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Wednesday, May 9, 2007

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Wednesday, May 9, 2007

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

AUTISM

Hon. Lucie Pépin: Honourable senators, I rise today to recognize Quebec's regional autism associations, which recently held marches to raise awareness. On April 28, these organizations simultaneously took to the streets in 12 regions of the province. I had the privilege of taking part in the first march held in Montreal by the association Autisme et troubles envahissants du développement.

Accompanied by the drumming of the group Kumpa'nia, and also by rain and wind, more than 100 of us paraded through the streets of Plateau Mont-Royal to raise public awareness of autism and pervasive developmental disorders. The march ended after a video presentation showing people with autism achieving success in school, at work and in leisure activities. While people with autism may be disabled in some ways, they have many talents that need support to blossom.

In Montreal, we were united by a common bond of commitment to furthering the cause of autism. The same commitment drove the marchers in Quebec City, Rimouski, Longueuil, Sherbrooke, Baie-Comeau, Lévis, Laval, Saint-Jérôme and Joliette. In Gatineau, the place where the idea was launched and which was holding its fifth annual march, more than $33,000 was raised to allow autistic children to attend specialized summer camps.

• (1335)

The recent report on autism by the Standing Senate Committee on Social Affairs, Science and Technology states that there is a general lack of understanding among Canadians about autism and its spectrum of disabilities.

The committee feels that a greater understanding of autism spectrum disorders could help to reduce the stress experienced by autistic individuals and their families. These marches contribute to the national public awareness campaign.

It is time to acknowledge the commitment of thousands of parents, children, friends and stakeholders across Canada who spare no effort to ensure that autistic individuals get the support they need.

Honourable senators, as we mark National Mental Health Week, I invite you to join with me in extending our deepest appreciation to these people for the invaluable services they provide.

COMMENTS OF LIBERAL CANDIDATE FOR PAPINEAU

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, we all know that Justin Trudeau was kind enough to make the trip from Westmount to impart his wisdom to Acadians about French-language and English-language schools.

In his speech, he proposed that Acadians go back to the era when schools were unilingual.

Honourable senators, why would we want to take such a backward step? You will recall that Acadians used to attend English-language schools and, as a result, gradually lost their knowledge of French.

Mr. Trudeau, who stated that sometimes sacred cows need to be looked at, justified his proposal by saying that it is expensive to maintain two school systems. I clearly remember that the authorities trotted out the same excuse when we were fighting to keep our schools.

Trudeau's proposal is not appreciated by the people who have dedicated their lives and are still fighting to advance the cause of Acadians in Atlantic Canada. These people have set themselves the mission to safeguard their precious language and all its richness.

Some have explained Mr. Trudeau's statement by saying that he is young, but I am not impressed by that argument. A man of 35 who goes into politics, a man who knows how to attract media attention with what he says and does, should certainly be mature enough to find out the lay of the land before he issues statements.

His inappropriate remarks serve as a reminder to all parliamentarians that it is always a good idea to think before you speak.

[*English*]

NATIONAL NURSING WEEK

Hon. Joan Cook: Honourable senators, this week is National Nursing Week. I would like to pay tribute to a group of men and women whose work is integral to our nation's health care system.

We use this week to recognize the tremendous contributions that both the nursing profession and individual nurses have made in our communities. Nurses are a fundamental component in our hospitals, communities, homes and schools and have a plethora of roles.

Nurses work with governments at all levels to reduce environmental hazards. They collaborate with police officers, firefighters and others involved in emergency planning to ensure that at the time of an epidemic or a natural disaster the expertise and infrastructure are there to deal with people with physical and mental health problems.

They also have a long history of involvement with social issues like homelessness and healthy child development. They lead research and international development initiatives and have a strong presence in Canada's military.

Honourable senators, just a few moments ago, I stood in the front of the Nursing Sisters' Memorial in the Hall of Honour and saw four courageous nurses being honoured for their service in Kandahar. They are Major Vanessa Daniel, Lieutenant Jeff Lee, Captain Odette Rioux, and Captain Christine Matthews from the community of Grand Bank in my home province of Newfoundland and Labrador.

Unfortunately, we continually hear about shortages in this profession, yet in our nursing schools, it is reported that there are three and four applications for one space. The interest is there. Stakeholders report that nursing across Canada must begin to work as a cohesive and connected unit instead of operating in fragmented silos. This one step could yield invaluable results in the field.

We often hear how nurses are at the heart of health care. I would like to take this opportunity to publicly acknowledge their remarkable courage and give them the recognition they truly deserve.

• (1340)

MENTAL HEALTH WEEK

Hon. Wilbert J. Keon: Honourable senators, the first week of May is Mental Health Week. To celebrate the week this year, the Canadian Mental Health Association is focusing on the need to maintain a work-life balance — something that far too many of us shrug off as an impossibility. It is becoming increasingly difficult to reach this balance in today's busy world. Some 58 per cent of us are overloaded trying to meet expectations of the many roles we play at work, at home, and with our families and friends.

This overload can cost us all dearly. According to Statistics Canada, people whose lives are either quite a bit or extremely stressful are three times more likely to suffer a major depressive episode compared to those who reported low levels of stress. Of those who had to take a break from work, almost three quarters did not return. To make matters more difficult, there is little support at work for people who have mental health issues. Relevant services are available to only about one third of workers in their place of employment.

The stigma that still clings to the "mental illness" label prevents people from getting needed care. According to an Ipsos Reid public opinion poll released in February, almost 80 per cent of employees believed that someone diagnosed with depression would keep it secret.

Peer support might be lacking also. Co-workers often do not know how to deal with colleagues who are suffering from depression, because of a lack of understanding of the problem. Here is the bottom line: Business pays a heavy price for employee burnout. According to the Global Business and Economic Roundtable on Addiction and Mental Health, mental illness costs Canadian businesses $14 billion a year.

Honourable senators, these are costs that Canadians and Canadian firms cannot afford. Ignoring the problem of mental illness and hoping it will go away is not the answer. We need to deal with it, in part, by promoting a healthy work-life balance.

I also want to take this opportunity to comment on the need to promote First Nations mental health. Sadly, one in three Aboriginal youths has thought about suicide by age 17. This is a serious issue that needs to be addressed.

I would urge honourable senators to visit the Canadian Mental Health Association website — www.cmha.ca — for more information. Taking care of our mental health can make a big difference in our lives and those of our friends and associates.

[*Translation*]

OFFICIAL LANGUAGES

Hon. Roméo Antonius Dallaire: Honourable senators, today I would like to speak about the point brought up earlier by Senator Comeau, Canadian linguistic duality.

Yesterday one of the members of the Parliamentary Group for the Prevention of Genocide said that she spoke in French when she was in Canada and in English when she was outside of Canada. Around 60 students were there and heard this comment, which I think is childish and ridiculous. Canadian linguistic duality, our ability to express ourselves in both official languages, enables us to speak in our language, not because it is a basic part of our ability to express ourselves, but because it is a right. That member of the group was speaking very immaturely.

[*English*]

The same kind of disrespect for the fundamental duality of the country goes back to the CBC report of the dedication of the restored Canadian National Vimy Memorial; Jack Granatstein was a CBC guest on that report. In that moment of bringing Canada together under a significant historic event, it was said that only one battalion of the 49 was French-Canadian. In so saying, the French-Canadian participation was exceptionally limited in this event and had limited impact in the province of Quebec.

Honourable senators, between 12,000 and 14,000 French-Canadians fought in World War I — about 5 per cent of the total commitment. Allow me to read to honourable senators a policy of the time in which we did not want French-Canadians to serve together for national unity.

• (1345)

[*Translation*]

At the start of the war, 13 infantry battalions out of 258 were French-Canadian. They had difficulties recruiting and often had to fight alongside anglophone soldiers because the generals did not want French-Canadian reinforcements to be deployed in strictly francophone units.

According to Jack Granatstein, the officers unanimously agreed that these soldiers should be dispersed for the good of national unity. There was a fear that, if they were grouped together in the same battalion, they would develop a francophone nationalist

sentiment. This is why Quebecers were forced to be dispersed among anglophone units, and this is why now, at this historic time, it could be said that there was not a single French-Canadian regiment.

[*English*]

ROUTINE PROCEEDINGS

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—FIRST READING

Hon. Pat Carney presented Bill S-225, to amend the International Boundary Waters Treaty Act (bulk water removal)

Bill read first time.

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

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

[*Translation*]

CRIMINAL CODE

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-299, to amend the Criminal Code (identification information obtained by fraud or false pretence).

Bill read first time.

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

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

[*English*]

QUESTION PERIOD

FINANCE

FOREIGN TAKEOVERS

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate.

Domtar, Abitibi Consolidated, Algoma Steel, North American Oil Sands Corporation, Inco and Dofasco have come under foreign ownership. Now Alcan and very soon BCE, two blue chip companies that are part of the backbone of the Canadian economy, will be taken over by foreign investors.

• (1350)

All of this has been happening under the leadership of the Harper government. According to Bloomberg data, these acquisitions amount to $156 billion over the last 16 months, compared to $43 billion in 2005. Can I just deduce that Tory times are hard times for Canada?

I would ask the Leader of the Government in the Senate to inform the chamber as to when the fire sale of the jewels of our country will stop. We are losing headquarters to other countries, losing research and development and losing professional services. What concrete action does our government intend to take to save these jobs and protect our sovereignty, especially in the natural resources and communications sectors?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for her question.

Obviously, it would be inappropriate for me, as a member of the government, to comment on business decisions.

The negotiations taking place between Alcoa and Alcan have been taking place for over two years. In response to claims from the official opposition that the proposed budget measures are somehow responsible for these foreign takeovers, I should like to quote Jack Mintz, who stated in a *National Post* article on Tuesday, May 8, 2007: "That's just imagination."

Everybody has different opinions on this issue; I read two conflicting opinions in this morning's newspapers. Suffice it to say, this is an issue that has been ongoing for several years.

[*Translation*]

Senator Hervieux-Payette: Honourable senators, the predators on our finest Canadian companies had access to Prime Minister Harper and Minister Bernier, who lent them a more favourable ear, leaving the door wide open to the foreign takeover of the pillars of our economy. Can the Leader of the Government at least assure us that the government will study this situation seriously and take swift action, as the United States, Australia and England have done, and stop this haemorrhaging that puts Canada's economic sovereignty at risk?

[*English*]

Senator LeBreton: I would remind all honourable senators that, as with all large acquisitions, anti-trust and foreign investment clearances must be obtained. In accordance with the Investment Canada Act, only those investments that demonstrate direct benefit to Canada will be approved.

