators, there I was, minding my own business in room 200. We were practising for the Christmas concert. Senator Lapointe was playing the grand piano up in front and there was a lull in the proceedings, so we started to sing together. Then he suddenly said, "Why don't you join me? I am going to the Air Canada Centre to the Chrétien tribute, so why don't you join Senator Ringuette and me?"

When I picked my jaw up off the floor, I still found it difficult to speak. However, we went, and he rehearsed us and made sure that we were ready to perform. I remember being at the Air Canada Centre and saying to myself, "Now, don't be nervous," although my knees were shaking, "just keep your eyes on Jean Lapointe, and everything will be okay." We got out on stage, and fortunately, the lights were all down in the Air Canada Centre. There was a spotlight on the stage, so I could not see anyone. It was as if there was no audience there at all, but there was and I knew I had to keep my eyes on Jean.

I just want to say to Jean that it was one of the most memorable experiences I have had, and he made it possible. Maybe when people speak about me, they will not say, "He served in Parliament for 40 years," but "He is the guy who sang with Jean Lapointe."

That will make me very happy, and it is something that I would treasure.

[*Translation*]

Thank you for your service to the Senate and for your friendship.

Hon. Marie-P. Poulin: Honourable senators, I join you in paying tribute to Senator Jean Lapointe, a great public servant in every sense of the word, as today's statements express so well.

As a raconteur, lyricist, composer, singer, songwriter, actor and so much more, he continues to please his fans around the world and here at home in Canada.

When I was a radio producer a number of years ago, I had a certain bias. I played Jean Lapointe records during every one of my daily broadcasts. Since 1950, Senator Jean Lapointe has been playing a key role in traditional and modern francophone culture. Despite his celebrity, it was the man of compassion I came to know here in the Senate.

As we know, the Jean Lapointe Foundation runs rehabilitation centres in Quebec to help those suffering from addiction. A dear friend of mine spent some time in one of the Jean Lapointe centres. One day, I confided in our colleague that my friend was having a tough time. Jean asked me, "What is your friend's name and telephone number?"

The next day, I received a phone call from my friend. He was laughing so hard he could barely speak. Senator Jean Lapointe did indeed call him, but my friend thought someone was playing a trick on him. He hung up on Jean Lapointe not once, but twice. Jean finally managed to keep my friend on the phone and have a heart-to-heart talk with him.

Jean Lapointe, you have brightened the lives of many. You have given them hope and I thank you from the bottom of my heart.

As a famous singer with an unequalled sense of humour, you may know that old musicians do not retire; they decompose — but not for many years to come, I hope.

Senator Lapointe, I will miss you.

Hon. Roméo Antonius Dallaire: Honourable senators, it is with great humility as a junior member of the Senate that I speak today to pay tribute to one of our senior members, the most senior member, who is leaving us today.

I had the opportunity to see Senator Lapointe on the show *Les coulisses du pouvoir*, last Sunday, talking about what inspired him to serve his country not only in a historical and artistic sense, but also in terms of influencing the politics of the land.

Son of a Liberal member of Parliament, who sat from 1935 to 1945, Jean Lapointe was named an Officer of the Order of Canada and an Officer of the National Order of Quebec. He is a member of the Académie des Grands Québécois. He has won Genie and Jutra awards many times over. How many kilometres he has travelled throughout this country, in all kinds of weather, alone, far from family, during his career as an artist. How many times he has risked his life on those roads to bring joy, humanity, interest and expression to people in theatres and living rooms in Quebec and elsewhere. And then there is his success in Paris and internationally.

Despite all that time away from his family, but supported by them despite his absence, he also agreed to come to Ottawa to spend more hours and days separated from them, once again.

Senator Lapointe said:

> I came here to serve. And so I contend, I state, I insist and I know that the Senate is the guardian angel of the people, of minorities and of the poor. Because, in contrast, when the party line comes into play, when that is brought to committee and highly competent people testify, that is when partisan lines begin to blur. . . .

Senator Lapointe, you still continued your efforts. You did not give up when these complications arose. On the contrary, you continued to perform with emotion. There is nothing more honest than to see the passion in the eyes and on the face of someone convinced of his mission, someone who is trying to convince others who do not have the same perception of humanity or the same sensitivity to humanity.

You have been a soulmate to me, as I am one of those trying to survive day by day. Every day, the hope is to survive until tomorrow. You understand these emotions, you understand these statements and you understand the enormity of the task at hand.

Jean Lapointe, I salute you.

[*English*]

Hon. Tommy Banks: Honourable senators, most of us in the rest of Canada have the disadvantage of not fully appreciating or understanding the way in which and the extent to which Quebecers and other members of the francophonie in Canada appreciate, understand and hold in such high esteem their creative artists. Therefore, we cannot fully appreciate the story that Senator Poulin told us when she explained to us her friend received a phone call from Jean Lapointe, and it seemed like it must be a joke because it was not possible that Jean Lapointe would actually be calling him.

We therefore also cannot appreciate the iconic stature that Jean Lapointe occupies in the Quebec pantheon of great artists. He is an actor, a musician, a comedian, a raconteur and an author, and he brings great distinction in those respects to this place, as he always has.

• (1520)

Like Senator Rompkey, I have the great honour of saying that I once actually played with Jean Lapointe, and it is one of the most important moments of my life. We will miss you greatly.

[*Translation*]

Hon. Mobina S. B. Jaffer: Honourable Senator Jean Lapointe, my esteemed colleague and dear friend, Senator Lapierre, Senator Léger, you and I all joined the upper chamber together in June 2001. I am very happy that Senator Léger is here with us today. I feel that we are all connected here.

Your departure will certainly leave a void that can never be filled. However, your words and your famous works will often echo here, reminding us that you are always with us.

The Senate process has always been important to you, and you have never had trouble expressing how it made you feel. Sometimes that took courage. I tip my hat to you and your undying, daring attitude. That is not something all of us share.

[*English*]

Senator Lapointe, I will always associate my time in the Senate with you as we arrived here at the same time and, during that time, I have come to admire you.

[*Translation*]

Senator Lapointe, I will miss you.

Hon. Jean Lapointe: Your Honour, honourable senators, I feel like a firefighter right now; a firefighter with tears in his eyes.

I will be brief; I do not want to name all the senators I love here, but I do want to acknowledge you, Your Honour, for accomplishing a miracle. In such a short time you have learned French and you have given me many chances. I am not a fool; when I was the last to want to speak and I was not supposed to, you still let me speak.

I would like to apologize to my adversaries for times when I spoke before thinking. I never meant any harm. I did not come here to fight; I came here to try to bring a little peace.

I would like to thank Senator Céline Hervieux-Payette in particular, who guided me through all my years in the Senate. Before making a mistake, I would go to her to suggest what I wanted to say. She would say, "Be quiet!" I would say, "Okay."

I would like to thank Senator Francis Fox, who not only was another guide for me, but who has also been involved in La Maison Jean Lapointe Foundation, youth centres and so on. For the past few years, La Maison Jean Lapointe has been addressing another addiction: gambling. I am proud to say that my daughter, Anne Élizabeth, is the director of educational programs there. She is doing a great job, and is well-liked and admired by her co-workers.

I would like to thank Senator Paul Massicotte, who really helped me get through a difficult period. I would also like to thank Senator Pierre Claude Nolin, a Conservative senator who always supported my efforts on video lottery terminals, in spite of everything. He is someone I like very much and a very respectable lawyer.

I would like to thank one of the greatest senators I have ever met here, Senator George Furey, who has always done, and continues to do, remarkable work.

Of course, I would like to thank the singing senators, Senator Rompkey and Senator Ringuette. We had the pleasure of singing together, and I believe we honoured this place by doing so.

I would like to thank Francine Charron, my executive assistant, as well as Pascal Charron, my political advisor, who helped me so much on the video lottery file.

Senator Andrée Champagne referred earlier to my absences. I must say, I was very ill for three years. I can hardly blame him, but my doctor signed a medical certificate to justify my absence from the Senate for an indefinite period. It was my friend Céline Hervieux-Payette who said, "Do not stay at home; you will only get more depressed. Come to the Senate; we love you and we will help you." I appreciate her honesty. I was often absent. I sat at the end of the row, where I had asked to sit because I often felt ill and had to leave the chamber. Nevertheless, I listened to the debates in my office and when there was a vote, I would come down.

I would like to thank the Senate staff. When I first arrived here, I was so overcome by the beauty of the Senate that I asked myself, "What am I doing here?"

I cannot help but feel emotional as I thank my dear friend, Viola Léger. After my tour with Les Jérolas and the film I am currently working on, and God willing, if we are still healthy, I truly hope with all my heart that we will one day find ourselves together on the same stage.

In closing, I would like to thank the members of my family and all those who came some distance to attend the tributes today, among others, my beloved agent.

To all of you and to everyone here, no matter which party you belong to — because I am a Liberal in quotation marks. I did not always vote with the party line. I do not remember ever voting Conservative, except maybe once. It was a youthful indiscretion, something that happens to everyone! — from the first to the last, I truly thank you. I will never forget — I see my friend Demers looking at me. He is very dear to me — the time that I spent in the Senate. From the bottom of my heart, thank you.

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, before proceeding to Tabling of Documents, I would like to draw your attention to the presence in the gallery of La Sagouine**,** our former colleague the Honourable Senator Viola Léger.

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

VISITORS IN THE GALLERY

Hon. Jean Lapointe: Honourable senators, please excuse me. All the members of my family are in the gallery. I would like to ask them to meet me in my office before going to yours, Your Honour.

The Hon. the Speaker: Honourable senators, to all the family and friends of Senator Lapointe, welcome to the Senate of Canada and to the reception that will be held after the Senate adjourns later this afternoon.

• (1530)

ROUTINE PROCEEDINGS

OFFICIAL LANGUAGES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF APPLICATION OF OFFICIAL LANGUAGES ACT AND RELEVANT REGULATIONS, DIRECTIVES AND REPORTS

Hon. Maria Chaput: 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 Wednesday, March 24, 2010, the Standing Senate Committee on Official Languages, which was authorized to study the application of the *Official Languages Act* and of

the regulations and directives made under it, be empowered to extend the date of presenting its final report from December 31, 2010 to March 31, 2011; and

That the Committee retain until June 30, 2011 all powers necessary to publicize its findings.

[*English*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF ACCESSIBILITY OF POST-SECONDARY EDUCATION

Hon. Art Eggleton: 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 18, 2010, the date for the presentation of the final report by the Standing Senate Committee on Social Affairs, Science and Technology on access to post-secondary education in Canada be extended from December 31, 2010 to March 31, 2011 and that the date until which the committee retains powers to allow it to publicize its findings be extended from June 30, 2011 to September 30, 2011.

RIGHTS OF MINORITIES AND INDIGENOUS PEOPLE

CHIAPAS DECLARATION—NOTICE OF INQUIRY

Hon. Donald H. Oliver: Honourable senators, pursuant to rule 57(2), I give notice that, two days hence:

I will call the attention of the Senate to the "Chiapas Declaration", which was adopted by consensus at the International Parliamentary Conference on "Parliaments, Minorities and Indigenous Peoples: Effective participation in politics" in Mexico on November 3rd, which urges every parliament to:

Hold a special debate on the situation of minorities and indigenous peoples in their country;

Recognize the diversity in society; and

Adopt a Plan of Action to make the right to equal participation and non-discrimination a reality for minorities and indigenous peoples.

QUESTION PERIOD

INDUSTRY

LONG-TERM DISABILITY BENEFITS—NORTEL EMPLOYEES

Hon. Art Eggleton: Honourable senators, my question is for the Leader of the Government in the Senate. At the Banking Committee last week, the Conservative members recommended that Bill S-216 not be read a third time and not be proceeded with. The committee, though, at the same time, passed a motion that was actually introduced by the Conservative members that we should ask the Minister of Industry, the Honourable Tony Clement — the same minister responsible for the acts that are relevant to Bill S-216 — to do something to help the people of Nortel who will be immediately affected by the recommendation to the Senate not to proceed with Bill S-216.

My question is simply, if not Bill S-216, then what? What will the government do to help those people?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question. The situation that former employees of Nortel are facing is a serious issue, not only to the individuals personally involved but to all Canadians. It is also important to our government. That is why we made a commitment in the Speech from the Throne to better protect workers when their employer goes bankrupt.

We are currently looking at ways to better protect employees on long-term disability in the event of bankruptcy. I can assure honourable senators that this is a matter of great concern to the government. Several ministers are working on proposals to alleviate the situation, especially for employees on long-term disability who are working for companies that go into bankruptcy.

