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Wednesday, May 5, 2010

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, May 5, 2010

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

Prayers.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, pursuant to the order adopted on April 29, 2010, I leave the chair for the Senate to resolve itself into a Committee of the Whole to hear from the Speaker of the Senate of the Republic of Poland.

POLAND

PARLIAMENTARY REPRESENTATIVES RECEIVED IN COMMITTEE OF THE WHOLE

On the Order:

> The Senate in Committee of the Whole to receive Bogdan Borusewicz, Speaker of the Senate of the Republic of Poland, accompanied by other Polish parliamentarians and the Ambassador of Poland to Canada.

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

The Chair: I would remind honourable senators that the committee is meeting today to hear from a delegation of Polish parliamentarians, led by the Speaker of their Senate. Speaker Borusewicz's remarks will be preceded by a welcome from Senator Andreychuk, speaking for the Leader of the Government, and followed by thanks from the Deputy Leader of the Opposition, Senator Tardif, speaking for the Leader of the Opposition. Pursuant to the order of the Senate, the committee shall then rise.

Honourable senators, there will be interpretation to and from Polish, so you may have to switch channels when that language is used.

I would now, honourable senators, on your behalf, ask the Usher of the Black Rod to escort the delegation into the Senate chamber.

• (1340)

(Pursuant to Order of the Senate, Senator Bogdan Borusewicz, His Excellency Zenon Kosiniak-Kamysz, Mr. Marek Borowski, Senator Zdzislaw Pupa, Senator Mariusz Witczak, Senator Lukasz Abgarowicz, Senator Andrzej Grzyb, and Senator Zbigniew Cichon were escorted to seats in the Senate chamber.)

The Chair: Honourable senators, the Senate is resolved into a Committee of the Whole to hear from Senator Bogdan Borusewicz, Speaker of the Senate of the Republic of Poland, who is accompanied by fellow parliamentarians and the distinguished Ambassador of Poland to Canada. In addition to Speaker Borusewicz, we have with us today His Excellency Zenon Kosiniak-Kamysz, Ambassador of the Republic of Poland to Canada; Mr. Marek Borowski, MP, Chair of the Contacts with Poles Abroad Committee; Senator Zdzislaw Pupa, Chair of the Environmental Committee; Senator Mariusz Witczak, Chair of the Local Government and State Administration Committee; Senator Lukasz Abgarowicz, Deputy Chair of the Immigration Affairs and Contacts with Poles Abroad Committee; Senator Andrzej Grzyb, Deputy Chair of the Culture and Media Committee; and Senator Zbigniew Cichon, Member of the Human Rights Committee, the Rule of Law and Petitions.

It is with great pleasure that I welcome you to the Canadian Senate. I know I am speaking on behalf of all honourable senators when I tell you how very honoured we are to have you speak to us in this unprecedented meeting of the Committee of the Whole.

Speaker Borusewicz, I am particularly grateful for the opportunity to return the warm hospitality I received while leading a Canadian delegation to Poland in the summer of 2007. Let me also take this opportunity to thank you for the gift to the Parliament of Canada of a replica of the Gutenberg Bible kept safely here in Canada for Poland during the Second World War.

Honourable senators, it was a particular delight to be able to point out to our dear colleagues from Poland the Levitic psalm when we opened the Gutenburg Bible, which is in Latin. In the Douay version, it is psalm 71, verse 8, and in the King James version, it is psalm 72. Somewhere along the line, two of the psalms were rolled into one by the monks at Douay. However, as we read this morning from the Gutenberg Bible, we saw the passage in Latin, "dominabitur a mari usque ad mare," from whence comes our motto "from sea to sea" and the term *dominabitur*, from whence comes the phrase "Dominion of Canada." The Douay version was then translated into English and used the word "rule," so it was good to have the King James version and go back to the original Latin. I am not sure what we would be called if we were not called the Dominion of Canada.

Mr. Speaker, your visit comes after a great loss for Poland. The tragic death of President Lech Kaczynski, his wife Maria, together with that of so many of your country's leading political, economic, and military officials is a great tragedy for which we express our heartfelt sorrow. We had the distinct pleasure of receiving Maria Kaczynski here in the Senate at my office, and I had the opportunity of meeting President Kaczynski's brother, then-Prime Minister Jaroslaw Kaczynski, during my visit to Warsaw. Honourable senators, such personal contacts make the devastating event all the more poignant, when we join with you in the grief of our colleagues in Poland.

Your Excellency, before inviting you to make your presentation, I will ask the Honourable Senator Raynell Andreychuk, speaking for the Leader of the Government in the Senate, to offer her welcome on behalf of the Government and the Senate.

Senator Andreychuk: Honourable senators, please join me in welcoming Speaker Borusewicz and our friends from the Polish delegation. Your Excellency, it is a particular pleasure to meet you. You represent the best of modern Poland.

On a personal note, I have a link to Poland that makes this opportunity special for me. My mother was born in Poland. The Polish people and history are dear to me personally. It is therefore a pleasure and an honour to be able to speak on behalf of my leader.

Your commitment to democracy began in the shipyards of Gdansk where, as a member of the Solidarity Trade Union, you helped organize the strikes in 1980, an event that served as a catalyst for the eventual fall of communism in Poland. It is also impressive that, prior to becoming Speaker of the Polish Senate four years ago, you were elected three times to the Sejm, where you worked tirelessly in investigating the consequences of the imposition of martial law and in examining Poland's Charter of Rights and Freedoms.

Let me also express our sincere and deep gratitude for the gift of the Gutenberg Bible replica that you have bestowed upon us. It is a fitting gift that recalls our commitment to freedom during the darkest days of the Second World War, when Canadians and Poles fought together against Nazi tyranny and Canada served as temporary repository, a safe haven, if you will, for many of Poland's national treasures, including the Gutenberg Bible and other treasures from Wawel Castle.

You are here today during a very difficult time for Poland. I echo the sentiments of Senator Kinsella in extending my sincerest condolences to your people. President Kaczynski was an advocate for freedom and a true servant of the Polish nation. His death, and that of his wife, together with so many leading officials and citizens, is a significant loss for your country, but many in that delegation were also friends and colleagues to us here in Canada. We share that loss with you.

We join all of Poland in mourning this tragedy. The sense of sorrow is compounded by the knowledge that their deaths occurred as they themselves were about to commemorate the 1940 massacre at Katyn Forest, where more than 20,000 members of the Polish military and intellectual elite were ruthlessly murdered.

History shows us that your country is no stranger to suffering. These struggles have led Poland to turn to leaders, many of whom emerged as sources of inspiration for others seeking freedom. One such person was Józef Pilsudski, a hero of the First World War who played a key role in ensuring Poland regained its independence in 1918. All of us recognize the name of Lech Walesa, a trade union activist and ardent supporter of human rights, who founded the Solidarity movement and won the Nobel Peace Prize in 1983. Even in the darkest of times, the courage and determination of those who fight for human dignity and freedom will continue to inspire us.

Poland has made astonishing progress after the dramatic events of 1989 and 1990, when your country embarked on the transition from communism to democracy. It has overcome major obstacles and has implemented many reforms. Fundamental transformations have included the introduction of multi-party elections, a new constitution, judicial reform and guaranteed civil liberties and human rights.

We salute the courage and determination of your people in these achievements and wish you every continued possible success for Poland as its democracy takes hold. The reaction shown by Poland since the tragedy of April 10 demonstrates your country's stability and its commitment to democracy.

Canada was pleased to have had the opportunity to help Poland during its transition to democracy and a market economy. To support Poland's early political and economic reforms, Canada launched a program of technical cooperation. Managed by the Canadian International Development Agency, this aid focused on the development of the private sector, the agriculture sector, education and training.

Through these years, you continued to make great strides, so that in 2004 you could join the European Union. Today, rather than being a recipient of aid, Poland works as a partner with Canada and other countries in funding development projects in other nations.