FINANCE

CHILD TAX BENEFIT—
EFFECT ON LOW-INCOME CITIZENS

Hon. Catherine S. Callbeck: My question is to the Leader of the Government in the Senate. Yesterday, I asked her whether she felt it was fair that a single parent living below the poverty line cannot benefit from the government's child tax credit.

The government leader's answer did not address my question. Therefore, I still do not understand why this government ignores the very children that need help the most. How does the government leader justify that low-income parents cannot take advantage of her government's child tax credit?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for her question.

I should like to review some of the budget policies for working families and lower-income Canadians.

Budget 2007 helps working families and individual Canadians through, as I mentioned yesterday, a new working income tax benefit, WITB, of up to $1,000 per family, $500 per individual, which will help 1.2 million Canadians over the welfare wall; a new $2,000 tax credit for every child under 18, to reduce taxes for 3 million Canadian families; a $1,000 tax credit to cut taxes for working Canadians; a tax fairness plan that cuts taxes for seniors by over $1 billion every year; improved RESP flexibility to allow more families to save for their children's education; a new long-term savings plan for parents of children with severe disabilities; and fairness for single-income families by ending the marriage penalty.

• (1355)

Senator Callbeck: Honourable senators, the Leader of the Government in the Senate has still not answered my question. I asked a specific question about the child tax credit. According to a new report by Statistics Canada, one out of ten Canadian children lives in poverty. The government's child tax credit initiatives do absolutely nothing for Canadian children from low-income families. An amount of $310 per child would go a long way for a single mother living below the poverty line.

I ask the Leader of the Government again: Why is this government punishing low-income parents and their children? Why is this government forgetting about or leaving out the Canadians who need help the most?

Senator LeBreton: I take issue with the premise of Senator Callbeck's question. There are many programs provided by the federal government, as well as by provincial governments, for example, through transfers to help people living at the lower end of the income scale or who are not working at all, through welfare, and there are other programs.

One of the measures brought in by this government is the direct payment to families of $100 per child for every child under the age of six. This helps all families, including those which are less fortunate and living in poverty.

To say that the government is ignoring this issue is wrong. I again point out that we have brought in programs to help people get over the welfare wall and to assist them in providing for their families by offering them a chance to participate in the labour force. There are many government programs, and the government has taken a number of people off the income tax rolls. The honourable senator's question does not properly reflect the efforts this government is making for Canadians who are less fortunate than others.

[*Translation*]

JUSTICE

ABOLITION OF COURT CHALLENGES PROGRAM

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. Last fall, the government announced cuts to a number of government programs, including the Court Challenges Program.

An article published in *Le Droit* on May 2 spoke of a motion brought forward by a member of the government, suggesting that there may soon be a new program that would ensure recognition of the linguistic rights of official language minority communities.

However, the Leader of the Government stated in the Senate on April 17:

> I have absolutely no intention of campaigning among my colleagues, in my party or in the cabinet to bring back that particular program.

My question is this: Can the Leader of the Government in the Senate confirm whether the government will support its member's motion to implement a program to ensure recognition of linguistic rights and give a voice to official language minority communities?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): As I have said in response to previous questions on the Court Challenges Program, our government will continue to respect its legal and constitutional obligations and responsibilities. I believe our government is firmly committed and is shown to be so in its support of the development of official languages minority communities and the promotion of English and French in Canadian society. We are delivering on a four-year, $120 million agreement for communities. In addition, last September, our government announced a five-year strategic plan to foster immigration to francophone minority communities.

• (1400)

[*Translation*]

HOUSE OF COMMONS

CANCELLATION OF MEETING OF OFFICIAL LANGUAGES COMMITTEE

Hon. Claudette Tardif (Deputy Leader of the Opposition): If the language rights of the official language minority communities are as important as the Leader of the Government has indicated, can she then explain why her colleagues from the other place cancelled — at the very last minute — the meeting of the Official Languages Committee, although representatives of the Court Challenges Program had travelled from Winnipeg to attend that meeting?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, the government is not responsible for all of the committee's work in the other place. Government members are on the committee, and I think the decision of the committee in the other place is best left to them.

We all saw what happened in the committee last week. The chairman of that House committee, Guy Lauzon, stated publicly that, as this matter is before the courts and also under the study of the Commissioner of Official Languages, it was best to cancel the meeting and delay the study for a few weeks in the interests of all. We saw what happened last week when the committee became part of other hearings. That was not helpful to anyone, whether they be French or English speaking.

Mr. Lauzon, who I hasten to point out is Franco-Ontarian, is a very credible spokesman for our party on these issues. He would only act on this matter in a responsible way. I believe that the explanation he expressed yesterday is valid. Cooler heads should prevail. As I said before, this matter is before the Commissioner of Official Languages, and Mr. Lauzon has decided it would be appropriate to wait a few weeks before bringing this matter back to the attention of the committee in the other place.

Senator Tardif: I take it, then, that the chairman of the committee made that decision unilaterally, without consulting the steering committee and, perhaps, making arrangements for the people who had planned their trip to know about the decision in advance, before arriving in Ottawa five minutes before the meeting?

Senator LeBreton: Obviously, the honourable senator would not expect me to be involved, nor should I be, in the operation of the committee in the other place. Therefore, I cannot answer that question. Only the committee chair and the steering committee of that particular committee could provide that particular answer to the honourable senator.

HUMAN RESOURCES AND SOCIAL DEVELOPMENT

REPORT OF MINISTERIAL ADVISORY COMMITTEE ON CHILD CARE SPACES INITIATIVE

Hon. Marilyn Trenholme Counsell: Honourable senators, my question is for the Leader of the Government in the Senate. On April 24, 2007, I asked the Leader of the Government in the Senate why the national child care spaces investment fund recommended by Dr. Gordon Chong and his committee will not be created, and I did not get an answer. I expressed my profound concern that money transferred to the territories and provinces through the Canada Social Transfer is a poor choice; the fund would be a good choice.

Honourable senators, I am sure the answer will be short, so I will take a couple of minutes to explain this fund and to go through some of the extremely valuable words in this report.

The report used words such as: "Establish a national child care spaces investment fund, administered by a third party, to finance the creation of new, high-quality child care spaces and the stabilization of existing child care spaces." It also spoke about being accountable, transparent and inclusive; respecting the need for multiple approaches; giving priority to partnerships and creative approaches; encouraging dialogue, community support, trust and openness, with clear roles and responsibilities and independent reporting; and with a small bureaucracy so that most of the money would go to child care spaces.

The fund would also be a trustee of public and private money, managed efficiently and effectively, with transparency and accountability. To build equity within the fund, there would be a national competition with priority being given to community partnerships, and provincial and territorial cooperation and contribution would be established. This fund would have certain priorities with respect to the defined gap between local supply and demand; it has a proven track record of high quality child care; and is innovative, creative and flexible. Children with special needs should receive special consideration from the fund.

• (1405)

To the honourable Leader of the Government, again, why is the Harper government not following this wise and visionary recommendation?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for her question. As I have said on many occasions, the issue of child care and the approach that our government has taken is obviously not the same approach that was advocated by the previous government. We were elected on a platform. We made it clear how we wanted to approach the child care issue. The honourable senator mentioned the report of Gordon Chong. The government appreciated his work and will respond in due course. However, on the issue of child care, honourable senators, there have been many ideas through the years. Some of us have taken positions on child care that I think are valid.

I wish to read into the record some comments from the Leader of the Opposition on this very issue, which appeared in a book entitled *If I Were Prime Minister*. On page 119 of this book, which is a compilation of various people's views, I want to quote what Senator Hervieux-Payette said.

> Even today, when we talk about providing child care programs, the solutions are short term and costly. It is not necessarily a universal day-care system we need. It is a system that will make the family the cornerstone of our future as a society, one that will stop penalizing parents who dare to have children. It will even encourage the restoration of a link with grandparents. We isolate individuals who have problems. Day-care is necessary when a parent is working outside the home, but why should it be institutionalized? A grandparent or a neighbour could do the same thing. Are we ready to use our imagination to consider other options, sometimes more flexible, that we can afford?

By the way, I totally endorse the words of Senator Hervieux-Payette on that occasion.

An Hon. Senator: Times have changed.

Senator Trenholme Counsell: I thank the honourable senator for her response. I do not want to raise my voice or get mad but I have found this process very frustrating. I have twice now asked

the honourable leader a direct question based on an excellent report. I thought she would say to me, "Yes, my government commissioned this report, so we will take credit for it," but I was giving a lot of credit to the report.

In this report there are four pages devoted to this fund. The honourable senator will not answer my question as to why the Harper government made the decision not to follow that lengthy and sound piece of advice to establish a fund rather than pouring this money into the Canada Social Transfer.

There is probably no point asking for a deferred answer, but the leader has not answered the question. This is the kind of thing that makes Canadians uneasy, and I am very sad. I do not want to say I am very mad; I am very sad. I will give her another chance. Why was the decision taken to put the money into the Canada Social Transfer rather than into the fund, as suggested in this very well thought out and well-documented report?

Senator LeBreton: When the honourable senator asked the question a week or so ago, I responded to the question. I thought my answer was very clear. Obviously, the honourable senator did not think the answer was clear or did not like the answer.

The honourable senator says she is sad or mad. The fact is that the government has undertaken a tax fairness program and other programs, as well as efforts to address child care needs, and not only, as I have said before, in the larger centres, because child care is a very complex issue. There are very different needs in different parts of the country, for instance, in smaller communities and rural areas. Senator Hervieux-Payette was quite right in her book, *If I Were Prime Minister*, that there are parts of our society that want to make arrangements; even working parents want to make different arrangements within their family or their neighbourhood.

• (1410)

There is not a single cookie-cutter model that we can use. The government is studying the recommendations and report of Dr. Chong, and when they have a fulsome response I will be happy to provide it to Senator Trenholme Counsell.

FOREIGN AFFAIRS

ZIMBABWE—BREAKING DIPLOMATIC RELATIONS

Hon. Hugh Segal: My question is to the Honourable Leader of the Government in the Senate. The question relates to a motion which was passed unanimously by the Senate yesterday, calling on the government to withdraw our diplomatic relations with Zimbabwe. A message to that effect pursuant to the motion was sent to the House of Commons and duly noted in their journal on this date.