Senator Eggleton: I appreciate that answer. However, the problem is that in 32 days, time will run out for these people. In 32 days, they will be cut off from their income support, subsequently to be replaced by something that is far less than they currently receive. There is no assurance at this time as to what that will be.

They will be also cut off from their medical benefits which, for many of them, are thousands and thousands of dollars a year. If they do not have the money for that, some of them will face more dire medical circumstances and worse health. They are already under enormous stress, knowing that, in 32 days, the clock will run out.

Certainly, the government has known about this matter for some time. I presented Bill S-216 in the spring of this year. In fact, I spoke to the Honourable Tony Clement at that time about it, so it has been well known to exist, but in 32 days, time will run out on these people. They are in desperate straits. They will go into poverty. They will not be able to get their medicines or the support that they need.

When will the government announce whatever it will do to help these people before they go through much more stress and the clock runs out at the end of the year?

Senator LeBreton: Honourable senators, no one appreciates more than we do the stress these individuals are facing, and we all know that this is a terribly unfortunate situation. All senators and members of Parliament sympathize with the difficult situation facing Nortel pensioners and long-term disability recipients.

However, the fact of the matter is, honourable senators — and it is well known — that as well intended as Senator Eggleton's bill may have been, this bill would not have helped Nortel long-term

disability recipients. Instead, it would have undoubtedly led to endless litigation to the detriment of all involved. This situation came about as a result of a court-approved settlement agreement between all parties enacted under legislation in effect at the time.

It is an unfortunate situation where actions have held out false hope to these individuals that something — and in particular this bill — would somehow or other alleviate this problem. Of course it would not. We certainly had many witnesses who testified to that. All of this, I wish to underscore, honourable senators, does not change the concern of members of the government and ministers, as committed to in the Speech from the Throne, in seeking to find a solution that will better protect employees when their employer goes bankrupt.

Senator Mercer: Thirty two days.

Senator LeBreton: This is a very unfortunate situation. I think it is sad that actions, whether this bill or others, have held out false hope when, in fact, this matter was litigated and dealt with in the courts.

Senator Eggleton: Expert witnesses before the Banking Committee, and I heard them, would beg to differ on that point of view.

• (1540)

Senator Oliver: Not all of them.

Senator Eggleton: The expert witnesses said this bill would work. In fact, most countries have provisions such as these. Almost all our trading partners already have these provisions. There is nothing new about that. However, I will speak to that later when we address the question of the report.

I want to get back to the alternative again, because if it is not this bill, then what, and when? Given that time is running out, will the government commit to announcing something in the next 32 days — the sooner, the better — that will, in fact, help relieve the 400 Nortel employees in this desperate circumstance who are sick and disabled? Will the government do that?

Senator LeBreton: Honourable senators, I think I have been clear about this, and certainly the government has been clear about it. The government, when we delivered the Throne Speech in this very place, specifically made reference to better protecting workers when their employers go bankrupt, especially those on long-term disability. I will impress the urgency upon my colleagues. Everyone is working hard to find a resolution to this. No one takes any joy in the situation these people face.

Having said that, there is ample evidence that a bill introduced by the honourable senator in the Senate would not have alleviated the problem and, of course, the bill had a long road ahead of it in Parliament.

I point out that this situation was the result of a court-approved settlement, and, of course, the court-approved settlement was agreed to by all parties and was enacted under legislation that was in place at the time. Little more can be said.

Again, I regret that Nortel pensioners, and especially those people on long-term disability, were put in the situation of being held out to false hope that somehow or other, miraculously, a bill in the Senate would have been able to change something that had already been court-ordered under the previous legislation.

Hon. James S. Cowan (Leader of the Opposition): I am sure that the Nortel pensioners appreciate the leader's concern and her regret about their situation. However, the fact is, to use the leader's phrase, there are only 32 days left and these people are in desperate shape. Surely the government has had ample opportunity. The government has made the decision that Senator Eggleton's bill is not the solution. Have they or have they not identified the solution that they will propose? That is the government's responsibility. Does the government have a solution? As Senator Eggleton has asked, when will that solution be proposed?

The leader suggested that Senator Eggleton's bill has held out false hope to these people. We want to know whether they can expect anything from their government in the next 32 days and, if so, when.

Senator LeBreton: Honourable senators, all I can say is that, as a member of the government, I am not in a position to answer specifically Senator Cowan's direct question, other than to say that the government has made a commitment to workers, as was indicated in the Throne Speech, and we will be working to find a solution, especially for people on long-term disability pensions who were working for companies that declare bankruptcy.

All I can say is that I will impress upon my colleagues the urgency, although I know I do not have to; they can count the same way I can. I will ensure that my colleagues are very aware of the concerns that have been expressed today.

Senator Cowan: Would the leader also ask her colleague to avoid either false hopes, which the leader has suggested, or uncertainty, which I think we would all agree exists on this issue, and would the leader speak to the minister and ask him to make a clear and definitive statement between now and the end of December so that those pensioners will at least know where they stand?

As it is now, they have had reasonable expectations that the government would cooperate in the passage of Senator Eggleton's bill. It appears, from the actions of the majority in the committee, that that is not the case and this bill will not go forward, and that is fine. However, as Senator Eggleton has said, if not his bill, then what?

Would the leader agree that the minister has a responsibility to address this issue in a clear and definitive way between now and the end of December, and will the leader urge her colleague to take that step?

Senator LeBreton: First, it is not correct to say that we gave reasonable assurances that Senator Eggleton's bill would pass. I do not believe that is the case.

Senator Cowan: I did not say that.

Senator LeBreton: I thought the honourable senator said that.

Senator Cowan: No, I did not.

Senator LeBreton: On the whole issue of pensions, the government has been working extremely hard with our provincial and territorial counterparts. As the honourable senator is well aware, only 10 per cent of pensions in Canada actually fall under the federal government.

As was specifically stated in the Throne Speech, the government is anxious to find solutions for that particular group, the recipients of long-term disability pensions and the companies that have declared bankruptcy.

All I can do, as I said a moment ago, is to impress this upon my colleagues. There are several ministers who are seized with this matter and, hopefully, as was indicated and promised in the Throne Speech, a solution will be forthcoming.

[*Translation*]

FOREIGN AFFAIRS

SUDAN—HAITI— DEPLOYMENT OF CANADIAN FORCES

Hon. Roméo Antonius Dallaire: Honourable senators, my question is for the Leader of the Government in the Senate and concerns Sudan, specifically the referendum to be held in January, which could give rise to exceedingly volatile conditions in terms of the human rights of minorities and internally displaced people.

I have not had an answer to a question I asked a few weeks ago. I would therefore like to move on to the other aspect of the question, which concerns the deployment of Canadian Forces as a preventive measure in support of the United Nations.

The United Nations has requested the rapid deployment of an additional 2,000 troops to reinforce the mission because current tensions have increased the risks. Was Canada asked to participate or did Canada offer to provide additional troops to bolster the mission and bring it up to a minimum operating level in order to ensure safety in the area?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I do not know whether or not Canada has offered or, in fact, if a specific request has been made of Canada in this regard, so I will take Senator Dallaire's question as notice.

Senator Dallaire: I thank the leader for her reply. Canada has led the way in conflict resolution, and in fact in conflict prevention, through the introduction and the acceptance of the United Nations General Assembly of the Responsibility to Protect, or R2P — a concept that, in fact, Canada created, led and has been pursuing.

Here, we have an ideal scenario of the prevention of a possible catastrophe of minorities in Northern Sudan if Southern Sudan votes for the separation of refugees coming in from Darfur who would want a better opportunity in this new country. We have oil fields now being contested and two armies facing each other. We have the UN that is out there asking not only for troops, but also for transport to get them there, logistics to move them around, helicopters, and even maps, as we provided in 2005.

• (1550)

Is any initiative being taken by the Canadian government to pursue its policy under the R2P, unless we have gone away from that initiative in our foreign policy, to prevent a humanitarian catastrophe?

Senator LeBreton: All of the concerns raised by Senator Dallaire are of great concern. I will seek an answer from Foreign Affairs on the extent to which Canada intends to make commitments or what exactly is being asked of Canada. I will take the honourable senator's question as notice and provide him with a written response.

Senator Dallaire: Honourable senators, to reinforce the point, a sense of urgency surrounds these questions. I find it difficult to understand why the government is not expressing anything about such a significant area of concern and Canada's international involvement.

However, that is not the only area of troop deployment that I wish to raise with the leader. Currently, the mission in Haiti is under significant pressure. They need an enormous amount of help in the area of water purification. I have seen people die of cholera by the thousands. It all comes down to clean water, nothing more. We have purification systems capable of producing millions of litres of clean water each day that are sitting in a DART facility instead of being deployed to Haiti. Why have we not responded as we did in the immediate emergency? As my son said when he was redeployed back home, maybe we moved out too fast.

Senator LeBreton: Honourable senators, no one questions our commitment to Haiti. This government has committed over $1 billion in Haiti. The senator is absolutely right about water purification. Canada is a world leader in this area. There have been examples of water purification equipment sitting on docks in the harbour at Port-au-Prince because of the red tape. There was a long report about this situation on a television newscast a few nights ago. This is a serious issue. I can assure honourable senators that every effort Canada can make is being made in Haiti, not only in the area of water purification and in dealing with field hospitals during the cholera outbreak, in particular in Cap-Haitien, but also in construction and rebuilding of schools, houses and public buildings so that the government can begin to function again. The honourable senator would know that the situation in Haiti is dire and desperate because his son was there. Certainly, Canada is doing everything it can do. I would say that Canada is doing more than can be expected because it has expended a great deal of money and sent many people to Haiti. Unfortunately, the lack of infrastructure and the cholera outbreak facing our people are great challenges, to say the least. I do not think the commitment of the government is any less than it has been right from the beginning.

Senator Dallaire: In both cases, we are talking about two UN missions and, in both cases, we have not demonstrated any particular desire to respond. Is the policy of the current government such that Canada is not keen on participating in UN missions deployed overseas?

Senator LeBreton: I do not know what the honourable senator would base that question on or why he would even ask it. Canada has lived up to its commitments and continues to commit through the United Nations and other agencies all over the world. Why the honourable senator would suggest that is not the case is beyond me.

Hon. Mobina S. B. Jaffer: Honourable senators, my question is for the leader of the government. When I was an envoy to Sudan, there were 100 members of the armed forces there. Currently, how many men and women do we have working in Sudan? How many police officers do we have helping with rape investigations?

I would ask the leader to tell honourable senators what the Task Force Sudan is doing, how much money is dedicated to the work of the Task Force Sudan, and what work will be done to help women in Southern Sudan who will suffer when the referendum results are released.

Senator LeBreton: Honourable senators, I will be happy to refer Senator Jaffer's questions to Foreign Affairs to bring her up to date on Canada's work in Sudan.

NATIONAL REVENUE

CANADA REVENUE AGENCY WEBSITE

Hon. Catherine S. Callbeck: Honourable senators, my question is to the Leader of the Government in the Senate. Last Thursday, I participated in a small business round table for young entrepreneurs. They brought forward many good ideas and concerns to help small business. One concern raised was that the Canada Revenue Agency website is not user friendly and takes too long to find specific information. These young people do not have that kind of time when they are trying to meet the challenges of running small businesses.

Some of them have complained to the CRA, but there have not been any changes. Would the leader please speak to the Minister of National Revenue regarding that website so it can be made user friendly and, therefore, help our young entrepreneurs and all small businesses?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for her question. I am happy to learn that she participated in one of these round tables. As the honourable senator knows, the government is conducting round-table discussions across the country dealing with large and small businesses in preparation for the next budget. The government has made many improvements to government services through Service Canada and various agencies. I am aware that the Canada Revenue Agency has improved their services quite significantly in a number of areas, but I would be happy to refer Senator Callbeck's question to the Minister of Revenue to seek a proper answer for the honourable senator. If she has more details of the types of frustrations that they have experienced and the kind of information they are looking for, I would appreciate having it.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to present four answers to oral questions: the first, a delayed answer to a question by Senator Dallaire on July 7, 2010, concerning National Defence, Budget and Recruitment; the second, a delayed answer to a question by Senator Dallaire on October 6, 2010, concerning National Defence, Operational Capability of Armed Forces; the third, a delayed answer to a question by Senator Callbeck on October 7, 2010, concerning Veterans Affairs, Veterans Independence Program; and the fourth, a delayed answer to a question by Senator Banks on October 28, 2010, concerning Transport, Harmonized Sales Tax—Canada Post.