I believe that it is fitting that we are meeting here today as members of two national senates to celebrate our friendship and to build closer relations.

Your Excellency, Speaker Borusewicz, we are very pleased to have this opportunity to hear from you. I hope — we all hope — that you will depart with good memories, and the knowledge of our high regard for you and for Poland.

Hon. Senators: Hear, hear!

• (1350)

[*Editor's Note: Senator Borusewicz spoke in Polish — translation follows.*]

Senator Bogdan Borusewicz, Speaker of the Senate of the Republic of Poland: Mr. Speaker, honourable senators, it is my honour and privilege to be here today before the Senate of Canada and to address you as we mark the official visit of the Polish parliamentary delegation. We have come to a welcoming nation, whose citizens have shown Poland kindness and are dear to the hearts of many of my fellow Poles, both those who remain in our homeland and those who now live abroad.

I would like to sincerely thank Canada for its expression of solidarity following the tragedy that occurred near Smolensk on April 10. Poland was left shaken by this air disaster, which took the lives of 96 people, among them the Polish President and his wife, as well as the last president of the Republic of Poland in exile. All were on their way to Katyn to pay tribute to the more than 22,000 Polish officers and members of the Polish intelligentsia murdered on Stalin's orders in April 1940. Prime Minister Stephen Harper's announcement of a national day of mourning in Canada and his attendance at a funeral mass for the victims of the Smolensk tragedy, together with representatives of all political parties, are signs of a genuine friendship. Poles were touched by the display of the books of condolences in the Parliament of Canada and the sight of the flag flying half-mast on that day.

Yesterday, Prime Minister Harper gave me the books of condolences and the Canadian flag that, as a sign of mourning, was flying half-mast here in front of the Parliament Buildings. I will take the books and the flag to Poland, as they are proof of our common grief in this tragedy that affected Poles and Poland.

Honourable senators, let me recall the visit the Honourable Noël Kinsella, Speaker of the Senate, made to Poland in June 2007. I remember well the fruitful discussions we had. I thank you.

Parliamentary visits are key to forging ties, and I would like today's visit to be another step in that direction.

I wish to take the opportunity of appearing here today before you, honourable senators of this hospitable nation, to respectfully express my gratitude to the Senate for the countless gestures of friendship Canadians have shown Poland during trying times in its history.

Thank you for the conditions Canadian authorities have created for Poles who were forced by circumstance to immigrate and settle overseas. There is no doubt that the subsequent waves of Polish immigrants brought our countries closer together. The Polish Senate, as was its pre-war tradition, protects Polish nationals who live beyond Poland's borders. We support the development of initiatives that make it possible for Polish communities abroad to maintain ties with their heritage. We believe this to be one way of strengthening relations with countries that have at one time or another provided our countrymen and women sanctuary and the chance for growth. During my current visit, I am planning to also travel to Toronto, Winnipeg and Windsor, where many of them still live.

Honourable senators, when the first settlers arrived in 1858, my homeland was occupied by enemy forces. Weakened internally, Poland was erased from Europe's political map for 123 years and divided among the neighbouring powers. Resolute attempts at state reform, based on the ratification of Europe's first and the world's second constitution on May 3, 1791, had failed. Thus began a time of repression, in spite of which Poles managed to maintain their language, culture and the wealth of their traditions. They brought this entire heritage with them here, to Canada. There are those among the descendants of the first settlers who inhabited the beautiful Madawaska Valley and established the community of Wilno, a mere 200 kilometres from here, who can still speak Kashubian.

The fact that our relations date back to the dawn of Canadian statehood is an affirmation of our enduring Polish-Canadian friendship. When the first Canadian Parliament was formed, Alexander Kierzkowski was elected to represent the riding of Saint-Hyacinthe, Quebec. He was a Polish immigrant who had taken part in the 1830 November Uprising. This rebellion was one of the many examples of the determination with which Poles strived to reclaim the independence they had lost in the late 18th century. The liberation efforts, however, were unsuccessful. It was not until the end of the First World War that my country, a nation with more than 1,000 years of state tradition, resurfaced on the map of Europe.

After the Second World War, Canada saw a massive influx of Polish immigrants, most of them soldiers who fought the Nazi enemy on the Western Front and could not return home when their country fell to communist rule. I am thankful to Canada for receiving these heroes.

Poles and Canadians have long been brothers in arms, strengthening their brotherhood in battle in Italy and in the liberation of Belgium and the Netherlands. Today, we are celebrating an anniversary of liberating the Netherlands. The Polish and Canadian soldiers fought arm in arm to gain that liberty.

The next wave of immigrants consisted of members of the Solidarity movement, my generation. I know many people who, in search of freedom and a better life, left or were forced to leave Poland. Countless of them found sanctuary in Canada and I am meeting these people here.

I would like to extend a particular note of thanks to the Senate for safeguarding precious assets of Polish culture in Canada during the dark years of the Second World War and in the post-war period. While Poland was gripped by war, Ottawa provided a place of safekeeping for treasures from the Wawel Castle, including 136 tapestries, the Polish Crown Jewels, the coronation sword, the Gutenberg Bible, the Psalms of David, the Holy Cross Sermons and gold from the national treasury. We see many examples today where some countries keep cultural treasures; however, there are only a few examples of countries returning cultural treasures. After the war, Canada returned the entire collection to Poland. As a token of our appreciation, I presented the Speaker of the Senate, the Honourable Noël A. Kinsella, and the Speaker of the House of Commons, the Honourable Peter Milliken, with a reprint of the Gutenberg Bible from the Diocese of Pelplin.

• (1400)

Today, Poland is a free, democratic country in which every citizen has the opportunity to grow and has a chance for a better life. Poland has been on this new path for over 20 years now. It began its fight against the totalitarian regime in August 1980 with the strike at the Lenin Shipyard in Gdańsk. There, at the shipyard, we questioned Lenin's theory, and we did away with that theory. That was done by the workers, and it was done by the young intelligentsia. We did it together.

Nine years later, in June 1989, Poland held, for the first time in its post-war history, free parliamentary elections, to the Senate specifically. This created a domino effect across Central Europe and paved the way to democracy for its countries. The transformations that took place then culminated in the fall of the Berlin Wall and the German reunification six months later. In a somewhat deeper sense, this process of unification continues still. In 2004, Poland joined the European Union, and several years before that Poland became a full-fledged member of the North Atlantic Treaty Organization.

The first few years that followed the fall of communism were not easy for Polish society. Institutional and particularly economic reforms had a painful impact on the Polish society in the short term: demanding sacrifices, forcing many companies into bankruptcy and triggering sizable unemployment. This was

the price of replacing a socialist, deficit-based economy with a market economy. That path was known to no one. In those challenging times, assistance from Western European countries, the United States and Canada was precious. In the 1990s, the Parliament of Canada provided considerable support to Poland's Sejm and the re-established Senate in my country. The numerous internships, training opportunities, seminars and conferences made available to both parliamentarians and staff were very helpful in creating the structures of the re-established Senate and were an invaluable source of information and experience in the building of a young democracy, the basis of which is Parliament.

Reforms did inspire entrepreneurship and a certain drive among the Polish people. Poland's membership in the European Union provided an additional impulse. It is through all this that today's Polish economy achieves the best results in Europe. We are currently the only European country to post an increase in the GDP. We have also developed an action plan to maintain Poland's strong position in the race to become one of the world's most developed countries.

With its difficult early and recent history not a distant memory, Poland has new hope. It is a rapidly growing country with advanced modernization under way, a credible political and economic ally on the international stage, open to others.

Poland and Canada are partners with enormous potential for cooperation, both in NATO and in forging stronger transatlantic links, the key component of which is the expanding cooperation between Canada and the European Union. An Eastern Partnership can be the arena for such promising cooperation. The purpose of this Polish-Swedish initiative that became an EU program is to disseminate democratic standards, human rights and market economy in Eastern Europe, particularly in Ukraine and in the Caucasus. Canada can therefore back a range of undertakings that fulfill the objectives of the Eastern Partnership.

