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**Wednesday, February 25, 2009**



THE HONOURABLE NOËL A. KINSELLA  
SPEAKER

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

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## THE SENATE

Wednesday, February 25, 2009

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

• (1335)

Prayers.

### THE HONOURABLE MARCEL PRUD'HOMME, P.C.

CONGRATULATIONS ON FORTY-FIFTH  
ANNIVERSARY AS MEMBER OF PARLIAMENT

### SENATORS' STATEMENTS

#### MS. LOUISE BERNICE HALFE

**Hon. Lillian Eva Dyck:** Honourable senators, on November 29 of last year, the sixteenth annual Saskatchewan Book Awards gala took place in Regina. These prestigious literary awards recognize Saskatchewan's finest writers and publishers.

Today, I would like to commend an acclaimed poet, Louise Bernice Halfe, a member of the Saddle Lake First Nations in Alberta, on her literary success as one of Canada's leading Aboriginal women writers.

Louise lives in the Saskatoon area with her husband, Dr. Peter Butt. Louise is the holder of many awards and distinctions, such as the 2005-06 Poet Laureate of Saskatchewan.

With over 113 entries and titles submitted to the Saskatchewan Book Awards competition, Louise was the winner of two prestigious awards: the Saskatoon Book Award and the First Peoples Publishing Award for her book of poetry, *The Crooked Good*, published in 2008.

Louise made her literary debut as a poet in 1990 by submitting her work to the *Writing Circle: Native Women of Western Canada*, an anthology of writings by Aboriginal women storytellers and writers.

Her first book of poetry, *Bear Bones & Feathers*, published in 1994, received the Canadian People's Poet Award and won the Milton Acorn Award in 1996. Her second book, *Blue Marrow*, published in 1998, was a finalist for both the Governor General's Literary Award for Poetry and the Pat Lowther Memorial Award. *Blue Marrow* was also a finalist for the 1998 Saskatchewan Book of the Year Award and the Saskatchewan Poetry Award.

Honourable senators, I congratulate Louise Bernice Halfe on her accomplishments and achievements as a poet who weaves the Cree language and teachings into her works. Her creativity and her magic with words encompass Aboriginal themes on a personal, historical, cultural and mythical perspective. I am honoured to be among her circle of friends.

Honourable senators, Louise Halfe's words and stories speak to First Nations issues in Canada, and I highly recommend her writings to you.

**Hon. Terry Stratton:** Honourable senators, I meant to deliver this statement a couple of weeks ago but I did not have the opportunity.

[*Translation*]

Honourable senators, it is not every day that we have the privilege of paying tribute to a colleague and friend whose 45-year political career has earned him the title of Dean of Parliament. Marcel Prud'homme's political career has been fascinating from the moment he was first elected in February 1964 in Saint-Denis, through eight successive re-elections and his appointment to the Privy Council in 1992, to his arrival in the upper chamber in May 1993.

I just want to point out that this remarkable man has known 11 of this country's 22 prime ministers. Who here can beat that?

The little guy from Montreal has been a friend and confidant to world leaders and has always worked to promote friendship and good relations between the peoples of the world. He got involved in international affairs because he believed that Canada's Parliament could not properly represent Canadians without caring deeply about international affairs.

As an advocate for justice, Senator Prud'homme has never shied away from extremely controversial issues. He chaired the Committee on Foreign Affairs and National Defence in the House of Commons for a long time, and he also chaired the 1985 Inter-Parliamentary Union assembly.

He founded numerous interparliamentary groups because he has always sought to maintain an ongoing dialogue with our brothers and sisters around the world. Because of him, we have become better representatives of the people, better elected officials, and better senators. He has always believed that he could make things better and make the world a fairer, more just place.

Dear senator, dear friend, we can never thank you enough.

**Hon. Francis Fox:** Honourable senators, our friend and colleague, the Honourable Senator Marcel Prud'homme, this month celebrates his 45th anniversary as a parliamentarian. It gives me great pleasure to join Senator Stratton and all my colleagues in the upper chamber in paying tribute to him on this occasion.

I am particularly proud and happy to be able to say that I have known Senator Prud'homme for more than 45 years. I met and became friends with the great Marcel when we were both students in the faculty of law at the Université de Montréal. Even then, his reputation preceded him.

Both a graduate and an exile from the University of Ottawa, he soon became president of the Université de Montréal law students association. He had a great talent for bringing people together. Among his flock at the time were future politicians like Bernard Landry, Jean Rochon and Pierre Marois, journalists like Marc Laurendeau and future jurists of note such as Michel Robert, Michel Proulx, Pierre Aimé Michaud and Louise Mailhot, to name only those who were appointed to the Appeal Court of Québec.

Early on, Marcel opted for a career in politics, and what a career he has had. Adored by his constituents, the great Marcel was known for his accessibility, whether he was strolling down Boulevard St-Denis, working at his riding office, or celebrating or mourning with the people in his riding.

Re-elected 10 times, he has served under 11 of the 22 prime ministers of Canada, and he can tell you stories about every one of them. He did more than just represent his riding. He has made his mark on Parliament in the most important debates of the past 45 years, never hesitating to take a clear stand, even when his positions were not always popular.

He has become one of the best-known Canadian parliamentarians on the international stage. His outspokenness and his commitment to his chosen causes have sometimes earned him criticism, but they have also won him international recognition, as the honours bestowed on him attest.

Marcel Prud'homme is first and foremost a humanist, a passionate man and a man of considerable intellect. He describes himself as a French-Canadian nationalist from Quebec with a federalist mind. I would add that with his political involvement over the years, he has shown that embedded in his DNA is an added virtue, that of taking a liberal viewpoint on all issues, even before they become hot topics.

