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The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Monday, December 11, 2017

The Senate met at 6:30 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

INTERNATIONAL HUMAN RIGHTS DAY

Hon. Thanh Hai Ngo: Honourable senators, I rise today to commemorate International Human Rights Day, which was observed yesterday, Sunday, December 10.

[*Translation*]

On this day, we should recognize and be grateful for our democracy, which guarantees all people, no matter who they are, what they believe or where they come from, to live free and equal with dignity and rights.

Today, I can't help but think of the deteriorating human rights situation in Asia and Vietnam.

[*English*]

To mark this yearly milestone, my office has once again distributed copies of our latest annual report on the human rights situation in Vietnam.

This year's report highlights critical issues that demonstrate how the single ruling communist party is depriving Vietnamese citizens of their political freedom and human rights.

Honourable senators, International Human Rights Day should act as a powerful reminder for Canada's foreign policy, especially as it looks at increasing its progressive trade relationship with countries notorious for their poor human rights conditions, namely, China.

Trade relations and agreements are great communication channels through which we can interact with other nations to raise our social differences. However, in these instances, human rights could be the table on which trade negotiations take place. To understand this we must remember why we trade and see that trade and human rights go hand in hand as both seek to provide a higher standard of living.

[*Translation*]

Honourable senators, today and every day, let's commit once again to guaranteeing the fundamental freedoms and protecting the human rights of all people. Thank you.

AGRICULTURAL COOPERATIVES IN RWANDA

Hon. Lucie Moncion: Honourable senators, I would like to draw your attention to the major contribution that cooperatives make to developing countries, the advancement of their people, and the promotion of gender equality.

[*English*]

From 2012 to 2017, Global Affairs Canada funded an agricultural capacity development project with 15 cooperatives in Rwanda, in partnership with the Canadian Co-operative Association. This project has directly contributed to improving the access of hundreds of Rwandan families to healthy eating.

By strengthening their organizational capacity, the participating cooperatives saw their corn production increase by 46 per cent and their rice production by 25 per cent, while new gardening methods have reduced the risk of disease, especially among children. Access to a healthier diet has been particularly beneficial for women and children.

[*Translation*]

These women, who used to be dependent on their husbands for their survival, now earn money by growing and selling food products, and many of them have been able to open a bank account in their own name.

When women earn a salary, the family's overall income goes up. Thanks to that extra money in their pockets and those extra resources, members of the cooperative enjoy better food security and greater financial stability between harvests. The fact that they are no longer in such a precarious position means that children can put off looking for paid work and stay in school longer. Local authorities in the city of Muhanga have noticed that there are more children attending school.

[*English*]

But the cooperative model does not only have economic benefits. It also helps to change attitudes and encourages a better division of labour within the family. Women are not just paid for their agricultural work. They're also involved in the management of their cooperative, where they occupy nearly half of the decision-making roles, at 48 per cent.

As a result, they are now seen as partners, and as they become involved in family decisions, their husbands begin to participate in household chores.

[*Translation*]

Having spent most of my career working in the cooperative field, I am very proud to see Canada emphasizing the cooperative model in its international aid policy.

Although the project ended a few months ago, it will continue to have positive effects on the people of Rwanda for years to come.

Thank you for your attention.

[*English*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Sotiris Antypas, President, Cephalonian Association of Montreal and John Theotosopoulos, President, Hellenic Congress of Quebec. They are the guests of the Honourable Senator Housakos.

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

Hon. Senators: Hear, hear!

IOANNIS FOKAS

Hon. Leo Housakos: Honourable senators, on the occasion of Canada's one hundred and fiftieth birthday, I would like to take this opportunity to commemorate one of my Greek ancestors for his contribution to this great country of ours.

Ioannis Fokas, or Juan De Fuca as he was known by his Spanish name, was a Greek navigator and explorer. Fokas's grandparents fled Constantinople in 1453 and settled in the Peloponnese, which is where my family is from. From there he moved to the beautiful island of Kefalonia, where Ioannis was eventually born.

• (1840)

The reason he is most commonly known by his Spanish name is because of the years he spent in service as a mariner to the King of Spain. It was during this time, in 1592, that De Fuca became the first non-indigenous person to discover the strait between Vancouver Island and the coast of British Columbia. At the time, De Fuca had been searching for the fabled Strait of Anian, believed to be a northwest passage. However, De Fuca did not get the recognition he expected or deserved for his discovery, not even from the King.

In 1596, De Fuca was convinced by Englishman Michael Lock to offer his services to England's Queen Elizabeth. Although nothing ever came of the proposal, it is through Lock's correspondence that the story of De Fuca's discovery is recorded.

In 1787, it was British fur trader Charles William Barkley who found the strait De Fuca had described hundreds of years before and named it in his honour.

It was thanks to the efforts of the British that Juan De Fuca would eventually get his due and be properly recognized for his accomplishments.

Now, on the occasion of Canada's one hundred and fiftieth birthday, 350,000 Canadians of Greek descent, including thousands hailing from the island of Kefalonia, can be proud of the contribution of Juan De Fuca in the founding of this great nation we call home.

THE LATE CHIEF LEONARD GEORGE

Hon. Larry W. Campbell: Honourable senators, I rise today to pay tribute to a great Canadian, Chief Leonard George. On December 6, 2017, Leonard passed away at the age of 71. I've known Leonard since the late 1960s, when he was a young man and so was I; I was in the Mounties and he was at the Burrard Band. His father, Chief Dan George, was the leader of the Burrard Band at that time, which is out on the Indian Arm. It was at that point considered relatively inaccessible.

It was through the hard work and vision of Leonard that the Burrard Indian Band rightfully took back their heritage in the Tsleil-Waututh name. Tsleil-Waututh means "People of the Inlet," referring to the Burrard Inlet and the Indian Arm located in the Lower Mainland of British Columbia.

Leonard overcame many obstacles and difficulties throughout his life. He was always a visionary and intensely protective of the Tsleil-Waututh peoples. He was a smart negotiator who helped the nation through the treaty process and several successful business ventures. In my opinion, however, his biggest impact will be his efforts to preserve his First Nations culture and heritage.

Chief George led by example and always listened and took into consideration the thoughts and wishes of his people. Because of him, there are many young leaders within the Tsleil-Waututh Nation who will carry on his incredible legacy.

Leonard is survived by his wife of 47 years, Susan, and three children — Justin, Gabriel and Zachary.

You will be greatly missed, my friend.

[*Translation*]

INTERNATIONAL CAMPAIGN TO ABOLISH NUCLEAR WEAPONS

CONGRATULATIONS ON NOBEL PEACE PRIZE

Hon. Marilou McPhedran: Honourable senators, I would like to congratulate ICAN, the International Campaign to Abolish Nuclear Weapons, on winning this year's Nobel Peace Prize. This civil society group demonstrates the power that citizens have to effect real change in order to advance human security and safety on the international stage.

[*English*]

Yesterday, on International Human Rights Day, December 10, ICAN's Executive Director, Beatrice Fihn, and Canadian Setsuko Thurlow, a Hiroshima survivor, accepted the Nobel Peace Prize, watched by more than 100 million people worldwide.

Ms. Thurlow, with her years of advocacy and inspiring work for a ban on nuclear bombs, said:

It has been such a privilege to work with so many passionate and inspirational ICAN campaigners around the world over the past decade. The Nobel Peace Prize is a powerful tool that we can now use to advance our cause, especially in countries that have so far refused to join the nuclear weapons ban treaty. I pledge, to my last breath, to dedicate my life to nuclear disarmament.

This morning, I had the opportunity to meet with a delegation of women leaders from Canada and South Korea, brought together by the Canadian Voice of Women for Peace, the longest-standing women's peace organization in Canada, to discuss how Canada can do better by including women civil society leaders as part of our feminist foreign policy implementation and our new Action Plan on Women, Peace and Security in discussions currently ongoing related to a nuclear ban treaty.

These women have dedicated themselves to disarmament and peace. They live in South Korea, and they are deeply alarmed by nuclear proliferation. To quote the leader of ICAN, nuclear war is "one . . . tantrum away."

The devastating impact of the war between North and South Korea continues to have vast impact. The threat of nuclear war between the United States and North Korea is real, and we happen to be on the way for that path.

Canada can step up to speak about nuclear non-proliferation and stand with the almost two thirds of UN member states in the UN General Assembly that approved the nuclear ban treaty in July.

Once again, I congratulate the leadership of ICAN and Canadian Setsuko Thurlow and the Canadian Voice of Women for Peace, and hope that we will find ways, as senators, to stand with them in the fight to eliminate nuclear weapons. Thank you. *Meegwetch.*

[*Translation*]

ROUTINE PROCEEDINGS

INDIGENOUS AND NORTHERN AFFAIRS

JAMES BAY AND NORTHERN QUEBEC AGREEMENT AND
NORTHEASTERN QUEBEC AGREEMENT—2010-11 AND
2011-12 ANNUAL REPORTS TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the 2010-11 and 2011-12 Combined Annual Reports on the James Bay and Northern Quebec Agreement and Northeastern Quebec Agreement.

[Senator McPhedran]

[*English*]

NISGA'A FINAL AGREEMENT—2013-14 ANNUAL REPORT
ON IMPLEMENTATION TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the 2013-14 Nisga'a Final Agreement Implementation Annual Report.

[*Translation*]

WESTBANK FIRST NATION SELF-GOVERNMENT AGREEMENT—
2013-14 ANNUAL REPORT ON IMPLEMENTATION TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the 2013-14 Westbank First Nation Self-Government Agreement Annual Report on Implementation.

[*English*]

THE SENATE

NOTICE OF MOTION TO EXTEND THIS WEDNESDAY'S SITTING
AND AUTHORIZE COMMITTEES TO MEET DURING
SITTING OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the order adopted by the Senate on February 4, 2016, the Senate continue sitting on Wednesday, December 13, 2017, until the latter of 4 p.m. or the end of Government Business;

That, if a vote is deferred until after the time provided for in the first paragraph of this order, the Speaker interrupt the proceedings immediately prior to adjournment to suspend the sitting until 5:30 p.m. for the taking of the deferred vote;

That committees of the Senate scheduled to meet on that day be authorized to sit after 4 p.m. even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto; and

That the provisions of rule 3-3(1) be suspended on that day.

[*Translation*]

MOTION TO PERMIT ELECTRONIC AND PHOTOGRAPHIC
COVERAGE OF NEXT ROYAL ASSENT
CEREMONY ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That photographers and camera operators be authorized in the Senate Chamber to photograph and videotape the next Royal Assent ceremony, with the least possible disruption of the proceedings.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (1850)

OFFICIAL LANGUAGES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY THE
APPLICATION OF OFFICIAL LANGUAGES ACT AND RELEVANT
REGULATIONS, DIRECTIVES AND REPORTS AND REFER
PAPERS AND EVIDENCE SINCE THE BEGINNING OF THE FIRST
SESSION OF FORTY-SECOND PARLIAMENT

Hon. René Cormier: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Official Languages be authorized to study and to report on the application of the *Official Languages Act* and of the regulations and directives made under it, within those institutions subject to the Act;

That the committee also be authorized to study the reports and documents published by the Minister of Canadian Heritage and Official Languages, the President of the Treasury Board, and the Commissioner of Official Languages, and any other subject concerning official languages;

That the papers and evidence received and taken and work already accomplished by the committee on this subject since the beginning of the First Session of the Forty-second Parliament, as authorized by the Senate on February 3, 2016, be referred back to the committee; and

That the committee submit its final report no later than June 30, 2019, and that the committee retain all powers necessary to publicize its findings for 180 days after the tabling of the final report.