Would the Leader of the Government in the Senate be prepared to undertake to revisit the issue with her colleagues? There was a delayed response to a question that I asked on the matter, indicating that, as a matter of general policy, the Department of Foreign Affairs believes that having an active embassy is a way to bear witness and work with other governments in the region. It strikes me, though, that diplomatic relations confer a level of legitimacy on the Mugabe regime, which its activities against its own people, its brutal beating and imprisonment of the leader of the opposition, and its confiscation of legally held land, would violate every core value Canadians share. Therefore, I ask the minister: Would she be prepared to have the matter considered by her colleagues at the next appropriate opportunity?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, Senator Segal is quite right that when he asked this question previously I did take the matter up with the Minister of Foreign Affairs. As Senator Segal stated, he and the department felt that it was still a better situation to be in the country and have the government represented because not to have someone there did not, at the time, seem to make sense in order to keep monitoring the situation and trying to come up with some solutions as to how the government could proceed to deal with this terrible situation. In view of the honourable senator's question today, I would be happy to return and ask my colleague to reconsider his earlier suggestion.

HUMAN RESOURCES AND SOCIAL DEVELOPMENT

CHILD CARE SPACES CREATED UNDER GOVERNMENT POLICIES

Hon. Jane Cordy: Honourable senators, as the Leader of the Government said, child care is extremely important and complex. I know that during the election campaign this was part of the Conservative campaign platform. I would like to know how many new child care spaces have been put in place since her government has come to power.

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I will take that question as notice. As the honourable senator knows, considerable funds have been transferred to the various provinces. If the department is able to answer that question, and I am sure it is, I will be very happy to provide the response.

Senator Cordy: Could the leader also look at what has happened with the creation of business workplace child care spaces?

Senator LeBreton: Honourable senators, we are still hopeful that businesses will create child care spaces. Some businesses have created child care spaces, but I will take that part of Senator Cordy's question as notice as well.

Senator Cordy: Does "hopeful" mean that no child care spaces have been created as a result of that program?

Senator LeBreton: It does not mean that at all. As indicated, I will be happy to forward the honourable senator's question.

• (1415)

There were significant budgetary funds transferred to the provinces, and I will ask the department to ascertain, if it can, exactly how many child care spaces have been provided.

[*Translation*]

REPORT OF MINISTERIAL ADVISORY COMMITTEE ON CHILD CARE SPACES INITIATIVE

Hon. Maria Chaput: Honourable senators, I have a supplementary question for the Leader of the Government in the Senate concerning early childhood services.

I represent official language minority communities in Manitoba among others. We have still not received an answer from you as to why the government cannot support integrated early childhood services.

Does your government realize that, by refusing to support these services, it is causing further harm to official language minority communities?

Children are the most fragile of beings. They deserve respect and to have access to the services they need. This is about early childhood services and also about the Court Challenges Program.

Several of the questions that you have refused to answer relate to services for francophone minority communities.

Can the Leader of the Government in the Senate tell us whether or not her government will finally address the issue of these services? We have still not received an answer as to why it is not possible to restore them or to set them up.

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for her question. She asked me a similar question some time ago and I did provide an answer by way of Delayed Answers.

In the recent budget, we transferred billions of dollars to the provinces through a fiscal balance issue. For anyone to say that this government is ignoring our children and ignoring minority language rights is just false. As Senator Tkachuk said yesterday, "Start a rumour; ask a question." This is the sort of situation we are getting into.

I point out that our government ran on a specific platform. We explained how we would deal with these issues. The Canadian public supported us on that platform, and we are implementing our agenda, not that of the previous government, not promises made, as Tom Axworthy said, like a "deathbed repentance." That is what Mr. Axworthy said about their child care plan.

We were not elected to implement the policies of the previous government, and thank goodness for that when you look at some of the other areas that caused them difficulty. As a member of this government and of this chamber, and as someone who has worked in these areas for a long time, I take great offence that the honourable senator would think that our government has not responded to these matters, because we have.

FINANCE

REVIEW OF COST OF FOREIGN ACQUISITIONS

Hon. Jerahmiel S. Grafstein: Honourable senators, I have a question for the Leader of the Government in the Senate about the issue of deductibility for foreign loans of Canadian companies.

The public is somewhat confused. The Minister of Finance delivered a budget saying that loans linked to foreign operations "would no longer be deductible." In the last day or so, the Minister of Finance is reported to have said that some of the interest incurred on foreign financing would be eligible for deduction.

The Leader of the Government knows, as does every member of the government side, that a budget is there to provide clarity so that Canadians can arrange their affairs in an appropriate fashion. That is why clarity of the budget goes to the heart of confidence in the government. It is a question of ensuring that people and businesses understand what they are to do as a result of government action.

• (1420)

The Minister of Finance, on a question that goes to the heart of confidence, said in the budget that these items are no longer deductible and yet is now saying that some are deductible. Which is it?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I noticed that Senator Grafstein was not reading from the budget but, rather, from a newspaper. I cannot respond to everything that is written in newspapers, especially things that may not be factual.

To reiterate what I said yesterday, the minister has said very clearly that he is opposed to tax havens and tax loopholes. He has said repeatedly that we believe that companies must be competitive and also pay their fair share of taxes. I believe most Canadians think that is reasonable.

As I have said previously, officials are discussing this proposed restriction with industry representatives. As a result of these consultations, the Minister of Finance will develop legislation. As the minister said, he will announce his plans shortly.

Again, as the Governor of the Bank of Canada said when he appeared before the Senate committee, one should be very careful about jumping to conclusions before seeing the draft legislation.

Senator Grafstein: Honourable senators, if this newspaper report is incorrect, I assume the minister will not follow what is said in it. The report says that the minister plans to announce his changes with respect to deductibility in Toronto on Monday.

The minister made his announcement in the budget, which goes to the heart of confidence in the other place, and is now about to correct that in some fashion outside of Parliament. That, to my mind, goes to the heart of Parliament. I hope the minister, if he chooses to do that, would correct himself.

The Hon. the Speaker: Order. I regret to advise the house that the time for Question Period has expired.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table a delayed answer to an oral question raised by Senator Milne on April 25, 2007, concerning the coming into force of the Conflict of Interest Act and the Federal Accountability Act.

TREASURY BOARD

FEDERAL ACCOUNTABILITY ACT— PROCLAMATION OF REMAINING SECTIONS

(*Response to question raised by Hon. Lorna Milne on April 25, 2007*)

On April 11, 2006, the Government of Canada introduced the *Federal Accountability Act* and Action Plan to make government more accountable. The Government of Canada delivered on this commitment by passing the *Federal Accountability Act*, which was granted Royal Assent on December 12, 2006.

The *Federal Accountability Act* amends over 45 statutes and creates two new ones, making it one of the largest and most complex pieces of legislation in Canadian history. As is common for complex legislation, different sections of the Act will come into force at different times. In passing the *Federal Accountability Act*, Parliament approved the various coming into force provisions that apply to the different parts of the Act. Some came into force at Royal Assent, some will come into force on specific dates and others will come into force at dates to be set out by Order in Council.

The *Conflict of Interest Act*, one of the two new Acts introduced by the *Federal Accountability Act*, and its related provisions will be brought into force on a date set by Order in Council. This date has not yet been set; in order to bring the *Conflict of Interest Act* into force, it is necessary to appoint a Conflict of Interest and Ethics Commissioner who is ready to administer the Act. The Government intends to announce a nominee for the new Conflict of Interest and Ethics Commissioner position in the near future, for consideration by the House of Commons.

Once these steps are completed the Government will be in a position to bring the *Conflict of Interest Act* into force.

In the interim, the current Conflict of Interest and Post-Employment Code for Public Office Holders — which is the most stringent Code ever put in place — remains in effect. This Code includes provisions that have been included in the *Conflict of Interest Act*, such as the five year ban on lobbying for senior public office holders, the banning of "venetian blind" trusts (also known as blind management agreements), giving the Ethics Commissioner the power to impose any necessary measures, and giving the Ethics Commissioner the ability to entertain complaints from the public that are brought to his attention by a member of Parliament.

Complete implementation of the *Federal Accountability Act* and Action Plan will be a long and complex process. Several key implementation activities are currently underway, including the development of several sets of regulations, some of which require significant public consultations; several Governor in Council appointments, some of which require vetting or approval by Parliament; and various other administrative matters, such as ensuring organizational readiness and training.

Each of these implementation activities will require time and resources, and officials are working to complete these tasks quickly and effectively.

The Government of Canada is working diligently to bring the remaining provisions of the Act into force. For example, the President of Treasury Board recently announced the coming into force dates for the *Public Servants Disclosure Protection Act* (April 15, 2007), expansion of the *Access to Information Act* to five Agents of Parliament, five foundations and the Canadian Wheat Board (April 1, 2007); expansion of the same Act to additional parent Crown corporations and wholly-owned subsidiaries (September 1, 2007); new fraud offences in the *Financial Administration Act* with tougher sanctions for those that commit fraud with taxpayers' dollars (March 1, 2007); and amendments to the Canadian Dairy Commission Act, the *Enterprise Cape Breton Corporation Act* and the *National Capital Commission Act* to separate the positions of Chair and Chief Executive Officer of these Crown corporations (April 1, 2007 for ECBC and the NCC and April 27, 2007 for the CDC) to coincide with the expiration of the terms of office of the current Vice Chairperson and Commissioner.

[*English*]

POINT OF ORDER

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, before moving to Orders of the Day, I wish to present my ruling on an appeal to the rules that was made on Wednesday, April 25. As I make this ruling, honourable senators, I will ask the pages to circulate a copy of the ruling to each of you.

Honourable senators, on Wednesday, April 25, 2007, Senator Banks rose on a point of order respecting membership of the Standing Senate Committee on National Security and Defence. He raised several issues. As Senator Banks recognized, the less serious of his concerns was that the membership change form that removed three senators from the committee on February 27, 2007 without indicating replacements, gave the incorrect name for the said committee and referred to rule 86(4) rather than rule 85(4). His principal concern, however, was that rule 86(1)(r) provides that the committee is to be composed of nine members. Senator Banks questioned the propriety of removing members without replacements since it effectively reduced the committee's membership from nine members plus the ex-officio members to six plus the ex-officio members.

• (1425)

Senator Kenny spoke in support of this point of order, and Senator Cools then addressed concerns about the membership of committees. The senator suggested that such changes should only be done with the agreement of the senators involved and that changes made by the leaders should not permanently override the decision of the Senate, made when it adopts a report of the Committee of Selection. Senator Hervieux-Payette also participated in debate, underscoring the disruptive effects that

unexpected changes or vacancies can have on the work of committees and inviting guidance about how this situation might be improved.