NATIONAL DEFENCE

BUDGET

(*Response to question raised by Hon. Roméo Antonius Dallaire on July 7, 2010*)

The Government is committed to providing the military the support it needs so that our troops can continue to do the important work that is asked of them. In recent years, the Government has made major, necessary investments in the country's military capabilities in support of the Canada First Defence Strategy.

In regards to the question of Vote transfers, departments have other methods at their disposal — in addition to Vote transfers — to cash manage the funding for capital projects that experience some slippage. For example, the Department can apply to re-profile Vote 5 funding from the current fiscal year to future years, to better match project cash flow requirements. In addition, DND can carry forward up to 2.5% of its Vote 1 and Vote 5 appropriation, from one fiscal year to the next.

Budget 2010 reaffirmed the government's pledge to increase the defence budget annually and will continue to support the fundamental tenets of the Canada First Defence Strategy. However, like other departments, DND and the Canadian Forces (CF) will have to manage its activities within an environment of constrained operating budgets.

In this context, the budget included provisions to slow the rate of previously planned growth for DND by $525 million in 2012-13 and $1 billion annually thereafter, starting in 2013-14. Therefore the defence budget will continue to grow every year, but more slowly than previously planned.

Recruitment, training, and retention of Canadian Forces personnel are central components of the Canada First Defence Strategy. In June, the Minister of National Defence told the Standing Committee on National Security and Defence that a renewed emphasis on recruitment has helped

the CF meet its latest yearly recruiting goal. We are well on our way to having 70,000 regular force and 30,000 reservists' personnel.

In addition, the Canadian Forces have enrolled over 6,500 new recruits annually for the last three years. In fact, our Regular Force grew by 2,200 personnel last fiscal year, the best net increase we've seen over the past several years.

Moreover, occupations below preferred manning levels have been prioritized, including navy technicians, doctors, medical technicians and other health service occupations, to name a few. Building on this strategy, we expect to close the gap in our manning in most occupations by 2015 and anticipate declaring all of our military occupations to within five per cent of our establishment by this time.

While the CF have generally met or exceeded their recruitment goals, keeping trained, qualified personnel has proven to be a challenge. To counter this, the CF is working to ensure that new recruits experience a smoother transition into the Canadian Forces. All members will benefit from more flexibility with respect to career options, better career management support and a renewed commitment to military families. The CF has also taken action to reduce the number of voluntary releases during the early stages of a military career. For instance, recruits are now provided with more information at the outset of their career so that they have more realistic early-career expectations.

It is important to manage this growth effectively and in a balanced way, which is why predictable funding and the 20-year planning window outlined in the *Canada First* Defence Strategy are so valuable.

Over the last several years, the Canadian Forces have shown that they are capable of generating a significant and simultaneous deployment of troops across a diverse spectrum of operations. We have benefited from increased funding over the last several years, excellent training and equipment, and above all else, the dedication and resolve of our soldiers, sailors and air personnel.

OPERATIONAL CAPABILITY OF ARMED FORCES

(Response to question raised by Hon. Roméo Antonius Dallaire on October 6, 2010)

There are no plans to reduce the operational capability of the Canadian Forces. The Canadian Forces will continue to be able to deliver excellence in Canada, be a strong and reliable partner in continental defence and project leadership abroad through meaningful contributions to international security.

Similarly, there have been no policy decisions to reduce the operational effectiveness of the naval, army or air force reserves. Our reservists are a vital part of the Canadian Forces, and the Government of Canada is committed to ensuring they have the resources and personnel they need to undertake their missions. Training for reservists continues to prepare and maintain reservists' combat readiness to ensure mission success and the safe return of our reservist soldiers, sailors, airmen and airwomen. Recently, this has been especially the case for Canadian Forces reservists deployed to Afghanistan.

While it is true that Budget 2010 will reduce the budget of National Defence by $525 million in fiscal year 2012-2013 and by $1 billion in 2013-2014 and ongoing, in reality National Defence's budget has grown significantly since 2005 and will continue to grow (albeit more slowly) over the next 20 years as part of the government's *Canada First* Defence Strategy commitment.

Furthermore, as part of the annual business planning and quarterly review processes at all levels, the department regularly examines the resource requirements within the defence program and will internally reallocate resources to areas of higher priority as needed.

The government is committed to implementing the *Canada First* Defence Strategy, which will ensure the Canadian Forces have the people, equipment, infrastructure and expertise required to defend Canada and Canadian interests now and well into the future. To achieve this, our strategy sets out a predictable, long-term funding framework and vision for the Canadian Forces.

VETERANS AFFAIRS

VETERANS INDEPENDENCE PROGRAM

(Response to question raised by Hon. Catherine S. Callbeck on October 7, 2010)

The Veterans Independence Program was established in 1981 by Veterans Affairs Canada. The intent of the program is to assist veterans to remain healthy and independent in their own homes and communities as long as possible by providing a range of services.

Eligibility for the Veterans Independence Program has evolved over the years to meet the needs of veterans, their primary care-givers and other eligible clients. In February 2005 amendments were made to allow Veterans Independence Program housekeeping and/or grounds maintenance services to be continued for a lifetime to a greater number of qualified primary caregivers. This change was intended to address the needs of primary caregivers who benefited from, came to rely upon, and have a continuing health need for the Veterans Independence Program housekeeping and/or grounds maintenance services. In general, it allowed a primary caregiver to continue receiving housekeeping and/or grounds maintenance services after the Veteran died or moved to a long-term care facility, provided the caregiver had a health need for the services.

The most recent change to Veterans Independence Program eligibility occurred in 2008. At that time, eligibility was expanded to include low-income or disabled survivors of certain war service Veterans who were not receiving Veterans Independence Program housekeeping and/or grounds maintenance benefits when the veteran passed away. This was the first time these benefits were made available to survivors of veterans who had not been receiving the benefits prior to the death of the veteran.

This expansion addresses the situation where the traditional war veteran received a disability pension or the War Veterans Allowance but was not receiving Veterans Independence Program housekeeping and/or grounds maintenance benefits at the time of death or admission to a health care facility. As a result, the survivor never had the opportunity to access Veterans Independence Program housekeeping and grounds maintenance services. With this expansion, those most in need — low-income or disabled survivors — may have the help they need to remain in their homes. It also honours the commitment of the survivors to our veterans, recognizing their years of support which enabled our veterans to remain independent in their homes as long as possible.

Veterans Affairs Canada encourages veterans to apply for Veterans Independence Program services when a health need arises to ensure that those in need can receive Veterans Independence Program services while they are still able to, and before they are admitted to a long-term care facility.

Veterans Affairs Canada continues to look at ways to improve programs and services. This will ensure veterans and their care-givers who have the greatest need for Veterans Independence Program services will have the help they need to remain independent in their homes and communities.

Approximately 108,000 clients of all ages benefit from Veterans Independence Program services.

TRANSPORT

HARMONIZED SALES TAX—CANADA POST

(Response to question raised by Hon. Tommy Banks on October 28, 2010)

According to the *Excise Tax Act (GST/HST legislation)*, postal services involving a bill of lading are subject to GST or HST based on the destination address. Canada Post considers commercial parcels, Xpresspost and Priority Courier to be postal services made pursuant to a bill of lading.

Therefore, if a Canada Post customer uses one of the services to send an item to the HST zone (Newfoundland, Nova Scotia, New Brunswick, Ontario and British Columbia), HST would apply to the postage. Likewise, if a customer from the HST zone uses one of these services to send an item outside the HST zone, only GST would apply. Consumer parcels and letter mail are taxed based on province of origin.

All transportation companies, couriers and Canada Post competitors, are required to collect GST or HST based on the destination address.

[*English*]

ORDERS OF THE DAY

OLD AGE SECURITY ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Seidman, seconded by the Honourable Senator Stewart Olsen, for the second reading of Bill C-31, An Act to amend the Old Age Security Act.

Hon. Catherine S. Callbeck: Honourable senators, I am pleased to rise today to speak on Bill C-31, which will prevent incarcerated persons from receiving any benefits under the OASA. I thank Senator Seidman for her excellent outline last Thursday on this legislation.

• (1600)

As many honourable senators are aware, this legislation was introduced in response to reports that serial child murderer, Clifford Olson, was receiving approximately $1,100 per month in OAS and GIS benefits. There is no question that such a thing is appalling; it is an insult to many seniors and to all Canadians across the country who are struggling to make ends meet.

I firmly support the principle of withholding OAS benefits for people who are incarcerated. Under this legislation, OAS benefits will not be paid to any person incarcerated in a federal, provincial or territorial institution if the sentence of imprisonment is more than 90 days. However, information-sharing agreements must be signed with the provinces before this can take effect.

There are four types of benefits that can be paid under the Old Age Security Act. The first is the Old Age Security Pension, which is a monthly payment available to Canadians 65 years of age or older. There is also the Guaranteed Income Supplement, which is additional money meant for low-income seniors living in Canada. To be eligible, a senior must be receiving an OAS Pension and meet the income requirements.

The third type is the Allowance, an income-tested benefit for low-income seniors who are between the age of 60 and 64 years old and whose spouses or common-law partners are OAS and GIS recipients. Finally, there is the Allowance for the Survivor Program, which is an income-tested benefit for low-income seniors between the age of 60 and 64 whose spouse or common-law partner has died.

While incarcerated, an individual will not be eligible for any of those benefits. That person must notify the minister in writing of a release in order to resume their benefits, which will begin during the month of their release.

The original legislation stated that the senior could not write to the minister until after he or she were released; however, the other place has amended the legislation so that the notification can be made before release.

This bill is expected to affect approximately 400 federal inmates and some 600 more in provincial or territorial facilities. As I said, information-sharing agreements need to be signed with the provinces and territories in order to implement this legislation. Unless the provinces and territories identify their inmates, there is no way for the federal government to know who is incarcerated at the provincial and territorial correctional facilities.

Honourable senators, OAS benefits are supposed to assist seniors cover the costs of living, which are things like housing, food and clothing. When a person is incarcerated, that person receives for free these necessities of life from the correctional facility. It is reasonable that if the government is already providing housing and food for inmates, there is no need for it to also provide monthly OAS benefits that are meant to cover these living costs. Suspending these OAS benefits also means the federal government will be saving millions of dollars while not paying out these benefits.

A concern has been expressed that these changes may cause undue hardship for the low-income spouses of those incarcerated. The government has attempted to address this concern. A spouse over the age of 65 will still receive his or her OAS Pension and Guaranteed Income Supplement benefit. However, the GIS amount will be calculated as if the person were single, because a maximum amount for a single person is more than for a couple: $658.40 compared to $434.78.

A spouse who is 60 to 64 years old will still receive their Allowance. Generally, the Allowance will be paid only if common-law partners have applied for it. This legislation provides that the spouse or common-law partner of an incarcerated person may present an application individually in order to receive the Allowance. The application will then be considered as if the applicant were presented jointly by the couple. However, the Allowance amount would be based on the individual's income, not the couple's income. The Allowance amount will go up because it is income tested.

It has also been suggested by others that by denying a particular group of Old Age Security benefits, the legislation discriminates against Canadians who are incarcerated. I know Senator Seidman has already mentioned various provinces that do not pay social assistance to incarcerated people and some countries that do not pay pensions. I am sure the committee will want to examine this issue in more detail.

In the end, honourable senators, I support sending this legislation to committee for further debate and more comprehensive examination.

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

Some Hon. Senators: Question!

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

(Motion agreed to and bill read a second time.)

[Senator Callbeck]

REFERRED TO COMMITTEE

The Hon. the Speaker: When will this bill be read a third time?

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

FIGHTING INTERNET AND WIRELESS SPAM BILL

SECOND READING—DEBATE ADJOURNED

Hon. Donald H. Oliver moved second reading of Bill C-28, An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act.

He said: Honourable senators, I am pleased today to begin second reading of Bill C-28, Canada's proposed anti-spam legislation. A year ago, I spoke about its predecessor, Bill C-27, in the last session of Parliament. Honourable senators will also recall that I have spoken at length about the matters contained in this bill when I introduced my own private members' bills to counter spam. I take great satisfaction in seeing this bill come before us again and I have every hope that this time we will legislate a strong regulatory system that will tell spammers they have nowhere to hide in Canada.

Honourable senators, measures to counter spam and related online threats have become even more urgent. In 2003-04, when my bills were before this chamber, I reminded honourable senators how spam costs businesses billions of dollars a year in lost productivity and other costs, and how it exposes families and children to pornography and fraudulent content, including phishing emails that trick users into providing private information. These online threats undermine the trust that businesses and consumers have in the digital world, and they diminish the great promise of the Internet for individuals, businesses, governments and society at large.

As honourable senators know, the Internet has become the central nervous system for the digital economy. It provides a common global platform for communication and commerce. Its use by business and consumers has led to the emergence of a borderless international marketplace.

