



DEBATES OF THE SENATE

1st SESSION • 41st PARLIAMENT • VOLUME 148 • NUMBER 87

OFFICIAL REPORT
(HANSARD)

Thursday, June 7, 2012

The Honourable NOËL A. KINSELLA
Speaker

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

THE SENATE

Thursday, June 7, 2012

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

Prayers.

SENATORS' STATEMENTS

CANADA-INDIA COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

Hon. Asha Seth: Honourable senators, as a new member of this great institution, it is sometimes difficult to find one's way because there are so many worthy causes that require our attention, so many people who need our help.

Yet, as the first Indo-Canadian female senator and a devoted Conservative, there is one topic that I know is of great importance to our Prime Minister, our party and millions of other citizens: the Canada-India Comprehensive Economic Partnership Agreement.

This is one of the most important free trade agreements for our government, our country and our economy. It has the potential of increasing Canada's economy by more than \$15 billion. That is 0.4 per cent of GDP, or gross domestic product. This represents thousands, if not millions, of new jobs and large profits for Canadian businesses, but negotiations are currently at a standstill.

This is not because the Conservative government is not working hard to complete its free trade agreement. Minister Ed Fast and the Department of Foreign Affairs and International Trade have made huge gains in negotiations, having hosted four successful rounds. Yet, our deadline is tight if we want this agreement to be finished by 2013. We have to put more emphasis on overcoming the many obstacles that are inherent in international trade negotiations. I am committed to using all my resources to bring stakeholders together, improve communications and make sure this multi-billion-dollar opportunity belongs to Canada. It is my plan to reach out to all those involved and break down as many walls in this process as possible.

The Canadian market is an international market, and the Conservative Party is committed to expanding the reach of Canadian businesses to every corner of the planet. Thank you.

WOMEN'S LEGAL EDUCATION AND ACTION FUND

Hon. Mobina S. B. Jaffer: Honourable senators, last Thursday I had the honour of attending a conference entitled Transforming our Future: Legal Strategies for Equality, which was sponsored by the Law Foundation of British Columbia and presented by the Women's Legal Education and Action Fund, also known as LEAF.

LEAF was founded in 1985, the same day the equality guarantees of the Canadian Charter of Rights and Freedoms came into force. LEAF's mandate is to change historical patterns

of legal interpretation and application. Moreover, LEAF's internationally recognized litigation strategy attempts to respond to the complexity of the goal of achieving equality for all women.

Honourable senators, I feel privileged to rise before you today and speak of the great work LEAF continues to do to ensure equality rights for all women and girls under the eyes of the law. In fact, I strongly believe that equality rights in Canada are advancing because of the work LEAF continues to do to ensure that women are guaranteed equality rights under section 15 of the Charter of Rights and Freedoms.

• (1340)

I am a real fan of LEAF's work. Many women who attended the conference do amazing work with some of the most marginalized and vulnerable women in Canada, doing their best to represent them with limited resources. Throughout the conference, all in attendance were reminded of the importance of choosing the right legal strategies for women — strategies that will help women receive the remedies they are seeking.

I had the pleasure of addressing all of those in attendance. During my remarks, I spoke of the great work many of the honourable senators here do to advance the equality of rights of women. I assured them that they had many allies here in the Senate who were passionate about the issues they were advancing, and I encouraged them to reach out to all of us.

The two-day conference was run by two very dynamic, competent women, Kristy Sims and Del Friday, whose hard work I would like to acknowledge. Both of these lawyers are volunteers with West Coast LEAF. They worked very hard to ensure that we all understood the strategies we would use to achieve equality for the women we worked for. I sincerely commend them for their work.

I also want to thank the Law Foundation of British Columbia for the support it provides to LEAF, and I wish to especially thank Chair Margaret Sasges and Executive Director Wayne Robertson for their continuous support to equality issues.

Honourable senators, the one thing I have come away with from these two days and would like to share is that when we increase criminal penalties here in Ottawa without increasing the monies available for legal aid, we diminish the rights of children. Throughout the two-day conference, I heard many heart-wrenching stories of how Canadian children were suffering because of lack of legal aid for family litigation. The message I heard was very clear: We either pay now to protect the interests of our children, or we pay later by building mega-prisons to house our children who we did not look after in the first place. I believe this is a wake-up call for all of us.

DR. ASMA JAHANGIR

MESSAGE OF SUPPORT

Hon. Hugh Segal: Honourable senators, I rise today to bring to the Senate's attention a situation that is deeply troubling.

For more than 18 months, as the Canadian member of the Commonwealth Eminent Persons Group, I worked closely with Dr. Asma Jahangir, the EPG member from Pakistan. Asma is the founder of the Human Rights Commission of Pakistan, the first woman to lead the Supreme Court Bar Association. She served as the UN Special Investigator on Extrajudicial Executions and as the UN Special Rapporteur on Freedom of Religion or Belief, reporting on violations worldwide to the UN Human Rights Council.

She also holds honorary doctorates from Queen's University in Kingston, the University of St. Gallen in Switzerland, Amherst College in the USA, and was Canada's first recipient of the John Diefenbaker Defender of Human Rights and Freedom Award in 2010 for her more than 30 years of work defending human rights and religious freedom.

On Tuesday evening, a press release was issued by the Commonwealth Human Rights Initiative, reporting that credible threats of assassination from within the Pakistan military establishment had been received by Dr. Jahangir, an assertion she made herself in a media interview this past Monday. To its credit, the Pakistani government has provided her with extra security.

The report of the Eminent Persons Group, of which she was a part, concentrated on Commonwealth renewal and reform, especially in areas of human rights, democracy and the rule of law. Dr. Jahangir was the one member at the table whose up-close and personal experiences brought home the reality of life when the respect for human rights we take for granted is non-existent.

Honourable senators, she has been jailed twice, beaten on several occasions and placed under house arrest, and yet she has always persevered in her work. She is Director of the AGHS Legal Aid Cell, which provides free legal assistance to the needy, and she was instrumental in the formation of the Punjab Women Lawyers Association and the Women Action Forum. Her input during our meetings was invaluable, and we are all very grateful to her, as all Canadians should be, for her insight and courage.

I value her as an extraordinary colleague and am proud to call her a friend.

Asma has made it clear that these threats will not drive her from her home or her country, although offers of safe haven have been extended, including by Canada, I might add, and she has no intention of bowing down to the pressure put on by those who want to silence a very powerful voice for human rights.

I am making this statement in the chamber today to let her know, and advise the people and Government of Pakistan, that Canadians and this chamber are engaged and looking out for her

safety. Her cause is our cause, and no threat or intimidation can silence the voices speaking out for human rights — not in the Commonwealth, not in Pakistan, not in the world.

MR. EWEN STEWARTCONGRATULATIONS ON DANNY
AND MARTIE MURPHY LEADERSHIP AWARD

Hon. Catherine S. Callbeck: Honourable senators, last Friday, Mr. Ewen Stewart of Stanhope, Prince Edward Island, received the Danny and Martie Murphy Leadership Award from the Alzheimer Society of Prince Edward Island. This annual award recognizes a person who exemplifies excellence in person-centered care while promoting programs and services for all those affected by Alzheimer's and related diseases.

Although he has never sought recognition, Mr. Stewart is a most deserving recipient of this award. For the past 18 years, he has worked tirelessly on behalf of the Alzheimer Society of Prince Edward Island. He provides personal support to the families of those living with this disease, with personal phone calls and visits. He knows how they feel, after losing his beloved wife Margaret in 2009 to Alzheimer's disease. He is known as an avid door-to-door campaigner for the society. He is a strong advocate for the services and programs provided by the organization, promoting these initiatives that help thousands of Island families.

Mr. Stewart has a long history of helping others. He has been Prince Edward Island's most prolific blood donor, beginning his donations at the age of 18 in 1951. He currently holds the record on the Island with 746 donations. At 79 years young, he is an avid cyclist, biking up to 30 kilometres a day. He has participated in more than 400 races, many on behalf of local charities.