[*English*]

ORDERS OF THE DAY

COMMISSIONER OF LOBBYING

MOTION TO APPROVE APPOINTMENT ADOPTED

Hon. Peter Harder (Government Representative in the Senate), pursuant to notice of December 4, 2017, moved:

That, in accordance with section 4.1 of the *Lobbying Act*, R.S.C., 1985, c. 44 (4th Supp.), the Senate approve the appointment of Nancy Bélanger as Commissioner of Lobbying.

He said: Honourable senators, this is the motion consequent to our hearing of the candidate and I commend the motion to the house.

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

Hon. Senators: Agreed.

(Motion agreed to.)

THE SENATE

STATUTES REPEAL ACT—MOTION TO RESOLVE THAT THE ACT AND THE PROVISIONS OF OTHER ACTS NOT BE REPEALED—DEBATE

On the Order:

Resuming debate on the motion of the Honourable Senator Bellemare, seconded by the Honourable Senator Pettitclerc:

That, pursuant to section 3 of the *Statutes Repeal Act*, S.C. 2008, c. 20, the Senate resolve that the Act and the provisions of the other Acts listed below, which have not come into force in the period since their adoption, not be repealed:

1. *Parliamentary Employment and Staff Relations Act*, R.S., c. 33 (2nd Supp);
-Parts II and III;
2. *Contraventions Act*, S.C. 1992, c. 47:

- paragraph 8(1)(d), sections 9, 10 and 12 to 16, subsections 17(1) to (3), sections 18 and 19, subsection 21(1) and sections 22, 23, 25, 26, 28 to 38, 40, 41, 44 to 47, 50 to 53, 56, 57, 60 to 62, 84 (in respect of the following provisions of the schedule: sections 1, 2.1, 2.2, 3, 4, 5, 7, 7.1, 9 to 12, 14 and 16) and 85;
3. *Agreement on Internal Trade Implementation Act*, S.C. 1996, c. 17:
-sections 17 and 18;
 4. *Comprehensive Nuclear Test-Ban Treaty Implementation Act*, S.C. 1998, c. 32;
 5. *Preclearance Act*, S.C. 1999, c. 20:
-section 37;
 6. *Public Sector Pension Investment Board Act*, S.C. 1999, c. 34:
-sections 155, 157, 158 and 160, subsections 161(1) and (4) and section 168;
 7. *Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12:
-sections 89 and 90, subsections 107(1) and (3) and section 109;
 8. *Marine Liability Act*, S.C. 2001, c. 6:
-section 45;
 9. *Yukon Act*, S.C. 2002, c. 7:
-sections 70 to 75 and 77, subsection 117(2) and sections 167, 168, 210, 211, 221, 227, 233 and 283;
 10. *An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts*, S.C. 2003, c. 26:
-sections 4 and 5, subsection 13(3), section 21, subsections 26(1) to (3) and sections 30, 32, 34, 36 (with respect to section 81 of the *Canadian Forces Superannuation Act*), 42 and 43;
 11. *Assisted Human Reproduction Act*, S.C. 2004, c. 2:
-sections 12 and 45 to 58;
 12. *Amendments and Corrections Act, 2003*, S.C. 2004, c. 16:
-sections 10 to 17 and 25 to 27;
 13. *Budget Implementation Act, 2005*, S.C. 2005, c. 30:
-Part 18 other than section 125;

14. *An Act to amend certain Acts in relation to financial institutions*, S.C. 2005, c. 54:

-subsections 1(1) and 27(2), sections 29 and 102, subsections 140(1) and 166(2), sections 168 and 213, subsections 214(1) and 239(2), section 241, subsection 322(2), section 324, subsections 368(1) and 392(2) and section 394; and

15. *An Act to amend the law governing financial institutions and to provide for related and consequential matters*, S.C. 2007, c. 6:

-section 28, subsection 30(1), subsection 30(3) in respect of paragraph 439(3)(a) of the *Bank Act*, subsection 88(1), subsection 88(3) in respect of paragraph 558(3)(a) of the *Bank Act*, subsection 164(1), subsection 164(3) in respect of paragraph 385.04(3)(a) of the *Cooperative Credit Associations Act*, section 362 in respect of subsections 425(1) and (2), paragraphs 425(3)(a) and (c) and subsection 425(4) of the *Trust and Loan Companies Act*.

Hon. Peter Harder (Government Representative in the Senate): Colleagues, I rise to speak on the statutes repeal motion to provide additional information about the specific acts and provisions that, should the motion be adopted, would not be repealed pursuant to that act.

[Translation]

I would like to thank Senator Bellemare for going over the history of this bill and the departmental process for determining which acts and provisions should not be repealed.

[English]

It would be my pleasure to dive into the details of specific acts and provisions that are recommended to remain on the statute books as time did not permit my colleague to do so.

Senator Bellemare also spoke about a deferral recommended by the Minister of Finance concerning several provisions of an act to amend the law governing financial institutions and to provide for related and consequential matters.

It remains for me to speak to a deferral recommendation concerning section 17 and 18 of the Agreement on Internal Trade Implementation Act.

Those provisions would amend certain sections of the Interest Act to facilitate the eventual creation of regulations relating to a cost of credit disclosure harmonization initiative that was referenced in the agreement on internal trade.

The Canadian Free Trade Agreement came into force on July 1, 2017. Bill C-63, currently in this chamber, implements the Canadian Free Trade Agreement Implementation Act and repeals the Agreement on International Trade Implementation Act, including sections 17 and 18, with a retroactive coming-into-force date of July 1, 2017. In other words, belt and suspenders here. Referral is recommended as the Senate has yet to complete its deliberations on Bill C-63.

Turning to the Foreign Affairs file. Senator Bellemare spoke about the referral recommended by the Minister of Foreign Affairs regarding the Comprehensive Nuclear Test-Ban Treaty Implementation Act.

Another recommended deferral that I will raise with you today concerns section 37 of the Preclearance Act. The Preclearance Act implements a 2002 bilateral treaty on air preclearance entitled Agreement on Air Transport Preclearance Between the Government of Canada and the Government of the United States of America.

Pursuant to the Beyond the Border Action Plan, a new preclearance agreement covering all modes of travel was signed by Canada and the United States in March 2015. This new agreement is a more comprehensive agreement and it will replace the 2002 bilateral treaty on air preclearance when it comes into force. Implementing legislation of the agreement, Bill C-23, is now before this chamber. We await Royal Assent, as senators will know.

If this bill comes into force, it will supersede the obligations under the current act and will repeal and replace it, including section 37. It is therefore recommended that section 37 be deferred from repeal until the new preclearance legislation comes into force.

In regard to Health Canada, the Minister of Health is recommending a deferral of certain provisions of one act. The deferral recommendation concerns sections 12 and 47 to 58 of the Assisted Human Reproduction Act. In 2012, the Assisted Human Reproduction Act was amended to respond to a Supreme Court of Canada ruling which clarified the federal government's role in the area of assisted human reproduction. The not-in-force provisions have been deferred from repeal since 2014. The file has made significant progress since that time.

In October 2016, a notice of intent was published in the *Canada Gazette*, Part 1, announcing Health Canada's intention to bring into force the dormant sections of the act and to develop the necessary supporting regulations. In July 2017, the department published a consultation document for a 60-day comment period that summarized key policy proposals that will inform the regulatory development phase of the project.

A deferral of repeal is recommended as Health Canada is currently in the process of developing the regulations necessary to implement these sections. The provisions will be brought into force once the accompanying regulations are ready.

I shall turn now to the Crown-Indigenous Relations and Northern Affairs file. The Minister of Crown-Indigenous Relations and Northern Affairs is recommending a deferral for certain provisions of one act. The deferral recommendation concerns sections 70 to 75 of the Yukon Act. These provisions will allow the Yukon government to appoint as its own Auditor General and cease to use the services of Canada's Auditor General. The Government of Yukon needs to establish a position of Auditor General before these provisions can be brought into force.

The other provisions of the Yukon Act for which a deferral of repeal is recommended are consequential amendments to other acts that should be brought into force when the federal Yukon Surface Rights Board Act is repealed and the Yukon legislature enacts legislation in its place.

To date, the territorial legislation is not yet in place. A new Yukon government was elected in November 2016. A deferral of the repeal of these provisions is recommended to provide the government with time to take action.

On the Justice Canada portfolio, the Minister of Justice and Attorney General of Canada is recommending a deferral for provisions of two acts. The first recommendation for deferral concerns certain provisions of the Contraventions Act. The act provides a procedural regime for prosecuting federal offences designated as contraventions. It sets out two options for implementing the regime; namely, through an autonomous federal infrastructure or existing provincial penal schemes.

The Minister of Justice and Attorney General of Canada has entered into agreements with most provinces to implement the federal contraventions regime through existing provincial penal schemes. The Department of Justice is still in negotiations with the governments of Saskatchewan and Alberta.

In the event that agreements cannot be reached with the remaining two provinces, the Department of Justice may need to implement an autonomous federal penal scheme in those provinces by bringing into force the remaining provisions of the act. A deferral of repeal is therefore recommended to allow negotiations for implementation through existing provincial penal schemes with the two provinces to continue.

The second deferral recommendation concerns the five outstanding provisions of the Modernization of Benefits and Obligations Act. This comprehensive act is amending 68 federal acts to ensure equal treatment of married and common-law couples and to implement remaining references to illegitimacy in the federal law.

The coming into force of two of the remaining provisions is part of the discussions with the Cree and the Naskapi in the context of a larger negotiation process that would result in other charges to the Cree-Naskapi (of Quebec) Act.

- (1900)

BUSINESS OF THE SENATE

The Hon. the Speaker: Sorry for interrupting you, but we will move to Committee of the Whole, and when we return after, you will have the balance of your time.

Honourable senators, pursuant to the order adopted on December 8, 2017, I leave the chair for the Senate to resolve itself into Committee of Whole to hear from Mr. Pierre Legault respecting his appointment as Senate Ethics Officer.

SENATE ETHICS OFFICER

PIERRE LEGAULT RECEIVED IN COMMITTEE OF THE WHOLE

On the Order:

The Senate in Committee of the Whole in order to receive Pierre Legault respecting his appointment as Senate Ethics Officer.

(The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Nicole Eaton in the chair.)

The Chair: Honourable senators, rule 12-32(3) outlines procedures in a Committee of the Whole. In particular, under paragraphs (a) and (b), “senators wishing to speak shall address the chair” and “senators need not stand or be in their assigned place to speak”.

Honourable senators, the Committee of the Whole is meeting pursuant to an order adopted by the Senate on December 8. The order was as follows:

That, at 7 p.m. on Monday, December 11, 2017, the Senate resolve itself into a Committee of the Whole in order to receive Mr. Pierre Legault respecting his appointment as Senate Ethics Officer; and

That the Committee of the Whole report to the Senate no later than 90 minutes after it begins.

I would now ask the witness to enter.

(Pursuant to Order of the Senate, Pierre Legault was escorted to a seat in the Senate chamber.)

The Chair: Mr. Legault, thank you for being with us today. I would invite you to make your introductory remarks, after which there will be questions from senators.

[*Translation*]

Pierre Legault, nominee for the position of Senate Ethics Officer: Madam Chair, honourable senators, thank you for inviting me to appear before you today. I am deeply honoured that the Prime Minister has nominated me for the position of Senate Ethics Officer and I am pleased to appear before you in that context today.

[*English*]

I will admit that I am also more than a little awed to be seated here in the Senate Chamber, the place that, with the other place, both the cornerstones of our parliamentary system, has seen so much of Canada’s history happen between its walls. It is a vivid reminder of why I am here today.