Since 2000, online sales for Canadian companies have increased nearly tenfold. Ten years ago, online sales in our country were less than $7.2 billion; in 2007, they reached almost $63 billion.

Businesses and consumers have grown to depend on the Internet; they count on it to be safe and reliable. Online security threats can erode the degree of trust and confidence in the Internet as a safe and reliable environment for electronic commerce.

• (1610)

Threats to the online economy include more than just spam. They include spyware, malware, computer viruses, phishing, viral attachments, false or misleading emails, the use of fraudulent websites and the harvesting of electronic addresses.

The bill before us contains important provisions that will protect Canadian businesses and consumers from the most harmful and misleading form of online threats. It improves the privacy and economic security of Canadians in the electronic environment. It offers a host of clear rules that all Canadians will benefit from. It will promote confidence in online communication and electronic commerce.

The bill before us stakes out new ground in Canada. Currently, Canada is the only G8 country and one of only three OECD countries without legislation dealing with spam. This bill will rectify that situation.

In developing the bill, the Government of Canada has been able to incorporate the best practices of other countries that have launched similar efforts. In my private member's bills, I knew how effective the private right of action had been in combating spam in the United States, so I recommended that to the government. Under the bill before us, businesses will be able to sue spammers who use their brand to lure unsuspecting customers to divulge private information online as a result of unsolicited emails. The bill enables class action suits by individuals who have been spammed or whose computers have been subject to spyware or botnets.

When I spoke last year, I commented that spam had become even more malicious with the advent of malware that enabled bad actors to take control over computers and use them to spread further spam. Honourable senators, in the year that has passed since then, the situation has become even worse.

Some of my colleagues may have noted a recent series in *The Globe and Mail*, entitled "Canada: Our Time to Lead." One of the stories proposed that Canada take a leadership role in Internet security. It related the story of how a new generation of spam is targeting social media such as Facebook. Even more disturbing is the increased prevalence of even more powerful botnets. These vast networks of computers are infected with malware that can be controlled in unison for a wide variety of purposes.

Clearly, the situation is evolving quickly.

I have been deeply involved in drafting, speaking about and studying anti-spam legislation now for more than eight years. My first private member's bill was Bill S-23, which received first reading on September 17, 2003, in the Second Session of the Thirty-seventh Parliament. My second bill, Bill S-2, received first reading in February 3, 2004; and my third bill, Bill S-15, received first reading on October 20, 2004, in the First Session of the Thirty-eighth Parliament. Five years ago, Senator Goldstein also introduced a private member's bill, based upon a lot of the work I had done in my previous bills.

Honourable senators, safeguards were proposed in the government bill, Bill C-27, and here again in Bill C-28 before us. With each iteration, this bill gets stronger.

Before either Bill C-27 or Bill C-28, I proposed to the government that we must have an independent regime, a stand-alone bill that would include a private right of action. Bill C-28 includes a private right of action, and the authorities of the CRTC, the Competition Bureau and the Office of the Privacy Commissioner, which can all be used against spammers. The CRTC and the Competition Bureau have been given powers to impose stiff administrative monetary penalties, which I am happy to see.

The bill last year, as with the bill before us, was based largely on the recommendations of the Task Force on Spam and wide consultations by Industry Canada. Honourable senators, I had the honour to appear before and make recommendations to the task force. I strenuously argued that we needed to have a stand-alone, independent anti-spam bill, which we now have.

The task force also benefited from the best practices of other countries, including Australia, where similar measures were effective in curtailing spam in that country, and in the United States, where the right of private action has been very effective.

For example, I would remind honourable senators that a California court, enforcing the United States' anti-spam law, ordered a Montreal-based Internet marketer to pay Facebook more than $1 billion in penalties for posting spam messages on the social networking site. The judgment was recently upheld by the Quebec Superior Court.

Honourable senators, we spoke at length about the merits of the former Bill C-27 last year and we sent that bill to committee for review. Unfortunately, it died on the order paper by year-end. Now, Bill C-28 has come before us with those earlier provisions essentially intact, but it has been fine-tuned in the meantime. The bill before us is better because it introduces two important changes from Bill C-27 that further strengthen the bill.

The first deals with what is called the "order of precedence" between this bill and the Personal Information Protection and Electronic Documents Act, known as PIPEDA. As honourable senators may recall, PIPEDA contains a primacy clause that ensures its provisions take precedence over subsequently enacted bills when dealing with personal information and consent. The purpose was to ensure that PIPEDA was not undermined inadvertently by legislation with weaker provisions.

The interesting thing, however, is that the privacy provisions in Bill C-28 are stronger than those in PIPEDA; stronger when it comes to consent when dealing with personal information respecting email addresses and stronger when dealing with consent to receive commercial messages. Clause 3 of the bill before us today clarifies that, in the event of a conflict with PIPEDA, this bill would take precedence.

The second change is a result of the debates that were held on its predecessor bill a year ago. Honourable senators may recall that the former Bill C-27 prohibited the electronic collection and use of personal information from computer systems "without authorization."

A number of parties, lobbyists and interest groups expressed concern with the breadth of that wording and pointed out that it could perhaps prohibit the ordinary and otherwise lawful use of information that is publicly available on the Internet. The government spent many hours looking at that problem and it has responded positively to those legitimate concerns.

Rather than prohibit the use of personal information collected "without authorization," the bill before us limits the prohibition to the collecting of information "in contravention of an act of Parliament." Those new seven words were chosen to overcome that previous problem. This language better reflects the intent of the bill and protects all those who legitimately collect information that is available to the public.

This change will safeguard personal information in the computers of individuals and businesses, while permitting the ordinary and routine use of publicly available information on the Internet. Honourable senators, the changes in Bill C-28 make a good bill even better.

Canadians have been waiting a long time for this type of anti-spam legislation.

I have reminded this chamber on previous occasions that Canada has been one of the very few industrialized countries without a regulatory regime to control spam. As the series of articles in *The Globe and Mail* urged, Canada has an opportunity to take the lead in many of the security implications of the Internet.

We are an advanced nation, with a high degree of respect in the international community. We have been at the forefront of the Internet and its applications. However, in the area of legislation governing spam, we have earned a reputation as one of the few countries without laws in place.

Honourable senators, the time has come for us to leave that reputation behind and move to a leadership position with the passage of this bill. I therefore urge all honourable senators to join me in supporting this significant piece of legislation.

(On motion of Senator Tardif, debate adjourned.)

• (1620)

SENATORIAL SELECTION BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Brown, seconded by the Honourable Senator Runciman, for the second reading of Bill S-8, An Act respecting the selection of senators.

Hon. David Tkachuk: Honourable senators, it is my pleasure to speak today to Bill S-8, the senatorial selection bill.

I want to respond to the comments of Senator Joyal who, in his remarks on October 20, questioned the constitutionality of this bill. I also want to say a few words about Senator Mitchell's contribution to this debate, as he represents a province which already has a senatorial selection process in place.

I always appreciate Senator Joyal's comments, and this time was no different. However, his statements on the senatorial selection bill, while enjoyable, were wrong.

I would like to address each of his primary criticisms, beginning with the idea that Bill S-8 would change the method of selecting senators.

Let me be clear: This bill would not change the method by which senators are appointed. It does not bind the Prime Minister in making recommendations to the Governor General. It does not affect the power of the Governor General when making appointments to the Senate. It would require the Prime Minister to consider the names of any nominees put forward by a province, provided that these names were the result of a democratic consultation process with the citizens of that province, as it is presently done in the province of Alberta.

I have not seen or heard anyone question the constitutionality of the Alberta process, which has been used by Prime Minister Mulroney in the case of Stan Waters, and by Prime Minister Harper in the case of Bert Brown. This bill would not require the Prime Minister to recommend those names for appointment, nor would it require the Governor General to summon these individuals to the Senate. It states only that the Prime Minister must consider the names.

In short, the bill does not in any way change the method of selection for senators, and therefore does not require a constitutional amendment.

Honourable senators, our government has been clear about our desire for Senate reform since taking office in 2006. Specifically, we believe Canadians should have a say on who represents them in the Senate. To facilitate and promote reform, the Prime Minister has invited the provinces to develop and implement their own democratic process for the selection of Senate nominees. The senatorial selection act would codify this approach.

Senator Joyal's second point, that Bill S-8 somehow delegates power to the provinces, is false. It does no such thing. Nothing in Bill S-8 changes the powers of the Governor General or of the provinces. The sole power to summon individuals to the Senate remains firmly in place with the Governor General.

Not only is there no delegation of powers to the provinces, but the bill does not even require that the provinces establish a consultation process. We are simply encouraging the provinces to develop legislation, not forcing them to do so.

The framework contained in the schedule of the bill is voluntary. It is provided for the provinces and territories to use as a basis for implementing the process to consult voters on Senate appointments. In our view, the most important aspect of any selection process is that it provides citizens with the opportunity to have input on their Senate representatives. Whether or not a particular province provides its citizens with that opportunity is a decision of that province alone.

Finally, I come to the third objection, that the legislature of a province has no jurisdiction to enact legislation with respect to the Senate. Again, the premise of the bill has been misinterpreted. Provinces will not be legislating with respect to the Senate because the bill does not empower provinces to legislate with

respect to the Senate. Any provincial process would only be consultative in nature and not legally binding. Thus, this bill does not violate the Constitution.

In many ways, these consultation processes would resemble referendums or plebiscites. Most provinces already have legislation that enables them to seek the views of citizens through a referendum on any matter of public interest or of concern.

Indeed, back in 2002, the Supreme Court of British Columbia ruled that it is open to the provincial government to elicit public opinion and that whether the government ought to have held a referendum is a political matter for which it is accountable to the electorate.

Honourable senators, the court has already stated that a province is well within its right to consult its citizens to determine their views on important public matters. The senatorial selection act encourages provinces to do exactly that. Any provincial process would be a nonbinding mechanism that would seek the views of its residents. Provincial governments would be accountable to the electorate on whether or not they chose to have a selection process. Similarly, the Government of Canada would continue to be accountable for its appointments to the Senate, just as Prime Minister Harper was accountable when he chose to accept the wishes of the people of Alberta and appoint Senator Bert Brown. At the end of day, these are political matters for governments.

Let me address what I suspect to be the real reason the Liberals are focusing on the Constitution. They are opposed to citizens having a say in who is their senator, even though a recent Angus Reid poll found that 70 per cent of Canadians would like to see direct Senate elections. The Liberals have had five years to develop their own ideas, yet the best they can offer up are 15-year terms and constitutional reform — a 15-year term, honourable senators. One election per generation: That is the Liberal approach to democracy.

A senator now coming to the end of her or his 15-year term would have been elected in 1995, a couple of years after Al Gore "invented" the Internet and around the time that Jean Chrétien was discussing public policy with street people. Bill Clinton had just welcomed a young intern named Monica Lewinsky to the White House and O.J. Simpson's lawyer was telling an L.A. courtroom, "If a glove doesn't fit, you must acquit."

Honourable senators, this past January their leader in the other place said he would like to see senators selected by a panel. Mr. Ignatieff and his Harvard friends — they would all be visiting of course — would be sitting around discussing who should be the next senator from Saskatchewan, or the next senator from Manitoba or Nova Scotia. Anything but the electorate.

This is not democracy, and it is time the Liberals were clear with Canadians on where they stand on Senate elections. What I suspect is that they would say something to the effect of, "We support Senate elections as long as they never take place."

Senator Mitchell may very well have demonstrated this when he attacked the government's approach during his November 2 remarks. Perhaps he felt a bit of déjà vu as he rose to speak on Bill S-8, a flashback to his days in the Alberta legislature when he spoke for Senate elections, but against the similarly named Senatorial Selection Amendment Act. Speaking of what was known as Bill 40, he told the legislature on April 29, 1998:

> I've never met a Senator who deep in their heart didn't want to be elected, because they know there is something slightly missing.

We have noticed. Of course, having spoken out on the need to elect senators, Senator Mitchell then proceeded to vote against the bill.

This was around the time that Senator Mitchell had just handed over the Alberta leadership to a successor and thus was open to new challenges, so he made it abundantly clear that his reasons for opposing Bill 40 did not include a future Senate appointment, stating:

> I know that the Treasurer wants to speak. . .

The treasurer at the time was the Honourable Stockwell Day.

> . . . and I bet I know what he's going to say. He's going to say that Grant Mitchell, the Member for Edmonton-McClung, is concerned about this because he would be in the running for a senatorial position perhaps. I'm not.
>
> I'm not interested. I have no interest in going to Ottawa, period, and I want to lay to rest before the member from the Treasury Department. . .