Honourable senators, today I want to commend Mr. Stewart and all others who are helping families affected by Alzheimer's disease. They are dedicated and compassionate people who do so much for our communities. These individuals embody the spirit of giving and help make life better for all of us. I am pleased to recognize the Alzheimer Society of Prince Edward Island for their good work across the province.

Honourable senators, please join with me in congratulating Mr. Ewen Stewart for receiving this leadership award and wishing him well in the future.

[Translation]

CINÉMAGINE

TENTH ANNUAL ALBERTA FRENCH FILM FESTIVAL

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, it was with great pleasure, excitement and pride that I attended the tenth annual cinÉMAGINE, the Alberta French film festival, from June 1 to 3, in Lethbridge. I had the great privilege of being this year's honorary president of the festival.

[English]

Ten years of promoting the discovery of world-class French films and documentaries, of offering a wide range of cultural activities and of reuniting people who appreciate the arts and French language from across the province of Alberta was a milestone that I was very proud to recognize and celebrate. Nationally and internationally, renowned French films such as *La Sacrée*, *La route de l'Ouest*, *Monsieur Lazhar*, *Elle s'appelait Sarah*, and *Le Concert* were among the many films and documentaries presented to this year's festival-goers.

[Translation]

The festival's guests of honour were director Jonathan Levert, from Val-d'or, Quebec, and Franco-Ontarian actress Louison Danis. We were very fortunate to have such creative, talented and dynamic symbols of French-Canadian movie making among us.

Honourable senators, human creativity is the driving force behind social and economic growth. In addition to providing extraordinary economic spinoffs, arts and culture contribute significantly to building an identity. They fuel our sense of belonging to a group or community, give us a sense of pride and bring us together by strengthening social cohesion. All these elements are hard to measure, but are certainly important and confirm that arts and culture make our communities good places to live where individual growth and the growth of the community are appreciated.

As Swedish director Ingmar Bergman said:

Film as dream, film as music. No form of art goes beyond ordinary consciousness as film does, straight to our emotions, deep into the twilight room of the soul.

• (1350)

[English]

I would like to extend my most sincere congratulations to the cinÉMAGINE Society of Alberta, its partners and its volunteers on putting together an outstanding French film program and on raising the profile of Alberta's francophone community. I would also like to thank the organizers for their continued dedication and commitment towards the development of French cinematographic arts in Alberta.

[Translation]

Thank you for showcasing the French language and culture in Alberta these past 10 years.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of grade eight students from École Pointe-des-Chênes in Sainte-Anne-des-Chênes, Manitoba.

They are guests of the Honourable Senator Chaput.

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

ROUTINE PROCEEDINGS

COMMISSIONER OF LOBBYING

2011-12 ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the 2012 fourth Annual Report of the Commissioner of Lobbying, for the fiscal year ended March 31, 2012, pursuant to section 11 of the Lobbying Act.

INDUSTRY

NATIONAL RESEARCH COUNCIL OF CANADA—
2010-11 REPORT TABLED

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the National Research Council of Canada Performance Report for 2012-11.

[English]

SAFE DRINKING WATER FOR FIRST NATIONS BILL

SIXTH REPORT OF ABORIGINAL
PEOPLES COMMITTEE PRESENTED

Hon. Gerry St. Germain, Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Thursday, June 7, 2012

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

SIXTH REPORT

Your committee, to which was referred Bill S-8, An Act respecting the safety of drinking water on First Nation lands, has, in obedience to the order of reference of Wednesday, April 25, 2012, examined the said Bill and now reports the same without amendment but with observations, which are appended to this report.

Respectfully submitted,

GERRY ST. GERMAIN
Chair

(For text of observations, see today's Journals of the Senate, p. 1368.)

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

[*English*]

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

CRIMINAL CODE

BILL TO AMEND—TWELFTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. Bob Runciman, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, June 7, 2012

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TWELFTH REPORT

Your committee, to which was referred Bill C-26, An Act to amend the Criminal Code (citizen's arrest and the defence of property and persons), has, in obedience to the order of reference of Tuesday, May 15, 2012, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

BOB RUNCIMAN
Chair

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

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

[*Translation*]

APPROPRIATION BILL NO. 2, 2012-13

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-40, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2013.

(Bill read the first time.)

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

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

APPROPRIATION BILL NO. 3, 2012-13

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-41, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2013.

(Bill read first time.)

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

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

[*Translation*]

SAFE FOOD FOR CANADIANS BILL

FIRST READING

Hon. Claude Carignan (Deputy Leader of the Government) presented Bill S-11, An Act respecting food commodities, including their inspection, their safety, their labelling and advertising, their import, export and interprovincial trade, the establishment of standards for them, the registration or licensing of persons who perform certain activities related to them, the establishment of standards governing establishments where those activities are performed and the registration of establishments where those activities are performed.

(Bill read first time.)

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

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

CANADIAN HUMAN RIGHTS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-304, An Act to amend the Canadian Human Rights Act (protecting freedom).

(Bill read first time.)

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

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

[English]

IMPORTATION OF INTOXICATING LIQUORS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-311, An Act to amend the Importation of Intoxicating Liquors Act (interprovincial importation of wine for personal use).

(Bill read first time.)

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

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

• (1400)

[Translation]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Kelvin Kenneth Ogilvie: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology have the power to sit on Tuesday, June 19, 2012, even though the Senate may then be sitting, and that Rule 95(4) be suspended in relation thereto.

[English]

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF PROVISIONS AND OPERATION OF THE ACT TO AMEND THE CRIMINAL CODE (PRODUCTION OF RECORDS IN SEXUAL OFFENCE PROCEEDINGS)

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

That, notwithstanding the order of the Senate adopted on October 4, 2011, the date for the presentation of the final report by the Standing Senate Committee on Legal and Constitutional Affairs to examine and report on the

provisions and operation of the *Act to amend the Criminal Code (production of records in sexual offence proceedings)*, S.C. 1997, c. 30 be extended from June 30, 2012 to December 31, 2012; and

That the committee retain all powers necessary to publicize its findings until 90 days after the tabling of the final report.

HUMAN RIGHTS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Mobina S. B. Jaffer: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I give notice that, later this day, I will move:

That the Standing Senate Committee on Human Rights have the power to sit at 6:15 p.m. on Monday, June 11, 2012, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

QUESTION PERIOD

ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

MISSING AND MURDERED ABORIGINAL WOMEN AND GIRLS

Hon. Mobina S. B. Jaffer: Honourable senators, my question is directed to the Leader of the Government in the Senate. According to the Native Women's Association of Canada, there are over 582 missing and murdered Aboriginal women in our country. It is my belief that the fact that many of these stories go untold and that almost all of these cases remain unsolved is a testament to the discrimination many Aboriginal women in Canada continue to face. I cannot begin to imagine the pain and suffering that a family must endure, knowing that their loved one is missing but not being able to access justice.

What is our government doing to ensure that the families of the missing and murdered Aboriginal women do not have to deal with this pain and suffering in isolation?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, we are all watching the proceedings taking place in the honourable senator's home province as we speak. As we have all communicated in the past, this is a dreadful situation. No one should have to go through their life with this hanging over their head and feeling that society is not paying the attention to this serious issue that it should.

Since we have come into government, and more recently, we have taken a number of concrete steps. We have created a new RCMP centre for missing persons. We have improved law enforcement databases to investigate missing and murdered women. We have boosted victim services and supported the creation of community and educational Aboriginal safety plans. We also created a national website for public tips to help in the investigation and location of missing women.

These are all necessary steps, honourable senators. One missing or murdered Aboriginal woman is one too many. We will continue to work diligently with our provincial and territorial counterparts to combat this serious problem.

Senator Jaffer: As the leader knows, I have asked this question in the past and am waiting for answers. I am not asking these questions only for my province, but for all the Western provinces.

What is our government doing to ensure that the families of the victims are given a voice? What specific resources are these families getting to ensure that they get access to justice for their loved ones?

Senator LeBreton: That is a good question, honourable senators. I appreciate the importance of victims' being given every opportunity. With regard to financial support for specific programs, I will take the honourable senator's question as notice and respond with a written reply.

