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Wednesday, February 9, 2011

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Wednesday, February 9, 2011

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

Prayers.

SENATORS' STATEMENTS

INTERNATIONAL DEVELOPMENT WEEK

Hon. Catherine S. Callbeck: Honourable senators, I am pleased to rise today in recognition of International Development Week. Every year during the first week of February, International Development Week provides Canadians with the opportunity to learn more about the good work that so many Canadians are engaged in abroad. These dedicated people have an impact on a wide range of topics: human rights, health care, infrastructure, disaster preparedness, education and economics, to name a few. All in all, the ultimate goal is to build a greater quality of life for people in developing countries.

This week also allows Canadians to discover more about life in developing countries and how they can become involved.

In my home province, the University of Prince Edward Island is participating in its tenth International Development Week. The highlight of the many events will be an on-campus public presentation by our own Senator Dallaire, who will speak to students about the role they can play in the lives of those in developing countries. Community events like the ones at UPEI demonstrate that Canadians care about international development and the well-being of others.

I was disappointed to hear that the Canadian Teachers' Federation has been denied funding for its five-year proposal to provide professional development programs for teachers and curriculum development programs in Africa, Asia and parts of the Caribbean.

For more than 50 years, Canadian teachers have travelled overseas to help improve education in developing countries. Without this funding, the work of thousands of Canadian teachers will end. I urge the federal government to find ways to work with the Canadian Teachers' Federation to ensure that their outstanding tradition of service is not lost due to a lack of funding.

Honourable senators, Canadians involved in international development are to be commended for the difference they are making around the world. We should be proud of the role these Canadians play on the world stage and we should assist them wherever possible to achieve their goals.

[*Translation*]

GHOSTS OF VIOLENCE

Hon. Carolyn Stewart Olsen: Honourable senators, I rise today to invite all honourable senators to attend the Atlantic Ballet Theatre of Canada's world premiere of *Ghosts of Violence* on February 15 at the National Arts Centre.

[*English*]

Our government is a proud supporter of the performing arts. The creation of this production was supported in part by the Government of Canada, Status of Women Canada, Atlantic Canada Opportunities Agency and the Canadian Council of the Arts.

[*Translation*]

Ghosts of Violence is an emotionally charged ballet inspired by the stories of women who have lost their lives as a result of family violence.

• (1340)

[*English*]

This ballet, combining multiple forms of media and performance art, aims to capture the tragedy of the erased memories and aspirations of those often-silent victims.

Ghosts of Violence is the largest initiative undertaken by the Atlantic Ballet Theatre company in their 10-year history.

Launched in 2002 and based in Moncton, New Brunswick, the Atlantic Ballet Theatre of Canada is one of Canada's most ambitious ballet companies. The members of the ballet have been successful ambassadors for both New Brunswick and the Atlantic region and have played national and international shows, touring in the United States, Germany and Italy.

In September 2010, the company had the honour to premier its new ballet, *Fidelio*, in Bonn, Germany, at the prestigious Beethoven Festival, where they were well received and performed to packed audiences.

The Atlantic Ballet Theatre company members are known for using their art to reach out to people. *Ghosts of Violence* aims to raise public awareness about the terrible, heartbreaking epidemic of domestic violence. Statistics show that one to two women are murdered every week in Canada, with young women under the age of 25 four times as likely to be killed.

[*Translation*]

Family violence is a problem that affects families from every part of our society.

[*English*]

I am proud of the Atlantic Ballet Theatre of Canada for using this original medium to promote dialogue on this difficult topic. The ballet was conceived and choreographed by the Atlantic Ballet Theatre's artistic director and choreographer, Igor Dobrovolskiy.

Two years ago, the company was overwhelmed and astounded by the reaction of victims to a short piece they did on domestic violence. Women who had never spoken out found a voice and so the full-length ballet was born.

[*Translation*]

This ballet was inspired by the Silent Witness Project that began in New Brunswick.

[*English*]

The Silent Witness Project is a travelling exhibit of life-sized red wooden silhouettes, each representing a woman murdered by her partner. There will be 21 silhouettes from several provinces at the NAC.

Honourable senators, this excellent company has worked very hard to bring its performance to you, and I hope you will join me on February 15 and attend this made-in-New Brunswick landmark production.

[*Translation*]

DIVERSITY IN FACULTIES OF MEDICINE

Hon. Lucie Pépin: Honourable senators, last Monday I received a visit from three McGill University students representing the Canadian Federation of Medical Students. These future physicians are concerned about the lack of socio-economic and geographic diversity in our medical schools. They believe that this situation exacerbates family doctor shortages and physician scarcity in communities that are already underserviced.

Medical schools encourage diversity, but still do not attract enough candidates from rural or low-income backgrounds. Some social and financial obstacles have been cited as the cause of this demographic imbalance.

Students from low-income or rural backgrounds are less likely to consider medicine as a viable career option.

They are also put off by the costs associated with studying medicine. Most medical students are from wealthy families. Almost 47 per cent of medical students report family incomes of more than $100,000. In Canada, only 19.7 per cent of households have this level of income.

The Canadian Federation of Medical Students would like to address the disparity in access to medical studies. The CFMS is asking for government subsidies to cover tuition for students from low-income families. The Association of Faculties of Medicine of Canada supports these subsidies, which already exist in the United States and Australia.

It is pertinent to know that students from low-income families are more likely to practise family medicine and to treat disadvantaged patients.

Research also shows that students from rural areas are 2.5 times more likely to practise in rural communities. Given that it may be easier to keep physicians who have grown up in rural areas from moving away, we need more programs that will attract candidates from these areas to medicine.

It is also important to establish mentorship and information programs that would target the socio-economic groups least represented in faculties of medicine. Preparation required to enter a medical school often begins in high school.

Dr. John Wootton is the president of the Society of Rural Physicians of Canada. He says that "if there is two-tier health care in Canada . . . it's urban versus rural." It is a fact that 30 per cent of Canadians living in rural and remote areas have difficulty accessing health care.

The Government of Canada is working with the medical community to increase the number of health care professionals in these areas. However, we must be more innovative and lay the foundation for solutions by creating the conditions for equitable access to medical education.

I hope that, in this quest for solutions, careful consideration will be given to the recommendations from the Canadian Federation of Medical Students.

[*English*]

THE LATE HONOURABLE STERLING R. LYON, P.C., O.C.

Hon. Donald Neil Plett: Honourable senators, on December 16, 2010, we lost a great Manitoban and a great Canadian. Former Manitoba Premier Sterling Lyon passed away following a brief illness at the age of 83. He leaves behind him a great legacy. He was truly a political champion for both Manitobans and Canadians.

Sterling Lyon was first elected to the Legislative Assembly of Manitoba in 1958 in the Winnipeg riding of Fort Garry. He was later named as the attorney general by Premier Dufferin Roblin after the Conservatives won a majority government in 1959. In his time in the Manitoba legislature, Sterling Lyon also served as Government House Leader, Minister of Public Utilities, Minister of Municipal Affairs and Minister of Mines and Natural Resources.

In 1974, Sterling Lyon tried his hand at federal politics, narrowly losing the riding of Winnipeg South to Liberal James Richardson and subsequently returned to provincial politics.

In 1975, Sterling Lyon was elected leader of the Progressive Conservative Party of Manitoba. In 1977, Lyon was elected as the seventeenth Premier of Manitoba, leading the Progressive Conservative Party into power in the Manitoba legislature. He served as premier from 1977 to 1981.

In his time as premier, Sterling Lyon took a strong role in the repatriation of the Constitution and in the creation of the Charter of Rights and Freedoms, which continue to have an impact on Manitobans and all Canadians. He is well known for butting heads with then Prime Minister Pierre Trudeau regarding the inclusion of the notwithstanding clause in the Charter of Rights and Freedoms, which created the defence of the supremacy of elected parliaments over unelected courts.

Lyon's government was defeated by the NDP in 1981 after only one term in office, in large part due to his strong fiscal conservatism and prudent government spending policies. Lyon subsequently acted as Leader of the Opposition for two years after the 1981 election. In 1983, he stepped down as the Conservative leader and in 1986, retired from politics.

In 2002, Mr. Lyon was inducted into the Order of Manitoba, and in 2009, was also made an Officer of the Order of Canada for his many accomplishments, including the expansion of community-based health and social services and modernized governmental financial procedures in Manitoba.

Sterling Lyon was not only a great public servant but also a great friend, husband and father. Though he was a hardworking man with a busy schedule, he always managed to find time to spend with his friends and family, whether it was hunting with his sons or spending time at the cottage. Sometimes family time was found with a little help from clever scheduling. On election day in 1981, once campaigning was over, Lyon took his son out duck hunting for the afternoon.

Sterling Lyon was a man of strong personality who truly had a profound influence on all Canadian lives. To quote Shakespeare:

> He was a man, take him for all in all,
> I shall not look upon his like again.

Honourable senators, please join me in acknowledging Sterling Lyon and his many notable contributions to our province, Manitoba, and our country, Canada.

2011 CANADA WINTER GAMES

Hon. Jane Cordy: Honourable senators, while Nova Scotia is always a great place to be, the last two weeks of February will be especially exciting. The 2011 Canada Winter Games will begin in Halifax, Nova Scotia, this Friday, February 11. Thousands of young athletes will be in Nova Scotia to compete in the 2011 Halifax Canada Games. These athletes have dedicated much time and effort in developing skills in order to represent their provinces in their respective sports. We know that these talented young people will compete with determination and strive to win but will also display fine sportsmanship. I would like to extend to all athletes my congratulations and best wishes for a successful competition. I would especially like to send best wishes to Brandon and Liam Dimmer who are neighbours of mine in Dartmouth and members of Team Nova Scotia. I would like to recognize the thousands of volunteers who will help to make the Halifax Canada Games a success.

• (1350)

I invite all honourable senators to Halifax to enjoy these Canada games. There will, of course, be the athletic competition but, in addition, there will be outdoor concerts to enjoy, featuring artists such as Joel Plaskett, Matt Mays, Sloan, and Great Big Sea.