[*Translation*]

As you may have read in my biography, I retired at the end of last year after a career that spanned nearly 35 years at the federal Department of Justice. I was the Associate Deputy Minister at the time of my retirement.

[*English*]

I started at Justice thinking it was a job that would offer me some interesting files and challenges, and it was. But justice, both the department and the very notion of justice, grows on you. I ended my career thinking that working at Justice was a vocation. So in my own modest way, I devoted my career to defending the rule of law, our Constitution, our democratic institutions and serving Canadians through serving successive governments during all these years.

I seek to become Senate Ethics Officer to continue serving and to continue supporting another of Canada’s fundamental institutions, the Senate. In fact, I must say I’m pretty excited at the prospect of being able to contribute at a time when the Senate is changing, when the expectations of Canadians toward their institutions are fast evolving.

I believe I am qualified for this position. I have interpreted and applied legislation and other texts and provided legal and policy advice on complex files and cases to all levels of government, including ministers and deputy ministers, in an objective, independent and non-partisan way throughout my career at Justice Canada. Should I be appointed Senate Ethics Officer, I would continue to do so in the same spirit.

[*Translation*]

As a lawyer, I am bound by the Barreau du Québec’s Code of Professional Conduct of Lawyers, which imposes ethics rules related to integrity, discretion and the importance of putting our clients’ interests ahead of our own. These rules matter to me not only because I am bound by them, but more importantly, because I believe in their fundamental value.

[*English*]

In fact, my interest for ethical matters is not recent. At Justice, I was senior counsel to the Ethics Counselor, as the position was then called, from 1995 to 1998, and I also supervised the provision of legal services to the Ethics Counselor from 1998 to 2002.

This brings me to the *Ethics and Conflict of Interest Code for Senators*.

The Senate, as a legislative body, is the master of how it disciplines its members. This principle has been recognized by a 1998 B.C. Court of Appeal decision in *Tafler v. British Columbia (Commissioner of Conflict of Interest)*.

The code contains the set of rules that the Senate itself has chosen to impose on its members. This is your code. Those are your rules. By virtue of the Parliament of Canada Act and the terms of the code itself, the role of the Senate Ethics Officer is, in short, to apply your code on your behalf.

[*Translation*]

I take very seriously the code's primary objective, which is to maintain and strengthen public trust, particularly its trust in the integrity of the Senate. If I am appointed Senate Ethics Officer, I will devote all my efforts to those duties and fulfill all responsibilities entrusted to me. As I said, I will do so in an independent, non-partisan and objective manner.

[*English*]

Indeed, the code specifies a number of responsibilities for the Senate Ethics Officer. To me, the most important of these responsibilities is to advise you and give you consistent, predictable advice on the code, with a view to helping you uphold the principles of the code and helping you prevent real and perceived conflict of interest so that I can help you maintain and enhance the integrity of the Senate.

If appointed, I would work tirelessly to ensure my office and I act with the same integrity that is expected of you, treat you with respect and fairness, and fulfil our duties competently and professionally.

A critical part of the Senate Ethics Officer's responsibilities would be, of course, to outreach in a way that achieves the balance between transparency and privacy that is sought by the code itself. I would inform on the code and how it works while respecting the limitation of not discussing the particular circumstances of an individual senator.

[*Translation*]

By the very nature of the position, the Senate Ethics Officer must have a great deal of discretion. Because the code requires these issues to be confidential, I will have to be very discreet with regard to senators' personal information and the measures I take or do not take to enforce the code.

[*English*]

Let me share with you some of the current practical illustrations of how the balance between transparency and privacy is achieved under the code.

On the one hand, the Senate Ethics Officer and the Office of the Senate Ethics Officer have to protect the information of senators. The security of written information is ensured through layers of physical security and limited access. Also, the written information given to the office never leaves its premises. When a senator leaves the Senate, his personal information is returned to him or destroyed, at his choice. The security of digital information is provided by the Senate's IT services, and the office benefits from the services of the Parliamentary Protective Service.

Preliminary reviews and inquiries must be conducted confidentially. The code says that the Senate Ethics Officer and those working for him have to keep confidential all matters required to be kept confidential under the code. A failure to do so is reason enough to be removed from office in the case of the Senate Ethics Officer or to be dismissed in the case of employees.

The employees are reminded regularly of their obligations related to confidentiality, and they must acknowledge in writing on a yearly basis their responsibility in that respect, similar to your own annual compliance statement.

• (1910)

On the other hand, the code includes a number of provisions to make information and documentation public. After review by the Office of the Senate Ethics Officer, a public disclosure summary of your annual declaration is made available to the public and is posted on the office's website as well as the statements on gifts, material changes and sponsored travel that you have the obligation to file and that you have submitted to the office. You will also find other documents on the office website, along with announcements about the status but not the content of reviews and inquiries.

Reports following preliminary reviews and inquiries are made public by the Senate and posted on the office website.

The Senate Ethics Officer also submits to the Senate an annual report describing his activities.

Now, I know the importance of the Standing Committee on Ethics and Conflict of Interest for Senators, to which you have entrusted all matters related to the code and under whose general direction I would be carrying out my duties and functions. Should I be appointed Senate Ethics Officer, I would very much look forward to working with the committee.

[*Translation*]

It goes without saying that I will be both delighted and honoured to work with each and every one of you.

Thank you for your attention. I now look forward to answering your questions.

The Chair: Thank you, Mr. Legault.

[*English*]

Honourable colleagues, we have less than 90 minutes to go and there is quite a list of questions, so I would ask you to be considerate and not spend a lot of time on preambles. Yes, you do have a limit of 10 minutes, but please consider that it would be nice to let all your colleagues have a chance to ask questions.

Mr. Legault, please keep it as short as possible.

We will start with Senator Smith.

Senator Smith: Thank you, chair. I will stand up because I've been in committee for the last couple of hours and we had a very interesting time in Official Languages.

[*Translation*]

Mr. Legault, welcome to the Senate of Canada. You have been Interim Ethics Officer for five months, since Ms. Ricard left in June.

[*English*]

You have had some time in this position. We thank you for the overview of some of your understanding of what you are going to head toward.

Can you give us a five-month summary of what you have seen? What works well in your office? What areas could be improved? If you could give us a scorecard for your five months of what you have seen, how it works, how it can be improved and how you feel you are fitting into it at this particular time, that would be helpful.

Mr. Legault: Thank you very much, senator.

I don't know if you remember the commercial for Remington razors, but in that commercial Victor Kiam, who was the owner, used that razor and liked it so much that he bought the company. After being the Interim Senate Ethics Officer for a month, I liked it so much that I decided to apply for the job. To me, indeed, it has been a positive experience not only after five months but after a single month.

Now, indeed, I have had a chance to look at some of the work that is done by the office. I haven't had the pleasure of going through the full cycle, and I have had the benefit as well of meeting a number of you.

One of the things I would like to do in the future is more outreach to senators and also their staff. I would like to review the positions taken by the office on a number of issues of interest to you all under the code and give you some general advice so that you have a better understanding of the code and your obligations.

This is one of the issues I have identified that I would like to address in the future.

There is some internal work to do as well in terms of the protocol to be used by employees within the office regarding the annual declaration process, for example, and things like that.

I would like as well to look at how to address a surge in work. We are a very small office, and if there is a surge in our work we will have to adapt to that, so I would like to work on that.

One of the unknowns going forward would be to see how in the future you decide to possibly amend the code, because there may be a review in the future. How to adapt to that and how to provide you the proper services would certainly be an issue of interest to me.

Generally speaking, as I mentioned in my opening remarks, I would like to continue to approach the services that we provide to you as individual senators in an independent, non-partisan and objective manner and base all of this on respect and professionalism with the ultimate goal to live by the reason the code was adopted, which is to maintain and enhance the reputation of the Senate.

Senator Smith: I won't take much more of your time. I just commend you on the opportunity of developing personal relationships with the senators. As we have a large group of new

people who have come in who are very qualified in their daily lives, the thing I have noticed over my seven years is there could be more interaction between the Ethics Officer and senators, which would help us in terms of giving us wake-up calls and making sure that we really do know what we think we know about the rules within the Senate itself. I would commend the point you made about that outreach.

Mr. Legault: I am in full agreement with your comments, senator. I would like to have the opportunity to meet each one of you and to give good advice to you in the spirit of the code. If I may say so, I like to make house calls, so you can call me any time. My main purpose is to serve you, again, under the code.

[*Translation*]

Senator Joyal: Welcome, Mr. Legault.

[*English*]

I would like to centre my question more on your status as defined in section 20 of the Parliament of Canada Act. I'm quite sure you're familiar with that section. It's the section that deals with your status as Senate Ethics Officer. Subsection 20.5(2) deals with privileges and immunities. I don't know if you have that Parliament of Canada Act section with you today or not, but I would like to quote it to you.

Subsection 25.2(2), entitled "Privileges and immunities" reads as follows:

The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.

This section, to me, is very important because, among the officers of Parliament, you are the only one who in the act enjoys the same privileges and immunities of the Senate as an institution and of senators individually. As you know, those privileges have a constitutional status according to section 18. You are a lawyer; you know that section of the Constitution very well.

What scope do you give to those privileges and immunities inasmuch as you are concerned in the performance of your duties as Senate Ethics Officer?

[*Translation*]

Mr. Legault: Thank you very much for your question, Senator. I have to admit, it is a particularly interesting and fascinating one. I will make a few preliminary remarks before getting to the substance of the question.

[*English*]

I will never pretend that because I have those same privileges and immunities that, in fact, I'm equal to a senator. I'm your adviser; I'm not a senator. Those privileges and immunities are not there for my own sake. They are there simply so I can support you as individual senators but, perhaps even more importantly, as an institution, as the Senate itself. Those exist so that the Senate

can continue conducting its affairs and is not forbidden or does not face obstructions that, in fact, would make it difficult to do so.

• (1920)

Interestingly, those privileges and immunities come from a long time ago. I believe they started in the eleventh or twelfth centuries in England. They were picked up by the Constitution of Canada back in 1867. It was recognized that these should be similar to what existed in Britain at the time, but also that they should be restricted, not a free-for-all. Those are picked up by the Constitution. They are reflected as well in the Parliament of Canada Act.

There are two types of such privileges and immunities. One is attached to individual senators. The most important one of those is the freedom of speech so that you have the liberty to express yourself in the Senate here and say what needs to be said without fear of being sued for defamation, for example, if you were to step out.

That freedom of expression, of speech, wouldn't apply to my position. This may be the only time I will be in front of you. The freedom of speech that you exercise in this room isn't always from the point of view of how it would apply to me. However, to the extent that I do a review, investigation, inquiry and I have a report, those documents would be protected as well by that freedom of speech. There are other privileges and immunities that arise from the history that we've just described, the freedom from harassment and civil processes, exemption from jury service or privileges relating to members being summoned as witnesses.

One of my favourites is that senators have privileges against obstruction, interference, intimidation and molestation. I take comfort in the fact that I could not be molested in the fulfilment of my duties. Indeed, this means that people could not try to intervene physically to stop a senator or member of the House of Commons to physically go in the chamber and fulfill their duties.

There are also some corporate privileges and immunities that arise out of our constitutional history and conventions. Some of the most important ones are the very reasons why we are here today. You have the right constitutionally, by convention as recognized by the case I was mentioning, to regulate your own constitution, the way you debate and the way you discipline yourself. The code is the end result of those privileges and immunities. Therefore, if I were to be confirmed as Senate Ethics Officer, it means that I would be implementing what you have decided arising out of those privileges.

I don't know if that answers your question, senator. I would be happy to elaborate further if you wish.