I am certain that the dean of Canada's Parliament will continue to take part in and enrich the political life of Canada, Quebec and Montreal for many more years to come.

Senator, I pay tribute to you on the occasion of your 45th anniversary.

[English]

### RACISM IN CANADA

**Hon. Mobina S.B. Jaffer:** Honourable senators, our country made history last week when Her Excellency the Right Honourable Michaëlle Jean, Canada's head of state, welcomed to our soil Barack Obama, the first African-American President of the United States. It was a poignant moment for all Canadians. It spoke to our minds and hearts in much the same way as did the words of Martin Luther King, Jr. when he said, "I have a dream." It was an emotional event at the end of Black History Month. President Obama's visit was welcomed by us all.

Honourable senators, I stand today and ask that we use this same zeal to welcome all Canadians. This means addressing inequality in our country.

Last November, Ontario released a report entitled, *Review of the Roots of Youth Violence*, which said that Ontario is at a crossroads in dealing with the roots of violence involving

youth. Deep concerns about racism were expressed in the report. The authors of the report said:

We were taken aback by the extent to which racism is alive and well and wreaking its deeply harmful effects on Ontarians and on the very fabric of this province.

• (1340)

They went on to say that:

Racialized groups are highly diverse, and the manifestations of racism affect them differently. Most encounter subtle and systemic barriers, including "glass ceilings" and other limits on their ability to participate fully in society. Others, in particular Blacks, continue to also suffer from a seemingly more entrenched and often more virulent form of racism.

Honourable senators, I know this statement could apply to every province in Canada. The report, commissioned in 2007 by the Ontario government after the shooting death of a grade 9 student at a Toronto high school, calls for a comprehensive and community-focused approach to addressing youth issues.

This report recommends anti-racism initiatives, calling for the establishment of a cabinet committee on social inclusion and anti-racism, as well as the training of front-line police officers, teachers and school principals to "better reflect the neighbourhoods they serve."

Honourable senators, one of the most important tasks we as senators are entrusted with is protecting the rights of minorities. We have basked in the visit of President Obama. We must now work to eradicate racism from our midst. I know honourable senators will agree with me that this is a collective responsibility.

### FINANCIAL SYSTEM

**Hon. Donald H. Oliver:** Honourable senators, the front page of Monday's *Globe and Mail* carried a story entitled "Europe pushes for global bank reforms."

Honourable senators, Canada does not need new global regulations for our banks. In light of the devastating, almost daily announcements globally about the effects of the recession and Europe's support for greater bank regulations, I want to call the attention of honourable senators to the state of Canada's financial system.

In short, we are the envy of the world. Canada has one of the best financial systems in the world. The International Monetary Fund said last year that, "Overall, the financial system appears to be in a position to weather financial turbulence and it is closer to long-term budget sustainability than other industrial countries." According to the IMF, Canada will lead the other G7 countries in economic growth in 2009.

What does this mean and why should we be proud? The latest report on global competitiveness from the World Economic Forum ranked Canada's banking system as the healthiest and

soundest in the world. This first-place ranking is based on opinions of executives from around the world. Out of a possible 7 points, Canada's banking system received a score of 6.8 points, placing it 0.1 point ahead of Sweden, Luxembourg, Australia and Denmark and 40 positions ahead of the United States of America.

However, Canada is not completely sheltered from the storm. Mark Carney, Governor of the Bank of Canada, recently suggested in a speech given in Halifax at the Chamber of Commerce that Canada's economic growth is expected to decline through mid-2009, and Canadian exports are also falling sharply because of the downturn in external demand, especially from the United States.

However, as he points out, our economy is expected to begin recovering later this year and to accelerate to above-potential growth in 2010 as policy actions that the Harper government initiated begin to take hold. This is because the Canadian economy has the advantage of having one of the soundest banking systems in the world.

What makes our banking system so strong? For one thing, our banks are better capitalized and substantially less leveraged than their international peers, says Mr. Carney. Our banks continue to lend money, notwithstanding the difficult economic times. For instance, the top five ranked banks in Canada had combined profits in 2008 of US\$8.2 billion, while the top five U.S. banks lost US\$8.3 billion.

If honourable senators want more proof that our banking system is stable and strong, they need only turn to TD Canada Trust. In 2007, it was ranked as the fifteenth largest bank in North America. One year later, it was ranked fifth — not because it grew so much but because the rankings of other banks had dropped. These numbers speak volumes about Canada's financial system and its overall performance.

Mr. Paul Volcker, former U.S. Federal Reserve Chairman and present member of President Obama's advisory team on the economy, agreed with this in a speech in Toronto on February 11. He said that Canada is in far better shape, and has been far better served by the structure of its banking system, than the U.S., Europe and other regions. He even suggests that the U.S. needs a system similar to ours.

• (1345)

### CANADIAN NAVY

**Hon. Michael A. Meighen:** Honourable senators, I am proud to join Senator Segal and other honourable senators who spoke eloquently in this chamber yesterday in celebration of Navy Appreciation Day.

[*Translation*]

I would like to extend my sincere thanks to the Speaker on behalf of all honourable senators who attended last night's dinner hosted by the Speaker and attended by the senior ranks of the Canadian Navy.

[*English*]

The role that the Canadian Navy plays in supporting our sovereignty, our security and our economic interests is too often underestimated or even forgotten. We frequently overlook that,

[ Senator Oliver ]

for almost a century, the Canadian Navy has answered the call for Canadians in many capacities, in times of both peace and conflict.

