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Tuesday, May 11, 2010

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Tuesday, May 11, 2010

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I should like to draw your attention to the presence in the gallery of Mr. Lu Yongxiang, Vice-Chairman of the Standing Committee of the National People's Congress of the People's Republic of China, together with an accompanying delegation.

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

Hon. Senators: Hear, hear.

The Hon. the Speaker: Honourable senators, I would also like to draw your attention to the presence in the gallery of Mr. Gifford Cooke, President of Cooke Aquaculture Inc.; Mrs. Margery Cooke, St. George, New Brunswick; and Greg Dunlop and Peggy Dunlop, Quispamsis, New Brunswick.

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

Hon. Senators: Hear, hear.

The Hon. the Speaker: Honourable senators, also in the gallery we have Mr. Hans van Baalen, President of the Liberal International and Leader of the Dutch Liberal Delegation in the European Parliament; and Mr. James Patava, Political Advisor, Liberal International. They are all guests of our colleague, the Honourable Senator Poulin.

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

Hon. Senators: Hear, hear.

The Hon. the Speaker: Finally, and certainly not least, I am happy to draw your attention, honourable senators, to the presence in the gallery of Mrs. Anne Keon and members of the Keon family.

Hon. Senators: Hear, hear.

[*Translation*]

SENATORS' STATEMENTS

TRIBUTES

THE HONOURABLE WILBERT J. KEON, O.C.

The Hon. the Speaker: Honourable senators, pursuant to rule 22(10), the Leader of the Opposition has asked that the time provided for consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Senator Wilbert Keon, who will be retiring from the Senate on May 17, 2010.

[*English*]

I wish to remind honourable senators that, pursuant to our rules, each senator will be allowed three minutes and may speak only once.

Is it agreed that we continue our tributes to Senator Keon under Senators' Statements?

Hon. Senators: Agreed.

The Hon. the Speaker: We will, therefore, have the balance of the 30 minutes for tributes, not including the time allotted for Senator Keon's response.

Any time remaining after tributes would then be used for Senators' Statements.

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, this is a day that I did not want to see come to pass. I am sure that view is shared by all of our colleagues in this place.

Honourable senators, after almost 20 years of service in the Senate of Canada, we say goodbye to our respected colleague and dear friend, the Honourable Senator Doctor Wilbert Keon. I know I speak for all honourable senators in saying that we will miss Senator Keon tremendously. First and foremost, throughout, his work in this chamber and beyond has been as a result of his dedication to the health and well-being not only of Canadians but also of our citizens worldwide.

It is difficult to overstate all that Wilbert Keon has meant to the city of Ottawa and its residents. I am happy to say that he was born in the Ottawa Valley, in Sheenboro, Quebec. He received his MD from the University of Ottawa, and, after studying at McGill, at the University of Toronto, and at Harvard, Dr. Keon returned to Canada in 1969 to found and build the Ottawa Heart Institute. Since it was established in 1976, the Ottawa Heart Institute has become Canada's largest and foremost cardiovascular health centre dedicated to understanding, treating and preventing heart disease.

Dr. Keon turned his dream into a reality and his life's work has changed for the better the lives of countless people — numbers far too many to even try to imagine. He made this contribution not only to our beloved city of Ottawa but also throughout Canada and around the world.

Dr. Keon is a true pioneer in the field of cardiology and has received many accolades as a result, including the highest honour of the Canadian Medical Association, the F.N.G. Starr Award; and an induction into the Canadian Medical Hall of Fame. The hall of fame citation reads in part:

> He is regarded by colleagues as an icon and by patients as the essence of the caring spirit in medicine.

• (1410)

As I have said many times, including at the Canadian Medical Association reception, had Dr. Keon been an American, he would have been *TIME*'s Man of the Year and been on the cover of that magazine.

In September 1990, Dr. Keon was named to the Senate of Canada by former Prime Minister the Right Honourable Brian Mulroney. During his almost two decades of service in the Senate of Canada, our colleague has made a meaningful, lasting contribution to the work of this place; most particularly as a long-standing member of the Standing Senate Committee on Social Affairs, Science and Technology. Senator Keon provided valuable input toward the committee's 2002 report on the federal role in our health care system, in which many of us participated. I was fortunate to have been deputy chair of the committee at the time of this comprehensive study, and I know that all honourable senators who contributed to that study believe it has made a more lasting impact on public policy in our country than any other report published before or since.

Senator Keon served as the deputy chair of the committee during its study on mental health, mental illness and addiction in Canada, which produced a Senate report in 2006, entitled *Out of the Shadows at Last*. All honourable senators who took part in that study are proud and humbled to have played a role in bringing national attention to this painful, often hidden problem facing families across the country. Dr. Keon was a leader in ensuring this report came to fruition. The report ultimately led to the creation, under our Conservative government, of the Mental Health Commission of Canada, which is chaired today by our former colleague, the Honourable Michael Kirby.

For all his impressive accomplishments, Senator Keon remains a kind, thoughtful and delightful person to know, someone whose giggle makes us giggle too, and it will surely be missed by all of us who got caught up in how this all happens.

Although we say goodbye today to Senator Keon with considerable sadness, we know that as a resident of Ottawa, he will never be too far away.

With great affection and thanks for all you have contributed to this chamber, Senator Keon, our Conservative caucus, the Senate as a whole, our city and our great country, I wish you and Anne a happy, healthy and well-deserved retirement.

I also would like to bring greetings to your son Ryan and your daughter-in-law Cindy, who are in the gallery with your grandchildren and, of course, your daughter Claudia, who is in the United Kingdom, and your son Neil, who lives in Dallas.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, Hippocrates, the so-called "father of medicine," is reputed to have said that wherever the art of medicine is loved, there is also a love of humanity. Although Hippocrates lived in the 4th century BC, his words could well have been inspired by Dr. Keon because they describe his work so perfectly.

Medicine for Senator Keon has never been primarily about medical procedures, however skilled or groundbreaking. Medicine is first and foremost about helping people.

Given Senator Keon's determination to help people, it should have come as no surprise to anyone that when he was asked by Prime Minister Brian Mulroney in 1990 to serve here in the Senate, he agreed. Although he came during a tumultuous time, in the middle of the GST debate, he quickly earned the respect of his colleagues on both sides of the chamber.

I have spoken here before, in other contexts, of the exceptional wealth and depth of talent and experience that we have gathered around us in this chamber, and the myriad ways this has contributed to the Senate as an institution and its contribution to public policy in ways that help Canadians. Without question, Senator Keon exemplifies the very best of this place.

I should add that Senator Keon's presence here has been a source of comfort to us and to our families. It is a good thing to know that one of the world's foremost cardiac specialists is in our midst. One never knows when that might come in handy.

Throughout his almost 20 years here, Senator Keon has devoted himself to advancing good health for all Canadians. He was, as Senator LeBreton has said, a driving force behind the two landmark reports of the Standing Senate Committee on Social Affairs, Science and Technology: the 2001-02 study entitled *Study on the State of the Health Care System in Canada*, and the groundbreaking 2006 report, *Out of the Shadows at Last*, *Transforming Mental Health, Mental Illness and Addiction Services in Canada*. These have taken their place among the finest reports ever produced by this chamber. In the best tradition of this place, they focused and advanced public debate on critical issues facing Canada.

Last year, Senator Keon was deputy chair of the Special Senate Committee on Aging, which produced the report entitled *Canada's Aging Population: Seizing the Opportunity*. A month after he spoke in this chamber on that report, he rose as chair of the Social Affairs Committee's Subcommittee on Population Health to table and speak to their report, entitled *A Healthy, Productive Canada: A Determinant of Health Approach*.

As Dr. Keon said in 2007:

> The health-care system is one determinant of health, but it counts for very little in the overall health status of the population. To produce a healthy population, you have to eliminate poverty, at least poverty as it affects nutrition, and you do that by providing adequate housing and particularly education institutions.

Honourable senators will understand why I began these remarks by quoting Hippocrates. This is a man who may love the art of medicine, but it is because he loves humanity.

Senator Keon, all of us have been proud to serve in this chamber with you. We may have sat on opposite sides, we may have disagreed from time to time, but there is no question that our goals are the same: to work to enable Canadians to lead the best and healthiest lives possible.

While you may be replaced, there is some comfort in knowing that the political tradition in the Keon family will continue after the next election, when Ryan will be joining our caucus as the new Liberal member of Parliament for Nepean—Carleton.

Senator Keon, we will all miss you; our very best wishes to you, to Anne, to your three children, Claudia, Ryan and Neil, and to your six grandchildren and another who is almost here.

Congratulations and thank you so much.

Hon. Lowell Murray: Honourable senators, to be named to the Senate is, for any Canadian, an honour and a unique privilege. However, there are a few rare individuals whose appointment adds honour and lustre to our chamber and to Parliament. We bask in the reflected glory of such as the Honourable Wilbert Keon, who came here in September 1990. Senator Cowan has properly described the period as "tumultuous" and he was not even here.

That the appointment was truly an inspired choice was lost on some Ottawa media types who, in their obsessive, almost pathological malice towards the then Prime Minister, poured out a full measure of their venom and bitterness on Senator Keon's head, thus inciting even more extreme elements in the community to do likewise.

That was a brief and shameful episode in our political history. Our new colleague, who must have been shaken by such an introduction to political life, nevertheless endured it stoically. Twenty years later, those unhinged media tirades look pathetically foolish when measured against Senator Keon's contribution to public policy over all this time.

As I reviewed the record of the past 20 years, the quality of Wilbert Keon's contribution is hardly surprising, given the renowned academic and professional achievements that he has to his credit. What is truly striking, however, is the sheer quantity and breadth of Senate studies and reports on which he has been able to concentrate with such discipline and thoroughness and make a significant contribution to them.

In passing, I may say that Senator Keon has numerous unpublished and politically unprintable views on various matters of public policy. I assure him these have been carefully noted but will not be divulged now, rather will remain in the National Archives of Canada for the entertainment and edification of future generations.

I should also state, because he asked me to do so, that our former colleague Senator Norman Atkins is much in Senator Keon's debt. In fact, he believes he owes his greatly increased life expectancy to Senator Keon's professional attention, to which I would add only that if this is so, then Senator Keon has a lot to answer for.

I am sure we are all better educated, better informed and should be more resolute on many health matters — from tobacco, one of his first statements, to dementia, one of his most recent — that Senator Keon has spoken about here. These and other more impromptu and always concise clinical seminars are warmly appreciated.

• (1420)

Senator Keon has shared his knowledge and experience with us most impressively. Although he says he has retired from the active practice of his profession, the information he gives us is always of the most recent date.

Senator Keon's contribution here, like his professional career, has been one of surpassing excellence. We have been honoured by his presence and his collaboration these past 20 years.

Hon. W. David Angus: Honourable senators, one September day in 1990, Prime Minister Brian Mulroney confided to me: "Keon is going to the Senate. What do you think?"

"That is just super," I exclaimed. "Davey Keon was always my favourite player and a tower of strength with the Leafs for many, many years."

"No, no, David," he replied, "not Davey Keon. I am talking about his distant cousin, the brilliant Ottawa heart surgeon with the worldwide reputation, a real non-partisan appointment, and the people will just love it; don't you think? And he is a fine Irish Quebecer to boot."

Honourable senators, Mr. Brian Mulroney was right on the money, and what a wonderfully inspired appointment it was.

Dr. Wilbert Joseph Keon, for over 20 years, as my colleagues have already said, has truly enhanced this place simply by being here. His dignity, wisdom, integrity, professionalism and gentle demeanour, which some of us call his "Senate-side manner," have been a shining example to senators on all sides of this chamber. Senator Keon has proven to be diligent and hard-working at all times and made excellent contributions to Canada in a variety of fields, not just those related to medical science and research.

As well, Senator Keon was friend, comforter, physician and, yes, even surgeon to a long list of senators serving in this chamber.

Honourable senators, I am confident you will agree that Willie Keon is a very special gentleman, the kind of individual the Fathers of Confederation surely had in mind for prime ministerial appointment when they created this place. Yes, I said "appointment."

I have shared almost no committee time with Senator Keon, just a quick stint on Rules when he chaired that committee briefly two years ago. However, we have been friends, neighbours and co-conspirators on the ninth floor of the Victoria Building for well over a decade. Some of our exploits must remain private, but there we have together conducted a vigorous campaign for urgently needed additional government funding for medical research in Canada — a major academic need that is sadly lacking. Our results, unfortunately, thus far, have been mixed and rather disappointing to us both. We have empathized and bonded in striving to meet this critical challenge. This mission remains front and centre with our departing colleague, and I know full well that he will be retired in name only. The reality is that, going forward, Senator Keon will be pressing harder than ever for more, better and properly funded medical research in Canada.

Honourable senators, Dr. Keon ardently believes, and has done so all his life, and he is right, that the health and well-being of all Canadians, especially our children and grandchildren, hang in the balance. Therefore, let us all wish Senator Keon much success as he continues to pursue this noble cause, and let us, too, assure him of our full support in accomplishing his goal.

Senator Keon, may God bless you and thank you for these 20 memorable years of valuable public service. We will all miss you.

[*Translation*]

Hon. Rose-Marie Losier-Cool: Honourable senators, I also have plenty of nice things to say about Senator Keon, who will be retiring next Monday. Some may think his retirement is well-deserved, but I find it unthinkable.

I have a hard time believing that this medical expert, this gracious, thoughtful and committed man, will be able to sit at home twiddling his thumbs. He still has so much to offer and contribute to society in Canada and Quebec, that I am sure he has secretly lined up one or two, or even more, professional or volunteer activities that will keep him as busy as the Senate did.

On a more personal note, I sincerely thank you, Senator Keon, for always being kind and courteous to me, and for being available, in particular when you were deputy chair of the Standing Senate Committee on Official Languages and filled in for a chair who was recovering from two surgeries after taking a bad fall.

[*English*]

I feel honoured, Senator Keon, to have worked with you and laughed with you. Your urbanity, fairness and intellect will be greatly missed in this chamber, much more than you may think.

Thank you for being who you are and for having accomplished all that you have, and may you be blessed with a long, healthy, prosperous and active life after the Senate.

Hon. Ethel Cochrane: Honourable senators, I also rise today in tribute to a truly remarkable man, my friend Senator Willie Keon.

While Dr. Keon has built an impressive career as a world-renowned cardiac surgeon and researcher, I consider him, first and foremost, to be a health care pioneer and a healer. Anyone who has had the honour of working with Senator Keon on the Standing Senate Committee on Social Affairs, Science and Technology can attest to his passion and drive to build a better health care system for all Canadians. He helped to lead the committee through landmark studies on mental health and the health care system, and was the visionary behind the groundbreaking study on population health.

The list of Dr. Keon's professional achievements and accolades seems endless. His many clinical innovations include Ottawa's first cardiac transplant and the first Canadian infant heart transplant. He has been awarded — to name just a few — the Order of Canada, the Order of Ontario and the Order of St. Gregory the Great by Pope John Paul II.