Senator Joyal: I would like to concentrate on the nature of your function, which is in fact to be part of the exercise of discipline of the Senate and of senators individually or collectively.

Do you see there is a potential conflict between the fact that you enjoy the same privileges as a senator in the Senate in the exercise of the privilege of discipline and the fact that you

nevertheless are not a senator? You are not appointed under commission and under the Great Seal of Canada, signed the Governor General of Canada, to sit in this chamber according to the section of the Constitution that you well know. How would you define the scope of the exercise of the privilege of discipline, as much as you are granted it, with the one that the senators have according to section 18?

Mr. Legault: Well, under the Parliament of Canada Act, the Senate Ethics Officer, on resolution of the Senate and on the approval of the Governor-in-Council, is also appointed under the Great Seal of Canada. If senators are appointed under that seal, the incumbent of this position is also appointed under that seal, but obviously for very different reasons and for very different functions.

The position and the code in a sense arise out of the way you have seen fit to regulate your own affairs. In that respect, yes, while being, as expressed in the Parliament of Canada Act, part of the Senate, my functions are very different. I don't personally see that there is a conflict because everything proceeds from our constitutional convention.

Senator Joyal: Let me be more precise.

You exercise the privileges of discipline. We individually exercise the privilege of discipline. What happens if you have an interpretation in a case, an affair or an investigation in relation to a senator, and the same position that we might have, but differently on the same issue, and we still have the privilege of discipline?

Mr. Legault: Thank you very much, senator, for clarifying your question. I do not have the power of discipline. I have the power to do a preliminary review. I have the power to do an inquiry. I can start both on the basis that it is self-initiated or at the request of a senator. I can make a recommendation, but at the end of the day, the report will go to the committee. The committee will make a recommendation to the Senate, and it is senators as a Senate who will decide on the measure to be applied to your colleague in the Senate.

Therefore, while I can investigate, I cannot decide what measures will be applied. That is yours. I don't have that power.

[Translation]

Senator Saint-Germain: Mr. Senate Ethics Officer-designate, thank you for your presentation. In the document describing your role and that of your office, you focus on the importance of prevention. You even say that prevention is the most fundamental role in the performance of your duties.

The means at your disposal to conduct preliminary reviews to determine whether there is cause for further investigation is one aspect of the prevention role. The other is helping senators who might seek your advice on their own individual matters, or those who might be reporting situations they may have read about in the media and that cause them concern.

Do you believe that you currently have every opportunity and the means to be informed of harmful situations that you might be able to address by taking preventive action within the Senate? Also, do you consider the media to be an effective reporting source?

Mr. Legault: Of course the Senate Ethics Officer has the power to conduct a preliminary review and a full investigation thereafter if there are grounds for it. The preliminary review is initiated specifically at the request of a senator or, again, following the officer's decision to proceed in that way.

Generally speaking, if another senator brought a matter to the attention of the officer, or if the media brought issues to the attention of the officer, I would examine those matters to determine the best course of action and decide whether it was indeed appropriate to proceed.

Senator Saint-Germain: In your presentation, you talked about the possibility of amending the code of ethics. You said that it was up to us as senators to decide what might be amended. If we asked your opinion on this what would it be?

For example, do you currently have the means to be proactive, to take preventive action and to advise? What other aspects of the code of ethics should be amended by senators, whether it is in their own interests or in the interests of the institution, to give you more authority or to clarify the code?

• (1930)

Mr. Legault: I have the great privilege of being the Interim Senate Ethics Officer, which, as Senator Smith pointed out, has given me the opportunity to see how things work.

The code is still relatively young. It was first adopted in 2005 and has been amended a few times, the last time being in 2014. One provision in the code calls for it to be reviewed every five years. I'm not sure whether 2014 is the starting point for that five-year period, but we can expect that the code might be reviewed in the near future. It is a living document, in a way. It must evolve over time, in light of experience gained and according to Canadians' expectations from their institutions. It will be important to review it.

If the code were to be revised, I hope that the Standing Committee on Ethics and Conflict of Interest for Senators would invite me to share my or my staff's observations. I haven't started a list of the topics or amendments I would suggest to the committee. I would like to take advantage of my staff's experience to see what could be improved, since they have been there longer than I have. Then, obviously, the committee would make recommendations to you, and you would potentially adopt some amendments. I would be happy to implement whatever you adopt.

To answer your question, I have not drawn up a list of changes to be made.

Senator Saint-Germain: Am I to interpret your answer as advice that you would give to all senators? If, for example, a senator reads about a troubling situation in the paper, should he

inform you of it so that we can act with discretion, respect, and impartiality given the interests involved? Is that advice we should follow?

Mr. Legault: Senators can always bring facts to my attention. Naturally, they can go further by filing a formal complaint. In that case, I would have no choice but to conduct a preliminary review. However, if a formal complaint was not filed, I would consider the comments made or facts submitted and decide on the best course of action in accordance with the code.

[English]

Senator Tannas: Thank you, Mr. Legault, for being here. First of all, let me say that we all value the advisory work that you and your office do in helping us comply with the code and to make sure that we are filing all the right things and so on.

I want to talk about inquiries and investigations. You're probably aware that one investigation I know of is approaching its third birthday in your office. In my view, in the five years that I've been here, a number of investigations have taken a puzzling amount of time to get completed. I have the greatest respect for your predecessor, but I would like a frank overview from you of, under your watch, how you see the conduct of investigations and inquiries and the need for speed, not undue but not undue delay.

Perhaps you could talk about how you might view attempts by people who are involved in the process to delay it and how you might combat that.

Mr. Legault: Thank you very much, senator. Indeed, the code states that an inquiry has to be conducted promptly. There is no question about that.

There is nothing that I would like better than to conduct an inquiry extremely rapidly, to be done with it and move on to something else. There is no question about that, either. When I think about it, though, I realize that there are some greater issues at play in the context of an inquiry. Therefore, I think you need to have a prudent approach to an inquiry.

At the end of the day, what we're talking about is the reputation of a senator, his or her integrity, but also the image of the Senate itself. It is one of the goals of the code to ensure, to maintain and to enhance the reputation of the Senate.

I believe that conducting an inquiry and cutting corners or proceeding in all haste simply to get a result would not serve the interests of the Senate well.

The gathering of facts, the interviewing of witnesses concerning the evidence and coming to a decision are not necessarily always easy. Witnesses are not always available when you want them to be. Sometimes you go from one witness, you discover something, and you move on to another witness that you had not anticipated. All of that takes time.

Again, I believe that if we do not do a proper investigation, then we will affect the reputation and credibility of the Senate, of senators, but also of the Senate Ethics Officer in support of the Senate.

I would grant you that the burden of proof that is required in an inquiry, or at least, generally speaking, under the code, which is sometimes on the balance of probability, sometimes reasonable grounds, is lower than the beyond a reasonable doubt that you will find in a criminal court and that it should take less time. But again, witnesses are not always available, and sometimes it gets difficult to get the physical evidence that we are seeking.

There's another factor that is very important as well. When there are allegations against a senator, we have to afford that senator the principles of natural justice. We have to give the senator a chance to know the allegations against him or her. We have to give the senator the chance to provide evidence, physical evidence, documents, and to be interviewed and have a real chance to express himself or herself, and to be represented by counsel if they so wish and so on and so forth. That, too, takes time.

Generally speaking, I would say that, absolutely, we should do an inquiry as expeditiously as possible. Indeed, if I'm appointed, I will endeavour to do so as fast as possible, but I would not want to do it to the detriment of the Senate's reputation.

Now, from a very practical point of view, I cannot tell you what has happened in the past. I can tell you that on a forward basis, I want to conduct those inquiries. Frankly, if I may say so, senators, I think that the Senate, individual senators and I will be successful if you make my job dull. If you make my job dull, it will mean that senators live up to their obligations under the code and there will not be any inquiries. That's the best possible state. But if we have inquiries, I will endeavour to do them as rapidly as possible.

Why I cannot answer your question directly is because of the reasons that I explained during my opening remarks. I cannot talk about what is happening during an inquiry or during a preliminary review, and I cannot talk about the particular circumstances of a senator. But at one point, when there's a report following an inquiry, that goes to the committee, which sends it to the Senate, and then it becomes public. At that point you might see what the reasons are for the pace of an inquiry.

• (1940)

Senator Tannas: The Senate Ethics and Conflict of Interest Committee is not really allowed to ask you to hurry up or ask you about what is going on. We wait for you. This is our one chance here to talk about this subject. I would say to you, sir, that if resources are ever the issue, you commit to come back here.

You're right. There is an individual senator at the heart of your investigations, and there are the collective reputations of all of us, and we don't get a chance to talk to you. This is the one and only time. I would ask that if you need more resources in order to complete something, for the good of the Senate and the senator, that you come quickly to do so.

Mr. Legault: Senator, thank you very much for the invitation. I very much appreciate it. I may avail myself of your offer in the future, if I'm appointed.

Senator Tannas: You mentioned a surge in activity and trying to develop a strategy around that. We'd welcome a plan around that, if that involves extra resources, if there's some trigger point at which you need extra resources. Thank you.

[Translation]

Senator Dupuis: Good evening, Mr. Legault. You mentioned that you have only been here for a few months. You also spoke about your previous years of service in the area of ethics.

From what you have seen over the past five months, is there any ambiguity in the code of ethics or is it missing any provisions that would normally be found in a code of ethics in 2017?

Mr. Legault: As I said earlier, I have not yet made a list of the changes that I would propose to the code. Everything changes. I'm sure that improvements could be made. However, at this time, I don't think that I'm in a position to provide you with a coherent list of changes with a vision of how to move forward. Once again, I would like to emphasize that, when it comes right down to it, you will be the ones deciding on the measures that apply to you. I do not have a list at this time.

Senator Dupuis: You said that one of your most important duties is to advise senators. I would like to ask an almost personal question, if you don't mind, even though that is not the point of today's exercise.

More specifically, what strikes me about the *Conflict of Interest Code for Senators* is that it focuses on principles. In other words, the part that I am particularly interested in is section 2, which talks about principles. The principles set out in the code deal primarily with conflicts of interest. There isn't much there about ethics. My question for you is an invitation of sorts. Could you, as part of your duty to advise senators, help us integrate the notion of ethics into the code in order to make it more balanced, at least in terms of what is said about conflicts of interest and what we would like to see regarding ethics?

Mr. Legault: Absolutely, senator. Let me tell you how I approach things. I mentioned that I spent part of my career at the Department of Justice. My primary goal was to serve successive governments well and to provide legal opinions to certain people.

To me, the notion of service is extremely important. If you come to me, I will give you my opinion on the basis of the facts that you provide me. The Senate Ethics Officer position doesn't involve the practice of law, per se, and yet it still requires a certain background in law, although its duties go far beyond. Enforcing the code takes precedence. It is not just about conflicts of interest. It is also about ethics. My approach will be to present the situation, express my opinion, go over your options, and assess the risks. Then, you will make a decision and I will enforce the code of ethics.

I would like to draw your attention to the fact that in addition to the principles that we find in section 2, there are also sections 7.1 and 7.2 of the code. In a way, the Senate is ahead of the curve in terms of the tangible steps it is willing to take in the area, compared to what is being done elsewhere in Canada. The committee has already issued a directive to that effect, more or

less stating that these provisions apply to senators whether they are directly related to their work as senators or not. Accordingly, even in their personal lives, inasmuch as they affect the reputation of the Senate, we must apply the highest standards of dignity inherent to the role of senator in those circumstances. Sections 7.1 and 7.2 were interpreted by the committee, but were not otherwise included in any decision. I get the impression that these provisions will be interpreted by the committee in some future directive or in light of the decisions that the officer might take over time.

