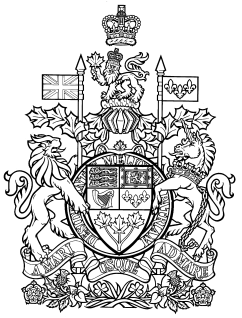

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OFFICIAL REPORT
(HANSARD)

Thursday, February 10, 2011

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

CONTENTS

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

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THE SENATE

Thursday, February 10, 2011

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

Prayers.

SENATORS' STATEMENTS

THE LUNAR NEW YEAR

Hon. Joseph A. Day: Honourable senators, I rise today to discuss the Lunar New Year and its significance in Canada. While the Lunar New Year is often referred to as the Chinese New Year, there are, in fact, many other countries and regions that celebrate the Lunar New Year at this time.

This year, the Lunar New Year fell on February 3. In our Gregorian calendar, the Lunar New Year may fall anywhere between January 21 and February 20, as determined by the arrival of the second new moon after the winter solstice.

The lunar calendar is based on the cycles of the moon, which repeat themselves every 12 years, honourable senators, and a system of animal signs to date the years. The lunar calendar represents a cyclical concept of time and life, which contrasts with our Western linear concept, an interesting difference that may explain our different ways of looking at matters.

China, Korea, Vietnam, Mongolia and other Eastern countries all celebrate the Lunar New Year on the same date. Combined, citizens descended from these groups account for nearly 2 million Canadians.

Honourable senators, I believe it is important to be aware that many Canadians, as well as others around the world, are celebrating what is an important event to them. Collectively, these Canadians have helped to make Canada the diverse and culturally rich country that it is.

Although the Western calendar has been adopted in many of these countries since the early 1900s, the lunar calendar events are still celebrated, and particularly the Lunar New Year.

Honourable senators, imagine the bridge that these Canadians can help Canada make with the countries of their ancestors. Chinese-Canadians alone account for nearly 1.3 million of our population, around 3.9 per cent of the entire Canadian population. The third most frequently spoken language in Canada, behind English and French, is Chinese.

Honourable senators, 2010 was an important year for Canada-China relations. It marked the fortieth anniversary of diplomatic relations between our countries.

The Lunar New Year is the Year of the Rabbit. The Year of the Rabbit is said to be a year to slow down and relax. It is a year to negotiate and not use force to resolve issues.

• (1340)

Honourable senators, given the issues facing this country, this seems to be a wise path for this place to follow. It is important for us to work cooperatively in our challenges, to perform our work here in the best interests of the people and the regions we represent, and to deal with the issues calmly and logically.

Honourable senators, this evening, at 6:30 p.m., the Canada-China Legislative Association will co-host a Chinese New Year's celebration, along with the Ottawa Chinese-Canadian Heritage Centre. The event takes place at the Government Conference Centre, across from the Château Laurier Hotel, and I hope many honourable senators will be able to attend this important function for the Lunar New Year.

[*Translation*]

INTERNATIONAL DAY AGAINST THE USE OF CHILD SOLDIERS

Hon. Roméo Antonius Dallaire: Honourable senators, I would like to draw your attention to an extremely disgraceful side of humanity.

[*English*]

Honourable senators, I rise today to inform the chamber that February 12, this Saturday, is the International Day against the Use of Child Soldiers. It commemorates the day on which the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict entered into force as international law. Canada ratified the optional protocol in 2000 and has been joined, to date, by 138 other countries in a commitment to protect children from armed conflict and its impact. Canada has not, however, put that into legislation.

Today we recognize the hundreds of thousands of children, of whom 40 per cent are girls, who have been killed, maimed, raped, drugged and otherwise abused, and forced to do the same to their families and communities while under the direction of adult combatants.

Soldiering is not a noble career option for nine-year-olds, barely taller than the gun she or he can even carry. This day exists for a reason. The task is not yet complete. Children continue to be recruited and used as soldiers. They continue to be exploited by adults, despite the prohibition that exists in international law.

Currently, Côte d'Ivoire is recruiting former child soldiers from Sierra Leone and Liberia to sustain that friction and potential catastrophe-in-the-making. They continue to be used despite the obligation of governments to protect children from involvement in and the effects of armed conflict.

Honourable senators, we know that children do not save their weekly allowance to pay for flights to far-off places to fight wars. Generally speaking, children do not save their earnings, made at their part-time jobs after school, to buy AK-47s. The funding still comes primarily from blood diamonds and Canada's weak support of the Kimberley Process is not abating that source.

If you buy a diamond, I must insist that you buy a Canadian diamond.

Some Hon. Senators: Hear, hear!

Senator Dallaire: They are clean. They are ethical. They are like the oil exercise that is being used in this country.

Children do not start wars. They are intentionally used as weapons of wars. Their involvement in armed conflict is not their violation against international law. The violation has been committed against them by adults.

[*Translation*]

There was a time when Canada was on the forefront of developing an international framework to protect children's rights. But we have regressed and for too long we have even abandoned one of our own, despite the international laws to which Canada subscribes. A former Canadian child soldier continues to languish at Guantanamo Bay. On this important day, we have the duty to humbly acknowledge Canada's position on the world stage and to make good on the commitment we have made to children.

[*English*]

The use of child soldiers is a crime against humanity. Adults hire, recruit and abuse child soldiers. Blood diamonds sustain these crimes. Buy Canadian diamonds.

THE HONOURABLE DOUGLAS JAMES ROCHE, O.C.

Hon. Tommy Banks: Honourable senators, I want to say a few words today about the Honourable Doug Roche. I first met Doug in the late 1960s when he came to Edmonton to be the editor of the *Western Catholic Reporter*. After a successful tenure at that newspaper, he entered politics and was elected to the House of Commons to represent one of Edmonton's constituencies as a Progressive Conservative. He served there with distinction and then was called to the Senate, where he also served with distinction.

I wish all honourable senators had a chance — as some of us were lucky enough to — to know Doug Roche in his work here. He was the conscience of this place in matters such as those that Senator Dallaire has just talked about, and many other things. When it came to peace and disarmament, it was Doug Roche who kept us from going off track and kept us on the straight and narrow.

Peace and disarmament, in fact, became Doug Roche's vocation. For over 40 years at the United Nations, he worked tirelessly for peace and disarmament. He was Canada's Ambassador for Disarmament to the United Nations. In 1988, he was elected chair of the United Nations' Disarmament Commission. His twentieth book on the subject is due out soon.

Honourable senators, the International Peace Bureau was established in 1890. In 1910, that organization won the Nobel Peace Prize. In the early years of the last century, many members of the International Peace Bureau were also recipients of the Nobel Peace Prize.

Doug currently lives in Edmonton with his wife Pat, where he has raised five wonderful kids and has three grandchildren. Last Wednesday, Doug learned that the International Peace Bureau has nominated him for the Nobel Peace Prize. I know you will all join me in congratulating him.

Hon. Senators: Hear, hear!

THE LATE BRIGADIER-GENERAL EDWARD A.C. "NED" AMY

Hon. Wilfred P. Moore: Honourable senators, I rise today to pay tribute to the late Brigadier-General Edward Alfred Charles "Ned" Amy, who passed away on February 2, 2011, at Camp Hill Veterans' Memorial Building in Halifax, Nova Scotia.

Born in Newcastle, New Brunswick, on March 28, 1918, Ned graduated from the Royal Military College in Kingston, Ontario, in 1939. During World War II, he was a feisty, fearless tank commander. Ned participated with distinction as an officer in three Canadian armoured regiments — the Ontario Regiment, the King's Own Calgary Regiment and the Grenadier Guards — the 22nd Canadian Armoured Regiment — in the Allied invasions and liberations of Sicily, Italy, and the Normandy to Germany campaign.

With the end of World War II, Ned commanded the Royal Canadian Armoured Corps School, the Royal Canadian Dragoons, the 1st Canadian Contingent to the United Nations Peacekeeping Force in Cyprus, the 1st Canadian Infantry Brigade Group in Calgary, and the 4th Canadian Mechanized Brigade Group in Germany. He served as the 1st General Staff Officer to the Commonwealth Division in Korea, and as a staff officer to both SHAPE and NATO headquarters.

At Canadian Forces headquarters in Ottawa, he served as Director of Armour, Director of Operational Support Requirements, and as Director-General of Land Forces Operations.

Upon his retirement in 1972, Ned marshalled his talents with immeasurable energy into volunteer service. He was President of the Royal United Services Institute of Nova Scotia, President of the Army Cadet League of Nova Scotia, member of the Citadel Hill Army Museum board of governors, Honorary Colonel of the Royal Canadian Dragoons, and Colonel Commandant of the Royal Canadian Armoured Corps.

He was a founder and active participant in the "Ko Canadian Unity Group," a gathering of Canadian Forces veterans who, since 1995, have met regularly at Ko's Restaurant in Bridgewater, Nova Scotia.

Perhaps his most beloved volunteerism was that as one of the Friends of the Halifax Rifles. He led us in that campaign which achieved victory on September 5, 2008, with the reactivation of that historic regiment as an army reserve unit.

Ned was one of Canada's three moqst-decorated soldiers. Ned proudly wore the Distinguished Service Order, the Order of the British Empire, the Military Cross, the Canadian Decoration, the Bronze Star of the United States of America and the Cross of Chevalier of the Legion d'honneur of France. On November 14, 2007, I spoke in this chamber about Ned's battle heroics.

• (1350)

Predeceased by his loving wife, Jean, we express our heartfelt sympathy to Ned's sons, Robert and Michael, and other members of his family. He will be interred in the cemetery at Indian Point, Lunenburg County, Nova Scotia, overlooking his beloved Mahone Bay.

Canada has lost a very special son. I am honoured to have been his friend. We shall remember him.

[*Translation*]

ROUTINE PROCEEDINGS

GIOVANNI CABOTO DAY BILL

FIRST READING

Hon. Consiglio Di Nino introduced Bill S-228, An Act respecting Giovanni Caboto Day.

(Bill read first time.)

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

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

[*English*]

CANADIAN HUMAN RIGHTS ACT CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-389, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression).

(Bill read first time.)

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

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

[Senator Moore]

[*Translation*]

FIFTH ANNIVERSARY OF CURRENT GOVERNMENT

NOTICE OF INQUIRY

Hon. Grant Mitchell: Honourable senators, I give notice that, two days hence:

> I will call the attention of the Senate to issues related to the 5th anniversary of the Government.

CLIMATE CHANGE IN CANADA

NOTICE OF INQUIRY

Hon. Grant Mitchell: Honourable senators, I give notice that, two days hence:

> I will call the attention of the Senate to the current state of climate change policy in Canada.

QUESTION PERIOD

FOREIGN AFFAIRS

COST RECOVERY OF TRAVEL TO AFGHANISTAN FOR FAMILIES OF FALLEN SOLDIERS

Hon. Roméo Antonius Dallaire: Honourable senators, my question is for the Leader of the Government in the Senate. In Afghanistan today, 14 family members of nine soldiers killed in combat are visiting Kandahar. Families find it very moving to be able to visit the place where their loved ones spent their final days.

Since 1997, it has been the policy of the Canadian Forces to repatriate the bodies of soldiers killed overseas. The soldiers' bodies are brought home, but the families' attachment to the battle sites is also very important. It was announced today that next month will be the last opportunity for relatives to travel to the area to remember those who have made the ultimate sacrifice.

Can the Leader of the Government confirm that all families who have lost loved ones in action will have the opportunity to decide whether or not they would like to go to Kandahar to take part in such a memorial for their loved ones?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I thank Senator Dallaire for his question. I have not heard what the honourable senator has just reported to this chamber. I am aware of the long-standing National Defence policy that permits Canadian military families to go over to Afghanistan. I realize that we are leaving Kandahar in a few scant months, but I will seek information, honourable senators, and respond to Senator Dallaire's question when I have an answer.

Senator Dallaire: Honourable senators, we still have troops in the field, still in combat, still in war, and most of them from the garrison near where I live in Quebec City. I raise this concern because of a media announcement by the Vice-Chief of the Defence Staff, who is the resource manager for the Department of National Defence. The announcement indicated that a series of benefits and supports available to the troops and their families have been put on hold. The benefits and supports have been stopped because of an internal paperwork problem and they have not sought authority from the central agencies, such as Treasury Board Secretariat.

Honourable senators, if this was a matter that occurred just last week, one could say that someone messed up in getting a signature. Apparently, however, this has been going on for five years.

Honourable senators, are the civilian bean counters who are responsible for the financial dimension of National Defence now starting to take control? As we have troops in the field, will they start cutting into benefits that those troops need in order to sustain their commitment and the commitment of their families to such a significant job as fighting our wars?

Senator LeBreton: As the honourable senator mentioned, that administrative issue has reached the public's attention. The minister is addressing this issue. It will be fixed as soon as possible, and soldiers and their grieving families will not be affected. All previously covered travel for grieving families will be paid. With respect to all other benefits, no money will be recovered from Canadian Forces members during this period of review.

Senator Dallaire: The Department of National Defence employs a method wherein when a soldier has been overpaid, the finance people simply cut the pay and absorb it in one transaction. In some situations, soldiers have found that they will not receive their pay because the finance people have clawed back the discrepancy. There is a terrible history of such actions in the past.

I am seeking from the Leader of the Government in the Senate a guarantee that this government will not retroactively obtain funds from the troops, their families or the programs that have been used to support them in the field.

Honourable senators, imagine that we are having this discussion while we still have troops in the field. It is bad enough that they have to worry about the enemy in front of them, but imagine having to keep an eye out from behind because of uncertainty of what is going on back home for support. Can the leader provide us with that guarantee?

• (1400)

Senator LeBreton: Honourable senators, Senator Dallaire is repeating the CBC's interpretation of the situation.

I have answered the senator's question. This is an administrative issue and, as the honourable senator just pointed out, there have been incidents in the past.

I will only commit to what I said to the honourable senator earlier in response to his first question, which is to get as much information as possible. However, I did say that with respect to the benefits, no money will be recovered from Canadian Forces members during this period of review.