PUBLIC SAFETY

HUMAN TRAFFICKING—VICTIM SERVICES

Hon. Mobina S. B. Jaffer: I appreciate that the leader may not have the answer to my next question, but I would appreciate a delayed answer.

When I spoke about trafficking of women and children, I said that the greatest sufferers are Aboriginal girls. What are we specifically doing to protect our young Aboriginal girls?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I do have an answer, and that came in the form of an announcement yesterday by the Minister of Public Safety. The government is bringing in very strong legislation to deal with the issue of human trafficking. We know that there are many components of human trafficking, whether it comes from offshore or involves our own citizens.

Minister Toews has acknowledged that Aboriginal people, and mostly young women, are overrepresented in the human trafficking problem in this country.

Senator Jaffer: Indeed a national action plan was announced yesterday with \$25 million provided for it. I understood that this was to collect data and to help the police. However, only \$500,000 was set aside for victim services. I urge the Leader of the Government in the Senate, as part of the leadership team of our government, to ensure that more funds are provided for victims because \$500,000 of \$20 million is not good enough.

[Senator LeBreton]

Senator LeBreton: Honourable senators, I will get the information for the honourable senator but, in fairness, there are many other avenues in the justice system through which the government contributes to victim services. This piece of legislation sets aside certain sums of money for victim services. This amount is added to funding in many other pieces of legislation that provide for victim services. I will provide the exact figures.

ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

FIRST NATIONS SCHOOLS

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I was saddened and concerned to learn this week that First Nations schools in my province of Alberta are being shortchanged \$15 million a year in funding compared to their provincial school counterparts. The numbers come from a new joint study by provincial, federal and First Nations staff that also found that an average of 39 per cent of children and young adults on reserves across the province are taking a pass on school altogether.

Honourable senators, there are huge gaps in funding between First Nations schools and provincially run schools. What is the government prepared to do in light of these alarming figures?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, the honourable senator has asked about the specific situation in Alberta. As she knows, Aboriginal education issues are very predominant in the activities that the government has undertaken.

• (1410)

Canada's Economic Action Plan 2012 includes a significant investment of \$275 million in First Nations education. It builds on major investments our government has already made over the last six years to improve outcomes for First Nation students, including the building of 37 new schools on reserves and negotiating partnerships with the provinces and First Nations across the country. We have some very good examples of working with the provinces to achieve very good results.

We are also committed to working with First Nations and other stakeholders toward legislation that will establish the structure and standards needed for a strong, accountable education system on reserves; and we are exploring ways to provide stable, predictable and sustainable funding for First Nations education.

As an aside, honourable senators, I attended the meeting of the ministers of the Crown and leaders of the First Nations in January. The issue of access to proper education and funding were at the top of the list. We have made a very good start and have been investing in programs since we formed government.

With regard to the specific school to which the honourable senator refers, I would have to ask for more detail.

Senator Tardif: I thank the minister for looking into this particular situation in Alberta. However, I had asked a similar question last February that dealt generally with what the

government planned to do to close the gap in funding. The leader assured honourable senators that the Minister of Aboriginal Affairs and Northern Development would take measures as quickly as possible to address these serious concerns. It is now the month of June. Will the leader make the commitment to take the \$100 million proposed in the 2012 budget to deal with this particular situation?

Senator LeBreton: In fairness, honourable senators, what the honourable senator asks of the government is being done by the government. The report prepared by the Standing Senate Committee on Aboriginal Peoples dovetailed very nicely into an independent report commissioned by the government. Certainly, it has been the focus of the Minister of Aboriginal Affairs every week this year and before. Great steps have been taken.

Through our jobs and skills training programs, the Prime Minister and I have said on many occasions that, as we develop the resources in the North, in particular those areas where there are large Aboriginal communities, it will be in everyone's interest that these jobs be available for the people who live in those communities, who in many cases are Aboriginal. Great effort is being put into skills training for Aboriginal people. Their economic status in the country will be greatly enhanced if these jobs are available to them and they have the skills to perform those tasks.

CANADIAN HERITAGE

CELEBRATIONS FOR THIRTIETH ANNIVERSARY OF CHARTER OF RIGHTS AND FREEDOMS

Hon. Jim Munson: My question is for the Leader of the Government in the Senate and concerns our beloved Charter of Rights and Freedoms. Honourable senators, this is not a headline story, as we talked about yesterday. It is not about robocalls or that sort of thing, but it is about the Charter of Rights and Freedoms.

A story was published yesterday by the *Canadian Press* dealing with non-partisan bureaucrats who had planned a rather elaborate party to celebrate the birthday of the Charter. In February they submitted a proposal for their plan, which called for a televised event on Parliament Hill featuring the Governor General, the Prime Minister, cabinet ministers and Canada's chief librarian. Even one of the two versions of the Proclamation of the Constitution Act, 1982 was to be on display. However, when the submission reached Mr. Moore's office, it was rejected.

A spokesperson for the minister, James Maunder, said:

The department routinely submits communications opportunities to the minister's office. . . . Some of them we take, some of them we don't.

We know that what we received was just a short press release.

Why did the government dismiss or ignore this non-partisan recommendation from civil servants in the Department of Heritage?

Hon. Marjory LeBreton (Leader of the Government): I appreciate the honourable senator putting on the record what the Minister of Heritage said, and that is the fact. Public servants routinely make recommendations of potential communications opportunities to ministers of the Crown. This submission was like many other submissions. As the honourable senator pointed out, the minister decided not to pursue this suggestion and issued a statement in honour of the thirtieth anniversary of the Charter. That was the decision of the minister; and the government stands by that decision.

Senator Munson: Honourable senators, yesterday, the Senate, under the leadership of the Speaker, sent a congratulatory address to Her Majesty Queen Elizabeth II on the anniversary of 60 years of her reign. All parties joined in that message and supported the government in a public way in the many non-partisan celebrations.

By the way, halfway through Her Majesty's reign, we brought home our Charter. She was on Parliament Hill on that rainy day in 1982. It was an important part of her history, our shared history, Canada's history as an independent nation and the Commonwealth's history.

Honourable senators, Prince Charles and his entourage were here, and we celebrated. We said publicly, "Welcome, Your Royal Highness." There was no question of celebrating that.

It sounds kind of petty to me, to be honest: a terse little press release. Why did the government refuse to recognize this? After all, where is the recognition within the government that the Charter deserves?

Senator LeBreton: Honourable senators, quite rightly, we all joined together and celebrated the Diamond Jubilee of the ascendancy to the throne of Her Majesty Queen Elizabeth II. This year, we are celebrating the two hundredth anniversary of the War of 1812, which historians agree was a seminal moment in Canadian history in terms of our identity on the northern half of North America. We are all working toward 2017 and the one hundred and fiftieth anniversary of Confederation.

As I pointed out to the honourable senator and as he pointed out in his statement, the office of the Minister of Heritage receives many proposals for communications opportunities from people in the bureaucracy. Minister Moore issued a statement on the thirtieth anniversary of the Charter. This was the decision of the minister and the government.

Honourable senators, I am a traditionalist and I tend to celebrate silver, golden, and diamond jubilees. The one hundredth birthday of Canada in 1967 was wonderful — I still have my centennial flag.

This, however, was a decision of the minister. I know that the honourable senator tries to impugn political motives for this, but I will quote a Liberal candidate in the last election in Vancouver West, Dan Veniez, who said:

As I see it, the only people politicizing the Charter anniversary are Liberals, and no one else.

• (1420)

This was said by a Liberal candidate in an article he wrote called “Stop politicizing the Charter.” He was right.

Senator Munson: By way of supplementary, the honourable leader talked about a 150-year anniversary, about Prince Charles being here, about the Golden Jubilee and about the War of 1812. Of course, all of these celebrations are important and cost millions of dollars, paid for by Canadian taxpayers. We do not mind doing that because it is important. However, at the end of the day, this is Canada’s Charter; it is not a Liberal Charter.

For the record, I would like to get the minister’s point of view. What does she think of the Charter?