[*Translation*]

Finally, Senator Tkachuk suggested that there was no valid point of order. The senator referred to the *Rules of the Senate*, Beauchesne, Erskine May, and general Senate practice to argue that the membership of committees can be changed and that the changes made to the National Security and Defence Committee respected normal practice and were in order.

Given the importance of this question, I took the issue under advisement. I thank all senators who participated in discussion. A consideration of Senator Banks' principal point, that the membership change of February 27, 2007 should have replaced one senator by another senator, has led to a consideration of several closely related issues. The specific situation cited by senator Banks did respect general practice and was not in contradiction with the rules. At the same time, there are several points needing clarification, and it might be appropriate for the Rules Committee to consider them.

[*English*]

An understanding of subsections (3), (4), and (5) of rule 85 is essential to this issue. Subsection (3) states that, once appointed, a senator is a member of a committee for the duration of the session. The appointment is, however, subject to subsection (4), which authorizes changes of membership by notices filed with the Clerk of the Senate. Subsection (5) specifies that the change of membership shall be made by the Leader of the Government for a government senator, by the Leader of the Opposition for an opposition senator, or by the leader of a recognized third party for a senator who is a member of such a party. In all these cases, the leaders may name another senator, typically the whip, to exercise this authority on their behalf.

Allowing changes in membership during the course of a session provides a convenient way to co-ordinate caucus work. If, for example, a senator is obliged to be away from a meeting for other responsibilities or if a senator who is not a regular member of a committee has particular expertise in a matter under consideration, rule 85(4) provides a way to accommodate these circumstances.

The Committee of Selection has recommended the appointment of independent senators to committees. These independent senators can indicate, in writing, that they agree to accept the authority of either the government or the opposition whip for the purposes of membership changes. This arrangement is entirely voluntary. If an independent senator does not write such a letter, or withdraws it, the rule respecting changes does not apply. Similarly, if a senator withdraws from a caucus, rule 85(4) would cease to apply. In the latter case, that senator would retain any then current committee memberships unless removed, either through a report of the Committee of Selection or a substantive motion, adopted by the Senate.

[*Translation*]

I will now turn to Senator Banks' concerns. On his first point, the rule number and the name of the National Security and Defence Committee, the changes sent by the whips have at times made reference to rule 86(4) rather than rule 85(4), most likely due to the use of forms antedating the renumbering of the *Rules of the Senate*. This can be easily corrected. Furthermore, the forms sometimes use abbreviated or incomplete names for committees. This particular form referred to "National Defense (*sic*) and Security," so the intent was clear. The inaccuracies were by no means so egregious as to render the form invalid. As Senator Banks noted, they should be viewed as typographical errors.

• (1430)

The more substantive complaint relates to changing membership by removing a member without designating an immediate replacement. Rule 85 is clear that the leaders do have authority to make changes with respect to their members. Once a change is made, the senator added is a member for the rest of the session until and unless another change is received.

[*English*]

As Speaker, I am bound to interpret the rules and practices as they exist. Whether a requirement for consultation and limits on the duration of a change in membership is desirable is not an issue that can be appropriately addressed in this ruling. Any guidance or changes should come from the Standing Committee on Rules, Procedures and the Rights of Parliament.

[*Translation*]

Returning to the main issue raised by Senator Banks, the removal of a committee member without making an immediate replacement, this has been a long practice in the Senate, developed since 1983, when the leaders were empowered to make changes to committee membership. During the current session, there have already been at least two dozen such changes, done by both sides. In some cases the vacancies were subsequently filled, while in others they remain to be filled. Such changes often occurred during previous sessions.

[*English*]

It will be noted that rule 85(4) simply refers to "a change in the membership of a committee." Removing a member from a committee with the replacement to follow clearly constitutes a "change" in committee membership that fits within the general wording of the rule and this practice has been sanctioned by long use. Again, if there is an interest in the Senate taking a new direction on this matter, the Rules Committee could make the appropriate recommendations.

Since the removal of committee members without making immediate replacements falls within the terms of rule 85(4) and has long been part of Senate practice, it follows that there have been many cases of committees not having the full membership set out in rule 86(1). The general acceptability of this situation is to some degree supported by a ruling of the Speaker of the Senate of May 30, 1991. That ruling stated that, while current rule 85, which was rule 86 at the time, "sets the maximum number of members which a committee may have, the Committee of Selection is not obliged to nominate a full complement of senators for each committee." Since then, some reports of the Committee of Selection have not recommended the maximum number of members.

[*Translation*]

A committee can function, from the time members are appointed, with fewer members than the number in the rules, provided it has quorum. This situation is endorsed by the Senate when it adopts the report of the Committee of Selection. Practice has been that a committee can also function if its membership falls below this number during the course of a session, as long as it continues to have quorum. What distinguishes the case Senator Banks raised is not only its duration, but also the fact that the entire membership of one caucus is involved. There is, however, no cut-off point as to how long this situation can last, nor can the Speaker impose one. Furthermore, while recognizing that the permanent withdrawal of all members from one side could alter the operations of a committee, this aspect of the issue is also beyond the authority of the Speaker, as long as there still can be quorum at meetings.

These issues, while important, are not strictly matters of procedure. In conclusion, the removal of certain members from the National Security and Defence Committee on February 27, 2007 respected the practices as they have evolved in the Senate, and was not inconsistent with the rules. The senators removed on that date, or other senators from the government caucus, can be added to the committee by the Leader of the Government in the Senate or her designate.

[*English*]

As noted, Senator Banks' point of order has brought to light a number of significant points on which clarification would be helpful, but the Rules Committee is the appropriate venue for such discussion. In closing, therefore, I urge that committee to take up these issues.

[*Translation*]

POINT OF ORDER

Hon. Pierre Claude Nolin: Honourable senators, I rise on a point of order. The Question Period that just ended was precisely 34 minutes long.

I humbly request that His Honour the Speaker give his interpretation of rule 24(8).

The Hon. the Speaker: The Rules state that Question Period is to last 30 minutes. By my watch, Question Period lasted 30 minutes, but if my watch is not working properly, I will find another one.

I would like to take this opportunity to point out that we prefer a good exchange during Question Period. One question may lead to many supplementary questions and this creates a dilemma for the Speaker, as to whether he should interrupt the flow of the debate. I also try to recognize all senators who rise in this chamber so that they may take part in Question Period.

In any event, Senator Nolin was right to point out that Question Period is to be 30 minutes long. As for me, I will get a new watch.

[*English*]

Senator Cools: I propose that honourable senators pass the hat for donations so that the Speaker can buy a brand new watch — a Rolex.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED

Hon. David Tkachuk moved third reading of Bill C-9, to amend the Criminal Code (conditional sentence of imprisonment).

He said: Honourable senators, I rise today to speak at third reading of Bill C-9. I thank the members of the Standing Senate Committee on Legal and Constitutional Affairs for their hard work in scrutinizing this bill. I would like to thank Senator Jaffer for her participation in ably representing her caucus.

• (1440)

I was not able to participate at the hearings because of the conflicts with the Banking Committee on which I sit. Their schedules often conflict. I do know, however, the committee heard from a variety of witnesses who had differing opinions on the bill.

This bill is a good first step in getting us to a place where, in every instance, the criminal pays a higher price for crime than does the victim. It does not get us all the way there, but it is a good first step.

I believe the committee acknowledges that, at least implicitly, in that in the observations attached to the bill it calls for more study. I can only hope that the results of that study lead to the improvement of Canada's criminal sentencing regime in the future. I am speaking specifically of the commitment in those observations to study the issue of sentencing in Canada more broadly at a future date. Perhaps we will find that a tougher sentencing regime deters more people from committing violent crimes.

I also welcome the committee's willingness, as part of that study, to look at organized crime and how we can make all such activity ineligible for conditional sentencing.

I hope that in their study they will, as well, look at the implications that arise from the serious personal injury aspect of this bill. We need to monitor the progress of this aspect of the legislation carefully to be sure that this section of the bill does not further victimize the victims of crime. I trust that the date for that future study will be sooner rather than later.

In conclusion, the Conservative government is seized with the need to combat crime and to protect victims of crime. The list of bills that we have proposed in this regard speaks for itself. Besides this bill, there is Bill C-10, which imposes graduated mandatory minimum sentences for crimes involving the use of firearms;

Bill C-23, which amends the Criminal Code regarding procedure sentencing and a number of other issues; Bill C-22, which deals with age of protector; Bill C-25, which deals with money laundering; Bill C-19, which is directed at street racing; Bill C-27, which is aimed at dangerous and long-term offenders; Bill C-32, which widens the offence of impaired driving; and Bill C-35, which is aimed at firearms, this time toughening the bail conditions for firearm-related offences.

The Conservative government is serious about combating crime, and Bill C-9 is but one among a number of measures we are taking in that direction. I will be happy to see this bill pass, as well as the other bills that have not yet passed.

Hon. Serge Joyal: Honourable senators, I want to associate myself with the remarks of the honourable senator in commending the work of our colleagues on the Standing Senate Committee on Legal and Constitutional Affairs. I benefited tremendously from the input, wisdom and expertise of members on all sides.

When a bill to amend the Criminal Code is referred to the Committee on Legal and Constitutional Affairs, it has a very serious mandate, and all members of the committee paid attention to the impact of this bill.

As the honourable senator said, this is part of the government's agenda — and I will paraphrase the spin on it — to be tough on crime. It is an agenda to try to create the impression, and probably the reality, that the streets of Canada would be safer and that citizens will have the feeling that they live in a secure environment.

The bill is very short; essentially one page. It is entitled "An Act to Amend the Criminal Code (conditional sentence of imprisonment)."

I would like to share three observations with honourable senators. First, through our study, I personally have concluded there is a lack of information on the real impact of this bill on increased security for our society. Second, there is uncertainty about what will happen under the new sentencing regime. Third, there are ambiguities in the text of the bill.

To reiterate, there is a lack of information on the impact of the bill, uncertainty about the sentencing regime following the adoption of this bill and ambiguity about its interpretation.

I will first address the lack of information on the impact of this bill on the security of Canadians. In other words, will this bill improve the security of Canadians?

Honourable senators, we had the benefit of hearing representatives from the Centre for Justice Statistics, a branch of Statistics Canada, on April 26. They provided members of the committee with 17 charts. The last one represented reinvolvement after a sentence has been served.