Hon. Grant Mitchell: Honourable senators, it was quite striking to see that the admiral would make an announcement of that nature, severing benefits without having any solution, the kind of solution that the Leader of the Government has mentioned today. Imagine — and I think we cannot — the message sent to families and the military in the field right now.

Honourable senators, what is wrong in that department, that the admiral would not think that he could settle this problem with the minister before an announcement was made announcing the problem and the solution? Is the relationship so bad in that department that the admiral simply did not feel he could go to his political leader to solve it?

Senator LeBreton: I will not get into hypotheses, honourable senators. Obviously, I sympathize with the families that are involved in this issue. I have already answered the question in response to Senator Dallaire.

SEARCH AND RESCUE

Hon. Terry M. Mercer: Honourable senators, on February 1, the House of Commons Standing Committee on National Defence was in Newfoundland hearing testimony on search and rescue response times.

Cheryl Gallant, the Conservative Member of Parliament for Renfrew—Nipissing—Pembroke made some odd comments during that hearing. Here are a couple of her strange comments from the transcript:

> In Ontario, we have inland seas, the Great Lakes, and it would never occur to any of us, even up in the Ottawa River, to count on the coast guard to come and help us.

Ms. Gallant went on to say:

> We have our province that actually has its resources deployed, and not at the same time; it might be one part of a river, or one lake, or another river on a given weekend. But we pool all our resources. Even the municipalities put boats out, so that it's a community effort.

Ms. Gallant continued:

> I know that it would be ideal to have the federal government be there in the 30-minute response time 24 hours a day, but in practicality, we do have to pool our resources.

It seems that the Conservative Party's new policy, when it comes to the safety of Atlantic Canadians, should be the fend-for-yourself approach, when it is clear that the federal government has responsibility to perform search and rescue in the North Atlantic.

Honourable senators, there is a great deal of difference between the North Atlantic and the Ottawa River. It appears dangerous for Newfoundlanders and Labradorians to vote for the Conservative Party.

Would the leader kindly tell us whether the Conservative government is pleased with this new approach to search and rescue?

The Hon. the Speaker: Order. Honourable senators, I have to draw your attention to rule 46 of the *Rules of the Senate of Canada*, which provides that it is quite proper to quote from a minister who has spoken in the other place. However, honourable senators, the rule, as I read it, proscribes the quoting of a member who is not a minister in the other place. Although one may summarize, one may not quote. I want to make clear what our rule 46 provides.

Senator Mercer: I thank His Honour for that clarification; however, had His Honour been paying closer attention, he would have heard that I was not quoting from what the member of Parliament for Renfrew—Nipissing—Pembroke said in the other place. I was quoting from comments Ms. Gallant made at a committee hearing in Newfoundland and Labrador.

Honourable senators, it appears that it is dangerous for Newfoundlanders and Labradorians to put any faith in this government.

Would the leader kindly tell us whether the Conservative government agrees with this new approach to search and rescue in the North Atlantic?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator. The member of Parliament in question was not speaking for the government. Ms. Gallant has apologized for her remarks, not only to her colleagues but also to officials in Newfoundland and Labrador.

Some Hon. Senators: Oh, oh!

Senator Comeau: Not good enough for you?

Senator Mercer: I do not think it is good enough for the people of Newfoundland and Labrador. Ms. Gallant should apologize to all Atlantic Canadians. It is well known that when an emergency strikes in Atlantic Canada, we are all there. When Swissair went down off Peggys Cove, people did not wait for the Coast Guard, but got in their boats and went out on the ocean to try to help the victims of the disaster. Unfortunately, there was no help to be given because of the magnitude of the disaster.

Honourable senators, we do not need to be lectured by people from Upper Canada about search and rescue.

Honourable senators, let me talk about the testimony provided by the Honourable Shawn Skinner, Minister of Natural Resources and Minister Responsible for the Forestry and Agrifoods Agency in Newfoundland and Labrador. Mr. Skinner appeared before the committee, and he said that 193 fish harvesters have lost their lives in the Atlantic since 1979. He also stated that the current search and rescue response times provided from DND — and please pay particular attention to the numbers I will give you — are 30 minutes between the hours of 8 a.m. and 4 p.m., Monday to Friday, and at two hours, outside of those hours and on statutory holidays.

How many Atlantic Canadians' lives are at stake when the Department of National Defence goes on a break or takes a vacation?

Senator LeBreton: Honourable senators, I think that Senator Mercer's comment is a gross insult to DND and members of the Coast Guard.

With respect to Canadian Forces and our search and rescue operations, as the minister has stated on many occasions, these assets are optimally located to provide the most rapid response to areas where, historically and statistically, incidents are most likely to occur. We are constantly assessing the search and rescue needs and capabilities, and we are committed to providing effective search and rescue services for all Canadians. Obviously, the people who live along our coasts are historically and statistically in more danger, and, obviously, that is where a good part of the search and rescue missions are focused, although we do have search and rescue capabilities in other parts of the country as well.

Senator Mercer: Honourable senators, I do not care if the people at the Department of National Defence are insulted by my comments because my question relates to the safety of Newfoundlanders and Labradorians and Atlantic Canadians who are out on the water. Those people are insulted by the lack of good service.

Honourable senators, can you imagine that we will have to tell the fishers to schedule any catastrophes between 8 a.m. and 4 p.m.? Perhaps someone at DND should understand that when fishers go out on the Grand Banks, they go for weeks and months at a time. It takes hours to get there. They do not get there in a few moments; it takes a long time. To have to say, "We will have to wait to have our accident until after 8 a.m. Hold it, now. Don't let anything happen before eight o'clock in the morning because search and rescue is unavailable until that time," is an insult to Atlantic Canadians and to those good men and women working on the waters of this country. DND should be ashamed of itself, not the other way around.

Could the leader tell me when this government will address the issue of search and rescue times so that we in Atlantic Canada can depend on search and rescue being able to respond in a reasonably quick time to help save those people who find themselves in distress on the water?

Senator LeBreton: I repeat, honourable senators, that I think the honourable senator has done a great disservice to our Canadian Forces and to the search and rescue people. To suggest that people's lives are at risk while the search and rescue people are off having coffee breaks or holidays or weekends is highly insulting. As the honourable senator knows full well, the search and rescue operation operates on a 24-7 basis.

• (1410)

We are always looking at ways to improve service, following areas where historically and statistically there are more incidents. I repeat what I said: I would take great offence if I were a member of the Canadian Forces, and part of search and rescue, to think that a parliamentarian would think I would rather go for a coffee break or have a holiday than save a life.

Senator Mercer: It is your responsibility, minister, as a member of the government, to manage the departments that fall under the government. One of those departments is the Department of National Defence.

The people who are not there at the time to respond are working to schedules established by the people who run the departments. The last time I checked, Peter MacKay, the Minister of National Defence, was responsible for that department, not some warrant officer or sergeant in Gander.

The schedules and rules are drawn up to make available the proper personnel and to provide enough personnel to perform this job. The schedules and rules are the responsibility of the minister and the management of the Department of National Defence.

The good people who work in search and rescue do a terrific job and we are happy to have them. We are thankful to have them, but what we do not have is enough of them, and we have poor management by this government.

How many more Atlantic Canadians are going to or could die because of the government's mismanagement?

Senator LeBreton: The honourable senator's remarks are clearly on the record, but I point out that we have vastly increased the resources and the number of people in the Canadian Forces, unlike the government of the previous 13 years. I invite the honourable senator to go back and check the record. When his party was in government, it would not even provide the Canadian Forces with decent helicopters to go out and save people.

Hon. Roméo Antonius Dallaire: Honourable senators, the information provided by Senator Mercer on the availability of search and rescue is at least shocking. However, we are talking about the air force; I will not go any further but it is inappropriate.

That being one element, the helicopters that have come in were initiated by the previous government and moved forward, but the issue of fixed wing aircraft for search and rescue has not been resolved. It is stalled within the process of procurement and decisions on benefits and so on.

The leader's government has been at it for five years. Could she tell us when those aircraft will appear on the horizon, please?

Senator LeBreton: Senator Dallaire has tried to cover the fact that the search and rescue mission operation was severely set back by the actions of the previous government on the whole issue of the acquisition of the helicopters.

With regard to the fixed wing, I will take the question as notice and send the honourable senator a written answer.

[*Translation*]

PUBLIC SAFETY

CONDITIONAL RELEASE OF PRISONERS

Hon. Céline Hervieux-Payette: Honourable senators, my question is for the Leader of the Government in the Senate. The coalition of the Conservatives with the separatists, the Bloc Québécois, recently managed to come to an agreement in order to pass a bill to prevent any form of early release for financial criminals, also known as white-collar criminals.

The bill will be fast-tracked and the legislation will apply retroactively. This is another example of the invention of a new procedure in order to avoid the usual process.

Apart from the fact that it is never a good idea to legislate based on one's emotions about an item in the news, no matter how villainous it may be, this agreement goes against our legal and democratic principles.

Furthermore, while the Conservative government and the Bloc members are acting tough, they are not mentioning the fact that Canadians will be paying to keep these people in jail, rather than having them do useful community work.

Finally, it is completely unacceptable to amend our entire parole system — retroactively and in contempt of Parliament — in order to play petty politics based on two isolated albeit tragic cases that played out in my province.

Can the Leader of the Government in the Senate perhaps tell us when — after five years in power — her government will stop micromanaging and decide to govern in the interest of all, with respect for our democratic institutions and for the good of our children's future?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): We have many pieces of legislation tabled before Parliament on a host of matters with regard to our justice system. On the particular piece of legislation that the honourable senator refers to, as the government is a minority government, for all legislation that is tabled in the other place, we seek the support of its members.

As was the case last night on a motion, the Liberals supported the government's position. In other instances, the NDP supports the government's position. On this particular matter, the members of the Bloc Québécois supported the government's position.

When the government tables legislation, the aim is to pass the legislation through Parliament. We appreciate the support of any of the opposition parties who choose to support the government's legislation.

On the piece of legislation the honourable senator refers to, this legislation is going through the parliamentary process. Everyone will have a chance to have their say, but I dare say that if I were a victim of Mr. Jones, I would not think of that individual as a stellar citizen.

[*Translation*]

Senator Hervieux-Payette: Honourable senators, I would like to point out to the Leader of the Government in the Senate that I was speaking about sound, long-term management and not making decisions on a case-by-case basis and then amending the Criminal Code based on a specific case.

FINANCE

HARMONIZED SALES TAX

Hon. Céline Hervieux-Payette: Honourable senators, I would also like to point out, in keeping with the theme of sound management, that in an interview on *RDI Économie*, broadcast on February 1 on the RDI network, Luc Godbout, a researcher with the Chair in Taxation and Public Finance at the Université de Sherbrooke, explained that Quebec is the only province, out of the six that have harmonized their sales taxes, to have received no compensation. The Atlantic provinces received almost $1 billion in compensation under the Liberal government, Ontario received $3.4 billion, and British Columbia was given $1.6 billion. Quebec is claiming $2.2 billion in compensation from the federal government for harmonizing its tax in 1992, and it has yet to be compensated.

Since the government has just shown that it can form a coalition with the Bloc Québécois separatists, can the Leader of the Government in the Senate tell us whether this coalition will at least put an end to the unfair treatment of Quebec and this double standard by including the amounts owed to Quebec in the next budget?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): We have been in government for five years and we have moved considerable legislation through Parliament using a process of cooperation in the other place by one or other of the opposition parties. Joining together and signing an agreement, that is a coalition. Seeking support from the opposition is a meaningful way of trying to move our legislation through Parliament.

With regard to white-collar crimes, this piece of legislation is not specifically designed for a few cases in Quebec. If the honourable senator checks the record, as part of our policy platform, we indicated our interest in dealing with white-collar crime long before these cases happened.

I can understand the honourable senator's concern when her party in the other place decides they are on the side of grow-op operators and drug pushers who damage our children. I can well understand it.

With regard to the sales tax in Quebec, I will repeat what I have said and what the Minister of Finance has said on many occasions. He is continuing to negotiate in good faith with his counterparts in Quebec, and we, as the government, hope to reach a successful outcome after these negotiations.

HEALTH

SODIUM WORKING GROUP

Hon. Catherine S. Callbeck: Honourable senators, my question is to the Leader of the Government in the Senate. On Tuesday, I asked the leader why the federal government disbanded the Sodium Working Group before the group completed its mandate. At that time, the leader indicated there was a significant overlap between the working group and the Food Regulatory Advisory Committee, which is the group that the government has now charged with implementing and monitoring the sodium reduction strategy.

I have checked into this matter and there is not a significant overlap. In fact, there is very little overlap between the two groups.

The Sodium Working Group is made up of experts in their field. They started the initiative. They had the mandate to develop, implement and monitor the strategy. They have already developed it, so why will the government not let them complete their mandate?

• (1420)

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, as I said when I answered the honourable senator's question a few days ago, it is clear that sodium levels in Canadian food products are high. That is why we established the Sodium Working Group. The group looked at ways to reduce the amount of sodium and encourage Canadians to reduce their sodium intake. There was a considerable amount of media interest around their reports.

As I said, we thank the Sodium Working Group for their hard work. At the health ministers' meeting last summer, the ministers of health adopted a goal of reducing sodium intake by one third by 2016. Following on these reports, Minister Aglukkaq will continue to work with her provincial and territorial colleagues and all other stakeholders in this area to ensure that this strategy is implemented to the benefit of all Canadians.

Senator Callbeck: The Sodium Working Group was set up to develop, implement and oversee this strategy. That was their mandate. They started it. They worked for three years. They developed a strategy. All of a sudden, the Sodium Working Group has been disbanded and the government has given the implementation and the oversight of this strategy to the Food Regulatory Advisory Committee.