— who was Stockwell Day —

> . . . gets up and starts to try to promote that little myth.

• (1630)

> It's interesting that patronage would immediately come to a Conservative's mind, because it really hasn't crossed mine. Not interested.

Well, how about that, fellow senators?

He even claimed that Senate elections were actually a Liberal idea, telling the legislature, on April 27, 1998:

> For any of those members who would suggest that we're not in favour of Senatorial elections, we absolutely are. In fact, it was Nick Taylor, the previous leader, who actually proposed the motion to elect a Senator, who eventually became Senator Stan Waters.

Indeed, a few months prior, he had demanded that the vacancy created by the death of Senator Walter Twinn be filled by an elected senator.

The *Edmonton Journal*, on November 7, 1997, told readers:

> Alberta politicians ranging from Manning to Klein and Liberal Leader Grant Mitchell have demanded a repeat performance of the 1989 election that resulted in the 1990 Senate installation of victor Stan Waters.

I am sure that when the call finally came in 2005, Senator Mitchell said, "Thank you, Prime Minister, but the people of Alberta have spoken, and they want Bert Brown as their senator."

To summarize, Senator Mitchell thinks that unelected senators are missing something. He claims that Senate elections were originally a Liberal idea. He demanded that an Alberta vacancy be filled by an elected senator and then turned around and accepted an appointment, even though elected senators were waiting in the wings. Honourable senators, Senator Mitchell is not willing to support this bill.

Honourable senators, we are seeing the same kind of story. The Liberals pay lip service to the idea of Senate reform, but they will do whatever it takes to obstruct progress, and the flavour of the day is the Constitution.

As I have already outlined, from a legal and constitutional perspective, the senatorial selection act is sound. It does not alter the Constitution, nor would it bind the Prime Minister or the Governor General in appointing senators. Senators would continue to be summoned to the Senate by the Governor General on the advice of the Prime Minister pursuant to the Constitution.

Although this bill may not be a radical change, it is an important change that illustrates our government's determination to enhance the legitimacy of our democratic institution. It indicates that this Prime Minister is willing to listen to the provinces and the people of Canada regarding Senate appointments. Our government continues to believe that this chamber needs to be reformed for it to be considered a modern democratic institution.

Honourable senators, four years ago, in its first report, the Special Senate Committee on Senate Reform told the Senate — and the Liberals controlled the committee back then — that the issues the committee proposed to address included "development of a model for a modern, elected Senate." Liberal members of that committee included Senator Austin, Senator Chaput, Senator Dawson, Senator Hubley, Senator Munson and Senator Watt, four of whom are still serving.

We now have a perfect opportunity for a committee of the Senate to look at the creation of a modern, elected Senate. Let us give Canadians a say on who represents them in this institution.

(On motion of Senator Tardif, debate adjourned.)

[*Translation*]

PRIVACY COMMISSIONER

MOTION TO APPROVE APPOINTMENT ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of November 24, 2010, moved:

> That, in accordance with subsection 53(1) of the Privacy Act, Chapter P-21, R.S.C. 1985, the Senate approve the appointment of Ms. Jennifer Stoddart as Privacy Commissioner.

(Motion agreed to.)

[*English*]

SUPREME COURT ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Tardif, seconded by the Honourable Senator Rivest, for the second reading of Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages).

Hon. Michael L. MacDonald: Honourable senators, before I begin, I would like it understood that my speech today will in no way interfere with Senator Meighen's holding of the adjournment, and, when I conclude my remarks, I would ask that the debate be adjourned in the name of Senator Meighen for the balance of his time.

I rise today in this chamber to speak to Bill C-232, an Act to amend the Supreme Court Act (understanding the official languages). Simply stated, this bill, if passed, would restrict membership on the Supreme Court to that very small percentage of Canadians who would prove fluency in both official languages. Bill C-232 is also a rare private member's bill that has come to us from the other place, and, since few such bills even make it this far through the legislative process, I think we owe it a particular duty of examination.

An Hon. Senator: Oh, oh!

Senator MacDonald: I will not deal at length with the political conduct of the opposition in the other place regarding this bill except to point out that the Leader of the Opposition, Mr. Ignatieff, whipped his caucus to support a private member's bill from the fourth party in the House of Commons. Private members' bills are supposed to be free votes. I will leave it to honourable senators to come to their own conclusion of what motivates Mr. Ignatieff and why he was so anxious to hold hands with the Bloc on this issue.

I also want to state that I take no great pleasure in speaking to this bill. Legislation dealing with the issue of language is a sensitive matter in most countries, and Canada is certainly no exception. Canada has been an officially bilingual country since 1969. I support official bilingualism, and I firmly believe it makes us a more inclusive democracy. Yet, support for official bilingualism does not exempt any parliament from using good judgment, fairness and common sense when applying this policy or, indeed, any other government policy. I appreciate the need to be vigilant regarding the application of government policy, and I respect those working to ensure that the fundamental elements of official bilingualism are upheld and updated when necessary.

However, Canada is politically a federation, not a unitary state, and Canada is geographically the second-largest country in the world, containing significant regional and demographic

differences across its length and breadth. We must be mindful of these realities as well and insist that they be observed, accommodated and reflected in the policies and the practices of the federal government.

Although I appreciate the importance of language to people individually and collectively, I confess I find the politics of language to be a dreary and divisive subject, and one which I much prefer to avoid. However, it is impossible to stay silent on a proposal that could only serve to marginalize the overwhelming majority of those in the legal community, both in my home province and across this country. This unfairness is particularly acute in regard to Ontario and the West, both of which are already severely under-represented on the Supreme Court relative to the size of their populations.

• (1640)

Since this legislation arrived here in the spring, I have received many representations from a variety of sources, expressing deep reservations about the negative impact of Bill C-232. I have also had the opportunity to listen to many people in the Nova Scotia legal community, and they are greatly concerned; indeed, they are disillusioned by the restrictive nature of this legislation. They shake their heads at the mindset of some politicians in the Ottawa bubble. I am obligated to speak out for them, just as I am obliged to defend in this chamber the best interests of Nova Scotia. If ever there was a circumstance illustrating the importance of the Senate's duty to provide sober second thought, surely it is Bill C-232. With that in mind, I would like to review the arguments put forth by those who would impose this proposed legislation on our Supreme Court. Let us put their reasoning under the light and determine if they have made a convincing case for their position.

The proponents of Bill C-232 claim that it is essential that our Supreme Court justices be bilingual so that a citizen will not suffer an injustice, because he would not be understood, because the defence would not be understood, and because the judge would not understand the nuances of the defence. This is specious reasoning at best and thoroughly unconvincing. Those that promote this argument cannot point to one concrete example of a Supreme Court judgment being rendered under such circumstances.

Simultaneous translation and interpretation has been an accepted practice in legislatures, courts and institutions throughout the world for many years. The people providing these services are specialists and highly skilled in their profession. Those working at the Supreme Court of Canada are highly trained in nuance and terminology, and are familiar with the use and meaning of legal language. It is what they do for a living. To suggest that their work is deficient stretches the imagination. The advocates of Bill C-232 re-assure us that the judges would have only to be functionally bilingual and that the bar would not be set too high. It is hard to believe that a functionally bilingual judge would exhibit comprehension skills superior to those of any fluently bilingual interpreter. The idea that a case could be lost because of nuance in language being overlooked is truly a dog that will not hunt.

Why confine concerns about nuance of language to solely our official languages? What about the 6 million Canadians who speak neither of the official languages as their first language? What about Aboriginal Canadians and the millions of immigrants who have made Canada their home? What allowances are made for the nuances of language in their situation and that of their children? Why are they less deserving of similar accommodation? Those who would support this legislation are silent on this issue.

Many would argue that the Supreme Court has definite shortcomings, but bilingualism is certainly not one of them. Our national institutions are thoroughly bilingual, and they work. The Supreme Court, along with the House of Commons and the Senate, is one of the three great institutions of Canada that embodies the federal state. When Canada became officially bilingual in 1969, the federal government endeavoured to make these three bodies fully bilingual in their function.

If the Senate is any example, I think the federal government has done a pretty good job. One has to spend only a few days working in the Senate to appreciate how well it functions in both official languages. I am always impressed by the fluency of the people I meet here. The bilingual efficiency of those who transcribe our proceedings is incredible, and the professionalism of the table and other officers is exemplary. I especially admire the effortless bilingualism of our pages, who are so patient and courteous, so indispensible to the running of this chamber, and so attentive to the needs and the demands of senators. We all operate comfortably in a functional and officially bilingual environment.

This environment is fully replicated in both the House of Commons and the Supreme Court of Canada. The purpose of establishing this type of workplace is quite straightforward and requires no interpretation — these institutions are to be fully bilingual in order to ensure that those who serve there have not only the freedom but also the right to work in the official language of their choice. If you are elected to the House of Commons, summoned to the Senate or appointed to the Supreme Court, you need to understand one of the official languages to function, but you do not require both to do your job. That is an undeniable fact. That is an incontestable truth.

Who in this country would dare to suggest that only the officially bilingual could run for election to the House of Commons, let alone attempt to pass a law enforcing such a measure? There is no federal institution as diverse and as representative of modern Canada as this Senate in which we serve. Just think of how unrepresentative of our country this Senate would become and how different and less diverse its composition would be if the narrow provisions of Bill C-232 were applied to this institution. Mr. Ignatieff thinks nothing of imposing these same measures on the Supreme Court and conspires to do so with his fellow travellers, the Bloc.

The proponents of this bill confine their arguments primarily to esoteric platitudes, but they studiously ignore the practical impact its enactment would have from coast to coast; and they refuse to acknowledge the extensive marginalization of Canadians that Bill C-232 would produce.

We must always be mindful of the relatively small size of the Supreme Court. Canada presently has a nine-member Supreme Court. By law, three positions are reserved for the province of Quebec. By convention, three of the remaining six seats are allocated to Ontario, two to the West, and one to Atlantic Canada.

These conventions are important as they allow for an application of balance and fairness in the absence of any legal requirement. Such compromises are essential to maintain political stability, and to minimize regional grievances in a large and diverse federation such as Canada. We have conventions and standard practices, and we apply them consistently because they are beneficial to the running of our country.

Atlantic Canada has but one member on the Supreme Court. Newfoundland, which joined Canada in 1949, has never had one of its own serve on the Supreme Court. However, Newfoundland is almost 98 per cent unilingual, the most unilingual province in Canada. Just as 19th century merchants displayed signs saying 'no Irish need apply,' this bill would hammer a 21st century notice over the door of the Supreme Court of Canada declaring, 'no Newfoundlanders need apply.'

As a Nova Scotian, I know Newfoundlanders as well as any mainlander, and as a Cape Bretoner, I am their neighbour. I have met many members of the Newfoundland bar over the years, and I am never surprised when they prove to be among the smartest and most thoughtful of people. Newfoundlanders will not support and should not accept being barred from serving on the highest court in the land due to the circumstances of their birth. I am more than prepared to stand with Newfoundlanders, even if some in the coalition are prepared to push them aside.

Let us go across the country. Quebec is the second most populated province with about 7.5 million people. About 6.5 million are francophone and 4 million of them are unilingual. By any yardstick, 4 million people constitute a critical mass of people. They form the heart of a community in Canada that stretches back to the 17th century. Now, we are to tell these old-stock Canadians that they do not merit consideration for the Supreme Court because they are unilingual. Are we really to believe that such a large and dynamic community of people in the centre of our country is not capable of producing one legal mind worthy of elevation to the Supreme Court?

Unilingual francophones from Quebec are no less Canadian than anybody else in this country, and they have the right to fully participate in our national institutions. Fortunately, in today's Canada, under the practices already established in the House of Commons, the Senate and the Supreme Court, they can do exactly that; and they are free to and have the right to participate in the official language of their choice.

We need also to consider how much Canada's population has grown since 1949, when the Supreme Court was enlarged from seven to nine members. In the past 60 years Canada's population has almost tripled in size, resulting in the Supreme Court being increasingly unrepresentative of the regions of the country. While Quebec and Atlantic Canada have one Supreme Court judge for every 2.5 and 2.3 million people, respectively, Ontario finds itself with one judge for every 4.4 million people. The imbalance is most pronounced in the West, which finds itself with one judge for every 5.1 million people.

• (1650)

About 93 per cent of Western Canadians are either unilingual or bilingual in non-official languages. Western Canada is the fastest growing area of our country, and they are already grossly under-represented on the Supreme Court. To deliberately marginalize the West even further by the imposition of such restrictive criteria is irresponsible and unacceptable.