Canada's 33 coastal defence vessels, warships and submarines are spread evenly between the Pacific and Atlantic coasts. They are deployed in a variety of roles, both domestically and internationally. The navy helps to enforce national and international laws in water over which it has jurisdiction and helps to protect our offshore economic resources. It is also an important instrument in our foreign policy.

Although the Canadian Navy does indeed perform admirably, honourable senators, it nonetheless faces acute challenges. For instance, not only is it increasingly called upon to do more, it is too often called upon to do more with less — fewer resources and more aging equipment.

We need to arrest this trend, honourable senators. We need to be vigilant in supplying the navy with the investments and equipment necessary to do its job.

In this regard, I am pleased to see that Budget 2009 has allocated new funds for the procurement of Canadian Coast Guard vessels and to undertake life extensions and refits for aging vessels. This initiative builds on the direction set in Budget 2008, where this government expressed its commitment to "Providing the Canadian Forces with stable and predictable funding to permit long-term planning."

The Standing Senate Committee on National Security and Defence has done work on how best to fortify our navy. I urge honourable senators to reacquaint themselves with what the members of that committee studied and recommended, as I feel this body of work points the way towards a more positive future for our navy.

• (1350)

Honourable senators, the Canadian Navy has answered the call for us. We, in turn, have an obligation to reciprocate.

[*Translation*]

## ROUTINE PROCEEDINGS

### TRANSPORT

CORPORATE PLAN SUMMARY FOR MARINE ATLANTIC INC., 2008-09 TO 2012-13 TABLED

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, Marine Atlantic Inc.'s 2008-09 to 2012-13 Corporate Plan Summary.

[English]

## THE SENATE

### NOTICE OF MOTION TO URGE GOVERNMENT TO CHANGE SPOUSAL BENEFITS OF MEMBERS OF FOREIGN SERVICE AND ARMED FORCES EMPLOYED OUTSIDE CANADA

**Hon. Sharon Carstairs:** Honourable senators, I give notice that, two days hence, I will move:

That,

Whereas the spouses of members of the foreign service and members of the armed services also serve Canada when they accompany their family member to foreign postings; and

Whereas if they are outside the country for more than 2 years these spouses become ineligible to collect benefits for which they paid premiums while employed in Canada; and

Whereas upon return to Canada they should be eligible for benefits while they seek employment;

Therefore the Senate of Canada urges the government to introduce legislation to change the eligibility requirement from 2 years to 5 years for spouses of foreign service officers and spouses of members of the armed services who live outside the country and who meet all the other eligibility requirements; and

That a message be sent to the House of Commons requesting that House to unite with the Senate for the above purpose.

[Translation]

## LEGAL AND CONSTITUTIONAL AFFAIRS

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY PROVISIONS AND OPERATION OF DNA IDENTIFICATION ACT

**Hon. Joan Fraser:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on the provisions and operation of the *DNA Identification Act* (S.C. 1998, c. 37); and

That the committee submit its final report no later than June 30, 2009.

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY IMPLEMENTATION OF GUARANTEED ANNUAL INCOME SYSTEM

**Hon. Hugh Segal:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report on the implementation of a guaranteed annual income system, including the negative income tax model, as a qualitative improvement in income security, with a view to reducing the number of Canadians now living under the poverty line;

That the Committee consider the best possible design of a negative income tax;

That the Committee submit its final report no later than December 31, 2009; and

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

[English]

## QUESTION PERIOD

### FINANCE

#### BUDGET 2009

**Hon. James S. Cowan (Leader of the Opposition):** Honourable senators, my question is for the Leader of the Government in the Senate.

Last week, during the parliamentary break, I spoke with officials of the Government of Nova Scotia, with the presidents of three Nova Scotia universities, and with the mayors of two of Nova Scotia's largest municipalities about the status of infrastructure funding under the budget.

• (1355)

In each case, I was told that they had absolutely no information or guidelines from the government and no idea as to what cost-sharing arrangements they would be expected to meet. When will the government let these partners know how and when money will flow to these infrastructure projects?

**Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)):** Honourable senators, there is planned government spending to be undertaken in partnership with the provinces and municipalities with regard to infrastructure. Many people do not realize that includes many different projects, including the building of bridges, roads, sewers, water treatment plants and, among others, the recreation facilities program.

In the budget papers, the government made clear commitments on the funds to be made available to the various provinces and municipal jurisdictions. Minister Baird has been working with his provincial counterparts. Many of these individuals have already identified projects to the federal government that would be “shovel ready,” and all it requires now for the government to commence working with the provinces is that the budget be passed.

**Senator Cowan:** Can the leader explain to me why senior officials in the Government of Nova Scotia would say the opposite?

**Senator LeBreton:** I cannot answer for the Government of Nova Scotia. We consulted with the provinces over the Christmas period, as well as in the month of January, on not only the infrastructure plan but also all other items such as health and education. During those consultations, we received a great deal of input from the provinces.

Since I do not know the name of the individual or all of the details, I cannot comment on a specific meeting that may or may not have taken place. I can only say that Minister Baird, the Prime Minister and Minister MacKay have been in consultation with many people not only in Nova Scotia, but also in the other Atlantic provinces as well.

**Senator Cowan:** I am not suggesting there have not been discussions and consultations. Perhaps the easiest way to do this is to have the leader obtain the precise rules, application forms and the cost-sharing formula from Minister Baird. I would be most grateful if the leader could obtain and table that information in the house. Perhaps there is some misunderstanding.

