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(HANSARD)

Wednesday, October 26, 2011

The Honourable NOËL A. KINSELLA
Speaker

CONTENTS

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

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THE SENATE

Wednesday, October 26, 2011

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

THE HONOURABLE PERCY MOCKLER

CONGRATULATIONS ON WINNING RICHARD B. HATFIELD AWARD

Hon. Gerald J. Comeau: Honourable senators, I would like to congratulate a dear colleague and a friend from the province next to mine, Senator Percy Mockler, who has been awarded the Richard B. Hatfield Award. This award is a huge honour given to a candidate who is an example of positive activism for Canada and the province of New Brunswick.

The Hatfield award was created in honour of an exceptional man who led New Brunswick for 17 years. He moulded his province and made it a leader in Canada, cementing his place as a visionary.

Not only did Premier Hatfield promote economic development and implement extraordinary health care reforms, but he also worked to help New Brunswick join the International Organization of La Francophonie. He was a great defender of Acadians in New Brunswick and all of Atlantic Canada. In recognition of these achievements and many others, he was awarded a number of honorary doctorates by universities in Eastern Canada.

Honourable senators, I will not go into detail on the life and career of Richard Hatfield, since I want to pay tribute to my friend Percy.

I would, however, like to point out that the Richard B. Hatfield Award is not presented to just anyone. It is presented to someone honourable and deserving who continues to make a positive impact in people's lives, to someone who works tirelessly and is constantly looking to improve life in New Brunswick and all of Canada. Senator Mockler is very worthy of this award. He works tirelessly and carries out the projects assigned to him, and he is always ready to go further and do more for others.

He is extremely committed and has boundless energy. It is a pleasure for me to see an often cunning smile light up his face when he has an idea to share. Senator Mockler never puts up any walls — his door and heart are always open. He is always prepared to help anyone in need, and his generosity, patience, integrity and quick wit are legendary.

Percy has spent some time in Ottawa, not to mention the many years he spent in the Legislative Assembly of New Brunswick working for constituents in Madawaska South, Madawaska-la-Vallée and Restigouche-la-Vallée. He worked for a number of years as a federal party organizer and will soon celebrate the third anniversary of his arrival here among us in the upper chamber.

I would like to extend my sincere congratulations to my friend Percy. I am pleased to see Senator Mockler's great enthusiasm for his community, his province and his country, but I am even more pleased to see that such a deserving candidate was chosen to receive the Richard B. Hatfield Award this year.

Good luck in all of your future endeavours, Percy. Keep up the good work.

MS. EDNA A. HALL

HONOURED BY FÉDÉRATION DES FRANCOPHONES DE TERRE-NEUVE ET DU LABRADOR

Hon. Maria Chaput: Honourable senators, on Friday, October 21, 2011, at the invitation of the Fédération des francophones de Terre-Neuve et du Labrador, I attended a banquet at which francophone communities paid tribute to Edna Hall, an employee of the Department of Canadian Heritage.

Here is an excerpt from the speech given by Julio Custodio, President of the Fédération des francophones de Terre-Neuve et du Labrador:

> Tonight, the Federation's provincial council would like to recognize the exemplary contribution that an employee of the Department of Canadian Heritage has made to our francophone communities.
>
> Ms. Hall had a clear understanding of the needs of the community and she took advantage of opportunities to support the community in its development.
>
> She worked tirelessly with the provincial government to create the Office of French Services.
>
> The Comité d'orientation aux Affaires francophones was also created under her direction. Today, this committee, which is managed by Canadian Heritage and brings together federal and provincial stakeholders and francophone organizations, is still a very welcome tool.
>
> She supported the notion of building an educational and community centre in St. John's.
>
> When the province announced funding for the construction of a new French school in St. John's, she ensured that the Department of Canadian Heritage was at the table to finance the community and shared portions.
>
> Ms. Hall brought an awareness of the needs of the francophone community to senior officials within the public sector and encouraged them to show leadership regarding the Official Languages Act, particularly Part VII, which promotes positive measures.

Honourable senators, the French presence in Newfoundland and Labrador dates back to the early 16th century.

At present, there are 21,000 people in the province of Newfoundland and Labrador who can communicate in French, including 2,500 whose first language is French.

The francophones of Newfoundland and Labrador are found in three main areas: the Port au Port Peninsula, the greater St. John's area, and Labrador. In some communities, francophones make up nearly 12 per cent of the population.

Honourable senators, the francophones of Newfoundland and Labrador publicly recognized Ms. Hall for being a leader who was convinced of the benefits of linguistic duality in Canada. I would also like to thank her here today and wish her every success in her future endeavours.