Why did the government disband the Sodium Working Group, which is composed of experts in their fields? The group includes Health Canada, Agriculture and Agri-Food Canada, the Public Health Agency of Canada, the Federal-Provincial-Territorial Group on Nutrition, scientists, health professionals, health and consumer groups like the Heart and Stroke Foundation and the food manufacturing and food service industries.

The group spent three years developing this strategy. As I said, their mandate was to develop, implement and monitor. Why will the government not let them implement and monitor this strategy?

Senator LeBreton: The participants in the Sodium Working Group completed their work. We thank them for their work and now the strategy will be implemented through the ministers of health for the various provinces and territories. I think we are speaking from the same side of the page, Senator Callbeck.

The Sodium Working Group was set up. They provided good work. They provided good research. There was a lot of media attention around their findings. The Minister of Health took this work to her counterparts in the provinces and territories and they are working to implement a sodium reduction plan to reduce intake by 2016. I do not know what more I can say.

Senator Callbeck: I still do not have an answer to my question. A number of the people around the Sodium Working Group are speaking out and are concerned about the future of this strategy.

They had a mandate to set up the strategy, implement it and monitor it. Suddenly, the government has taken the implementation and monitoring from the working group and given it to another group called the Food Regulatory Advisory Committee. Why did the government do that?

Senator LeBreton: Honourable senators, I have not seen any of the people who are questioning this move referred to by the honourable senator. The group provided good work, they completed their work, we thanked them for their work and we have turned this strategy over to the people who are in the best position to implement it; namely, the various health authorities in the provinces and territories.

Senator Callbeck: Hopeless.

HERITAGE

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION APPOINTMENT OF VICE-CHAIRPERSON

Hon. Pierre De Bané: Honourable senators, my question is for the Leader of the Government in the Senate.

When we had our exchange, the leader said something that astonished me. I argued that the new vice-chair of the CRTC is a person who has never been involved in any matter related either to broadcasting or telecommunications. The leader made the argument that having someone appointed to such a critical position without any experience in that field —

The Hon. the Speaker: I regret to inform honourable senators that the time allotted for Question Period has expired.

I am therefore obliged to call for Delayed Answers.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table a delayed response to an oral question raised by Senator Dallaire on December 13, 2010, concerning National Defence—Military Family Resource Centres.

NATIONAL DEFENCE

MILITARY FAMILY RESOURCE CENTRES

(Response to question raised by Hon. Roméo Antonius Dallaire on December 13, 2010)

Military Family Resource Centres work tirelessly to support families at Canadian Forces bases, wings and stations across the country, in the United States and in Europe. Their job, in short, is to bolster the resilience of families and ensure the services are in place to meet the unique demands of the Canadian Forces lifestyle.

The Military Family Services Program, and the Military Family Resource Centres who deliver the Program, are the most visible demonstration of our support for the families of Canadian Forces members. Recognizing that individual and family well-being has a significant impact on military readiness and operational effectiveness the Military Family Resource Centres provide a number of services to Canadian Forces personnel and their families to support their ability to be ready for duty.

The heightened operational tempo that has been the mainstay of Canadian Forces operations since 2002 has emphasized the critical contributions of families to the operational effectiveness of the Canadian Forces. The research is clear: the capacity of military families and their support of the Canadian Forces contribute positively to the recruitment, retention, readiness and deployability of Canadian Forces personnel. Military Family Resource Centres are a critical enabler of operational effectiveness.

With respect to the specific question concerning the Valcartier Military Family Resource Centre, the situation is quite to the contrary of what the Honourable Senator has suggested. First, the Valcartier MFRC has not terminated any employees as a cost-saving measure. Second, since 2007, the Valcartier MFRC has seen increases to both its core, public funding and the local funding provided by the base.

It is clear that the many services provided by the Military Family Resource Centres are critical to maintaining a military force that is operationally ready and effective. That is why, for over 20 years Military Family Resource Centres have been a hub of activity for providing services that help military families tackle the challenges of their unique lifestyle. The Minister of National Defence is confident that they will be able to continue to provide these services and give our Canadian Forces personnel and their families the support that they deserve.

[*English*]

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—AMENDMENTS FROM COMMONS—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Carignan, seconded by the Honourable Senator Demers:
>
> That the Senate concur in the amendments made by the House of Commons to Bill S-6, An Act to amend the Criminal Code and another Act *(Serious Time for the Most Serious Crime Act)*; and
>
> That a Message be sent to the House of Commons to acquaint that House accordingly.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I take this opportunity to address the issue raised yesterday by Senator Nolin about the amendments to Bill S-6 and the two new proposed subsections both referred to as subsection (2.7). I thank the Honourable Senator Banks for moving the adjournment to provide us with time to review this matter.

Upon review, it has been established that this matter can be treated as an error in the amendment message; that is to say, a minor typographical error that can be corrected by the law clerks of the two houses acting together before Royal Assent. Such corrections, unfortunately, are required from time to time to correct what Driedger called "an obvious typographical error or slip of the draftsman's pen."

By such means, the second proposed subsection (2.7) would be renumbered subsection (2.8) before Royal Assent. This means would avoid the need for a formal amendment to the message to be sent back to the House of Commons to seek agreement of the house.

The Hon. the Speaker: Are honourable senators ready for the question?

On debate.

Hon. Lowell Murray: Honourable senators, I do not see Senator Nolin in his seat. The explanation the Deputy Leader of the Government in the Senate has given sounds to me to be perfectly reasonable and sensible. However, it was Senator Nolin who raised the matter. I think it would be better if we waited until he is back in his seat to see whether that explanation is satisfactory to him.

If my friend opposite can say that he has already consulted privately with Senator Nolin, that consultation, of course, would also be acceptable.

Senator Comeau: I find Senator Murray's suggestion highly irregular that we wait for a senator to be in the chamber to deal with this issue. Senator Nolin asked a perfectly legitimate question yesterday, and I imagine he placed extreme urgency on it. We gave a response and the response is legitimate, as the honourable senator suggested a moment ago.

I do not think we have to wait for Senator Nolin to be back in the chamber to give either his assent or to demonstrate his continued concern. Honourable senators, this bill has been kicking around for a long time. We have been advised by the law clerks of both houses that typographical errors happen from time to time, and that this means is a perfectly legitimate way of solving the problem.

I suggest that we continue with the debate and then proceed to the final denouement of this bill.

Senator Murray: Honourable senators, I am seeking a simple matter of courtesy from the government towards one of its members. The explanation all sounds reasonable to me. I want to know that Senator Nolin is satisfied with the explanation. He can indicate his satisfaction privately to my friend or he can come in here and do so for the record.

• (1430)

I do not see what we have to lose by waiting until another sitting to send a message to the House of Commons as to our agreement. I do not think we have prorogation or dissolution staring us in the face this weekend.

My friend suggests that we should continue the debate. I would move the adjournment of the debate.

The Hon. the Speaker: I know that another senator is prepared to speak now. Does the honourable senator wish to move the adjournment later?

Senator Murray: Thank you, Your Honour. Yes, I do.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, today I am speaking to Bill S-6 because, unfortunately, I heard a word in this chamber that always gets a reaction out of me when it is used in the context of rejecting a bill that meets the expectations of the families of victims of crime, namely, the word "vengeance."

To properly express my thoughts and provide my opinion on the bill to abolish the faint hope clause, I would like to share the story of the murder of my daughter Julie.

Julie was a young woman full of life. She was 27 years old. Julie had an incredible future ahead of her. She had life ahead of her.

A few months before her murder, she was promoted to manager of the Aldo store in Sherbrooke. That was Julie's dream job. She was kidnapped in downtown Sherbrooke, unlawfully confined, raped and strangled by a man who, on the night of June 23, 2002, was a predator on the hunt for a woman to rape.

Despite Julie's pleas not to be killed after she was raped, her attacker did not give her the first chance, let alone a second chance to live.

[*English*]

Honourable senators, I do not know whether or not Senator Carstairs, who said that this bill is about vengeance, has met many families who have had a loved one murdered. I encourage her to do so. She will discover that very few of them are about vengeance, no more so than this bill is about vengeance against murderers.

[*Translation*]

We have to stop thinking of victims' families as vengeful. Those I have met are concerned about justice and public safety. Their primary concern, of course, is that the murderer is punished for his crime, but they also want to ensure that he never has a chance to create more victims. These victims' families are asking for only one thing: that justice is served and respected; that the sentence handed down by the court is respected. That is the very foundation of Canadian justice.

Honourable senators, I cannot tell you often enough in this chamber that these families are motivated by mutual compassion and by an obvious concern to prevent such tragedies from ever happening again.

Is kidnapping, raping, attacking and killing a woman not a serious crime in your view? Releasing a criminal convicted of such acts after only 15 years in prison is certainly not a very serious sentence.

Honourable senators, I remember November 30, 2004, when the judge asked the criminal to stand while the sentence that the jury had decided on was read out: life in prison with no chance of parole for 25 years. When it was read out, we were not necessarily pleased with the sentence; we were simply satisfied that it was fair and proportionate to the crime, as set out in the Criminal Code of Canada. You can imagine my surprise when I learned, two years later, that we have a parallel justice system in Canada that allows sentences handed down by our judges to be reduced. The criminal therefore had the possibility of being released after having served only 15 years of his life sentence.

Our family's legal battle went on for nearly seven years. The offender's request for a new trial went as high as the Supreme Court of Canada, but obviously it was denied. In 2016, five years from now, seven years after the end of the legal proceedings, our family will have to relive this painful past because Julie's murderer will be able to start his release process. He can do this every two years.

That is why, when I was chairman of the Murdered or Missing Persons' Families' Association, our association fought hard to eliminate such privileges, in order to ensure that criminals would serve their entire court-imposed sentences for premeditated murder.

All partisan comments aside, I would like to remind you that this privilege, which was implemented by the Liberal government at the time, follows the same philosophy as automatic parole after one sixth of a sentence. These measures have been openly condemned by the public and prove to victims that the Liberals often put criminals' rights ahead of victims' rights.

For five years, our government has been trying, with bills such as this one, to put rigour and accountability back into our prison system. These values have disappeared over the past 30 years. All too often over the past 30 years, Liberal legislation has transformed criminals' privileges into rights that the majority of them now benefit from.

[*English*]

Some would like criminal laws and victims' rights to be kept apart, to be separate and impenetrable; but that cannot happen because we live in a society founded on the rule of law. We cannot systematically separate the human dignity of victims from the need to see the most dangerous of criminals punished.

[*Translation*]

The underlying principles of criminal law are deterrence and punishment, which ensure that the most despicable actions are condemned. Criminal law revolves around *mens rea*, with criminal intent forming the basis for Canadian criminal law. Therefore, it is proper to severely judge those who have intentionally ended the life of a human being.

If we are here today, sitting in the same seats occupied by our predecessors in the Senate, it is because we have been given the responsibility of passing laws to ensure peace, order and good government. The aim of Bill S-6 is to ensure that we preserve the values of our society. Respect for others and respect for human life are pre-eminent values. Honourable senators, that is the true sense of the justice we wish to re-establish in the Canadian justice system. Criminals must recognize and accept the consequences of their actions. This bill will achieve that purpose.

[*English*]

I will close by quoting a great philosopher of the 19th century, John Stuart Mill, who said:

> That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

[*Translation*]

Honourable senators, I urge you to lend your unqualified support to Bill S-6, on behalf of the families of murder victims and all Canadians.

(On motion of Senator Murray, debate adjourned.)

[*English*]

CRIMINAL CODE
NATIONAL DEFENCE ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Daniel Lang moved second reading of Bill C-48, An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act.

He said: Honourable senators, I am pleased to speak today in support of Bill C-48, the Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act.

• (1440)

I say this because I am speaking on behalf of 34 million Canadians who are outraged that a multiple murderer like Clifford Olson has the right to apply for parole every two years. Canadians believe that this right should be abolished because it makes a mockery of the law and everything our country stands for.

Honourable senators, one need only listen to what Sharon Rosenfeldt, President of Victims of Violence, said to a committee in the other place as she described having to relive the horrors of the murder of her son during parole hearings. She said:

> On a personal level, I can tell you one thing: it's tough. It's tough after 29 years, it's tough after 26 years, and I'm not sure why we have to go through it.

One can only imagine what this right of appeal for mass murderers does to the families of the victims who are forced to relive the past. We need only refer to the earlier comments of our colleague.

Thirty-four million Canadians, along with Sharon Rosenfeldt and other victimized Canadians, expect us to rectify this obvious major flaw in our justice system.

Bill C-48 proposes to amend the Criminal Code and make consequential amendments to the National Defence Act. It would authorize a judge to order that convicted multiple murderers could serve separate, 25-year periods of parole ineligibility to account for the second and each subsequent victim of their crimes. Most importantly, these additional 25-year periods would run consecutively to the period of parole ineligibility imposed for the first murder.

In exercising this new authority, judges will have regard to criteria in the Criminal Code with which they are already familiar in the context of setting parole ineligibility periods for convicted murderers.

Also, Bill C-48, as introduced by the government, would require the sentencing judge to give reasons for the decision not to impose consecutive periods of parole ineligibility on a convicted multiple murderer in a particular case. This would be of benefit to the families and loved ones of murder victims who have long said that they are left in the dark as to why certain decisions are taken during the trial and sentencing process.

The measures proposed in this bill have been brought forward because of the compassion Canadians feel for the families and loved ones of murder victims.

This issue is not new to Parliament. Ten years ago, a Liberal member of Parliament, who still sits in the other place, tried to address this wrong by way of a private member's bill. Ten years later, the government has brought it forward for our consideration.

Let us be clear: This bill targets criminals who have committed the most horrific of crimes. For these most depraved criminals, we are talking about incarceration, not rehabilitation.

The discretionary authority granted to judges by this bill will allow them to impose consecutive periods of parole ineligibility for a multiple murder. In these cases, judges will have the new power to effectively eliminate the need for victimized families to suffer through a series of parole applications that too often do little more than stir up painful memories.