As I reflected on what to say about our honourable colleague today, I was reminded of many examples which illustrate Dr. Keon's commitment to health and to the service of everyone. In my experience, he has been willing to help anyone, anytime, anywhere.

In one particular example, Dr. Keon's intervention helped a 39-year-old mother get the diagnosis and surgery she needed. In her case, she suffered from a condition that is rarely detected. I can say unequivocally that many individuals are alive and families are still together today as a result of the actions of this remarkable man.

Honourable senators, as I was reading up on our esteemed colleague's career, I noticed that the word "saint" was used repeatedly to describe him. I think businessman Rod Bryden put it best when he said, "This is as close as Ottawa has come to having a saint in our midst. He has done absolute marvels for the city overall, and, of course, for a great many individuals."

Honourable senators, despite the accolades and achievements, Dr. Keon remains among the most human, most humble and most down-to-earth people you could ever meet.

Willie, I thank you for choosing to be a person of compassion, of strength and of leadership. You have touched so many lives in a meaningful way, and we are all the richer for it. We have been blessed to have you with us in this place since 1990, and I simply do not know what we will do without you. Trust me, you will be sorely missed.

I thank you for all your help to me over the years, and I wish you, Anne and your family many happy and healthy years ahead.

Hon. Lucie Pépin: Honourable senators, today we mark the upcoming departure of our fellow senator who has contributed a great deal to the institution. For the past 20 years, Senator Keon has graced us with his broad experience and strong commitment to his fellow Canadians.

• (1430)

Senator Keon will be greatly missed by the Senate Committee on Social Affairs, Science and Technology, where I served alongside him since 1997. In this committee and in the Senate as a whole, Senator Keon has fostered a better understanding of illness.

The committee reports to which Senator Keon contributed so much have improved policies affecting the well-being of Canadians. As mentioned, Senator Keon played a major role in the production of the Kirby report, the report on public health and the report on mental illness.

Senator Keon led the Subcommittee on Population Health's study on the determinants of health approaches. That report was favourably received. I hope our fellow parliamentarians will ultimately adopt its conclusions so that the root causes of illness in Canada may finally be addressed.

Senator Keon is a person of great intellectual rigour. With his subtle sense of humour, he has a talent for refocusing the debate and bringing everyone back down to earth. With the precision and confidence befitting his career as a surgeon, Senator Keon got straight to the point, never straying from the essential issues. His pragmatism set a strong example for politicians who try to resolve everything all at once.

Senator Keon's ability to work as part of a team meant he could always look beyond our political differences to focus on our common purpose of improving the daily lives of Canadians.

We are losing a valuable member of our team, Senator Keon. Thank you again for your many years of loyal service to our health system and to medicine. We wish you well in the next phase of your life, which will certainly be equally busy. I have no doubt that you will continue to strive to improve health services, with as much dedication and effectiveness as ever. Please take good care of yourself, also. Fair winds, dear friend.

Hon. Hugh Segal: Honourable senators, I rise today to contest the entire notion that Dr. Keon is retiring. Senators like Dr. Wilbert Keon never retire; they do not even fade away. They simply change the place to which they go to work in the morning and continue to serve. He will nag us forever.

When I first came to this place, on my second or third day in the chamber, Dr. Keon rose to remind us of a disease whose national day it was. He continued to do this frequently. Whenever he would rise in those days when I sat in the second row with him on my right and Senator Murray in front of me, Senator Murray would warn, "Under the desk, Segal, here comes another bone-chilling, heart-stopping disease from the good doctor."

Once, when he lectured us on trans fat, I heard the great infectious giggle to which Senator LeBreton referred. When I said, "Why not just tie us all up to an intravenous, give up on solid food and get on with it," we got the giggles, and it was wonderful.

Senator Keon is a man of compassion. When he was unceremoniously ripped by our heartless leadership from between Senator Meighen and myself in the second row and was given a seat on the front bench, he came back to Senator Meighen and me in the second row to say that clearly our political careers were over. Our political careers were over and we could no longer get free medical advice. I might add, there is objective evidence to be found everywhere you look that our careers are over, but Senator Keon was glad to offer advice and counsel on how they might be revived.

Senator Keon is not the kind of man who retires. Can you see him trying to figure out how to spend his time but not his money? I doubt it. He did, after all, donate his entire salary to the Ottawa Heart Institute for his first 16 years here, when he served in both places — a precedent, thank God, that has not caught on, but which gives us all the measure of the man.

He has absolute paternity for the Canadian Institutes of Health Research, which he warmly shares with Dr. Henry Friesen of the Medical Research Council; Prime Minister Brian Mulroney, who started the ball rolling; and Prime Minister Chrétien and Finance Minister Martin, who were the attending obstetricians at the birth.

His global role as a heart surgeon, innovative cardiologist and cardio research heavyweight brought health and life to thousands worldwide.

I do not see Senator Keon living a life where research seminars are replaced by naps and new research initiatives are replaced by golf. I suspect he is only a day or two away from the speech that many spouses make to retiring great men, "Love, honour and obey, Willie, does not include lunch."

He will become involved in advocating for the kind of preventive research population health initiatives that keep people healthy, manage health care costs and keep Canada and Canadians strong. All here today can see the remarkable effect he has had as my personal fitness and nutrition adviser for the last five years. I will miss him terribly.

When I consider Churchill's reassuring advice — "don't run when you can walk, don't walk when you can sit, don't sit when you can lie down" — advice which, after all, saved civilization, I will always take Dr. Keon's advice given to me in those few short months we sat together — "Take vitamins and drink red wine."

Godspeed, Dr. Keon, and do not even think of retiring. Canada and Canadians cannot afford for that to happen.

Hon. Jane Cordy: Honourable senators, I am pleased to join with others in honouring Senator Keon. Shortly after I came to the Senate, I became a member of the Standing Senate Committee on Social Affairs, Science and Technology. Senator Keon was a member of the committee, which was studying Canada's health care system at that time. He was and continues to be very well respected across the country, and his Senate salary was a bargain price for the expertise he provided to the committee and to the Senate, particularly since, as Senator Segal has said, he did not collect the salary for 16 years.

Indeed, when I speak about the advantages of an appointed Senate, I most often use Senator Keon's name as someone who would not likely have run for office but has made a tremendous contribution to social policy in Canada through the Senate.

At the Social Affairs Committee, Senator Keon would listen to the discussion of the witnesses and the senators and then, in a calm, quiet way, he would start with, "Well, you know," and immediately he would get to the crux of the issue. His comments were rarely partisan. He wanted our reports to develop strong recommendations to help Canadians.

Senator Keon, you are a gentleman and you have taught me so much about the development of social policies, particularly those related to health care. I feel very fortunate to have worked with you.

My best wishes to you and to Anne — I do believe you were very lucky to have married a schoolteacher — and my best wishes to your entire family. Enjoy your trip to Ireland. Hopefully, now that you are retired, you will have more time to become involved in the next federal election, which would probably be the first time you were ever politically active because, as Senator Cowan said, we would be very fortunate to have another Keon in Parliament.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, for all of the reasons my colleagues have already given, I want to remind all honourable senators how important it is to have people of Dr. Keon's calibre among us.

Senator Angus mentioned the Fathers of Confederation. Senator Keon's departure inspires me to thank them for having created an institution in which individuals like our colleague can serve their country and their fellow citizens, not because they are popular or were elected in a popularity contest, but because they are competent.

• (1440)

We need individuals like him. Those of us who have been here longest will remember what things were like when Senator Keon first came to the Senate. People who think that there is acrimony and partisanship in the Senate now do not know what they are talking about. Back then, in 1990, it was absolute warfare. The Speaker was held hostage by the senators.

Then Senator Keon, who shunned partisan behaviour, arrived in this pit of partisanship and made his mark thanks to an institution that allows any Prime Minister of Canada, despite fear and acrimony, to appoint an individual and transplant him into an environment desperate for the wisdom of a person as brilliant as Senator Keon.

I wanted to take this opportunity to thank the Fathers of Confederation and to wish Senator Keon every happiness in the future. I do not know if he is capable of spending the rest of his days peacefully, but that is my hope for him and his family.

Senator Keon, thank you very much for serving your institution and your country so admirably.

Hon. Pierre De Bané: Honourable senators, I think that there is no more eloquent way to speak to a person's values than to consider his actions.

After completing his specialization and his education in the United States, Senator Keon received the most attractive offers an outstanding surgeon could possibly get. He could have earned a huge amount of money had he accepted the offers he received from Harvard and the big hospitals in the United States, but he refused them.

He came to Canada where he could have just practised his profession in a major centre, but once again, because of his concern for the common good, he devoted all his energy to founding a heart institute that today is one of the finest centres in the world.

It is his constant concern for the good of the community that impresses me to no end.

[*English*]

Like many others, I was fortunate to have Senator Keon take care of me when I had my heart attack. I still remember the day when I was at a reception, and it happened that I was with three or four colleagues who had also been cared for by Dr. Keon the heart surgeon. He entered the reception, saw us together holding our glasses of wine and said: "Oh, I see you all have your medicine. That is good."

I will not forget that, Senator Keon. I simply want to say to you, from the bottom of my heart, that I know I am alive today because of you. You are one of the people who, when you join an institution, it is not you who is honoured; instead, it is the institution that is honoured.

Hon. Gerry St. Germain: Honourable senators, I take this opportunity to rise and pay tribute to, undoubtedly, the finest man that has sat in this Senate since I have been here.

Some Hon. Senators: Hear, hear.

Senator St. Germain: I came to know Senator Willie — as I call him — because we have been residents of the Victoria Building together — I for 17 years; he for 20 years. I came to know how hard he works, how dedicated he is and how kind a human being he is. He always had time whenever anyone asked him anything.

Fortunately, I have not had the health problems some have, but I had a minor situation with my heart. I knew Senator Willie was busy, but he took the time to sit down and to explain to me that what I had was really nothing and not to worry about it. However, Senator Willie took the time and this is about time. Most of us do not take time for each other as human beings, whereas Senator Willie always did and I am sure he always will.

I will not go on at great length because everything was well said before I rose. To paraphrase a well-known American president: There are no great men, only ordinary men, ordinary men who rise to great occasions.

You, Senator Keon, are one of those men. To your family and to you, may God bless you.

[*Translation*]

Hon. Jean Lapointe: Honourable senators, you will forgive me for starting with an excerpt from a song that is not to be taken literally. It was popularized by the Compagnons de la chanson a number of years ago.

It goes like this:

He was so big, so very tall,
we thought
he might well reach the sky.

In my opinion, Senator Keon is not only a great senator, but also a great humanitarian. Over the years, I have always appreciated what he has done for the upper chamber, for the whole country and for other countries of the world.

His talents as a heart surgeon and his extensive knowledge of the medical field led him to chair the foundations of the University of Ottawa Heart Institute and the Ottawa Civic Hospital. Thanks to Senator Keon, these institutions are world-renowned today in the field of cardiology.

After working for decades on the most important organ in the human body with the ultimate goal of saving lives, Senator Keon is someone whom I would describe as having an extremely generous heart.

Although we sat on opposite sides of this chamber, we were always reaching for the same goal. Thank you for everything, my dear friend. Best wishes to you and your loved ones.

[*English*]

Hon. Michael Duffy: Honourable senators, I rise to endorse everything that has been said here today about a truly remarkable Canadian. We have all heard of Senator Keon's exploits as a brilliant surgeon, but perhaps not as many honourable senators know that he is also a marriage maker.

On the day Senator Keon was sworn into this chamber twenty years ago, I was sitting in the press gallery watching this remarkable man from Sheenboro, Quebec, I had heard much about, who had married a woman from Pembroke, Ontario. Wilbert Keon was a legend in the Ottawa Valley and he was, even then, considered to be a saint. I came from the Press Gallery to witness the swearing-in ceremony.

• (1450)

This man underwent the most vicious, vile and mean attacks in the media. I hope the people at the *Ottawa Citizen* who demanded his resignation are ashamed of their conduct because, in the 20 years since, Dr. Keon has shown the entire world and not just the citizens of Ottawa what it is to be a great Canadian and a superlative senator.

He was pretty down on the day he was sworn in. I went out of my way to meet him and have a conversation. I suggested that, given all my time in the media, I had seen such things before and that this, too, would pass. I was pleased to see that after some reflection, he decided he would carry on, and carry on he did — to the great heights we have seen.

A couple of years later, three days before I was due to be married, I had a heart attack and was taken to the University of Ottawa Heart Institute, which, as Senator De Bané has pointed out, is world renowned. I was taken there at 7 o'clock in the evening. The next morning, at 7 o'clock, into the room comes Dr. Keon. My wife woke me up and she said, "Honey, Dr. Keon is here to see you." I said, "That is not Dr. Keon; that is Senator Keon." He said, "Well, you can't be too sick if you're already making jokes at this hour of the day."

Here is where the humanitarian comes in. Three days hence, we were due to be married. My future wife said, "Let's cancel everything. You have had a heart attack." We had people and family coming from all over. Right away, I started making deals. At 7 a.m., I said to Dr. Keon, "If I don't get any worse, would you mind if we got married here in the Heart Institute on Saturday?" Willie, being the great humanitarian he is, said, "If you don't get any worse, it will be all right, but I don't want any kind of big event." I said "No, no, just 10 minutes; just here in the room. Everything will be fine."

Sure enough, I went along. They got me into the shower and got a suit and tie on me on the Saturday. Then the TV and still cameras arrived, along with Peter Mansbridge and Wendy Mesley and all my family. We were in the reference centre and Senator Keon said, "I thought this was going to be a low-key affair." Anyway, we got married, and he was my sponsor when I arrived in the upper chamber.

He is a most remarkable human being, as honourable senators have noted, and we will miss him dearly. To Anne and the family: God bless you for sharing him with us. He has done so much for so many and never asked for anything for himself.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to pay tribute to Senator Keon as he prepares to take his leave from this chamber. The close of Senator Keon's remarkable 20-year Senate career gives me pause and makes me reflect on the hard-working, knowledgeable voice we will surely miss in this place.

To speak of Senator Keon is to speak of many people: the doctor, the politician and the caring person. As a senator, Dr. Keon has continually reminded us that preparation is our best defence against the afflictions that ail us. As he said in 2007, in an interview with InnovationCanada.ca, "The gospel I'm preaching now is to try to get out in front of the problem, because many diseases are preventable."

Upon receiving the 2007 F.N.G Starr Award from the Canadian Medical Association, which has been described as the Victoria Cross of Canadian medicine, Dr. Keon remarked that: "It means a great deal since I gave my life to medicine and made many sacrifices. . . ."

Honourable senators, today we are reminded of the many contributions Dr. Keon has made, both to medical science and to public policy in Canada. Today, we turn to one of our own to say that, in the wake of his sacrifices, we stand to benefit.

Today, we say thank you to your family and to you for helping to save the lives of our loved ones.