Poland is watching closely how the nearly one-million strong community of Canadians of Polish descent is becoming an increasingly active part of social, cultural, academic, economic and political life in Canada. We are proud of our fellow countrymen and women who, while preserving the memory of the native land of their forefathers, are making a substantial contribution to the development of the thoroughly prospering Canadian society. Much is owed to the commendable multicultural system Canada has developed. An open Canadian society gives everyone the possibility of reaching out for success. Due to this, Canada has achieved success, and others look at Canada in envy.

Our nations and our peoples have always stood together in good times and in bad. As an old Polish saying goes, it is when times are hard that we meet our true friends. We came to know your friendship during the Second World War, but also during the days of the First World War, when Canada helped train at Niagara Polish-Canadian recruits to General Józef Haller's "Blue Army" which fought for my country's independence. We were true friends when our soldiers fought side by side on the fronts of the Second World War. Canada was the first NATO member state to ratify the accession protocols of Poland, the Czech Republic and Hungary, and today as members we participate in the difficult mission in Afghanistan.

We knew your friendship when you supported us as we strove toward freedom, democracy and membership in the security community safeguarded by the North Atlantic Alliance. You, the free country, have supported us, the enslaved country. For all this, we are sincerely grateful to Canada and all Canadians.

Hon. Senators: Hear, hear!

• (1410)

[*Translation*]

Senator Tardif: Speaker Borusewicz, like my colleagues, Speaker Kinsella and Senator Andreychuk, it gives me great pleasure, on behalf of the Leader of the Opposition, to welcome you to Ottawa and to the Senate. We are truly honoured by your presence here today.

Let me also express our condolences and sympathy for the great loss that Poland sustained in the aircraft accident last month. It was a horrendous tragedy which shocked the entire world. Your decision to carry on with your visit to Canada as Poland continues to recover from this sorrowful event, I take to be a testament of the deep and abiding friendship between our two countries.

[*English*]

The ties between Poland and Canada run deep and they go back hundreds of years. While many are aware of Poland's long and heroic struggle to obtain its place in Europe, I want to focus on the contribution Poland has made to this country. As I mentioned, it goes back many years, to at least 1752 when the first Polish immigrant, Dominik Barcz, a fur merchant from Gdansk, established himself in Montreal. Indeed, throughout our history, Canadians of Polish descent contributed to the making of Canada as it grew from a colony into a fully-sovereign nation. In Quebec, the family of Globensky is still remembered for the role members played in the War of 1812, the Rebellion of 1837, and as prominent members of the legislature. A Polish Canadian, Alexandre Eduarde Kierzkowski, was a member of the very first House of Commons to sit after Confederation. More recently, the late Stanley Haidasz was a notable member for more than twenty years of our Senate, following many years of service in the House of Commons.

In addition, many Polish immigrants came from the mid-19th century, as you noted in your speech, and settled all across this country to cultivate our farmlands and to build our cities. Throughout the 19th century and especially in the years just before the First World War, waves of settlers from Poland came to Canada. Thousands made the long journey from the home they knew and loved to build their lives here and become an integral part of the wonderful mosaic of Canada. The result has been the growth of Polish communities across this country, including the cities of Toronto, Ottawa, Winnipeg and Windsor, which you will be visiting during your time here. While proud of being Canadians, our Polish compatriots retain a love for their ancestral homeland that is sustained by various organizations and associations, including the Canadian Polish Congress, established more than 75 years ago.

Given Poland's contribution to the development of Canada and the great admiration we have for Poland that has demonstrated remarkable resilience and determination throughout its history, I have no doubt that our relations will remain deep and enduring. We are bound, above all, by a commitment to democracy, a firm belief in equal justice, and respect for human rights. These shared values bind us as individuals and as nations. They are sustained also by visits such as this one.

In closing, let me reiterate how much we appreciate your address to us and how we look forward to further parliamentary exchanges in the coming months and years. Thank you.

Hon. Senators: Hear, hear!

The Chair: Honourable senators, I know that you will join me in thanking most sincerely Speaker Borusewicz. Is it agreed that I report to the Senate that the delegation has been heard?

Hon. Senators: Agreed.

The Chair: I will now ask the Usher of the Black Rod to escort the delegation from the chamber. To allow senators to greet our Polish friends, and so that members of the public who are with us can leave the galleries if they wish, is it agreed that the sitting be suspended briefly, with a five minute bell before we resume?

Hon. Senators: Agreed.

• (1430)

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

REPORT OF COMMITTEE OF THE WHOLE

The Hon. the Speaker: Honourable senators, the Committee of the Whole, authorized by the Senate to hear from the Speaker of the Senate of the Republic of Poland, accompanied by other Polish parliamentarians and the Ambassador of Poland to Canada, has the honour to report that it has heard from the delegation.

SENATORS' STATEMENTS

NATIONAL HOSPICE PALLIATIVE CARE WEEK

Hon. Jane Cordy: Honourable senators, this week is National Hospice Palliative Care Week, which is a one-week campaign that focuses on raising awareness about hospice palliative care. It is a time to celebrate, to recognize and to share the achievements of hospice palliative care throughout Canada.

This week's campaign is coordinated by the Quality End-of-Life Care Coalition of Canada, which is a network of 33 national organizations representing professional and family caregivers, volunteers, health care professionals and those with terminal illnesses along with their families.

The Quality End-of-Life Care Coalition of Canada believes that all Canadians have the right to quality end-of-life care that allows them to die with dignity, free of pain, surrounded by their loved ones, in the setting of their choice.

There is a growing demand for hospice palliative care in Canada. Nearly 259,000 Canadians die each year, and those who die of chronic diseases account for 70 per cent. Of the people who need hospice palliative care services, only 36 per cent have access to it, and when we look at those living in rural and remote locations, that percentage drops considerably.

With the aging of our population, by 2026, the number of Canadians dying each year will increase by 40 per cent, to 330,000 a year.

Honourable senators, most Canadians would prefer to die at home surrounded by family and friends. Most, however, are still dying in hospitals or long-term care homes.

I take this opportunity to thank Senator Carstairs for the work she has done in the field of palliative care. As a minister, she brought the quality end-of-life care issue to cabinet and to all Canadians.

All medical schools in Canada now educate physicians in palliative care. Programs for nurses, social workers and pharmacists include training in end-of-life care. This change can be attributed to the work that Senator Carstairs has done and the work she continues to do with a passion.

Honourable senators, it is important that Canadians plan for their own end-of-life care. We need to encourage more dialogue and more planning for death while we are living. High-quality palliative care should be an integral part of our health care system, and it should be available in hospitals, long-term care facilities, hospices and homes.

As Peter Mansbridge, the honorary chair of the National Hospice Palliative Care Week, stated:

> Hospice palliative care is about seeing someone with a life limiting illness as a living person, not a dying patient. It is about adding life to days and supporting the caregivers, family and friends.

THE LATE PETTY OFFICER DOUGLAS CRAIG BLAKE

Hon. Doug Finley: Honourable senators, today I stand before you with a heavy heart to speak about a tragic incident that occurred on Monday, May 4.

After bravely and successfully completing a mission of detonating a roadside bomb, Canadian sailor Petty Officer Second Class Craig Blake was killed after an improvised explosive device was detonated on his walk back to camp.

Other Canadian military personnel were injured in the explosion. Petty Officer Craig Blake is the first member of the Canadian navy to be killed in Afghanistan, which was particularly deeply felt as the petty officer's death occurred one day prior to the celebration of the navy's one hundredth birthday.

Blake was a native of my hometown, Simcoe, Ontario, though the effects of this hero's death will affect Canada nationwide. Petty Officer Blake, at the age of only 37 years, leaves behind his wife, two sons, family, friends and colleagues, through whom he will be remembered as a true leader.