Honourable senators, the 2011 Canada Winter Games are shaping up to be a lot of fun with Atlantic Canadian hospitality at their heart. It will be a great few weeks, so come and celebrate with us.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, before continuing with Senators' Statements, I wish to draw your attention to the presence in the gallery of a special guest to whom I wish to say *qujannamiik*, which means in Inuktitut "thank you for visiting us." Our distinguished guest is none other than Paul Okalik, who is the Speaker of the Legislative Assembly of Nunavut. I might add that his family name means "rabbit," and what better season to come to the Senate of Canada than in the launch for the Year of the Rabbit.

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

Hon. Senators: Hear, hear.

BAFFINLAND IRON MINE

Hon. Dennis Glen Patterson: Honourable senators, I would like to join His Honour in welcoming Speaker Okalik.

There have been significant events that have recently occurred in Nunavut and, indeed, in the international marketplace that I believe will have a profound and lasting effect on the economic future of this rich region of Arctic Canada, which I am proud to represent in this chamber.

The events I am referring to are Baffinland Iron Mines being acquired by ArcelorMittal and Nunavut Iron Ore.

As you have heard from me before, Baffinland held the rights to the Mary River Project, one of the richest iron ore projects in the world, a veritable mountain of hematite, which is located on northern Baffin Island.

Baffinland had been advancing the Mary River Project for years and it had reached a point where significant capital was needed to take the project through the final development and then on to the mining stage.

While it is known that Mary River has reserves lasting at least 21 years, there are literally hundreds of millions of tonnes of future iron ore resources, which means that this project will provide decades of benefits through training, employment and business opportunities to the communities of the North Baffin and other regions of Nunavut.

Moreover, the mine will provide significant revenues to the Government of Nunavut and the Qikiqtani Inuit Association, which will respectively receive taxation and royalty revenues from the project. Equally important will be the contribution that this $6 billion project will make to the GDP of our country and revenues for our federal government.

For those of you who are not familiar with the companies that acquired this development, ArcelorMittal is the largest steel manufacturing company in the world and the fourth largest iron ore miner globally.

From a Canadian perspective, ArcelorMittal is no stranger to this country, being the owner of ArcelorMittal Dofasco and ArcelorMittal Mines Canada, formerly known as Quebec Cartier Mining, together employing over 7,000 Canadians.

It is also worth mentioning that several senior members from ArcelorMittal have significant cold regions mining project experience. Phil Du Toit, the new CEO, led the implementation of Northwest Territories' successful Diavik diamond mine and the Voisey's Bay nickel mine in Labrador. Peter Kukielski was chief operating officer at Teck Resources and was responsible for the Red Dog zinc mine in Alaska, and, similarly, while COO of Falconbridge, he was responsible for the Raglan nickel mine in the Nunavik region of Northern Quebec.

ArcelorMittal mining team is completing a green field mining project in Liberia and, as such, will be the first mining company to bring iron ore production to West Africa. They are aiming to achieve the same pioneering feat in Nunavut. ArcelorMittal's partner Nunavut Iron Ore is a company that was established to bid for Baffinland, and during the bidding process, Nunavut Iron Ore and ArcelorMittal joined forces to secure the deal.

ArcelorMittal have confirmed that they intend immediately to pursue development of the project.

Mary River is very unique in a very unique and special part of the world.

This project potentially presents tremendous opportunity for the Nunavut labour force and private sector and significant opportunities for Canada. While the project is currently in the regulatory process, I remain confident that Nunavut boards and agencies will make the necessary decisions and recommendations that will ensure the Nunavut environment is respected and socio-economic impacts in nearby communities will be manageable and beneficial. I plan to meet the ArcelorMittal group later this month and look forward to hearing more about their plans for the years to come.

I know I speak for all honourable senators in welcoming and supporting ArcelorMittal as they pursue development of this special project in Nunavut.

THE LATE LESLIE LORNE MCLAUGHLIN

Hon. Daniel Lang: Honourable senators, I rise to pay tribute to Leslie Lorne McLaughlin, who passed away in Ottawa on January 8 at the age of 69.

Les started his life in Yukon at the age of three and played minor hockey in Whitehorse, and then eventually went on to play senior hockey.

At the same time, he volunteered at the military-run radio station CFWH in the late 1950s.

Les then began his broadcasting career at CBC Northern Service in Yukon in 1962 and was a full-time announcer operator by 1964, where he worked until 1968. He then went to work in Montreal as the Northern Service producer, and then to Ottawa as the producer and head of the Ottawa production unit from 1980 to 1995.

Fortunately for Canada's and Yukon's heritage, Mr. McLaughlin committed the voices and memories of pioneers from the Yukon to audiotape, videotape, music and the spoken word. His work will enrich Canadians for generations to come.

The *Whitehorse Star*, in marking his passing, referred to "the patented McLaughlin voice, rich in baritone, authoritative in its delivery and razor-sharp in its accuracy."

Honourable senators, I remember it well. All Yukoners remember his voice very well.

Mr. McLaughlin received the CBC President's Award in 1992, the Yukon Heritage Award in 1996 and the Yukon Commissioner's Award in 2005.

After retiring from his job as producer in Ottawa, Les went on tour and produced records of the music of the North. He was the founding producer of the True North Concert series broadcast across Canada. Les also produced a unique and innovative series of broadcast recordings, featuring Northern musical talent from across the North. The series includes over 1,000 musical selections. He was committed to the North.

Dave Brown of the *Ottawa Citizen* recently wrote the following about Les:

> He was modest and self-effacing, rare qualities in a media star, particularly of the CBC variety . . . He wore oversized glasses. There were unproved rumours he actually owned a tie. His usual greeting was to dip his head, peer over his glasses, and smile.

Fellow senators, Canada and Yukon were well served by Les McLaughlin. Along with his children, Mark and Angela, and their families, and his sister Margaret, who came to be by his side for the last couple of months, we mourn his passing and celebrate his contributions to Canada.

HATE CRIME CONVICTIONS

Hon. Donald H. Oliver: Honourable senators, yesterday I rose to speak about Black History Month, and today I rise to speak about why that month is so important.

On March 10, 2010, I called to your attention a cross-burning incident that took place in Poplar Grove, Nova Scotia.

As you may recall, a seven-foot wooden cross, reminiscent of the activities of the Ku Klux Klan, was erected and burned on the lawn of a biracial family in the middle of the night on February 21, 2010. A hangman's noose was attached to the cross. While it burned, Shayne Howe, Michelle Lyon and their five children were threatened with racially charged words of hatred.

Two brothers, Justin and Nathan Rehberg, 20 and 21 years of age, were accused and convicted of these horrific crimes.

• (1400)

Crown Prosecutor Darrell Carmichael called the cross-burning incident "a sensational message of racial hatred," signifying that there is profound historical and cultural significance to the burning of a wooden cross with a hangman's noose.

On January 10, Judge Claudine MacDonald sentenced Justin Rehberg to two months in prison for inciting public hatred and two months for criminal harassment. The next day, Justice John Murphy sentenced Nathan Rehberg to six months in jail for criminal harassment and four months for incitement of hatred.

While handing down her sentence, Judge MacDonald said:

> To act the way you did, to use the symbol of hate . . . you victimized the family and you had an impact on the community at large.

Halifax's *The Chronicle Herald* ran an in-depth coverage of the trials. Last week it published a thought-provoking, detailed, four-part series on the cross-burning incident. Many Nova Scotians who responded by way of letters to the editor to the series denied the fact that racism even existed.

Dan Leger, director of news content for *The Chronicle Herald* wrote:

> There is a problem and we can't ignore it just because we fear stirring up old resentments . . . . We did the story because it is important to shine light on dark events, to tackle a painful issue that has long divided Nova Scotians.

Honourable senators, it is the second time in Canadian history that a burning cross has been recognized as a hate crime in a court of law. The first was in 2001 in Moncton.

It also reminds us that hate crimes and racism do, in fact, exist in Canada. In 2007-08, more than 1,800 hate crimes were reported to police in Canada; 58 per cent of these were centred on race or ethnicity.

Honourable senators, what happened in Poplar Grove last year was an offensive and insensitive act of hatred and, regretfully, a crude reminder that racism still poisons our society.

Honourable senators, please join with me in doing what you can to help fight race hatred, to promote tolerance and equality, and, finally, to raise awareness about the benefits of diversity.

[*Translation*]

ROUTINE PROCEEDINGS

CANADA-UNITED STATES RELATIONS

DECLARATION BY THE PRIME MINISTER OF CANADA AND THE PRESIDENT OF THE UNITED STATES

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, a declaration made by the Prime Minister of Canada, Stephen Harper, and the President of the United States, Barack Obama, in Washington, on February 4, 2011, entitled *Beyond the Border: a shared vision for perimeter security and economic competitiveness*.

[*English*]

GOVERNMENT PROMISES

NOTICE OF INQUIRY

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I give notice that, on Tuesday, February 15, 2011:

> I will call the attention of the Senate to the litany of broken promises by the Harper administration, beginning with the broken promise on income trusts, which devastated the retirement savings of so many Canadian seniors.

QUESTION PERIOD

INTERNATIONAL COOPERATION

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY—PROJECT OVERSEAS FUNDING

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. For 50 years, Canadian teachers have volunteered their time and experience to improve education in developing countries. The Canadian Teachers' Federation has partnered with the Government of Canada to send Canadian teachers — over 1,900 since the program began — to developing countries around the world, working with teachers in places such as Ghana, Malawi, Mongolia, Uganda, Mozambique, Burkina Faso, Sierra Leone and Haiti.

The Canadian Teachers' Federation has estimated that if even half the teachers around the world who participated in this program improve their teaching, at least 1.4 million students would have benefited. All of this has come crashing down. The government has rejected the request for funding for the upcoming five years of Project Overseas. Forty thousand teachers overseas and their over two million students will be the immediate casualties of this decision.

An email from a CIDA official stated:

> It was determined that the most recent Canadian Teachers' Federation proposal did not meet our aid effectiveness criteria.

What criteria did the proposal not meet? What part of encouraging and educating young people in developing countries does the government not support?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question. As I have said many times before in answer to questions related to CIDA funding, our government is bringing real accountability to development funding to ensure that our taxpayers' dollars bring real results. We want to ensure that the money we put into these programs is getting to the people who need it the most.