I refer honourable senators to what the Federal Ombudsman for Victims of Crime told the committee in the other place. Susan O'Sullivan said:

> Bill C-48 addresses two specific concerns that victims have raised again and again: the need for accountability for each life taken, and the anxiety and emotional toll victims face when an offender is granted a parole hearing.

She went on to say:

> . . . anybody who has suffered a loss as a result of murder will be scarred for life.

Honourable senators, Bill C-48 is yet another example of the commitment of this government to address the concerns of crime victims and all Canadians that convicted murderers should serve the time in prison that their crimes merit.

In this regard, Bill C-48 should be seen as companion legislation to Bill S-6, the Serious Time for the Most Serious Crime Act, which will effectively repeal the faint hope regime for all future murderers and help to ensure that they serve the full time to which they were originally sentenced.

The bill is based on the straightforward proposition that taking the lives of more than one person reflects a higher degree of moral guilt and must allow for a higher penalty.

In conclusion, these proposed amendments will protect the families and loved ones of multiple murder victims from being forced to re-hear the details of these crimes at parole hearings.

Bill C-48 proposes to reform the approach to sentencing multiple murderers in a way that balances respect for the principles of sentencing with respect for the rights of victims and their families. For this reason, honourable senators, it deserves your careful consideration and support. Thirty-four million Canadians expect no less.

(On motion of Senator Tardif, debate adjourned.)

INCOME TAX ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Banks, for the second reading of Bill S-221, An Act to amend the Income Tax Act (carbon offset tax credit).

Hon. David Tkachuk: Honourable senators, I would like to rewind the clock on behalf of Senator Comeau.

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

SUPREME COURT ACT

BILL TO AMEND—SECOND READING—
POINT OF ORDER—SPEAKER'S RULING RESERVED

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. Joan Fraser: Honourable senators, I will continue the remarks that I began yesterday on the point of order raised by Senator Cools in connection with the need or otherwise for Royal Consent to this bill.

I confess that I have not had the opportunity to consult more of the words of Sir John A. Macdonald, so the quotation that I used yesterday about being a British subject will have to stand, although, of course, I am a Canadian and proud to be so.

To the subject matter, I have had the opportunity to consult some authorities and past Speaker's rulings, and I find them to be very instructive. I note, for example, a ruling of October 25, 2001, on a point of order about Bill S-20, which concerned changes to the system for appointment to certain high public positions, changes involving consultation with an advisory panel. Although the bill concerned appointment to a number of high public positions, including, I think, the Senate, the Speaker's ruling was confined to its implications for appointment of the Governor General. The Speaker ruled that in that case, Royal Consent would be needed.

• (1450)

On November 17, 2004, the Speaker also ruled on Bill S-13, which was presented by our esteemed Deputy Speaker today, although he was not yet Deputy Speaker. The bill concerned a proposal to elect the Speaker of the Senate. The Speaker ruled that that bill also would require Royal Consent and, from a lay position, that makes sense. Both of these bills affected things that the Governor General actually does, or the Queen actually does, in the case of the appointment of the Governor General on the advice of the Prime Minister.

Royal Consent was given to Bill S-34 in April 2004, which was a bill concerning the ceremony of Royal Assent. That, again, concerns something that the Governor General actually does. Royal Consent was also given to Bill C-20, the Clarity Act, in 2000. However, as many senators will recall, there was a sense at the time on the then government side that Royal Consent was not needed for that bill but that it would clarify matters should anyone have any doubts. As honourable senators will recall, as Senator Boudreau reminded us in that debate, no less eminent a person than Professor Patrick Monahan had told the committee studying the bill that it had absolutely no impact on the Crown Prerogative. I thought at the time, and still think, that the provision for Royal Consent for that bill was not necessary.

Honourable senators, perhaps more interestingly, the Speakers have ruled over the years on a number of cases where they said Royal Consent was not needed. On March 8, 2005, the Speaker ruled that Bill C-6, which would abolish the position of Solicitor General, did not need Royal Consent. His Honour ruled on February 26, 2008 that Bill S-224, concerning time limits for the filling of vacancies in Parliament, including the Senate, did not require Royal Consent.

Honourable senators, I found this example most interesting: On September 24, 2003 the Speaker ruled that Bill C-25, which abolished the Oath of Allegiance to Her Majesty for some public servants, did not need Royal Consent even though the Oath of Allegiance is to the Queen. That did not need Royal Consent. Presumably alluding to the fact that 400 or 500 years ago, the abolition of such an oath would have required Royal Consent, the Speaker said: "No such prerogative exists in Canada today."

That leads me to something that was said in a Speaker's ruling on March 8, 2005: "Prerogative powers, despite their long history, need not be forever immutable. They can be abolished or limited by statute."

Honourable senators may like to know that Professor Peter Hogg, perhaps our most eminent constitutional expert, said in *Constitutional Law of Canada*, fifth edition:

> . . . the prerogative could be abolished or limited by statute, and, once a statute had occupied the ground formerly occupied by the prerogative, the Crown had to comply with the statute. All of these rules, and especially the last (displacement by statute), have had the effect of shrinking the prerogative powers of the Crown down to a very narrow compass. The conduct of foreign affairs, including the making of treaties and the declaring of war, continues to be a prerogative power in Canada. So are the appointment of the Prime Minister and other Ministers, the issue of passports, the creation of Indian reserves, and the conferring of honours such as Queen's Counsel. But most governmental power in Canada is exercised under statutory, not prerogative power.

That passage is found on page 119 of that edition of Hogg; and in the same edition, on page 8.2, he addresses himself more particularly to the case before us, which is of the Supreme Court of Canada, which was, as we know, established by statute in 1875. Hogg says:

> The Supreme Court of Canada's existence, and therefore the details of its composition and jurisdiction, depend upon an ordinary federal statute. . . . over the years there have been many changes in its composition and jurisdiction, and these have been accomplished by federal statutes.

Indeed, Your Honour, I have been unable to find any indication that Royal Consent was sought, let alone obtained for the Supreme Court Act. The Library of Parliament has

checked amendments to the Judges Act back to 2001. I believe there have been five of them, if my memory serves. Although all had a Royal Recommendation, none had Royal Consent. Therefore, Your Honour, I would argue that by strong precedent, there is no need for Royal Consent on this bill either.

Some Hon. Senators: Hear, hear!

Hon. Hugh Segal: Honourable senators, I wish to associate myself with the comments made on the issue of the role of this place relative to advice to Her Majesty, which were opened so eloquently by Senator Cools yesterday. I do so again without regard to the substance or content of the bill, but to the notion of prescribing Her Majesty's options as the reflection and representative of the state relative to the kinds of appointments that are dealt with in the legislation proposed before us in Bill C-232.

All of us in this place, if we look at our orders of commission, are commissioned as advisers to Her Majesty; here at the express direction of the Crown through its representative. The government in the other place, the first minister and his colleagues, are constituted as advisers to Her Majesty and to the Crown.

Honourable senators, every time we seek, for even the best of purposes, to prescribe the appointment process that Her Majesty has through her representative, we diminish not only the Royal Prerogative but the process by which the state actually expresses itself in this kind of parliamentary government, as opposed to the kinds of government we find elsewhere, for example, to the south.

Honourable senators, at a Commonwealth meeting in London, I found myself with a former first minister from Kiribati, a small island state in the South Pacific. We were commenting on why there had been riots in the streets of Paris after certain austerity measures were defined and why student riots had not yet occurred in London. Someone in the car offered that it was because there is a difference between life, liberty and the pursuit of happiness and peace, order and good government, at which point the ears of my South Pacific friend perked up and Sir Jeremiah said, "Peace, order and good government, we have that in our Constitution." I said, "Sir Jeremiah, that is because it was boilerplate, coming out from the colonial office on a regular basis, but it was all about the supremacy of the Crown." It was all about politicians not taking unto themselves, elected or otherwise, powers that are vested in the state and the Crown to make important decisions.

I believe that the point of order raised by our colleague commends itself to His Honour's most careful consideration, and positive consideration, because every time, willingly or otherwise, for the best of purposes, we prescribe that expression of who we are, how we are governed and our constitutional history, we diminish that constitutional framework in a fashion that reduces our identity, our sovereignty and the nature of who we are as a society. We are different on the northern half of this continent from our friends to the south, and we share that difference with our Commonwealth brothers and sisters around the world. We are different from other republican styles of government. That was not the intent of the author of this bill; I respect that. However, that may be the unwitting result if we proceed without giving this point of order the most careful consideration.

• (1500)

Hon. Claudette Tardif (Deputy Leader of the Opposition): Your Honour, although Senator Cools presented us with an interesting historical overview yesterday, there is no valid point of order here. Senator Cools is asking us to ignore the procedural authorities and to overturn a series of earlier Speaker's Rulings in an attempt to prevent all of us here from debating a matter of public importance. Senator Cools claims that Bill C-232, which we received from the House of Commons in April, 2010, requires Royal Consent and that it must receive that consent before we move any further with the legislation.

Let me remind honourable senators that there have been a number of recent decisions by the Speaker in this chamber, and Senator Fraser referred to some of them, indicating that no Royal Consent was required. Three of those decisions were points of order raised by Senator Cools herself. I refer to decisions of September 24, 2003, May 7, 2002, and October 29, 1998. In the decision rendered on May 7, 2002, the Speaker noted:

> While I do not dispute the accuracy of the Senator's references and examples, I do question their binding relevance to modern practice. All Senators can appreciate that the law of Parliament is not static; it changes and evolves to suit the needs of Parliament and its members.

Yesterday, Senator Cools made the following statement:

> Bills that seek to amend that royal power need royal attention and royal agreement even to be debated in Her Majesty's Senate and House of Commons.

She asserted:

> Senators have no power to even debate, far less to adopt, Bill C-232 without the Royal Consent.

Colleagues, this proposition is startling. We are members of a legislative body whose freedom and ability to conduct rigorous debate is protected by parliamentary privilege; yet, Senator Cools would have us accept that there are certain matters that we cannot discuss out loud in this chamber without the express permission of Her Majesty.

Let me repeat her words. She said:

> Senators have no power to even debate . . . Bill C-232 without the Royal Consent.

Living in a 21st century parliamentary democracy instead of an 11th century absolute monarchy makes it difficult for me to accept that I need the express permission of a hereditary monarch to debate any question of public importance in our Parliament.

Some Hon. Senators: Hear, hear.

Senator Tardif: Perhaps my views would have been different a thousand years ago during the reign of Ethelred the Unready, who reigned from 978 to 1016, but I am not living 1,000 years ago. We are living in a mature parliamentary democracy, where Canadians expect their parliamentarians to debate all issues of public importance and to do so freely.

Beauchesne's sixth edition, at citation 727, states:

> The consent of the Crown is always necessary in matters involving the prerogatives of the Crown. This consent may be given at any stage of a bill before final passage. . . .

Are we anywhere near final passage? The answer is no, unfortunately. Final passage is third reading. We have not even completed second reading, let alone moved on to committee stage to hear the views of Canadians.

The members of the other place examined Bill C-232 and concluded that it deserved support. They gave passage to this legislation and sent it to us for consideration because, in their view, it was a matter of important public interest.

Honourable senators, not only is Beauchesne clear that a bill requiring Royal Consent needs to obtain that consent only prior to final third reading passage, but successive rulings by the Senate Speaker, which were never challenged, made the same point.

For example, in 2004, Senator Oliver had a bill before the Senate designed to permit the election of the Speaker of the Senate. On November 4, during second reading debate, questions were raised about whether the Governor General's consent was required because Royal Prerogative could be affected by the bill.

This point of order was raised by Senator Murray. In the ensuing debate on his point of order, Senator Cools reminded everyone how Royal Consent was given by the government leader, Senator Boudreau, in 2000 to the Clarity Bill at the third reading stage. Senator Cools went on to say:

> . . . the practice as set by the Speaker has been in this chamber for quite some time that a bill is given second reading and is referred to committee. Thereafter, if the Royal Consent is required, someone else, especially if it is an opposition bill, figures out how to approach Her Majesty's representative to observe the Royal Consent.

The opposition leader also argued on that day that Beauchesne's and precedent did not support the proposition that the question of Royal Consent needed to be finalized at the second stage. He said:

> Our precedents are very clear that the debate can continue.

That point is exactly the one I am arguing today. Whether or not Bill C-232 requires Royal Consent need not be determined until third reading, and, until then, debate should be allowed to continue.

In her remarks yesterday, Senator Cools said that my actions to try to advance this bill "suggest that she wishes us to carry this bill through all its stages without Royal Consent."

Let me assure Senator Cools that my sole intention at this time is for the debate to continue at second reading, for the bill to receive second reading and for it then to be referred to committee, where the views of Canadians can be heard. I am confident that vigorous committee hearings will persuade the government that this bill is in the public interest.

Honourable senators, the point of order raised by Senator Cools rests on several assumptions, a number of which I hope will come true. Since the procedural authorities and previous rulings made clear that the question of Royal Consent becomes an issue only at third reading, she must assume or anticipate that this bill will receive second reading. She must also assume or expect that the subsequent committee hearings will so impress committee members that they will recommend to the Senate that the bill be adopted without amendment. Otherwise, there would be a committee stage to deal with amendments or, even worse, a recommendation from the committee that the bill not be proceeded with.

Although Senator Cools may have confidence that Bill C-232 will proceed smoothly to third reading, at which time Royal Consent may, and I stress "may," be an issue, I am not willing to prejudge what senators may decide at any of the intervening stages. That is for the Senate to decide.

However, my contention is that the Senate should have a chance to debate the merits of this proposal that we have received from the elected members of the other place and then to decide whether we wish to hear from Canadians on the bill without being stopped from doing so.

If there is a problem with Royal Consent, why did it not arise in the other place as Bill C-232 went through its three readings? I would say it is because it was judged that it was not necessary. That is a moot point, because the bill is before us now.

With all respect, whether Bill C-232 requires Royal Consent before the third reading question is put is also moot because we are still at second reading. Debate should continue, honourable senators. The question is hypothetical at this time, and we should not prejudge what the Senate will do in the weeks ahead.