We must also remind ourselves not just how much Canada's population has grown but how it is growing. Honourable senators, I am disappointed to say that if we were to look at a photo of the Supreme Court today, it looks pretty much as it would in the 19th century, other than the inclusion of women. As far as I can determine, there has never been a visible minority or Aboriginal Canadian on the Supreme Court. Although Canada promotes itself as being one of the most multicultural countries in the world, there is no evidence of this to date reflected in the composition of the Supreme Court.

Most immigrants to Canada today are visible minorities, and many speak to their children at home in a language that is neither of our official languages. In effect, Bill C-232 mandates that we hold our immigrants, Aboriginal Canadians and their children to an even higher standard than other Canadians; not only must they learn one of Canada's official languages, they must learn two. They must be trilingual.

This bill pushes visible minorities and Aboriginal Canadians to the margins.

The Hon. the Speaker: I regret to advise the honourable senator that his 15 minutes have expired.

Senator MacDonald: May I have five more minutes?

Hon. Senators: Agreed.

Senator MacDonald: This pushes visible minorities and Aboriginal Canadians to the margins and makes their chances of serving on the Supreme Court statistically very remote. This is unconscionable.

My honourable colleagues on the other side who spoke on this issue pointed out several times in debate that both the English and French versions of the statutes are equally authoritative. They are correct. Why is it so? I believe we do this because it does not matter what language we speak. When I rise to make a statement in this chamber or in committee, I know that my words will be interpreted and translated by eminently qualified people who understand the language of Parliament and who understand the importance of accuracy.

There are many countries in the democratic world that are officially bilingual or even multilingual. I took the time to review the composition of many of their supreme courts, and in almost all cases they operate with simultaneous translation with no requirements for the judges to have bilingual or multilingual ability.

Belgium is an officially bilingual country; they speak primarily Flemish and French, and they have a small German-speaking population. Belgium is also surrounded by tens of millions of Dutch, French and German speakers, which provide Belgiums, like most Europeans, ample opportunity from birth to acquire more than one language.

The Belgian supreme court equivalent has 13 members, with six chosen from the native Flemish community, six from the Walloon community and one from the German-speaking population. Like Canada, although many judges are bilingual, they are not required to be officially bilingual. Unlike Canada, bilingualism is not considered an asset when appointments are made to the court, although Belgium, geographically, is a mere postage stamp of a country compared to Canada, which is 3,000 miles wide and spans a continent.

The problem, honourable senators, is that this bill speaks to one particular ideal of Canada, not of the modern Canada in which we live coast to coast. To demand that our Supreme Court justices know both of our official languages holds them to a standard that, frankly speaking, few Canadians can meet. It is not a standard we expect in our members in the other place and not one we demand of the members of this chamber.

The Senate of Canada endeavours not to defeat government legislation. All parliamentarians understand that the House of Commons provides the basis for responsible government in our country and the Senate is, by convention, restrained in its conduct when it comes to defeating government bills. However, it must be noted that it is not the elected Government of Canada which sponsored and passed this legislation in the other place. It was the coalition which dropped these questionable, undemocratic and elitist measures into our laps for consideration.

Some Hon. Senators: Oh, oh!

Senator MacDonald: Bill C-232 is divisive, exclusionary and above all completely unnecessary. This legislation does not deserve our support. I urge all honourable senators to do the reasonable and rational thing and reject this prime example of bad and poorly thought-out legislation.

[*Translation*]

Hon. Claudette Tardif (Deputy Leader of the Opposition): Would the Honourable Senator MacDonald take a question?

Senator MacDonald: Of course.

Senator Tardif: First, I would like to thank Senator MacDonald for speaking about this bill. However, I would like to make sure that he understands the intent of Bill C-232.

When we apply the principle of substantive equality of the official languages in the highest court in the country, we are talking about fairness before the law. French and English are treated equally. However, it is clear that one language takes precedence over the other in the Supreme Court of Canada, since most of the time interpreters are used when cases are heard in French.

How can we talk about substantive equality if French is not recognized in the same way as English in the Supreme Court of Canada? This looks like a double standard to me.

[*English*]

Senator MacDonald: I take issue with the claim that English and French do not have the same standing in the Supreme Court of Canada. I know that the Supreme Court is primarily an appeals court and that most of the evidence that goes before the Supreme Court is in written form and there is no oral presentation.

Senator Tardif: I would beg to differ. There is an oral presentation and, in that presentation, often the French lawyers need to have their voice heard through an interpreter whereas English-speaking lawyers do not.

Senator MacDonald: Again, I would like to correct Senator Tardif. I did not say there was never any oral presentation. I said it is primarily an appeals court, primarily with written representation.

Senator Fraser: And those documents are not translated.

Senator Tardif: And those documents are not translated.

[*Translation*]

The Hon. the Speaker: It is moved by the Honourable Senator Meighen, seconded by the Honourable Senator Rivard, that the debate stand until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: No.

The Hon. the Speaker: I will repeat the motion. It is moved by the Honourable Senator Meighen, seconded by the Honourable Senator Rivard, that the debate stand until the next sitting of the Senate. Is it your pleasure . . .

Senator Tardif: I would like a clarification.

The Hon. the Speaker: The motion before the Senate is the following: It is moved by the Honourable Senator Meighen, seconded by the Honourable Senator Rivard, that the debate stand until the next sitting of the Senate.

Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators who are opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

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

(Motion agreed to, on division.)

[*English*]

BANKRUPTCY AND INSOLVENCY ACT AND COMPANIES' CREDITORS ARRANGEMENT ACT

BILL TO AMEND—SIXTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE—DEBATE

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans, with a recommendation), presented in the Senate on November 25, 2010.

Hon. Céline Hervieux-Payette: Honourable senators, it gives me no pleasure to move the adoption of this report, but as the Deputy Chair of this committee, I have certain responsibilities.

• (1700)

Since my chair was not at the meeting last week, I move, with great sorrow, the adoption of the report to ensure that it is brought forward for debate in the Senate, where I hope it will be defeated.

The Hon. the Speaker: It is moved by the Honourable Senator Hervieux-Payette, seconded by the Honourable Senator Tkachuk, that this report be adopted.

On debate, Honourable Senator Hervieux-Payette.

[*Translation*]

Senator Hervieux-Payette: Honourable senators, I would like to explain how I feel about this report, which took us all by surprise at last Thursday's meeting. I would like to explain how, when it came time for clause-by-clause consideration of the bill, just as I was asking whether there was agreement to proceed with a clause-by-clause study of Bill S-216, the Conservative senators asked that we not proceed with the vote on the clause-by-clause study. There was a vote on this procedure and the Conservative senators simply ignored the clause-by-clause study of Bill S-216.

I would like to reiterate the comments I made to my colleagues, which were that since we have a British parliamentary system, voting for a clause-by-clause study allows senators to speak to each clause and to vote for or against each clause. There was nothing to prevent our colleagues from exercising their right to vote. We are lawmakers and our way of dealing with all issues is simply through bills.

The second phase of our meeting consisted of the tabling, by the same senator, of a report by God knows who, a report that I was obliged to table by virtue of my position and that did not at all reflect the evidence submitted by the witnesses. I would like to make some clarifications, because we had an outstanding witness by the name of James Pierlot.

[*English*]

He holds degrees in history from the University of Western Ontario, common law, Osgoode Hall, civil law, University of Montreal.

[*Translation*]

As well, Mr. Pierlot holds a Masters of Law in Taxation from Osgoode Hall. I would like to remind honourable senators what this witness said.

[*English*]

> Bill S-216 amounts to a modest incremental change to insolvency legislation that is consistent with other recent changes to insolvency legislation that provided limited creditor protection for pension plan contributions and unpaid wages.

For Mr. Pierlot, the effect of Bill S-216 on an employer's ability to raise capital is expected to be minimal because LTD claimants tend to be a small minority of an employer's total workforce and because the bill is not intended to affect secured creditor claims. Although the bill may require more employers to obtain periodic valuations of LTD liabilities for purposes of obtaining credit, this bill would not seem to be an unduly onerous task, given that valuations of LTD programs are fairly routine.

For Mr. Pierlot, it is a modest but important first step toward improving benefit security for Canada's most vulnerable workers, those who are unable to support themselves due to workplace injury, illness or disability.

[*Translation*]

These remarks reflect the opinions of most of the witnesses we heard and the credibility of that witness is worth a great deal. I would remind honourable senators that Nortel once amounted to 30 per cent of the TSX, that is, 30 per cent of the companies listed on the Toronto Stock Exchange. This shows the importance of a company that was a leader in technology in Canada, and one that disappointed us considerably. Shorty before Nortel declared bankruptcy, we learned that its senior executives had given themselves bonuses worth $8 million and we are still wondering what was going on with the board of directors of that corporation, which submitted incorrect financial statements three times.

I would remind honourable senators that Nortel executives in the United States were prosecuted and received prison sentences for fraud. The same corporation has caused much suffering to these employees with disabilities.

In Canada, in September 2010, an agreement was reached with Nortel's creditors. Needless to say, there was nothing in that agreement for the employees with disabilities. In the meantime, Bill S-216 was introduced in this chamber. We have learned that Nortel's creditors will share $6 billion, including $1 billion in Canada. It is estimated that, at this time, the amount of money needed to create a fund that would give some hope and dignity to the former Nortel employees with disabilities is about $80 million.

I will use the terms from the report tabled by our Conservative colleagues and point out certain paragraphs that just do not stand up to scrutiny.

First is the question of retroactivity. The last budget, Bill C-9 — which was passed in the Senate to our dismay — contained retroactive measures that went back several years. When it comes to retroactivity, the Conservatives do not seem to get bogged down in details if they are taking money out of taxpayers' pockets.

The second point in the report suggests that Canadian industry would suffer. I would remind the senators that of the 54 countries studied by the OECD, 34 protect workers with disabilities by giving them sufficient income, treatment, and necessary medication for their well-being and by not penalizing them and ensuring that funding is available.

The third paragraph in the report is about the impact on the financial sector, in terms of potential future borrowing. The analysts advising us said that there would be very little impact, about 0.002 per cent. I do not think that the Canadian economy will be weakened or that the markets will crash if we pay 0.002 per cent.

I would also like to point out that we are being told that, if Bill S-216 is passed, there is the possibility of a legal challenge. That cannot be serious. The $6 billion would remain frozen until the proceedings conclude and the creditors who are owed $6 billion would go after 550 disabled pensioners. Really, if the $6 billion were invested and earning interest, I do not understand why they would still go after people living in extremely deplorable financial and physical situations, and lose hundreds of millions of dollars in interest while the courts deal with this issue. I do not think that we are very realistic when we talk about this issue.

Regarding the legal challenges, those of us with legal knowledge believe that the creditors forgot to put some money aside in their settlement. I do not think that contributing $80 million of the $6 billion would really reduce the financial rating of Canada's businesses.

No senator worth their salt could support this report. In light of the evidence, it seems clear that Bill S-216 has to be passed in the face of the silence, inaction and vague policy of the government which has not proposed anything — as we saw today in Question Period — to give hope to these disabled workers. I wonder who will have the heart and the courage to face these people who will lose everything on December 31, knowing that on November 30, we still have not found a solution even though the issue was brought before the Senate in the spring.

Honourable senators, you will understand that it is impossible for me to support this, and I expect a response as soon as possible.

At the request of my colleagues, I have prepared a letter to the minister asking him what his solution is to this. I look forward eagerly to a solution, which should be imminent, because when people are sick and living in uncertainty, we know that this affects their health. Some colleagues from both sides of the chamber have been sick and they know full well that concern contributes to the problem, while security helps in recovery. I invite honourable senators to reject this report.

• (1710)

[*English*]

Hon. Art Eggleton: Honourable senators, this committee report is not an appropriate answer to people who are in very a desperate situation, and it is not supported by the expert evidence that was given at the Standing Senate Committee on Banking, Trade and Commerce.

I will ask all honourable senators not to support this report from the committee, as Senator Hervieux-Payette has also stated, and in fact to, allow us to then go back to Bill S-216 so that we can properly deal with the matter. I have an amendment to Bill S-216, and if we get to that stage, I will want to move for further clarification on the transition clause number 8.

I will deal first with the arguments that come up in the report. The first argument against Bill S-216 is the retroactivity. The retroactivity in this particular case is a very limited one because the proceedings are still before the court and are not completed. There has been one part of it that has been the result of a recommended settlement by the court on the basis of the law as it presently stands, which makes the long-term disability claimants unsecured creditors, right at the bottom of the barrel. However, if they are moved up into a preferred status, which is about a middle-rank status, not the highest by any means, then the court would take that into consideration. The transition clause in this bill it would require that they do that, and then could provide for the appropriate benefits to which these people are entitled and to which they have seen their health and welfare trust diminished to the point where it cannot presently provide for them, even though the company has the assets to do so.