Honourable senators have all spoken so eloquently about Senator Keon, the doctor and the politician, but I want to speak of him as my neighbour on the ninth floor of the Victoria Building. As a neighbour, he has always been there for me. When

I have had personal challenges, he has come to my office with caring and supporting words. When my father suffered a heart attack, Senator Keon helped me through it. He has been there through all my mother's illnesses, as well.

Dr. Keon and his staff have always been there for me. Diane Desrochers has always helped my staff and, without hesitation, Diane was always available when there was a query.

[*Translation*]

Senator Keon, your presence among us will be sadly missed.

[*English*]

Senator Keon, in my mother language, there is a saying that your first relative is your neighbour. You have been my relative. When you leave today, I will lose a relative on Parliament Hill. We will all miss you and your staff tremendously. Thank you for your friendship.

Hon. Kelvin Kenneth Ogilvie: Honourable senators, I, too, rise to add my voice to those paying tribute to a truly remarkable individual. Wilbert Joseph Keon is a surgeon, innovator and inventor, builder, leader, visionary, based on thought, experience and ultimate benefit to Canadian society.

Let me briefly remind honourable senators of a numerical recognition of his many contributions as a scientist and as a surgeon without peer: More than 200 scientific publications; more than 175 scientific abstracts; hundreds of special lectures; and numerous chapters in books and films. These contributions are the record of his achievements through scientific investigation for the benefit of humanity.

That this work had impact — and enormous social benefit — can be seen through his more than 40 distinguished awards, including Officer of the Order of Canada. No less than four major awards and permanent events, including a building, have been named in his honour.

I have long known of the man held in awe and near reverence by all who have known and worked with him, but to have had the remarkable privilege to work with him in the Senate of Canada is an experience that I will treasure. My deep regret is that this wonderful opportunity has been far too short.

I close by reminding honourable senators that few people have impacted their spheres of influence in such a complete and immensely positive way as Wilbert Joseph Keon. Think of the lives he has saved with the skill of his own hands. Think of the countless more he has helped through the impact of his work that I referenced before. Think of the leadership he has brought to medical science, and the inspiration he has provided for generations of new medical researchers and practitioners.

I remind honourable senators that, beyond all of this, his demonstrated managerial approach, if widely copied throughout our hospital system, Canadians would greatly benefit from better services at much lower costs.

Senator Keon, as you move to the next phase of your remarkable life, take with you the gratitude, the admiration and the warmest of personal affection from your colleagues in this chamber.

The Hon. the Speaker: Honourable senators, the Honourable Senator Keon.

Hon. Wilbert J. Keon: Honourable senators, I have often been a part of conversations that note that tributes go on far too long and that we should do something about them in the *Rules of the Senate*. As a matter of fact, when I was Chair of the Standing Committee on Rules, Procedures and the Rights of Parliament, the subject came up. Senator Fraser, it came up; you should have pushed it and something would have happened. If you had, you would not have had to suffer this today!

It is truly an honour to be here on this occasion with my family. I am deeply, deeply touched by the tributes. Who could not be? They were beautiful.

• (1500)

It was a wonderful honour to be appointed to the Senate. I considered it an honour from the first minute that Prime Minister Mulroney mentioned it to me, even though I had no warning. I never learned until last night how it happened, when Senator LeBreton told me how my name got in the mix. I had no idea it was coming. Anyway, I really considered that a great honour. I did not think I could do it at the time, but I am so glad I did.

I must say that honourable senators on both sides and the staff at the Heart Institute made it possible. I could not possibly have managed my responsibilities at the Ottawa Heart Institute and managed to be a senator here had I not been treated so supportively by everyone.

I am very proud to be one of you. You are a wonderful group of people — all of you, both sides. This is a wonderful chamber; it is underestimated. There is tremendous intellectual wealth in this chamber.

I have had the great privilege of circulating with Nobel laureates, great scientists and so forth, but the wisdom that comes out in this chamber is truly tremendous. It is such a wonderful cross-section of Canadian society. When we go to a different method of appointment — and I will say a few words about that later — I hope that we can sustain the cross-section of society that I have had the privilege of encountering here over the last 20 years, because it truly is impressive.

I also want to say, Your Honour — Your Honour, you have to pay attention.

Hon. Senators: Hear, hear!

Senator Keon: We have been privileged with an absolutely wonderful Speaker, have we not?

Most of you probably think that Speakers are appointed by the prime minister. Well, I have news for you. Our Speaker arrived here through divine intervention. I learned of his appointment at church on Sunday, after mass, from the nephew of Mackenzie King, who was the priest in the church. If that is not some sort of spiritual continuity, I do not know what is.

In any event, I do want to compliment the Speaker because he is a wonderful Speaker. When he was appointed, I told him he was born to do the job and he has done a wonderful job for us.

I also want to say that I am honoured to be a Conservative. I did not choose a political party until I was appointed to the Senate. I had financially supported both Liberal and Conservative parties over the years because I felt these two parties were very important to sustaining our country.

However, I was smitten by Prime Minister Mulroney. I thought he was great. I really believed in what he believed in. When he had that magnificent victory that pulled the whole country together, when we, for the first time, had representation across the country, I thought that was a tremendous accomplishment.

I was a huge believer in free trade. It was my philosophy of life. In research and medicine, if your grants could not compete on the global level, the research was not worth pursuing. Do it over again until it was good enough to compete on the global level, and that is what free trade is all about. We have really benefited a great deal from that initiative.

We have a wonderful Prime Minister at the present time, also. He is serving us well around the world. I fully appreciate that senators opposite have to find a way to defeat him. You will have a difficult time because he is awfully good. There is no question about it. He does represent us with tremendous pride on the international scene.

We should be terribly proud of every prime minister we have ever had in Canada. I was mentioning only last night what a privilege it is to be part of the governance of Canada. This is a tremendous governance no matter what party is in power. When one looks back at the prime ministers, the leadership, and the governments we have had since Confederation, they have been absolutely wonderful compared to the rest of the world.

We have to do better, and I appreciate that, so I will deal with Senate reform right now. Senate reform was the number one item on the agenda when I came in here 20 years ago. It is the number one item on the agenda when I will leave here now; and I said last night, it will be the number one item on the agenda when the rest of you go out of here, too.

Hon. Senators: Hear, hear!

Senator Keon: The major defect, I believe, as someone who was not involved in active politics, is the appointment process. It is considered to be patronage, and the system has to be improved.

The current proposal for a combination of election and selection I think would be an improvement and may add a great deal. I do not think it will have a particularly smooth ride, but those of you here will consider the subject carefully and I am sure you will come up with something positive.

Until I was appointed to the Senate, I simply followed my nose in politics. I had to be somewhat politically inclined to get the money I needed to build the Heart Institute, but I was not particularly committed to any party. I guess I was a member of the 30 per cent that had no real political commitment.

However, I want to tell honourable senators on both sides, I truly admire those of you who have made that commitment, who have built your parties, who have sustained your parties and who have made them work, especially when your parties were down a bit, for it kept them alive so there could always be an alternative for the Canadian electorate.

I am a committed Tory now, but thanks to the commitment of people like you, people like I used to be had a choice when they went to the polls and it made the system work. There were two good, solid, healthy parties and a government in waiting all the time. I will not talk any more politics because I am intimidated by Senator Murray.

Senator Murray was my leader when I came into the Senate. Those were difficult days.

Let me relay a little anecdote. We were sitting through the night, and Senator Neiman was speaking and speaking. She was a lovely person and a great senator, but she was speaking in French and she could not speak French. I sat over there beside Senator Finlay MacDonald, and Senator Nathan Nurgitz was sitting in front of me. Finlay leaned over his seat and said to me: "Those French girls drive me wild."

• (1510)

On a more serious note, during most of my time here, I was honoured to serve on the Social Affairs, Science and Technology Committee. Indeed, I had to serve on many committees at one time when we were down to 22 people on this side. I truly enjoyed that committee. The 2002 Kirby-LeBreton report on the federal role in the health of Canadians was tremendous. Senator Kirby handled that so well. It was followed by his report on mental health, which has made a great contribution to mental health in Canada.

Early on, I wanted the committee to study and report on population health because I sincerely believe, at age 75 with over 40 years' experience in the health and science field, that the only solution lies in population health. We cannot continue to spend the way we are spending and achieve the kind of results that we are getting because 50 per cent of what we treat in the health care delivery system now is preventable upfront. In addition, about 35 per cent of the procedures we do are not effective. Therefore, we have to start measuring what we are doing, and the Canadian Institutes of Health Research can do that and we should make use of those services. Everything should be measured and, if it is not effective, it should not be funded. We have to bring objectivity into the whole system and, in particular, we have to convince the population that their health is their responsibility. We have to build healthy communities on a platform of the determinants of health and look at the life cycle throughout.

As part of that study, I went to Cuba to study the Cuban system. They spend 1/47 of what we spend on health, and they have the same outcomes. They have the same maternal mortality,

infant mortality and life expectancy as we have. How do they do that? They have done it through a system of polyclinics for primary health care integrated with education, sport, nutrition, housing and all other determinants of health. We published our report, entitled *Maternal Health and Early Childhood Development in Cuba*, and I like to think that it had a real influence on the government of the day in selecting maternal and child health as a priority at the G8 and the G20 conferences. I know there is some controversy about the details, but there cannot possibly be a better mission in the world than maternal and child health.

Senator Mitchell, I say this to you: You spend a lot of your time talking about the environment, and I thoroughly enjoy the questions that you throw at our leader, although I do not think she enjoys them. The most serious problem confronting the world and global society is overpopulation, and it will not be controlled until we have the empowerment of women worldwide. We should get our priorities straight because this is a serious problem. We must have the empowerment of women worldwide.

Hon. Senators: Hear, hear!

Senator Keon: I cannot possibly leave without plugging research again. Research is part of my soul, and we do not do enough. I appreciate that the government has many places to spend its money, but the private sector in Canada could do much better. Our American friends spend eight times as much from the private sector as we spend, so it is time that industry stepped up to the plate and made an investment in research. When coupled with other private sector endeavours, the government platform and the efforts of NGOs, we could be one of the leading nations in the world for research. We likely cannot catch up to the Americans because they have too many clever people and too much money. Apart from them, we can come in second worldwide in discovery if we truly address research.

One of my most gratifying experiences since I came to the Senate has been my participation in the birth of the CIHR, about which there is an interesting story that I will not tell, and the Canada Foundation for Innovation. The combination of the CIHR and the CFI and the way that they integrate was a stroke of real genius. I know there was a small problem a year or so ago with the overfunding of the CFI compared to the CIHR, but it will balance out. It has been a truly marvellous thing.

The CIHR, which was started under Prime Minister Mulroney, is such a complement to our political system. It had not moved along very far when Mr. Mulroney was replaced by Prime Minister Chrétien, who continued with it and the CIHR was born. I was sitting on the other side on April 10 when the bill passed third reading in the Senate. This has to be one of the greatest moves we have ever made in Canada from a research and discovery point of view. It is a great tribute to our political system that it did not fall off the agenda just because the government changed.

I was also associated with the Public Health Agency of Canada. Following the SARS epidemic, for one reason or another, I ended up on all the committees dealing with it. Everybody wanted a Public Health Agency of Canada. When I was young, I used to say repeatedly that this country needed a surgeon general to prepare an annual report on the health of our nation. Today, we have such annual reports between the Public Health Agency of Canada and the Health Council of Canada. They might not be perfect, but they are happening.

Another great thing is the Canada Gairdner Awards. I am indebted to Senator LeBreton for booting that along. With $20 million, the Canada Gairdner Awards rose to international status just below the Nobel Prizes. As well, the Mental Health Commission of Canada has been a tremendous step forward.

I am deeply concerned about our National Research Council, as Senator Ogilvie knows. He has all the necessary expertise to correct the problems that exist there. I hope the committees of the Senate will stand behind him, get on with this and put our National Research Council back to where it should be.

• (1520)

Finally, I will miss life here very much and I will miss all of you. You have been great. I have thoroughly enjoyed my time here, and I hope I have helped by contributing. In closing, I say thank you to all of you on both sides.

To my wife Anne, up there in the gallery, thank you. We will celebrate our fiftieth anniversary on July 2. Anne kept food on the table for the first 10 years of our life and trucked around after me as I moved from one university to the other, trying to put myself in a position to know all the reviewers and everything in a subsequent life, and I did very well at that. Meanwhile, she kept the cash flowing in our budget, subsequently raised three children on her own and all along the road of life, kept me out of trouble. She is still high-school cute. Do you not think so?

Hon. Senators: Hear, hear!

Senator Keon: We have three wonderful children. Claudia is in England. She will be joining us in Ireland for my seventy-fifth birthday. She has three boys: Jack, Chris and Ethan. Her husband Mark, is a heart surgeon and Claudia is a practising family physician. To our despair, she said she married her father — she married a heart surgeon — but they are very happy. Neil is in Dallas with a lovely wife and son. They cannot be here, so Ryan and Cindy are carrying the torch, and Will and Emily are up there propping them up.

I extend a big thank you to everyone. I must not forget my staff in the gallery, Diane and Gail. They are wearing white, as they should be, for taking care of me. They have been wonderful.

I will miss all of you. God bless all of you. I will be seeing you.

Hon. Senators: Hear, hear!

[*Translation*]

ROUTINE PROCEEDINGS

UNITED NATIONS

HUMAN RIGHTS COUNCIL— NATIONAL REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the United Nations National Report submitted in accordance with paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1.

HUMAN RIGHTS COUNCIL— UNIVERSAL PERIODIC REVIEW TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Report of the United Nations Working Group on the Universal Periodic Review.

HUMAN RIGHTS COUNCIL—ADDENDUM TO UNIVERSAL PERIODIC REVIEW TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Report of the United Nations Working Group on the Universal Periodic Review Addendum.

HUMAN RIGHTS COUNCIL— REPORT ON ELEVENTH SESSION TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the United Nations Human Rights Council Report on the Eleventh Session.

TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY EMERGING ISSUES RELATED TO THE CANADIAN AIRLINE INDUSTRY

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

That the Standing Senate Committee on Transport and Communications be authorized to examine and report on emerging issues related to the Canadian airline industry, including but not limited to:

(*a*) its performance and long-term viability in the changing global market;

(*b*) its place within Canada;

(*c*) its business relationship with their passengers; and

(*d*) its important economic effect in the Canadian communities where airports are located; and

That the committee report to the Senate from time to time, with a final report no later than June 28, 2012 and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

[*English*]

QUESTION PERIOD

INFRASTRUCTURE

FUNDING FOR NORTHERN PROJECTS

Hon. Nick G. Sibbeston: Honourable senators, my question today is about infrastructure funding in the North. My colleagues Senator Lang and Senator Patterson I am sure will be interested in the response from the government leader.

We are now in the final year of stimulus spending. The ministers responsible for infrastructure spending have frequently stated that any projects not completed by March 31, 2011, will lose their federal funding. Municipal, provincial and territorial governments will be on the hook for the full cost of the projects that go over the deadline.