DIVERSITY IN FEDERAL PUBLIC SERVICE

Hon. Donald H. Oliver: Honourable senators, I rise today to draw your attention to a topical issue: bilingualism among visible minorities in the Public Service of Canada.

For decades, some people said that there were very few visible minorities in the executive ranks of the public service because they do not speak French.

Several executives suggested that, for quite some time, visible minorities were unable to fulfill the requirements of our national policy on bilingualism. Many believed that several visible minorities did not speak French.

Fortunately, that myth was just dispelled with the publication of a report this week on the Public Service Commission of Canada.

• (1340)

[*English*]

It is the statistical bulletin tabled by the Public Service Commission of Canada on Visible Minorities and Bilingual positions in the Federal Public Service — Impact of Official Language Requirements.

As honourable senators will know, visible minorities have complained for decades that their promotion and advancement in the Public Service of Canada has been held back for many systemic reasons. One argument is that visible minorities could not meet the challenges of Canada's official languages' policies.

In today's report, there was a detailed analysis of the impact of linguistic requirements on career progression of visible minorities under the Public Service Employment Act. The conclusions of this study are two: first, visible minorities in organizations under the PSEA occupy an increasing share of bilingual positions; and second, bilingual visible minorities spend less time in unilingual jobs before their appointments to the bilingual imperative position. This is great news for visible minorities and great news for the continuing success of our bilingual policy in Canada.

Honourable senators, a lot depends on what is the first language of a visible minority, whether it is French or English. For example, visible minorities with French as their first official language move from French essential to bilingual imperative positions in 17 months, whereas other employees with French as their first language move in 24.1 months. However, visible minorities with English as their first official language move from English essential to bilingual imperative positions in 23.7 months, whereas other employees with English as their first language are at 23.9 months.

You may ask: What is the current representation of visible minorities in the public service? In Canada today, more than 20 per cent of the people of our country are in visible minorities. The representation of visible minorities in the public service rose from 5.9 per cent in 2000 to 9.8 per cent in 2009.

Honourable senators, I have had meetings with Maria Barrados, the President of the Public Service Commission, and Mr. Graham Fraser, the Commissioner of Official Languages. I have met with them both on several occasions and have, at present, outstanding correspondence from them with respect to this issue.

This most recent report, however, confirms the following: that the representation of visible minorities in public service bilingual positions increased from 3.7 per cent in 2000 to 7.8 per cent in 2009.

The overall conclusion of this study, honourable senators, is that there does not appear to be negative impacts for the career progression of visible minorities based on linguistic requirements.

I await the report of the Commissioner of Official Languages that will give me more details on my request for information on this point, and I undertake to bring the new information to honourable senators' attention once received.

MACDONALD-LAURIER INSTITUTE

RECOGNITION FROM THE UNIVERSITY OF PENNSYLVANIA

Hon. Larry W. Campbell: Honourable senators, I rise today to speak on a great accomplishment from one of Canada's foremost public policy think tanks. The Macdonald-Laurier Institute, a non-partisan organization located here in Ottawa, was recently recognized by the University of Pennsylvania as one of the "top 20 new think tanks" in the world.

The Macdonald-Laurier Institute, named after two of Canada's greatest prime ministers — one Conservative, one Liberal — was established just over one year ago but has already had a significant impact on federal public policy research and discussion. The institute is dedicated to promoting excellence in public policy in every area under federal jurisdiction and is a well-deserving recipient of this honour.

Their work has been cited by our current Prime Minister and four former prime ministers and has also been included in such national and international publications as *The Globe and Mail*, the *National Post*, the *Wall Street Journal* and *The Economist*.

The University of Pennsylvania's think tanks and civil societies program surveyed nearly 1,500 scholars, policy-makers and subject area experts worldwide before finalizing the rankings. To be the only Canadian institute included in the top 20 is a testament to the quality of work done by the Macdonald-Laurier Institute.

In order to ensure our government implements policies that truly make sense for Canada, we need to have informed and relevant discussion on public policy issues that matter to Canadians. I thank the hard-working individuals of the Macdonald-Laurier Institute for their contributions and encourage honourable senators to support all non-partisan organizations similarly committed to improving our public policy.

ASSOCIATION OF UNIVERSITIES AND COLLEGES OF CANADA

CONGRATULATIONS ON ONE HUNDREDTH ANNIVERSARY

Hon. Nancy Greene Raine: Honourable senators, 2011 marks the one hundredth anniversary of the founding of the Association of Universities and Colleges of Canada. This week the AUCC is holding its annual conference in Montreal, where it was announced yesterday that Professor Stephen Toope, President and Vice-Chancellor of the University of British Columbia, has begun a two-year term as Chair of the AUCC's board of directors.