He was a sailor who was both well liked and well respected in his career, as well as a family man with a great sense of humour and considerable athletic talent.

Petty Officer Blake is the one hundred and forty-third courageous Canadian who has paid the ultimate sacrifice to better the lives of those in need while serving his country since the Afghanistan mission began in 2002.

Honourable senators, please join me in remembering this dignified sailor, as well as the other 142 fine men and women who have shown incredible bravery and aid to those suffering in the province of Kandahar. Also, please take a moment to honour the Canadians who are still in Afghanistan fighting for the freedom that our country is lucky to experience every day. They are the best and the brightest that our nation has to offer.

[*Translation*]

ROUTINE PROCEEDINGS

CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—FIRST READING

Hon. Gerald J. Comeau (Deputy Leader of the Government) presented Bill S-10, An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts.

(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.)

THE SENATE

NOTICE OF MOTION TO URGE GOVERNMENT TO PROVIDE FOR THE PARTICIPATION OF HAITIAN WOMEN IN THE RECONSTRUCTION OF THEIR COUNTRY

Hon. Rose-Marie Losier-Cool: Honourable senators, pursuant to rule 58(1)(i), I give notice that, at the next sitting of the Senate, I will move:

That the Senate of Canada ask the Government of Canada, as regards its assistance to Haiti, to ensure and to prove with known and reliable indicators that Haitian women participate fully and equitably in the sustainable reconstruction and the economic, political and social life of their country; and

That a message be sent to the House of Commons to seek its concurrence in this motion.

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I would like to point out that, because the Leader of the Government in the Senate is unavoidably absent, the government will be unable to answer questions today.

• (1440)

[*English*]

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Carignan, seconded by the Honourable Senator Fortin-Duplessis, for the second reading of Bill S-6, An Act to amend the Criminal Code and another Act.

Hon. Sharon Carstairs: Honourable senators, there is, in my view, a great prevalence of misconception about the meaning of a life sentence in Canada. That came to my attention several years ago when, as Chair of the Standing Senate Committee on Legal and Constitutional Affairs, one of my colleagues from the other side — also a personal friend and a lawyer — the late Duncan Jessiman, said to me, "There is no sentence for life in Canada." I said, "Senator Jessiman, of course there is." He said, "No, there is not. Show it to me in the Criminal Code." We produced the Criminal Code and, lo and behold, clearly there was a life sentence in Canadian law.

I think that misconception is prevalent, that there is no such thing as a life sentence in Canada. Well, there is.

The sentence for someone convicted of first-degree murder and high treason or second-degree murder is a mandatory sentence. It is one of the few mandatory sentences in the Criminal Code. The judge has no discretion. The mandatory sentence is life imprisonment for first-degree or second-degree murder. A life sentence means just that — life. However, there is a possibility for parole. The only difference between a life sentence for first-degree murder and a life sentence for second-degree murder is the clause respecting eligibility for parole. Although there is no guarantee, in second-degree murder convictions there is eligibility for parole after 10 years, but it can go as high as 25 years if the judge so determines.

First-degree murder eligibility for requesting parole does not begin until 25 years have been served. However, the warrant that sends this individual to jail lasts a lifetime. Life means life. It is not just a slogan; it is the reality in Canada.

Eligibility for parole does not guarantee parole. Prisoners appear before a National Parole Board hearing. You hear much criticism in this country about the leniency of the National Parole Board. I find it interesting that although this government has put many pieces of legislation, so-called tough-on-crime bills, they have not ever done anything about parole. Is that not an interesting thought, honourable senators?

At a National Parole Board hearing the claimant can be refused, or may be given a variety of types of parole. He or she may be given day parole or weekend parole. In some cases, yes, the claimant may be released. In all cases where parole is granted, however, there are parole provisions.

Interestingly enough, some criminals, who do not want to be subject to parole provisions, choose to serve their complete sentences. If they serve the full sentence, they are released without supervision. They are released without controls because they have served their time.

In my view — and I am sure others do not share it — we would be better off to release people under parole conditions so we can monitor their behaviour when they are let out of prison.

What are parole provisions? Usually, the parolee has to report to a parole officer. In some cases, he or she can be prohibited from drinking or other forms of substance abuse. The parolee can be refused access to certain places. If, at any time, these parole conditions are not met, he or she can be returned to prison unless a judge determines otherwise. That is true whether the parolee has served 10 or 25 years. Parole eligibility does not guarantee release.

The faint-hope clause, which is the section of the Criminal Code subject to this particular bill, only impacts prisoners whose normal eligibility begins after 25 years. It is not available to those who have been convicted for multiple murders. Under section 745.6 of the Criminal Code, prisoners can make an application for parole after 15 years. However, honourable senators, under the present legislation, it is not a simple process.

The honourable senator on the other side, who spoke eloquently at second reading of this bill, failed to go through the current process. I believe it is important to elucidate on exactly how the present parole provision exists under the faint-hope clause so that honourable senators will know what they are amending.

The first thing that a criminal must do is make an application before a judge for so-called judicial screening. Under the current law, the judge must determine if there is a reasonable possibility of a successful parole application. If the judge determines that parole is unlikely, the process stops there and no parole is granted. If the judge determines that there is a reasonable possibility of parole, he convenes a jury. The jury must hear from the prisoner, but the jury must also hear from the victim and/or the victim's family. The jury, made up of citizens, must determine if the prisoner is able to apply for parole. Often the jury says no, so again the process comes to a halt; no parole. If the jury says yes, and only if the jury says yes, only then is the prisoner allowed to petition the National Parole Board. The convicted person petitions the National Parole Board, and the parole board has the power to consent or to deny parole. If the parole board consents to granting parole it is at this stage that it imposes the condition of parole. Honourable senators, it is for all the above conditions that very few make applications and even fewer are granted.

Honourable senators, the question that must be asked is, what is broken that needs to be fixed? The sponsor indicated that applications can be made too frequently for those presently serving sentences, because they can be made at 15, 17, 19 and 21 years. This bill limits the application process to twice during the incarceration. The inmate may make application at 15 years or somewhat later and then again five years following the first application. This provision may be worthy of our consideration because it is a great deal to put a victim's family through this parole application procedure every two years, although that is not generally what happens. However, the very fact that it is permitted is worthy of our looking carefully at that particular provision.

Let us be clear. Many who have asked for this provision do not have it granted, and generally, on average — as we learned when we studied this bill in 1997 — they have served 18 or 19 years before they actually become eligible. Honourable senators, that places Canada at one of the highest rates of release in terms of time served of almost all nations in the world, with the exception of the United States.

The sponsor of this bill also raised the concerns of victims. I agree that the process is difficult on victims. However, victims do have input into the present process. They are heard, and this is a very important part of the process.

Honourable senators, I believe our criminal justice system has two primary purposes. One is punishment and the other is rehabilitation.

• (1450)

I heard nothing in the sponsor's speech with respect to rehabilitation. There are hardened criminals where the hope of rehabilitation is dim. That is why the faint-hope clause does not apply to prisoners who have committed more than one murder. Those eligible under the faint-hope clause are usually those who have committed what many refer to as crimes of passion.

We heard only last week in testimony from the criminal justice system under our study of Bill S-2 that 80 per cent of murders are committed by someone who knew the victim and whom the victim, in turn, knew. Many single murders in this country are murders between two persons who know one another; a husband and a wife or two friends who have altercations, tempers rise and a crime is committed.

What we know about these situations is that they are often one-time events. After these offenders have served their time and they are released, the chances of the exact circumstances happening again are remote, and that is why, when these murderers are released, they rarely reoffend. They will not reoffend if they have been kept in jail for 15, 18 or 25 years. What purpose is served by keeping them in jail longer? Yes, it is

essential that they serve a significant sentence because it is important to send a signal that such behaviour is absolutely unacceptable. However, how many years must be served to send this message?