I am not suggesting that the consultations and discussions did not occur, but rather that the three levels involved, the universities, municipalities and the Province of Nova Scotia, are unaware of the cost-sharing arrangements. If Minister Baird has finalized those arrangements, would the leader please obtain them so we can ensure they are clearly understood?

**Senator LeBreton:** Once the budget is passed, information will be disseminated to the universities, provinces and municipalities concerning the method whereby they can access this information. I would be happy to take that request to my colleagues and fulfill it as quickly as possible.

**Senator Cowan:** The leader might point out to Minister Baird that there are similarly no rules or application forms with respect to the projects or funding approved in last year’s budget.

[Translation]

## TRANSPORT

### HIGH-SPEED RAIL

**Hon. Dennis Dawson:** Honourable senators, my question is for the Leader of the Government in the Senate. At a press conference yesterday, the premiers of Quebec and Ontario expressed their formal and unequivocal support for the Quebec City-Windsor high-speed rail corridor. This project is supported not only by the two provinces, but also by a number of municipalities, including Quebec City, and certainly by several new senators.

[ Senator LeBreton ]

My question is this: what is the federal government’s position on this project?

• (1400)

[English]

**Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)):** Honourable senators, I was clear that some commitments were made in the budget with regard to infrastructure and various railway initiatives. I know there has always been much speculation about a high-speed train, but I have not seen any specific proposals in that regard. I heard about the newspaper column, so I will take the question as notice.

[Translation]

**Senator Dawson:** Honourable senators, there seems to be some confusion. Yesterday, I listened carefully to Senator Housakos from Montreal and, on the weekend I read the article by Senator Rivard. Both clearly stated that, as senators representing the government, they support the project. The Premier of Ontario said, and I quote:

[English]

Stephen Harper “is not as much of a fan.”

[Translation]

On Monday, you announced that you would provide financial support for a project planning study. The Prime Minister of Canada is quoted by the Premier of Ontario as saying that he is “not a fan of the project.” Can the minister tell us who we should be listening to?

[English]

**Senator LeBreton:** Honourable senators, I read the comments made by the Premier of Ontario. In order not to further confuse the issue, I will take the question as notice and seek clarification.

## FINANCE

### BUDGET 2009

**Hon. Jim Munson:** Honourable senators, my question is to the Leader of the Government in the Senate. I want to congratulate the government for putting \$1.5 million into the budget for Special Olympics. It is extremely important, and I know the Special Olympics movement appreciates it very much.

As the leader knows, I work closely with many different groups in autism, Special Olympics and others. Some time ago, the Leader of the Government in the Senate provided us with information regarding the Enabling Accessibility Fund. She said that \$45 million would be available over three years, and that the call for proposals for this funding was open from April 1 to April 30, 2008.

Can the leader please tell us today, of the more than 800 submissions received, how many qualified for funding?



**Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)):** Honourable senators, obviously the question is a detailed one. I do not have that information at my fingertips. I will take the question as notice and provide the information.

**Senator Munson:** Honourable senators, the leader may wish to take this supplementary question as notice as well. How much of that \$45 million has been spent, and when will the next call for submissions go out? Disability groups want to know.

**Senator LeBreton:** I can understand that these groups want to know, and I will add that question to the inquiry.

[Translation]

#### SALE OF CROWN PROPERTIES

**Hon. Claudette Tardif (Deputy Leader of the Opposition):** Honourable senators, my question is for the Leader of the Government in the Senate. A list of Crown properties for sale has been circulating for some time. Among them are VIA Rail and Canada Post, which have the legal obligation to serve their clients in the official language of the client's choice. If Crown properties were to be sold, can the minister guarantee that the official languages obligations would remain or is this, once again, an example of how this government is undermining the Official Languages Act?

[English]

**Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)):** Obviously, our government is supportive of Canada's linguistic duality and has backed this support up in many areas. With regard to the actual sale of property, that was mentioned in the budget as a possibility for the government.

I will pass along the concerns of Senator Tardif to the Minister of Finance and my other colleagues. Anything that is under the responsibility of the federal government is, of course, subject to our language policies. I cannot answer as to what would happen if these properties were no longer providing a federal service, whether, in fact, that would apply. In the case of Air Canada, when the government privatized that company it required that it respect Canada's linguistic duality.

• (1405)

I will do my best to seek clarification as to what plans the government has for prospective owners, if we do sell some of this property, and what the criteria would be in terms of respecting Canada's Official Languages Act.

[Translation]

**Senator Tardif:** I thank the minister in advance for discussing this question with her colleagues. Could the minister also inquire as to what mechanisms will be used to ensure that, if a sale were to be made, these agencies would continue to have an obligation to respect the Official Languages Act?

[English]

**Senator LeBreton:** I indicated in my first answer that I would be happy to try to obtain the criteria and the mechanisms by which the government would proceed and what steps are in place to ensure that Canada's Official Languages Act is respected.

[Translation]

#### OFFICIAL LANGUAGES

##### OFFICIAL LANGUAGE OBLIGATIONS AT CROWN CORPORATIONS

**Hon. Maria Chaput:** Honourable senators, when you look at the agreement made with Air Canada, could you also look at the way it guarantees French services? If it has an obligation to offer these services in French, can it have help from the federal government? Air Canada representatives told us at an Official Languages Committee hearing that it is considered to be a private business and therefore no longer has access to funding for training personnel or for offering services in both languages. This problem must not be repeated with the other Crown corporations.

[English]

**Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)):** Honourable senators, I believe that once Air Canada ceased being a Crown corporation and was privatized, the government of the day put in place certain stipulations concerning its ability to provide service in both official languages.