I am informed that CIDA has been working with the Canadian Teachers' Federation for the last six months to help them adapt their programs to the funding criteria.

Senator Cowan: My question, of course, was: What criteria did the proposal not meet? Perhaps the leader would take that as notice and could respond to us so that honourable senators would know.

The difficulty I have is that this is not an isolated incident. This is reminiscent of the decision that the government recently took to axe funding to KAIROS. The minister responsible for CIDA and her parliamentary secretary both repeated in the other place, over and over, that KAIROS did not meet the official criteria for funding. Then the president and vice-president of CIDA unequivocally stated that they, representing CIDA, had recommended KAIROS for renewal of its $7 million grant. Honourable senators will know that KAIROS is an NGO that focuses on human rights, poverty and other justice-related issues.

The Canadian Teachers' Federation, which is engaged in sending teachers to some of the poorest places in the world, tries to help build a better tomorrow in those places through education.

The CTF was told their application was rejected not on the merits, but because of a technicality, and this after they had worked with CIDA for 18 months on the new proposal.

What technicality was it that justified killing this excellent program? In 18 months, through that whole period of time when CIDA was helping CTF with the preparation of the proposal, not once did CIDA alert CTF to this technicality. Why not? Is this just another example of CIDA taking the fall for a decision made elsewhere in government?

Senator LeBreton: We understand that CIDA officials expressed direct concerns with the Canadian Teachers' Federation regarding a lack of focus, a lack of sustainability and a lack of budgetary information.

Having said that, the Canadian Teachers' Federation is more than welcome to address these issues and apply for funding under a new call for proposals.

• (1410)

With regard to KAIROS, Minister Oda has always been clear. As I have said before with regard to funding by the Canadian International Development Agency, often projects do not meet government priorities, which was the case with KAIROS. We cannot fund every single proposal that is made. People who receive funds from various government programs are not guaranteed that they will receive them in perpetuity. Other new people and agencies are applying for funds. In the case of work that was done by KAIROS, KAIROS has partner organizations, such as the United Church of Canada and Lutheran World Relief, which have been funded and are continuing with that good work.

Hon. Jane Cordy: The leader said that one of the reasons the Canadian Teachers' Federation was not given funding was because of lack of sustainability. This program has been going on for over 50 years. I would think that program is sustainable.

Mary-Lou Donnelly, President of the Canadian Teachers' Federation, outlined, as Senator Cowan has said, that the Canadian Teachers' Federation was rejected not on the merits of the program they proposed but on a technicality. A program that has been in place for over 50 years, where volunteers give teacher training and curriculum development programs in Africa, Asia and parts of the Caribbean, has been rejected on a technicality. It has been rejected, the leader said, because of lack of sustainability. I find that reason to be incredible.

Can the Leader of the Government, as Senator Cowan said, please tell us what this technicality was?

Senator LeBreton: Honourable senators, I believe I was clear that it was more than a technicality. I will repeat: The agency officials expressed concern with the Canadian Teachers' Federation regarding a lack of focus, a lack of sustainability and a lack of budgetary information. I think those concerns are a little more than a technicality.

As I have said many times, and I will repeat again, there are many worthy causes for which CIDA is approached for funding. CIDA funds many organizations. Simply because some organizations are funded does not mean that the funding goes on in perpetuity. Other bodies and agencies deserve to be considered as well.

Honourable senators, I repeat: Concerns were expressed with the proposal by the Canadian Teachers' Federation about lack of focus, lack of sustainability and lack of budgetary information. Those concerns are important, since we are talking about taxpayers' dollars. The federation has been invited, and they are more than welcome, to address these issues that were raised with them directly and apply for funding under a new call for proposals.

Senator Cordy: Let me get this straight. CIDA told Mary-Lou Donnelly, President of the Canadian Teachers' Federation, that they were rejected because of a technicality, but the leader is telling us that, in fact, it was not only a technicality; the CIDA officials were wrong when they spoke to Mary-Lou Donnelly. Is that what the leader is saying?

Senator LeBreton: I am simply saying that I was not party to the conversation between the CIDA official and the individual the honourable senator mentioned. I am reporting to the honourable senator what was reported to me by officials. I did not use the word "technicality"; the honourable senator used the word "technicality".

Hon. Céline Hervieux-Payette: Honourable senators, for a number of years now I have been working with the Inter-Parliamentary Forum of the Americas. We work with the entire continents of the Americas — North America, South

America and Central America. We have to deal with CIDA. I have seen our staff exhausted because they sometimes have to renegotiate the same contract three times.

In terms of reporting — and this point was mentioned also in the previous report of the Senate on CIDA administration — the demands for specific analysis of projects, et cetera, are beyond any requirements in the private sector.

Will the leader at least report to us what specifications CIDA requires? Are the requirements state-of-the-art in terms of administration? Everyone we speak to in this country about CIDA requirements in terms of financial reporting find the requirements are beyond the imagination and certainly not according to best practices. I want to ensure that the federation has not been subjected to standards that no one else is applying anywhere in society.

Senator LeBreton: Honourable senators, as we know, there are many pressures on CIDA for funding. They perform great work around the world. Obviously, complaints about CIDA are something that CIDA must put up with. There are always groups that complain about the process they must go through when they make applications to CIDA.

Without all of the details, I believe that in the application process for funding through CIDA, CIDA follows a process where accountability is important. Furthermore, the aid that they fund is effective and targeted, and goes to those places where it is most in need.

Hon. Terry M. Mercer: Honourable senators, I am having difficulty with this answer. The leader talked about lack of focus, sustainability and budgetary information. The focus is 50 years of doing a job around the world and helping thousands of teachers and millions of students improve their lives in Africa, Asia and the Caribbean region. The sustainability is this program has been delivered over 50 years. Budgetary information is provided in all the applications.

What prompted me to rise to my feet was the talk about the Canadian Teachers' Federation not meeting the requirements for filling out an application. I recall only a short while ago, as honourable senators will recall, that the Prime Minister had a big event where he talked about the commitment of the Conservative government to cutting what — red tape. He was cutting red tape.

It seems to me, honourable senators, that a program like this one, which has been praised by people across Canada and around the world as a terrific program, is a great place to show the kind of leadership that the Prime Minister seemed to indicate he wanted to demonstrate: by cutting the red tape and by ensuring that this program receives funding and receives it now.

Senator LeBreton: Honourable senators, there is a big difference between cutting red tape and demanding accountability. Again, honourable senators, the government is committed to making Canada's international assistance more focused, more efficient and more accountable.

We want to ensure our assistance is getting into the hands of those who need it most. One of the first measures we took in this area, although I did not hear much praise in this place, is that we untied food aid. We were a major donor to the World Food Programme. Our new aid-effectiveness agenda focuses assistance on food security, children and youth, and sustainable economic growth. That is what I mean by focusing — drawing attention and being more accountable for our food-aid dollars, which are widely sought after.

With regard to the Canadian Teachers' Federation, obviously they have been delivering this program for some time. That is obvious. However, that does not mean that this program continues in perpetuity, and it does not mean that at some point in time these programs will not be looked at. If CIDA has found a problem with lack of sustainability, lack of budgetary information and lack of focus, I believe it is incumbent not only on CIDA officials but also on the Canadian Teachers' Federation to work together, as they appear to be doing, to resolve these issues.

• (1420)

Senator Mercer: Honourable senators, it is incumbent upon the Canadian Teachers' Federation to do so, but the federation has been collaborating with CIDA for the past 18 months. During those 18 months, could someone from CIDA have asked the Canadian Teachers' Federation to provide CIDA with more financial information? Could someone from CIDA have made it clear that CIDA was not happy with the teachers' description of sustainability? Could someone at CIDA have asked to learn more about the sustainability of the federation? Could someone from CIDA have mentioned that CIDA feels that the federation is not focused enough, even though the Canadian Teachers' Federation has been in this business for 50 years?

Over 18 months, combined with the Prime Minister's commitment to cut red tape, you would think this would be a no-brainer, that you could get this done quickly and that you could continue to deliver quality services to teachers and students around the world, helping to raise the level of education of the poorest of the poor.

Senator LeBreton: Honourable senators, that is a very interesting comment, because that is precisely what appears to have happened between the Canadian Teachers' Federation and the CIDA officials.

Honourable senators, the Canadian Teachers' Federation has been told that they are most welcome, once they address these issues, to apply for funding under a new call for proposals.

Hon. Roméo Antonius Dallaire: Honourable senators, the leader's position on accountability and ensuring that funds are well spent and oriented is commendable. The leader's position is based on Bill C-2. However, honourable senators, what happens if the organization is blind in the field?

The Canadian International Development Agency has a body of about 1,200 employees, of whom barely 75 are actually in the field looking at the programs, monitoring the programs, influencing the programs, in order that those who are delivering these programs get the right advice from the agency and that they have a continuous positive flow.

Honourable senators, perhaps the problem is that there are too many CIDA employees writing nearly postgraduate documents in that building on Promenade du Portage and not enough hard information coming from the field to actually take far more enlightened and appropriate decisions than some of the ones we have been seeing recently.

Senator LeBreton: Honourable senators, I will not stand here and prejudge the hard work that the officials at CIDA do and I will not presume that they are not working very hard in the field to address these issues. That is unfair to them. It is unfair to the hard-working public servants who work for CIDA and are working to resolve many of these issues in the various trouble spots and the poorest parts of world. I think they do an excellent job. There is proof now that with more focused efforts — and I go back to untying food aid — there are some real results.

Honourable senators, I will not stand here and give credence to Senator Dallaire's comments about people sitting around writing papers and not being in the field. I do not think that is fair. If we look at the Foreign Affairs and International Trade model, the percentage of people working out in the field is far greater than the percentage of people who are working at DFAIT in Ottawa.

The honourable senator's comments are unfair to CIDA officials and I will not be part of them.