There are circumstances in which remorse is exhibited almost immediately, and that is not to say that this person should not serve significant time; they should. However, if their behaviour in jail is exemplary, if they have dealt with the issues of anger management, if they have accessed and benefited from programs while incarcerated, should they not be given a second chance?

Honourable senators, I have difficulty with a criminal justice system that is only about revenge. Have we seen a large increase in recidivism to justify the elimination of faint-hope? When I reviewed the testimony that we heard before the committee in late 1996, when section 745.6 was last amended, I did not hear that kind of evidence.

Appearing before the committee on October 31, 1996, Brian Saunders, the Executive Director of the John Howard Society in New Brunswick, said:

> The John Howard Society believes that the longer an individual remains isolated from the community, the less likely that person is to have a successful release. . . . We believe that a gradual and controlled conditional-release process, when well done and commenced at the right time, enhances the capacity of the correctional system to do its job correctly; that is, to be effective in correcting criminal behaviour and in creating a safer place for us all to live. This should be our goal for the justice system and for those who move through it.

Appearing before the committee on November 21, 1996, Brian Gough, a staff member of Project Lifeline, which is sponsored by the St. Leonard's Society of Canada and, by the way, a paroled lifer, said:

> The purpose of the federal correctional system is to carry out the sentence of the court; but it is also incumbent upon the system to recognize the profound interpersonal and intrapersonal change that occurs in an offender's life. The system is required to punish offenders by taking from him or her our most precious of rights, the right to liberty. It must also make every effort to salvage that life and to return the offender to the community as a law-abiding citizen. There is a period in the lives of a vast majority of lifers when this change occurs, and that change occurs well before 15 years.
>
> To deny a life a second chance ignores any semblance of fair and humane treatment and contravenes the very principles of a free and democratic society whose ethics reflect a Christian doctrine of redemption and forgiveness. I know of many convicted murderers who have been released through the parole process and who now live productive, law-abiding lives. They work, pay taxes, employ others and, in many cases, work in some social capacity to help others.

Honourable senators, these are not my comments.

We heard, for example, on November 6, 1996, from Scott Newark, the Executive Officer of the Canadian Police Association, who had been on record as wanting to repeal section 745. He said in speaking to Bill C-45 of that time:

> The process will change so that an individual judge makes a decision on a basis which is extremely unwise; I believe the phrase is a "reasonable prospect of success." At the very least, I suggest you insert something that says no comment can be made to the jury about the fact that some judge has predetermined that there is a reasonable prospect of success. If you do not, you can imagine what the results will be for juries.

I find that comment interesting because in the present bill that is before us, the wording is "a substantial" chance of success. If that is the signal we will give to the juries, that there is "a substantial" chance of success, is that not directing the jury more than the current bill directs the jury?

In testimony from someone supportive of the faint-hope clause from the Quebec Association of Social Rehabilitation Agencies on November 21, 1996, the witness said:

> Moreover, as described in the bill, the fact that a judge is the one who decides whether or not to hear an application for judicial review leads us to believe that the jury's authority has been usurped by the judge. We should not forget that in a judicial review hearing, the jury is comprised of people who come from the community in which the offence was committed.

Opponents to section 745 argue that at the time it was not faint-hope but a loophole, where everyone who applied was released, which of course is not the case. Those in favour of the bill were also concerned by the judicial review, as they feared it would usurp the jury's authority. Bill S-6, the bill presently before us, creates an even more stringent test for judicial review, that of "substantial likelihood." Does that not serve to instruct the jury even further?

Johanne Vallée, Member, Director General, Quebec Association of Social Rehabilitation Agencies, went on to say before the committee on November 21, 1996:

> We must bear in mind that, in Canada, the philosophy and mission of the Correctional Service of Canada is based on the belief that a person is capable of change. The proposed amendments further limit access to this process and stand in stark contrast to this philosophy. They emphasize that incarceration is associated more with vengeance and punishment than with a chance for social reintegration.
>
> The judicial review process rewards those who, during their period of incarceration, have made a genuine effort to become better citizens. It is thus pointless to extend their time behind bars. The time comes when it is appropriate to release an individual. That is why judicial review is a useful, necessary mechanism. It helps to identify those who are

> ready to be released and to avoid situations where these persons would be detained uselessly in prison when they could be out becoming productive members of their community at less cost to the taxpayers.
>
> If access to release is further restricted, the hopes of inmates will be dashed, and it will be much more difficult to manage lengthy sentences. Consider what is happening in France. This country is currently experiencing serious problems with violence in its institutions because of overcrowding, lengthy sentences and fixed-term sentences.

On November 27, 1996, Professor Patrick Healy of McGill University in his appearance before the committee said:

> You might have heard in proceedings before you a great deal of talk about different aims in sentencing policy in Canadian law. There is no aim higher than the protection of the Canadian public. I would suggest to you that there is no empirical evidence to suggest that the protection of Canadian society has been diminished by the application of section 745.6. I would suggest, in fact, that section 745.6 is entirely consistent with the protection of the Canadian public.
>
> If the policy of the law is to give the convicted person, after 15 years, a chance at a chance at a chance, let us consider for a moment precisely what that means. It means that, having regard to the conduct of the offender in prison and a variety of other factors, there is reason to believe that given the protection of the Canadian public it may be safe for this person to be considered for earlier release. This does not mean that a person who has been sentenced to life has his sentence in any way commuted from that principle. The only way in which you can eliminate a life sentence is by a pardon and that simply does not occur. A life sentence remains with someone, whether or not that person is released for life. The policy of section 745.6 allows representatives of the community, through the jury and through the National Parole Board, to consider whether there is something in the circumstances of the offender that makes it consistent with the protection of the Canadian public for that person to be considered for early release.

• (1500)

He went on to say:

> . . . without the phase of judicial screening, you would expose the families of victims to an automatic hearing before a jury and you would force them to go through the evidence in a case that might be hopeless. This screening at least provides some measure of protection for them. However, I repeat, taking the three together — the judicial screening, the jury and the parole board — you could not have a set of decision-making steps that would give the public more confidence in the acceptability of the results.

We have a system that recognizes both principles of justice-deterrence and rehabilitation; a system that recognizes individual circumstances, considers victim impact and includes a unanimous jury of people from the community. Why do we need to change it?

Professor Allan Manson of Queen's University, representing the Canadian Bar Association, also appeared on November 27, 1996. He said:

> When the Supreme Court of Canada in the case of *Luxton*, in 1990, confirmed the constitutional validity of the new murder sentencing regime, and the lengthy sentences for first degree murder, in doing so it made specific reference to section 745 as one of the factors that persuaded the court that these sentences are not cruel and unusual treatment and punishment, or grossly disproportionate. The deserving prisoner has the opportunity to come forward after 15 years. The continuing excessive access to section 745 is essential to preserve the constitutional validity of the whole homicide sentencing regime.

Has the government considered the effect of the constitutional validity of the homicide sentencing regime by repealing section 745.6?

Honourable senators, let us send this bill to committee, despite my serious reservations, but let us keep an open mind as to whether, one, it is constitutionally valid; two, it makes us safer on our streets and in our homes; and three, it helps or hinders our corrections system in this country.

Hon. Anne C. Cools: Will the honourable senator take a question?

I was listening with some care to Senator Carstairs, as I had listened to Senator Carignan with great care. I thank both of them for excellent speeches.

Honourable senators, in a way, I want to appeal to both of them but especially to Senator Carstairs, who sits on the Standing Senate Committee on Legal and Constitutional Affairs and was once herself a chair of the committee, to make sure that we study these relatively arcane areas of law. By that I speak, for example, of the Parole Act, which created the National Parole Board. It was brought in, I believe, under Mr. John Diefenbaker. It had its origin in a famous report of Mr. Justice Fauteux, which was called the Fauteux report. It would be helpful to the committee and to our studies if we could look at that report. I will ask my questions and let the honourable senator respond at the end, or as she chooses.