The North being what it is, remote, distant, with some areas subject to summer sealift, winter ice roads and short summer work seasons, it is difficult and challenging to start and finish projects. What assurance can the minister give us that planned projects in the northern territories will receive all the promised funding and that small, remote communities and financially strapped territorial governments will not be penalized if the reality of northern construction is in conflict with federal government-imposed timelines?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, Senator Sibbeston is quite correct in that the infrastructure and the stimulus programs were designed to deal with the worldwide economic downturn. He is absolutely right that the program is designed to end at the end of the fiscal year, on March 31, 2011, and he is also quite right that all levels of government that have participated in putting these projects together understood the requirements clearly going in.

The honourable senator asked specifically about certain projects. There are some projects, honourable senators, in the North that fall under other areas of government funding. I will have to take the question as notice. Obviously, there are programs under the stimulus fund that must be completed by the prescribed time. There are other projects under way that do not fall into that category, so I will have to obtain a status report for Senator Sibbeston on the various projects and development in the North and where they fit into the overall scheme of things.

• (1530)

Hon. Bill Rompkey: Honourable senators, to add to Senator Sibbeston's question and emphasize points he has made, the construction season in the North is very short. It is really the summer months. If there is inclement weather and the ship does not get in and supplies do not arrive, construction is delayed, if not terminated.

Rules and regulations are often made, in my experience, by central Canadians that do not apply to the extremities of the country, particularly to the Arctic.

Would the minister seek some latitude for unusual circumstances that exist in construction in the Arctic so that that region may participate fully in what is essentially a pan-Canadian program?

Senator LeBreton: I thank the honourable senator for the question. The government fully understands the complexities and diversity of the country and the difficulties in project funding, particularly in the North and more remote areas where the conditions are not as they are in other parts of the country.

Many programs that the government has negotiated with our northern partners fall within other funding areas of the government. I am quite sure that when they were working with our partners in the North they took into account all of the factors involved. If a program did not fit within the stimulus program's stipulated time frame, I am certain that other programs could have been used in order to make accommodations.

As I said to Senator Sibbeston, I will obtain a full report on the various projects and their status and what government programs are funding them.

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

FUNDING FOR THE FIRST NATIONS UNIVERSITY OF CANADA

Hon. Robert W. Peterson: Honourable senators, my question is to the Leader of the Government in the Senate. It has never been more obvious that this government takes Saskatchewan and Western Canada for granted. On the issue of the First Nations University of Canada, this government refuses to address the concerns of students, faculty and staff who do not know whether they will have funding to offer classes next year. The uncertainty has proven to be a self-fulfilling prophecy. The President of the First Nations University of Canada, Shauneen Pete, announced last Monday that they have been forced to sell the Saskatoon campus.

The university's new administration has earned the support of the community, including the Government of Saskatchewan, the University of Regina, the Canadian Association of University Teachers, Canada Foundation for Innovation and the Saskatchewan Chamber of Commerce. The university has bent over backwards to address the serious issues that plague them, but all this government can tell us is that they received a proposal and are considering it.

The Government of Saskatchewan is firmly behind the First Nations University of Canada. On Tuesday of last week, the provincial government announced the signing of a $5.2 million funding agreement between the First Nations University of Canada, the University of Regina and Meyers Norris Penny Limited. Under the agreement Meyers Norris Penny will administer the funding and provide regular financial reports.

Minister Norris said:

> This agreement is the result of the hard work of all the partners to fulfill their obligations under the MOU that was signed in March and I congratulate them on their efforts.

Honourable senators, while the federal government is thinking, an entire community is twisting in the prairie wind and the university is under severe stress and uncertainty.

Can the leader confirm that, in view of these new developments, her government will accelerate negotiations with the objective of a successful conclusion by reinstating long-term funding?

Hon. Marjory LeBreton (Leader of the Government): I thank Senator Peterson for the question.

I must take issue with the honourable senator's opening preamble. The government has demonstrated on many fronts that it is very well in tune with and connected to the concerns of Western Canada, particularly Manitoba, Saskatchewan, Alberta and British Columbia.

With regard to the First Nations University of Canada, honourable senators know full well that this university has experienced a great deal of difficulty. This is a troubled institution. There have been incredibly difficult financial problems. It was obvious that tough decisions were needed to deal with them. We continue to encourage the institution to keep working with all of its partners, the University of Regina, the Federation of Saskatchewan Indian Nations and the province, as it restructures.

As I have said in this place many times, the government remains committed to supporting First Nations learners and encouraging and ensuring that they graduate with the skills needed to enter the labour market and share fully in Canada's economic prosperity.

Our focus has and always will be the students. That is why, on April 29, we announced $3 million to help students complete their academic year through August 31. As announced, Indian and Northern Affairs Canada will continue to work closely with the University of Regina to finalize details and ensure the timely distribution of funding.

The present situation was a long time in coming and developed over a period of many years. There are huge problems here. The government is seized with dealing with this issue, and we have two priorities when dealing with this serious matter. The first priority is the students; and the second is the proper use of taxpayers' dollars.

Senator Peterson: Honourable senators know that if long-term funding is not reinstated the university will not survive. I really cannot understand the government's unyielding resistance to this situation.

In my province of Saskatchewan the fastest-growing cohort is the 18 to 25 age group, and they are mostly First Nations. They will become the workforce in the decades ahead. Why would we deny them the opportunity of a higher education by refusing to fund this most important institution, the First Nations University of Canada?

Senator LeBreton: Honourable senators, we are not denying anyone anything and we are not refusing anything, either. I have just stated what the government has done and is prepared to do, and that it is encouraging the university to continue to work with the various partners. I cannot imagine how the honourable senator could come to his conclusion.

It is obvious that the university has had severe managerial and financial difficulties. The government has worked hard with them and with our partners to resolve these problems. Our focus has been on the students. That is why we put in the additional funds, in order to allow those students to complete this school year. We continue to work with the various partners.

As I said a moment ago, our priority is the students. The government has taken many initiatives in many areas where we feel it is very important for our Aboriginal communities to fully participate — in the North and in the communities in which they live — in Canada's economic prosperity.

Whether or not one is an Aboriginal Canadian, one would understand that the government wants to ensure that the money invested in these facilities is properly managed and assists those who require the assistance, and that is the students.

Hon. Lillian Eva Dyck: Honourable senators, as the Leader of the Government in the Senate knows, 15 per cent of the Saskatchewan population is Aboriginal. As our honourable colleague has indicated, that population is growing rapidly, so that in a few years' time, 50 per cent of the population under the age of 25 will be Aboriginal.

Currently, 40 per cent of First Nations students in Saskatchewan who are enrolled in post-secondary education attend the First Nations University of Canada. We all know that post-secondary education is a major means to escape the cycle of poverty and to contribute socially and economically to the well-being of the whole province. It has recently been shown that Aboriginal women with degrees earn as much or more than non-Aboriginal women with degrees. It is vitally important that Aboriginal women get degrees.

If this government truly believes in the advancement of women — that we need to look at the empowerment of women, as Senator Keon has stated earlier — how can it not then fund the major institution that is educating and empowering Aboriginal women?

• (1540)

Senator LeBreton: Honourable senators, in my previous answers I dealt specifically with the First Nations University in Regina. The government absolutely believes in the importance of education in our Aboriginal communities. That is why since 2006, we have invested $395 million for the completion of 94 school projects. Canada's Economic Action Plan provided for 10 new schools and three major renovations. The Building Canada Plan provides for eight new schools or renovation projects. I have said this to the honourable senator before. Last year we also invested more than $100 million over three years for the Aboriginal Skills and Employment Partnership and $75 million in the new Aboriginal Skills and Training Strategic Investment Fund.

I cannot understand how the honourable senator could stand there and say the government is not taking this issue seriously, when clearly we are taking the issue seriously and investing considerable sums of money into the betterment of the education system for Aboriginals.

[*Translation*]

CANADIAN HERITAGE

FUNDING FOR SUMMER FESTIVALS

Hon. Francis Fox: Honourable senators, my question is for the Leader of the Government in the Senate and concerns the Marquee Tourism Events Program. I would also like to follow up on a question I asked her last week.

Last Friday, 33 days before the opening of an international-scale event that is well known in Montreal and by all senators who come from Quebec and who sit by the leader's side, the organizers of the FrancoFolies de Montréal learned that their application for $1.5 million in assistance from Industry Canada would not be renewed this year.

I would like to draw to the minister's attention that this decision penalizes the FrancoFolies, obviously, which is the biggest francophone music event in Canada and in the world, and it tarnishes Montreal's reputation as a city of festivals.

Allow me to suggest that she consult her colleagues from Quebec in the chamber today before making a final decision. I see that Senators Nolin, Angus, Seidman, Carignan and Brazeau are here. After this consultation, would the leader be prepared to recommend to the Minister of Canadian Heritage, who may have a better understanding of the issues involved, that the Minister of Industry review this decision and try to find the $1.5 million that was foolishly cancelled — by means of a press release — with just a few days' notice?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, the question of funding various organizations is one that the government takes seriously. We have increased funding in arts and culture by 8 per cent. The fact is, and we all understand this, organizations that receive funding are not entitled to funding in perpetuity. Many organizations apply for funding every year. Neither the previous government, this government nor future governments would ever have enough money to fund all of the programs for which there are applications.

I will have to make an inquiry about the specific program to which the honourable senator referred but, as I mentioned to him the other day, we increased spending on arts and culture by 8 per cent. Our campaign promise was to maintain or increase our spending in arts, culture and heritage, and we have kept our word.

We have increased direct support to the arts and cultural organizations by putting a record amount into the Canada Council for the Arts, $181 million. We doubled support for the National Arts Training Program across Canada. This year and last year we gave cultural industries a shot in the arm by building arts infrastructure for future generations. We are investing more money than ever before in our artists and we are ensuring that every dollar delivers results for them and for Canadians.

Our government, through Canada's Economic Action Plan, has also invested more than $500 million in arts and culture. Arts training programs, festivals, theatres, museums, youth programs and cultural infrastructure have all received more support than ever before from our government.

Every single day, in this place and in the other place, someone can complain about a program that did not get funding this year; or that got funding last year and not this year; or that had funding for 10 years and all of a sudden their application was not approved this year. That, unfortunately, is the reality. Many organizations have received funding and are grateful for that funding. Unfortunately, no one stands up and asks me questions about this funding or thanks the government for this funding; they simply stand up and ask about organizations that feel they are entitled to their entitlements and funding in perpetuity.

[*Translation*]

Senator Fox: Honourable senators, I might add that the honourable leader should also consult the Senator Champagne and Senator Fortin-Duplessis, as members of her own caucus, before making a decision.

I am simply pointing out that this decision not to fund the FrancoFolies de Montréal festival this year comes as a surprise, because it is contrary to the very goals of the Marquee Tourism Events Program, which is described as a program established to assist existing marquee tourism events in enhancing their offering. A marquee event is then defined as "an annually recurring world-class event that is well established and has a long-standing tradition of programming and management excellence."

I would say that the festival we are talking about fulfills that condition.

I think, Madam Leader, that the honourable senators will also tell you that the FrancoFolies de Montréal is an international festival that meets that requirement. I might add that the decision that was made is contrary to the commitment made by the government at the Montreal Culture Summit, to which then Heritage Minister Josée Verner and the Minister of Public Works and Minister responsible for the Montréal region at the time, Mr. Michael Fortier, were sent to say how supportive the government was of the idea of Montreal becoming a cultural metropolis.

Honourable senators, we have here a world-class cultural event, the largest francophone music and song event in Canada and around the world, as I said earlier, and the government is about to say no to it.

I am not trying to be partisan. I just want to encourage the honourable leader to reconsider that decision, so that it can be reversed and that the FrancoFolies de Montréal international festival can take place and continue to foster Montreal's identity as the city of festivals.

[*English*]

Senator LeBreton: The honourable senator assumes there was no consultation. I would suggest to him that the Department of Heritage consults widely when it assesses these various applications.

The fact is that many of the programs that have received funding in the past, in order to build a profile and to become the successes that they are, are capable of standing on their own two feet. There are now well-established festivals. People know of these festivals and attend them. Once festivals are established as bona fide national attractions, there is nothing to say that they cannot continue along with great success. Some of these festivals no longer require the assistance of government.

I have a long list of the various cultural organizations in Quebec that receive funding that I will be happy to provide to the honourable senator. There is a long list of organizations that need funding in order to obtain the profile that some of these other organizations now have and benefit from. Why would we not try to bring other organizations up to the same level and enable them to have people attend their functions, as is the case with the festival the honourable senator mentioned?

• (1550)

[*Translation*]

Senator Fox: Honourable senators, I have a supplementary question. I would like to point out to the minister that this program, the MTEP, is part of the Government of Canada's economic stimulus plan and the objective of this program, as written in the program guidelines, is to help annually recurring world-class events — new ones are not excluded, however. Do not try to tell me the government will cancel their funding because they are recurring.

I am not the one who wrote these guidelines; it was the government, to help organizations, such as this one, overcome the economic crisis and allow them to not only survive but also to flourish during this time.

I cannot imagine that the Government of Canada would tarnish Montreal's reputation as Canada's city of festivals or as Quebec's cultural metropolis. If that comes into question, I would like to know about it.

[*English*]

Senator LeBreton: The honourable senator is referring to the Marquee Tourism Program. That is a two-year program. Last year, 75 per cent of the funds from this program went to the large centres. That was great. It assisted them last year. Why does the senator think it is not fair then to assist some different events this year? That is all the government is saying.

It is a two-year program, and for year two of the program the government, in fairness to all those who did not get funds last year, wanted to ensure that other cities or smaller cities are also able to benefit and put a higher profile on their events so that they become must-see events in the future for tourists who come to Canada.

Senator Comeau: Come to Western Nova Scotia.

Hon. Percy E. Downe: Honourable senators, my question is for the Leader of the Government in the Senate.

Last year, Confederation Centre in Charlottetown received funding under the program. Did the centre receive funding for this year or was there any other funding available for Prince Edward Island? If the leader does not know, could she find out, please?

Senator LeBreton: I do not know and I will find out for the Honourable Senator Downe.

I am sure there was funding for Prince Edward Island, though.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, a delayed response to an oral question raised by Senator Mercer, on April 28, 2010, concerning Agriculture and Agri-Food — Farm Income.