Indeed, I think it's the responsibility of the incumbent of this position to give you advice on ethical matters. That seems fundamental to me.

Senator Dupuis: I have a sub-question, and I'm not looking for any details on senators' disclosures, but you referred to how the Senate has been evolving, and rightly so. From your own experience examining a number of disclosures — for it seems to me that I have replied to some correspondence from you, and I'm sure I'm not the only one to do so — is there anything that we senators need to examine, considering that some senators are independent, that is, they do not belong to any political party caucus? In this new situation, should the institution take a closer look at these issues from an ethical standpoint?

Mr. Legault: If you are asking the question only in the context of the annual disclosure, I don't think it matters at all whether a senator is independent or affiliated with a party. It has absolutely no impact.

Senator Dupuis: Generally speaking, apart from a senator's individual disclosure, is there anything that stood out for you?

Mr. Legault: Regarding the annual disclosure process?

Senator Dupuis: No, the situation itself. In other words, the appointment of independent senators has created a new situation. What concerns does this raise, if any, from an ethical standpoint?

Mr. Legault: On the face of it, I don't see any systemic problems per se. I think everything needs to be assessed one case at a time. When new senators are appointed, I will meet with them and explain the code, and I will assess the situation to look for potential problems in terms of conflict of interest or ethics. That advice is confidential and offered to all senators.

Once again, these matters have to be dealt with case by case. It has nothing to do with belonging or not belonging to a group.

Senator Dupuis: I have one last little question

The Chair: You have two minutes left, senator.

Senator Dupuis: This will take less than two minutes.

Is there anything about the extent of your powers that stands out for you? Do you feel you have enough powers to fulfill the duties of the position as you see it, or do you feel there is anything missing, anything that should be clarified or added to your existing powers?

• (1950)

Mr. Legault: I was fully aware of the contents of the code and the responsibilities of the ethics officer when I applied for this position, since I had already been the interim ethics officer for one and a half months. This means that I was completely comfortable with the ethics officer's role under the code.

However, to answer your question more specifically, I think this falls into the same category as another question you already asked about what amendments I might suggest in the future to potentially improve the code and the work we do. I still don't have a list.

[*English*]

Senator Batters: Mr. Legault, I note that the Senate ethics code defines parliamentary duties and functions as "including public and official business and partisan matters." How do you see the role of senators as parliamentarians intersecting with that of partisanship? Could you please explain whether you see senators' expression of political or partisan views as contrary to the Senate ethics code?

Mr. Legault: I think that the code reflects the role of senators, including that it is fine to engage in partisan politics. That's not contrary to the code, so I don't think there is an issue there per se.

Obviously, depending on how a senator behaves — what they do, and so on — would they at some point breach one of the specific provisions of the code, whether it's on conflict of interest or on ethical matters? Again, that would be a question to be looked at on a case-by-case basis.

There is very little direction in the code on such matters and what it means other than the definition that you have given. Frankly, I would not want to define that tonight but, rather, do it in the course of the application of the act over time. Indeed, if there were some rules or some interpretations that I thought would be useful to all senators, I would then make them known to senators.

Senator Batters: I want to follow up briefly on the questions asked earlier by Senator Tannas. Mr. Legault, I'm sure you're very aware of this, but I wanted to raise this point: Sometimes delay and investigation, real or perceived by the public, could be detrimental to the reputation of the senator involved or to the reputation of the Senate itself. Could you briefly comment on that?

Mr. Legault: Yes, senator, I'm aware of that. That's why I will endeavour to proceed as expeditiously as possible, absolutely; yes.

Senator Lankin: Mr. Legault, welcome and thank you for being here. I congratulate you on an illustrious career. Thank you for your service to the people of Canada for all those years.

One part of my questioning is with respect to the questions of Senator Tannas and Senator Batters. I think you've answered them thoroughly. However, I have one follow-up comment and a quick question on that, and then I'll move to another area.

I think Senator Batters just talked about the fact that justice delayed can be justice denied, and sometimes there are other people involved, not just the senator and the reputation of the Senate. I completely endorse everything you've said about due process, natural justice and affording the time that is necessary to do the appropriate job. However, I think in some circumstances where there are third parties that are affected by this, their rights to a response have to be considered as well. I'm sure that is part of what you intended when you spoke.

My question is this: If confirmed into this position, would you undertake to do a review of the kinds of investigations that have been done and the factors that have led to an expeditious resolution and completion of an inquiry or the factors that have drawn out an inquiry and report from that whether there are any substantive systemic issues that need to be addressed in the code? That would be my first question on that.

Mr. Legault: Thank you very much, senator. Indeed, I'm very interested in looking at how we operate in the clear context of a review or an investigation to see how we can proceed rapidly and what the pitfalls or impediments are to having a process that responds to the expectations of the code and of the Senate.

Yes, I would want to do something like that, namely, draw some conclusions and, obviously, depending on the nature of what I find, change the way that we approach things or, in some cases, have a discussion with the committee on such matters.

That would be part of how I would want to approach the position — that is, to look at the operations, not only for reviews and inquiries but, generally speaking, to have a thorough understanding. In the same way that I think the code is a living thing and has to evolve, I think the management of the office is a living thing that has to evolve as well. Absolutely; yes.

Senator Lankin: My second question is with respect to your interaction with individual senators as you seek to advise them on all aspects of the code. You've spoken about this quite a bit. I take from what you've said that you see the role as a proactive one of providing good advice. I wonder what that looks like to you.

I ask because I've had the opportunity in different situations of dealing with different people. I have all the confidence that you understand the nature of the job, the code and the provisions, but personality, style and your personal beliefs about what you want to achieve in the job will shape your interactions. I have been watching what's going on in the other place, and I can't help but wonder about how proactive advice can be and how you can work to problem solve.

I've had an experience with a terrific former judge in such a role who was very proactive in problem solving and working through things. I've also had the experience of a very cut and dried, these are the rules, this is a problem situation, even when it was quite clear to me that it wasn't, and working through that, even when, finally, the person came to understand their mistake, not finding any resolution, which led to the next year when we dealt with the issues.

So I'd like to know, in your experience thus far and in your view, what you think it means to advise a person and how you work with them through that process.

Mr. Legault: As I've said before, my hope is that I will create a relationship with each one of you and come to know what you do and what your concerns are so that I can advise you. That's certainly my wish.

Obviously, I need your help with this. We have to establish that relationship. If I'm confirmed, I intend to get in touch with you and make an appointment and meet with you, and so on. I will provide you with my honest advice.

At the end of the day, however, I'm not the one making the decisions. The decisions belong to each one of you individually. In the course of those conversations, I would advise you on options and what the risks are, and so on. I hope that you will take my advice, but I don't have the power to impose my advice on you under the code. I don't have that power. I can only advise.

Now, I have other powers that we can talk about because if there is a breach, then I have the power to conduct preliminary reviews and inquiries as well. It's a bit like being judge and jury at the same time.

My hope is that we would prevent any ethical breach or any conflict of interest, perceived or real. That's what I would work towards with you.

Senator Lankin: Thank you very much. This might be uncomfortable because I'm talking from my own personal opinion. I've watched parliamentary officers over the last number of years assume a different profile and role than perhaps had been traditionally played. I'm talking about at all orders of government. Furthermore, I'm talking about officers of Parliament — that is, budget officers, ombudsmen and auditors. I found the trend disturbing.

• (2000)

This is a different place in which the Senate is ruled by the opinion of the majority of the senators when they get the chance to express it. That can be difficult for a person working with the Senate if a particular report, review or opinion you've expressed for the purpose of the Ethics Committee review and report to the Senate and decision, if the decision taken is different from where you would have arrived in your consideration of the matter. Does that give you any cause for concern or pause? I know you've applied for the job, but I'm assuming you've given consideration to that?

Mr. Legault: No, not at all. If I give you a piece of advice and you don't follow it, I will not take that personally because I recognize that I'm not the one making decisions. I'm there to advise you.

I have a long experience in the Department of Justice where I provided advice to ministers, deputy ministers and everybody else. My advice was not always taken.

Indeed when a decision is made, it's not just on the basis of legal advice. People have to consider all sorts of other issues. Sometimes those are budgetary issues, policy issues, political

issues, economic issues, a legal issue or opinion or an ethical opinion. What I might provide to you is one entrant in your decision-making. So no, I would not take that personally.

At the same time, if I give you advice that what you are proposing to do or your particular circumstances are such that you might breach the code, obviously you have something to do in terms of how you are going to come to that decision and what decision it would be. If it's a breach, then I have other powers, duties and responsibilities under the code. You would be asking me, if I were to be appointed under the code, not just to provide you advice, but to make sure that if there are breaches under the code —

[*Translation*]

The Chair: Thank you, Mr. Legault. We will continue with a question from another senator. Thank you, Senator Lankin.

Senator Carignan: Welcome to the Senate and to your position as the Ethics Officer, Mr. Legault.

My question is about the rules of conduct. My colleague said earlier that the code is more a conflict of interest code than an ethics code. I found that somewhat startling, especially in light of the changes we made in 2014, which introduced the notions of ethics and conduct which, for a parliament, is rather unique in the world.

You mentioned sections 7.1 and 7.2, which state:

A Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator.

You also referred to section 7.2, which states:

A Senator shall perform his or her parliamentary duties and functions with dignity, honour and integrity.

This is the type of wording used in professional codes to broadly define what constitutes a breach and all potential situations that are not otherwise covered, any conduct deemed inappropriate or deviant that is seen as an affront to honour and dignity. That is not something you find often in parliamentary codes of ethics.

Are you aware of a code of ethics for parliamentarians anywhere in the world that goes as far as this one does?

Mr. Legault: Thank you very much, senator. As I said earlier, with the addition of these provisions in 2014, the Canadian Senate's code is ahead of the curve. Having said that, I have to admit that I am not familiar with other codes. It is not that they do not exist, but I just can't say one way or the other.

Senator Carignan: Great.

My next question is a general one. If you look at how the public views the position of senator or what can reflect adversely on the image of a senator or of the Senate, you get an idea of how the public sees the Senate or senators. How do you think the public sees the Senate and senators?

[Mr. Legault]

Mr. Legault: As I said earlier, the code does not get more explicit than what is set out in sections 7.1 and 7.2, apart from the committee directive I mentioned earlier. I would be reluctant to make assumptions about what the public may think, either specifically or generally, about the word "dignity" as they understand it. The reason I would prefer not to go down this road is that I may be called upon at some point to make a decision on the content of sections 7.1 and 7.2. Although I am not a judge, I want to be free to consider the facts as they are submitted to me, to determine the application of the code's provisions on a case-by-case basis, and, over time, to develop an understanding or interpretation of these provisions, which reflect the expectations Canadians can have toward the institution and toward the conduct of individual senators.

Senator Carignan: In the past few months and years, we saw that the Ethics Officer who preceded you relied heavily on external contracts to get the work done. External contracting sometimes leads to a loss of corporate knowledge and continuity. In that context, how do you see your role when it comes to managing your office, in order to ensure that there is a body of corporate knowledge or to help develop one? This is a skill that the Ethics Officer develops anyway, especially given the new breaches in 2014, with all the background that goes with them. How do you see yourself managing your office?

Mr. Legault: That is an excellent question. I have to say that there are some people in the office who have been there for a very long time and who have the institutional knowledge that you are referring to. If we do contract out, it is important to ensure that we do not lose any of that knowledge. In such circumstances, we would have to be careful about which mandates we chose to give to others and be sure to fulfill the most important ones internally, so that we can keep that knowledge.