Honourable senators, the system is a far more complex system sometimes than we realize. The business of parole is not about innocence or guilt. That is presumed dealt with by courts, juries, judges and so on. The parole system begins with the premise that not only is the inmate guilty but proven so. Therefore, parole has its origins in the notion of, as Senator Carstairs said, human redemption, human remission from their sins. The parole system used to be called the remissions service.

Honourable senators, I want us to produce a good study, and to understand clearly that the parole system is about whether or not the individual inmate has changed since conviction and since sentencing. Most important of all, the primary concern to which the parole board addresses itself is whether he or she is a risk to society. I ask Senator Carstairs to comment on that point and

to assure us that we will look at that issue precisely because no inmate is ever released on parole from the maximum security institutions. There are many other protections. There is a process that is called, I believe, cascading through the system, and as an inmate moves from, say, maximum security through medium, through minimum, his possibilities for parole become greater.

Honourable senators, it would be wonderful if the committee could look with some gravity and seriousness at these questions, and perhaps bring individuals before the committee to explain some of these processes. Can Senator Carstairs give us some assurance that she will strive as hard as possible to ensure that the proper study takes place, and the committee takes the time to do the work that needs to be done?

Senator Carstairs: I thank Senator Cools. First, I have not been on the Standing Senate Committee on Legal and Constitutional Affairs for a number of years since I was busy in other roles, but I have been a member since we came back after prorogation and we are under the distinguished leadership of Senator Fraser and Senator Wallace. I know that both of them want to do thorough jobs of examining all pieces of legislation.

As for the honourable senator's specific suggestion that we should look at the Parole Act and the provisions of parole, I think that suggestion is an excellent one, because this particular piece of legislation amends those provisions. It amends the opportunity for parole, so it would be erroneous for us to look at this bill without having a better understanding of how the parole system works in Canada.

The Hon. the Speaker: If Senator Carignan speaks, it will have the effect of closing the debate.

Senator Carstairs: I believe he wanted to ask a question, not to speak.

The Hon. the Speaker: Senator Carignan on questions and comments.

[*Translation*]

Hon. Claude Carignan: Honourable senators, Senator Carstairs said that the offender's sentence must not be lengthened. Of course, lengthening the offender's sentence after he has already been convicted would be unconstitutional. Handing down a longer sentence than the one already imposed would violate the Charter.

It seems to me that not only does the bill not lengthen the offender's sentence, but it ensures that the sentence imposed is served and is not reduced.

That important nuance in the bill will enhance public confidence in the system. I have always believed that the public should have full confidence in its institutions, including Parliament and the justice system, in order to ensure that they run smoothly.

Would you not agree that, in addition to the three points you added, the committee's study should also consider whether the bill inspires public confidence and protects victims' rights, and try to ensure such an outcome?

• (1510)

[*English*]

Senator Carstairs: I thank the honourable senator for his question, although I believe it is impossible to impose a longer sentence than life in prison. Anyone convicted of first-degree murder or second-degree murder, is condemned to life in prison. The only difference is whether the person should be eligible for parole after 25 years or whether a faint-hope clause would allow the person to apply for parole between 15 years and 25 years. I believe that is the only nuance of concern to honourable senators.

I mentioned that we have to be concerned about the victims. When the bill was amended, in 1996, it took into account, for the very first time, the right of victims to appear before this jury. The jury did not exist prior to that. The jury was put into place in the bill that came into force and effect in 1997 but which was studied in 1996. So, yes, all of the aspects need to be studied. Yes, the right of the victim and/or the victim's family needs to be studied. Quite often, as the honourable senator is aware, the victim is no longer with us. The issue of whether our streets are safer should also be studied. I said that should be one of our considerations, but, in our presentations in 1996, I was assured by the Correctional Service of Canada that not a single person released on early parole had reoffended.

Senator Cools: Perhaps the Honourable Senator Carstairs could explain to this house that the whole system of parole is really under the powers of clemency and mercy. It is all about the exercise of the clemency and mercy powers. In addition to clemency by parole, there is what used to be called earned remission. For example, in the old penitentiary system, Saturdays and Sundays were off from sentence. I do not know what it is today. Although the inmate was in the institution for those days, they were remitted. Could the honourable senator explain that?

Honourable senators, I think there is a profound misunderstanding of the clemency and mercy powers. When section 745 was first created, they were careful at the time — and I remember a long discussion about this — to bring in the judges. Many people questioned whether or not that should have been done. There was a hefty motivation, especially among the legalists in this place, to involve judges in this decision, rather than to leave them "to administrative tribunals." Perhaps the committee will take some time to clarify some of these questions.

Honourable senators, parole is a part of Her Majesty's clemency and mercy powers, the highest form of which is the Royal Prerogative of Mercy with high pardons, as distinct from the pardon under the Criminal Records Act. I hope that the committee will bring some clarity to Canadians' understanding of these systems. I am well aware of the problems, the errors, the negligence and the carelessness within the system, but I am talking about the wider principles. Could the honourable senator please explain what the clemency group of powers is, and so on?

Senator Carstairs: Honourable senators, it is important to go back to the origin of section 745. One must recognize that, as we were moving away from the death penalty, there was to be a life sentence. Some said, "If you just have a sentence for life and you have no inherent ability to ever reform, to ever rehabilitate

yourself, then we must build into that a system whereby there would be at least a request for eligibility for parole." That was set at 25 years for first-degree murder, and generally at 10 years for second-degree murder, although, as I said, a judge could raise it to 25 years.

There was then the desire to say, what if there was genuine remorse? What if there was genuine rehabilitation? Would there be no way to give this individual hope? That is why it is called the faint-hope clause. That is, it is a faint hope that the inmate will receive parole. Many do not apply because they know they could never qualify for the faint-hope clause.

You have instituted the faint-hope clause on the very basis of the clemency provisions to which the honourable senator has referred, namely, that the system must work in such a way that we must recognize that the ability to reform is inherent in all human beings. If we do not believe that, honourable senators, then we lock everyone up for life. We would have an awful lot of our citizens in prison. We already have a great number of our citizens in prison. I do not want to turn us into what they are like south of the border. What always concerns me so much is the fact that 70 per cent of our citizens in our prisons are Aboriginal people.

Senator Cools: Honourable senators, I had intended originally to speak to this, but I think there is a general feeling that we want to move it on to the committee. I hope that the committee's study will bring forth information and data on the current composition of the inmate population. The honourable senator mentioned that a huge number of inmates are from the Aboriginal community. I am well informed that there is a disproportionate number of Black people in the system. I am hoping that we will bring forward some of this data as we go forward.

Having said that, honourable senators, I shall not bother to put further questions. This is a huge issue. It is easy, honourable senators, to appeal to bloodthirstiness in human beings. I have read the histories and accounts of lynchings where the individuals discovered hours after the lynching that they had lynched the wrong person. All those accounts have focused on that element of bloodthirstiness that can be appealed to in humans. As members of Parliament and as senators, we should always repress that bloodthirstiness rather than seek to elevate it, which, in my mind, is the purpose of civilization.

Honourable senators, there are large numbers of men in this system, a much greater proportion than women. I had a gentleman in my office a few days ago who is one of the 32 well-known cases of wrongful conviction. I repeat: 32 cases. That shakes one's confidence in the system.

• (1520)

Honourable senators, the powers of clemency and mercy should always exist side by side with the exceedingly slow grind of the wheels of justice because the powers of clemency understand that human beings are imperfect. Offenders are imperfect, but so are the people who try and process offenders. Years ago, most judges, members of Parliament and government retreated from capital punishment not because they believed that every murderer was a good human being, but because they understood that systems and processes are fraught with imperfection and carelessness and that human beings make mistakes.

Honourable senators, we know of cases where a judge simply took a dislike to a defendant or an accused. Human imperfection exists on the part of offenders, which gets them into trouble. However, human imperfection also exists in those who try and process offenders. If one knows anything about the corrections system, its imperfections are enormous. At every stage of the process as an offender moves through the system, the system keeps trying to correct earlier wrongs.