Senator LeBreton: Senator Munson always tries to ask these cute little questions about my personal point of view. I am here as the Leader of the Government in the Senate to answer for the government. I totally, wholeheartedly support the decision of the minister.

Senator Munson: The question was: What does the leader think of the Charter?

Senator LeBreton: I will not tell the honourable senator, although I will tell him one thing, something that he does not like to hear: Women were left out of the Charter. I was part of a group of women who marched on Parliament Hill to put women in the Charter.

Some Hon. Senators: Hear, hear!

JUSTICE

GENDER IMBALANCE IN THE JUDICIARY

Hon. Joan Fraser: Honourable senators, what a lovely opening the leader has just given me. My question is about the persistent and very thick glass ceiling that seems to affect the appointment of women as judges in this country.

We are stuck solid at 27 per cent — 27 per cent last year; 27 per cent since April 1, 2007. This seems strange given that 40 per cent of the members of law societies in Canada are women. In April, the President of the Canadian Bar Association said:

With more women than ever in the profession, the judiciary should more accurately represent Canada’s — and the legal profession’s — gender balance and diversity. . . . Surely there are more women who are qualified to be appointed to the Bench.

Can the leader tell us, please, what the government plans to do to rectify this imbalance?

Hon. Marjory LeBreton (Leader of the Government): The honourable senator should know that this is a process in which the government does not directly involve itself. Our government appoints judges according to merit and legal excellence, and these appointments are based on recommendations of 17 judicial

advisory committees across the country. Members of the judicial advisory committees work on a voluntary basis and continue to identify and recommend qualified candidates for Canada’s judiciary.

As the honourable senator knows, and I know because I did have some experience, these judicial advisory committees are made up primarily of officials from the various jurisdictions. It usually involves the chief justice of the province; the head of the law society of the province or territory. It is a body of very diverse people from across the country, and the Ministers of Justice from the various provincial governments are involved as well. The judicial advisory committees then submit the names of people who they determine are worthy of elevation to the bench. That is the process that is followed.

If the honourable senator would like to know more about the process, I would encourage her to visit the website of the Office of the Commissioner for Federal Judicial Affairs Canada. The whole process and the people who serve on these various advisory committees are there for all to see.

Senator Fraser: That is the site from which I obtained these numbers.

I do hope the leader is not suggesting that excellence and merit are unequally distributed across the sexes in this country. The judicial committees include people appointed by the Government of Canada, and they submit lists of names. I am not able to believe that those lists do not include names of qualified women. The government then makes its choice from among the names that have been submitted, and this government is stuck at 27 per cent.

In the last year of the Liberal government, 41 per cent of the appointments to the bench were women. While I know that senators on the other side do not adore Liberals in any shape or form, I think it has been universally acknowledged that historically the calibre of the people appointed to the bench in Canada is recognized not only in this country but also around the world. I am not saying that the present government has appointed people who are not competent to sit on the bench; far from it. However, I am saying that in their survey of available qualified candidates, they do appear to have overlooked a pool of talent.

I ask again: What will the government do about it?

Senator LeBreton: First, honourable senators, we do not overlook a pool of talent. As honourable senators know, the way the judicial advisory committees from the various jurisdictions are set up to appoint a judge, there are not a lot of openings all at once. There are not a lot of judges in the country; there are not a lot of openings. They recommend the judges. Hopefully, when they are putting their list together, they will put qualified women on that list so that the government will have the opportunity to choose from among them.

I dare say that the honourable senator is speaking to the wrong person when she talks about the appointment of women. As she knows, in my previous life I was responsible for the appointment of many people in the government. In 1987, when I took over the position of appointments in the Prime Minister’s Office, less than

[Senator LeBreton]

15 per cent of the total order-in-council community were women. When we left government, we had that number up to almost 35 per cent before it fell back somewhat. It was not just women in stereotypical positions as was the case under the Liberals, like Status of Women. We had women as heads of the Civil Aviation Tribunal, the Export Development Corporation, the Veterans Review and Appeal Board and the Canada Transportation Agency. We had women in meaningful positions.

Going back to the honourable senator's question about judges, obviously the government hopes that the judicial advisory committees that submit names to the government for appointment are mindful of the fact that there are not only a great many women but also a great many other people. Other groups are vastly under-represented in our judicial system, most particularly visible minorities. It behooves all of us to urge these judicial advisory committees to submit names to the government that more accurately reflect the makeup of the country.

Senator Fraser: Honourable senators, I am very glad to hear the leader say that. Indeed, I have heard her speak before about her time under the Mulroney government and the record of appointments of women. I know she is very proud of it, and she has every right to be.

I would observe, in passing, that women were not left out of the Charter; it is just that women wanted more protection than was in the original version of the Charter, as did a number of other groups. That is why women marched and argued and won.

The last part of the leader's answer to me indicated what I was trying to ascertain, which was that in her view it is appropriate for the government to indicate to the advisory bodies that it wishes to see the names of qualified women figure prominently on these lists.

• (1430)

Would the Leader of the Government in the Senate be good enough to convey to the Minister of Justice that a significant number of us in the Senate hope that that will become the settled policy of this government?

Senator LeBreton: I would be very happy to, honourable senators. I know that the Minister of Justice, as well, is mindful that the judiciary should reflect the demographic of the country. However, I would be very happy to reinforce his views with the views of those honourable senators in the Senate.

[Translation]

HUMAN RESOURCES AND SKILLS DEVELOPMENT

EMPLOYMENT OPPORTUNITIES IN QUEBEC AND THE ATLANTIC REGION

Hon. Jean-Claude Rivest: Honourable senators, yesterday, the premiers of the Maritime provinces met and indicated to the federal government that they have very serious concerns about the devastating impact that the government's proposals for employment insurance will have on the economies of the Maritimes, Quebec and other regions of Canada.

Certainly, the provision that requires people to accept employment that is a one-hour commute from their residence might make sense in urban or highly industrialized settings. However, this raises serious concerns for the regions of Canada where seasonal work is more common. Such work is extremely important economically and socially.

Can the Leader of the Government in the Senate tell us if the government will remain sensitive and open to the submissions made by the premiers of the Maritime provinces and review its proposed reforms to employment insurance, in order to ensure that regional economies, particularly fisheries, agriculture and other sectors, are fully protected?

[English]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, in response to Senator Fraser's question, I meant to say something that is germane to the province of Quebec. We did name the first ever Chief Justice of the Quebec Court of Appeal, a woman, Madam Justice Hesler.

With regard to question of the Honourable Senator Rivest, it is clear that there is a lot of misinformation being communicated about what the government's intentions are with regard to Employment Insurance. The fact is the government wants to connect Canadians to jobs that are available in their own communities, or ensure that they have been properly trained to take some of the jobs. As we know, there are labour shortages all over the country.

The minister has indicated, because of the meeting yesterday of the four Atlantic premiers, that she is very open to discussions and comments. As a matter of fact, although this is not reported, she has been dealing with her provincial counterparts throughout the period. There is a good understanding of what the government has in mind. The object of the exercise, which I believe all honourable senators would support, is to connect people to available jobs within a reasonable distance of their home. The government would obviously not do anything to harm people. The government is trying to help people and that is why we are bringing in these changes.

Many years ago, in another capacity, my colleague Senator Segal made a statement. Many people have laid claim to this particular quote, but it was actually Senator Segal who said it first, although no one will give him credit now. He said: "The best social policy in this country is a job."

An Hon. Senator: Hear, hear.

ORDERS OF THE DAY

BUDGET 2012

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Carignan calling the attention of the Senate to the budget entitled, *Economic Action Plan 2012: Jobs, Growth,*

and Long-Term Prosperity, tabled in the House of Commons on March 29, 2012, by the Minister of Finance, the Honourable James M. Flaherty, P.C., M.P., and in the Senate on April 2, 2012.

Hon. Grant Mitchell: Honourable senators, normally I rise to speak about the budget in response to provocation by Senator Gerstein, but I do not see him right now and so I do not have the pleasure of responding to him. However, I know in his heart of hearts he would want to stand in this house and say, “This government is producing the best economic performance in the history of the world and aren’t we great?”