You hit on something that I mentioned earlier, and that is how to deal with extra work in a given area. The Office of the Senate Ethics Officer is very small. We are able to deal with the usual work. However, if we had to conduct several investigations at the same time, we would have a hard time being able to do that. That is why we plan to rely on outside contracts.

I would hasten to say, however, that when we use external services, the same confidentiality rules that I mentioned earlier still apply to them in order to protect the information that you send us. I mentioned that earlier and I would like to look at that to see how we can do things in the future. It all depends on the demand for our services, and the number of reviews or inquiries that we are called upon to do. If things remain the way they are, or if there is a very low level of activity, then we won't need to contract any work out and we might be able to do everything internally. I think it is important to have an action plan, and that is something I would like to look at.

[*English*]

Senator Mercer: Mr. Legault, thank you for being here. I have a suggestion that I have given to other Officers of Parliament who have been here before through the approval process. Assuming that you are successful and will be appointed, I would encourage you to get to know the 105 people in this chamber. All 105 of us do the job differently. We all have different other aspects of our lives that may interfere with how

we do our jobs. We have to manage that and do so, obviously, within the guidelines of the code of ethics that we work by, but it is different for all 105 of us. I would encourage you to do that.

• (2010)

Other officers of Parliament, in particular the Auditor General, did not learn how this place operated and did a good deal of damage to this place. He took time to talk to us, but didn't take any time to listen to us. I would suggest that one of the problems that I want to continue to emphasize with people who are here to be confirmed is that we are all different. We all do the job differently, all 105 of us. I encourage you to get to know us. At least in my case, my door is always open to you and so are my files if you need to see them. So please do that.

Mr. Legault: Senator, I will take you up on your offer. I think it's important that I do so.

I will also note that the mandate I would have under the code is different than the mandate of the AG as well, and I'm very cognizant of that.

[Translation]

Senator McPhedran: Thank you for being here this evening, Mr. Legault. My question has to do with the inquiries you can undertake as Senate Ethics Officer.

[English]

Under your mandate, you are responsible to administer, interpret and apply the *Ethics and Conflict of Interest Code for Senators*. I would seek clarification from you as I do not see this mentioned under your specific mandate, and I will ask all my questions in the interest of time.

My first set of questions regards the status of unfinished investigation, and my second set of questions regards the interview process before you came here this evening.

As the Senate Ethics Officer, can you assure us that all unfinished inquiries or investigations into sexual harassment allegations will be finished and reported back to this place on the public record pursuant to section 48?

Another question: What would you do if your report to the committee is not tabled in the Senate pursuant to section 48?

I'm also asking you to share with us the current status of unfinished investigations.

To my second set of questions, did this issue of unfinished investigations arise in the course of your being interviewed for this position? And were any representatives of the Privy Council Office, the Prime Minister's Office or Treasury Board ever present at any point in the process?

Mr. Legault: Thank you, senator. That is a lot of questions, so I may forget some. If I do so, it's not because I want to ignore them. Please remind me of those questions.

Senator McPhedran: I will.

Mr. Legault: First of all, you talk about some of the inquiries that are going on at this point. As I said in my opening remarks, the code imposes restrictions on me as the Interim Senate Ethics Officer and also as the nominee for the position of Senate Ethics Officer in responding to questions like this.

As I said, the code carefully balances public disclosure with the protection of senators' privacy, so therefore I cannot specifically tell you where I'm at in the conduct of an inquiry; but if and when I'm at liberty of making information public, it will be made public in accordance with the terms of the code.

I would say as well that if indeed I submit a report to the Ethics Committee, they have the obligation to have it tabled in the Senate. They don't have the choice. That report would then become public and be posted on the website of the Senate Ethics Officer.

Unfortunately I cannot answer specifically about any of the cases that may be under inquiry at this point.

The other question that you asked was about the process that led me to be sitting in front of you today. I can describe that process a bit if you wish. It was quite an involved process, the first thing being what I mentioned before; I liked the job so much that after a month and a half I decided to apply for it. In order to apply for it, I had to provide my curriculum vitae and provide justification as to how my experience and skills in fact met the requirements of the position.

I was also interviewed by a group of people to verify my knowledge, skills and abilities. I had to provide references to verify my work experience as well.

A new one for me was that I had to complete some psychological tests online and undertake a psychometric interview with a doctor in psychology for about an hour and a half, which was pretty much as long as this will last here today.

Then they had to verify my background for security purposes. I also had to demonstrate and prove that I can understand and express myself in the second official language.

Finally, I have to appear before you so you can satisfy yourself that I'm the right candidate for the position of Senate Ethics Officer.

That's what I went through.

What did I miss?

Senator McPhedran: If I may, I would like to clarify the first part of my question, which is to indicate very clearly I'm not asking anything about who; I'm asking about whether there are unfinished investigations into sexual harassment allegations and whether you will continue to finish those investigations and report pursuant to section 48.

The second clarification I would like to offer is that I don't think you answered the following question: Were any representatives of the Privy Council Office, the Prime Minister's Office or Treasury Board ever present at any point in the process leading up to your being here with us this evening?

Mr. Legault: The answer to the first question is that it is public knowledge that there are two inquiries going on under the code at this point; there is an inquiry on Senator Kenny and an inquiry on Senator Meredith, as he was then, because now he is obviously no longer here. Those are ongoing.

You probably know that the committee has decided that despite the fact that Senator Meredith is no longer a senator, the inquiry should proceed. So I have no choice, and I would have no choice if I were to be the Senate Ethics Officer, but to complete that inquiry.

As to whether there was involvement by certain departments leading up to me being in front of you tonight, there were some people on the selection committee, on the board of interviewers in front of whom I appeared, from PCO, from PMO and the Senate. Those were the people who were on the board.

Senator McPhedran: Not the Treasury Board?

Mr. Legault: Not the Treasury Board, no.

Senator Hartling: Sorry. We're kind of far from each other. I get to see your back.

Thank you for being here. I really appreciate your openness in saying that you would like to meet with us and keep those doors open. I have been here for a little over a year. The whole thing about the Ethics Commissioner was a little onerous as to what was expected, so it is nice to have the opportunity to meet the potential person.

My question is around looking forward and creating openness. How would you create a working environment that's open so that employees from the Senate, if they have issues around harassment or discrimination, would be able to go to your office to make those complaints and feel assured that the reports will move forward efficiently? I'm wondering about the working environment you would create in that sense.

Mr. Legault: Senator, I apologize if I turn my back to you, but I guess I have to speak into the microphone here.

• (2020)

Senator Hartling: I will move over here.

Mr. Legault: My responsibility under the code is to apply the code itself. I have no responsibility other than this. Obviously, there are other officers of the Senate who have their own responsibilities, so depending on what employees want to bring to the attention of my office or others, first they would have to consider whether I'm the right person.

Having said that, as I mentioned before, I'm cognizant of what is happening. I don't live in isolation of what may be said, either in the press or by some of your colleagues or employees. Whether or not I take action would depend indeed on the nature of what I hear. I would be open to listening.

Senator Hartling: Okay. Thank you.

[*Translation*]

Senator Verner: Good evening, Mr. Legault, and welcome to the Senate of Canada. Thank you for being with us this evening.

My question builds on those of Senator Tannas and Senator McPhedran about ongoing investigations of former Senate employees, such as Senator Meredith, whom you mentioned earlier. His case got a lot of media attention, so I don't think this is news to anyone.

According to the *Huffington Post*, the first allegations came out in the spring of 2014. Steps were taken, and we know the Conflict of Interest Committee asked for the investigation to continue despite the senator's resignation. In light of the virtually global phenomenon of allegations surfacing in every sector in recent months, how can you assure the alleged victims that there will be a report at some point so they can have closure and turn the page on a dark chapter in their lives?

Mr. Legault: Thank you for your question, senator. As I said earlier, the investigation is strictly confidential. The Senate Conflict of Interest Committee called for the investigation to continue despite the fact that Mr. Meredith is no longer a senator. A report will be produced, but the code prevents me from sharing any more information or details.

Senator Verner: I was not asking for details or information. You answered my question because all I wanted was your assurance that a report on the investigation will be forthcoming.

The Chair: Honourable senators, I know that you will join me in thanking Mr. Legault.

Hon. Senators: Hear, hear!

The Chair: Honourable senators, is it agreed that I report to the Senate that the witness has been heard?

Hon. Senators: Agreed.

[*English*]

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

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Nicole Eaton: Honourable senators, the Committee of the Whole, authorized by the Senate to hear from Mr. Pierre Legault respecting his appointment as Senate Ethics Officer, reports that it has heard from the said witness.

THE SENATE

STATUTES REPEAL ACT—MOTION TO RESOLVE THAT THE ACT AND THE PROVISIONS OF OTHER ACTS NOT BE REPEALED ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Bellemare, seconded by the Honourable Senator Petitclerc:

That, pursuant to section 3 of the *Statutes Repeal Act*, S.C. 2008, c. 20, the Senate resolve that the Act and the provisions of the other Acts listed below, which have not come into force in the period since their adoption, not be repealed:

1. *Parliamentary Employment and Staff Relations Act*, R.S., c. 33 (2nd Supp):
-Parts II and III;
2. *Contraventions Act*, S.C. 1992, c. 47:

-paragraph 8(1)(d), sections 9, 10 and 12 to 16, subsections 17(1) to (3), sections 18 and 19, subsection 21(1) and sections 22, 23, 25, 26, 28 to 38, 40, 41, 44 to 47, 50 to 53, 56, 57, 60 to 62, 84 (in respect of the following provisions of the schedule: sections 1, 2.1, 2.2, 3, 4, 5, 7, 7.1, 9 to 12, 14 and 16) and 85;
3. *Agreement on Internal Trade Implementation Act*, S.C. 1996, c. 17:

-sections 17 and 18;
4. *Comprehensive Nuclear Test-Ban Treaty Implementation Act*, S.C. 1998, c. 32;
5. *Preclearance Act*, S.C. 1999, c. 20:

-section 37;
6. *Public Sector Pension Investment Board Act*, S.C. 1999, c. 34:

-sections 155, 157, 158 and 160, subsections 161(1) and (4) and section 168;
7. *Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12:

-sections 89 and 90, subsections 107(1) and (3) and section 109;
8. *Marine Liability Act*, S.C. 2001, c. 6:

-section 45;
9. *Yukon Act*, S.C. 2002, c. 7:

-sections 70 to 75 and 77, subsection 117(2) and sections 167, 168, 210, 211, 221, 227, 233 and 283;

10. *An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts*, S.C. 2003, c. 26:

-sections 4 and 5, subsection 13(3), section 21, subsections 26(1) to (3) and sections 30, 32, 34, 36 (with respect to section 81 of the *Canadian Forces Superannuation Act*), 42 and 43;

11. *Assisted Human Reproduction Act*, S.C. 2004, c. 2:

-sections 12 and 45 to 58;

12. *Amendments and Corrections Act, 2003*, S.C. 2004, c. 16:

-sections 10 to 17 and 25 to 27;

13. *Budget Implementation Act, 2005*, S.C. 2005, c. 30:

-Part 18 other than section 125;

14. *An Act to amend certain Acts in relation to financial institutions*, S.C. 2005, c. 54:

-subsections 1(1) and 27(2), sections 29 and 102, subsections 140(1) and 166(2), sections 168 and 213, subsections 214(1) and 239(2), section 241, subsection 322(2), section 324, subsections 368(1) and 392(2) and section 394; and

15. *An Act to amend the law governing financial institutions and to provide for related and consequential matters*, S.C. 2007, c. 6:

-section 28, subsection 30(1), subsection 30(3) in respect of paragraph 439(3)(a) of the *Bank Act*, subsection 88(1), subsection 88(3) in respect of paragraph 558(3)(a) of the *Bank Act*, subsection 164(1), subsection 164(3) in respect of paragraph 385.04(3)(a) of the *Cooperative Credit Associations Act*, section 362 in respect of subsections 425(1) and (2), paragraphs 425(3)(a) and (c) and subsection 425(4) of the *Trust and Loan Companies Act*.