I will give honourable senators an example. When I was on the Parole Board, I encountered an individual who was thought to be one of the hardest and toughest of the lot. During an episode of turbulence in the prison, this particular young man put his own life at risk when a group of inmates took a prison guard hostage and had strung up the guard to murder him. This young man entered the fray, risked his own life, challenged the other inmates and cut down the guard. That fellow had cascaded through the system and came before the Parole Board.

As honourable senators, we must not be so hasty to rush to judgment. There is much we do not know. Even now, we do not know why one in four Black men in the U.S. is in prison. It will soon be one in three.

Honourable senators, we must always appeal to reason and good sense.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, I have a question for Senator Carstairs. I have the feeling that we are hearing more from the defenders of criminals' rights than from those who defend victims' rights.

It is true that justice must first impose a sentence for a crime and then enable the criminal to be rehabilitated. However, justice must first seek the truth using the facts that are presented. When a judge sentences an offender to 25 years with no possibility of parole, we are lying to the public, because the prison system could release that criminal after 15 years.

I have attended trials. I attended the criminal trial in my daughter's case, and the judge handed down a sentence of 25 years with no possibility of parole. Why allow the prison system to release a criminal after 15 years? If justice is the search for truth, are we lying to members of the public and families when the judge says 25 years with no possibility of parole, yet the criminal could be released after 15 years? Is justice lying at that point?

[*English*]

The Hon. the Speaker: Senator Carstairs' additional five minutes has been exhausted. Is an additional five minutes granted?

Hon. Gerald J. Comeau (Deputy Leader of the Government): Yes.

Senator Carstairs: I thank honourable senators for the additional time because I want to answer Senator Boisvenu's question.

Honourable senators, we changed the law in 1996, which took effect in 1997, because victims and victims' groups said they were not represented in this process. The individual took his request for faint-hope application to the National Parole Board and, without any guarantee that victims would be heard, parole was granted or refused. We changed that in 1996 and 1997 so that the jury needed to hear from the victim or the victim's families as part of its deliberation. The jury then decided, having heard from the convicted prisoner and the victim's family, whether the prisoner should be allowed to apply for — not get — a parole.

[*Translation*]

Senator Boisvenu: Honourable senators, I am very familiar with the changes made in 1996, 1997, 2001 and 2007, when it became possible for victims' families to give an impact statement as part of the parole process. That was not my question.

I will repeat my question. When a judge sitting on the bench — after the jury has determined that the criminal is guilty of first-degree murder — says to the offender, "I sentence you to 25 years' imprisonment without possibility of parole," is the judge lying to citizens and to the family if the penal system can release the offender after 15 years? Yes or no?

[*English*]

Senator Carstairs: Honourable senators, of course, the justice is not lying. The justice knows that section 745.6 of the Criminal Code exists, which is referred to as the faint-hope clause.

[*Translation*]

Senator Boisvenu: Then, the Criminal Code will have to be amended and judges informed, because it seems that they are misinformed. In the case of a firm 25-year sentence without possibility of parole, the judge will be told to say, "Yes, but I will authorize you to apply for parole after serving 15 years." Would that not make the Criminal Code be more transparent in the eyes of citizens?

[*English*]

Senator Carstairs: Honourable senators, I find it difficult to believe that judges in this country are not aware of section 745.6 of the Criminal Code of Canada. After all, they make judgments on the Criminal Code of Canada each and every day of their working lives.

Hon. Hector Daniel Lang: Honourable senators, my question relates to what I think is one of the most important aspects of the bill before us. The principle behind this bill is the fact that the most heinous crime has occurred, due deliberation has taken place and the final outcome is 25 years or life for the convicted. With the faint hope clause, the reality is that the family perhaps has to relive the decision made 15 years prior.

As the previous honourable senator asked, is it fair to those families to have to go through that experience again, given that the individual in question was charged, found to be guilty and sentenced to 25 years? All of a sudden the family should relive that experience because the honourable senator told us she feels he or she should have the opportunity for rehabilitation.

• (1530)

Senator Carstairs: I suggest to the honourable senator that the family will have that difficulty at 25 years in any case. At 25 years, the individual is eligible for parole. Given life expectancies, the individual may not be alive at 25 years.

However, I think the honourable senator is missing the word "faint," and I stress the word "faint." Few people who apply for this provision are successful. The one aspect of the bill that I think is worthy of our consideration is the issue of not allowing them to apply every two years after they have served 15 years. That part of this bill says, for those who are currently in the system — not for new ones but for those currently in the system — that they be given the opportunity to apply only at 15 years and then again, 5 years later. In this way, the family will not be put through this experience too often. I think that change is worthy of our consideration.

However, I believe there are examples of individuals who rehabilitate themselves. There must be an opportunity for those people to be given a faint hope.

The Hon. the Speaker: The extended time has been exhausted, honourable senators. Is the question being called?

Hon. Senators: Question.

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

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

REFERRED TO COMMITTEE

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

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

FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Comeau, seconded by the Honourable Senator Tkachuk, for the second reading of Bill S-4, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak on Bill S-4, a bill respecting matrimonial property situated on First Nations reserves.

The preamble sets out:

[*Translation*]

> WHEREAS it is necessary to address certain family law matters on First Nation reserves since provincial and territorial laws that address those matters are not applicable there and since the *Indian Act* does not address those matters;
>
> WHEREAS measures are required to provide spouses or common-law partners with rights and remedies during a conjugal relationship, when that relationship breaks down or on the death of a spouse or common-law partner in respect of

[*English*]

The preamble goes on to talk about how it is necessary also to look after the interests of the children. When decision-makers look at the whole issue, they should look at how this bill will protect the children. Bill S-4 clearly emphasizes to the decision-makers that protecting the rights of the child to maintain contact with the First Nation community is paramount. The child also needs to know his or her First Nation culture and social rights.

Presently, when a marriage breaks up, people living on reserves do not enjoy the same rights on a break-up of marriage that are enjoyed by the rest of us. The people on the reserve are left without protection because the Indian Act is silent on the division of matrimonial property. Unfortunately, there is no legislation to fill the gap.

In our legal system, matrimonial property is normally owned by one or both spouses, and used for a family purpose. What is matrimonial property? Matrimonial property can be divided into two types of property. There is matrimonial real property, which includes land and anything permanently attached to the land, such as a home for the family. Under the Constitution Act, 1982, provincial and territorial governments have jurisdiction over property. As a result, the provinces and territories have laws protecting spouses on separation.

There is a legislative gap. The courts have no authority to protect the matrimonial real property interests of spouses on reserves. In a report called *Reclaiming Our Way of Being: Matrimonial Real Property Solutions, People's Report*, the Native Women's Association of Canada states:

> This lack of legal clarity and protection also means that women who are experiencing violence, or who have become widowed, may lose their homes on the reserve. NWAC understands that this gap in the law harms Aboriginal women and children more often than Aboriginal men. Women and children who have to move away from the reserve lose the support and help of their families, friends, and community. They also lose their access to benefits and programs that are only available to people living on reserve. The entire community will miss the women and their children's contributions as well, if they have to move away from the reserve.

Later, the report continues:

> Children have the right to live in a safe and healthy environment. The well being of children is best met by their parents being able to find solutions to their disagreements that consider the needs of the children first.
>
> *". . .the importance of making the children feel safe in their communities and not having to leave their communities and so that they can have some stability."*
>
> Men are our equal partners, and their skills and knowledge give them an essential and equal role in the community. Men contribute to and benefit from the existence of strong and respectful families in our communities. Men also provide leadership in rebuilding our communities. As one woman said:
>
> *"We need to work together, right - men and women. I'm a mother of two sons; I don't want my sons separated from stuff that's going to affect them. We are women, we give birth to men, and they are a part of us."*

The report later says:

> *". . . our traditional ways have brought us through and we have the ability to pull back from the memories of our elders and utilize those systems for our people."*

As I have already stated, the land on reserves falls under the exclusive jurisdiction of the federal government within the meaning of section 91(24) of the Constitution Act, 1867.