AGRICULTURE AND AGRI-FOOD

FARM INCOME

(*Response to question raised by Hon. Terry M. Mercer on April 28, 2010*)

The federal government contributes to a variety of programs to assist farmers faced with financial difficulties, including the Business Risk Management (BRM) programs:

- The federal-provincial-territorial BRM Suite of Programs includes:
  - AgriInvest — producer-government matched-contribution savings accounts;
  - AgriStability — an improved margin-based income stabilization program;
  - AgriInsurance — expanded insurance options and other benefits; and;
  - AgriRecovery — a disaster relief framework that allows a quick and coordinated response to disasters affecting producers.
- Since the inception of the BRM programs for the 2007 program year, producers have benefited from nearly $5 billion in support through these programs, including the federal AgriInvest Kickstart program. Of this, producers in Atlantic Canada have benefited to the tune of $131 million. Atlantic Canada's share of BRM payments (2.62%) is consistent with its share of total farm market receipts (excluding supply-managed commodities) for 2007 and 2008 (2.68%). Given the protection of supply-management, these producers rely less on BRM payments.
  - New Brunswick: $45.0 million
  - Nova Scotia: $25.8 million
  - Prince Edward Island: $58.9 million
  - Newfoundland/Labrador: $1.3 million
- The BRM programs have and continue to provide significant levels of assistance to producers across Canada, including the Atlantic Provinces.
  - Payments under these programs are targeted to financial need. Therefore a significant portion of these funds have gone to embattled cattle and hog producers and will continue to do so as long as producers in these sectors are facing losses.
  - It is expected that more than $1 billion will go to livestock producers across Canada for losses they incurred in 2008 and 2009.
  - Governments are working to get this money into producers' hands as quickly as possible.

As governments work towards Growing Forward 2, they are in the process of undertaking a comprehensive review of the current BRM programs to gage their effectiveness and ensure they will continue to provide the support producers need. As part of this process, governments are now consulting with producers and agricultural groups on their long-term objectives, their challenges and opportunities, and how governments and industry can work together for the long-term success of the sector. These national and provincial sector engagement sessions will also present the initial findings of the current review of BRM programming. The results of the consultations will be reported back to Ministers at their next meeting in the summer, and they will inform governments as they work towards the next phase of the national agricultural policy framework, including BRM programming.

In addition to the BRM programs, the federal government has shown support for producers through:

- Recent changes to the Advance Payments Program (APP) which have resulted in increased access to government-backed loans, including a Stay of default until September 30, 2010 for APP advances to hog and cattle producers during the 2008-09 production period.

- Announcing three new programs to assist the hog industry, including the International Pork Marketing Fund ($17 million) for market research, promotion and access initiatives to find new customers for Canadian pork products, Hog Industry Loan Loss Reserve Program to help the Canadian hog industry by providing government-backed credit to help viable operations weather the current economic uncertainty and the Hog Farm Transition Program ($75 million) to help struggling operations to transition out of the industry.

- The recent federal budget included a number of measures to support the beef industry, including an additional $10 million for the $50 million Slaughter Improvement program, $25 million for plants processing over thirty month (OTM) cattle and $40 million for new technologies to reduce costs or add value for specified risk material.

- The Government of Canada also continues to work tirelessly to expand global market access for commodities produced by Canadian farmers and to defend Canada's trade rights through venues such as the World Trade Organization.

ANSWER TO ORDER PAPER QUESTION TABLED

FINANCE—BURMA AND HUMAN RIGHTS

Hon. Gerald J. Comeau (Deputy Leader of the Government) tabled the response to Question No. 9 on the Order Paper—by Senator Downe.

[*English*]

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. Bob Runciman moved third reading of Bill S-2, An Act to amend the Criminal Code and other Acts.

He said: Honourable senators, it is a privilege to sponsor Bill S-2 for passage at third reading. The bill before us today would implement both fundamental and administrative reforms to the National Sex Offender Registry, ensuring that our streets and school grounds are safer for everyone. It includes important measures to ensure that sex offenders are properly identified so that police have the tools to do their job. It also addresses concerns raised by law enforcement and victims' groups.

As many of you may well remember, some of the key changes being proposed include having all sex offenders included in the registry, as opposed to the current system where the Crown must first make an application and the judge has discretion to refuse the order; ensuring international sex offenders no longer escape registration; and ensuring that all sex offenders are included in the National DNA Data Bank. In addition, this bill will give police the power to use the registry not only to investigate but also to prevent sex crimes.

Honourable senators, I am confident that we all see the value in giving the police a proactive tool to prevent these crimes from occurring in the first place, something especially true for sex offences.

Under the changes proposed by Bill S-2, registry officials would also know when sex offenders are released or readmitted into custody. This is not the case today. Sex offenders would be required to provide notice in advance of any absence from their home address of 7 days or more, rather than the current 15 days. The amendments the government is proposing will also allow police in one part of Canada to notify police in another part, as well as police services in a foreign country, when registered sex offenders are travelling to their jurisdiction. Canadians who return to Canada after having been convicted of a sex offence outside of Canada will also be required to register on the National Sex Offender Registry.

Honourable senators, all these provisions and several more would mean that our children are safer, and perhaps we can help prevent some of the tragic stories all of us have heard with regard to sex offences.

As Jim Stephenson, whose son Christopher lost his life to a sex offender, noted during committee hearings:

> With the changes contained in Bill S-2, much will be done to enhance the National Sex Offender Registry.

I urge all honourable senators to support the legislation before us and work to ensure its speedy passage.

[*Translation*]

Hon. Marie-P. Poulin: Honourable senators, during my speech at second reading of Bill S-2, the Protecting Victims From Sex Offenders Act, I made a number of observations and suggestions that I and other senators on this side of the chamber felt were valid and reasonable and that could improve the bill.

While it was examining the bill, the Senate Committee on Legal and Constitutional Affairs heard from a large number of expert witnesses — over 30 of them. Some of them had concerns about certain provisions in the bill, and others called for stricter monitoring of sex offenders. However, many of them were in favour of the bill and supported the principles of an effective sex offender registry, and I emphasize the word "effective."

The Liberals felt that this bill had merit and supported it, despite some concerns about one of the central points, the automatic inclusion in the national registry of sex offenders who are found guilty of one or more of the 18 primary designated offences in the Criminal Code.

[*English*]

Honourable senators, the difficulty with the mandatory placement is that there is no room for judicial discretion. Conviction equals a mandatory registry order no matter the

severity of the crime. This will not increase the effectiveness of the registry. An example cited in committee described the scenario of an intoxicated 19-year-old at a Christmas party inappropriately patting a woman. As far as the mandatory order provision is concerned, that offence is on par with aggravated sexual assault, bestiality and incest.

I submit, honourable senators, that there is a difference between inappropriate touching and egregious assault that should be taken into account at sentencing. Nevertheless, under Bill S-2, all crimes demand registry placement without benefit of judicial discernment. Without discretion, we are hamstringing our judges. Without discretion we are inferring that while aiming for justice and balance in our judicial system, we are supporting a one-size-fits-all approach with Bill S-2.

A new question could also be raised: Will judges be less inclined to deliver a guilty verdict because of the added stigma associated with being placed on the registry? There is no doubt that the registry will aid police in tracking down sex offenders, perhaps even preventing a crime but, as asked at second reading, is the mandatory provision not being overzealous?

• (1600)

[*Translation*]

Honourable senators, I do not understand the government's statement that it would oppose the purpose of Bill S-2 to authorize some degree of discretion. Let us not forget these points: that the Sex Offender Registry is not a public document; that it is available only to legal authorities; that convicted individuals must comply with certain obligations, including notifying the police of their comings and goings; and that nearly 40 per cent of those convicted of a sexual offence are not listed in the registry.

[*English*]

Honourable senators, we are discovering, along with other aspects of this government's tough on crime policy, that the costs of jailing and tighter supervision of all offenders are soaring to unknown heights. Would it not be more fair and cost effective to allow judges to exercise some discretion?

We in this chamber all agree that sexual crimes are repulsive and guilty offenders must be penalized. However, in protecting society, Bill S-2 would be more effective with some judiciary discretion given to judges regarding guilty offenders of more minor offences.

That said, it is with reservations — and as we say here, on division — that I support Bill S-2.

Hon. George Baker: Honourable senators, I have a few words concerning the bill and references to the amendments attempted at committee.

This chamber is not providing sober second thought to this bill, but sober first thought, after which it will go to the House of Commons for consideration. If the House of Commons amends the bill, it will be sent back here for sober third thought.

I want to take a couple of minutes to explain the amendment I proposed, why I proposed it and make one further suggestion on how to toughen the legislation if that is what the government wishes to do. Perhaps that is what all members wish to do on sober second thought. Let me explain.

The bill will close a loophole in the Sex Offenders Information Registration Act in Canada, which says that the Crown prosecutor is to make an application for the person's name to be placed on the registry upon conviction for a designated offence. For the past five years that this law has been in effect, over 40 per cent of those people convicted of a designated sexual offence did not have their names placed on the registry. That is the problem facing the government; the names of 42 per cent of all those convicted of a designated sexual offence are not on the registry.

Senator Manning: Shame!

Senator Baker: This bill eliminates the need for the Crown prosecutor to put forward an application upon conviction for the judge to consider the application. No one disagrees with that. In other words, upon conviction, the judge shall issue an order if the person is convicted of a designated sexual offence to place that person's name on the registry.

Honourable senators, a House of Commons committee completed the Sex Offenders Information Registration Act's five-year review following the act's coming into effect on December 15, 2004. The committee and the Quebec Bar recommended that the act no longer require the Crown prosecutor to make application to put the person's name on the National Sex Offender Registry if that person is convicted of a designated offence under the Criminal Code. The judge would automatically do so. The House of Commons committee was chaired by MP Garry Breitkreuz. The committee indicated that, in what they called rare circumstances, the judge should have discretion where the offence could be prosecuted by summary conviction.

As all the lawyers on the other side know, there are two ways that we can prosecute someone. If an offence is hybrid, we can proceed with a summary or indictable conviction. "Indictable" are serious offences, while "summary" are less serious offences.

The Quebec Bar wrote a letter to the chair of the committee and to Senator LeBreton to say they wanted that change made in the legislation. In other words, in the rare instances where the offence could be classified as summary in nature, the judge should have discretion. That is why the amendment was moved.

Honourable senators on the other side of the table voted against the amendment. I am not criticizing the honourable senators for voting against the amendment.

Look at the senators on the other side of the chamber. We have Senator Wallace who is a well-known and respected lawyer with many years of experience in New Brunswick. Senator Lang served in eight or ten administrations in the Yukon Territory as a cabinet minister for several departments. Senator Angus appeared before the Supreme Court of Canada arguing in French at the age of 31. Who was the person next to Senator Angus?

Senator Segal: Stikeman.

Senator Baker: The person next to Senator Angus was H. Heward Stikeman — the famous H. Heward. Next to him was the "to-be" famous W. David, as they called him. If honourable senators look at the records of the Supreme Court of Canada, we see that over the next few years as appeals rose from the Exchequer Court, it was Senator Angus appearing, but not Mr. Stikeman. Senator Angus was a brilliant lawyer by the age of 31.

Senator Carignan appeared before the Quebec Superior Court at the age of 25. Senator Boisvenu is an expert on the subject of the sex registry.

• (1610)

Sitting next to him is the mover of this motion, Senator Runciman, who was for 29 years a member of the Ontario legislature and who held seven cabinet positions. Senator Runciman is one of the key people who ensured that Christopher's Law came into existence and that it was passed in the Ontario legislature.

To be quite honest, honourable senators will not see a line-up like this were there to be elections in the Senate.

I say the following for the record, because the House of Commons will take these debates and read them prior to consideration of the bill, if they use due diligence, as I am sure they will. Their rationale was simple. Five courts of appeal in this nation took the original registry bill on Charter challenge and said that being on the registry was not considered punishment. Senator Angus is nodding his head yes; he knows it quite well. The Courts of Appeal said it is not considered punishment. It was appealed to the Supreme Court of Canada and refused. It is not considered punishment, but it is considered a minor inconvenience. Those were the judgements of our Courts of Appeal across the nation. Therefore, that was the logic used by the Conservative side in refusing the amendment.

Honourable senators, I would like to make one more point. An amendment was not moved which perhaps should have been moved. I think it bears examination. How do we ensure that the names of the 42 per cent who escape the registry and who are now on sentence in jail — some of them for the commission of first-degree murder — are put on the registry?

I have an institutional memory regarding this bill going back to the House of Commons on the actual act, the Sex Offender Information Registration Act. I refer honourable senators to section 490.019 of the Criminal Code. That section of the Criminal Code allows attorneys general the permission to issue to those on sentence a registration. The request is because the matters we are addressing here are prosecuted in the provincial courts. That is the initial charge.

Therefore, the attorneys general turned around and passed regulations in each province after we passed the bill in 2004, after it was debated in the House of Commons in 2002-03. However, only one province actually completed the process of registering those on sentence. The words "on sentence" not only covers those in prison but those under sentence, on conditions, such as those on probation, et cetera.

Why did only one province do it? Unfortunately, we put in the bill that going back and applying it to those on sentence would terminate in one year. You can find that at section 490.021 in the Criminal Code. That was done because the Department of Justice said there might be Charter challenges to this; you are going back.

That was the major argument against my suggestion. However, honourable senators, it is a complicated argument, and we had it out in the Senate committee. There were three words. What are the meanings of "retroactive," "retrospective" and "progressive"?

One cannot be retroactive in the application of a law and increase someone's penalty after the fact. However, our Courts of Appeal have approved retrospective application of this law. In other words, we could put someone on sentence on the sex registry because it is not a punishment; it is an inconvenience.

Therefore, if the House of Commons might consider it, the simple omission of section 490.021 is needed, which is only one sentence in the Criminal Code. It would accomplish the application of the law to all those who are presently on sentence for these designated offences.

Honourable senators, in closing, let me say that Senate committees do a great job. I was in the House of Commons for over 29 years, and I am still amazed at the wonderful work the Senate does compared to the House of Commons. It is why our courts today reference committees of the Senate four times more in their judgments than they do committees of the House of Commons. Thank you.

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

Hon. Senators: Question.

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

Some Hon. Senators: On division.

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

CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. John D. Wallace moved second reading of Bill S-10, An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts.

He said: Honourable senators, I rise today to speak to Bill S-10, entitled the Penalties for Organized Drug Crime Act. This is an act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other acts.

Honourable senators, you may recall that this is the third attempt of our government to have this very important legislation adopted and brought into force. This bill is specifically aimed at tackling a problem that is of the most serious concern to all Canadians, and that is the problem of illicit drug crimes, particularly drug trafficking and drug production, both of which occur within all regions of our country.

Honourable senators, Bill S-10 is being reintroduced exactly as it was passed by the other place in the previous session of Parliament. It includes the amendments that were adopted by the Committee on Justice and Human Rights after hearing from the Minister of Justice, officials from the Department of Justice Canada, as well as a wide range of stakeholders and experts, including representatives of law enforcement.

These committee amendments were then adopted by the other place, and this is the bill that is now before us.

• (1620)

Honourable senators, I believe it is extremely important to point out to you that this bill must be viewed within the context of Canada's National Anti-Drug Strategy that was announced by the Prime Minister in October 2007. Moreover, this bill follows through on one of our government's key priorities, namely, to tackle crime and, particularly, organized crime.

In this regard, Canada's National Anti-Drug Strategy is composed of three action plans, one of which is a plan for combating both the production and distribution of illicit drugs. This particular action plan contains a number of key elements, which include ensuring that strong and adequate penalties are in place for serious drug crimes.

Bill S-10 falls clearly within this particular action plan. The bill proposes a number of mandatory minimum penalties to ensure that the appropriate, significant sentences are imposed on those who commit serious drug crimes.