The document states:

> As we can see for these jurisdictions, the proportion of probationers who returned to corrections within the 24 months was a little lower (18 per cent) than for those serving conditional sentence (23 per cent) but the proportions are quite similar.
>
> The proportion who returned to corrections after finishing a sentenced custody was much higher (around 40 per cent).

Those statistics tell us that if a criminal is sentenced to prison, there is a 40 per cent chance that that person will one day be sent back to prison. If the person is sentenced to conditional sentencing, there is a 23 per cent chance that he or she will go back to prison.

This bill removes three specified offences from conditional sentencing. The first offence is that of serious personal injury offence, that is, attacking the physical integrity of a person; the second offence is terrorism; and the third is organized crime.

If we decide that persons convicted of one of the three offences would not be eligible for conditional sentencing, what would we be creating? We will be sending more people to prison. Are we creating more risk that that person, having served his or her sentence in prison, will represent a higher risk of recidivism?

Therefore, society will be more secure while the person is in prison, but as soon as he or she is out of prison, what risk will that person represent to society? According to those statistics, such persons will represent a higher risk. That is what we heard in testimony from the statistician who testified before us on April 26.

Ms. Johnson said:

> We can see from this is that they also have higher rates of re-involvement in correctional services than those who only spend their time in community correctional services.

Those are the statistics in general. We have tried to deconstruct those statistics to understand them. The subject is very complex, honourable senators. With the statistics that are presently available we cannot draw a final conclusion on the assertion that I have made that this bill will represent a higher risk for security.

Ms. Barr-Telford concluded:

> To be able to answer that directly, we would need to be able to conduct that kind of particular analysis. To date, we are unable to do that.

• (1450)

In other words, we legislate this bill with good intentions — there is no doubt about that, as the honourable senator said — to make Canadian society not only feel safer but, in reality, become safer. However, because of the lack of data, we cannot absolutely conclude that it will happen.

My second point is about the uncertainty that that will bring in the sentencing regime for the three offences I stated earlier.

What will happen in court where a person is accused and found guilty of one of the three offences I have stated? What will the judge do? I will tell you what the judge will be faced with. We put that question clearly to the witnesses in the committee:

> . . . a judge will not have to choose between incarceration and probation. According to this bill, if a person is found guilty of a serious personal injury offence, since the conditional sentence is removed as an option, probation can come after incarceration, but it is not prison or probation, as I understand the way it will work. Am I correct?

The answer we got is the following:

> It is not clear from the bill. This was one of the questions that came up when we look at the data. At present, some get a conditional sentence, prison or probation; there are various sentencing options.

In other words, the statistician, or those who have analyzed data on the 17 charts we were presented with, could not conclude specifically on how the court would react to that. There was even an additional question put by Senator Bryden, if I can quote him. Senator Bryden asked:

> Do those sections of the Criminal Code allow a judge not to use conditional sentencing but, although the charge would entitle him to imprison the accused for 12 years, not do that but impose a two-year sentence, suspend it and put the person on probation?

Answer from Mr. MacKay:

> That is correct. For a serious offence like attempted murder, for example, which has a high maximum sentence, the judge could give a suspended sentence and probation, or could send the accused to jail for two years less a day plus a three-year probationary term. That still remains an option if Bill C-9 is adopted, yes.

Senator Bryden responds:

> It seems a little strange to me that you would miss. You say that it is not open to conditional sentencing, which in fact restricts the freedom of the person more than probation does. Yet, for the same crime, the judge is in a position to use probation instead of a 12-14-year sentence.

In other words, there is uncertainty about how the court will react to the use of the sentencing regime. That has been the conclusion of witnesses that have answered and commented on this.

I will read another answer the committee received. I am reading from the April 26 transcript of the committee. Ms. Barr-Telford said the following in response to me:

> To predict and discuss the way in which the bill will be implemented, should it be adopted in the future, is difficult — if not impossible — to do at this point in time. We simply cannot answer how that will unfold.

In other words, honourable senators, there is uncertainty about how the regime of sentencing will develop or unfold when those proposed provisions are adopted.

Finally, my last point is about the ambiguity of the text itself. There are two points I wish to draw to the attention of honourable senators. The first one was raised by the Canadian Bar Association in its April 26 letter to the committee, appearing on page 2 — and I quote: "CBA, Canadian Bar Association section members, have raised potential ambiguities in interpreting this complex clause, especially the term 'indictable offence.'"

I would refer honourable senators to the brief from the Canadian Bar Association.

There is another aspect of the bill. The other place amended the original bill to include the offence of organized crime. Organized crime, honourable senators, is a part of the Criminal Code that many senators in this chamber will remember. We had a very extended discussion in this place when we added the organized crime section to the Code.

The organized crime section of the Criminal Code of Canada contains three offences— participation, commission, and instructing the commission of an offence. The amendment that the House of Commons has brought to the bill covers the commission and the instruction of an offence, because it is admissible to 10 years' penalty, but not the participation, which is admissible to five years' penalty.

It is not clear in the bill, when we define criminal organization offence, if the original intention was to cover the three aspects, participation, commission and instruction, or only two aspects, commission and instruction.

I am not the one, honourable senators, who raised this concern. It was raised by the Canadian Association of Chiefs of Police, in its brief, tabled with the committee on May 2 through the two witnesses we heard from the association. Mr. Brabant, who is an experienced lawyer, states on page 3 of that brief:

> We were also interested to note that the Committee did agree that it was appropriate for Parliament to provide guidance to the judiciary under certain circumstances and to send messages.

At page 5 of that brief, it states:

> We would therefore like to suggest an amendment that specifically ensures that all "criminal organization offences" as defined in section 2 of the *Criminal Code* be ineligible for conditional sentences.

That is the advice we received from the witnesses.

In summary, honourable senators, with respect to Bill C-9, I agree with the purpose and intention that we should try, when we amend the Criminal Code, to know as much as we can of the impact to the system. The Criminal Code is a serious statute, especially the conditional sentencing provision, which was adopted 10 years ago, in 1996. Today, we have data to evaluate the impact of the conditional sentencing provision on Canadian society. I totally agree. If there are sections or offences that need to be removed from conditional sentencing, then that is something we could consider, with all the information possible, to ensure that the result will not be counter to what we are looking for.

Honourable senators, even with the statistics and information from the various witnesses, we cannot conclude for sure. That is the most objective judgment we can bring from the witnesses we have heard.

That is why, in the report of the committee tabled last Thursday, we have suggested:

> Your Committee also expresses its concern about the lack of detailed data on conditional sentences and hopes that the Canadian Centre for Justice Statistics, Statistics Canada, will expand its research to enable us to better understand and evaluate the implications of Bill C-9, and how conditional sentences are implemented in the future.

If there is one lesson, honourable senators, I want to draw from this exercise, it is that this bill is an example of the need for a chamber of sober second thought. The work members on both sides of the committee did in trying to understand the impact of this bill is a testimony to the seriousness and objectivity the Legal and Constitutional Affairs Committee assumed in reviewing this proposed legislation and hence reporting our perception of this bill — which, as the honourable senator has said, will certainly need to be monitored closely in the future if we really want to know what we are doing when amending a statute as important as the Criminal Code of Canada.

• (1500)

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, I have participated in the committee's work and it is important to explain to the honourable senators who did not participate precisely what we did. Senator Joyal has tried to do it. Through my questions, I will try to clarify some points that he raised.

I verified with my colleagues from the other place who participated in the drafting of the amendment that led to Bill C-9. Senator Joyal referred to three offences set out in the Criminal Code with respect to criminal organizations. The MPs wanted to include the three offences; they did not address the fact that the participation offence had a penalty of only five years. I informed them that we had added a comment in our report, but we did not intend to return the bill for this reason, since a future reference to the Criminal Code would do.

In order to ensure that our colleagues are not too confused, I will ask leading questions. Let us look at the text of the clause from Bill C-9. A judge finds an individual guilty of an offence. He is about to hand down a minimum two-year sentence and is convinced that this accused person, this individual found guilty, will not put the community's safety at risk. I am summarizing so that everyone understands. This is the situation the judge will be in if the bill passes. Am I correct?

Senator Joyal: Honourable senators, I would like to draw to your attention the response that was given to the committee by Mr. MacKay, in reply to a question that was quite similar to the one Senator Nolin has just asked. I will give an example.

[*English*]

For a serious offence like attempted murder, for example, which has a high maximum, the accused could receive a suspended sentence and probation, or he or she could receive a jail sentence of two years less a day, plus a three-year probation term. That remains an option if Bill C-9 is adopted.

[*Translation*]

In other words, when a person is convicted of a serious personal injury offence as defined in section 752 of the Criminal Code, punishable by a maximum sentence of 10 years, the judge can sentence that person to two years less a day, plus probation. This is still possible under Bill C-9, in recognition of the reality that could still exist when Bill C-9 is adopted.

Senator Nolin: You are getting a bit ahead of me. The judge is getting ready to sentence a convicted offender to less than two years, if the judge is of the opinion that the offender would not endanger the community. Can the judge apply Bill C-9? The answer is yes. Bill C-9, which you all have on your desks, tells us that if, on the other hand, a person is convicted of an offence other than a serious personal injury offence as defined in section 752, a terrorism offence or a criminal organization offence, these offences are not covered by Bill C-9. Am I right? The judge has that ability.

Senator Joyal: Of course, because Bill C-9 eliminates the possibility of conditional sentencing. A judge who is faced with an offender convicted of one of these three offences no longer has the option of issuing a conditional sentence. Right now, a conditional sentence is an option, but if Bill C-9 is adopted as is, it will no longer be an option. The bill eliminates one of the avenues the judge can consider in determining the appropriate sentence. As you know, the committee was told several times that a conditional sentence is often more severe and more restrictive than probation. I believe that the committee heard some very convincing testimony about this.

Senator Nolin: In the end, a conditional sentence represents controlled freedom. Instead of being in prison, the offender is at home, but his or her freedom is controlled.

Can you read section 752 of the Criminal Code and tell us which offences constitute serious personal injury offences?

Senator Joyal: Of course, honourable senators. I have the English version. Section 752, entitled "Definition," reads as follows:

[*English*]

> "serious personal injury offence" means
>
> (*a*) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving
>
> (i) the use or attempted use of violence against another person, or
>
> (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,
>
> and for which the offender may be sentenced to imprisonment for ten years or more, or

(*b*) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

Senator Nolin: Honourable senators will understand that this bill is trying to curtail the options of the judge. Honourable senators have heard a list of crimes for which a judge will not be able to give conditional sentence.