Interestingly enough, 100 years ago there were no universities in British Columbia. When the AUCC was founded at McGill University on June 6, 1911, 19 institutions were invited to attend: three from the West; seven from Ontario; three from Quebec; and six from the Maritimes.

Eighteen academics from 15 universities attended that first meeting. None of the three Western universities was able to attend. Today there are 95 members of Canada's national association of universities and colleges.

One hundred years ago, our country was still only 50 years old and it was seized with the vision of building a nation. People understood the importance of the national railway, for example, which was doing so much to open up the West, and the national parks system was also founded. Therefore, it was no coincidence that our universities got together on the understanding that they had a role to play in the building of a nation.

Today Canada's universities are more important than ever, and now many of them are part of a movement that is taking advanced education to people all over the world through the Internet. Learners can now take courses online from accredited universities in many countries, working at their own pace and motivated by their own interests.

Honourable senators, last summer, Thompson Rivers University in Kamloops, along with Athabasca University in Alberta, were among 10 international universities to found the Open Education Resource Foundation, which has taken on the challenge of quality control of the growing number of web-based educational programs. The foundation is developing a system for assessment of students taking courses at their institutions.

They have agreed that member universities must provide their course content free of charge online, but that students will pay for the assessment and for the tracing of their course records toward earning a credential or degree. The foundation's work will answer two basic questions arising from distance learning: Is the course worth it and has the student learned the course?

Honourable senators, I look forward with great interest as our post-secondary institutions move to harness the power of the Internet. Our world is changing. Knowledge is exploding and it is very important that students, both young and not so young, learn how to use the new tools to benefit from the expanded opportunities that are now around us. As senators, we also must keep up to date and learn to use the tools and technology to make our work in the Senate more efficient and productive.

CANADIAN PARAPLEGIC ASSOCIATION

CHAIRLEADER EVENT ON PARLIAMENT HILL

Hon. Jim Munson: Honourable senators, I seek leave to sit in my wheelchair to deliver my statement and to work in the Senate today.

Hon. Senators: Agreed.

Senator Munson: First, I thank His Honour for allowing this sort of access today. I think it is precedent setting and sends a very important message to the rest of the country and to Parliament Hill.

Honourable senators, today is the Canadian Paraplegic Association's annual Chairleader on the Hill event. Twenty-five senators and members of Parliament are currently trying to go about their day's business while using wheelchairs. I am pleased to see that my friend Senator Yonah Martin is among those of us who have taken up the challenge. We have had quite a day thus far, particularly crossing Wellington Street.

I appreciate the chance to once again do my part to raise awareness about the obstacles people with spinal cord injuries and wheelchair-related disabilities face every day. I have to admit, though, that I have looked forward to this day with mixed emotions. I hope this is not going too far, but last year I almost impaled myself in the men's urinal. However, I survived that and I am back.

Being in a wheelchair, needless to say, is tough. It demands a lot of physical strength and determination. Until the first time I took part in this event, I never saw the hazards and physical barriers that prevent someone in a wheelchair from moving easily from point A to point B. The experience can be discouraging and frustrating. Now that my eyes have been opened, I continue to grow more aware of these challenges and the need to address them.

One glaring example of a challenge that should be addressed is here in our midst. I have my wheelchair in this chamber under the permission of the Speaker. Normally, I could not bring it inside and I would have walked in; but what about those people who cannot walk?

In principle and in practice, the Senate should be accessible to everyone. Even the *Rules of the Senate* call for a senator to rise or stand to be recognized by the Speaker. Also, senators must stand to vote. What if a person cannot stand? It is something to think about.

• (1350)

Last year, Robert White, Executive Director of the Canadian Paraplegic Association, appeared before the Standing Senate Committee on Human Rights. In his introductory remarks to the committee, he mentioned that a colleague was supposed to have accompanied him to the hearing. His colleague could not fly from Toronto as planned, though, because there was no room for his wheelchair in the plane's cargo section.

The CPA helps people with spinal cord injuries to achieve independence, self-reliance and full community participation. The association currently has over 20,000 members.

I would like to thank the Canadian Paraplegic Association for once again inviting me to be a Chairleader. Throughout the day, I will no doubt find myself in some tricky situations with my wheelchair, and tomorrow I am sure my muscles will ache like they did last year; but it is worth it. This opportunity to support the important goals of the CPA is a privilege and worth every discomfort of a single day.

THE LATE HONOURABLE BARNEY DANSON, P.C., C.C.

Hon. David P. Smith: Honourable senators, I rise to pay tribute to my late friend Barney Danson. Senator Meighen spoke about him yesterday. I was also at the funeral last Sunday.