I will take the question as notice, but Air Canada is a private company, and as much as we encourage all private sector companies to provide services, and it is in the interest of any private company to provide services in both official languages, the Government of Canada cannot attempt to put extra funds into various private sector companies. That would be a very expensive proposition.

• (1410)

Having said that, it makes good sense that any major corporation serving our country would want to serve all the country's citizens. Any company operating in Canada would want to ensure that it provided services to take advantage of customers who speak both our official languages. Certainly, I would do that if I were running the company.

**Hon. Lowell Murray:** Honourable senators, from time to time we canvassed these issues at the former Standing Joint Committee on Official Languages. Good points have been made on both sides of the discussion today. However, the Leader of the Government may want to draw to the attention of the Deputy Leader of the Opposition in the Senate and to the attention of Senator Chaput, the fact that a previous Parliament and a previous government imposed, as a condition of the sale of both Air Canada and Canadian National Railways, if memory serves me right, language obligations, and we included those obligations in the legislation. The companies are governed still by that legislation. I think I am correct in saying that Air Canada, although a private company, is subject still to the requirements of the Official Languages Act, which is why Senator Chaput's point is well taken. Air Canada, unlike its competitor airlines, is subject to the Official Languages Act. I think — and we have canvassed this issue from time to time — that a good case can be made that the federal government should assist Air Canada in carrying out the obligations that the previous Parliament imposed.

**Senator LeBreton:** Honourable senators, I do remember. The honourable senator and I were, I believe, part of the same government at the time.

**Some Hon. Senators:** Oh, oh!

**Senator LeBreton:** One of the competitors, Canadian Airlines, is no longer a competitor.

I will take note of the concerns of the honourable senator. He is right. When Air Canada was privatized, the obligation was written into legislation. I will be happy to obtain an update as to how Air Canada is living up to those obligations, as well as any further comment the government may want to make. I will take that question as notice.

**Hon. Joan Fraser:** Honourable senators, I could not agree more that any sensible, intelligent company would think it appropriate to serve the people of Canada in both of Canada's official languages, but it is amazing that not all companies agree. Like other members of this chamber, I have sat in meetings of the Official Languages Committee and listened to Air Canada complain bitterly about the fact that it must meet the requirements of the Official Languages Act while its competitors do not. I would think this requirement is a competitive advantage but it has not always been seen that way.

Given that precedent, I ask the leader if she will return to her cabinet colleagues and ask all of them who may or may not be involved in turning over Crown agencies or corporations to the private sector to promise solemnly that in doing so they will insist that a condition of the transfer be the permanent requirement that the Official Languages Act continue to be respected by those bodies.

**Senator LeBreton:** Honourable senators, I will apprise my cabinet colleagues of that suggestion with regard to potential turnovers of Crown corporations.

I remind honourable senators that the government committed to a road map for linguistic duality. We have committed to an allocation of \$1.1 billion over five years. This government-wide investment targets five priority sectors: economic development, health, immigration, justice, and the arts and culture community. The Minister of Canadian Heritage and Official Languages, the Honourable James Moore, has been meeting with various groups. He is committed to this program, and I am looking forward to the implementation of this road map for linguistic duality.

• (1415)

Again, I will be very happy to express the concerns of Senator Fraser and others in this chamber as to the potential dangers of turning over Crown corporations and not serving all Canadians.

[*Translation*]

#### COURT CHALLENGES PROGRAM

**Hon. Maria Chaput:** My question is for the Leader of the Government in the Senate, and it is about the Court Challenges Program.

The government has reached an agreement with the community. Can the minister tell us about the new criteria and the funds available for this program?

Is the funding part of the Roadmap envelope, or is it in addition to that money? Are projects now being accepted under the new program?

[*English*]

**Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)):** Honourable senators, the amount for the program is \$1.1 billion and that is spread over five years. The minister responsible, the Honourable James Moore, has spoken to both the media and the public quite often since his appointment. I do not have before me the exact breakdown as to which program is getting what amount of money, but I will be happy to ask Minister Moore to provide me with that information. I will provide that information to the Honourable Senator Chaput by way of a delayed answer.

#### NATIONAL DEFENCE

##### LANDMINES AND CLUSTER MUNITIONS

**Hon. Elizabeth Hubley:** Honourable senators, this is the tenth annual Canadian Landmine Awareness Week. Where does the Government of Canada currently stand on mine action and its commitment on the Ottawa treaty? Is the eradication of landmines and cluster munitions still considered a priority for Canadian international affairs?

**Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)):** Honourable senators, the eradication of landmines and cluster munitions is absolutely a priority for this government.

Senator Hubley asked a question in the last Parliament about mines and cluster bombs, and I believe that I tabled a detailed response from the department on this issue last May. I regret that the honourable senator did not receive it; I thought perhaps she had.

This matter is a priority for the government. I will seek further information from the department in an effort to provide the honourable senator with more information.

**Senator Hubley:** I thank the minister for that undertaking. I will await that information.

If the government remains as committed to the eradication of landmines as the Leader of the Government indicates, why has government funding for organizations like Mine Action Canada been reduced so severely? Will the leader provide assurances that the Government of Canada will restore funding to non-governmental organizations that labour to eliminate these weapons of war?

**Senator LeBreton:** Honourable senators, as I have said in this place many times, the government often will use different plans and programs to obtain results and attain objectives in areas such as this. We will not necessarily follow every program that has been implemented over the past 20 years, but that does not take away from our commitment to these serious matters. I am not familiar with the means by which this program is being administered, but I will be happy to inquire as to what our plans are in that area.