Under section 88 of the Indian Act, subject to treaties concluded by First Nations with the Crown and to the federal government laws, First Nations people are bound by all provincial laws of general application except to the extent that such laws are not consistent with the Indian Act. The provinces are responsible for family law matters, including matrimonial property, under section 92(13) of the Constitution Act, 1867.

At first blush, there could be an assumption that provincial or territorial legislation would also govern property rights upon a break-up of a marriage on reserves. However, because of the legal status of Indian reserves, there needs to be a distinction between real and personal property.

There is no law in place for division of matrimonial real property on reserves and, therefore, there is a need for legislation so all Canadians have the same rights. Bill S-4 is trying to right a wrong and be just for all Canadians.

The provincial law applies to personal property in the event of a break-up of marriage on the reserve; that is to say, assets such as cars, furniture and personal effects. The Supreme Court in *Derrickson v. Derrickson* held that the possession of land on reserves and the transfer of a right of possession are governed by the provisions set out in the Indian Act. The Supreme Court held that the courts cannot rely on provincial law to order the division of real property on reserves.

In *Paul v. Paul*, a 1986 case that was handed down the same year as the *Derrickson* case, the Supreme Court held that the same principles apply to an application under provincial law for interim occupancy of the family home.

Honourable senators, there is a legislative gap for people on reserves and then there is the issue of ownership of land and collective rights on the reserves.

Most Canadians who own land have full — fee simple — ownership of land itself. Reserve land is not "owned" in the usual meaning of the word by the people of the First Nation. Underlying title is held by the Crown. As section 18 of the Indian Act says:

> . . . reserves are held by Her Majesty for the use and benefit of the respective bands for which they are set apart.

• (1540)

Aboriginal people can obtain possession of land on which they would be able to erect buildings, and the buildings will belong to them, but in most cases, they will never have full fee simple ownership of the land itself.

In 1986, as I have already stated, the Supreme Court, in *Derrickson v. Derrickson* and then in *Paul v. Paul*, held that if a marriage breaks down on a reserve, the courts cannot apply provincial or territorial jurisdiction because reserve lands fall under federal jurisdiction.

The result of *Derrickson* and *Paul* and the lack of legislation have meant that people do not enjoy the same matrimonial property rights as the rest of us have. Upon the breakup of a marriage, the people on the reserve cannot seek the help of provincial or territorial courts to divide their assets.

Since 1986, the *Derrickson* decision of the Supreme Court of Canada and the gap in the law meant the courts cannot grant relief on such things as: to stop a spouse from selling their house; order that one spouse — normally the spouse who has the sole custody of the children — have possession of the house; order the partition and sale of the family home; order one spouse to receive compensation from the sale of the house; or order that the spouse who has the house in his or her name not further encumber the property.

Bill S-4 purports to provide for interim measures and these should be examined in committee.

Some key elements of this bill are that one spouse can apply for exclusive occupation of the matrimonial home. Another element is that a person can apply for an order for compensation on sale of the home and, if there is an assault by one spouse, the other spouse can apply for an immediate order that the offending spouse vacate the home for up to 90 days. In addition, the court can order the transfer of certain rights and interests in the reserve lands to either spouse.

There have been some consultations with the First Nations, with Chief Wendy Grant John being the ministerial representative. However, I understand there is a concern that there have not been enough consultations. The Native Women's Association of Canada, in their earlier report that I quoted, cautioned us to make sure that the ideas for solutions for this matrimonial real property division come from the people of the First Nation who have personal experience with matrimonial real property; and they further caution us that the First Nation's own culture, knowledge and experience be reflected.

The Native Women's Association of Canada, in their report, quote one of the women. She says:

> I think there are just layers and layers like an onion. I always say when it comes to Aboriginal women it's just like an onion, one layer after another after another after another. We're so pushed down by all those determinants that it makes it quite difficult to hear our voice.

Honourable senators, Bill S-4 alone will not change the lives of First Nations people, especially of the women. The following are some of the resources that we need to provide for this bill to become an effective law.

The first is housing. The shortage of on-reserve housing is one of the main factors forcing people to leave the reserve in the event of a marriage breakdown. The Senate Committee on Human Rights studied this issue in 2003. In our report, which was titled *A Hard Bed to Lie In: Matrimonial Real Property on Reserve*, the Native Women's Association of Canada stated to the committee:

> NWAC takes the position that effective remedies to address a lack of matrimonial property rights regimes on reserves must be implemented in all communities immediately, even if this is before the realization of self-government and even if this means legislative reform, due to the severity of its impacts on the lives of First Nations women and their children. This impact is captured in the following account.
>
> An Aboriginal woman committed suicide earlier this year after the authorities apprehended her children. The woman, who had five children, was forced to leave her reserve due to a chronic housing shortage. However, she could not find affordable housing off the reserve. Due to her financial situation she was forced to live in a rundown boarding house with five children. She sought assistance from the authorities to seek affordable housing for her and her children. The authorities responded by apprehending her children. At that point, the woman, sadly, lost all hope and took her life.

Besides providing housing, there is also the issue of access to justice. For this bill to help people on reserves there will have to be access to the courts, especially for women living in remote areas. With easier access to justice, there will have to be an implementation of legal aid for people on the reserves.

When this bill is sent to committee, in order to provide balance or justice with regard to matrimonial real property, we will have to work hard to ensure that we do not create injustice on the following issues, which we will have to look at when we study the bill.

We will have to look at whether Bill S-4 prejudices the inherent jurisdiction that the First Nations have over marriage and matrimonial property. We will have to study how Bill S-4 could

affect the inherent right of self-government and what effect it will have on the collective rights of the First Nations when this bill comes into force. We will have to examine whether this bill will affect any other right of self-government and whether Bill S-4 would be contrary to the Constitution Act, 1982.

Honourable senators, I would like to conclude by reading the conclusion of the report of the Native Women's Association of Canada.

On page 23, they state:

> The connections of Aboriginal peoples to our lands and territories are sacred and historical. These are not just pieces of land, but our traditional territories. This issue of matrimonial property on reserve was not created by Aboriginal people. The issue of matrimonial real property on reserve is now a complex one to resolve; however, it should not be. There has been much discrimination in the past and it continues to this day. This discrimination has created detrimental impacts upon many generations of youth, women, men, families, and communities across this country.

NWAC believes that introducing legislation on matrimonial real property is only part of the solution, and they end by saying, as one participant told us:

> I know that the urgency of the problems, one would be quick to look at what we do to "stop the bleeding" and why that concerns me is that I've seen over the years too often that if government can stop the bleeding, that is all they want to do, they haven't healed the wound.

Honourable senators, Bill S-4 is a start to resolving issues for First Nations people on matrimonial property, but we also have to look at providing safe homes for women on reserves or near reserves, and how to help them build more housing and obtain better access to justice.

Hon. Sandra Lovelace Nicholas: Would the honourable senator take a question?

Senator Jaffer: Yes.

Senator Lovelace Nicholas: When the honourable senator was in committee hearings, did she feel that most of the problems originate with INAC? I refer to the housing shortage and the lack of adequate funding.

Senator Jaffer: Honourable senators I have to confess that the hearings were in 2003, so I could not say today exactly if most of the problems originated with INAC. However, having just read the report, I do know that housing and funding issues were emphasized by most on-reserve witnesses.

Hon. Suzanne Fortin-Duplessis (The Hon. the Acting Speaker): Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Acting Speaker: It is moved by Senator Comeau, seconded by Senator Tkachuk, that the bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Wallace, bill referred to the Standing Senate Committee on Human Rights.)

(The Senate adjourned until Thursday, May 6, 2010, at 1:30 p.m.)

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