Honourable senators, it is also important to realize that Bill S-10 is not about applying mandatory minimum penalties for all drug crimes. It introduces targeted mandatory minimum penalties for serious drug crimes and ensures those who carry out these crimes will be appropriately penalized.

Before addressing the specifics of Bill S-10, I would like to take a few moments to explain the nature of the problem that this bill seeks to address.

During the last decade, domestic operations related to both the production and distribution of marijuana and synthetic drugs have dramatically increased, resulting in extremely serious problems in some regions of our country, problems which often overwhelm the capacity of law enforcement agencies. These illicit drug operations pose serious health and public safety hazards to those in or around them. They produce environmental hazards, pose cleanup problems and endanger the lives and health of Canadians and their communities.

These operations are lucrative businesses and attract a variety of organized crime groups. Huge profits are available with little risk to operators, and these profits are used to finance other criminal activities. Existing penalties and sentences related to these offences are considered by many to be far too lenient and not commensurate with the level of harm imposed upon our communities by such criminal activities.

According to Statistics Canada, the rate of marijuana cultivation or production offences has more than doubled from approximately 3,400 offences in 1994 to 8,000 in 2004. According to a study on marijuana grow operations in British Columbia in 2003, approximately 39 per cent of all reported cultivation cases, numbering 4,514, were located in British Columbia. Between 1997 and 2000, the total number of these cases increased by over 220 per cent.

Although the number of individual operations in British Columbia levelled off between 2000 and 2003, the estimated quantity of marijuana produced increased from over 19,000 kilograms in 1997 to a seven-year high of over 79,000 kilograms in 2003. That is a fourfold increase due directly to the size and sophistication of individual operations.

Honourable senators, these observations are provided to you so there can be a full appreciation of the seriousness of the drug crime situation in our country.

The Government of Canada has recognized this. It has recognized that serious drug crimes, such as large-scale grow operations and clandestine labs, most definitely pose significant threats to the safety of our streets and our communities. In this regard, Bill S-10 is a vitally significant part of our government's strategy to address this very serious problem.

This bill proposes certain amendments to strengthen the Controlled Drugs and Substances Act provisions in regard to penalties for serious drug offences by ensuring that these types of offences are punished by the imposition of mandatory minimum penalties. With this bill, our government is demonstrating its commitment to improving the safety and security of Canadians and communities across our country.

As has been stated before, our government recognizes and acknowledges that not all drug offenders and drug offences pose the same risk of danger and violence. Bill S-10 recognizes this fact, and that is why it proposes a focused and targeted approach in dealing with serious drug crimes. Accordingly, the new penalties will not apply to the offence of drug possession, nor will they apply to offences involving all types of drugs. This bill focuses on the more serious drug offences that involve the more serious illicit drugs.

Overall, the amendments included within Bill S-10 represent a tailored approach to the imposition of mandatory minimum penalties for serious drug offences, including trafficking, importation, exportation and production involving such drugs as cocaine, heroin, methamphetamine and cannabis. This bill provides a seamless approach to dealing with serious drug offences and, to this end, proposes a number of significant amendments to the Controlled Drugs and Substances Act.

The illicit drug offences being targeted by Bill S-10 are trafficking, possession for the purpose of trafficking, production, importing, exporting and possession for the

purpose of exporting drugs. The drugs that would be covered are described as Schedule I drugs, which include cocaine, heroin, methamphetamine, and also Schedule II drugs, such as marijuana.

Bill S-10 does not apply to drug possession offences or to offences involving less serious drugs, such as diazepam or Valium.

For Schedule I drugs — that is, drugs which include heroin, cocaine or methamphetamine — Bill S-10 proposes a one-year mandatory minimum penalty for the offence of trafficking or possession for the purpose of trafficking in the presence of certain aggravating factors.

These aggravating factors include: the offence is committed for the benefit of, at the direction of, or in association with organized crime; the offence involved violence or threat of violence or weapons or threat of the use of weapons; or the offence is committed by someone who was convicted in the previous 10 years of a designated drug offence.

If youth are present during the commission of the offence, or if the offence occurs in a prison, the mandatory minimum penalty is increased to two years.

In the case of importing, exporting and possession for the purpose of exporting, the mandatory minimum penalty is one year if these offences are committed for the purpose of trafficking.

A one-year mandatory minimum penalty will also be imposed if an offender abuses his authority or his position, or if the offender has access to a restricted area and uses that access to commit these crimes.

The mandatory minimum penalty will be increased to two years if these offences involve more than one kilogram of a Schedule I drug. A mandatory minimum of two years is also provided for a production offence involving a Schedule I drug.

The mandatory minimum sentence for the production of Schedule I drugs increases to three years where the aggravating factors relating to health and safety are present. These particular factors include: the illicit drug production constituted a potential security, health or safety hazard to children who were in the location where the offence was committed or in the immediate area; the illicit drug production constituted a potential safety hazard in a residential area; or the person who committed the offence placed or set a trap.

For Schedule II drugs, including marijuana and cannabis resin, the proposed mandatory minimum penalty for trafficking and possession for the purpose of trafficking is one year if certain aggravating factors are present, such as violence, recidivism or organized crime. If factors such as trafficking to youth are present, the mandatory minimum penalty is increased to two years.

• (1630)

For the offences of importing or exporting and possession for the purpose of exporting marijuana, the mandatory minimum penalty is one year imprisonment, if the offence is committed for the purpose of trafficking. A one-year minimum penalty will also be imposed if an offender abuses his authority, or his position, or if the offender having access to a restricted area uses that access to commit these crimes.

For the offences of marijuana production, Bill S-10 proposes mandatory minimum penalties based on the number of plants involved: The production of six to 200 plants cultivated for the purpose of trafficking would bring a minimum of six months imprisonment. In this regard, it is significant that the minimum number of plants was increased to six plants from one plant as a result of an amendment that was proposed in the other place by the Justice Committee. The production of 201 to 500 plants would bring a minimum one year imprisonment. The production of more than 500 plants would bring a minimum of two years imprisonment. The production of cannabis resin for the purpose of trafficking would bring a minimum one year imprisonment.

The mandatory minimum extensions for the production of Schedule II drugs increase by 50 per cent when any of the aggravating factors relating to health and safety, which I have just described, are present. The maximum penalty for producing marijuana would be doubled from 7 to 14 years imprisonment. Amphetamines and the "date rape" drugs GHB and Rohypnol would be transferred from Schedule III to Schedule I, thereby enabling the courts to impose higher maximum penalties for offences involving these drugs.

Honourable senators, it is extremely important to recognize that Bill S-10 also provides the courts with the discretion to impose a penalty other than the mandatory minimum on a serious drug offender who has entered and successfully completed a court drug treatment program. As honourable senators will recall, when predecessor Bill C-15 was introduced last year in this chamber, a number of amendments were made to it. I would like to speak to two of those amendments.

Predecessor Bill C-15 also proposed mandatory minimum penalties that were based on the number of plants involved in the marijuana production operation. It provided for a mandatory six months imprisonment in cases involving the production of six to 200 plants and if the plants were cultivated for the purpose of trafficking. Once again, the minimum number of plants had already been raised to six plants from one plant as a result of the amendment that was adopted by the Justice Committee and passed by the other place.

Under Bill C-15, persons who cultivated five plants or less would not have been subjected to a mandatory minimum penalty. Rather, the minimum penalty would have applied only where the offender cultivated more than five plants and fewer than 201 plants, and the offender was growing the plants for the purpose of trafficking. It is not a possession offence, but it is a production offence for the purpose of trafficking.

One of the amendments proposed and adopted by the Senate committee in respect of the predecessor Bill C-15 changed this approach in a very significant way. That particular amendment removed the mandatory minimum penalty for persons producing between five and 200 plants if the production was for the purpose of trafficking. It removed that mandatory minimum. This amendment would have meant that any person would have been allowed to operate a production grow operation of up to

200 plants with the intent to traffic and not be exposed to a mandatory minimum penalty of any kind whatsoever if convicted of producing marijuana.

Honourable senators, this amendment amounts to an invitation for criminals to become involved in the business of producing 200 marijuana plants or less for the express purpose of trafficking and to not fear imprisonment. In my view, such an amendment would send out the absolute wrong message and most definitely should not be repeated.

I draw the attention of honourable senators to another amendment proposed and adopted by the Senate committee in respect of Bill C-15. It would have given judges the discretion to impose a penalty that would be less than the mandatory minimum for any of the serious drug offences covered by that bill when the court is satisfied that, where the offender is an Aboriginal person, the sentence would be excessively harsh under the circumstances and another sanction would be reasonable and available. That particular amendment would have meant that an Aboriginal offender who committed a serious drug crime of any kind would not face a certain term of imprisonment, as would all other offenders in similar circumstances. I also remind honourable senators that Bill S-10 provides the courts with the discretion to impose a penalty other than the mandatory minimum for a serious drug crime offender who enters and successfully completes a drug treatment program. That is regardless of whether the program is monitored by a drug court or an ordinary court.

Our government recognizes that Aboriginal offenders constitute a significant percentage of the inmate population in our jails and penitentiaries. Moreover, our government is cognizant of the Criminal Code provisions that permit courts to pay particular attention to the circumstances of Aboriginal offenders during sentencing. However, as the Supreme Court of Canada found in *R v. Gladue* in respect of the Aboriginal offender, this is not to be taken to mean that, as a general practice, Aboriginal offenders must always be sentenced in a manner that gives greatest weight to the principles of restorative justice and less weight to goals such as deterrence, denunciation and separation. It would be reasonable to assume that Aboriginal people believe in the importance of these goals and that such goals must be given due consideration in appropriate cases.

Even when an offence is considered serious, the Supreme Court of Canada has held that the length of a term of incarceration must be considered. In some circumstances, the length of the sentence of an Aboriginal offender may be less and in others, it may be the same as that of any other offender. In this context generally, the Supreme Court of Canada has held that the more serious and violent the crime, the more likely it will be, as a practical matter, that the terms of imprisonment will be the same for similar offences and offenders, whether the offender is Aboriginal or non-Aboriginal.

With this in mind, I remind honourable senators that Bill S-10 is about dealing with serious drug offenders. The bill proposes that mandatory minimum penalties be imposed when serious aggravating factors are proven to exist. In my view, and under these circumstances, the Aboriginal and non-Aboriginal offender should be treated in the same manner in consideration of the imposition of the minimum penalty. It would still be open to the courts to impose less severe maximum penalties in appropriate cases involving Aboriginal offenders. It would also be open to the courts to refer, in appropriate cases and where possible, Aboriginal offenders to drug treatment programs and to impose a penalty other than the mandatory minimum if the offender has successfully completed the drug treatment program.

• (1640)

Honourable senators, Bill S-10 is a vital part of our government's continuing commitment to take the steps necessary to protect Canadians and make our streets and communities safer. Canadians want, and expect, a justice system that has clear and strong laws that denounce and deter the commission of serious crimes in this country, and this includes, of course, serious drug crimes. Canadians want laws that impose penalties that adequately reflect the serious nature of these crimes, and Bill S-10 does just that.

Thank you, honourable senators.

Hon. Hugh Segal: I wonder if the senator would take a question?

Senator Wallace: Certainly.

Senator Segal: I am a great admirer of Senator Wallace and the tremendous work he has done on some of these difficult Criminal Code, sentencing and related issues. I am particularly impressed by the fairness and balance he has brought to the arguments that he has made on behalf of the government both he and I support.

I am worried, though, about laws that, in their specificity, may have the unintended circumstance of bringing the administration of justice into disrepute. I am not a lawyer, and I defer to others in this chamber who are. I have no experience with marijuana. I was once asked by Craig Oliver in 1998 if I had ever tried marijuana. I said that I did not like it very much. I was not a smoker and I preferred smoked meat.

Having said that, there is a big difference between 200 plants and six plants. If one looks at the studies on what might be going on in university residences across the country, I am led to believe by those who understand this more than myself that there might be as many as three, four or five plants found on occasion in a student's room, maybe as many as six or seven. The notion that that constitutes prima facie evidence of the intent to traffic and sell strikes me as putting an undue burden on our police. Last I checked, the police are pretty busy dealing with serious crime, such as the real traffickers and the big grow-ops that the OPP and the RCMP, as Senator Runciman knows, have found in rural eastern and northern Ontario, where there are serious issues of people conspiring to break the law in a big way.

Does Senator Wallace think there is any give in the gap between 200 plants, which may be excessively, if you excuse the expression, liberal with respect to some protection, and six plants? On occasion, local police officers may find that hard to enforce. Local Crown attorneys might find it puts them in the circumstance where they have to prove intent in face of competent defence lawyers who would argue that six plants may be excessive in terms of the specificity of the law, but by no means constitute intent to traffic or give to others for reasons that are intrinsically unlawful.

I put the question to the senator, knowing that he may want to reflect on it, but hoping that he might give some consideration to the prospect of a modestly more relaxed approach.

Senator Wallace: I thank the honourable senator for the question. The issue of marijuana production is significant in this country. We know from our study of Bill C-15 and the evidence that came before us at that time that there are differences of opinion on the topic. There is no question, though, with our government, and I firmly believe this myself, that marijuana production is a serious problem, and it is one that fuels organized crime to a great extent. As the honourable senator may know, in the United States, British Columbia is thought to be a major source of marijuana production and exportation, and it is a serious concern.

Regarding the range of six plants to 200 plants, production has to be proven to be for the purpose of trafficking. The Crown is required to prove that. The subject is not taken lightly. It is a serious matter to prove that it was for the purpose of trafficking. At the upper end of the scale, and I remember this from the work we did with Bill C-15, the wholesale value of 200 plants equates roughly to $350,000, so it is significant money.

At the lower end of the scale, as I mentioned in my presentation, the initial thought in the house was to start at one plant. There was a lot of discussion about where between 1 and 200 that limit should fall. There was considerable discussion with all law enforcement throughout this country on where that figure should start. The departments of justice in the various provinces were very much involved in that whole consultative process. As a consequence of that, the one was increased to five, so now it is anything that is less than six. Having gone through that exercise and taken it seriously, the number was not grabbed out of the air. It was done through consultation with those who are knowledgeable about these issues and, in particular, serious drug crime in this country, which is what this is all about. We are focusing on this to make our streets safer and protect our children. That is what this is about. It is to impact in a significant way the serious problems that organized crime presents.

Having said all of that, the question was about the chance, at this stage, having gone through this process, that there would be a change in that, and I would think not.

Hon. Joan Fraser: Will the honourable senator take another question?

Senator Wallace: Yes.

Senator Fraser: My question follows on from the interesting line of reasoning advanced by Senator Segal. I would tend to agree that six to 200 is too broad a range. It is the range the House of Commons sent to us. Perhaps this is an occasion for some sober second thought.