[*Translation*]

That said, I do not think that Bill C-232 requires Royal Consent since the authority of the Governor-in-Council to appoint judges to the Supreme Court is not in jeopardy. The bill simply further specifies the criteria for appointing judges. Furthermore, this has nothing to do with royal power because it applies only to names submitted by the Prime Minister. The Governor General does not judge or choose a candidate, and either way, constitutional convention dictates that he cannot deny his consent.

• (1510)

Even the Governor General himself must respect the Supreme Court Act and the Official Languages Act. The addition of a qualifying requirement in this case is no more subject to royal approval than any other position that is filled by order-in-council; it is a law like any other.

The bill in question would ensure that speakers of both official languages have equal access to justice. It would implement section 16 of the Charter of Rights and Freedoms and does not violate the conventions or the common law because they must both be in accordance with the Charter.

Senator Cools claims that Bill C-232 restricts the size of the pool of candidates eligible for appointment as judges to the Supreme Court. As Senator Fraser said yesterday, and I quote:

> We have in legislation many rules that the Parliament of Canada has adopted about qualifications for various high positions. Frequently, the higher the position, the more stringent the qualifications set out in legislation. In the precise case of judges, we are quite picky about them; and justly and rightly so. We require that judges be lawyers. We require, among other things, that like senators they retire at the age of 75, which disqualifies a large number of extremely qualified persons. We require by law in the case of judges who are not members of the Supreme Court that the court be capable of hearing and understanding proceedings in both official languages without the aid of an interpreter. In other words, we require that a significant number of judges of the lower courts be able to do that, which, by extension, disqualifies a large number of Canadians, even if they are lawyers and under the age of 75, from filling those positions. The same is true for many positions determined by the Parliament of Canada.

[*English*]

In addition to the restrictions to the nomination of judges that I have already identified, let me highlight two other restrictions contained in the Supreme Court Act. Section 6 requires that at least three judges be appointed from Quebec and section 8 requires all the judges of the Supreme Court of Canada to reside in the National Capital Region, or within 40 kilometres of its boundaries.

Both these provisions restrict the size of the pool from which Her Majesty may choose. Both these provisions were modified by Parliament in 1974, in the First Session of the Thirtieth Parliament, by Bill S-2. I have been informed by the Library of Parliament that Bill S-2 did not receive Royal Consent. It did, however, pass both chambers and received Royal Assent. Are we now to question the validity of the changes that were made at that time to these two provisions? I think not.

The Supreme Court Act is a law that was passed by Parliament and therefore it is the right of Parliament to modify this law. Changing a criterion of nomination by way of legislation, in my humble opinion, is within the right of Parliament and does not necessitate Royal Consent.

[*Translation*]

Parliament has the sovereign power to amend its legislation.

[*English*]

Honourable senators, in my view, there is no procedural impediment to our continuing to examine and debate Bill C-232 at this time and there is no valid point of order.

[*Translation*]

Hon. Claude Carignan: Honourable senators, I think Senator Cools has raised a very astute question. I think it deserves some careful reflection and a very carefully considered decision on the part of our Speaker.

I had a few hours to examine the soundness of this point of order and took the opportunity to read some past Speaker's rulings, particularly a ruling made on October 25, 2001, by Speaker Hays regarding a point of order raised on June 5, 2001, by Senator Joyal concerning Bill S-20, An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions.

Honourable senators, I obtained a copy of the *Journals of the Senate* and the question raised by Senator Joyal reads as follows:

> If I understand the objective of this bill, it is to provide that, in the future, the positions listed under Schedule, Part 1 . . .

Schedule, Part 1 referred to Supreme Court justices.

> . . . of the bill will be the subject of compulsory procedures for any minister of the Crown who proposes the appointment of a person to fill one of those positions. Most of those positions are covered by the Constitution Act. For instance, the lieutenant governor of a province is appointed under section 58 of the Constitution Act. Senators are appointed under section 24 of the Constitution Act. Judges on the second part of the annex are appointed under section 96 of the Constitution Act.

A little later, Senator Joyal stated:

> That issue could be taken under advisement and the Speaker could inform this chamber, at the proper time, of his decision. We would be taking an important initiative that is of a constitutional nature, because all of these positions are covered by the Constitution of Canada in one way or another.

Coming back to Speaker Hays' ruling, which cites authorities such as Beauchesne, sixth edition, paragraph 726, the paragraph preceding the one cited by Senator Tardif, he states:

> 726.(1) The consent of the Sovereign (to be distinguished from the Royal Assent to Bills) is given by a Minister to bills (and occasionally amendments) affecting the prerogative, hereditary revenues, personal property or interest of the Crown. *Journals*, April 26, 1978, p. 696.

The Speaker also referred to page 643 of the *House of Commons Procedure and Practice*, by Marleau and Montpetit:

> Royal Consent . . . is part of the unwritten rules and customs of the House of Commons of Canada. Any legislation that affects the prerogatives, hereditary revenues, property or interests of the Crown requires Royal Consent, that is, the consent of the Governor General in his or her capacity as representative of the Sovereign[249].

And Bourinot, on page 413, fourth edition,

> . . . the consent may be given at any stage before final passage, and is always necessary in matters involving the rights of the Crown, its patronage, or its prerogatives.

What is Royal Prerogative? It was also defined in the ruling by citing Blackstone, who describes it as "that special pre-eminence which the King hath, over and above all other persons, and out of the ordinary course of the common law, in right of his real dignity."

The Speaker also quoted Dicey, who described prerogative as:

> . . . the residue of discretionary power left in the hands of the Crown.

— and continued:

> . . . every Act which the executive government can lawfully do without the authority of an act of Parliament is done in virtue of this prerogative.

How does prerogative apply here? It is the power to appoint judges, but not just any judges: Supreme Court judges. This power is the exercise that comes to us directly from section 96 of the British North America Act.

• (1520)

That power is vested in the Governor General. In the Letters Patent of 1947, in which the Queen set out the Governor General's mandate, Article IV says:

> And We do further authorise and empower Our Governor General to constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers (including diplomatic and consular officers) and Ministers of Canada, as may be lawfully constituted or appointed by Us.

I also want to refer to Article VIII of the Letters Patent, in which it states that Supreme Court justices, in particular the Chief Justice, and in his absence, the senior judge, would replace the Governor General in his absence or in a case of invalidity.

The Supreme Court justices who are mentioned here are also a substitute for the Governor General in his absence.

In his decision, Speaker Hays stated that Royal Consent is required. That was based solely on the Governor General and went no further than the others. He did not speak about the justices because he felt it is enough to say that the Governor General needs to be consulted. However, he did not rule it out entirely and he did not respond to Senator Joyal's question about judges, and Supreme Court justices in particular.

The other question, which Senator Fraser raised, is this: does the fact that a law is passed infringe on the Royal Prerogative or does the law become the source of power to appoint judges? That would mean that the power to appoint judges would no longer come from the Royal Prerogative but from the law and the Royal Prerogative would not be affected by amending the law.

I humbly submit to you that none of the Supreme Court sections in the Supreme Court Act state that the law has become the basis for appointing Supreme Court justices. On the contrary, section 4 of the Supreme Court Act sets out that the court be composed of a chief justice, called the Chief Justice of Canada, and eight puisne judges. It also governs the appointment of judges, which happens through letters patent from the Governor-in-Council under the Great Seal.

It uses the exact wording used in the Letters Patent of 1947, which is the wording for the exercise of the Royal Prerogative found in section 96 of the British North America Act.

The conditions of appointment are specified, that is true. The conditions for appointment set out in section 5 state that only a judge who is or has been a judge of a superior court or a barrister or advocate of at least 10 years standing at the bar of a province may be appointed; however, this was already set out in the British North America Act, 1867. Therefore, the Supreme Court Act merely repeats what is already stated in the Constitution. That is also the case for the appointment of the three judges from Quebec; it was a constitutional convention and it is now in the Constitution Act, 1982.

Thus, nowhere do we see that the law has become the authority for appointing judges, and even less so for appointing Supreme Court judges. In my view, the Governor General and the Prime Minister, when they decide to appoint a judge, especially to the Supreme Court, are acting in accordance with the Royal Prerogative.

This is particularly true for the Supreme Court because a process was implemented for superior court judges in which a committee made up of members of the bar and representatives of the public creates a list of potential candidates for appointment to the superior courts. Superior court judges must go through this committee in order to be appointed; however, such is not the case for Supreme Court judges.

The Prime Minister can recommend that the Governor General appoint a person who has not been screened against the selection criteria by any kind of selection committee, as long as he respects the criteria set out in the Constitution, namely, the person must have been a practising lawyer and a member of a provincial bar for at least 10 years and/or a judge.

If a law that sets an appointment condition that reduces the pool of potential candidates to the Supreme Court by 50 per cent in some cases in Quebec and by 90 per cent in certain other provinces does not affect the Royal Prerogative or its execution, I do not see what does.

Clearly, I will not claim to have Senator Cools' or various other senators' expertise in parliamentary procedure but this issue seems serious enough to me to ask the Speaker to give it careful consideration, particularly since Supreme Court judges are not like other judges. Unlike with other judges, the power to appoint a Supreme Court judge is not limited by legislation. It is also important to remember that Supreme Court judges act for the Governor General in the Governor General's absence, which makes them special people.

We have to be attentive to a law that affects how such judges are appointed.

[*English*]

Hon. Gerald J. Comeau (Deputy Leader of the Government): I will not add much to what has already been said. I take this opportunity, though, to congratulate Senator Cools for the tremendous amount of work that she put into this point of order. I can imagine the many hours she spent on it.

I felt particularly bad when reference was made this afternoon to dealing, somehow, with eleventh century traditions, and so on. Senator Cools has gone back to the roots — which was not the eleventh century — of British parliamentary tradition established in Great Britain, which we adopted here in Canada. She has made references to the first prime minister of Canada. She has made reference to people who we still consider to be the roots of what our parliamentary procedures are here in Canada.

A great many references she made were to Bourinot. I note that Senator Carignan cited the same reference.

On this subject, I ask Senator Cools if she, in her closing remarks, would refer to a more recent case. When Senator Lynch-Staunton moved a bill in this chamber, he had to withdraw. I think it had to do with written Royal Assent. Senator Lynch-Staunton had to withdraw because the government would not provide Royal Consent. Almost the next day the government of the day, through the Leader of the Government in the Senate at that time, resubmitted the same bill, and indicated at the time that the Royal Consent would be given.

• (1530)

I especially want to say in closing that reference was made this afternoon to the fact that the bill can progress without Royal Consent. In fact, there is a lot to be said about that point. Senator Cools likely will refer to it more.

As far as I can see, reference was made to the fact that Royal Consent was not given in the House of Commons. It does not need to be given in the House of Commons or here. I cannot envisage any minister of the day, either in this place or in the other place, even considering giving consent to this bill.

Of course, I cannot speak for the government. My seatmate can correct me if I am wrong, but I doubt very much that Royal Consent would come from any minister in this place.

Finally, in Senator Cools' closing comments, I ask her to address, if she would, Senator Carignan's reference to the administrative post of the Supreme Court justice. It is one with which I am not completely familiar, but I am sure the honourable senator will have some ideas along that line, of whether this administrative post should also be considered under the decision rendered by His Honour.

Senator Fraser: Honourable senators, I will ask Senator Comeau to clarify one aspect of his remarks. I believe he said that he was not speaking for the government when he said he would be surprised if Royal Consent were given.

I want the honourable senator to clarify that point because, as I am sure Your Honour knows, all the recent precedents and rulings suggest that even where a government is strongly opposed to the content of a bill, it will not refuse Royal Consent on the grounds that the Parliament of Canada has the right to debate any subject of public interest.

If Senator Comeau can confirm for the record that his opinion was a personal one and not a forerunner of government policy, I would be grateful.

Senator Comeau: I can assure the honourable senator entirely that I do not speak for the government. I have no government position.

Senator Stratton: There is only one government member in this place.

Senator Comeau: There is only one government member in this place at this time, and that is my seatmate. I am a parliamentarian and, like all parliamentarians, the Constitution grants me powerful ability to say what I wish to say. Generally, if honourable senators followed my comments over the years, I tend to say them. Every once in a while I try to control them, but if —

Senator Mitchell: Does Senator Mercer have those powers as well?

Senator Comeau: Senator Mercer, unfortunately, also has those same powers, which can be extremely annoying sometimes, I will grant that. However, Senator Mercer has the privileges that have been granted to all of us to be able to rise in this place and speak. Thank God we have those privileges. I think we must use them judiciously.

By all means, I do not speak for the government. Anyone who has been in this post realizes that at a certain point.

However, since I am on my feet, I wonder if Senator Fraser can clarify a statement that she made yesterday. I will not attempt to paraphrase, and Senator Tardif made reference to it this afternoon, but I seem to recall the issue of judges of other courts demanding that they be bilingual in order to receive certain appointments. I think she was wrong. I may have misread or misheard her yesterday, but my understanding was that she said that certain judges had to be bilingual to sit on the court.

Will the honourable senator confirm or agree with me that it is the court that is bilingual under the Official Languages Act and not the judges?

Senator Fraser: In my remarks, I referred to the capacity of the court to hear cases without the aid of an interpreter.

I went on to say — and I think this matter is one of pure logic — that this means that a certain number — and given the vast extent of this country, not an inconsiderable number — of our judges must, therefore, have the capacity to hear a case that may move back and forth between two languages. I myself have been asked to participate as a witness in cases that move back and forth between two languages. For such cases, yes, a judge must be bilingual.

Senator Segal: Honourable senators, I want to clarify, and ensure I understand, some of the distinctions that have been raised by colleagues on both sides. I think there has been some mixing of terms such as Royal Assent, Royal Consent and Royal Prerogative.

I am working on the basis, as I understand Senator Cools to have said, that Royal Prerogative is extended by Her Majesty based on advice from the Governor-in-Council, and that is the basis upon which a bill is brought forward by Her Majesty's government in this place or in the other place.