FOREIGN AFFAIRS

INTERNATIONAL DEVELOPMENT ASSISTANCE

Hon. Roméo Antonius Dallaire: Honourable senators, I am not sure whether the leader should bring Foreign Affairs and International Trade into the debate, because over the last years we have gutted Foreign Affairs and, in fact, that department is just a whisper of what it used to be.

Honourable senators, concerning CIDA, I am not talking about the people and whether they are hard-working individuals. On the contrary, they are working incredibly hard. These individuals must be working hard because you have to have nearly a postgraduate degree to get a project approved through CIDA because so many hoops have been created and there is so much prioritization that it costs more to get a project in there than will be realized in monetary return.

Honourable senators, I am stating that systematically within that department they have lost contact with the field because they are all sitting doing paperwork and flying in and out instead of being deployed with authority in the field. They should be in the field monitoring, advising and ensuring that programs do not go sour, as the leader seems to have described with this current project with the teachers.

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, my comments are the same as they were in relation to the honourable senator's comments about CIDA officials. It is incorrect for the honourable senator to suggest that the hard-working public servants at Foreign Affairs and International Trade are not what they used to be. It is incorrect to suggest that something is lacking, when in reality nearly 60 per cent of DFAIT's rotational employees are currently posted abroad. Those currently based at headquarters provide valuable support to those people who are working in the field.

I hope they are paying attention to what the honourable senator is saying, because I think he is seriously undermining the hard work of our employees at DFAIT.

[*Translation*]

INDUSTRY

STOCK EXCHANGE MERGERS

Hon. Jean-Claude Rivest: Honourable senators, my question is for the Leader of the Government in the Senate. The government is currently looking at merging — if it is not already done it is about to be done — the Toronto and London, England stock exchanges. This issue is very important to the entire Canadian economy.

Can the minister tell us whether one of the fundamental conditions for the Government of Canada agreeing to this transaction will be the preservation of trading activities in Vancouver — to a smaller extent — and also in Calgary and especially Montreal? We must protect the derivatives market — the activity in the Montreal stock exchange — which was part of the agreement concluded when the Montreal and Toronto stock exchanges were merged.

Can the minister assure us that the Canadian government will not agree to this extremely important transaction unless there is a firm guarantee that stock trading activities in Montreal, Calgary and Vancouver will be protected?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question. The Minister of Industry is looking to see how the Investment Canada Act applies to this proposed transaction. The act, as we know, allows for a 45-day period for ministerial review. That is the extent of what I will say on this matter. It is obviously in the news.

There is nothing more to say other than that the minister is looking to see how the Investment Canada Act applies to this proposal.

PUBLIC SAFETY

COST OF CRIME BILLS

Hon. Tommy Banks: Honourable senators, my question is to the Leader of the Government in the Senate. In the previous line of questioning about CIDA, the leader referred several times to the government's commitment to accountability and said that she had not received applause. However, honourable senators, the leader's government received applause when, in the interest of accountability, it appointed a Parliamentary Budget Officer. Applause was given to it in this place. The leader received congratulations from this side, because it was a good move.

However, the relationship between the leader's government and the PBO has not been sanguine entirely. This past Monday, a question of privilege was raised in the other place regarding her government's refusal to release the cost estimates of its tough-on-crime legislation.

The Prime Minister is a pretty good piano player and quite a versatile one, but since last autumn, the only tune that this government seems to be playing is about putting more and more people in jail for longer and longer.

Honourable senators, Canadians have a right and we here have a right to know just how much these American-style super-prisons will cost. The Conservative government has replied that it is not required to submit the estimates to the Parliamentary Budget Officer, citing cabinet confidence.

That is a red herring, I think, because the legislation has been introduced and it is now in the public domain. It is a perfectly reasonable thing to ask how much it will cost. The Parliamentary Budget Officer is asking that question.

For a government that claims to be transparent and accountable, the leader must recognize that the Parliamentary Budget Officer cannot do his job if he is not given the information with which to do his calculations. He cannot provide estimates. He cannot provide comments on estimates. He cannot provide comments, as he is supposed to, on proposed government spending unless he is given the information.

Will the leader tell us why her government will not provide the Parliamentary Budget Officer with the information on the cost of building prisons and housing more prisoners?

• (1430)

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I am well aware of the question of privilege in the other place regarding the cost of our crime bills. I can only report to Senator Banks that the government will be responding to this very shortly.

Senator Banks: Honourable senators, I hope the government will respond by answering the question the PBO is asking. I suppose this is a comment and not a question, but with a spring election looming —

Some Hon. Senators: Oh, oh.

Senator Banks: There is a spring election looming.

I believe the minister will agree that there can only be two reasons for not providing that information. One is that the PMO has contempt for the PBO, which I think might be the case, or there is a simple fear of backlash from taxpayers who are beginning to get fed up with irresponsible government spending.

Senator LeBreton: I am very interested in the assuredness the honourable senator speaks of about having a spring election —

Senator Comeau: They have to get rid of Iggy.

Senator LeBreton: That must be it.

The fact is that the government is governing. There will be a budget brought down. The budget will continue on with our economic plan in the interests of jobs and the economy. We are not anticipating an election but, of course, we have to be mindful of the coalition. The coalition has said that they will defeat the government, so we will be ready.

Some Hon. Senators: Oh, oh!

Senator LeBreton: This government has survived in a minority position for five years now, which is even longer than their beloved Lester Pearson. At different times through that process, we have had many pieces of legislation passed with the support of one or other, or sometimes all, of the opposition parties. That is how we got the legislation through.

The Liberal Party itself has supported us on many initiatives, such as our past budgets. The NDP has supported us. That is quite a different matter from the three parties coalescing to defeat the government and cause an election where their intention is to raise taxes for Canadians.

Senator Banks: My final question is this: Does the leader not understand that she is part of a coalition? Does she not understand that there will be an election unless the NDP caves, and then there will be a Conservative-NDP coalition, which is a very interesting concept?

Senator LeBreton: The fact is that we will be presenting a budget and we operate completely as a government in the interests of Canadians. If one or other party decides to support our initiative, then that is their decision and the honourable senator will not have his wish of having an election so his party can deal with its own leadership problems.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my question is not about the Bloc-Conservative coalition. I will make that clear.

My question is simply this: Why in the world can the leader not explain to Canadians and provide to the Parliamentary Budget Officer and to honourable senators and members in the other place the cost of the proposed legislation they are asking us to pass? It is impossible to believe that the government has not costed their legislation. What is wrong in principle with providing that information to parliamentarians who are called upon to vote for it? Could the honourable senator explain that to us, please?

Senator LeBreton: I would like to ask the honourable senator what part of yes he has trouble understanding. I have already said the government will be responding very shortly.

Senator Cowan: Will the government be providing that information to parliamentarians in the other house and in this house before we are required to vote on the legislation? Yes or no?

Senator LeBreton: There is a question of privilege by the honourable senator's colleague in the other place who is from the same province he is from. I have a lot of background material on that particular member of Parliament. Talk about someone turning themselves inside out and now saying exactly the opposite of what they once said.

In any event, I can only repeat what I just said. The government will be responding to that Liberal member's question of privilege very shortly.

Senator Cowan: The leader is not answerable for the actions of her colleagues in the House of Commons, but she is answerable and responsible to her colleagues in this chamber. Will she give us an assurance that, before we are asked to vote on any further so-called tough-on-crime legislation, our committees at least will be provided with the best estimates that the government has as to the cost of implementing that legislation?

Senator LeBreton: Honourable senators, it only stands to reason that if there is a question of privilege in the other place and we said we will answer it, then we will obviously answer it with some type of answer. That is all I can say.

[*Translation*]

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—AMENDMENTS FROM COMMONS—DEBATE ADJOURNED

The Senate proceeded to consideration of amendments by the House of Commons to Bill S-6, An Act to amend the Criminal Code and another Act:

1. *Page 1:* Delete clause 1.

2. *Page 3, clause 3:* Add after line 28 the following:

> "(2.7) The 90-day time limits for the making of any application referred to in subsections (2.1) to (2.5) may be extended by the appropriate Chief Justice, or his or her designate, to a maximum of 180 days if the person, due to circumstances beyond their control, is unable to make an application within the 90-day time limit."

3. *Page 3, clause 3:* Add after line 28 the following:

> "(2.7) If a person convicted of murder does not make an application under subsection (1) within the maximum time period allowed by this section, the Commissioner of Correctional Service Canada, or his or her designate, shall immediately notify in writing a parent, child, spouse or common-law partner of the victim that the convicted person did not make an application. If it is not possible to notify one of the aforementioned relatives, then the notification shall be given to another relative of the victim. The notification shall specify the next date on which the convicted person will be eligible to make an application under subsection (1)."

4. *Page 6, clause 7:* Replace line 9 with the following:

> "3(1), within 180 days after the end of two years"

5. *Page 6, clause 7:* Replace line 19 with the following:

> "amended by subsection 3(1), within 180 days"

Hon. Claude Carignan: Honourable senators, I move:

> That the Senate concur in the amendments made by the House of Commons to Bill S-6, An Act to amend the Criminal Code and another Act, Serious Time for the Most Serious Crime Act, and
>
> That a message be sent to the House of Commons to acquaint that House accordingly.

Honourable senators, as the sponsor of Bill S-6, An Act to amend the Criminal Code and another Act, I would have preferred that the House of Commons not amend the bill. Our government also would have preferred that. Nevertheless, the government believes that the bill should continue through the legislative process with the proposed amendments.

Indeed, at the House of Commons Standing Committee on Justice and Human Rights meeting on November 23, 2010, four amendments were adopted with the support of the three opposition parties. Two of the amendments had to do with the time limit for making an application for parole under the faint hope clause. A third amendment had to do with notifying the families and loved ones of murder victims. The fourth amendment was to delete the short title.

At present, applicants have 90 days in which to submit an application for parole under the faint hope clause, pursuant to sections 745.6, subsections (2.1) to (2.5) of the Criminal Code and to the transitional clauses of subsections 7(2) and (3). The 90-day time limit was considered enough time given that Correctional Service Canada helps inmates prepare their applications at least one year before they have served 15 years of a life sentence.