However, looking at the lower end of that range, six, 10, or maybe 15 plants, my recollection of the work of the Senate committee is that one of the concerns was that, true, the plants would have to be being produced for the purposes of trafficking. Unlike Senator Baker, I do not have my Criminal Code with me. Can Senator Wallace confirm for us that the Criminal Code definition of trafficking is extremely broad? It includes giving or even offering to give. Someone in a suburb who grows 20 plants so that he can have a nice pot party once or twice a year with his neighbours, just good, respectable suburban folks, would be considered to be growing those plants for the purposes of trafficking even if it were only for the three or four immediate neighbours. Am I correct in my recollection about what the Criminal Code says about trafficking?

Senator Wallace: I thank the honourable senator for the question. This is not from personal knowledge, but my understanding is that five marijuana plants, which is the average that is being used for consideration, do produce a significant amount of marijuana. To answer specifically the honourable senator's question, it is true that trafficking does include more than the sale of product, and it would cover giving as well.

Hon. Grant Mitchell: I have two questions, and I will ask one at a time.

The honourable senator was making the point that this will reduce organized crime, which is somehow fuelled by marijuana trafficking. Can he tell me how it is that organized crime would be interested in six plants? That does not seem like a significant amount for an organized crime operation to be worried about, so why would we be worried about it in that context?

• (1650)

Senator Wallace: The bill, as the honourable senator knows, involves a far broader range of serious drugs: heroin, cocaine, methamphetamine, and marijuana. There is no question that production and sale of those drugs are a financial lifeline for organized crime. We have heard that from law enforcement and I fully believe that.

As to the honourable senator's question of where the interest of organized crime begins and where to slot in the beginning point in production to gear to that, that could be an endless debate. The point is that there has to be a beginning — the beginning point of six plants was one that was not taken lightly — and there is no question that the focus of this bill is to deal with serious drug crime. It is the government's view that production from six plants and up does constitute serious drug crime.

Senator Mitchell: The real fear is that a university student growing some plants in a few rooms in a university residence or a house near campus could literally have their lives ruined by something that, in fact, is not particularly pernicious, does not lead to organized crime and might well be commensurate with any number of events that senators in this house got themselves into when they were 19 and 20 years old. When quantifying the level at six plants or five plants, that is the risk you will run. We will start to see what we have seen in the United States, where people who make a relatively minor mistake are in jail for five and ten years — admittedly, you are saying for six months — and their lives are literally ruined. I make that as a statement.

This bill will undoubtedly result, the government would hope, in many more people going to jail. Its tough-on-crime bills always tout that purpose, which is the irony because, if these measures actually worked fewer people would go to jail due to the disincentive for committing the crimes this kind of penalty represents.

Has the government done any analysis of how many more people will go to jail for who knows how much longer, into facilities we do not yet have but must build and operate, because this bill increases the number of people who will be creating the demand for them? Remember that one cell costs $100,000 to build and one person in that cell costs $100,000 a year to operate. Have you an estimate on what this bill will actually cost the Canadian people?

Senator Wallace: I have a couple of comments. You suggest it is the government's hope or my hope that many more people will go to jail because of this measure. I would hope just the opposite. We can debate the deterrence impact of mandatory minimums and stiffer sentences. It would certainly be my hope that there will be a deterrent effect and as a result fewer who would involve themselves in criminal activity. That is an endless debate, I realize, but the point that we would somehow hope more people will go to jail and that is what we stand for is not the case.

Having said that, criminal activity is a significant issue in this country and I believe it is necessary for law enforcement and for legislators to support the efforts of law enforcement to disrupt that criminal activity. Yes, to do that there are times that separating those who will be involved in trafficking, production, importation, and exportation of serious drugs and incarcerating them is what will have to be done to protect our citizens and to make our streets safer. Quite frankly, if that is what it takes to do it, I fully support it.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I wish to follow up on Senator Mitchell's question.

Assuming this bill goes forward and goes to the committee, will Senator Wallace ensure or alert the officials in the department that we would like access to any studies that might have been done by the government that show what impact this measure might have to deter criminal activity, as the honourable senator would hope it would, and also the cost of implementing this bill as a result of increased incarceration rates? Would the honourable senator ensure that appropriate witnesses are available to the committee for that purpose?

Senator Wallace: The full gamut of issues that this bill involves will be considered at committee, as it was when we dealt with Bill C-15. I know there are a number of witnesses within the Department of Justice and otherwise who will speak to all of the issues that this bill involves. It is not the first time the issues you raise have been raised, as you are well aware. They will be raised again and I am sure will be adequately addressed at committee.

(On motion of Senator Tardif, debate adjourned.)

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. Linda Frum moved third reading of Bill S-215, An Act to amend the Criminal Code (suicide bombings).

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

SUPREME COURT ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Tardif, seconded by the Honourable Senator Rivest, for the second reading of Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages).

Hon. Claude Carignan: Honourable senators, I would like to share my reflections and response at second reading, to Bill C-232, An Act to amend the Supreme Court Act, which proposes to add to section 5 of this act a condition for eligibility to Supreme Court appointments, namely, to understand English and French without the assistance of an interpreter.

This bill could have major repercussions on linguistic minorities of both official languages. Honourable senators, I have conducted a very serious examination of this bill, and hope that I can move the debate out of partisan bounds and thus enable our chamber to fulfill its role of sober second thought.

To begin, I would like to quote the Supreme Court decision in the 1988 *Ford* case on language issues. The court writes:

> Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is a means by which a people may express its cultural identity. It is also the means by which one expresses one's personal identity and sense of individuality.

It is this fundamental right to use the language of one's choice that is addressed in Bill C-232.

• (1700)

All will agree that in a modern Canada respectful of its two official languages, bilingualism constitutes a desirable, indeed an ideal individual objective which must be considered when one aspires to the highest echelons of our society, whether at a political, judicial or social level.

A poll conducted by Decima Research in 2006 revealed that seven out of ten Canadians are in favour of bilingualism for Canada as a whole and that eight Canadians out of ten believe it is essential for their children to learn a new language.

However, there is a wide gap between the ideal of a bilingual population and reality. The rate of bilingualism in Canada is about 17 per cent of the population. Analyzed more closely, this average shows that the bilingualism rate is highest in Quebec, at 40 per cent, that is, 66 per cent Quebec anglophones are bilingual and 36 per cent of Quebec francophones.

New Brunswick is in second place, at 34.2 per cent. All other provinces are at less than 12 per cent, from P.E.I. at 12 per cent to Nunavut at 3.8 per cent. This means that the pool of individuals who can fill bilingual positions in Canada, Quebec excepted, is reduced by approximately 90 per cent. For the francophones in Quebec, the pool of individuals who can fulfill bilingual duties is cut by almost 70 per cent.

Beyond these demographic aspects, I examined the constitutional validity of the bill and its impact on future interpretation of individual language rights. But first, a historical and judicial background is needed to assess the impact of Bill C-232.

Before 1867, there was what some authors have called an institutional indecisiveness, which created a series of sometimes contradictory obligations relative to linguistic rights, especially in the judicial arena.

Section 133 of the British North America Act enshrined in the Constitution the fundamental right to use the language of one's choice. This section is still in effect and is one of the pillars on which linguistic rights in Canada were built.

Section 133 provides that, "Either the English or the French Language may be used by any Person in the Debates of the House of the Parliament of Canada and of the Houses of the Legislature of Quebec; . . . and either of those Languages may be used . . . in or from all or any of the Courts of Quebec."

Therefore, Section 133 guarantees the use of either English or French in the Parliament of Canada and that of Quebec, in Canada's courts under federal jurisdiction, and in Quebec's courts. So, this right that I am exercising today in the Senate to address you in the language of my choice, the French language, is this constitutional right provided for in section 133. All the parties in courts of law have exactly the same constitutional right as members of Parliament.

Since its inception, section 133 has been the object of several Supreme Court decisions which have shaped linguistic rights in Canada. Section 133 spearheaded the great judicial victories of linguistic minorities, as well as the recognition of their inalienable right to use the language of their choice.

Among others, I will quote the 1975 judgment in *Jones*, which confirmed the federal jurisdiction in passing the Official Languages Act, and confirmed that section 133 gives linguistic rights which cannot be reduced but that the state has the power to allow for extra rights and privileges.

A few years later, in *Blaikie* in 1979 and 1981, the Supreme Court used a broad and liberal interpretation of section 133, and declared unconstitutional the legislative obligation of unilingualism in Quebec, reiterating that the capacity to use one of the two official languages applied to all procedure and oral arguments and to all organizations or courts who have the authority to administer justice.

In 1986 the Supreme Court, in the *MacDonalds*, *Bilodeau* and *Société des Acadiens* decisions, identified specific linguistic rights. In *MacDonalds*, the Supreme Court stipulated that the fundamental right to use the language of one's choice applied to litigants, lawyers, witnesses, judges and court officers who speak at a trial. While this right is to be able to use the official languages of one's choice, it does not include the right to be understood without the help of an interpreter.

In 1986, the Supreme Court, through Judge Beetz — a bilingual judge from Quebec — gave a restrictive interpretation of the law. He said that, just as the accused exercised his constitutional linguistic right to speak in English, the judge exercised his constitutional right by giving a decision in the language of his choice, a decision rendered partially in French and partially in English.

Therefore, the rights of one party end where the rights of another begin. Judge Wilson, who dissented, has a wider interpretation and confirms that the right to choose your language applies in the same manner to judges, and that the state fails to respect its obligations if it does not take into account the language used by all parties.

Judge Wilson said that the law:

> . . . validates them for a reason and that reason is that the person before the Court will be dealt with in the language he or she understands. To say otherwise is to make a mockery of the individual's language right. Regardless of whether a judge acting in his or her official capacity retains the right as an individual to write judgments in the language of his or her choice, this cannot, in my view, detract from the state's duty to provide a translation into the language of the litigant.

Therefore, Judge Wilson believes the state must provide a translation, and this translation is the means through which the constitutional rights of the parties and those of the judges are taken into account, the rights to express oneself and the right to be understood. She uses an approach to interpretation based on the object which is used in the 1999 *Beaulac* decision through Judge Bastarache.

So, right now in this chamber, simultaneous translation enables me to exercise my constitutional right to express myself, to be understood by many of you in the language of my choice, the French language, and enables my unilingual anglophone colleagues to understand me and to speak to me after my speech by using their constitutional rights to address me in the language of their choice.

Other constitutional guarantees have been added to the 1867 historical compromise, most notably in 1982 with the passage of sections 16, 17, 19, 20 and 21 of the Canadian Charter of Rights and Freedoms.

• (1710)

These sections explain section 133 in greater detail and extend their application to New Brunswick. Section 16 includes a clause on the advancement of status and use of the official languages and requires the state to promote the equality of status of both official languages.

Section 20 creates an obligation to provide services in both official languages under certain conditions, namely, where there is a significant demand. Section 21 provides for the continuation of existing constitutional provisions, including those provided for in section 133 of the Constitution Act, 1867.

In 1988, Parliament modernized the 1969 Official Languages Act by passing the Act respecting the Status and Use of the Official Languages of Canada. Courts have given a quasi-constitutional status to this act, thereby insisting on the importance of language rights in Canada. Section 2 of the Official Languages Act stipulates that its purpose is to ensure respect for English and French as the official languages of Canada, and ensure their equality of status and equal rights and privileges as to their use in federal institutions, in Parliament and in the administration of justice.

Section 4 of that act reformulates the principles of section 133:

> English and French are the official languages of Parliament, and everyone has the right to use either of those languages in any debates and other proceedings of Parliament.

Subsection 14 says:

> English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court.

Section 15 gives the right to interpretation in any federal court and section 16 creates a duty to understand official languages to make sure that every federal court, other than the Supreme Court, which hears the proceedings can understand the case in the language of the party without the help of an interpreter.

Section 16 creates a duty for the judicial institution to ensure that the judge who hears the case understands the language of the party. It does not require the judge to be bilingual. There is no prerequisite for a judge to be bilingual because that would violate a judge's right guaranteed in section 133 of the BNA Act. It is incorrect, contrary to what some people pretend, to say that all judges should be bilingual, except for Supreme Court judges. The state has the duty to designate a judge who understands the language of the parties. Therefore, the individual right guaranteed by the Constitution to use the language of one's choice is respected for all parties in the case.

Why should there be an exception for the Supreme Court? Let us remember that the Supreme Court is made up of only nine judges, which would make it practically impossible to apply this standard without violating a judge's constitutional right. Incidentally, Parliament's deliberations when the act was passed in 1988 confirm this interpretation. The Honourable Ray Hnatyshyn, then Minister of Justice, said:

> . . . Bill C-72 does indeed preserve the immunity, the privileges and the powers of judges.
>
> In fact, judges retain their rights as individuals defined in section 133 of the Constitution Act, 1867 to choose to preside over the court in French or in English.

Honourable senators, should we accept the violation of the constitutional right to use the language of one's choice guaranteed in section 133, even if it is the right of a judge?

We must remember that section 133 spearheaded the rights of language minorities in Canada, that it is one of the pillars on which was built the edifice of linguistic rights in Canada and which requires the state to offer services in both official languages. Accepting the violation of the constitutional right to use the language of one's choice is a step back for linguistic rights. The only way to ensure the continued evolution of linguistic rights is to find a balance so that each individual's constitutional rights are respected. This constitutional right to use the language of one's choice creates a duty for the state, but the individual who hears a case has a right and not a duty.

In the Supreme Court, in particular, legislators have created a way to balance the rights of all individuals by ensuring high-quality simultaneous translation. Also, the Supreme Court, as a bilingual institution, ensures that all communications with the public are bilingual and that litigants can speak in the language of their choice and be understood.

I would like to warn you against making the mistake of rejecting the methods of exercising language rights concurrently, for example through simultaneous translation, a method we employ every day in the Senate to exercise our constitutional right to use the language of our choice.

I would like to give an example of the danger of bypassing such a method that creates a balance between individual rights of the same level that are guaranteed by the Constitution.

In 1998, the Court of Appeal of Quebec was to rule on the constitutional validity of section 530.1(*e*) of the Criminal Code. The Code's section 530 and subsections provide for a series of language rights to ensure the respect of official languages and the right of accused persons to be tried in the language of their choice. According to section 530.1(*e*), the Crown prosecutor in charge of the trial must speak the language of the accused. In 1998, the Attorney General of Quebec was Serge Ménard, currently a Bloc Québécois member of Parliament. Through his lawyers, Attorney General Ménard raised the constitutional invalidity of the right of the accused set out in section 530.1 because of the non-compliance with section 133 of the Constitution Act, 1867, and spoke up for the right of the Crown prosecutor, as a party to the trial, to use the language of his choice, in this case French.

For Serge Ménard, even though section 530.1 served to promote linguistic rights, it was not constitutionally possible through section 530.1 to reduce the rights guaranteed by section 133 without amending the Constitution.

The Attorney General of Quebec added that if an accused does not understand the language of the trial, his or her rights can be ensured through the help of an interpreter, as guaranteed specifically in section 14 of the Canadian Charter of Rights and Freedoms. The Court of Appeal summarized the jurisprudence, which is that section 133 guarantees the rights of all parties, including lawyers, judges and the accused, to use the official language of their choice, that the system can only be changed

through an amendment to the Constitution, and that it would be illegal for a judge to prohibit the use of one or the other official language in the court.