Some Hon. Senators: Hear, hear!

Senator Mitchell: If I said it again, honourable senators, would you give me a standing ovation? Marjory would stand up for me.

Honourable senators, I was therefore very encouraged to see, at some superficial level at least, that the name of the budget was the *Economic Action Plan 2012: Jobs, Growth, and Long-Term Prosperity*. I started to think about that. That is an interesting name, and it certainly has spin, but it just defies reality because all of the evidence is to the contrary.

This government cannot run an economy and it cannot balance budgets or run a budget effectively. It is striking that they cannot even do it, in particular, after they were handed a remarkably strong budget situation from the former Liberal government. I believe there were eight or nine consecutive surplus budgets and a \$12-billion or \$13-billion surplus. The Conservatives could not do that after years of unprecedented economic growth, again sustained by strong Liberal management and Liberal policies on how to run a budget, how to run a government and how to run an economy.

Honourable senators, it is very interesting to note that for the longest number of years the Canadian market outperformed the U.S. market. Last year, for the first time in a long time, the U.S. market outperformed the Canadian market by 17 percentage points, despite the U.S. market problems. That spread resonates because we do not have as much history and experience with Conservative governments in Canada, fortunately.

An Hon. Senator: We are getting there.

Senator Mitchell: In the U.S., on average, the markets underperform 17 percentage points with Republican governments over Democrat governments. They underperform with right-wing conservative governments. That brings me to the question — rhetorical perhaps, but maybe more than that — of what makes anybody think that right-wing ideology works? Let us look at the facts and the figures.

We have listened ad nauseam to Mr. Flaherty and others saying that we have the best economic performance in the Western world and that we have the strongest banks. Well, we do, actually, and that is, again, thankfully because the Liberals — Mr. Martin, in particular — managed those banks and did not succumb to Mr. Harper wanting to deregulate those banks at about the time he wanted to get us into Iraq, I might add, but we will just look at

the figures. This is not me speaking. These are OECD figures. This is not the UN, which the Conservatives do not like. We will go to the OECD figures.

Honourable senators, the government says that it can manage deficits. There is an interesting coincidence. I think they had a \$30-billion deficit in the most recent year. By how much did they drop taxes since they have been in? It was \$30 billion. Now, is that not an interesting coincidence? They did not balance the budget. They dropped the least productive tax that they could have chosen, the GST, and they ended up with a \$30-billion deficit and \$30-billion tax cuts. If that is their tax policy, why is it not working? Let me show honourable senators the ways it is not working.

We will look at the government deficits as a percentage of GDP. This government would say it can manage government deficits and manage the budget. Of the 32 nations in the eurozone area listed in the OECD figures, Canada ranks eighteenth. We are in the bottom half for government deficit as a percentage of GDP. Where is this stuff about how they can manage deficits?

Do honourable senators know some of the countries that are ahead of us? Norway is ahead of us. The euro area countries are ahead of us, in spite of the fact that that includes Spain and Greece, and senators can name a few others. They are ahead of us. We are eighteenth out of 32. It is appalling for the government to stand up and say that it can manage deficits.

Honourable senators, the next figure is for general government net financial liabilities. That is overall debt as a percentage of GDP. Let us look at that. Oh, my gosh, we are fourteenth out of 32. The Liberal government dropped the debt by \$100 billion, almost 20 per cent I think, and now it is going to be at \$600 billion or so. Do honourable senators know who is ahead of us? Slovenia is ahead of us. Oh, my gosh, that is an economic powerhouse. Sweden is ahead of us. The United Kingdom, with all the problems that it has been having, is ahead of us. Denmark is ahead of us. I can go on, but we are fourteenth out of 32.

• (1440)

When it comes to real growth — growth forecasts — this is where the government prides itself — manage the economy, drive growth, better jobs. All we hear is jobs, jobs, jobs, economy, economy, economy. What do we have? We are twelfth out of 32 for growth. Who is ahead of us?

Honourable senators will not believe this, but Mexico is ahead of us. Do you know why? Mexico can take a \$100 barrel of oil and manage it.

Think about the only thing this government has really done of anything that would be productive. They sat by and basked in the glow of \$100 barrel oil. Anybody can manage that. Well, not anybody, because this government has not. We have runaway deficits, lower growth, higher deficits, higher debt than all kinds of other countries that are Western industrialized nations. It is not me saying this. These are OECD figures, right here in black and white.

Do not tell us and do not tell Canadians that this kind of plan of yours and the ones before have done anything for the economy, because they have not.

Honourable senators, I ask again, rhetorically, why does anyone believe that Conservatives can run an economy? Not true. Before I finish, let us talk about unemployment. It is up 25 per cent thanks to the government. However, way worse than that 25 per cent is the 25 per cent unemployment for the youth of this country. We had some remarkably powerful, remarkably good Aboriginal speakers today at the Energy Committee. One of the members on the other side, whom I like very much, said, “Well, what about all those jobs that development creates for your young people,” and this man said, “Well, since when did that development ever create any jobs for our young people?” It does not happen.

Young people and the future are very much in jeopardy given the “economic plan.”

Now I ask myself, how could this happen? Why would this happen? Why is it that the people who think they can run economies simply cannot? Well, one of the reasons is because ideology trumps common sense. I will give you a two-track example. You want to get \$25 billion or is it \$14 billion or \$38 billion to spend on F-35s? I do not know.

Senator Munson: What is a billion dollars?

Senator Mitchell: Let us say \$35 billion. I am probably low. The government is willing to spend — without any analysis, without any proof of what we would use them for or what kind of threats we will face in the world — \$35 billion on jets.

On the other hand, the government is not going to spend basically anything on climate change. Let us compare the two. Let us compare them on risk, economic advantage and disadvantage.

Okay, so the jets are \$35 billion. You need some risk, but what is that? I am not saying there is not some risk they need to meet, but the big risk we saw, the one that they captured, and I remember this picture, is that we have to be afraid of the Russian bombers. There is a Russian bomber built in 1952. It has propellers. Our jets today cannot fly slow enough not to stall beside those jets, and we play hockey with those people, so that is not the threat we need F-35s for, I guess. Then there is terrorism. I have a vision of a terrorist who is strapped to a bomb in one of our cities. What is an F-35 jet going to do? Strafe them? No. We need security. We need intelligence. We need relationships around the world with people who can tell us what is happening to them, but we do not need F-35s to strafe some terrorist in downtown Toronto.

There is a threat. Sure, there will be threats of Libyas again and perhaps Afghanistans, God forbid. There are those kinds of things that relate to terrorism, yes, but where is the document? A one-page letter, three paragraphs I think, from the military — written in a day, or maybe 15 minutes — saying this is what we need for a jet. Why do we not get some sort of analysis that says these are the kinds of risks that we think we will confront militarily in the future — like climate change: Where is that going to bite, and how much will that create conflict, as is already being created in Africa?

Honourable senators, sure, there is some risk, but let us look at the risk in climate change, on which the government spends no money. The risk in climate change is infinite. It is absolutely

infinite. You want to wreck an economy, you just keep doing what you are doing: nothing. That is an infinite risk, and the science is settled. It is not a doubt, and the government is doing nothing, absolutely nothing, so we talk about risk.

The other risk is that of lost opportunity, opportunity costs. There is huge opportunity in dealing with the economic possibilities that arise out of climate change.

Let us talk about the comparison there. The risks, I would say, are not comparable. There are pretty serious risks for which we need F-35 jets — another Libya — but there are infinitely serious risks for which we need climate change initiative, real action. Now the government comes back and says we cannot do that because it is going to wreck the economy. It is going to wreck the economy. Is that not interesting? We will spend \$35 billion on jets, most of which — or at least a huge portion of which — will be spent outside of the country. The big technology, the development, all of that stuff is outside the country. They are built outside the country. That will not hurt the economy, just sending that money out of the country. That is what you would say. I would say that is really grievously going to hurt the economy. Billions of dollars are going out for that initiative. I am not saying we should not do it, but I am saying let us compare the costs.