It is a limited application of retroactivity, which is something that happens all the time around here. Bill C-39, Bill C-33 and Bill S-7 have all been adopted and each one includes one or more retroactivity clauses. We find retroactivity in terms of budget bills when they are ultimately adopted and taken back to an earlier stage when the provision was put into effect.

There is nothing unusual about retroactivity. You would have trouble if you were getting into criminal law in dealing with that, but this is hardly that kind of thing. This is dealing with commercial transactions involving bondholders and others and is simply saying that the employees deserve to be at a higher rank.

Honourable senators, this government has recognized that because it brought in the Wage Earner Protection Program Act in 2007, and it said there should be super-priority status. That is more than what my bill asks for. That is a higher ranking. Super-priority status is for wages outstanding when it comes to bankruptcy proceedings. The Leader of the Government in the Senate cited that the other day in one of her answers.

It is hard to understand why it seems fine in one instance and does not in another. It did not create all the havoc or problems in the markets in that case, as it has in so many other countries, yet somehow they think it will be here.

Mr. Pierlot, who has previously been mentioned, who is a legal expert in this area and deals with pensions and disability plans, et cetera, says that does not hold water at all in his comments. He

says it is quite acceptable and has adequate precedent to be able to do that. The next argument is that it could result in litigation. You could make an argument that almost anything could result in litigation.

Again, that same witness said that he did not see the cause for action and did not see a basis in law to be able to do that. He said that surely they are not going to sue the disabled employees. Will they sue the government? What basis would they have to do so? He says there is no basis. He went through the Constitution and other factors and said there was no basis in law to do it.

The other argument mentioned was the time factor, that the people who have most of the money perhaps are the secured creditors. They would not have a reason to do it. They are better off to start with than the preferred status that I am recommending. They are better off. Others, well, time is money and it would take a lot of time to go through these kinds of processes, presumably, and to what end.

Here we are talking about less than $100 million out of a company that, worldwide, has assets of $6 billion, and $1 billion of assets in Canada. We are talking about a very small amount of money by comparison, and it is not something that anybody would find in their interest to tie up in the court for a long period of time, namely their own possibility of getting funds out of the liquidation of the company, which is well on its way to happening.

Again, the expert advice that we had before our committee quite clearly indicated that there is not a basis, a case in law, for doing that.

Honourable senators, they go on to talk about conferring super-priority status on similar claims under the bankruptcy. Again, super-priority status does not, in the CCAA, pertain, and I am not asking for it under the Bankruptcy and Insolvency Act, but the government, under the Wage Earner Protection Program Act, did bring in something to that effect for outstanding wages.

The final argument they come up with is increasing risk for investors and financing costs for bond-issuing companies. Again, the evidence does not support that. The financial analyst who was before our committee cited numbers down to the one hundredth of 1 per cent level: miniscule, absolutely negligible.

A study done in Australia further supports that. This is a study done by a couple of economists there, Anderson and Davis. They examined the effect of employee entitlements on bond credit spreads in Australia. They used an analytical credit risk model. They actually added in more than just things like long-term disability. They added in other employee-type benefits, and again said it was a negligible, extremely small impact.

Those witnesses and those pieces of information that the committee had before it simply do not support this idea that it might hurt the markets.

There are so many countries that already do this. Thirty-four out of 54 countries surveyed by the OECD and the World Bank already have either super-priority status or preferred status: France, Germany, Belgium, the Czech Republic, Italy, Spain, Sweden, Switzerland, the U.K., Norway, Australia, New Zealand, Korea, Brazil, Israel. I could go on and on. Those countries already have the amendments to the bankruptcy protection for those people.

• (1720)

On top of that, we have all sorts of other provisions in countries such as the United States or the U.K. At least 12 countries, including Germany and the United Kingdom, require the payment of insurance premiums by their corporations to fund their public pension plan and disability income insurance programs. In the United States, LTD employees have disability protection for pensioners through the Pension Benefit Guaranty Corporation. Also, employees have legal recourse to go after LTD benefits after bankruptcy provided by their federal Employee Retirement Income Security Act legislation. There is no such avenue for Canadians. They also have a more generous social security disability program, which actually pays more than twice what the CPP disability pays for similar people in Canada. Every major trading partner, every country we deal with, has something more than what we have. Most of them have the kind of protection in bankruptcy proceedings that I am asking for in this bill.

Colleagues, the evidence quite clearly supports us not adopting this single-page report from the committee and instead reinstating Bill S-216. If we do not do that, we are letting Nortel off the hook. We are letting them walk away from their obligations. They managed to find money to pay seven executives $8 million in bonuses a year ago. They have assets of $6 billion, $1 billion of which is in Canada, and they are just going to download this obligation onto the taxpayers. There is not enough money in the health and welfare trust to deal with Nortel's responsibilities. They raided the fund. It is down to 35 per cent of what it would require. Therefore, at the end of the year, these people will be cut off their medical benefits, and their income support benefits will be cut down to about 20 per cent of what they are now, which in turn is only 50 per cent of what they had as income when they were employed by the company.

How will this then affect them? Honourable senators, we have a number of impact statements that a number of them have signed. Over 400 people are in this circumstance, and many of them have signed impact statements. Let me give you some examples.

One woman says she is 55 years old, with primary progressive multiple sclerosis. She currently uses a cane. She has worked in Canada for over 40 years. She says:

> The situation my husband and I find ourselves in is not only frightening but it's alarming. We have both worked all of our adult lives and, while ensuring a good education and providing for our sons, we also managed to diligently save for our retirement. I am sure it's everyone's dream to enjoy a comfortable retirement. This has all changed. Not only does my illness cause a considerable change to our plans, our financial stability that we have worked tirelessly for is all gone. Due to my husband being self-employed, we will be without benefits after December 31 of this year. The cost of medication alone, combined with my lack of income, will no doubt deplete our savings in the short term, causing us ultimately to sell our home, which currently has little equity due to remortgaging.

Another person says:

> I am the mother of a nine year old child. I survived to this point severe cancer, which has left me disabled. I have fought extremely hard for my life, and now the perspective of losing my long-term disability benefits by the end of December causes me and my family a tremendous amount of stress. Time is quickly running out for us.

Another one says:

> My wife was diagnosed with a brain tumour one month after the birth of our second child in 2008. As of December 31, our lifestyle will drastically change. We will no longer have the means to save adequately for our children's education, to invest in our retirements or take family vacations. There is also the risk that we will have to sell our home. I anticipate the additional financial burden would significantly impact the well-being, mentally and physically, of my life.

Another person says:

> My income under disability has dropped by 50 per cent. If there is nothing after December 2010, we will well go into poverty. I will not have enough to cover basic living expenses and definitely not enough to pay for the medication that I need to just survive. My medication is over $5,000 a year. I am uninsurable by new insurance unless I pay over $3,000 a year in premiums. Without the medical treatment, the cancer will spread quickly. The impact of no income from the LTD benefits in my situation is not just one of inconvenience, it is in fact life threatening.

Another one says:

> There are no words to explain the stress that this bankruptcy is putting all of us in.

Another one with a stroke says:

> I am not able to talk, write and read due to a stroke while I was working in the office. This statement was written by my wife, with help. The stroke was caused by a blood clot, et cetera. To help look after me, my wife has quit her job, and without the medical benefits, we don't know how to pay for my essential medications, annually costing some $5,000, over and above medicare. Without disability benefits, we are not sure how to pay our rent, our household expenses and help our children with their education.

Let me go to one more.

The Hon. the Speaker: I regret to advise the honourable senator that the 15 minutes is over.

Some Hon. Senators: Five more minutes.

The Hon. the Speaker: Agreed.

Senator Eggleton: This one says:

> To end up disabled and in utter poverty after all the years of studying and hard-working is much for one in life. When I was thinking about all this, I decided to commit suicide, and I did it. At the end of this March, when the judge was deciding when to stop our life support, immediately or December 31, 2010, like it would make a difference, I wrote a last note, asking my mum to teach my children, live on rice and potatoes, and took a huge overdose of my pills. I already was far from here, not feeling anything. Fortunately, or maybe not so, my son found me breathless and called 911. At that time, my life had been rescued. I spent a month in hospital, in bed, not wanting to see the spring. Do I have to continue?

There are so many more who are like that. These people are in a desperate situation, and the end of the year is fast approaching. Some of them may survive with the taxpayers' social assistance programs, but many others may be like that lady and maybe not. Something has to be done about this. As I said earlier, if it is not this bill, what will it be? Time is running out. These people are desperate and very stressed out at this moment and will get more stressed out every day.

The arguments put forward in this report are not sustainable. We have adequate evidence from the expert witnesses that were before the committee and from the fact that so many other countries provide this kind of support and do even more that we should not accept this report but go back to Bill S-216.

Some Hon. Senators: Hear, hear!

Hon. Grant Mitchell: Honourable senators, I rise to agree with exactly that sentiment. Let me tell you why I have a great deal of difficulty with the way things stand now. I had the pleasure, certainly the challenge, of sitting in on the Bill C-10 review with the Standing Senate Committee on National Finance earlier this year. Of course, we reviewed the Nortel situation. We had a number of witnesses, as we always do about issues like that, and, as the discussion progressed, I began to wonder why it is that pensioners, and in this case disability pensioners, would be so far down the list of priorities when it comes to credit or ranking, particularly given that the government itself had, just several years before, established the Wage Earners Protection Act, which moved wage earners up the ranking so that, in the event something like this occurred, they would have greater standing and a greater chance of getting paid. If it is good enough for wage earners, who would still have a chance to get another job, if worst came to the worst, and protect themselves and their families, surely pensioners who live on their pensions, just as wage earners live on their wage, and disability pensioners would have an even greater argument for being raised up the list or the ranking of creditors.

• (1730)

I asked one of the private sector experts, I believe from a national accounting firm, why it would be that pensioners would be subordinated in ranking, in line for getting paid in the event of a bankruptcy, behind much more powerful interests, like the banks? What they said was very telling and striking to me. They said that if the pension liability was moved up the ranking ahead of secured creditors, like the banks, then the cost of borrowing for companies would go up. It would go up, of course, because the banks would not have access to that money now going to pensioners or disability pensioners. Therefore, in the event of a

failure, they would not stand to recoup as much money. The implicit cost is greater. They therefore would charge higher interest rates if that ranking were to be readjusted in favour of pensioners.

I said to myself, how can that possibly be fair? Why would we in this country ask pensioners to subsidize the cost of borrowing for big companies? It seems surreptitious. It seems unfair and behind the scenes. It is complicated, of course, so perhaps it is easy to slip by, but that is exactly what this issue is about. It says that the banks are more important, and the company's interest in being able to pay not quite as much money in interest on its borrowings is more important than the basic livelihood of people who simply cannot recover if they lose the benefit. They do not have another chance.

It seems very straightforward to me. Why would we not put a priority on people who are disabled? Why would we not put a priority on people who rely on their pensions to live?

One of the very powerful things that I appreciated about what Senator Eggleton said was how he brought this issue down from the abstract — people out there, pensioners — to real people who have families, lives, fears and hopes, and who confront a future without much security at this time. I am very glad of that, and I would hope that we could think about those people as people and not as some abstract issue.

Also, I was encouraged, tentatively hopeful, when I heard the leader say today that she could not talk about it because they actually were doing something. I will put all kinds of hope in the thought that she meant that they are doing something for these people. I would ask that perhaps they could do it before Christmas so that these people, who are real people and who are suffering, will be able to enjoy that period of the year as well.

POINT OF ORDER—SPEAKER'S RULING RESERVED

Hon. Sharon Carstairs: Honourable senators, I rise on a point of order. I am extremely concerned throughout this debate that we have something before us that was not properly put before us. I look at rule 96(7.1) of the *Rules of the Senate*, which states:

> Except with leave of its members present, a committee cannot dispense with clause-by-clause consideration of a bill.

I was not at the committee meeting, but I understand that the government side decided that they did not want to proceed with clause-by-clause consideration. They moved a motion to that effect and, therefore, dispensed with clause-by-clause consideration of the bill. In fact, the *Rules of the Senate* do not allow us to dispense with clause-by-clause consideration unless there is unanimous consent. They proceeded to write a report on a bill that they had not dealt with in clause-by-clause consideration, which only the government side approved. It would seem to me that this entire report is not appropriately before the house and that this bill should be referred back to the committee for clause-by-clause consideration, which they should have done when it was in committee in the first place.