Senator Cools: Absolutely.

Senator Segal: Royal Assent, as my colleagues know better than me, having been present for far more of those ceremonies than I have, takes place when a bill having passed all stages of approval in both chambers is assented to by Her Majesty's representative in the presence of the Speaker, others and the rest of us when Her Majesty's representative deems to so do in this chamber.

I am not aware of what Royal Consent means. I am not familiar with the term, and if anyone can help me with that meaning, I would be delighted to be so apprised.

[*Translation*]

Senator Carignan spoke about the role of a member of the Supreme Court as an administrator of Canada.

[*English*]

He was talking about the role that individual would play in the Royal Assent process when the Governor General, for whatever reason not able to be here, had called upon the l'administrateur du Canada to extend that Royal Assent in his or her name. Those are the terms I am working with, and if I misunderstand in any way, I am open to any of our more learned colleagues clarifying that misunderstanding for me.

The Hon. the Speaker: If no other honourable senator wishes to provide counsel to the chair, I will turn to Senator Cools to conclude.

Hon. Anne C. Cools: Honourable senators, I am pleased to have the opportunity to respond to interventions made to my point of order on Bill C-232 that I raised yesterday. Many statements have been made here and many assertions have been made, but not that much proof or evidence has been put forward to support the assertions and the claims.

I would like to begin by clarifying a couple of questions that have been put to me. One of them concerns the role of the administrator. I have no doubt that there are many senators here who are hearing that term for the first time. The "administrator" is a different position and a different person than Deputy Governors General. We see Deputy Governors General come here, who are deputized by the Governor General to give Royal Assents in his stead. The administrator is a slightly different creature and higher. The administrator is a substitute Governor General who is so appointed in the instances of serious illness or absence of the Governor General.

I am sure those of us here who are seasoned and experienced parliamentarians, like Senator Murray, will recall when Chief Justice Bora Laskin came to this very house and from that very throne read the Speech from the Throne. The letters patent identify clearly who the administrator will be; it must be a chief justice, not another justice. The letters patent articulate clearly the powers and the role that the chief justice should play.

I put that into my speech because all those appointments are unquestionably nothing else but an exercise in the Royal Prerogative. Perhaps there is confusion as to what the Royal Prerogative is. It is called the *lex praerogativa*.

• (1540)

Honourable senators, when portions of that Royal Prerogative are delegated to subordinates to do business on behalf of Her Majesty, it is called "privileges." For example, we talk about judicial privileges, lawyers' privileges, solicitor and client privilege, and we talk about prosecutorial privileges, but all of that is part of Her Majesty's administration where she empowers these people and calls those special gifts — those special endowments — "privileges." The two words are intricately connected: the *lex praerogativa*, the old Latin term, and the *lex privilegia*.

Having clarified, I hope, the position of the administrator on which Bill C-232 will impact as that of an alternate Governor General, I move on. Honourable senators, the bill before us is a serious matter. The questions and the issues are weighty.

I would like to make another small point. Senator Tardif speaks about me as though I am some sort of an 11th century creature. I have always thought of myself as a very modern woman — an extremely modern woman.

Senator Munson: Right on!

Senator Cools: Honourable senators, I want to let you know that I led women in this country on many central and important matters, one of which was to wear pants. That is a minor one, but I certainly did lead in the field of domestic violence, while I asserted strongly that the old notion — the rule of thumb and all of that — was over.

I was a modern woman 30 years ago, and I assert that I still am — an aging modern woman.

Some Hon. Senators: Hear, hear!

Senator Cools: Far from the principles that I am talking about, not being principles of the 11th century, I would also like to clarify that I have been talking about the basic modern principles of responsible government.

Senator Segal: Hear, hear.

Senator Cools: I would like to introduce Senator Tardif to the modern notion of ministerial responsibility and responsible government, the concept of the King, the Queen and her councils in her Parliament, which is the modern system of government. It is not 11th century at all.

Honourable senators, Senator Tardif spoke about restrictions. I had difficulty understanding what she meant. It took me a few minutes. She spoke about disabilities. Let me explain that when a

Supreme Court Justice must live in Ottawa, or the Governor General must reside at Government House, or a senator must reside in the province of his appointment, one could hardly call those "disabilities." Senator Tardif used the word "restriction," but I think she meant "disability."

The fact is I made certain statements when I spoke yesterday, and I am trying to avoid repeating what I said yesterday because I have so much new information to put on the record. When I talked about "disability," I was not talking about anything as minor as a little inconvenience; I was talking about "disability."

I will repeat the statement I made yesterday. I will quote myself, where I was actually quoting from the Oxford dictionary on the definition of "disability." I will put it on the record again. The definition is:

> Incapacity in the eye of the law, or created by the law; a restriction framed to prevent any person or class of persons from sharing in duties or privileges which would otherwise be open to them; legal disqualification.

Honourable senators, the current Supreme Court Act at section 5 says clearly:

> Any person may be appointed a judge who is or has been a judge of a superior court of a province or a barrister or advocate of at least ten years standing at the bar of a province.

That is the state of the law, honourable senators. All of these people are eligible for appointment to the Supreme Court. The proof that this is prerogative power is in the margin note, which states, "Who may be appointed." It is not "recommended," but "Who may be appointed." The fact is that Bill C-232 will disable large numbers of individuals who in this country today are eligible and would be eligible to be called by Her Majesty to the Supreme Court to serve, and will not be eligible to do so if Bill C-232 is passed. You call that, honourable senators, "a bill of disability."

These bills were quite common. However, with the modern times of charters of rights and freedoms, and human rights, these bills have gone away quietly. It is pointless to argue that a few minor restrictions here and there, some inconveniences, are in the same category as the disabilities in this bill.

I do not want to go further on this because I have been working hard to avoid going into the substance of the bill. I have made the point, and I will leave the point right there.

Honourable senators, there have been assertions here from my colleagues who have said that Royal Consent may be given at any stage, and here they cite Beauchesne's paragraph 727 about the final stage. Well, that is true. However, usually Beauchesne's and these other references are about government bills. I went to great pains yesterday to explain that a government has access to Her Majesty and is able to obtain the Royal Consent, literally, whenever they see fit. I put that before the house that problems arise and become more complicated when these bills that require the Royal Consent are moved by private members, what they used to call "independent members." There were government members, ministers, and the others were all independents, now private members. We must understand clearly that the questions that I raised revolved around the position of private members and opposition members who bring bills without the Royal Consent. I even described in my remarks yesterday that the Royal Consent in those instances must be obtained by a member moving an address to Her Majesty praying for the Royal Consent. An "address," for the new senators, is the form of speaking to the sovereign. The houses speak to each other by message, but we speak to the sovereign by an address.

Honourable senators, as a part of our privileges under section 18 of the BNA Act, we have a right. If a private member brings a bill without the Royal Consent, we have a right under our privileges to speak in that debate on that motion for an address praying for the Royal Consent. I am saying that we have a privilege here to take part in a debate; to advise the Governor General as to whether or not he should give a Royal Consent to a private member.

• (1550)

Honourable senators, I encourage Senator Tardif to move such a motion, which would have the wonderful effect of having even more debate. She said that I am trying to limit debate. It would be a new and wonderful debate on whether or not the Governor General should actually grant the consent.

Having said that, honourable senators, I want to continue what I was doing yesterday, because His Honour has a huge and challenging job before him. I would like to continue to put a few more precedents on the record, if I may.

I would like to offer Your Honour another important precedent, which took place in 1844, which Sir John A. Macdonald would have been well aware of in 1879. It was called the Diocese of St. Asaph and Bangor Bill. In this instance, the bill was withdrawn because another prime minister, the Duke of Wellington, stated, at page 124 in the debates of the House of Lords, on July 1, 1844:

> He had been called on, . . . to state whether or not he was authorized to give Her Majesty's consent to its discussion; he answered that he was not so authorized; and he was not so authorized on this last stage of the Bill.

There are several other precedents. I am hoping to get some more on the record, or I can table some of them, if necessary. However, they are very clear precedents.

The important thing, Your Honour, about this particular one, the Diocese of St. Asaph and Bangor Bill, is that at one point in the debate, the Lord Chancellor expressed doubt as to whether or not he could put the motion before the house. He called on the house for advice and the house suggested — by motion — that a committee be appointed to look at the question. It is brilliant reading; brilliant debate, and brilliant, clear, lucid thinking.

The important thing is that the committee read like a who's who of the legalists of that era in England: Lords Brougham, Campbell and Cottingham — very big names. His Honour might want to look at that. This is the second case where a prime minister was involved.

Honourable senators, it is a serious matter, and a rare matter, when a prime minister would rise on the floor and intervene at that stage and in that way because, as we know, a lot of the business of Her Majesty is done quietly and discreetly, without much ado.

Having said that, I remind honourable senators that the Supreme Court of Canada is a very strange creature. I do not know if many senators know this — Senator Murray would — but the Supreme Court of Canada was created pursuant to a power given in the BNA Act.

That power is in section 101, which says that the Parliament of Canada may provide for the Constitution, maintenance and organization of a general court of appeal. That was the grounds out of which the Supreme Court of Canada and the Exchequer Court, now called the Federal Court, were created.

Honourable senators, many are in awe at the mention of the Supreme Court, but the Supreme Court's usefulness and existence were questioned very heavily at the outset. The court had to spend many years proving itself, because it was frowned upon by the other superior courts which were antecedent to the BNA Act and Confederation. That is very important.

Honourable senators, there is a point that no senator has raised yet. The complicating fact about Bill C-232 is that it is about justices and judges. We, as members of Parliament, have a range of practices that are called into existence whenever bills about judges are before us. I will go into that.

Honourable senators, I thank the intervening senators for their time and efforts. Bill C-232 will amend the Queen's absolute prerogative, her absolute power in appointing judges by disabling a class of Canadian persons from said appointment.

I want to repeat very clearly what I am asking His Honour to rule on. I am asking him to rule on whether or not this bill touches the Royal Prerogative; if it requires the Royal Consent; and to ensure that the proper procedure is followed.

Honourable senators, I am not asking His Honour to declare the bill out of order or anything of that nature. I am asking him to rule, as other Speakers, especially in the House of Commons, such as Speaker Lucien Lamoureux, have ruled.

I have already cited many relevant precedents and authorities directly from the original records. I would like some clarification. I frequently hear the term "the procedural authorities," and I would like to find out who they are.

Your Honour, I note the excellent books by Mr. Alpheus Todd — he is the greatest of them all. He predated and preceded Erskine May in writing. He is probably the most-quoted Canadian in court cases all over the world, especially in the past century. Messrs. Todd, Bourinot, Beauchesne and May created the most valuable and helpful reference books that guide us to sources.

Honourable senators, these writers, with their helpful summaries, however, are not the authorities and are not declaratory or authoritative. Every time we say the word "parliamentary authority," let us understand what we mean.

The authority of precedent is the actual record of the actual events in the actual words spoken in debate by the members and their Speakers in their houses — not those books or their summaries, which are subjectively written and selectively edited, with all the pitfalls that selectivity and subjectivity will bring.

My intention, Your Honour, was to place before you those true precedents and the authorities themselves. If there is doubt whether or not Mr. Gladstone was a great authority, all we need to do is to examine all the language in this place around financial bills, money and appropriations. He created much of that language.

What I am talking about, honourable senators, is not the 11th century. I am talking about modern practice as it has developed in modern times.

My true purpose, Your Honour, is to retrieve, to recover to the chair, our Senate Speaker, the sole and proper power to give rulings and to lay down precedents. That is why I have been so diligently laying out the precedents and putting them before him.

• (1600)

Honourable senators, we are the upper house. Our Speaker is not of an elected character as in the other place. He is of a viceregal character, the fourth in precedence in Canada. He is a representative of Her Majesty and a guardian of her interest in this Senate, which is the house of the throne and the house of Parliament wherein its three constituent parts, Her Majesty, the Senate and the House of Commons, may convene in Parliament assembled.

Honourable senators, it has been held by many great thinkers that true liberty and true freedom live in the rules that govern how we proceed, called the law of Parliament. This law of Parliament, the rules, forms and procedures by which our laws are made with ministerial responsibility, is probably the greatest contribution of Britain and its common law — the greatest contribution they have made to the world. I repeat, this is the notion: The King in his council in his Parliament is alive and well in our practices, and I shall show that.

Bill C-232 is about the judges. Therein, honourable senators, lies the dilemma. Parliament's rules prescribe practices regarding our approach to bills about judges. In fact, the law of Parliament prescribes the ways that we should manage such bills. The British North America Act, 1867, sections 99 and 100 charge us as members of each house with the duty to protect the judges from executive caprice, pleasure and displeasure. The act therefore grants us superintendence over them.

As a result, our practice has been that bills, measures about judges' affairs, especially salaries, pensions, selection and conduct — some higher in priority than the others — should proceed in the houses with caution, with minimum conflict and controversy, with equanimity and with as maximum agreement as we can get.

Honourable senators, it has always been thought that it is a terrible thing that a bill about judges, especially salaries, which I will come to in a minute, should proceed amidst strife and threat.

Bills about judges' affairs should not be subjected to partisanship spectacle because of the inherent negative consequences that would fall to justice. We should fear the potential crises in justice itself. I used to be in charge of the government's supply bills.

Honourable senators, as we know, judges' salaries are permanently charged to the Consolidated Revenue Fund. They are statutory charges not subject to the annual review, debate and vote as annual supply items. There is a reason for that, honourable senators. The reason is to minimize adverse or hostile criticism towards or about judges in the process during debate on their salaries and to avoid potential questions of confidence and ministerial resignations over those salaries.

There is much practice that has developed as a result of the protection that we accord to judges. However, I have to tell honourable senators that if this house ever believes that a judge were doing something very wrong, it would have a double duty to move on that.

Our practices expect that the houses of Parliament will approach bills and measures about judges with great attention, caution and care. I shall leave the question of addresses for removals and their relationship to questions of confidence and the resignation of ministers for another day.