- (1420)

## FOREIGN AFFAIRS

### UNITED NATIONS CONVENTION ON CLUSTER MUNITIONS

**Hon. Elizabeth Hubley:** Honourable senators, as part of its ongoing commitment to eradicate landmines, Canada signed the new UN Convention on Cluster Munitions in December 2008. For the convention to enter into international law, 30 countries need to ratify it. To date, Canada has not ratified this convention.

Would the leader assure us that Canada will finally resume the leadership position that was abandoned and become one of the first 30 countries to ratify the new convention?

**Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)):** Honourable senators, we signed on to this convention in December. The process of other countries signing on is something that is taking place at the United Nations. The action we took in December indicates our commitment, but I will seek further clarification from the Minister of Foreign Affairs as to what our representatives at the United Nations are doing to move this file along.

## AGRICULTURE AND AGRI-FOOD

### CANADIAN FOOD INSPECTION AGENCY— AUDITOR GENERAL'S REPORT

**Hon. Catherine S. Callbeck:** Honourable senators, my question is directed to the Leader of the Government in the Senate.

The most recent Auditor General's report raised serious concerns about the safety of plant life imports into our country. The Auditor General's report indicates that the Canadian Food Inspection Agency lacks the information management and technology to ensure that dangerous and invasive plant imports do not threaten our domestic plant resources. The Auditor General's report also indicates that the CFIA had been aware of the deficiencies and that they agree with the recommendations. What is the government doing to correct this problem which could have a major impact on our food security?

**Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)):** The government appreciated the Auditor General's report with regard to the Canadian Food Inspection Agency. The government has taken action on the report and has increased the number of inspectors, and made changes to food and product safety as well as product labelling. The government has taken action on all of these important issues.

Concerning the importation of plants, I will ask the department what measures they are about to take or have taken with regard to the Auditor General's report.

**Senator Callbeck:** Honourable senators, I appreciate the fact that the leader will make inquiries of the department. I would like to know not only what the government is doing, but if and when they plan to implement the recommendations of the Auditor General.

**Senator LeBreton:** Honourable senators, as indicated in my first answer to the honourable senator, I will ask the minister and the department what they plan to do, or have done so far, in response to the recent report of the Auditor General.

## ORDERS OF THE DAY

### CUSTOMS ACT

#### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Tkachuk, seconded by the Honourable Senator Raine, for the second reading of Bill S-2, An Act to amend the Customs Act.

**Hon. Tommy Banks:** Honourable senators, Bill S-2, which is before us and was introduced by Senator Tkachuk, is framework legislation. Framework legislation is when a government has a reasonably good idea about something it wants to do and it says to Parliament: Here is sort of what we want to do, and here are the means by which you will empower the government to do this. We will tell you later what is actually going to happen when the rubber hits the road by the promulgation of regulations, which will form a schedule to the bill.

There are times when that is absolutely necessary; but there are also times when it is used as a device by governments as a means of evading — not avoiding always, but evading — scrutiny by Parliament of what will actually happen. Few of us would think that the relevant regulations are not ready when a bill is introduced, except in the most extraordinary cases, or that they are locked in a drawer someplace in order to avoid parliamentarians asking all those rude questions about how they will work. Of course, there are necessary exceptions at times. Bill S-2 is an example of framework legislation with a wrinkle to which I refer and place my concerns about on the record.

- (1425)

Regulation-making in Canada usually follows a pattern in that we pass bills without truly knowing the full implications of the regulation-making power that we are giving to the government. Bill S-2 has an unusual regulation-making power, which makes it even more difficult to know what we are being asked to approve. The authority being sought is found in clause 17 on page 7. It reads:

The Act is amended by adding the following after section 164:

164.1(1) A regulation made under this Act may incorporate by reference any material regardless of its source and either as it exists on a particular date or as amended from time to time.

That means it could incorporate some of the customs regulations of North Korea, which might be amended by North Korea five years hence and would become part of the regulations of this bill. The proposed section continues:

(2) Material that is incorporated by reference in a regulation is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

Honourable senators are aware that governments need to be able to govern and to have the flexibility that is obtained at times by Parliament providing this kind of discretion to them. Certainly, some notice requirements of the usual regulation processes seem overly cumbersome, in particular for customs purposes. We might have to consider measures that relax some of those “normal” obligations, if I can use that word, but what we have in this bill might go too far.

Why does clause 17 concern me? First, it says “. . . any material regardless of its source . . .” This passage is surprisingly vague, even for proposed framework legislation. There is no hint of what the government is asking Parliament to authorize it to do.

Second, it says “. . . or as amended from time to time.” The concern here is that some authority other than Parliament or the Governor-in-Council would be able to amend indirectly the regulations by updating a document that is incorporated by reference into the regulations of this bill. In other words, we are being asked to agree to a clause that delegates the authority of Parliament to unknown persons or entities. That is a bit alarming, when one thinks about it, and it is difficult to understand why such a regulation-making power is truly necessary. At a minimum, we should consider whether clause 17 could be improved to prevent potential abuses.

Third, the clause says “. . . not a statutory instrument for the purposes of the *Statutory Instruments Act*.” Combined with the other two concerns, this exemption from the Statutory Instruments Act seems secretive and unnecessarily broad in its scope.

I will outline the potential implications of the exemption, at least the ones that have occurred to me. The Statutory Instruments Act imposes several conditions on the power to make regulations. A condition is that drafts and notices of those regulations must be published in the *Canada Gazette*. Drafts and notices under this bill may be published but they will not include the documents or materials, whatever they might be, that are incorporated by reference. This situation undermines the usual consultation process and this runs the risk of errors, of unintended consequences and of a negative impact on compliance.