One of the three amendments regarding the time limit for submitting an application to a judge — the proposed subsection is 745.6 (2.7) — aims to increase the time limit from 90 days to 180 days, if inmates are unable to do so within 90 days due to circumstances beyond their control. The other two amendments are concurrence amendments meant simply to replace the 90-day time limit with a 180-day time limit.

With respect to the last amendment regarding subsection 745.6 (2.7), it states that Correctional Service Canada must immediately notify in writing a parent, child, spouse or common-law partner of the victim or another relative if the convicted person does not make an application for parole under the faint hope clause.

Honourable senators, I propose that we support the will of the House of Commons and the proposed amendments.

• (1440)

[*English*]

Hon. Sharon Carstairs: Honourable senators, it is clear that the crime policy of the government has been exposed for all of its flaws. The government purports to tell us they are all about the victims and yet the honourable senator stood in this place and said that he would have preferred the bill to be passed without amendments. One of those amendments, honourable senators, was all about victims. It was to inform the victims if a convicted murderer had not made use of the faint hope clause and thus ease their concern about the faint hope clause.

If the honourable senator was concerned genuinely about victims, he would have stood up in this chamber and applauded that amendment from the other place and he would not have said that he preferred the bill without amendments. The crime agenda has never been about victims; it has been about vengeance; and nothing relates more to that concept than the faint hope clause and the desire of this government to do away with it.

It is important to put on the record what many of the churches in this country think about this policy. I will identify the members of the Church Council on Justice and Corrections: the Anglican Church of Canada, Baptist Convention of Ontario and Quebec, Canadian Conference of Catholic Bishops, Christian Reformed Churches of North America, Disciples of Christ in Canada, Evangelical Lutheran Church in Canada, Mennonite Central Committee Canada, Presbyterian Church in Canada, Religious Society of Friends (Quakers), the Salvation Army in Canada and the United Church of Canada.

What has the Church Council on Justice and Corrections written in a letter to Prime Minister Harper with respect to his crime agenda? The letter stated:

> Dear Mr. Prime Minister,
>
> The Church Council on Justice and Corrections (CCJC) is most concerned that in this time of financial cuts to important services you and the government of Canada are prepared to significantly increase investment in the building of new prisons.
>
> Proposed new federal laws will ensure that more Canadians are sent to prison for longer periods, a strategy that has been repeatedly proven neither to reduce crime nor to assist victims. Your policy is applying a costly prison response to people involved in the courts who are non-violent offenders, or to repeat offenders who are mentally ill and/or addicted, the majority of whom are not classified as high risk. These offenders are disproportionately poor, ill-equipped to learn, from the most disadvantaged and marginalized groups. They require treatment, health services, educational, employment and housing interventions, all less expensive and more humane than incarceration.
>
> The Canadian government has regretfully embraced a belief in punishment-for-crime that first requires us to isolate and separate the offender from the rest of us, in our minds as well as in our prisons. That separation makes what happens later easier to ignore: by increasing the number of people in jail for lengthier sentences you are decreasing their chance of success upon release into the community.
>
> The vision of justice we find in Scripture is profound and radically different from that which your government is proposing. We are called to be a people in relationship with each other through our conflicts and sins, with the ingenious creativity of God's Spirit to find our way back into covenant community. How can that be if we automatically exclude and cut ourselves off from all those we label "criminal"?
>
> Increasing levels of incarceration of marginalized people is counter-productive and undermines human dignity in our society. By contrast, well supervised probation or release, bail options, reporting centres, practical assistance, supportive housing, programs that promote accountability, respect and reparation: these measures have all been well-established, but they are underfunded. Their outcomes have proven to be the same or better in terms of re-offence rates, at a fraction of the cost and with much less human damage.
>
> Public safety is enhanced through healthy communities that support individuals and families. We, therefore, respectfully ask you to modify your government's policy taking into consideration the impact it will have on the most disadvantaged, its lack of effectiveness, and its serious budgetary implications.
>
> Sincerely,
>
> The Church Council on Justice and Corrections

Honourable senators, the faint hope clause was introduced originally when we introduced a bill that did away with capital punishment in this country. The clause was put in place for two reasons: first, the belief that people could be forgiven, that they could change and that they could reform; and second, the genuine concern that if people were sentenced to life imprisonment for 25 years with no eligibility for parole for committing first degree murder, it might place an unfair burden on those who were in the business of helping to incarcerate — specifically the guards.

If people have no hope, then what is their justification for good behaviour? What is their justification for trying to live their lives in a better fashion and in a better manner? The faint hope clause was added in the hope that it would challenge them to do just that; and it has been highly successful. Never has an individual released in Canada under the faint hope clause committed another murder. Over 97 per cent of them have never had any further difficulty with the law.

Senator Mercer: Is it 97 per cent?

Senator Carstairs: Yes, it is 97 per cent. Yet, we want to imprison them longer; for what reason?

Senator Mitchell: It is disgusting.

Senator Carstairs: I remind honourable senators who intend to vote for these amendments, and thus for the bill, that once passed, the bill will do away entirely with the faint hope clause for anyone convicted of murder. It will not apply to those convicted before its passage. The 90 days was increased to 180 days so they could still apply, except anyone convicted from date of prorogation forward.

For those people eligible to apply, what do they have to go through? Who do they have to convince? First, they must convince the judge that they have reformed sufficiently to be given permission to appear before a jury. If the judge says, no, that is the end. If the judge says, yes, they go before a jury. They must convince the jury that they have reformed so that the jury grants them permission to go before the Parole Board of Canada. They must then convince the members of the Parole Board of Canada to release them.

Honourable senators, they must go through all of those stages before they can be released into the community; and yet, this government wants to eliminate that clause.

• (1450)

Honourable senators, I cannot support that. I cannot support legislation based on vengeance. That is not what I was taught as a child and it is not what I believe in as an adult. It is not, I believe, a part of the Canadian value system.

[*Translation*]

Hon. Pierre Claude Nolin: Why does Senator Carignan agree that we drop the short title?

Senator Carignan: I believe that, after careful review of Bill S-6, the House of Commons made a few minor changes, namely to the title and changing the deadline from 90 to 180 days where appropriate.

The House of Commons and the Liberal opposition in the House of Commons agreed on the principles of this bill. They voted in favour of the bill. I cannot recommend that honourable senators oppose minor changes. I think we need to get to the heart of the matter and protect victims and victims' rights, and we have to make sure that a life sentence is a life sentence.

Senator Nolin: I would like another clarification. Amendments 2 and 3 suggest a paragraph (2.7). Are there two paragraphs 2.7 in clause 3 of the bill?

Senator Carignan: I have received the ninth report of the Standing Committee on Justice and Human Rights and indeed, it mentions paragraph (2.7). I imagine that both paragraphs (2.7) will follow in subsection 1 and in subsection 2. That is how I understood the report because clause 3 states: ". . .be amended by adding after line 28 on page 3 the following."

(2.7) is being added, but was already adopted. I gather part 3 will have a second subsection to clause 2.7. That is how I understood it. Unfortunately, this is a report that was not presented as a bill to amend, which would have allowed us to identify specific flaws like the one Senator Nolin has flagged, but that it is how it is written in the report.

Senator Nolin: I think His Honour should address this inconsistency before we vote on the bill. We are being asked to adopt two paragraphs that would have the same number in the same clause. Before we can properly vote on the amendments, I think His Honour should clear up this matter.

I feel very strongly that there cannot be two paragraphs with completely different text that share the same number. I implore His Honour to intervene so that we can vote on this bill properly.

The Hon. the Speaker: Honourable senators, the question before the chamber is very clear and if, over the course of debate, other amendments are proposed, that is a different question. If there are no amendments, then we will be debating the amendments proposed by Senator Carignan, seconded by Senator Demers.

[*English*]

Hon. Joan Fraser: Honourable senators, I do not think Senator Nolin phrased this as a point of order but, if necessary, I will. Senator Nolin has drawn our attention to the fact that the material before us gives two identically worded instructions to do "the following," except that "the following" is different in the two cases. I think Senator Nolin has a valid point in saying that we need clarification on this matter, so I am seeking that from you, Your Honour. If it takes a point of order, would you consider it to be a point of order?

The Hon. the Speaker: I do not consider it to be a point of order. I think that we have identified something in debate and, when we identify something in debate that needs modification, the way to deal with it is to move an amendment to see whether or not the house agrees to make that change.

Senator Murray: The bill was amended by the House of Commons.

The Hon. the Speaker: Exactly, and we are dealing with that amendment. If we do not like the wording, then this house has available to it options that should be presented to the house by way of a clear question that it can deal with.

(On motion of Senator Banks, debate adjourned.)

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Claude Carignan moved second reading of Bill C-21, An Act to amend the Criminal Code (sentencing for fraud).

He said: Honourable senators, I am grateful for the opportunity to speak to Bill C-21, which addresses the important issue of enhancing the sentencing provisions for fraud.

Frauds come in all shapes and sizes and Canadians are at risk in virtually all aspects of their lives. It is clear that fraud is a problem on which we need to focus our attention. Today's fraudsters are highly sophisticated and anyone can become a victim.

It is harder and harder for Canadians to tell the legitimate businesses from the scams. The result is that Canadians and foreigners are being defrauded of millions.

• (1500)

Securities fraud also diminishes the confidence of Canadians in capital markets, in Canadian companies and in the regulatory authorities tasked with ensuring that transactions are open, transparent and fair.

This bill contains a number of measures designed to strengthen sentencing for people who commit serious fraud offences and it also sends the message that these crimes have very serious consequences for victims.

The impact on victims can be enormous and devastating; they can suffer significant harm as a result of the crime and that must be taken into consideration by judges when imposing sentences.

It may be useful to remind honourable senators of the current state of the law with respect to fraud.

The Criminal Code already addresses all forms of white collar crime: securities-related frauds, such as insider trading and accounting frauds that overstate the value of securities issued to shareholders and investors, mass marketing fraud, theft, bribery and forgery, to name just a few of the offences that may apply to a given set of facts.

The maximum penalty for fraud is already high. For fraud over $5,000 the maximum term of imprisonment is 14 years.

This is the highest maximum penalty in the Criminal Code, short of life imprisonment.