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, just to resume, I am dealing with the deferrals in the Justice Department with respect to the Modernization of Benefits and Obligations Act. There are five such, and I was talking about two, which are related to the negotiations under way with the Cree and Naskapi in the context of the larger negotiations that would result in the changes to the Cree-Naskapi (of Quebec) Act. These discussions resulted in the conclusion of the Agreement on the Cree Nation Governance signed by Canada and the Cree on July 18, 2017. A deferral of repeal is recommended to allow for the amendments to the Cree-Naskapi (of Quebec) Act to proceed.

The other three provisions authorize a federal regulatory scheme to allow payment of parental benefits in the event of an unconstitutional exclusion caused by a parentage determination under provincial and territorial laws.

A deferral of repeal is recommended to enable the federal government to complete a review of federal, provincial and territorial family-related laws. It is important to note that currently, birth and adoptive parents, whether opposite sex or same-sex couples, are eligible to receive Employment Insurance parental benefits.

Turning to National Defence, the Minister of National Defence is recommending a deferral for certain provisions of one act. The recommendations concern certain provisions of An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts. These provisions would amend the Canadian Forces Superannuation Act and relate to supplementary death benefits and elective service rules. They cannot be brought into force before the accompanying regulations are made. To that end, policy analyses continue.

An additional factor affecting the timing for the coming into force of these provisions is the recent transfer of responsibility for the administration of Canadian Armed Forces pension plans to Public Services and Procurement Canada as part of the Government of Canada Transformation of Pension Administration Initiative. This transfer was completed on January 3, 2017.

A deferral of repeal is recommended, as it is intended that the revisions will be brought into force once the accompanying regulations are ready and to ensure the successful implementation of the new pension administration system.

With respect to Public Services and Procurement Canada, the Minister of Public Services and Procurement is recommending a deferral for certain provisions in two acts. The first recommendation concerns Part 18 of the Budget Implementation Act, 2005, other than section 125. The provisions in question amend several provisions for the Department of Public Works and Government Services Act and give the Minister of Public Services and Procurement the exclusive authority for contracting for services as the minister currently has for goods. Granting the deferral of sections 120 to 123 of the Budget Implementation Act, 2005 would provide the time needed to consult across government to determine the true potential impact of these sections on the government's procurement and modernization agenda.

As part of the procurement modernization initiative, which is consistent with the mandate of the Department of Public Services and Procurement, the federal government is updating the procurement framework and, more especially, the roles and responsibilities with respect to procurement government-wide. This deferral would also provide the time needed for the department to implement these provisions, as it presently does not yet have the capacity to exercise the authority under section 123 of Part 18, namely, the capacity to exercise exclusive authority for services.

• (2030)

The second deferral recommendation concerns Parts II and III of the Parliamentary Employment and Staff Relations Act.

Part II provides that labour standards such as standard hours, wages and leave will apply to parliamentary employment as per the Canada Labour Code.

Part III provides the same occupational health and safety coverage to parliamentary employees that exists for private industry and the federal public service under the Canada Labour Code.

On November 7, 2017, Part 2 of Bill C-65 was introduced before the House of Commons. Bill C-65 amends Part III of the Parliamentary Employment and Staff Relations Act with respect to the application of Part II of the Canada Labour Code to parliamentary employers and employees, without limiting in any way the powers, privileges and immunities of the Senate and the House of Commons and their members.

Therefore, a deferral of the repeal of Part III of the Parliamentary Employment and Staff Relations Act is recommended, as amendments will not be enacted and brought into force by December 31 of this year.

Finally, a deferral of the repeal of Part II of the Parliamentary Employment and Staff Relations Act is also recommended to allow further analysis of the possible impact of the amendments to Part III on Part II should Part II be brought into force.

I will turn now to Transport. The Minister of Transport is recommending a deferral for a certain provision of one act. The deferral recommendation concerns section 45 of the Marine Liability Act.

That provision will, if it comes into force, give effect to the Hamburg Rules, which is an international convention on the carriage of goods by sea adopted by the United Nations in 1978. However, the Hamburg Rules have not been ratified by Canada's major trading partners.

The Department of Transport is undertaking research, analysis and stakeholder consultations to identify how best to update Canada's laws on marine carriage of goods by water, including the Marine Liability Act.

A deferral of repeal is recommended to allow for this review to continue.

With respect to the Treasury Board, the President of the Treasury Board is recommending a deferral for certain provisions in two acts.

The first recommendation concerns certain provisions of the Public Sector Pension Investment Board Act that address supplementary death benefits for the Canadian Armed Forces. These provisions would amend the Canadian Forces Superannuation Act to permit regulations to be made prescribing the amount of supplementary death benefits payable and the amount of premiums.

Following significant efforts to transfer responsibility for the administration of the Canadian Armed Forces pension benefits plan to Public Services and Procurement Canada, the Department of National Defence is continuing regulatory policy work, including further consultations and financial analysis to establish the required regulations to bring these provisions into force. Given that these provisions cannot be brought into force before the necessary regulations are made, it is recommended that a deferral from repeal be granted for 2017.

The second deferral recommendation concerns certain provisions of the Amendments and Corrections Act, 2003, that amend the Lieutenant Governors Superannuation Act, the Salaries Act and the Supplementary Retirement Benefits Act.

When in force, these provisions would modernize pension protection with respect to disability for lieutenant governors, providing them with the same protections received by members of Parliament.

The provisions will require regulations to be made. A deferral from repeal is therefore recommended given that supporting regulations have been developed in order to bring these provisions into force in 2018.

Let me just remind colleagues of the temporary nature of the deferrals. In her remarks, Senator Bellemare reminded all senators that the deferrals in the Statutes Repeal Act are temporary. Any legislation for which a deferral is obtained this year will appear again in next year's annual report.

She also reminded this chamber that it is important that the motion be adopted before December 31, 2017, to avoid inconsistency in federal legislation and a costly and time-consuming exercise of introducing, studying and passing the resulting necessary legislation.

I would like to reiterate what Senator Bellemare said in her conclusion by urging you to vote in favour of the motion so that the act and provisions listed in the motion not be automatically repealed on December 31 of this year by application of the Statutes Repeal Act.

Finally, senators, I'd like to pay tribute to Senator Tommy Banks, without whose advocacy for this act you wouldn't have enjoyed this, but also the parliamentary oversight that is implied in this presentation on an annual basis would be unknown. Therefore, Parliament would have been in the dark on how its acts are being implemented by the Government of Canada.

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

Hon. Senators: Agreed.

(Motion agreed to.)

**IMMIGRATION AND REFUGEE PROTECTION ACT
CIVIL MARRIAGE ACT
CRIMINAL CODE**

BILL TO AMEND A BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator McPhedran, for the third reading of Bill S-210, An Act to amend An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.

Hon. Salma Atallahjan: Honourable senators, I rise today to briefly speak once more in support of Bill S-210, which seeks to remove the short title of the Zero Tolerance for Barbaric Cultural Practices Act.

When I spoke to Bill S-210 at second reading, I affirmed my strong support of Bill S-7 and its intent. However, I also fervently expressed my opposition to its short title, which, in my view, is incendiary and deeply harmful, as it targets a cultural group as a whole rather than individuals who commit the specific acts.

Through conversations with my community, I heard from most that they felt the short title was directed solely at them and that from their perspective it served only to further stigmatize and alienate them from the community at large.

Furthermore, it is not only immigrant communities that have spoken out against the short title. For example, the Canadian Bar Association has said that the short title “. . . is divisive and misleading, and oversimplifies factors that contribute to discrimination and violence against women and children.”

As I noted at second reading, Senator Jaffer eloquently observed that “. . . we can call terrorists barbaric, we can call violence barbaric, but we cannot call cultures barbaric.” I could not agree more.

I applaud and thank the Honourable Senator Jaffer for addressing the serious concerns raised by many Canadians on this issue, including Senator Eaton and myself, and ask that all senators support the amendment as put forth in Bill S-210 to repeal the short title of the Zero Tolerance for Barbaric Cultural Practices Act.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

• (2040)

SENATE MODERNIZATION

SIXTH REPORT OF SPECIAL COMMITTEE—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Tannas, seconded by the Honourable Senator Wells, for the adoption of the sixth report (interim) of the Special Senate Committee on Senate Modernization, entitled *Senate Modernization: Moving Forward (Speakership)*, presented in the Senate on October 5, 2016.

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Honourable senators, I note that this order is on day 15, and I'm not ready to speak at this time. With leave of the Senate, notwithstanding rule 4-15(3), I would like to propose that the clock be reset on this item.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(On motion of Senator Mercer, debate adjourned.)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

TWENTY-FIRST REPORT OF COMMITTEE—
DEBATE CONTINUED

On the Order:

Resuming debate on the consideration of the twenty-first report (interim) of the Standing Committee on Internal Economy, Budgets and Administration, entitled *Audit and Oversight*, presented in the Senate on November 28, 2017.

The Hon. the Speaker: Honourable senator, I would ask that you move this report before you begin, please.

Hon. Paul J. Massicotte moved the adoption of the report.

He said: Honourable senators, first let me recognize the hard work of a number of senators in crafting the proposed standing committee on audit and oversight. The deep thought that went into it was obviously very significant and sincere. Unfortunately, I do not support the model you have in mind.

First, I would like to outline why the current system is inadequate. In addition to responding to the proposal made by the Government Representative in the Senate, I will give my opinion about the merits and insufficiency of the proposed audit and oversight committee.

Let us first remind ourselves of the principal objective of this exercise, which is to reassure Canadians that senators spend their discretionary office budget wisely, all according to the most appropriate rules and policies.

In this respect, we must acknowledge that our existing practice of having senators, via the Internal Economy Committee, supervise and approve the spending of their colleagues and friends does not pass the public smell test, nor does it correspond to the modern definition of adequate independence and governance. In my opinion, we need to come up with a more appropriate supervisory model to satisfy Canadians.

How best can we achieve this result at the most reasonable cost? It is the question we should ask ourselves.

[*Translation*]

Let's take a look at the independent parliamentary oversight models used in the United Kingdom and Australia. These two bodies largely consist of external experts who review and approve parliamentarians' policies and discretionary spending. However, they do this at a cost ranging from \$3 million to \$12 million a year. This model, which was proposed by the Auditor General in his 2015 report and by the Government Representative in the Senate, is certainly a solid and efficient model for achieving our goal, but is it worth the cost?

Wouldn't this model interfere with the Senate's ability to govern itself, free from outside interference? I would put senators' discretionary spending somewhere between \$7 million and \$10 million a year. Furthermore, nearly all of the audits performed by the Auditor General for his 2015 report focused on discretionary spending.

In my view, \$2 million to \$3 million a year seems like a lot of money to spend on an independent supervisory body of external experts to review \$7 million to \$10 million in discretionary spending. We need to find a less costly model.

[*English*]

Let's take a look at the standing committee on audit and oversight that our Internal Economy Committee wants to create as an alternative to the Auditor General's recommendation.

That committee would be composed entirely of senators who do not sit on Internal. It would have the authority and purpose of employing auditors or experts to confirm that our spending is proper and most effective, all at an estimated annual cost of \$500,000 per year.