• (1430)

Ordinarily, the second requirement for regulations is that the regulations themselves must be published in the *Canada Gazette*. However, according to this bill, materials incorporated by reference will not be published in the *Canada Gazette*.

Additionally, there is the usual obligation with regulations to promulgate them in both official languages. There is no requirement to include the materials incorporated by reference in both official languages. They could be incorporated in Lithuanian.

[ Senator Banks ]

Also, the regulations ordinarily are made with the delegated authority of Parliament, and Parliament may disallow a regulation by following a procedure that is set out in the Statutory Instruments Act. The disallowance procedure is contained in the Statutory Instruments Act, and regulations exempted from that act cannot be disallowed. It is unclear whether the provisions in Bill S-2 preserve Parliament’s authority in that respect.

Another issue is accessibility. Several of these conditions are related to an important principle in a country that governs itself by the rule of law. The citizen must have a reasonable opportunity to know what the law is. How can we subject people to possible sanctions and maybe even jail terms if they have no way of knowing what the law is? I am sure that the department is pursuing this route with all good intentions but the drafting that has been provided may go a bit too far. It may go beyond what is necessary to accomplish the needs and the government’s goals.

The Standing Joint Committee for the Scrutiny of Regulations receives its order of reference from the Statutory Instruments Act. If we adopt this clause in its current form, I am concerned that the act could be interpreted as removing the authority to examine documents that are incorporated by reference. At the very least, it should be made absolutely clear that the exemption from the Statutory Instruments Act does not limit the mandate of the Standing Joint Committee for the Scrutiny of Regulations to examine those materials that are incorporated by reference. I hope the committee will pay a lot of attention to that issue.

This concern is compounded by the fact that the bill effectively allows third parties to amend regulations. The worst-case scenario is that, by passing this bill, we could be delegating the law-making power of Parliament to unknown third parties while removing the power of Parliament to scrutinize the regulations and to disallow them. Honourable senators should be cautious that they know exactly what these provisions will mean before they are approved.

The authority that is being sought here is rare. However, it is not unique; I found similar provisions in about 14 other statutes. One of them, for example, is the Motor Vehicle Safety Act. However, only three statutes include exemptions from the Statutory Instruments Act. The remaining 11 do not; they have similar provisions but they are not identical.

Therefore, I cannot say that the provisions of Bill S-2 are unprecedented but they are certainly extraordinary and they warrant close examination by the committee.

One example that I came across — the Motor Vehicle Safety Act — contains a sunset provision that automatically causes incorporated materials to expire after five years, which is the kind of precaution that we might want to consider here.

It is reasonable to consider the government’s request for special treatment of regulations of this kind. I understand the need for flexibility and that incorporation by reference is a useful technique in certain cases. However, the legislative approach should be surgical rather than simply tossing the Statutory Instruments Act aside with all the implications of such a sweeping gesture.

We should follow the example of the House of Lords in the United Kingdom, where regulation-making authority is carefully considered. They do not have a one-size-fits-all approach, as we have here in Canada. The lords have a variety of models for regulation-making power. When they assess a government request for new regulation-making power, they weigh all the factors, such as urgency, and they adopt a model that is appropriate to the bill before them. There is a range of models, some that are more permissive, while others are more restrictive. Some limit the government's range of options.

However, in no case does the United Kingdom's Parliament ever delegate its law-making power without condition and without the capacity to scrutinize. Never in any case does the U.K. Parliament do that. Our committee would do well to consider following a similar approach. Surely we can accommodate the government's need for flexibility without throwing the baby out with the bathwater. I hope that the committee will give serious consideration to that approach.

The sponsor of the bill, Senator Tkachuk, indicated, when I first raised this concern, that the committee would have the opportunity to examine these questions. However, I do not have the honour of belonging to that committee and I wanted to place these concerns on the record.

**Hon. Hugh Segal:** Will the honourable senator take a question?

**Senator Banks:** Of course.

**Senator Segal:** I address this to the honourable senator but also, by definition, to all honourable senators. The specific difficulty that the honourable senator has cited is reflective of a growing trend in a lot of legislative proposals — not only in this Parliament but in other Westminster models, as well as others. The drafters, perhaps without the explicit, precise understanding of the responsible minister, put in areas of flexibility so as to maximize the flexibility of the public servants and the program administrators in the process. In some cases, they genuinely may believe that flexibility is in the public interest because situations change and they want the flexibility to move quickly in that context.

In other circumstances, however, one runs a risk. For this reason, I appreciate the honourable senator's intervention in this matter, as a fellow member of this chamber. That risk is that of Parliament and the legislative process being made secondary and, in fact, irrelevant to what is happening in Parliament's name. That is the risk.

I think, for example, of the bill on quarterly financial reporting, which was passed twice by this chamber, passed second reading in the other place, went to committee and was part of the government's platform. Now public servants are in the process of gutting the bill in ways that Senator Day's committee would not allow them to do.

This process is ongoing. I know there was a committee on statutory instruments in this place in the past that met and dealt with those details. I ask the honourable senator, being more experienced in these matters and having been here longer, whether he might have some advice as to whether reconstituting that committee and looking at some of these manifestations might be in the interest of Parliament and, perhaps, even in the interests of democracy?

**Senator Banks:** I thank the honourable senator for his question and for his kindness in saying I might know more about this matter than he does. I do not, however.

I do not presume to suggest whether the duties that are presently those of the Standing Joint Committee for the Scrutiny of Regulations ought to be either enhanced by another committee or, in some circumstances, supplanted by another committee. I am not qualified in having an opinion in that respect.