Several specific aggravating factors for fraud are provided in the Criminal Code, in addition to those that apply generally to all offences.

The aggravating factors require sentencing courts to increase the penalty imposed when, for example, the value of the fraud exceeds one million dollars, the offence involved a large number of victims, or, in committing the offence, the offender took advantage of the high regard in which he was held in the community.

Canadian courts have clearly stated that for large-scale frauds, deterrence and denunciation are the most pressing objectives in the sentencing process.

We routinely see sentences in the four to seven year range for large-scale frauds, and more recently, we have seen prison sentences over 10 years for very large-scale cases of fraud.

The courts have been clear that a serious penitentiary sentence must be imposed for large-scale fraud.

However, there is still much more to be done. We can strengthen the provisions of the Criminal Code to include tougher sentences.

The bill proposes a new mandatory minimum penalty of two years for large-scale fraud with a value of $1 million or more.

Orchestrating and operating a fraud scheme worth $1 million is a serious crime and should carry a minimum two-year prison sentence.

The time spent coming up with, planning and executing large-scale frauds reflects the morally reprehensible nature of the act, for which there must be serious penalties in the Criminal Code.

Furthermore, we all know that there are fraudsters who have managed to extort well over $1 million out of Canadians.

In addition, obviously, the mandatory minimum penalty of two years in prison for fraud with a value of over $1 million should be seen as a starting point and not a cap.

The government believes that cases of higher-value fraud will naturally receive harsher penalties, and the courts have shown that they are willing to hand out sentences of five to seven years for large-scale fraud.

However, we want to send the message that cases of lower-value fraud — but still over $1 million — must be taken seriously even if they are on a smaller scale than the large-scale frauds that are so well covered by the media.

The bill adds several new aggravating circumstances to those already specified in the Criminal Code for fraud offences set out in section 380.1(1).

These new aggravating circumstances are: if the fraud had a particularly significant impact on the victims taking into account their personal characteristics such as age, financial situation and health; if the fraud was significant in its complexity or duration; if the offender failed to comply with applicable licensing rules; and finally, if the offender tried to conceal or destroy documents that recorded the fraud or the disbursements of the proceeds.

In order to determine a sentence that suits the facts and circumstance of each case, sentencing courts will take these new aggravating circumstances into consideration, as well as those already set out in section 380.1 and the general circumstances set out in section 718.2 of the Criminal Code.

The bill also includes a new sentencing measure to limit the possibility that a person convicted of fraud could have access to or control over another person's assets.

This prohibition order can be for any duration the court considers appropriate. Violating a prohibition order would also be an offence.

The proposed new prohibition order would include some protective measures: the judge would have discretionary authority to make such an order; the judge could not make the order until the prosecution and the defence had the opportunity to comment on the impact such an order might have on the offender's ability to earn a living and other relevant considerations; the offender or the Crown could ask the court to vary the order.

This measure will help prevent fraud by preventing convicted fraudsters from deceiving others into handing them their money again.

Other measures in the bill focus more directly on the specific concerns of victims of fraud: the proposals deal with restitution and with the consideration of community impact statements.

Restitution is the return or restoration of some specific thing to its rightful owner.

It is part of the overall sentence given to an offender, as a stand-alone measure, or as part of a probation order or a conditional sentence.

The Criminal Code currently enables judges to order offenders to pay restitution to victims in appropriate circumstances to help cover monetary losses incurred by the victim as a result of bodily or psychological harm or damage to property caused by the crime.

An offender might be ordered to cover expenses incurred by a member of the offender's household as a result of moving out of the household in cases of bodily harm or threat of bodily harm.

The amount of restitution must be readily ascertainable and not in dispute. It cannot be ordered for pain and suffering or other damages that can only be assessed in civil court.

Restitution may be ordered as a stand-alone order or as a condition of probation or conditional sentence.

In deciding to make a restitution order, judges must take into account the offender's ability to pay.

Bill C-21 would require judges to consider restitution orders in all cases in which an offender is found guilty of fraud.

A judge would have to ask the prosecutor whether reasonable steps had been taken to provide victims with an opportunity to indicate that they were seeking restitution. This would allow the victims to establish their monetary losses and give them a chance to indicate that they would like to seek restitution from the offender.

• (1510)

In cases where the victim requests restitution and the judge decides not to make a restitution order, the judge will be required to justify that decision.

This measure should make it possible to avoid inadvertently omitting the question of restitution. Moreover, victims will be able to understand why judges decide, in certain cases, not to make a restitution order.

The bill also proposes including in the Criminal Code an optional form to assist victims in calculating their losses.

The value of the losses incurred must be readily ascertainable and victims will be required to provide evidence to support their claims. However, the courts will be able to continue to accept information regarding a request for restitution presented in other ways.

The use of the form will not be mandatory but the form will be available to facilitate the process for victims, prosecutors and judges.

Bill C-21 also includes measures to ensure that the effects of fraud are properly taken into account during the sentencing process.

Fraud has a major impact on victims, including financial, emotional, psychological and social harm.

The harm done to victims continues to be an important consideration for the courts when dealing with cases involving fraud.

Bill C-21 goes even further by recognizing the effects fraud has not only on individuals but also on groups and communities.

The bill proposes amendments that would specifically allow statements made on behalf of the community to be taken into account during the sentencing hearing so that judges can fully assess the terrible effect that fraud can have on an entire community.

The Criminal Code currently provides that in determining the sentence to be imposed on an offender, judges must consider any victim impact statements that have been properly submitted to the court. These statements are prepared by victims of an offence and describe the harm done to or loss suffered by the victim.

These statements must be prepared in writing, but may also be read in court by the victim during the sentencing hearing or presented in any other manner that the judge considers appropriate.

In addition to the formal victim impact statement, the Criminal Code provides that the court may consider any other evidence concerning the victim for the purpose of determining the sentence.

Judges have given the term "victim" a broad interpretation so that people other than the direct victim, including communities, have been permitted to provide victim impact statements.

Bill C-21 would explicitly allow courts to consider a community impact statement, made by a person on a community's behalf, describing the harm done to, or losses suffered by, the community when imposing a sentence on an offender found guilty of fraud. The statement would have to be in writing, identify the community, clarify that the person can speak on behalf of the community, and be shared with the Crown and the defence.

A community impact statement will allow a community to express publically the impact the crime has had on the community. It would also make both the court and the offender directly aware of the loss or harm that has been suffered as a result of the fraud.

Community impact statements will provide an opportunity to help the community begin a rebuilding and healing process by being able to describe the impact of a crime on the community. Community impact statements may also help offenders better understand the consequences of their actions, thus improving their chances for rehabilitation.

Case law has demonstrated that victim impact statements serve three purposes: to provide sentencing judges with information on the impact of the offence; to educate the offender on the consequences of his actions with some rehabilitative effect; and to provide a sense of catharsis for victims.

The provisions in this bill, which would create a community impact statement provision for fraud offences, share these three purposes.

Honourable senators, I think we would all recognize that communities and not just individuals can be impacted by crime. The proposals in this bill will make that recognition clearer in the law.

The proposed restitution amendments and the proposed amendments pertaining to the use of community impact statements are aimed at bringing the perspective of victims of fraud into the sentencing process in a more comprehensive and effective way. In doing so, it is our hope that these proposals will improve victims' experiences with the criminal justice system.

This bill represents a big step forward toward improving the current criminal justice response to serious fraud.

By creating a mandatory minimum sentence for fraud over $1 million, adding aggravating factors for sentencing, introducing a prohibition order as part of a sentence, and requiring mandatory consideration of restitution for victims, this bill represents a complete package of reforms to reflect the serious impact of fraud offences on communities and individuals.

This bill offers senators an opportunity to show their unequivocal support for victims of fraud. I believe that enhancing sentencing for fraud is a priority issue for all honourable senators.

Honourable senators, in my opinion, a theft committed using a pen is at least as serious as one committed at knife point, if not worse. People who commit such crimes must be severely punished. I therefore urge you to support this bill and refer it to committee for study.

Hon. Pierre Claude Nolin: Honourable senators, if Senator Carignan would accept a few questions, I would like him to help me reflect a little more on the government's objective with the notion of imposing, once again, a minimum sentence of two years. What is the goal here?

Senator Carignan: We really need to meet the victims of this type of fraud, who have lost their hard-earned retirement savings. Many people who do not have pensions gave contributions and trusted individuals who presented themselves as trustworthy, who had a licence to make investments and who embezzled money for their own use, and who embezzled all of that money. I firmly believe that society and the people who are considering committing crimes should be aware that the government considers this to be a serious crime. By creating a minimum penalty of two years, it would mean that offenders would have to serve their sentences in a federal penitentiary, which is a clear signal that the community does not approve of this type of behaviour. This sentence would prevent reoffending and also sends the message to others who might be tempted to commit a crime that the consequences they would suffer are serious and that the impact they have on the victims is just as disastrous.

• (1520)

Senator Nolin: In the Norbourg case, Judge Wagner said, and I am paraphrasing, that if the maximum penalty in the Criminal Code had been higher than 14 years, he would have given a sentence of more than 14 years.

So why impose a minimum penalty in the bill? Why not increase the 14-year maximum penalty?

Senator Carignan: The Norbourg affair that you mentioned was a particularly appalling case. The 14-year penalty was determined to be sufficiently severe. The case we are talking about here has to do with crimes of over $1 million, so not necessarily highly publicized cases like the Norbourg affair. We believe that by setting the minimum penalty at two years, that sends a message to the judge that an appropriate sentence should be between two and fourteen years.

The government is working to try to avoid another situation like the Norbourg case, in which the individual found guilty served one-sixth of his sentence and was released into society. It has been in the media and in the public domain. The government is trying to avoid having a situation like that happen again. But that will surely come through another legislative measure, another bill.

Senator Nolin: I presume that the department studied the bill and provided you with the results. Can you tell us if you discovered that the courts have often imposed sentences of less than two years on individuals found guilty of fraud, under section 380, where the value of the fraud was $1 million or more? Has it ever happened in Canada that the courts have imposed a sentence of less than two years? If so, I would like the details.