I will throw out one item, honourable senators. In this country, we have never removed a judge in a joint address procedure. In England there was only one: Sir Jonah Barrington. It was a famous case. We have not done so, not because there have not been bad judges, but for the potential crisis that would result in justice itself and the potential for governments to fall on those kinds of questions.

Honourable senators, that is why I have said that it would be constitutionally catastrophic for us to place our Speaker in a position to have to refuse to put the question on this bill or that a senator be compelled to move a motion to nullify the proceedings on this bill if adopted without the Royal Consent.

Honourable senators, Bill C-232 about judges is large and complex, and engrossed with the prerogative law, which is purely executive and not administrative. Usually, such bills are too important and too problematic to proceed as private members' bills. In fact, parliamentary practice developed to avoid such conundrums. Formerly, ministers of the Crown were confined to their executive duties and to securing the house's agreement to those consequential measures.

With the ascent, and the advent, of responsible government — and not in the 11th century — the roles and duties of ministers in public affairs and in measures for the common good were greatly expanded. This expansion simultaneously enlarged private members' possibilities, granting them greater and more opportunities to raise, debate and amend questions.

It became the rule, honourable senators, that all great, important and complex public measures — for example, bills about judges — should originate with a minister. In this case, that would be the Minister of Justice, ex officio the Attorney General, *attornatus rex*, and the Law Officer of the Crown, the guardian of the prerogative and the curial powers — the guardian of justice itself.

Alpheus Todd wrote about this subject at page 299 in his 1869 book, *On Parliamentary Government in England, Vol. 2*:

> But it has only been by degrees, and principally since the passing of the Reform Acts of 1832, that it has come to be an established principle, that all important acts of legislation should be originated, and their passage through Parliament facilitated, by the advisers of the crown.

He continued at page 299 on these events that:

> . . . led to the imposition of additional burthens upon the ministers of the crown, by requiring them to prepare and submit to Parliament whatever measures of this description may be needed for the public good; and also to take the lead in advising Parliament to amend or reject all crude, imperfect, or otherwise objectionable measures which may at any time be introduced by private members.

Honourable senators, as I said, with the enlargement of the duties of ministers to initiate and originate public measures, private members' opportunities for debate, criticism, amendment and rejection were also enlarged, but with two important limitations. Alpheus Todd, wrote at page 300:

> On the other hand it should be freely conceded to private members that they have an abstract right to submit to the consideration of Parliament measures upon every question which may suitably engage its attention, subject only to the limitations imposed by the prerogative of the crown, or by the practice of Parliament.

This is why the law and practice of Parliament prescribes the Royal Consent for bills that affect the Royal Prerogative — the purely executive law.

Honourable senators, Todd explained and summarized these developments. At page 317, he wrote:

> Thenceforth, the rules of Parliament, which prohibit the introduction of a Bill to appropriate any portion of the public revenue, except at the recommendation of the crown, through a responsible minister, — and which require the consent of the crown before either House can agree to a Bill affecting the royal prerogative, — together with the admitted right of ministers, so long as they retain the confidence of the House of Commons, to regulate the course of public business — have secured the rights of the sovereign, as a constituent part of the legislative body, as unmistakeably, if not more effectually than by the direct interposition of a personal veto.

What happened was that the sovereign surrendered his direct personal intervention and worked more through ministers. It is at that time in history that these practices and these rules about which I am speaking came into prominence. As the advent of responsible government was moving ahead, we find a greater preoccupation with these rules and practices.

Honourable senators, the purpose was to secure the rights of the sovereign as a constituent part of Parliament. The sovereign Queen has an abiding presence in the rules and practices of each house, something very akin to the mace on the table.

• (1610)

Honourable senators, Sir William Blackstone told us about the sovereign king or queen in his 1765 *Commentaries on the Laws of England*, Book I, at page 146, that:

> . . . he is a single person, whose will may be uniform and steady; the first person in the nation, being superior to both houses in dignity; and the only branch of the legislature that has a separate existence, and is capable of performing any act at a time when no parliament is in being.

He said, at page 149, that Parliament is:

> . . . the great corporation or body politic of the kingdom, of which the king is said to be *caput, principium, et finis*.

Her Majesty is *caput, principium, et finis*. That is the head, the beginning and the end. Everything about Parliament — the summoning, the prorogation, the dissolution, the Royal Assent — begins and ends with the Monarch. I want honourable senators to know that this is no relic; this is the legal system in Canada. We must understand that we are not talking about the natural person. Rather, we are talking about the Queen in her Royal political capacity, the "Royall politick capacity," in the words of Sir Edward Coke, in which she is the representative and the embodiment of all the people. The prime minister represents some of the people; Her Majesty represents all the people.

The prerogative law is about the sovereign's absolute duty to protect, defend and serve her subjects, and to execute justice, as sworn in her Coronation Oath, to which we are joined by our oath of allegiance.

Honourable senators, my final point is to Senator Tardif and her preoccupation with antiquity, time and the 11th century. A standard rule of these massive prerogative powers, by which most governments run, is always stated as *nullum tempus occurrit regi*, which means that time does not run against the king or against the king's powers. The prerogative power is never lost. It may be silent for a while, but it is never lost. Honourable senators should understand that.

It is therefore imperative for the stability of our parliamentary system that we recognize and uphold the balance between the law of the Parliament and the law of the prerogative. It is unthinkable, in my view, that it could be thought that a bill of this magnitude, with the consequences that it will create for justice, could proceed successfully without the support of the Attorney General of Canada.

Honourable senators, I will come to a conclusion. I thought I would have many well-thought-out arguments to answer, so I came prepared. Senator Comeau has asked if I would table some of these documents, which would save the Speaker the trouble of having to pull them up. I would be happy to do so.

The Hon. the Speaker: Honourable senators, is it agreed that the documents be tabled?

Hon. Senators: Agreed.

Senator Cools: Thank you.

The Hon. the Speaker: Honourable senators, I thank Senator Cools for the point of order. I equally thank all honourable senators for their interventions, which are very helpful. I will take the matter under advisement.

NATIONAL HOLOCAUST MONUMENT BILL

SECOND READING—DEBATE ADJOURNED

Hon. Yonah Martin moved second reading of Bill C-442, An Act to establish a National Holocaust Monument.

She said: Honourable senators, I would like to speak this afternoon about Bill C-442, An Act to establish a National Holocaust Monument. Before focusing on this proposed legislation, it is worthwhile to consider some facets of the contextual background leading to it.

For thousands of years, communities have erected structures to collectively commemorate important events, individuals or groups of people that have made significant contributions or who have died or suffered as a result of war or other catastrophic events. There are a number of monuments, such as the ancient pyramids and the Parthenon, known to have been constructed by ancient civilizations and many remain to symbolize these historical periods.

Many words in modern English relating to monuments find their roots in historical languages. For example, "cenotaph" is derived from the Greek words "*kenos*" and "*taphos*," which taken together mean "empty tomb." Similarly, the word "monument" originates from the Latin "*monere*" which means "to remind" or "to warn."

Canadians also recognize the social importance of paying tribute to those who have given up their lives, even as innocent civilians, so that others can benefit from a better understanding of their sacrifices. This is demonstrated by the many monuments established in localities across Canada. For instance, there are close to 50 memorials in Montreal alone, and hundreds of war memorials in towns and villages across the country.

There are also a number of statues and other monuments prominently on display on federal public land throughout the National Capital Region.

The Canadian Tomb of the Unknown Soldier was added to the War Memorial in Confederation Square in 2000. It holds the remains of an unidentified soldier selected from a cemetery near Vimy Ridge where Canadians fought in the famous battle in the First World War. This tomb honours Canadians who have died during their service with the Armed Forces.

The National Aboriginal Veterans Monument is located in Confederation Park and was installed in 2001. It pays homage to the contribution of our Aboriginal men and women to Canada's Armed Forces over the years. It reflects traditional beliefs and its highest point is the symbol of the Creator.

The Canadian Tribute to Human Rights can be seen at the corner of Elgin and Lisgar Streets in Ottawa. It honours the fundamental values of personal freedom and respect for the dignity of every person. In 1988, President Nelson Mandela unveiled a plaque at the monument honouring a Canadian, John Peters Humphrey, who authored the first draft of the Universal Declaration of Human Rights. This served to commemorate the fiftieth anniversary of the United Nations Universal Declaration of Human Rights.

There are certainly other monuments of significant importance within a few kilometres of Canada's Parliament buildings that are maintained by the National Capital Commission.

As honourable senators are most certainly aware, however, Canada does not yet have a national Holocaust monument. The atrocities of the Holocaust occurred during the 1930s and the Second World War in which our country took so active a part. The Nazi state sought to eliminate the Jews of Europe and vulnerable groups, such as disabled persons. This Holocaust must have a permanent place in our nation's consciousness and memory. We must honour the memory of all Holocaust victims as part of our collective resolve never to forget. A national monument will remind Canadians of one of the darkest chapters in human history and of the dangers of state-sanctioned hatred and anti-Semitism. It will encourage future generations to learn about the root causes of the Holocaust and its consequences to help prevent future acts of genocide.

The Second World War became the most widespread and deadliest war in the world's history, with at least 100 million military personnel and more than 50 million fatalities. A substantial number of these deaths resulted from Nazi ideological policies, including the genocide of Jews and other ethnic and minority groups.

• (1620)

Canada entered that war with its declaration of war against Germany on September 10, 1939, seven days after France and Britain declared war, and nine days after Poland was invaded by Germany.

Canadians served in our own military forces as well as in the service of various Allied countries. Our nation experienced a significant number of losses during this period. With a population of between 11 million and 12 million people at that time, approximately 1.1 million Canadians served during the Second World War. There were 730,000 personnel enlisted in the army, 260,000 in the air force, and a further 115,000 Canadians in the navy. By the end of the war, more than 45,000 Canadians had lost their lives and another 55,000 were wounded.

In the years following the Second World War, a number of countries decided to install structures or museums to commemorate the Holocaust. The first country to erect a national Holocaust memorial was Israel, the country that had the greatest number of Holocaust survivors. In August 1953, the Knesset, the Parliament of Israel, passed legislation that established the commemoration of Jews who died during the Holocaust, the survivors, and those who risked their lives to save the Jewish people. After a 10-year renovation and expansion project that was planned by Israeli-Canadian architect Moshe Safdie, the memorial in Jerusalem reopened in 2005.

In France, the Holocaust memorial of Paris was unveiled in 1956. Similar to that in Jerusalem, the French memorial is a crypt with a flame that burns amongst the names of concentration camps. Ashes from the concentration camps and the Warsaw ghetto have been deposited in the crypt. The French monument also underwent renovations in 2005, during which two white marble walls were added with the names of Holocaust victims who had been deported from France.

In 1980, the United States Congress agreed that a Holocaust memorial and museum should be built on the National Mall in Washington, D.C. The U.S. Holocaust Memorial Museum, which was opened in 1994, is amongst the most visited in the U.S. capital. A number of its rooms are reminiscent of barbed wire camps and fenced ghettos.

Germany's national museum commemorating the murdered Jews of Europe is located in Berlin. Designed by another renowned architect with strong ties to Canada, Daniel Libeskind, it was inaugurated on May 10, 2005, 60 years after the end of the Second World War. His design at the site incorporates over 2,700 rectangular slots made of concrete that appear like tombstones to evoke the sense of concentration camps.

Monuments and museums that are dedicated to remembering the Holocaust are situated in other countries as well, including Argentina, Australia, Greece and Hungary.

I am proud, therefore, that we are now considering a private member's bill endorsed by the House of Commons of this Parliament that proposes to establish a national Holocaust monument in our own country.

With this proposed legislation, the Minister of Transport, in his capacity as Minister Responsible for the National Capital Commission, would oversee the realization of a national Holocaust monument in the National Capital Region. The minister would rely on efforts undertaken by a council formed for the purpose of establishing this monument, as well as on the expertise of the National Capital Commission.

It is fitting that the National Capital Commission participate in planning, designing, installing and even maintaining the monument.

The National Capital Commission is responsible, under its enabling statute, to assist in the planning and improvement of the National Capital Region, coordinating the development of federal public lands in the region, and approving proposals regarding buildings and other structures on these lands. In keeping with its mandated responsibilities, the National Capital Commission has developed a comprehensive policy on commemoration. Under this policy, the commission usually receives ownership once the commemoration has been installed and the commission ensures that the commemoration is properly maintained.

The National Capital Commission identifies potential sites on public land that can accommodate the commemorative structure. In most cases, the proponent is responsible for seeking and obtaining financial contributions to cover all costs associated with the project. The most appropriate location is selected following consultations with the proponent and other stakeholders. The implementation phase of the commemoration project commences when fundraising has been completed.

A recent example of involvement by the National Capital Commission in establishing commemorative structures is the decision to erect a memorial for the victims of communism in the Garden of the Provinces and Territories in downtown Ottawa. This memorial is being realized with the efforts of an organization named Tribute to Liberty, which was created for this purpose.

Having considered a variety of background information relevant to the amendments proposed in Bill C-442, it is appropriate now to consider the bill itself.

This legislation provides that a national Holocaust monument be established in the National Capital Region and that the timeline for doing so depends on the amount of funds raised by the council for this purpose. I am convinced that Canadians have such high regard for this initiative that undoubtedly there will be ample resources to secure the establishment of this monument.

In addition to carrying out responsibilities for the realization of a national Holocaust monument as provided for in Bill C-442, the Government of Canada supports other programs that pertain to remembering the Holocaust. These efforts underline Canada's commitment to ensuring that the Holocaust is not forgotten. This is part of Canada's overall objective of combating racism and discrimination in order to build a socially integrated society.

Just over a year ago, Canada became the twenty-seventh member of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research, ITF. This organization was established in 1998 under the guiding principles outlined in the Declaration of the Stockholm International Forum on the Holocaust in January 2000. The ITF is a coalition of government and non-government organizations whose purpose is to build support behind the need for Holocaust education, remembrance and research, both nationally and internationally. Members must be committed to the implementation of national policies and programs in support of Holocaust education, remembrance and research.