However, I agree with what the honourable senator said about the practicality of who is interested in introducing the greatest possible flexibility, beginning with the concept of framework legislation, for a start. The responsibility probably lies equally in governments. As the honourable senator and I made clear, that is all governments and not only our governments, as well as the bureaucracy. Both have similar interests in that respect.

Governments, writ large, as well as their bureaucracies, tend from time to time to think of their legislatures — of which they are supposed to be functions rather than the other way around — as being impediments to acting.

Parliamentary democracy is inefficient. Absolute monarchy is extremely efficient. Bureaucracies sometimes resent our asking those questions.

(On motion of Senator Tardif, debate adjourned.)

• (1440)

## THE SENATE

### MOTION TO TELEVISION PROCEEDINGS— DEBATE ADJOURNED

**Hon. Hugh Segal,** pursuant to notice of February 3, 2009, moved:

That the Senate approve in principle the installation of equipment necessary to the broadcast quality audio-visual recording of its proceedings and other approved events in the Senate Chamber and in no fewer than four rooms ordinarily used for meetings by committees of the Senate;

That for the purposes set out in the following paragraph, public proceedings of the Senate and of its Committees be recorded by this equipment, subject to policies, practices and guidelines approved from time to time by the Standing Committee on Internal Economy, Budgets and Administration (“the Committee”);

That selected and packaged proceedings categorized according to subjects of interest be prepared and made available for use by any television broadcaster or distributor of audio-visual programmes, subject to the terms specified in any current or future agreements between the Senate and that broadcaster or distributor;

That such selected proceedings also be made available on demand to the public on the Parliamentary Internet;

That the Senate engage by contract a producer who shall, subject only to the direction of that Committee, make the determination of the programme content of the selected and categorized proceedings of the Senate and of its committees;

That equipment and personnel necessary for the expert selection, preparation and categorization of broadcast-quality proceedings be secured for these purposes; and

That the Committee be instructed to take measures necessary to the implementation of this motion.

He said: Honourable senators, I am beginning to view this as the end-of-life proposal. I have colleagues whom I love and respect and who are determined to adjourn this motion until I pass away. They do so in the spirit of what they think is in the best interests of this chamber. I respect their judgment, and I certainly respect their seniority, in large measure because I have no choice.

However, in so doing, I think they stand between this chamber and the opportunity — especially in its reinvigorated mode as we speak, a process of reinvigoration that I hope will continue over the next few years — to communicate the quality of work done in this chamber and the quality of debate in a fashion with the public not now available.

The motion before honourable senators represents bipartisan collaboration. Changes were made to it based on advice and counsel from colleagues on the other side. I believe it represents a way ahead that confers no final decision beyond the Standing Committee on Internal Economy, Budgets and Administration, which can make a series of decisions about cost and proceeding in a way that does not diminish the authority of this chamber to govern the process going forward in any way.

Based on advice from all sides, the motion reflects a fashion in which we might proceed that is frugal and responsible. It would allow us to progress without — in any way, shape or form — diminishing the prerogatives that we all have as members of this place with respect to the way it is governed.

I commend this motion, honourable senators, to your most favourable and pressing consideration.

**Hon. Tommy Banks:** I want to take a moment to urge all honourable senators to take to heart what Senator Segal has said. His excellent motion is in the spirit to which we must all subscribe of making the work of this place — what goes on here and what the Senate does — more transparent, more widely known and better accessible to Canadians. To suggest that the subject matter of this motion is not a good idea flies in the face of everything that is logical in the current situation with respect to this chamber and this government. I join the honourable senator in urging support for his motion. We should approve it forthwith.

**Hon. A. Raynell Andreychuk:** I commend Senator Segal for his comments that he wants to seek and has sought consultations. I would like to add my words to that process. Therefore, I wish to adjourn debate so that I may have my say.

(On motion of Senator Andreychuk, debate adjourned, on division.)

[*Translation*]

## OFFICIAL LANGUAGES

### COMMITTEE AUTHORIZED TO STUDY APPLICATION OF OFFICIAL LANGUAGES ACT AND REFER PAPERS AND EVIDENCE FROM THE FIRST SESSION OF THE THIRTY-NINTH PARLIAMENT

**Hon. Maria Chaput**, pursuant to notice of February 24, 2009, moved:

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

That the committee be authorized to study the reports and papers produced by the Minister of Official Languages, the President of the Treasury Board, the Minister of Canadian Heritage and the Commissioner of Official Languages as well as any other material concerning official languages;

That the papers and evidence received and taken and work accomplished by the committee on this subject since the beginning of the First Session of the Thirty-ninth Parliament be referred to the committee;

That the committee report from time to time to the Senate but no later than June 30, 2010, and that the Committee retain all powers necessary to publicize its findings until December 31, 2010.

(Motion agreed to.)

[*English*]

## ABORIGINAL PEOPLES

### COMMITTEE AUTHORIZED TO STUDY FEDERAL GOVERNMENT'S RESPONSIBILITIES TO FIRST NATIONS, INUIT AND METIS PEOPLES

**Hon. Gerry St. Germain**, pursuant to notice of February 24, 2009, moved:

That the Standing Senate Committee on Aboriginal Peoples be authorized to examine and report on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Metis peoples and on other matters generally relating to the Aboriginal Peoples of Canada.

That the Committee submit its final report to the Senate no later than March 31, 2010.

(Motion agreed to.)

(The Senate adjourned until Thursday, February 26, 2009, at 1:30 p.m.)

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