The difficulty I have with this model is that it does not in itself remedy the blaring weakness of our existing governance model where senators approve other senators' spending, even if we avoid having the same senators sitting on both committees — audit and oversight and Internal Economy.

The proponents of the audit and oversight committee argue that the auditors and experts will be employed to ensure independence. This could actually work if the audit mandates are structured properly. But, in my opinion, adding such an audit committee to the process of reviewing senators' policies and

discretionary spending adds little more than another layer of bureaucracy. It may even be viewed as a subterfuge to convince the public that the Senate now has things in control, when, in truth, the creation of this audit committee achieves nothing in itself.

Also, having an audit committee of senators decide on the audit mandates, on which auditor is hired, who has the possibility of reviewing the audit report before it's made public, and especially on how any deviation will be dealt with, will do little to bring greater legitimacy and accountability in the eyes of the public.

[*Translation*]

This leads me to make the following suggestion. Why don't we just ask the Senate to immediately commit to hiring one of the four big independent auditing firms every three years, for example? The firm would be tasked with reviewing and publicly reporting on whether our rules and policies are adequate and whether the senators have truly obeyed the rules on discretionary spending. The scope of the audit would enable us to determine whether our systems and control policies are adequate. The firm would review a sample of actual discretionary spending and could conduct an in-depth study of our spending habits if necessary.

Following the publication of the audit report, it will then be up to the Senate to vote and decide on the appropriate course of action in the event of a serious violation. This entire process could be coordinated by the office of the Speaker of the Senate, and senators would not be allowed to change or approve the audit report in advance, of course, to correct factual errors.

With this solution, which would cost no more than \$250,000 every three years, creating an audit and oversight committee would be unnecessary. The relatively low cost of this audit method will be more suited to the amounts in question. Furthermore, by combining this approach with the already established practice of making senators' expenditures public, I am confident that Canadians would support it. Why, then, do we need to complicate matters by creating an audit and oversight committee? Thank you.

Hon. Senators: Hear, hear!

Hon. Pierrette Ringuette: Would Senator Massicotte accept a question?

Senator Massicotte: Gladly.

Senator Ringuette: Based on the scenario you are proposing, every three years, this auditing responsibility would fall to the Speaker of the Senate. Since it would not be the Internal Economy Committee that would request an audit every three years and since you mentioned that the audit report would be submitted to the Speaker, then I assume that the Speaker would be the one to request the audit. Did I understand that correctly?

• (2050)

Senator Massicotte: You understood correctly, but it would be up to us. It doesn't really matter whether it is the Speaker or the Internal Economy Committee. The important thing is the

mandate given and the way the report is delivered. I think that the mandate should be given by the Senate. It can be initiated by the Internal Economy Committee or by the Speaker, but the report must be prepared by people who are completely independent from the Senate and it must be made public without any interference in its approval. Senators are not in charge of the report. It is public and we can hope that a third party will confirm that our methods are responsible and effective for less than \$2 million, \$3 million or even \$500,000 a year.

Senator Ringuette: If I remember correctly, in 2012 or 2013, two audits were done, one right after the other. One audit was conducted by KPMG and another by Deloitte. These two audits were also made public.

What do you believe the difference will be?

Senator Massicotte: I would like to clarify something. Almost every organization in the world undergoes an audit once a year in order to determine whether their finances are in order and that they are correctly representing their financial situation. We are not talking about an audit of our effectiveness as senators or of our policies.

I am talking about a specific mandate that would be granted to one of the four major auditing firms in order to determine whether the rules in place are adequate and whether the senators have followed the rules. It would be a specialized audit tailored to our interests.

[*English*]

Hon. Frances Lankin: Would you take another question, senator?

Senator Massicotte: Of course.

Senator Lankin: Thank you. I am also concerned about the proposal that's before us, but I appreciate the work that's been done and that's a very good place to start from.

I am trying to understand how once every three years would help us do a really exhaustive examination of both the policies and the controls that are in place. Often, it's the controls that fail; it's not necessarily the policies themselves, although they need to be kept current.

The role of a truly independent internal auditor who reports to an audit committee has, I think, the better opportunity to do the ongoing quality assurance that we need.

My concern is with the independence of the review of that information. If I look to the public service and the departments that all have internal audit committees, they all have both internal and external independent people who have been appointed to them. Have you given consideration to something like that as a model and why would you find that failing?

Senator Massicotte: I think there's always a role. There is currently an internal auditor working within the Senate. The role of the internal auditor is, generally speaking, to verify that the accounting and internal audit controls are in place and, therefore, there is no loss of funds or whatever.

I'm not talking about that. I think our mandate is to talk about discretionary spending of senators. I'm not talking about the annual audit because that's a broader subject.

I'm talking about our issue. The problem we have is an issue of trust with the public, in my opinion. To have an internal auditor report to highly qualified senators on internal matters, I don't think that is going to fly. People want external confirmation that the policies are appropriate and we're spending according to those policies.

You have a discussion relative to whether three years is too long. If you think there is an urgency to the matter, although I must say we just reviewed the policies and I think they are pretty good, but it's important to have a review by third parties. If you think it's important, do the first one in a year or two. I think afterwards, if you look at the Senate spending, maybe \$110 million, take off our salaries, the non-discretionary spending and all the areas where we don't have a conflict, where it's not our money, we're talking about equipment, so on, what you are left with is \$7 million to \$10 million of discretionary spending, which is where the problems lie. If you look at the audit report of 2015, 99 per cent of the comments relate to those discretionary spending amounts. That's all. For the rest, there is no conflict. The rest is fixed by statute.

You can easily bring down \$110 million to maybe \$10 million. How much do you want to spend to do that? I don't think we should spend \$2 million or \$3 million a year; \$500,000 a year is quite a bit. I think maybe do it in the first year. I think three years is good enough for afterwards, or do it every four years, every second year. When you're talking only of that sum and it's a very specialized audit, I think three years is good enough. I think it's maximum of \$250,000 for those three years.

[Translation]

Hon. Lucie Moncion: Would Senator Massicotte like to take my question?

Senator Massicotte: It would be my pleasure.

Senator Moncion: My question is on the role of the auditor, the person who would play that role within the Senate. An independent person might conduct the internal audit, in other words an independent employee from an audit committee who might also, for a period of three years, work with an external auditing firm, which would audit the work of that person.

My concern has to do with the fact that when external auditors come in to go over the books or the results of an internal audit, they always make reference to their limited intervention. They confirm only what they were able to audit and there is always a stipulation that they cannot necessarily be held accountable for what they did not audit, in light of what they saw.

The employee who holds this internal auditor position, in an independent manner, would conduct this audit and when the external auditor arrives, the work will already be under way.

I would like your opinion on such a proposal.

[Senator Massicotte]

The Hon. the Speaker: I am sorry, Senator Massicotte, but your time is up and other senators want to ask you questions. Are you asking for five more minutes?

Senator Massicotte: Yes.

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

Hon. Senators: Agreed.

Senator Massicotte: Thank you.

Here is the problem I have with internal audit. As far as the public is concerned, our credibility has been compromised, so people might raise concerns about the fact that the person preparing the report is an internal employee under our control. That employee may be very competent, but I think the arrangement lacks credibility.

I understand your argument about how, if we hire someone to do this job, the external auditor's role will be less extensive and less costly. However, for the specific task I am talking about, if the mandate is very clear and we authorize the auditor to do sampling, it could be very efficient and lead to a fairly comprehensive opinion.

I am sure a very reasonable amount of money would enable us to provide assurances to the public about our discretionary spending.

Senator Moncion: Our expenses are already available to the public, and people can ask questions. What more would an external auditor do, especially with the new rules in place?

Senator Massicotte: That is a very good point. For the past two years for most senators, and for the past six or nine months for all of us, our spending as senators has been reported quarterly. Some might argue that this is sufficient disclosure and that the public doesn't need more details. I agree with this argument, in light of our recent history. Members of the public are not all experts. They do not all want to rely on a journalist who spends his time examining our expenses. It would help the Senate's credibility if we had someone external who was looking at our discretionary spending. This may not be necessary in five to ten years, but right now it's very important.

• (2100)

Hon. Raymonde Gagné: Would you take another question?

Senator Massicotte: I'd be happy to.

Senator Gagné: In the model you're proposing, who is responsible for implementing the recommendations from the audit report?

Senator Massicotte: That will be up to the Senate to decide. The report will be presented to the Speaker and will be made public immediately. It will be up to the Senate to improve its monitoring system, address the issues raised in the report, and fix problems related to external interference.

Hon. Patrick Brazeau: Thank you very much for your speech. As you know, in the past 10 years, the Senate has hired external auditors KPMG and Deloitte. These external auditors reached clear findings regarding the Rules of the Senate. In particular, in 2013, Deloitte looked at some Senators' specific expenses. Unfortunately, for reasons that are not without significance to me, these conclusions were ignored and the Senate did not follow up on the external auditors' recommendations. How can we make sure that the Senate follows the external auditors' recommendations to improve its operations, if that's the path we choose?

Senator Massicotte: There's no guarantee that the Senate will follow the recommendations made by an external auditor. It's up to the Senate to decide. However, in two cases, the auditors' and one of the judges' findings were inconclusive, since our rules were unclear and contradictory.

Then there was the review conducted by Internal Economy over the past two years. Last summer I spent about fifty hours with ten or so people checking all the policies. There is certainly room for improvement, but we have addressed many of those contradictions and the lack of clarity of the rules. There may be differences of opinion about the need to revise them again. It is a never-ending task. That being said, the major problem of the past few years has been resolved.

[*English*]

The Hon. the Speaker: I am sorry, Senator Brazeau, but Senator Massicotte's time has expired again.

Are you asking for more time, Senator Massicotte?

Some Hon. Senators: No.

The Hon. the Speaker: Is leave granted? I hear a "no."

(On motion of Senator McPhedran, debate adjourned.)

FISHERIES AND OCEANS

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Fabian Manning, pursuant to notice of December 7, 2017, moved:

That the Standing Senate Committee on Fisheries and Oceans have the power to meet on Tuesday, December 12, 2017, at 5 p.m., even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

The Hon. the Speaker: It was moved by the Honourable Senator Manning, seconded by the Honourable Senator Ataullahjan, that the Standing Senate Committee on Fisheries and Oceans have the power to meet on Tuesday — may I dispense?

Hon. Senators: Dispense.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to.)

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Michael L. MacDonald, for Senator Galvez, pursuant to notice of December 7, 2017, moved:

That the Standing Senate Committee on Energy, the Environment and Natural Resources have the power to meet at 5 p.m. on Tuesday, December 12, 2017, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

The Hon. the Speaker: It was moved by the Honourable Senator MacDonald, seconded by the Honourable Senator Tkachuk, that the Standing Senate Committee on Energy, the Environment and Natural Resources — may I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Question.

The Hon. the Speaker: Is it your pleasure, honourable senators — Senator Plett?

Hon. Donald Neil Plett: I have a question for Senator MacDonald, if I could.

Senator MacDonald: Certainly.

Senator Plett: Senator MacDonald, is this committee studying legislation at this point?

Senator MacDonald: Yes, Senator Plett. We will have Bill C-17 coming to the committee, the Yukon legislation, and we expect the minister tomorrow evening.

Senator Plett: The purpose of your sitting is to study legislation?

Senator MacDonald: The purpose of the sitting is to hear the minister on Bill C-17 tomorrow.

Senator Plett: Thank you.

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

Hon. Senators: Question.

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

(At 9:07 p.m., the Senate was continued until tomorrow at 2 p.m.)

Hon. Senators: Agreed.