Fortunately, the court ensured an interpretation respectful of the constitutional rights of counsel and the accused, and let the state fulfil the linguistic obligation.

• (1720)

Therefore, in this case, the Attorney General of Quebec invoked the lawyer's constitutional right set out in section 133 and violated another constitutional right set out in section 133, that of the accused, setting aside the methods of assigning cases which do provide for the respect of the right of all parties to use the language of their choice.

If Serge Ménard, Quebec's Attorney General at the time, had succeeded, through his attorneys, in invalidating section 530.1, he might have made a few short-term political gains with his sovereignist base in Quebec, but it would have represented a disastrous step back for language rights in Canada. This decision was quoted in approval by the Court of Appeal for Ontario in the 2004 *Potvin* decision.

Honourable senators, the right to use the language of one's choice is at the base of all the state's constitutional obligations relative to bilingualism. We cannot accept that the rights of one party are used to violate the rights of another without risking, in the long term, a weakening of the foundations of linguistic rights in Canada. We must resist condoning this type of violation.

The cause of minority language rights in Canada is too important and fundamental for the future of our country to accept the violation of individual language rights. Are there other methods as efficient and less prejudicial to individual linguistic rights as simultaneous translation for the Supreme Court, where only questions of law are debated, without witnesses?

Together, we could perhaps identify other mechanisms to create a balance between rights. The state has a duty to seek them and to select those which will be least prejudicial to individual rights.

Other Supreme Court decisions contributed to shaping the linguistic picture of Canada for the next decades. There is the *Beaulac* decision, written by Judge Bastarache, supported among others by Judge Major, who is unilingual. These judges declared:

> Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada.

This rule of interpretation adopted unanimously by the Supreme Court and, I repeat, signed by the unilingual Judge Major, is currently followed in all decisions of lower courts which interpret linguistic rights on a wide and liberal basis depending on their object.

Honourable senators, the more the individual right to use the language of one's choice is protected against all encroachments, the more the constitutional duties of the state to offer services to minority language communities can be extended.

Other nuances are important to protect the fundamental status of language rights. An important section in *Beaulac* summarizes the linguistic right and establishes a subtle but important distinction with the right to a fair trial. It states:

> I wish to emphasize that mere administrative inconvenience is not a relevant factor. The availability of court stenographers and court reporters, the workload of bilingual prosecutors or judges, the additional financial costs of rescheduling are not to be considered because the existence of language rights requires that the government comply with the provisions of the Act by maintaining a proper institutional infrastructure and providing services in both official languages on an equal basis.
>
> As mentioned earlier, in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages. . . .
>
> Another important consideration with regard to the interpretation of the "best interests of justice" is the complete distinctiveness of language rights and trial fairness. Unfortunately, the distinctions are not always recognized. . . . The right to full answer and defence is linked with linguistic abilities only in the sense that the accused must be able to understand and must be understood at his trial.
>
> But this is already guaranteed by s. 14 of the *Charter*, a section providing for the right to an interpreter. The right to a fair trial is universal and cannot be greater for members of official language communities than for persons speaking other languages. Language rights have a totally distinct origin and role. They are meant to protect official language minorities in this country and to insure the equality of status of French and English.
>
> This Court has already tried to dissipate this confusion on several occasions. Thus in *MacDonald v. City of Montreal*, Judge Beetz states that:
>
> > It would constitute an error either to import the requirements of natural justice into language rights or vice versa, or to relate one type of right to the other. Both types of rights are conceptually different. To link these two types of rights is to risk distorting both rather than re-enforcing either.

Honourable senators, at the risk of perverting and weakening linguistic rights, we should avoid using theoretical arguments like those invoked by Maître Doucet before the House of Commons committee, when he said he lost a case because the judge did not understand him.

First, this does not appear to have ever happened in the course of history, but if it had happened and the appellant could prove that the simultaneous translation was deficient, that it caused him or her a prejudice, it is possible to ask for a new hearing of the appeal, both before and even after the decision is made, according to section 76 of the rules of the Supreme Court.

Second, this theoretical possibility is based on fairness of the trial and not on linguistic right. This accusation does not take into account the whole proceedings of the Supreme Court, where nine judges, most being bilingual, each assisted by three research analysts, hear the appeal of a law dispute which has already gone through two other courts. It omits the fact that arguments were cleverly written in submissions, were read and re-read, commented on by numerous barristers, and the whole process was supported, for people who do not understand the language perfectly, by a translation system among the best in the world which is complementary when the judge may not understand everything perfectly.

If you remove translation, you will never be able to find nine judges with language skills equal or superior to that of translators. How many nuances will be missed by the brains of nine human beings who are functionally bilingual? Would adjudicative fairness be better served? Is not the current system, with bilingualism as an important selection criterion, supported by simultaneous translation, the best possible guarantee of a fair trial?

If the translation is somewhat deficient and one fears that one has not been understood accurately, it is possible to have a new hearing based on the record of the transcription.

• (1730)

With no translation, and therefore no transcription in both languages, one could never say that one was not understood and prove that the judge gave a wrong interpretation due to an error in translation.

Honourable senators, language rights are fundamental, inalienable and closely linked to an individual and his or her identity. The quality of translation mentioned by Maître Doucet concerns the right to adjudicative fairness. It is the duty of the state as an institution to ensure that simultaneous translation is of a superior type which respects the principles of quality and fundamental justice.

In the *Tran* decision of 1994, the Supreme Court specified that an optimal translation must be one of "continuity, precision, impartiality, competency and contemporaneousness." If the simultaneous translation is deficient, we need to change the translator, not the judge. It has nothing to do with linguistic rights.

Paraphrasing the Supreme Court, I say that with this kind of argument, Maître Doucet risks perverting linguistic rights and weakening their importance.

Honourable senators, I would like to raise other issues of a constitutional nature which make me doubt the validity of this bill. The Supreme Court is established by the Supreme Court Act, which stipulates that judges are selected from among current or former judges from a provincial superior court or from among lawyers who have been members of a provincial bar for at least ten years.

At least three judges are chosen from the Court of Appeal or the Superior Court of Quebec or from among the judges of that province. The six other judges are appointed by constitutional convention providing for three judges from Ontario, two from the West and one from the East. In consequence, it is incorrect to pretend, like some, that the effect of this bill will be to increase Québec's representation.

The Supreme Court was enshrined in the Constitution with the adoption of the Constitution Act, 1982. We must now question the impact of this bill on the Supreme Court. Can we reduce the pool of candidates to the Supreme Court by 90 per cent outside Quebec and by almost 70 per cent among Quebec francophones? Changing the criteria for appointment to the Supreme Court surely constitutes an issue of concern to the Supreme Court itself. However, section 41.1(*d*) of the Constitution Act, 1982 says that any changes to the Constitution of Canada concerning the composition of the Supreme Court have to be passed unanimously by the federal government and the provinces. We could pretend that this only applies to the number of judges and not to the conditions for appointment. Well, then, what about section 42.1(*d*), which sets out the 7/50 formula, seven provinces representing half of the population, applicable to any amendments to the Constitution of Canada concerning the Supreme Court of Canada?

Since the conditions for appointing judges to superior courts are included in the 1867 Constitution, does the addition of a discrimination criterion based on language not risk changing the historical and political compromise set out in section 133, and would that not call for a constitutional amendment in accordance with the amending formula? I do not have the answer to this question, but it would surely require a more in-depth examination, which obviously has not been conducted to date by the committee of the House of Commons. Some will say that there is surely a way to find bilingual judges in the 10 per cent of bilingual Canadians. However, we must push this analysis a bit further. Our parliamentary system is based on the principle of the rule of law, that is, the supremacy of law and legality. To ensure an optimal determination of the rights, it is necessary to appoint the most competent candidates, without discrimination.

Judge Kelly of the Supreme Court of Nova Scotia gave a lecture to the United Nations on the important elements of judicial independence as a basic principle of the rule of law. After he spoke about the criteria of the rule of law in matters of judicial independence, he said that the selection process of judges must guarantee that there are no irrelevant or discriminatory criteria, including those based on race, colour, sex, religion, and national or social origin.

While Judge Kelly did not mention it specifically, language also constitutes a motive for discrimination recognized by authors as illegal where there is no rational link between the motive and the required skill. What are we to think when, on top of that, the use of the official language of one's choice is guaranteed by the Constitution? The rule of law enshrined in the Constitution calls for judicial selection criteria that are not discriminatory and for the appointment of the candidate who is the best legal mind.

Bilingualism is an important asset to consider, but it cannot be an essential condition to the eligibility of a judge.

Some Hon. Senators: Hear, hear!

Senator Carignan: Honourable senators, the Supreme Court is the jewel in the crown of our judicial system, where only Canada's best legal scholars must sit. Members of this court are picked from a pool of lawyers and judges where, unfortunately, bilingualism has made very little progress.

I would like to quote the Commissioner of Official Languages, Graham Fraser, in his 2007 speech to the Canadian Bar Association. Among other things, he said:

> I am confident we have accomplished much in matters of access to justice in the past 40 years. That is not to say that our work here is done. Much more is needed. Members of official language minority communities continue to be underserved by the legal profession and to encounter difficulties in exercising their language rights before the courts. When they do choose to exercise their rights, they are faced with numerous obstacles and administrative delays, which can discourage some of the most tenacious litigants. In large parts of the country, there is a shortage of lawyers able to represent their clients before the courts in both official languages. Most Canadian law schools do not adequately make their students aware of the existence and importance of these language rights.
>
> The majority of law students graduate knowing only half of the laws they studied — either the English or the French half. Once called to the bar, lawyers are rarely made aware or reminded of these rights and their importance for their clients. Institutional hurdles are also numerous.
>
> There continues to be a shortage of judges able to hear cases in either official language — particularly before provincial and territorial trial and appellate courts. An insufficient number of judges able to hear cases in both languages are being appointed to the bench; bilingualism is often not given enough weight in the selection process for members of the judiciary, despite language being demonstrated as an important aspect of access to justice. A shortage of bilingual court personnel and legal and administrative resources often compounds the lack of bilingual judges.

Honourable senators, we must acknowledge that beyond constitutional amendments justifying the rejection of this bill, the real work of advancing the equality of both languages must start at the base of the pyramid.

• (1740)

The statements of the Commissioner show that at the base of the judicial pyramid, few legal officers are bilingual, services in both languages still leave much to be desired, and the pool of bilingual potential candidates is too small to ensure that eminent scholars are also bilingual. The risk of missing the best possible scholar is still too high. When the judiciary has done its homework at the base, when the state increases the number of bilingual attorneys and judges of the inferior courts, then Parliament will be able, while ensuring the constitutional validity of the process, to impose a condition of bilingualism without running the risk of missing out on the best legal minds of the country.

Notwithstanding this duty to advance the linguistic equality of the judiciary, the state must adopt efficient measures to advance the situation of linguistic minorities who are threatened, especially in the francophone community.

From 1996 to 2006, the relative weight of francophones in Canada dropped to 22.1 per cent from 23.5 per cent, while that of allophones went up from 16.6 per cent to 20.1 per cent. French as the language spoken at home has decreased by 5 per cent since 1971, and is now at 21 per cent of the population.

Language transfer, which means using a language at home other than the mother tongue, is not good for the French language. In 2006, 42 per cent of francophones outside Quebec used English at home, compared to 39 per cent in 2001. Experts say this number is an early sign that the situation of francophones will not improve for the next generation.

Honourable senators, francophone minority language communities need efficient laws, real progress, not simply symbols. Their constitutional rights must be determined by the best legal minds in the country. Some people have claimed that appointing only bilingual judges would be an important symbol for Canadians.

Honourable senators, we must beware of symbolic arguments. A symbol could be a lighthouse serving as a guide, which can both illuminate and blind francophone minorities by letting them believe that all is well and that equality has been reached. The minority status of linguistic communities requires constant vigilance, a true defence of language rights and an active and efficient promotion of these rights, not through symbols, but through concrete and real actions.

We cannot build and evolve by violating the rights of others, but by claiming our own rights. We must base our actions on institutional bilingualism while we promote the inalienable right to speak in the language of our choice. We must pick our battles and never make gains by violating the individual rights of others.

The Hon. the Speaker: I am sorry to interrupt the honourable senator, but his time is up.

Senator Carignan: May I have another five minutes?

Hon. Senators: Agreed.

Senator Carignan: Thank you. We must remember that the distinction between the individual right to use the language of one's choice and the institutional obligation of bilingualism is at the base of the development of our linguistic rights. The gains of francophones were made by requiring the state to provide services in French, and not by violating individual rights. Crossing this fine line could push back individual language rights which were at the heart of francophones' historical claims. Violating the linguistic and constitutional rights of a unilingual anglophone means tacitly accepting the ulterior violation of the individual rights of a unilingual francophone under the constitution, and vice versa. I do not believe that this is the way to go.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Will the honourable senator take a question?

Senator Carignan: Of course.

Senator Tardif: You referred to section 133 many times in your remarks. Now, section 133 of the Constitution simply states that either English or French may be used in courts established by the authority of the Act. Bill C-232 therefore does not prevent Supreme Court justices from using the language of their choice when addressing lawyers. Bill C-232 is about understanding both official languages without the help of an interpreter. Judges will not lose the right to use the language of their choice.

That being said, you did refer to section 133 frequently, and those arguments were very strong 20 or 25 years ago. They do not take into account the changes made in 1988 to the Official Languages Act or the Canadian Charter of Rights and Freedoms, which enshrines language rights in sections 16 to 23.

Also, when you spoke about this, you did not mention, for example, Chief Justice Dickson's ruling, in which he stated that there is another interpretation of section 133 of the Constitution Act, 1867 and of section 19 of the Canadian Charter of Rights and Freedoms. According to his interpretation, section 19 gives rise to a much broader interpretation. While section 133 gives rights to an individual, section 19 gives rights to individuals with regard to the state. That is the important part: the rights of individuals with regard to the state.

The *Beaulac* ruling spoke of real equality. Do you believe that real equality is respected when one official language group is subject to the filter of an interpreter and the other is not?

Senator Carignan: I would like to thank the honourable senator for her question. First, it is important to distinguish between the Official Languages Act, which is a quasi-constitutional statute, and section 133 of the British North America Act, which is constitutional law.

Second, in the Constitution Act, 1982, section 21 states that the 1982 act does not affect rights and privileges previously recognized in other provisions of the Constitution Act, including section 133. Therefore, the 1982 Act does not diminish the importance of the rights in section 133.

Unfortunately, I do not have enough time to — I will not say plead — refer to the numerous Supreme Court and appeal court rulings with their various nuances. Understandably, 45 minutes is not enough time to argue the constitutionality of a law. That would normally take a lawyer four or five hours in front of a judge speaking the language of his choice.

(On motion of Senator Mitchell, debate adjourned.)

(The Senate adjourned until Wednesday, May 12, 2010, at 1:30 p.m.)

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