Canada has a long history of promoting human rights and combating hate and discrimination. In its continued efforts to remember the Holocaust, it is fitting that the Government of Canada adopt Bill C-442 that has as its objective the establishment of a national Holocaust monument in the region of our own country's capital.

(On motion of Senator Tardif, for Senator Harb, debate adjourned.)

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

SECOND REPORT OF COMMITTEE—
MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Smith, P.C. (*Cobourg*), seconded by the Honourable Senator Fraser, for the adoption of the second report of the Standing Committee on Rules, Procedures and the Rights of Parliament (*study on questions of privilege*), presented in the Senate on April 27, 2010;
>
> And on the motion in amendment of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fraser, that the report be not now adopted, by that it be referred back to the Standing Committee on Rules, Procedures and the Rights of Parliament for further study and debate.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, Senator Cools is not in the chamber at this moment, but I talked to her earlier on. Given the hour, I prevailed upon her to wait until next week to speak to this issue, and she has agreed to do so.

Therefore, I move the adjournment of the debate in her name for the balance of her time.

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

• (1630)

THE SENATE

MOTION TO CALL UPON CHINESE GOVERNMENT
TO RELEASE LIU XIAOBO FROM PRISON—
ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Di Nino, seconded by the Honourable Senator Stewart Olsen:
>
> That the Senate of Canada call upon the Chinese Government to release from prison, Liu Xiaobo, the 2010 Nobel Peace Prize Winner.

Hon. Consiglio Di Nino: Honourable senators, I wish to ask Senator Day when we may expect his speech on this item, which has now been here since before Christmas.

Hon. Joseph A. Day: Honourable senators, it is always a pleasure to hear from the Honourable Senator Di Nino. I have had an adjournment for four sitting days. I am working on a reply and in due course I will be replying before the fifteenth date.

Senator Di Nino: Thank you.

(Order stands.)

[*Translation*]

SENATE ONLINE

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Mitchell calling the attention of the Senate to the online presence and website of the Senate.

Hon. Maria Chaput: Honourable senators, I intend to take part in the debate on this inquiry, but my speech is not yet ready. I move the adjournment of the debate for the remainder of my time.

(On motion of Senator Chaput, debate adjourned.)

[*English*]

WOMEN'S EQUALITY IN CANADA

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Mitchell calling the attention of the Senate to the state of women's equality in Canada.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I note that Senator Wallin is not in the chamber and I know she does not want to have this item fall off the Order Paper; therefore, I would like to adjourn the debate in her name for the balance of her time.

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

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

CANADA'S ENGAGEMENT IN AFGHANISTAN

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Wallin calling the attention of the Senate to the efforts and accomplishments of Canadian military members, diplomats and aid workers in Afghanistan over the past ten years, which has included significant milestones in security, basic services, economic development, diplomacy and humanitarian assistance;
>
> The Government of Canada's plans for continued assistance to that country to build on this progress through a new non-combat role for Canada's engagement in Afghanistan until 2014 by training Afghan security forces so that Afghanistan can progressively take control of its own security and future; and
>
> The fact that the Canadian Government will persist with its successful education and health initiatives for children, promotion of regional diplomacy and delivering humanitarian assistance to the Afghan people.

Hon. Terry Stratton: Honourable senators, it is too bad I am in the room; I could get Senator Comeau to address this. Honourable senators, I ask for this to be adjourned in my name for the balance of my time.

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

(On motion of Senator Stratton, debate adjourned.)

FIRST CONFERENCE OF ARAB EXPATRIATES

INQUIRY—DEBATE CONCLUDED

Hon. Pierre De Bané rose pursuant to notice of February 8, 2011:

> That he will call the attention of the Senate to the First Conference of Arab Expatriates, conference organized by the League of Arab States, that was held in Cairo, Egypt, from December 4 to 6, 2010.

He said: Honourable senators, on December 4, 5 and 6, I had the honour of attending a conference held in Cairo, Egypt, by the League of Arab States, which had invited people of Arab descent from countries all over the world to attend the First Conference of Arab Expatriates under the theme: "A Bridge for Communication."

This is the first time an event of this nature has been held by the League of Arab States, thanks to the initiative of the league's Secretary-General, His Excellency Mr. Amre Moussa, Egypt's former Minister of Foreign Affairs and a distinguished diplomat. His Excellency has always impressed me with both his thoughtful analysis and his political courage.

Honourable senators, for the last three weeks, Egypt, where both my parents were born, has been going through the most serious crisis since it gained full independence. I am not surprised that Mr. Amre Moussa is now a key player in convincing government authorities to urgently implement the reforms that the people, especially the young generation, are calling for.

This conference gathered citizens of Arab origin from all continents: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Cuba, Cyprus, Denmark, Dominican Republic, Ethiopia, France, Germany, Ghana, Italy, Ivory Coast, Liberia, Netherlands, Nigeria, Romania, Russia, Slovenia, South Korea, Spain, Sweden, Switzerland, U.K., Ukraine, U.S.A., Venezuela — from 32 countries, as well as from the 22 Arab countries, which all had delegated government representatives, including many at the ministerial level.

This meeting between Arab emigrants and the current citizens of their original homelands is a welcome and a natural thing. What, perhaps, is less natural is that they had not met officially until now!

Honourable senators, I strongly applaud this initiative taken by the tireless statesman, His Excellency Mr. Amre Moussa, who believes that every culture should be open to all other cultures. It should influence them and, conversely, be enriched by them, especially in our era.

We live in the era of communication, which has made the whole planet a global village where the world becomes smaller year after year, to the point where we need to be instantly and continuously connected. In today's world, there are more than 200 million people living in countries different from their birthplaces. These emigrants could form a natural bridge between nations, all the more so if there is a political will to enrich the world consciousness and to enhance the dialogue of cultures rather than focus on the so-called clash of civilizations, which is so divisive, especially in a country of immigrants such as ours.

In Canada, we are fortunate to have a vibrant Canadian-Arab community exceeding 600,000 people. They are as diverse as the richness of the Arab world itself, for it is in some way misleading to speak, as many do, in general about Arabs as if they constitute a single monolithic entity. Many of those who today live in and, as a result, are influenced by the Arab world are not necessarily of pure Arab origin. They can also be Kurds, Assyrians, Berbers, Africans or, due to historical reasons, even Armenians and Greeks. Nor are they necessarily of the same religion. They could be Sunni Muslims, Shia Muslims, Roman Catholics, Eastern rites Christians, Anglicans, Jews, Druze, Animists, Yazidis and so on. They certainly do not all speak or dress alike and, importantly, have not shared a unique historical experience. Former colonizers have left distinct imprints, legacies and tradition in each area. In fact, to be an Arab in the same way it is to be Canadian, is to be part of a rich civilization. It is much more a cultural state of mind and linguistic identity than a racial characteristic.

Canadian Arab immigrants are proud people — proud of their original heritage and proud of belonging to Canada. They are, of course, forever grateful for having been invited to become Canadian citizens. In return, immigrants and, in this case, immigrants of Arab descent have contributed immensely to the development and prosperity of our country.

• (1640)

We find Canadians of Arab descent in all walks of life, in the public sector as well as in the private sector. Among public figures, I mention the Premier of the Province of Prince Edward Island, the Honourable Robert Ghiz, and his father, who also was elected premier of the same province. Canadians of Arab descent are members of both houses of Parliament, as well as members of the provincial legislatures, ambassadors, numerous distinguished members of our diplomatic corps, deputy ministers, mayors, municipal councillors, police officers and so on.

[*Translation*]

Among academics, I mention the Vice-President of the Research Department at the University of Ottawa, the Vice-Rector and Chair of Arabic Studies at the University of Ottawa, the Director of French Theatre at the National Arts Centre, the President of York University, the former interim president of Carleton University and a number of deans of faculties and university professors.

Among professionals, there are well-known writers, artists, movie and theatre directors, doctors, lawyers, teachers and engineers of Arab descent.

When I was Minister of Fisheries and Oceans and had an overview of the business world in Canada, which is the second-largest country in the world, I was often surprised to meet Canadians of Arab descent in the most remote corners of the country, who were managing their businesses in the Arctic or in other remote communities.

We are the descendants of a people with a very rich past, a population that invented the alphabet and taught it to the rest of the world, one that built cities and historical monuments that still exist today— the Pyramids, Petra, Byblos, Damascus, Carthage and more — and that helped to advance science in the fields of mathematics, medicine and astronomy. During the 12th century, Arabic numerals were introduced to the Western world in Latin translations. Arabs also translated and preserved the texts of Greek philosophers and spread them throughout Europe.

Now many of us live in Canada, as first-class citizens, like all immigrants, determined to protect our new country and keep it safe, thriving and prosperous for many generations to come.

That is why I would like to propose replacing the term "expatriate" with the term "emigrant." In its broadest sense, an expatriate is an individual who lives in a country other than his or her own. However, in common parlance, the term is used to describe professionals sent overseas by their employers, in contrast with local employees, who might also be foreigners. All emigrants, without exception, have explicitly asked a country to welcome them. Almost no emigrants move to a country only temporarily and pledge their allegiance and loyalty to that country. On the contrary, while always maintaining very close ties to their country of origin, they are generally very eager to set down roots and prosper in their new country.

The goal of the First Conference of Arab Expatriates was to encourage immigrants from Arab countries to fully integrate into their adopted countries, to faithfully abide by those countries' laws and regulations, to fulfil all their civic duties and responsibilities and to work to build a solid bond with their homeland for the greater good of all involved.

That is what many dynamic communities in Canada have done, for instance, the Jewish, Italian, Polish, Ukrainian and Irish communities. The creation of a reciprocal relationship is advantageous because it helps to foster a better understanding of both countries' concerns, facilitates trade, and broadens Canada's spheres of influence. It is now up to Canadians of Arab descent to put aside temporary internal frictions in their countries of origin and take the high road for the greater good of both countries and of humanity as a whole.

[*English*]

Among my recollections of this historic conference held at the headquarters of the League of Arab States, I would like to report to you above all, the appreciation and enthusiasm of the participants when I informed them that the supreme law of our country states that the Canadian Constitution:

> . . . shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

In other words, honourable senators, the Canadian Constitution states that there is absolutely no contradiction whatsoever between our loyalty to Canada and the maintenance of our cultural heritage. No small-added benefit is that the First Conference of Arabic Expatriates was an occasion to express publicly my strong allegiance to my country, Canada, as well as an opportunity to establish new and beneficial relations with citizens from all over the world, including from countries of the Arab League and members of the Arab Expatriates Department. That department is led by the dynamic director Ms. Samiha Mohey Eldine and her dedicated assistants: Enas Mostafa El Fergany, Lobna Essam Azzam, Amina Tawfik El-Sheibany and Rana Mohammed Essam.

At this time, I ask leave of all honourable senators to be allowed to table, in both official languages of Canada, English and French, the final communiqué of this conference outlining the main conclusions and decisions reached by the conference.

The Hon. the Speaker *pro tempore***:** Honourable senators, is leave granted to table the documents?

Hon. Senators: Agreed.

Senator De Bané: Honourable senators, I had the honour to meet with His Excellency Mr. Amre Moussa when he was the Minister of Foreign Affairs of Egypt, a position he held for 10 years. His analysis then of the top foreign affairs challenges showed his grasp of the most important issues that threaten world peace and future events and show his great foresight. Like all the other participants of this conference, I am fully conscious that our meeting and its success are due to his leadership and vision.

Mr. Amre Moussa has been inspirational to so many of the young generation in Egypt who lived his legacy when he was Minister of Foreign Affairs between 1991 and 2001. His charisma is immediately felt, and he is a pragmatist with a clear vision for what must be done to connect Egypt with all the world while reasserting the pride and dignity of the Egyptians. He inspired the young diplomats in the ministry because of his empowerment to all those who are skilled, which enabled them to understand and live the process of decision making and participate in solving crises through dialogue and sound policy.

Mr. Amre Moussa comes from one of the most prominent and politically distinguished families in Egypt in the 1930s and 1940s that fought for the liberation of Egypt from the British occupation. The enabling society and his ability to reach out to the various strata in the Egyptian society gave him the opportunity to understand the aspirations of those who were deprived of wealth. He lifted the hopes of the people to reach their dreams for a liberated Egypt and later for aspiring to a more capable Egypt where the wealth can be equally distributed. The current wave in Tahrir Square resonates with Moussa's call for acquiring for the people of Egypt their basic rights with dignity and freedom. He went to the people in Tahrir Square to express his full support as a "proud Egyptian."

• (1650)

Speaking to reporters at the annual meeting of the World Economic Forum in Davos, Switzerland, on January 25, Mr. Moussa said the following:

> There is turmoil in the Arab world for so many reasons, internal as well as regional, and even international. The Arab citizen is angry, is frustrated. That is the point. So the name of the game is reform.

That is why, honourable senators, many political analysts and so many media outlets all over the world, including over a dozen Canadian newspapers, have concluded that Mr. Moussa is the most credible statesman to shoulder the responsibility to lead his country.

I hope this conference will become a permanent and regular institution with new participants, so that gradually in each country there will be a core of active members who will spread in their community the guiding principles and spirit of this conference.

I am profoundly convinced, honourable senators, that we, Canadians, must encourage such endeavours that promote understanding, mutual respect and harmony, and that strengthen the allegiance of new immigrants to our great democracy, while making the dialogue of cultures a duty of every citizen of our country in these troubled times.

The Hon. the Speaker *pro tempore***:** Further debate?

Honourable senators, if no senator wishes to speak, this matter shall be deemed to be debated.

[*Translation*]

ADJOURNMENT

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

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

> That when the Senate adjourns today, it do stand adjourned until Tuesday, February 15, 2011 at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Tuesday, February 15, 2011, at 2 p.m.)

CONTENTS

Thursday, February 10, 2011

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