[*Translation*]

Does the judge still have the option of sentencing the offender to probation? He finds the individual guilty but, because that person does not pose a threat to public safety, does the judge have other options beside incarceration? I believe that the answer is yes. Am I right?

Senator Joyal: The answer is a qualified yes. You will remember, honourable senators, that, when we asked the same question of the witnesses, we were unable to obtain a definitive answer. And so, honourable senators, I refer you to the presentation by the Bar, on page 2, where it states:

[*English*]

> The term indictable offence includes hybrid offences, such as assault causing bodily harm or assault with a weapon, and so forth.

[*Translation*]

In the case of hybrid offences, there is a choice. The Crown attorney may make that choice. Since we have eliminated the conditional sentence, the Crown attorney will now have to make a decision. Depending on the plea entered by the accused, he will make a choice regarding the final step, which is the sentence.

• (1510)

[*English*]

Hon. A. Raynell Andreychuk: I wish to ask Senator Joyal another question, if he would accept it.

Senator Joyal: I think I am probably beyond the 15 minutes. With the concurrence of the house, I would be pleased to accept your question.

Some Hon. Senators: Agreed.

Hon. Peter A. Stollery: You have 45 minutes.

Senator Andreychuk: I agreed with Senator Joyal on the issue that we should look at sentencing. This is not the first time in the Standing Senate Committee on Legal and Constitutional Affairs — and he and I have been there for a long time — that we have had bills get in the way of studying the issue of sentence reform. As he rightly pointed out, conditional sentencing was put into place some 10 years ago, and it was a new concept at that time. Conditional sentencing was supposed to be a halfway point between incarceration or letting someone out on the street with minor restrictions. This is what we used to call "house arrest." That is, a person is out, but is narrowly confined in what he or she can do.

We heard from witnesses who said that this approach was both innovative and helpful to our justice system. It relieved the pressures on the incarceration units, and it also allowed for better rehabilitation, et cetera, without interfering with the other sentencing principles that we are bound by in this country. We also heard from defence lawyers that some people wanted conditional sentencing, but when they got the conditional sentencing, they found it even more oppressive than being jailed, obviously because there are some choices. One must abide by that. A person could leave the house, perhaps temporarily one would hope, before the authorities could find them. By and large, I think conditional sentencing is deemed to be for those people for whom the risk does not attach with the same frequency and severity as it would for those who are incarcerated — separate and apart from some very major offences, and we will not go into murder cases.

When Senator Joyal pointed out the statistics, was it not fair that when the witnesses came before the committee, they talked about statistics on conditional sentencing per se, but Bill C-9 was a very narrow band? The bottom line was that the success rate, statistically, looked better on paper for conditional sentencing than for incarceration rates. In other words, people were repeat offenders on a percentage basis more often when they were placed in incarceration. They represent a larger group, whereas conditional sentencing represents a smaller group. That is probably where our risk is taken, but they have responded with lesser offences.

We really do not know everything about people's behaviour, recidivism, level of danger and all those other terms. While we had a good debate, we really could not say that if we gave more people conditional sentences that society would be safer. We simply know that, as a group, which appears to be the case, with the built-in proviso that these are the people with whom we should perhaps take a risk as opposed to the others who are not.

Judges, prosecutors and defence counsel have been weighing in on this issue in what appears to be an appropriate manner. Bill C-9 is a narrow band where the minister said there would be very few cases, but important cases where the judge would not have that option. I would like the honourable senator to comment on that, coupled with the fact that there was some evidence to put on the record that it is difficult to determine how all of these factors are weighed because of the number of plea bargain cases that come before the courts. All of that leads us to the very fine conclusion that we need to know more, and members of Parliament need to know more as we pass bills.

Senator Joyal: Absolutely, honourable senators. I concur with the honourable senator on the recommendation of the committee. We made that recommendation — that is, the honourable senator made that recommendation, as have Senators Nolin and Bryden. When Senator Grafstein was a member of the Standing Senate Committee on Legal and Constitutional Affairs, he also made that recommendation. Over the last 10 years, we have been preoccupied with all those changes in the Criminal Code that have an impact on the sentencing regime, but we have lost the overall picture. As the German psychologists have put it, we have lost the gestalt; that is, the overall system and its impact in real terms.

The honourable senator has asked how we can understand those statistics. I cannot put it better than the conclusion of the Canadian Centre for Justice Statistics, which concludes in this way:

> What does this mean? Does it tell us about the effectiveness of conditional sentencing and probation programs? . . . Does it tell us about risk assessment in the awarding of sentences? . . . It is very difficult to disentangle that impact.

That is what I concluded, humbly, with honourable senators today. There is a need to go deeper into the system because the cost of someone serving his sentence in the community is about $5 a day for the public purse, whereas the cost for a daily inmate in prison is $142. Those are the statistics that were provided to the committee at the beginning of the week from the clerk of the committee.

There are many impacts of this bill that we need to revise in order to better understand what we are called to do not only with this legislation, but also future pieces of legislation that are waiting on the Order Paper or in the other place for the improvement of the justice system. I concur with the honourable senators on that.

Hon. Francis William Mahovlich: Honourable senators, I would like to ask a question about pedophiles. Over the past years, I have read much about the penalties that pedophiles receive. For example, if a priest was involved, he would be transferred from Saskatchewan to Alberta and that was his only penalty. I think there should definitely be a stricter penalty for pedophiles.

If you pick up *Maclean's* magazine this week, you will see that the penalties are very minor. Does this bill address issues related to pedophiles?

Senator Joyal: The honourable senator raises an important point that we commented on at the committee. The Honourable Senator Andreychuk initially raised this point with Minister Nicholson. I will not put words in her mouth, honourable senators, but she was the first one on the committee to raise the perception that conditional sentences are perceived incorrectly by a large majority of Canadians and the media as being less harsh than sending the person to prison. There is a perception that when something horrible happens, such as the crime of pedophilia, punishment is the main preoccupation. The perception is that incarceration is harsher than punishment. Conditional sentencing seems to be a much smoother sentence.

What the honourable senator refers to is a reality, and we have raised it. We have addressed it to a point in our discussion, because it is part of the revision of the conditional sentence regime. As honourable senators will remember, especially those who were on the committee, Professor Julian Roberts and Allan Manson have produced a very important study called, "The Future of Conditional Sentencing: Perspective of Appellate Judges, April 2004." They have reviewed those aspects of how conditional sentencing should be brought to the mind of the judge or the appellate jurisdiction judge in the case of a crime where the aspect of punishment is important to rehabilitation. What is more unacceptable is a person in authority — a teacher or someone occupying a position of responsibility in an institution — who abuses his or her position with respect to children. That is something that revolts everyone.

• (1520)

There is no doubt that conditional sentencing, as was done by Professor Roberts, needs to be looked at. I hope, as Senator Andreychuk, Senator Nolin, Senator Fraser and others on the committee have indicated, we will review the sentencing regime; it should be a priority.

Hon. Joan Fraser: I wish to thank Senator Joyal and other honourable senators for the very learned discussion we have been having. I agree with a great deal of what has been said.

To come back to the question of the statistics, the committee study of the statistics concerning conditional sentencing brought to mind that old saw about lies, damned lies and statistics. It is not that anyone was lying to us, but it is possible to interpret statistics in many different ways, not all of which will be accurate.

As the Canadian Centre for Justice Statistics told us, it is absolutely true that about 23 per cent of people who receive conditional sentences end up back in the system, probably incarcerated, whereas about 40 per cent of those who are incarcerated in the first place end up back in the system. To go back to the point that Senator Andreychuk was making, they told us explicitly that nobody knows which is cause and which is effect on those two statistics. Is it that conditional sentences are given to people who have satisfied the judge correctly that they are not likely to reoffend, so it is safe to give them a conditional sentence, or is it that people who are given conditional sentences and therefore are not incarcerated — not shut up with hundreds of hardened criminals — are less likely to become repeat offenders?

No one knows the answer to that question. It was very interesting to see the raw data, but the data only takes us so far. We cannot know at this point what the effect of this bill will be.

The second thing that strikes me about this proposed legislation is that, in the end, as in a sense Senator Joyal has suggested, there is much less to it than meets the eye. There will still be conditional sentences. There are just now a few categories in which conditional sentences will not be allowed. As the defence lawyers told us, two of those categories were probably not getting conditional sentences anyway — criminal organizations and terrorist offences. Offences in these categories are such that a judge is not likely in the first place to have given conditional sentences. Personal injury is another category. The defence lawyers had some concerns about that.

Then, as has been pointed out, the judge still retains the option of probation.

How much will actually change with this bill? Is this bill, in fact, even necessary? The only logical argument I can find for it on the basis of the knowledge we now have is that the law should be logical. If we do not believe that people who commit terrorist offences or criminal organization offences should be eligible for conditional sentences, the law should say so. That is an argument that I can accept. I am much less persuaded by the notion that it will help Canadians feel safer. Many things might help Canadians feel safer. Bringing back capital punishment might help some Canadians feel safer — however, I do not think it would be worth bringing back capital punishment on that ground.

It is, in other words, at best an unnecessary piece of proposed legislation. I am not persuaded that the bill is actively bad, but I did want to make the point about the statistics.

Hon. George Baker: I should like to comment on the bill.

I want to congratulate Senator Joyal for his summary, as well as the senators opposite in questioning him concerning what he said. I also wish to put on the record that at the committee we heard the minister speak about the need for the bill, the intent of the proposed legislation. The minister gave examples of terrible crimes that resulted in conditional sentences. During our hearings, we heard of other cases. In one case, a terrible crime was committed where a single mother was used by drug dealers to bring drugs into Canada. It was a first offence. The lady was given a very strict conditional sentence, with many conditions so that she could care for her children at home. The committee heard an example from the minister, where he said: "Here is why the bill should be passed. Here is this terrible crime, and look, this judge gave a conditional sentence so that this person could go to their home." Then we heard just the opposite from other witnesses.

The whole matter boils down to this, honourable senators, that is, it is not the judge alone who makes the decision. There are protections built into the system. When someone is found guilty, a sentencing hearing takes place. In some cases, a judge can demand an independent report be made to the court. The Crown and defence each present their case, and a decision is made by the judge, as Senator Andreychuk knows, and the judge is then required to go through a rather complex checklist. That is a part of the system. The judge listens to arguments and makes a decision based on very firm reasons. The judge is required to do that. If the Crown or the defence is unhappy with the judge's decision on conditional sentencing, either one can go to the appellate court. If a provincial court judge made the decision, one can appeal to the Supreme Court. If the decision came from the Supreme Court, one can appeal to the Court of Appeal. If the decision came from the Court of Appeal, one can appeal to the highest court, the Supreme Court of Canada.