Senator Carignan: I do not have the statistics with me. That is one of the reasons why I am asking honourable senators to send the bill to the Legal and Constitutional Affairs Committee.

We all acknowledge the expertise and the very serious nature of this committee, which would request and have access to all the data, from Statistics Canada in particular.

Even though it may cover only a few situations, this bill is more important than that. Even if it only sends a message to the victims, in some situations, that they have the right to be compensated and that the community, the government, the House of Commons and the Senate consider that the consequences of losing their hard-earned savings are serious, I believe that this message of confidence in the justice system, and not just the number of cases affected, deserves our consideration.

Senator Nolin: I understand that you are undertaking on behalf of the Department of Justice, not just to provide statistics on any and all of these proceedings, when the bill comes before the legal affairs committee, but to provide details on these proceedings. It is important to be able to refer to the individuals and cases that led you to argue for this sentence.

Senator Carignan: I will make that commitment personally rather than for the minister.

Senator Nolin: You are here in your role as the sponsor of the bill. You are the minister's right- or left-winger. That is why the commitment I am asking you to make should be made on behalf of your team's captain, the Minister of Justice.

Senator Carignan: I would say I am the minister's goalie, but I promise to produce these statistics.

Hon. Pierrette Ringuette: Honourable senators, I could not help but pay attention to Senator Carignan's speech when he began to speak about the pension fund victims, people who took solace in the idea that their financial future was secure in a pension fund. As you said, you are the justice minister's goalie on this bill.

In your speech, you said that victims need to know that they have the right to damages for their lost pension funds. You said that they have lost their hard-earned savings.

I heard your comments on this bill and saw what happened a few weeks ago in this chamber when we voted on disabled victims of pension fund investment loss. You, Senator Carignan, you stood and said no to damages for pension fund investment losses, for disabled people, no less! Given all this, I am trying to understand where you stand in terms of Canadians' investments in pension funds.

Senator Carignan: I imagine that your question refers to Bill C-21, which would amend the Criminal Code sentencing for fraud. We are looking at amendments that affect the Criminal Code for criminal offences. In the case you are referring to, there were no criminal charges brought against anyone. If that had been the case, which I do not think it was, the victims would have benefited greatly from Bill C-21.

(On motion of Senator Tardif, debate adjourned.)

THE ESTIMATES, 2010-11

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (C)

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of February 8, 2011, moved:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in Supplementary Estimates (C) for the fiscal year ending March 31, 2011.

(Motion agreed to.)

• (1530)

[*English*]

SUPREME COURT ACT

BILL TO AMEND—SECOND READING—POINT OF ORDER—DEBATE SUSPENDED

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. Anne C. Cools: Honourable senators, I rise on a point of order, not on the substance or the merits of the question.

First, I wish to thank the sponsor of this bill, Bill C-232, the Deputy Leader of the Opposition, Senator Claudette Tardif, for her efforts on this bill. I believe that the Senate is enriched by her work on language and minority rights.

Private member's bill, Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages), is out of order because it does not conform to the settled law of Parliament and its parent power, the law of the prerogative, which holds that bills that affect Her Majesty's Royal Prerogative require Her Majesty's Royal Consent in her capacity as the head of Parliament and the enacting power in our Constitution.

Honourable senators, Bill C-232's single purpose is to amend the sovereign's, the Queen's, Royal Prerogative to appoint judges to the Supreme Court of Canada. This purpose places this bill in that class of bills that require the Royal Consent, that ancient parliamentary process to obtain the Queen's agreement for either house to debate or consider any bill that affects Her Majesty's sovereign and absolute interests.

The Royal Consent is no mere formality, nor is it a relic from other times. It is absolutely necessary, and has been prescribed by ancient parliamentary practice and usage. In Canada it is granted by Her Majesty's representative, the Governor General, His Excellency David Johnston, and embodies Parliament's and the Constitution's deference to the sovereign Queen as their head and the sole representative of all the people of Canada. This consent does not mean agreement to the merits or the substance of the bill, merely that the houses may debate on it.

Honourable senators, this bill is solely concerned with Her Majesty's prerogative law as the fountain of justice, the *fons justitiae*, that piece of prerogative law by which Her Majesty, in the person of our Governor General, by the instrument of letters patent under the Great Seal of Canada, constitutes and commissions Canadian persons as judges of the Supreme Court of Canada to serve during good behaviour, for life.

Honourable senators, the legalist Henry, Lord Brougham, once a Lord Chancellor, said that the sovereign Queen:

> . . . has the absolute power of appointing all the Judges, . . .

This quote is in his 1861 book, *The British Constitution: Its History, Structure, and Working*, at page 272.

The appointment, the constituting of judges, is a high and absolute prerogative power. Bill C-232's single purpose is to interfere with this prerogative power, this constituting power, by which Her Majesty the Queen, the chief magistrate, transforms certain Canadian persons into judges; that is, royally uplifted persons who have been royally vested and endowed with the high powers, privileges and immunities, to hold court, to try causes and to pronounce judgments. This appointment was called "raised to the bench."

The constituting of superior court judges is a royal matter of some gravity. Bills that seek to amend that royal power need royal attention and royal agreement even to be debated in Her Majesty's Senate and House of Commons.

Honourable senators, this bill's primary object remains undeclared. This type of bill is rarely used. Now condemned and unused, these bills were known as bills of disability. Bill C-232 is a bill of disability whose unspoken goal is to disable a specific class of Canadian citizens of their legal rights that are normally enjoyed by them. The 1981 *Compact Edition of the Oxford English Dictionary* defines "legal disability" as, at page 737:

> Incapacity in the eye of the law, or created by the law; a restriction framed to prevent any person or class of persons from sharing in duties or privileges which would otherwise be open to them; legal disqualification.

This bill proposes to disable a defined class of persons, which is all Canada's unilingual lawyers and judges, by far the majority, from appointment as Supreme Court judges. This bill asks Her Majesty to perform a novel act, and to enact a statute of disability, a doubtful policy of dubious morality and dubious legality. This bill has no precedent. These novelties alone render the Royal Consent imperative and urgent to this debate's continuation.

Honourable senators, the mischief grows like Topsy. Its other unspoken goal is to amend sections IV and VIII of the 1947 Letters Patent given under the hand of King George VI. Section IV is the source of the Governor General's power to appoint judges. The bill's drafters seem not to understand that the office of the Governor General and the prerogative law are constituted, not by the *British North America Act, 1867*, but by the royal, absolute and sovereign instrument of Letters Patent, which antedates the 1867 Act and cannot be amended by any bill. It is beyond amendment by any bill here.

Section IV states:

> And We do further authorize and empower Our Governor General to constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, . . .

This bill also amends Section VIII, the power to constitute the administrator, who is the person who acts in the absence or illness of the Governor General.

[Senator Cools]

Honourable senators, Bill C-232 is an alien and invasive creature. It violates the substance and the design of our law of Parliament, and disturbs the balance, equilibrium and comity between its three constituent parts: the Queen, the Senate and the Commons. This bill asks this Senate to trench and to usurp, to take over the exercise of the Royal Prerogative, a purely executive act — not an administrative act, a purely executive act.

Executive functions are no part of the privileges, powers and immunities of senators or members of Parliament, received from the United Kingdom and granted to us by the BNA Act, section 18. Senators have no power to even debate, far less to adopt, Bill C-232 without the Royal Consent. This bill is out of order.

Honourable senators, I shall cite the precedents that bear materially on this bill. John George Bourinot wrote about the Royal Consent. In his 1916 book, *Parliamentary Procedure and Practice in the Dominion of Canada*, he said at page 413:

> . . . the consent may be given at any stage before final passage, and is always necessary in matters involving the rights of the Crown, its patronage, its property, or its prerogatives. This consent of the Crown may be given either by a special message, or by a verbal statement from a minister — the last being the usual procedure in such cases.

The Royal Consent to bills is the Governor General's royal grant of power to either house, delivered there by a special message, or by a verbal statement from a minister. It represents his considered decision, founded on the advice given to him by his Crown ministers under ministerial responsibility. Ministerial advice is pre-eminent.

Recently, there have been two compelling cases in the Senate. Two Royal Consents were intimated here by two ministers, both of whom were Privy Councillors and Senate government leaders.

Honourable senators, on October 4, 2001, Senate government leader, minister, Senator Sharon Carstairs, P.C., one of the truly great women of Canada, gave the Royal Consent for her government's Royal Assent Bill S-34. She did this correctly as she began second reading debate. She said, at page 1379 of the *Debates of the Senate*:

> I have the honour to advise this House that:
>
> Her Excellency the Governor General has been informed of the purport of this bill and has given consent, to the degree to which it may affect the prerogatives of Her Majesty, to the consideration by Parliament of a Bill entitled "An Act respecting royal assent to bills passed by the Houses of Parliament."

• (1540)

Senator Carstairs acted in accord with the settled law of Parliament and ministerial responsibility. This case showed the legal role of ministerial advice. Remember, honourable senators, this bill had been moved by the opposition leader, Senator John Lynch-Staunton, who, by agreement with the government, withdrew his bill to allow Senator Carstairs to introduce it, corrected, as a government bill, Bill S-34.

The other case was on June 29, 2000. Senate government leader, minister, Senator Bernard Boudreau, P.C., intimated the Royal Consent for the consideration of the government's Clarity Bill, Bill C-20, saying that Her Excellency was pleased, in the Queen's name, to give consent to the degree that it may affect the prerogatives of Her Majesty. These two Senate precedents leave no doubt.

Honourable senators, Alpheus Todd, John George Bourinot, and Arthur Beauchesne recorded the authorities on the need for the Royal Consent to bills, and on the sad fate of bills that are refused it. John George Bourinot wrote, at page 414:

> If the introducer of a bill finds, from statements of a minister, that the royal assent will be withheld, he has no other alternative open to him except to withdraw the measure.

Among the many U.K. refusals, Bourinot recorded a famous Canadian refusal of Royal Consent when our House of Commons Speaker, in 1879, withdrew a bill moved by private member MacDonnell, because the premier informed that the Royal Consent would be refused. Bourinot wrote, at page 415:

> The premier having stated that he was not prepared to give the consent of the Crown to the bill, the mover was compelled to withdraw it.