On the other hand, any money put into a climate change initiative will largely stay inside the economy. If we had credits, for example, that you could buy like you can in Alberta now, that money goes to farmers in Alberta who have reduced carbon. It goes to small businesses in Alberta. It creates jobs, some of them for young people, for whom you are not creating any jobs. That money stays in Alberta. Not only that, it stays in rural areas, areas like Senator Mockler’s. Where you can build one huge plant for billions of dollars next to, in my case, Edmonton, how many small communities does that keep going? However, if the government builds 1,500, 2,000, 5,000 dispersed wind farms, solar farms and biomass farms around the country, it keeps rural economies going and keeps families in those careful, closed, safe rural communities, just where we should have them.

I am just trying to give a different paradigm. I am trying to shift your paradigm so you can see.

Honourable senators, let us accept the government’s logic. There is risk to the F-35s and there really is not any advantage economically to the F-35s. Compare the same parameters. There is risk to climate change and there is huge advantage to dealing with climate change effectively. The two are not mutually exclusive, and in fact the oil economy and dealing with climate change are not mutually exclusive. They are quite unified in their ultimate objective and results. In fact, this is where Senator Unger and I disagree. She says I do not represent Albertan’s interests. Oh my God, I cannot believe it. There are Albertans who care deeply about the environment.

In fact, if I wanted to put myself in the Prime Minister’s shoes, heaven forbid, and think about what he wants to accomplish with development, the last thing I would do is the kind of climate change anti-policy that he undertakes.

For example, he wants to build the Gateway pipeline. Let us just assume that he wants to build it. If the biggest fear for the Gateway pipeline is not that people are concerned about spills, I do not know what the biggest fear is. The social license for that pipeline, in large part, relates to spills.

Now, what does the marketing genius Mr. Harper do? He closes the office of environmental emergency protection program that deals with spills — the one that was in Vancouver — and he moves it to Quebec. It is good for Quebec, but that is not going to alleviate the fears of the people of B.C. who are concerned about spills.

Honourable senators, let us take Keystone. You have got to carry the favour of interests in the U.S. to build Keystone, so what do we do? Well, Senator Eaton — following Minister Oliver, following Minister Kent — stands in the Senate and elsewhere and attacks, bullies, diminishes, chills international U.S. environmental foundations. What kind of message does that send? Can Mr. Harper not get that if the government wants to build these projects and sell our products, it has to develop a sense of social responsibility, of true credibility on climate change, or the world will not let the government do it, period?

However, that is to say there is a huge future. I would say we all agree that we will be using fossil fuels for a long time. However, the world will not be using a lot of our fossil fuels, or less and less if we are not careful, if we do not do something and show the world that we care — like premier Redford, who gets it — that we are prepared to reduce our carbon, manage it effectively and make it work.

When I look at the budget, it has a nice name, but whenever one reads a Conservative title for a bill or budget one has to know that it means exactly the opposite thing. It is not an economic action plan for prosperity at all. If the government wanted to have an economic action plan for prosperity, it would have one that included live, targeted action leadership in the world for climate change.

Could I have five more minutes, please?

• (1450)

The Hon. the Speaker *pro tempore*: Is more time granted to the Honourable Senator Mitchell?

Some Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: Five minutes are granted.

Senator Mitchell: Do honourable senators know what else? One would not create a new environmental review process that the government thinks — or says — will streamline and speed-up the process of development review and approval, but that is actually fraught with so many problems that delay after delay will be created in the courts.

Just this morning, these first-class presenters made the point that the government, with respect to the Fisheries Act, has excluded a very important feature of Aboriginal fishing rights: moderate livelihood. That will not be covered by the act, and it has been very clearly defined by the Supreme Court. It means that

this is a gaping hole that constitutional, legal arguments can be sucked into — it is a black hole of legal arguments — and these projects will be held up in the courts for who knows how long.

How can Mr. Harper think that for one minute he has presented us with any kind of action plan on the economy, when he has presented us with a plan of inaction on the economy? In fact, if I can coin this phrase, it is a “disaction on the economy,” and he is grievously hurting the economy.

There are some things he should be talking about. What about a national labour strategy? We talk about needing to create jobs. In Alberta, sure, we need some jobs, but we have so many jobs that we cannot even fill. Why? We cannot because we have people in one place who do not have a job, sometimes, or they are not trained where they could have been trained, and so we cannot fill those jobs. We have no national coordination of labour strategy.

We do very little to develop, for example, the Aboriginal population and their young people and their needs. I remember Eric Newell of Syncrude once saying that we will never be able to fulfill the labour needs of Alberta for these projects until we can adequately, aggressively fill those jobs with trained, effective Aboriginal young people and young workers. That is just forgotten.

We have a huge economic problem with productivity. It is huge. It is a continuing problem in our economy. If we reduce energy input costs, like we would with a strong conservation strategy, we will immediately, by definition, increase productivity.

There is the question of rural development. There is a hugely important potential for us in our rural areas to unleash creativity, economic potential and entrepreneurship. That could be sustained, as could our farming community, with disbursed green or renewable alternative energy kinds of initiatives.

What about education? What has this government done to make it easier for someone to get an education? What have they done to reduce tuition? That is the future. They have done nothing. In fact, it is quite the contrary: It is getting harder and harder. In some senses, we are cutting our younger people loose.

What about research? They have fundamentally restructured it; they have reduced it fundamentally. They have also restructured it away from any kind of research that is not specifically applied. That is very dangerous not just for creativity and getting really good ideas that one had not expected, but that creates leaps forward with technology advancements.

There is also the question of uncertainty. The oil industry in Alberta is crying out for certainty. What will the cost of carbon be in 10 years? People are not making major capital investments today because they do not know what the cost of carbon will be in 10 years. If we had a government that took it and provided leadership, we could get that and begin to understand what the cost of carbon would be, and they would begin to make investments.

We are on the precipice, in some ways. The markets are changing all over the world, and dramatically. Shale gas is changing dramatically. This government is bringing in a system of environmental reviews that will get bogged down in the courts;

[Senator Mitchell]

it will be slower. They are stepping back from getting the kind of social licence that they need, and they are absolutely, fundamentally missing every last future opportunity for an economy based on alternative energy; an economy based on science and research; a futuristic, 21st century economy that can be a renaissance for us and for our children and create leadership for Canada in the world once again, like it used to be in the good old days under the Liberal government.

The Hon. the Speaker *pro tempore*: Will the honourable senator accept a question from the Honourable Senator Downe?

Senator Mitchell: Yes.

Hon. Percy E. Downe: I wonder if Senator Mitchell is aware that today, former Conservative member of Parliament Bob Mills indicated that Canadians will “pay a price” for Prime Minister Stephen Harper’s imbalanced and mistaken approach on environmental issues. He said this at a press conference on Parliament Hill earlier today. He is a former MP from Red Deer, from 1993 to 2008 —

Senator Munson: I liked him a lot.

An Hon. Senator: Time.

The Hon. the Speaker *pro tempore*: I regret to advise the honourable senator that his time has expired.

Honourable senators, is there further debate?

(On motion of Senator Carignan, in the name of Senator Buth, debate adjourned.)

[*Translation*]

OFFICIAL LANGUAGES ACT

BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Chaput, seconded by the Honourable Senator Hubley, for the second reading of Bill S-211, An Act to amend the Official Languages Act (communications with and services to the public).

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, given that no one has moved adjournment in his or her name, I know that Senator Comeau wishes to speak to this bill. It would be the second time, for 45 minutes. I therefore move the adjournment of the debate in the name of Senator Comeau.

(On motion of Senator Carignan, for Senator Comeau, debate adjourned.)

[*English*]

INTERPRETATION ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Watt, seconded by the Honourable Senator Lovelace Nicholas, for the second reading of Bill S-207, An Act to amend the Interpretation Act (non-derogation of aboriginal treaty rights).

Hon. Dennis Glen Patterson: Honourable senators, I rise to speak to Bill S-207, an Act to amend the Interpretation Act (non-derogation of aboriginal treaty rights).