Hon. Gerald J. Comeau (Deputy Leader of the Government): I believe that I heard Senator Carstairs indicate that she was not at the committee. Therefore, she is reporting on what I presume she was told had happened at committee. Be that as it may —

Senator Mitchell: So?

Senator Mercer: Your point is?

Senator Comeau: Do you want to get into the act, Senator Mitchell, as usual? I would stick to your own defences.

The committee is the master of its own house. The committee duly presented its report last week, and with serious reservations today it was moved for adoption by Senator Hervieux-Payette. I do not see anything out of order at all with the fact that we have the report of the committee before us for consideration. Senator Carstairs gave it a good try, but I do not think it is going anywhere.

The Hon. the Speaker: Honourable senators, may I ask Senator Carstairs to repeat the rule she cited?

Senator Carstairs: Yes. I cited rule 97(7.1)

Senator Cools: It is rule 96.

Senator Losier-Cool: It is rule 96.

Senator Carstairs: I am sorry; it is rule 96(7.1), on page 97, of the *Rules of the Senate*.

The Hon. the Speaker: Thank you, senator.

Hon. Céline Hervieux-Payette: Honourable senators, I want to ensure that honourable senators understand that the clause-by-clause matter is not before the Senate as hearsay. I mentioned in my speech that I tried to introduce clause-by-clause. Maybe my honourable colleague was not listening. I even suggested that the committee proceed to clause-by-clause consideration of Bill S-216, as per usual. Of course, at that time, the Conservative senators opposed the vote and voted on the fact that we could not vote.

I have just learned that, although I am not an expert in procedure, it is not proper procedure in committee. Had I known that rule, of course, we would have used it. We have to return to our rules of procedure. As far as I am concerned, we have no choice but to return to clause-by-clause consideration at committee.

Hon. Anne C. Cools: Honourable senators, I rise to support Senator Carstairs' point of order. The sixth report of the Banking Committee in regard to Bill S-216 is out of order. At times I feel terrible that I see these flawed procedures very quickly. I am often bothered that we have become very slipshod in our practices and inattentive to the rules. Sometimes, honourable senators, I tire of being the one who notices.

Let us roll back in time. Senator Carstairs has put on the record very appropriately rule 96(7.1), and I will read that clearly for the record. It states:

> Except with leave of its members present, a committee cannot dispense with clause-by-clause consideration of a bill.

For those honourable senators who do not understand, "leave" is that which is required to waive or to suspend a rule of the house. It is otherwise called "unanimous consent." It means that there must not be a single dissenting voice. The rules intend that clause-by-clause consideration of a bill be a serious part of committee consideration.

I find some support for that, honourable senators, in *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament,* twenty-third edition, at page 600, under the title "Functions of a committee on a bill." It states:

> The function of a committee on a bill is to consider the bill clause by clause and, if it wishes, word by word, and to approve the text or to modify it to reflect the committee's legislative intentions.

Erskine May is also replicated in the new *House of Commons Procedure and Practice*, Second Edition, 2009, by Audrey O'Brien and Marc Bosc. At page 757, under the title "Role of a Committee on a Bill," it states:

> The role of a committee is to consider a bill clause-by-clause and, if necessary, word by word, and to approve the text or to modify it.

Therefore, honourable senators, clause-by-clause consideration is important. It is unfortunate that the chair of the committee did not know this rule. It is also unfortunate that the committee members did not know this. However, this is a fact of our parliamentary life in terms of proceeding to clause-by-clause consideration, and this has been a fact of the rules for quite some time.

• (1740)

I would like to caution again about the current practices of simply proceeding in what I consider to be very shoddy ways. However, let us move on to the point.

Honourable senators, if the committee chair had known this, she first could have insisted that all committee members be asked for leave. Every single member would have had to dispense with clause-by-clause consideration. However, the chair had another option in her hand, as well. I want to put this on the record and I have used this often in support of the Speaker of this place. If the chair has any doubts whatsoever about the probity, the propriety, the properness, the morality, et cetera of any question, the chair is bound not to put the question. If the chair was dubious, she should not have put the question for a vote.

I can support that, honourable senators, by citing *The Chairman's Handbook* of 1933, written by Sir Reginald Palgrave. It is a very famous book. You can find support for what I said at page 5:

> A Chairman is bound to decline to put from the Chair a Motion or Amendment which is out of Order, . . .

Honourable senators, I have known this for a while. I was not planning to speak but I had looked up some authorities to see if my recollection was correct. I have so verified it all.

Honourable senators, there is no doubt about what the committee record says, and I have the committee transcript in my hands. It does not have the issue number. It says "unrevised," and the date is not on it, but there is a number — 48482 Bank, page 1030-49. All that is on it, and we recognize it as the committee blues.

I shall quote the committee blues on page 1030-50. The deputy chair was speaking and she was cut off. Senator Greene states:

> I would like to make a motion. I move that:
>
> We not proceed to clause-by-clause, and
>
> That we proceed in camera to consider two draft reports.

Then there is an exchange back and forth. Then Senator Greene later on said again:

> We are not suggesting a postponement.

This is at page 1030-51.

> We are not suggesting a postponement. We are suggesting we go in camera. We would like to go in camera to consider two draft reports.

Honourable senators, there is nothing at this point in time that needs more examination in this Senate than the phenomenon of committees working in camera and often without a record. We need to study this, because one particular committee that I am on is having many problems operating as it does in camera and without records. This debate proves the importance of records.

Honourable senators, I sincerely believe that Senator Greene had no bad intentions. He was doing his best and he sincerely believes in what he is doing. He is a good man.

In any event, honourable senators, I want to continue citing the committee blues. At page 1030-54, Senator Greene said:

> No, Madam Chair, we do not. We would like to dispense with clause by clause and to consider a draft report.

Honourable senators, I have placed the committee blues before His Honour.

Finally, Senator Greene at page 1030-54 says:

> I agree with that. I would like to move that we do not proceed with clause by clause.

The deputy chair then put the question, which she should never have done.

Honourable senators, I wish now to speak about a committee report and the meaning of the word "report." Perhaps I can attempt a definition of a "report." A committee report is the means by which a committee expresses the opinion, or the conclusion it has reached after it has obeyed the reference of the Senate to study a particular matter or question.

Honourable senators, the committee report is that document that records the opinion of the committee after it has reached its opinion. In this case, no opinion was reached on Bill S-216. This is very important, and I am not splitting hairs. First of all, a committee decides yea or nay. It decides it is for or against or "maybe." It is after that decision has been taken that a member says, "Let us report this conclusion to the house." Usually it is by a motion, and then the committee report, a formal document called a "report," is put for a vote and then presented in the Senate.

Honourable senators, what happened here is very unusual. Senator Greene simply appeared with these two things called "reports." It was by his moving the adoption of his report that the committee formed its opinion that is now before us. There was no real discussion in the committee and no expression of a considered opinion or conclusion.

Honourable senators, many of these irregularities occur and now many senators think they are normal practice. Some senators even think they are correct, but they are not. A committee decision has to be taken before the committee report can be adopted or even assembled or put for a vote. It seems these two documents suddenly appeared before the committee were moved and then voted on, as other senators have said.

Honourable senators, I really think we can do better. I am not debating the merits of the bill. I am not giving a speech here about the individual LTD claimants who are suffering. We have all received the correspondence. I am told there is incalculable and unspeakable suffering. I am speaking about a parliamentary point here, all the more important because, when senators set out to defeat a bill, or to recommend such to the house, as the committee report recommended that the bill not be proceeded with, it is extremely important that that decision be a clear decision of the committee, and that it represents the opinion of the committee after considered debate and considered discussion. That did not happen.

Your Honour has been put, as usual, in a very difficult spot. I believe that the report is not properly before us. We had a similar situation a couple of years back where there was another report which was not properly before us, because the circumstances of its adoption were questionable and dubious. However, the proceedings around this committee report are flawed enough and impure enough as to make it a corrupt proceeding. Corrupt has nothing to do with graft or money; "corrupt" means rendered impure, imperfect, spoiled and so on.

I do not know how the Speaker will handle this one, but he will do his best. In a debate as critical as this, I do not think it does any good for either side to paint each other as less than human.

• (1750)

I do not think there is a single senator in this place who is not concerned with the health and the welfare of the several claimants — as Senator Eggleton has called them, the LTD claimants.

Honourable senators, I am sorry that I am not more prepared, but I do ask His Honour to look at the facts and consider whether this committee report was adopted in accordance with the rule of the law, and in accordance with the due process here that we call parliamentary procedure. At the same time the Speaker must determine whether this committee report should be sent to committee so that the committee can complete its study, which I would say right now stands incomplete. This committee report is out of order.

Hon. Wilfred P. Moore: I would like to give His Honour a little bit of information that he should also have when he is considering this matter.

When it was moved by Senator Greene that we go in camera, I asked for the floor and was recognized by the chair. I made the point that we were in agreement that we would go in camera, and when we came out of the in-camera meeting, we would go to clause by clause. That is a matter of record.

On the vote, the government benches had more members in attendance and they moved and voted not to go to clause by clause. However, that is what the agreement was; and the agreement was in the committee the week before, so it is consistent with what the intention of the members was.

I, too, regret not having that rule book there with us. The clerk did not mention it. Nobody mentioned it, but clearly it should have been dealt with then.

Senator Comeau: I do not know how long we will be going on with this, and in no way do I wish to stop the debate at this point. I did note that Senator Banks wants to makes some comments.

However, I do want to come back to the issue that this point of order should have been raised at committee. That is the proper place at which such points of order should be raised. I wonder why it was not done at committee. Essentially, this is where it should have been done.

I have a Beauchesne's 6th edition here, page 222, which states:

> The Speaker has ruled on many occasions that it is not competent for the Speaker to exercise procedural control over the committees. Committees are and must remain masters of their own procedure.

The reference for this is the Journals, December 4, 1973, pp. 709-10.

Having said that, I know a number of very important arguments have been raised this afternoon, so if His Honour wishes to take this under advisement to give it further consideration, I have no problem with that whatsoever. I know some very important comments have been raised this afternoon.

Senator Carstairs: There have been some very important points made, and, yes, the point of order should have been made in the committee. It is one more example, as Senator Cools has pointed out, that we are not as familiar with our rules as we perhaps should be, and that those who are assigned to help us sometimes do not have all those rules at their fingertips either.

However, the reality is that the report is now before the entire Senate, and it is before the entire Senate inappropriately because the bill has not received clause-by-clause. Therefore, the only

appropriate action, in my view, is to send it back to the committee for clause by clause, after which point it can then be returned to the chamber. However, we cannot be dealing with a report on a bill which has never had clause-by-clause.

An Hon. Senator: Yes, you can.

Hon. Tommy Banks: I call to the attention of honourable senators who might not have been here — and I was reminded of it by Senator Cools' remarkable grasp of Senator Carstairs' point — that Your Honour found, in the instance to which Senator Cools referred, that there was a prima facie case of privilege involved in the case of the proceedings of a committee of which I was the chair at the time. Some of my colleagues will remember that.

In that case, I want to remind honourable senators that clause by clause was done. The question on which Your Honour ruled at that time was who was there and who ought to have been there. However, clause by clause reading and approval of that report was done at that time, and I thank Senator Cools for reminding me of that.

Hon. Consiglio Di Nino: Would rule 100 of the *Rules of the Senate of Canada* be of some use to His Honour? Rule 100 reads:

> When a committee to which a bill has been referred considers that the bill should not be proceeded with further in the Senate, it shall so report to the Senate, stating its reasons. If the motion for the adoption of the report is carried, the bill shall not reappear on the *Order Paper*.

That may have a bearing on this, as well.

Senator Tkachuk: That is exactly what happened.

The Hon. the Speaker: Let me thank all honourable senators for their intervention on this point of order. I do not find the point of order particularly difficult to deal with. I think our rules are clear. However, it has been suggested that I should sleep on the matter at least, and I think that was wise counsel. I will attempt to report and rule on this matter tomorrow.

Hon. Terry M. Mercer: I would urge His Honour to act with as much haste as possible. The urgency of this bill has been outlined earlier by Senator Eggleton and others. The clock is ticking and there are people who will suffer if we do not get to our job and get this bill taken care of.

The Hon. the Speaker: If the honourable senator thinks it is really urgent that I rule now, I am prepared to do so. What I said to the house is I would be more comfortable in looking up some of the references that have been cited, and that I would rule tomorrow.

Therefore, honourable senators, I take the matter under advisement.

(The Senate adjourned until Wednesday, December 1, 2010, at 1:30 p.m.)

CONTENTS

Tuesday, November 30, 2010

Available from PWGSC – Publishing and Depository Services
Ottawa, Ontario K1A 0S5