Honourable senators, that premier was Prime Minister Sir John A. Macdonald. Commons Debates April 28, 1879, reads, at page 1579:

> Sir JOHN A. MACDONALD said this Bill affected the Royal prerogative, and the assent of the Crown must be given to it. He was not prepared to give that assent . . . and, as the assent of the Crown had not been given to the Bill, it could not be proceeded with.

Commons Journals that day reads, at page 322:

> *Ordered*, That the said Order be discharged.
>
> *Ordered*, That the Bill be withdrawn.

Honourable senators, I note that Senate Speaker Dan Hays was unaware of this when he ruled, on October 25, 2001, insisting:

> There is no known example in Canada of consent being refused. This raises the issue of whether a convention may have evolved here that consent will be granted, making the request for it a formality.

Perhaps His Honour, Senator Kinsella, should take a fresh and probing look at previous Speakers' rulings on the Royal Consent.

Honourable senators, Alpheus Todd wrote about the seminal private member's precedent — remember, honourable senators, there is a difference between government members operating under ministerial responsibility, government ministers and private members — laid down by the great Liberal parliamentary authority William Ewart Gladstone, while opposition leader in the U.K. Commons.

Honourable senators, you must know how these individuals influenced my life and how much I read about these men.

In his 1869 *Parliamentary Government in England*, volume II, Alpheus Todd wrote, at page 298:

> This intimation should be given before the committal of the Bill. But where a measure of this description is initiated by a private member, and not upon the responsibility of ministers, the House ought to address the crown for leave to proceed thereon, before the introduction of the Bill . . .

John George Bourinot said the same at pages 413 and 414, which is repeated in Beauchesne's in paragraph 728, at page 213. Beauchesne's is a repetition of Bourinot's.

Honourable senators, I shall read the words of William Gladstone, whose work influenced my life. One must know the influence of British Liberalism in the British Caribbean.

On May 7, 1868, moving his address for Queen Victoria's Royal Consent, for his private member's bill, he said:

> . . . I have felt . . . that it was my duty . . . to ask the House to present an Address requesting the Assent of the Crown, and allowing us to deliberate upon this subject before any Motion be made in the House for the introduction of the Bill.

Honourable senators, I shall quote one of the greats, Lord Lansdowne, a former Governor General of Canada and a great authority who, from the House of Lords opposition benches, laid down a germane precedent. On March 30, 1911, relying on Mr. Gladstone, Lord Lansdowne moved an address for His Majesty's Consent. In his stunning summary of the law and precedents on the position of an opposition member and the Royal Consent, he said:

> . . . it is certainly a breach of the law of Parliament to pass through either House a Bill affecting the Prerogative of the Crown without the assent of the Crown. I do not think any one will dispute that. We also conclude from these precedents that, although this assent may be signified at any stage, it is the proper course to obtain it before the introduction of the Bill. But we draw this further conclusion in reference to cases where the Bill is introduced, or is sought to be introduced, not by the Government, but by the Opposition.

He explained:

> The case of the introduction of such a Bill by the Opposition is clearly a different case from the introduction of a similar Bill by the Government, because it is perfectly fair to assume that if the Government makes itself responsible for the Bill it can at any moment count upon the assent of the Crown.

He added:

> That, of course, is not true when the Bill is moved from the Opposition side of the House, and it certainly does not seem fair and reasonable that, in such a case, a Bill should not only be introduced, but, perhaps, carried through several stages and laboriously debated under conditions

> which would expose the movers of the Bill to find themselves estopped by the Government, who would only have to signify, at whatever moment might seem fit to them, that the Royal Assent was not likely to be forthcoming.

Honourable senators, Bill C-232 is in its final stages. It came from the other place. About this, Speaker Lucien Lamoureux — and I have been quoting the original precedents, not what others have written, but the originals — while ruling in the other place on April 25, 1966, cited John George Bourinot and cautioned, at page 434 Journals:

> . . . a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown but if it is not given at the last stage, the Speaker will refuse to put the question.

This is the Speaker of the House of Commons speaking about the last stages in the House of Commons.

Honourable senators, to muse why the Speaker in the other place did not refuse to put the question there, or why the Royal Consent was not sought there, is moot. The bill is before us now, and it is still a private member's bill moved from the opposition. For probity, order and regularity in our proceedings, it is now imperative that the Senate receive some indication of Senator Tardif's intentions to move an address to the Governor General praying for the Royal Consent. I had thought that Senator Tardif's delay was for some good reason such as discussions with the government, as in the case of Senator Lynch-Staunton. However, Senator Tardif's recent actions in the Senate suggest that she wishes us to carry this bill through all its stages without Royal Consent. That is the reason, honourable senators, that I have raised this point of order. I have been waiting for this indication. I have concern that without Royal Consent, His Honour will soon find himself in the calamitous position where he must refuse to put the question. I do not know whether honourable senators know what this means, but it is an extremely serious matter.

• (1550)

Honourable senators, paragraph 726.(2) of *Beauchesne's Parliamentary Rules & Forms* states at page 213, the consent's:

> . . . omission, when it is required, renders the proceedings on the passage of a bill null and void.

If this bill were adopted without it, it will undoubtedly face such a motion as have many other bills that have proceeded without it. I therefore ask the Speaker of the Senate to rule and to follow Speaker Lamoureux's ruling that:

> . . . it is . . . the duty of the Speaker to determine whether this Bill interferes with the Queen's prerogatives and to see that the proper procedure be followed.

What I am asking Your Honour to rule on is clear: Does this bill touch the Royal Prerogative and, if it does, are the proper procedures being followed?

Once again, I thank Senator Tardif for her hard work. I am aware that time is ticking.

[Senator Cools]

I thank honourable senators for listening and for their attention. Understand that a few hundred years of development have gone into these rules and practices and for good reason. They are substantial and important to all of our processes. This bill in respect of the appointment of judges is solely about the Royal Prerogative — the *lex praerogativa*. It is about nothing else, and such a bill requires Royal Consent. In addition, it is our right and privilege to be informed by the mover of the bill as to her intentions in respect of acquiring or obtaining that Royal Consent. I thank honourable senators.

The Hon. the Speaker: Honourable senators, Senator Cools did allude to time. As I am always guided by that great Roman inscription, *tempora, tempore, tempera*, we cannot allow time or the absence of it to interfere with good process or good judgment.

Honourable senators, it is a house order that we rise at 4 o'clock. As Speaker, I would like to hear as much on this matter as possible so if honourable senators are agreed, I suggest that the house rise at 4 o'clock and resume this item when Orders of the Day are called tomorrow. I do not want honourable senators to feel constrained by time. Some time remains before the house rises today.

Hon. Joan Fraser: Honourable senators, I would like to pay tribute to Senator Cools, who is one of our unfailing and unflinching guardians of this institution. I do not think any honourable senators listen to her learned, heavily researched interventions on these matters without profit.

Like Senator Cools, I am something of a royalist. I grew up in a part of the world not far from the place where she grew up. We had a profound sense of the importance of our rights and liberties under the institution of the monarchy and all of its rights and privileges. However, in this case, I am not sure for a number of reasons that Senator Cools is correct.

Honourable senators, at the outset, Senator Cools seemed to suggest that the adoption of this bill would be a novel procedure in that legislation having the effect of disqualifying classes of persons from particular high positions in Canada is beyond our purview. I would suggest to honourable senators that perhaps that is not the case. We have in legislation many rules that the Parliament of Canada has adopted about qualifications for various high positions. Frequently, the higher the position, the more stringent the qualifications set out in legislation. In the precise case of judges, we are quite picky about them; and justly and rightly so. We require that judges be lawyers. We require, among other things, that like senators they retire at the age of 75, which disqualifies a large number of extremely qualified persons. We require by law in the case of judges who are not members of the Supreme Court that the court be capable of hearing and understanding proceedings in both official languages without the aid of an interpreter. In other words, we require that a significant number of judges of the lower courts be able to do that, which, by extension, disqualifies a large number of Canadians, even if they are lawyers and under the age of 75, from filling those positions. The same is true for many positions determined by the Parliament of Canada. Therefore, on that ground, I would argue with all the respect that I truly hold for Senator Cools on these matters that her argument, although thought provoking in many ways, does not hold in this case.

Honourable senators, then there is the matter of Royal Consent. On this, I thank His Honour for indicating that this debate should continue tomorrow. Although Senator Cools carries a great deal of this in her brain, I suspect she spent a great deal of time researching the authorities to ensure that her quotations and citations were letter perfect. Surely many honourable senators wish to do the same before continuing this debate.

However, I would repeat the point that Senator Cools acknowledged. If Royal Consent were necessary in this instance, it has been well established and confirmed in Speakers' rulings, as His Honour knows better than the rest of honourable senators, and I quote citation 727 at page 213 of Beauschene's Sixth Edition, that:

> . . . a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown . . .

As honourable senators are aware, this bill is a long way from the last stage. This place is having a dickens of a time trying to get it through second reading, let alone committee study and third reading. While the point of order is theoretically interesting, it would not be applicable at this time. Whatever might be the question for Royal Consent is not a block at this stage of the bill to the proceedings of this chamber. I would argue that it is not a block at all in this case and that the prerogative of the sovereign is not affected in any way by a decision of Parliament that judges of the Supreme Court should have extra qualifications beyond those existing in law. I have not had the benefit of Senator Cools in establishing what may or may not have been said in past parliamentary debates. Sir John A. Macdonald is not my bedside reading, I confess.

Some Hon. Senators: Shame.

Senator Fraser: Well, at times perhaps. A British subject I was born; a British subject I will die. Great man though he was, I have neither his parliamentary references immediately at hand nor those of Sir Wilfrid Laurier and others responsible for bringing before Parliament their views on the proper constitution of the judiciary.

Oh, dear, has my time expired?

The Hon. the Speaker: Honourable senators, at the end of Orders of the Day, I will recognize Senator Fraser on the point of order.

(The Senate adjourned until Thursday, February 10, 2011, at 1:30 p.m.)

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