Before addressing this bill, I want to pay tribute to my friend and Senate colleague, the sponsor of this bill, Senator Charlie Watt. Senator Watt was on the board of Inuit Tapirisat that brought me to the North in 1975. He was one of the pioneers of the comprehensive land claims movement in Northern Canada: the first land claim in Nunavut, which paved the way for all the others that followed. They are the most spectacular and ambitious land claims agreements in all of Canada. Senator Watt was also one of the leaders of the Inuit Committee on National Issues, which was pivotal in pressing for the inclusion of Aboriginal rights in the Constitution in 1982.

That is where we start the discussion of this bill. The good news is that the Aboriginal and treaty rights of the Aboriginal peoples of Canada — Inuit, Indians and Metis — are protected and enshrined in the Constitution of Canada. Section 35 of the Constitution Act was, after some hiccups following the so-called “kitchen accord,” restored to the Constitution by nine premiers and the prime minister, giving Aboriginal rights the protection of the supreme law of the land. It is now the anchor of Aboriginal and treaty rights in this country.

The bad news is around the definition of Aboriginal and treaty rights. Although following repatriation there were valiant attempts to give the section more precise definition, the three years of meetings of Aboriginal affairs ministers for federal-provincial-territorial governments and Aboriginal leaders — meetings which Senator Watt and I both attended — never resulted in a more precise definition than what is set out in the bare bones wording of sections 35 and 25.

The courts, of course, given the rather broad language in section 35 and the subsequent failure of political and Aboriginal leaders to give it a more precise definition, have established certain justifiable limits on the extent of Aboriginal rights.

Just as the courts have ruled that there are reasonable limits on freedom of speech — the oft-cited example is that freedom of speech does not mean that one is free to shout “fire” in a crowded theatre when there is no fire — the Supreme Court has ruled in the *Sparrow* decision that even Aboriginal rights, which we all respect, may have certain reasonable limits in special circumstances. I believe a clear example of one of those reasonable limits is found in Bill S-8, the Safe Drinking Water for First Nations Act, which is now in the Senate. Witnesses were heard on clause 3 of

that bill, which contains an exception allowing the infringement of Aboriginal rights, specifically when the safety of drinking water is concerned. An example was cited of a garbage dump or waste disposal site on Indian lands.

• (1500)

Even if there was an Aboriginal right on Indian lands that contained an important community water source, a lawyer for the Department of Justice advised our committee that the clause was necessary to ensure that Aboriginal land rights would not prevail if those rights were employed to justify the establishment of a garbage dump or waste site that jeopardized a source of clean drinking water for the community on those lands. To me, the provision of safe drinking water is a pretty clear “valid legislative objective,” as the court described it in *R. v. Sparrow*.

However, enacting clauses piecemeal, on an ad hoc basis, as Bill S-8 proposes, may not be the best solution to this important question.

Parliament has now devised, I understand, no fewer than 19 clauses, in various Statutes of Canada, that have sought to protect the Aboriginal rights enshrined in our new Canadian Constitution by inserting clauses in federal legislation that specifically state that, notwithstanding legislation that might appear to infringe, to one degree or another, on Aboriginal rights in the Constitution, the Aboriginal and treaty rights recognized in the Constitution Act are preserved and respected. These are the so-called non-derogation clauses. As I say, soon there may be another clause in another statute, the proposed safe drinking water for First Nations act, Bill S-8, which takes yet another approach. Clause 3, in fact, has been called a derogation clause because it allows for an exception to the non-derogation words in the bill where Aboriginal rights conflict with protection of safe drinking water and sources.

Honourable senators, in this connection, I may be part of the problem. I will be introducing Bill S-8 for third reading in the chamber next week. I do so because I believe that there is justification for infringing Aboriginal rights where such an important public policy goal as protecting safe drinking water and sources is required. However, some, including my respected colleague Senator Sibbeston, have argued that such a clause is patronizing and represents the thin edge of the wedge.

The *Sparrow* case sets out clear criteria under which an infringement of Aboriginal rights must be justified. There must be a “valid legislative objective,” such as natural resources conservation or protection of safe drinking water.

We have a sacred right, which was given recognition, after much struggle, in the highest law of our land, in section 35 of the Constitution Act. I was involved in that struggle, as were Senator Sibbeston and Senator Watt, amongst others. Given that sacred right and given that the courts, including the highest court of the land, and our own federal Parliament have qualified that right and set limits upon it through court decisions and, at last count, 19 versions of the so-called non-derogation clauses, how can we be sure that this sacred right is respected and protected? That is, as I understand it, what Senator Watt’s bill, S-207, is all about. The courts, by the way, have not been helpful to date because not a single case has yet considered the array of non-derogation clauses now in place in various federal statutes.

[Senator Patterson]

It has been admitted by senior Justice officials that legislative draftspeople take an ad hoc approach to ensure whether statutes might infringe Aboriginal rights and, therefore, whether a non-derogation clause is needed. One senior official before the previous committee even admitted candidly, speaking of the Department of Justice’s position on the issue, that:

When dealing with specific requests for inclusion of a non-derogation clause, there was sometimes or perhaps generally little in-depth analysis or discussion concerning the intended purpose or effect of such a clause. . . . Instead, the issue tended to be dealt with on an *ad hoc* basis. Calls for an inclusion of a clause or debates over wording were often made late in the legislative process. In the result, the focus was often on avoiding delays to the passage of the bill, rather than on the impact the provision might have in the operation of the legislation.

As a result, non-derogation clauses were added to statutes often as a matter of compromise or expediency.

I think it is time that we once again seriously examine how we can ensure that Aboriginal rights do not get watered down by further court decisions and by the enactment of federal laws that, perhaps unintentionally, have the cumulative effect of incrementally eroding that most fundamental of rights for the Aboriginal peoples of Canada.

We have thoughtful advice from the Standing Senate Committee on Legal and Constitutional Affairs of the Thirty-ninth Parliament, Second Session, whose chair was Senator Joan Fraser, whose deputy chair was Senator Raynell Andreychuk and whose members included Senator Watt, Senator Lovelace Nicholas and Senator Dyck. In their final report, December 2007, *Taking Section 35 Rights Seriously: Non-derogation Clauses Relating to Aboriginal and Treaty Rights*.

The committee’s first recommendation is what led Senator Watt to introduce this bill. Interestingly, their second recommendation also called for the repeal of all non-derogation clauses relating to Aboriginal and treaty rights under section 35 of the Constitution, enacted since 1982, which Senator Watt has chosen not to include in Bill S-207.

Another recommendation called for the Department of Justice to establish a firm practice of vetting each bill proposed for Parliament to review whether the proposed bill would impact Aboriginal rights. We do this for Charter rights. The practice is known as “Charter proofing.” Why should we not do it for Aboriginal rights, which are arguably just as important as Charter rights? After all, there is no provision in the Constitution for reasonable qualifications on Aboriginal rights. Those exceptions have been constructed by the Supreme Court since the Constitution was repatriated, most notably in the *Sparrow* case.

This, I think, is the least that we must do to ensure that we are vigilant in protecting and respecting Aboriginal rights.

There is agreement by expert witnesses who the committee heard in 2007 on a number of important points relating to this issue.

First, the ad hoc and sometimes last-minute approach we are now taking, seemingly on a statute-by-statute basis, is not the ideal way to deal with respecting such a sacred right.

Second, there must be a process to vet each bill for possible infringement of Aboriginal rights, as we now do for Charter rights. I was pleased to note that Senator Dagenais endorsed this process when he spoke to this bill on April 4 on behalf of our government.

Third, since there is agreement even from Aboriginal rights lawyers that in certain circumstances infringement of Aboriginal rights is justified, the primary question is really how do we best give recognition to this without eroding those sacred rights.

Senator Watt's bill provides one clear answer, as recommended by the Standing Senate Committee on Legal and Constitutional Affairs in 2007: Put a provision in the Interpretation Act that will apply to all federal statutes.