Every judge who makes a decision on conditional sentencing must give reasons. Why is a judge required to give reasons? Honourable senators, a judge is required to give reasons so that they will be there for appellate review. There is only one case, as senators know, where reasons are not given, and that is in a jury decision. One cannot appeal a jury's decision, because a jury does not have to give reasons. The only thing that can be appealed in a jury case is the judge's instructions to the jury.

In these cases of conditional sentences, those are the built-in protections that we have. The judge is under strict standards of review in every case, and the standards of review sometimes differ, as senators know, in different sections of the Criminal Code. They sometimes err in law only, sometimes in law and in fact. These are the defences that are built in.

• (1530)

I want it on the record that we just cannot blame a judge if a judge makes a decision, as the minister outlined. We have to take the entire process into account to know that our system is working well. The question should be asked at times like this, why do we need a change if it is working very well?

On motion of Senator Tardif, debate adjourned.

[*Translation*]

BILL TO AMEND CERTAIN ACTS IN RELATION TO DNA IDENTIFICATION

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Stratton, for the second reading of Bill C-18, An Act to amend certain Acts in relation to DNA identification.

Hon. Marilyn Trenholme Counsell: Honourable senators, throughout human history, science and art have often been connected. During my career, I have often spoken of the science and the art of medicine. Today, I will be talking about science and art in the legal system.

Scientific data are now prominent in legal proceedings and can easily influence the course of investigations, interpretations and debates and alter the decision-making process, even in our courts.

Medicine has acknowledged this reality for centuries. The justice system acknowledged it just two decades ago.

[*English*]

A little history: The RCMP Laboratory in Ottawa opened its doors to DNA analysis in 1989. Lawyers and police took crash courses in molecular biology, forensic technology and population genetics. U.S. lawyers wrote about a DNA war. A regional Crown prosecutor in New Brunswick wrote, "It seemed that all my waking hours were consumed by all of this." The media took great interest:

> Forensic DNA analysis involves taking hair, semen, blood, saliva or bone marrow found at a crime scene, extracting the DNA and reducing it to what looks like a bar code found on grocery items. This genetic bar code is typically called a DNA fingerprint, or profile. Geneticists regard the science as so precise that the odds of a DNA match in a criminal investigation being wrong are . . . millions, even billions, to one. It can establish innocence as easily as guilt.

The science of DNA was to the 20th century what fingerprinting was to the 19th century. The first fingerprints were used as evidence to solve the dual murder of two children in Argentina in 1891. The first use of DNA evidence was in the United Kingdom in 1983 when Dr. Alec Jeffreys, a prominent DNA scientist, used DNA to exonerate an individual who had confessed to a crime but was not proven guilty.

In Canada, DNA evidence was first used by the RCMP in Canadian courts at a sexual assault trial in Ottawa, April 1989. DNA confirmed the suspect as the perpetrator.

New Brunswick became the centre of attention, nationally and internationally, when serial killer Allan Legere was convicted on November 3, 1991, by DNA evidence, on four counts of first-degree murder. This was the first time in which the new science of DNA typing was used to obtain a criminal conviction in Canada and was therefore a landmark in Canadian legal history.

Not only in the Miramichi, but across Atlantic Canada, people had been terrorized by Allan Legere, as André Veniot wrote in *Allan Legere: A Look Back, 2006*. People had guns and rifles under their beds while this man was on the run for seven, very bloody months. In that time, he killed four people and sexually assaulted a fifth, leaving her for dead. Citizens young and old were shocked by the sheer brutality, cruelty and savagery of these murders.

Allan Legere became known as "The Monster of the Miramichi." There were no fingerprints at the crime scene and no eyewitnesses. DNA analysis of semen samples found on Mr. Legere's rape victims became the foundation of the case. These were matched with a spot of blood from a Kleenex he used to blow his nose and with hair left over from a previous investigation.

Screaming obscenities in the court on more than one occasion, Mr. Legere professed to know more about DNA than his accusers. In the end, DNA won the day and the conviction was upheld in a subsequent appeal. The prosecution referred to one chance in 310 million that someone else would match the genetic codes taken from the semen samples.

Sixteen years later, in the Senate of Canada, we find ourselves contributing to the DNA debate and the advancement of justice through Bill C-18, a bill that has had many predecessors, and which represents a culmination of several other projects of law.

DNA did not make its way onto the floor of Parliament until July 1995 when Bill C-104 was unanimously passed in the House of Commons after only one day of debate. Yet it died on the Order Paper in June 1997. Bill C-104 was reintroduced in September 1997 as Bill C-3 and received Royal Assent December 1998. Subsequently, Bill S-10 was introduced the Senate November 1999.

Bill S-10 included recommendations regarding fingerprints, the inclusion of designated offenders in the military justice system and, most importantly, called for " . . . a full legislative review after five years to be conducted by the Senate and the House of Commons."

Bill S-10 received Royal Assent June 30, 2000. Bill C-3 and Bill S-10 were proclaimed June 30, 2000. Four years later, October 15, 2004, Bill C-13 was introduced and received Royal Assent May 19, 2005. Bill C-13 added 172 offences in its amendments to the Criminal Code, the DNA Identification Act and the National Defence Act. It also created a new category of offences where judges would have no discretion, and included all offences prosecuted by indictment, and punishable by five years as secondary offences. Other amendments addressed retroactivity, profile sharing procedures and rules to confirm the validity of the National DNA Data Bank orders. However, only certain parts of Bill C-13 were proclaimed. The fact is that most of Bill C-13 did not come into force due to so-called technical glitches.

Recognizing the need to change Bill C-13, Bill C-72 was introduced November 2005 — election and another death on the Order Paper.

Honourable senators, Bill C-18 was introduced June 8, 2006, to make the changes embodied in Bill C-72, along with other technical improvements. Almost one year later, the Senate is finally turning its attention to this exceedingly important legislation for Canada's system of justice and for the security of our fellow citizens. I sincerely trust that Bill C-18 will not become the victim of unnecessary delays, nor of another election call. The history lesson is over.

What is Bill C-18? It amends the Criminal Code, the DNA Identification Act and the National Defence Act and chapter 25 of the Statutes of Canada, 2005. Essentially, Bill C-18 deals with 10 categories of change to the above legal documents. The first is retroactivity, including persons sentenced or discharged or found not criminally responsible because of mental disorder, for designated offences committed at any time, including before June 30, 2000. These retroactive designated offences include having been declared a dangerous offender or a dangerous sexual offender even before January 1, 1988; convicted for murder, attempted murder, conspiracy to commit murder, to cause another person to be murdered; conviction for a sexual offence; conviction for manslaughter; and in all cases of the above, currently serving a sentence of imprisonment for that offence.

Second, Bill C-18 will permit the taking of bodily substances for forensic DNA analysis from persons found not criminally responsible on account of mental disorder, for primary designated offences, under the Criminal Code, the Young Offenders Act and the Youth Criminal Justice Act. However, a court may decide to allow exemptions under the Young Offenders Act and the Youth Criminal Justice Act. Similarly, the court may exempt a person found not criminally responsible because of a mental disorder if the impact of such an order would be detrimental to the person's privacy and security.

Bill C-18 also applies to secondary designated offences under the Criminal Code and the Controlled Drug and Substances Act carrying a maximum punishment of imprisonment of five years or more; and attempts or conspiracies to commit an offence prosecuted by indictment.

Third, Bill C-18 allows an order to be made for forensic DNA analysis up to 90 days after sentencing, if that order was overlooked at the time of conviction. Fourth, Bill C-18 adds attempted murder and conspiracy to commit murder or to cause another person to be murdered, as I mentioned at the beginning.

• (1540)

Fifth, Bill C-18 eliminates the necessity that the person from whom the sample is to be taken must be serving a sentence of imprisonment for two years or more in favour of "still serving a sentence of imprisonment for one of the specified offences."

Sixth, Bill C-18 allows closed-circuit TV or similar means of communication to be used to facilitate management of cases involving forensic DNA analysis. Seventh, Bill C-18 allows samples to be taken at the place, day and time set by an order or a summons or as soon as feasible afterwards. Eighth, Bill C-18 states that every person who, without reasonable excuse, fails to

comply with a DNA order or summons is guilty of an indictable offence and liable to imprisonment for a term of not more than two years, or an offence punishable on summary conviction. A justice of the peace may issue a warrant for arrest.

Bill C-18 lists as a reasonable excuse for not complying, a person who, under the National Defence Act, is subject to the Code of Service Discipline. Ninth, Bill C-18 mandates the destruction of bodily substances and details the mandatory conditions for DNA information to be permanently removed from the DNA data bank by the Commissioner of the RCMP. It must be removed if the Attorney General or the Director of Military Prosecutions decides the offence is not a designated offence, and in cases such as acquittal, absolute discharge and conditional discharge.

Bill C-18 enables the Commissioner of the RCMP to communicate internationally information, which may be communicated within Canada to law enforcement agencies or laboratories under subsection 6.(1) of the DNA Identification Act, and outlines in further detail the law concerning communication with foreign law enforcement agencies.

Honourable senators, these are the 10 main categories of change encapsulated in Bill C-18.

As mentioned earlier, certain of these changes apply also to the National Defence Act, for example, retroactivity, not criminally responsible due to mental disorder, results of failure to comply with orders and certain other stipulations.

Senators, those of us who are not lawyers, will be interested in the offences affected by this DNA legislation. However, the following list is not complete. As primary designated offences, I would mention the following: murder; manslaughter; attempt to commit murder; bodily harm with intent by firearm, air gun or pistol; administering noxious substances with the attempt to endanger life or cause bodily harm; overcoming resistance to the commission of offence; assault with a weapon or causing bodily harm; aggravated assault; unlawfully causing bodily harm; sexual assault with a weapon; aggravated sexual assault; kidnapping; robbery, extortion; indecent assault on a female, indecent assault on a male, and acts of gross indecency; use of explosives or other lethal device; participation in criminal organizations; sexual exploitation of a person with a disability; making, distributing, possession of child pornography; luring a child or procurement in relation to child pornography, including via the Internet; prostitution under 18 years of age or living on the avails of such acts; sexual assault; hostage taking; intimidation of a justice system participant or journalist; attack on the premises, transport or accommodation of an internationally protected person or United Nations or associated personnel.