Interestingly, the committee report noted that putting this clause in the Interpretation Act would not prevent reasonable infringements of Aboriginal rights protected in the Constitution because section 3(1) of the Interpretation Act itself provides that:

. . . a provision of that Act does not apply to an enactment where a contrary intention appears. Thus, if in the future Parliament considers it inappropriate for the non-derogation clause to apply to a given federal statute, the expression of a contrary intention in that statute would be sufficient to address the concern. In short, we find it preferable, in the interest of upholding the honour of the Crown, to make inclusion of a non-derogation clause in all legislation the default position through the insertion of a provision in the *Interpretation Act*, with explicit action needed to opt out of its application.

It is timely that this question, and what I see as a growing legislative problem, be addressed once and for all. I commend Senator Watt for bringing this important bill forward to this chamber, and I put my trust in the Standing Senate Committee on Legal and Constitutional Affairs to build on the work done in 2007 — and I would respectfully recommend that previous testimony be adopted, if possible — and to recommend a way to resolve this vexing question through its examination of Bill S-207.

It is, I think, noteworthy that the Standing Senate Committee on Legal and Constitutional Affairs, which included many current members of this chamber, recommended a non-derogation amendment to the Interpretation Act with all-party support. That committee is now the place to finish the job of making order out of disorder.

Hon. Nick G. Sibbeston: Honourable senators, the matter of non-derogation clauses in federal legislation has been before the Senate on numerous occasions. Since I came to the Senate in 1999, as bills dealing with Aboriginal matters came before Parliament they invariably contained a non-derogation clause. I first dealt with a matter, along with Senator Watt and other Aboriginal senators then in the chamber, in the fall of 2001, when it arose as part of the Nunavut Waters Act. These clauses had been appearing in federal legislation as early as 1985, generally mirroring the wording found in section 25 of the Constitution Act.

• (1510)

The standard wording was “nothing in this Act shall be construed so as to abrogate or derogate from any existing Aboriginal or treaty rights of the Aboriginal peoples of Canada under section 35 of the Constitution Act.” That was very clear and simply stated.

In the late 1990s, a variation on the standard wording began to appear in legislation. At first, only a few lawyers working with Aboriginal organizations noticed this change. However, as they began to accumulate, some of us began to see it as an attempt by Justice Department lawyers to weaken these words that were intended to protect the rights of Aboriginal people. It is a slightly different word here and there. It seems innocent and innocuous, but when it is dealt with by courts, it could lead to a very different interpretation. The courts would certainly get the impression that Parliament wanted the rights of Aboriginal peoples to be less than they had been and we were concerned about that.

On the one hand, Justice Department officials who appeared before us said that these clauses had no impact anyway, as the Constitution was supreme. On the other hand, they stated that that wording in section 25 of the Constitution would really protect Aboriginal peoples.

In my view at the time, these clauses were indicators to the courts that they should be mindful of Aboriginal rights in applying the law. As I said, to remove or modify them could result in a different interpretation by the courts. It could even result in unintentional infringement of rights. As Jim Aldridge, a lawyer for the Nisga'a, stated, it was “drive-by derogation.”

These clauses were sometimes amended and sometimes allowed to stand. There was always active debate in committee when we considered bills that contained them. It was questioned whether the clauses should be in the legislation or whether we should amend them or delete them. In some cases it was decided that rather than having weak legislation we should just omit them.

After several years passed and numerous pieces of legislation were dealt with, the government agreed that the matter of non-derogation clauses should be studied, and that was undertaken by the Standing Senate Committee on Legal and Constitutional Affairs in 2000.

The committee persevered in its work despite electoral interruptions and other pressing business. We consulted widely with government, academics, lawyers and, most important, Aboriginal organizations and communities. The committee finally released its report in December 2007. The committee recommended that the Government of Canada take immediate steps to introduce legislation to add to the federal Interpretation Act the non-derogation provision that I referred to earlier. It also recommended that every enactment shall be construed so as to uphold existing Aboriginal and treaty rights recognized and affirmed under section 35 of the Constitution Act and not to abrogate or derogate from them.

The government, in its response in July 2008, said that continuing the previous ad hoc approach to non-derogation was unsustainable and contained risk. They further said that the

legislative solution was worthy of serious consideration. Yet, we continue to see non-derogation clauses, often with new and inventive words, appearing in government bills. We are dealing with one example right now in Senator Patterson's Bill S-8. It was not even a non-derogation clause; it simply stated outright that the government would derogate from the rights in certain instances. That is how far this whole matter has come.

Senator Watt's bill proposes to do exactly what the committee recommended more than four years ago. It is a practical and effective solution to an important problem and would free up legislators to deal with the main points of legislation. We often get sidetracked and spend a great deal of time on the non-derogation clauses. If this were dealt with in the way that Senator Watt has proposed, it would deal with that issue and we would be able to focus on the main issues of the bills that come before us.

I urge all honourable senators to support the bill, send it to committee and eventually pass it.

Hon. Joan Fraser: Would Senator Sibbeston take a question?

Honourable senators, I will put something to Senator Sibbeston that I would have said in response to Senator Patterson had I risen to my feet quickly enough.

Would Senator Sibbeston be good enough to convey to Senator Patterson the following: Although he was kind enough to mention that I had been chair of the Standing Senate Committee on Legal and Constitutional Affairs, my clear recollection is that a great deal of the work on this report, of which we were all very proud, was done under the chairmanship of our present Speaker *pro tempore*, the Honourable Senator Oliver.

The Hon. the Speaker *pro tempore*: There being no further debate, are honourable senators ready for the question?

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

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

[Senator Sibbeston]

• (1520)

THE SENATE

MOTION TO URGE GOVERNMENT TO OFFICIALLY APOLOGIZE TO THE SOUTH ASIAN COMMUNITY AND TO THE INDIVIDUALS IMPACTED IN THE KOMAGATA MARU INCIDENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator Munson:

That the Government of Canada officially apologize in Parliament to the South Asian community and to the individuals impacted in the 1914 Komagata Maru incident.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, this motion has been before the Senate since November 2, 2011. There is little debate among any honourable senators in this chamber that the *Komagata Maru* incident represents a dark spot in Canadian history that was tragic and regrettable.

Senator Jaffer spoke compellingly in this chamber recounting the horrific experience of the 376 South Asians who sailed to Canada in 1914 in the hopes of a better life. Senator Martin also spoke and reminded us of how far we have come as a country, no longer afflicted with that widespread, deep-seated prejudice against immigrants and minorities that was the cause of the *Komagata Maru* incident.

Four years ago, the Prime Minister offered his apologies to a group of South Asians in Surrey, British Columbia. It is now time to make that apology, in an official and formal way, to the entire community. Just as Canada has done for Chinese Canadians stigmatized by the head tax and for Aboriginal people who were victims of the residential school system, it is now time for Canada to put on record an official apology to the South Asian community for the *Komagata Maru* incident.

I believe that all honourable senators should take an important step in righting this wrong by passing this motion today.

(On motion of Senator Carignan, debate adjourned.)

[*Translation*]

ELECTORAL RIDING REDISTRIBUTION

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Chapat calling the attention of the Senate to the process for readjusting federal electoral boundaries and the impact it could have on the vitality of official language minority communities.

Hon. Fernand Robichaud: Honourable senators, this is a timely issue since, in all provinces, the commissions dedicated to redistributing electoral ridings are considering the options.

I think that in New Brunswick, we should be receiving a preliminary report shortly. It is absolutely necessary and important for the commission members — and I have no doubt that they will do this — to take into account most of the points that Senator Chaput shared with us and that I would like to speak about in a few days. I therefore propose that the debate stand until the next sitting of the Senate.

(On motion of Senator Robichaud, debate adjourned.)

HUMAN RIGHTS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Mobina S. B. Jaffer, pursuant to notice of June 7, 2012, moved:

That the Standing Senate Committee on Human Rights have the power to sit at 6:15 p.m. on Monday, June 11, 2011, even though the Senate may then be sitting, and that Rule 95(4) be suspended in relation thereto.

(Motion agreed to.)

ADJOURNMENT

MOTION ADOPTED

Leave having been given to revert to Government Notices of Motions:

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Monday, June 11, 2012, at 6 p.m.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Monday, June 11, 2012, at 6 p.m.)

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