Some secondary designated offences affected by this DNA legislation include the following: trafficking in substance, and possession, importing, exporting for the purpose of trafficking; bestiality in the presence of or with a child; parent or guardian procuring sexual activity; indecent acts; failure to stop at the scene of an accident; criminal harassment, uttering threats; assault including a peace officer; breaking and entering; intimidation; and, arson and setting fire to other substances.

I wish also to mention a number of other important considerations in Bill C-18. First, appeals are allowed either on the part of the offender or on the part of the prosecutor under proposed subsection 487.051(1) to (3). The delegation of responsibility to collect samples, including fingerprints, is covered extensively in Bill C-18, including the training or experience required, the duty to inform, the use of force as necessary.

Certain other requirements are stipulated, such as the necessity to verify whether or not the person's DNA profile is already in the National DNA Data Bank.

The written transmission of information to the Commissioner of the RCMP is detailed in Bill C-18. Any failure relating to the acquisition of forensic DNA material or failure in the transmission of information must also be fully documented. Bill C-18 clearly states that bodily substances taken in execution of an order can only be transmitted to the Commissioner of the RCMP; no other use is permitted. Any person authorized to take samples of bodily substances is protected from any criminal or civil liability.

Errors in procedures reported to or observed by the Commissioner of the RCMP must be referred to the Attorney General for review and decision. Thereafter, a provincial court judge may authorize the taking of additional samples of bodily substance for forensic DNA analysis.

Information in the National DNA Data Bank will be permanently removed after an order is finally set aside; the person is finally acquitted of every designated offence; or, one year after the day on which the person is discharged absolutely; or, three years after the day on which the person is discharged conditionally, if that person is not subject to an order relating to another designated offence, or convicted of or found not criminally responsible on account of mental disorder for a designated offence during that period.

Honourable senators should note that other items on the legislative agenda will affect Bill C-18. Bill S-3, which received Royal Assent on March 29, 2007, will require minor technical changes to Bill C-18. Bill C-7, which is only in first reading at the House of Commons, would necessitate similar changes in the National Defence Act. Bill C-10, which was at the report stage in the House of Commons on May 7, 2007, if given Royal Assent and proclaimed, would necessitate certain other changes.

Honourable senators, 11 months ago on June 8, 2006, Bill C-18 was introduced by the Minister of Justice and Attorney General of Canada. At second reading on October 3, 2006, he stated:

> This bill is highly technical. It is necessary, however, to make these technical changes so that we can proclaim former Bill C-13, which was passed in the last Parliament, with all party support.

The minister spoke about the need to pass this bill for many reasons, including the importance of proceeding with a five-year parliamentary review of DNA legislation, which should have begun June 30, 2005, had it not been for the many delays I have outlined.

Honourable senators, I was touched to read that the opposition justice critic singled out greater protection for children provided for by Bill C-13 and Bill C-18, such as Internet luring and child pornography becoming primary offences. The critic also spoke of the urgency for an overall review relative to emerging areas and stakeholders' concerns.

After two days of debate in the House of Commons, Bill C-18 was unanimously referred to committee. The Standing Committee on Justice and Human Rights of the House of Commons studied Bill C-18 for two days and on March 1, 2007, agreed, on division, with one MP reporting against, to report Bill C-18 without amendment. Bill C-18 received third reading on March 28, 2007, in the House of Commons and was passed unanimously.

Honourable senators, I concur with our colleague Honourable Senator Pierre Claude Nolin, who urged us on May 2, 2007, to quickly refer this bill to committee for study involving officials and experts.

[*Translation*]

There is no doubt that Bill C-18 moves law, justice and the safety of all Canadians forward. This is a very important bill. I am honoured to have had the privilege of participating in this debate. Thank you, honourable senators.

[*English*]

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

Senator Trenholme Counsell: Yes.

Hon. Roméo Antonius Dallaire: Honourable senators, I sit as a member of the national police services advisory board, which oversees all police services in the country from the RCMP to municipal police forces. One of the areas is the realm of DNA, the laboratories, the work done there and so forth.

In our meetings, we have discussed DNA and the tardiness of bringing about modern legislation to maximize that extraordinary capability. We desire the legislation for the application of justice to ensure that innocent people are not misjudged and pay for crimes they do not commit and to bring to justice those who commit crimes.

The suggestion I would like to raise with the honourable senator, because she has worked on this and pondered over it, is that DNA sampling should be taken from every newborn in the country as well as every immigrant coming into the country.

Does the honourable senator have an opinion as to whether that goes beyond the bounds of reasonableness or, potentially, individual rights?

Senator Trenholme Counsell: I thank the honourable senator for his question; however that question does not apply to this bill. It is a profound question that deals with technicalities in the administration of certain aspects of the Criminal Code and the other bills, the DNA Identification Act, the Military Justice Act and so forth.

• (1550)

The question regarding storage of DNA from cord blood is in the media. Many Canadians are talking about it. At this point it is at the stage of very personal reflection only. It may be interesting for the Senate to debate this profound question.

We have many issues to debate in Parliament about stem cell research and biogenetics. This matter is different but, in some ways, connected. The DNA issue is a matter of ultimate security and protection and is different from the stem cell debate.

The honourable senator's question is a good one. However, in my opinion, it is not a question related directly to Bill C-18.

Senator Dallaire: I am aware of that. I am trying to push the envelope because I believe that we are fiddling in the margins of a capability that has long been available. We are holding ourselves back by some perspective of encroaching upon liberties of individuals.

This technology can ensure far greater capacity for justice rather than being an encroachment on individual rights. Therefore, I am most supportive of this bill. I hope we push the envelope and that the debate will not stop at this bill but will go much further.

The Hon. the Speaker: There being no further debate, 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 and bill read second time.

REFERRED TO COMMITTEE

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

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

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE SUSPENDED

Hon. A. Raynell Andreychuk moved second reading of Bill C-48, to amend the Criminal Code in order to implement the United Nations Convention against Corruption.

She said: Honourable senators, I rise to speak to Bill C-48, to amend the Criminal Code in order to implement the United Nations Convention against Corruption.

Corruption, a serious criminal activity, presents challenges to all countries of the world. No country is exempt from corruption activities. It constitutes a serious problem in developing countries, where it creates an enormous obstacle to development and reconstruction efforts.

Canadian businesses face corruption in commercial operations. Institutions engaged in development and reconstruction projects confront it also.

The United Nations Convention against Corruption is the first comprehensive and global anti-corruption treaty. Canada has been a strong supporter of the convention since the beginning of the process. We took an active and leading role during the preparatory stages and the negotiation of the treaty. Since the convention was adopted by the UN General Assembly in October 2003, Canada has provided expertise and financial support to the UN secretariat and to other countries in order to encourage and assist them in ratifying and fully implementing the convention.

While the UN convention is the first comprehensive global instrument of its kind, Canada is already a state party to several regional and more specific treaties dealing with corruption. Canada has been a party to the Inter-American Convention against Corruption, under the auspices of the Organization of American States, since June 2000. We have also been a party to the United Nations Convention against Transnational Organized Crime, which deals with the transnational and organized crime aspects of corruption. As well, we have been a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions since 1998.

Since we ratified these international legal instruments, officials have been actively engaged in supporting them through monitoring activities and the delivery of assistance to other states parties that have requested it.

Canada's ratification of the United Nations Convention against Corruption will be an important and logical extension of its international commitments in the global fight against corruption.

When Canada signed the convention in May 2004, we indicated that we supported the convention, we intended to ratify it, and we intended to be bound by it. The government now wants to ratify it and send a strong signal to all countries of the world. Our message is that Canada recognizes the seriousness of corruption and that we stand united with our fellow member states of the United Nations in our commitment to deal with corruption as a global problem.

Canada supports this convention not only because it will further the cause of assisting other countries in development and good governance, but also because the implementation of its provisions in those countries will help to ensure that development funds contributed by Canadian taxpayers and other donor countries will be used to the full benefit of the developing countries.

The UN Convention against Corruption criminalizes the bribery of domestic and foreign public officials, as well as persons working in the private sector, and of embezzlement in the public and private sectors.

State parties are also invited, but not required, to consider criminalizing trading in influence, abuse of functions and illicit enrichment by public officials.

Apart from the offence of illicit enrichment, which is not mandatory, the other offences established by the convention are, for the most part, already criminal offences in Canada. For example, the offence of bribery of domestic public officials is covered by a series of existing Criminal Code offences, including bribery of judges and members of the federal Parliament or a provincial legislature, section 119; bribery of police, court officers and anyone involved in the administration of the criminal law, section 120; bribery of government officials, section 121; bribery of municipal officials, section 123; and breach of trust, section 122.

With respect to private sector bribery, we have the offence of secret commissions — section 426 of the Criminal Code.

The offence of bribery of a foreign public official is found in the Corruption of Foreign Public Officials Act.

The offence of fraud — section 380 of the Criminal Code — applies to embezzlement in the public and private sectors, and the new offences of fraud against public money in the Financial Administration Act, which were enacted by the Federal Accountability Act, apply to embezzlement by public servants and by directors or employees of Crown corporations.

As required by the convention, we already have offences in place that cover both active and passive bribery. It is a crime to offer or give a bribe to a public official, and it is a crime for a public official to solicit, demand or accept a bribe.

Domestic anti-corruption standards in Canada are already in place to meet the requirements of the convention. However, there is need to make some technical legislative changes in order to comply fully with the requirements of the convention. This is what Bill C-48 is really all about.

Many of the offences of corruption in the Criminal Code come from the common law and were part of our law before the criminal law was first codified in 1892. The scope of some of our present offences must be expanded to fully conform to the convention.

The convention requires us to criminalize both direct bribery and bribery demanded or given through an intermediary. It also requires that we criminalize bribery where a benefit is demanded for, or given to, a third party. Some of the corruption offences in the Criminal Code already expressly meet these requirements, but

not all of them. Case law has interpreted some of the offences that do not specifically provide for bribery through intermediaries and third parties as if they did. The proposed amendments will add the necessary words to these offences in order to ensure that our obligations will be met fully, consistently, and in every case.

The convention also applies a definition of "public official" that is broader than the definition of "official" as it reads in section 118 of the Criminal Code.

The Hon. the Speaker: Honourable senators, Senator Andreychuk, who is the sponsor of this bill, has 45 minutes to speak. There is a house order that the Senate must adjourn at 4 p.m. I want honourable senators to know that Senator Andreychuk has used up only seven minutes of her time.

Debate suspended.

The Senate adjourned until Thursday, May 10, 2007 at 1:30 p.m.

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