Barney Danson was a great fellow. Born in 1921, he was nearing his ninety-first birthday. He was a sergeant in the Second World War, lost an eye and wrote a great book, *Not Bad for a Sergeant*. He was very witty and everybody loved him.

Bob Rae was at the funeral and said a few words. He said, "When you go into politics, some people get mad at you and, believe me, I know about it. However, I do not know a single person who did not like Barney Danson." That is true.

It was a lovely service. Barney had been Minister of Defence, as honourable senators know, and was in cabinet for 11 years. At the funeral, an honour guard took the casket out while soldiers in uniform stood out front. There was a warm feeling.

I will not go into too much detail but something really brought the house down. His son, John, read a few excerpts from a letter that Barney had written to former Prime Minister Chrétien. He read:

> I am writing this as an older man in his 70s because I am very concerned at how long it is taking your government to approve the sale of Viagra in Canada. I know it is hard to be prime minister, but please do not go soft on this issue.

How often are you at a funeral where everybody is smiling and chuckling as they remember a great friend and guy, someone whom they all respected?

I knew him very well and served with him.

Barney, you will be missed; you will be loved; and we need more people like you coming into public life these days with that great sense of humour.

[*Translation*]

ROUTINE PROCEEDINGS

CLIMATE CHANGE

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 need for a new call to action on climate change.

[*English*]

QUESTION PERIOD

AUDITOR GENERAL OF CANADA

BILINGUAL CAPACITY

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

I have in my hands the notice of vacancy with respect to the position of Auditor General of Canada that was published on October 2, 2010. After describing the job of the Auditor General, the phrase "proficiency in both official languages is essential" appears. In other words, bilingualism is mandatory. There were reports circulating within the last 24 hours that the government's nominee for Auditor General of Canada is, in fact, not bilingual. Why did the government nominate someone who did not meet the essential qualifications set for this position, which is an officer of Parliament?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I understand that because the person is an officer of Parliament, the Prime Minister consulted with all leaders of the opposition and that the nominee to the position of Auditor General will appear next week before the Committee of the Whole in the Senate.

We were very pleased to announce that Michael Ferguson, former Deputy Minister of Finance for New Brunswick, will be the next Auditor General. Mr. Ferguson has a proven track

record of public service for the Province of New Brunswick, where he served as Auditor General from 2005 to 2010. He has demonstrated a strong record of non-partisan public service.

Honourable senators, I do not have the document from which Senator Cowan is reading, but I understand that Mr. Ferguson has indicated he will make every effort to take the necessary steps to satisfy the requirements of bilingualism.

Senator Cowan: Honourable senators, the job requirements state that proficiency in both official languages is essential. One would assume, therefore, that someone not proficient in both languages would not have a chance. We all know of people who look at job postings and either do not apply or if they apply will be screened out when they see they do not meet the posted requirements. Is Mr. Ferguson proficient in both official languages?

Senator LeBreton: Honourable senators, I do not have the job posting before me, but I understand the requirements for the position. Of course for all of these positions, official bilingualism is very advantageous, although I understand that it is not a requirement in the act. There seems to be some discrepancy between the requirements under the law and those on the notice in the honourable senator's hand.

• (1400)

Senator Cowan: Honourable senators, I draw to the leader's attention again that the wording in the job posting is "proficiency in both official languages is essential." Coincidentally, the next notice of vacancy was for the Canadian Centre for Occupational Health and Safety, and that job posting states "proficiency in both official languages would be strongly preferred." Clearly, there is a distinction and those words were chosen carefully.

Is Mr. Ferguson proficient in both official languages? If not, why would the government put forward a nomination that does not meet its own criteria? I am not talking about the letter of the law; I am talking about the criteria that were put forward by the government in its own job posting.

Senator LeBreton: As I mentioned, there appears to be some difference between the posting and what the requirements for the job actually are. I will take Senator Cowan's question as notice and respond as to why the notice was different than the requirements.

As I mentioned, this gentleman is extremely well qualified. I understand that the process of consulting with members of the official opposition has been completed. His appointment, pending approval by Parliament, has been announced. I understand that the required process will take place in Committee of the Whole next week.

Senator Cowan: When the minister is looking into this, would she ascertain whether other unilingual candidates were advised that that requirement was not going to be complied with so that they could take the opportunity to apply for this position?

Senator LeBreton: I am not involved in the process. Officers of Parliament are unique positions, so I absolutely will not do that.

Senator Cowan: The minister also referred in passing to the fact that the leaders of the recognized parties in both houses of Parliament, including herself and myself, were advised by the Prime Minister in confidence some weeks ago. When one is told something in confidence, one respects that confidence and any inquiries we could make were circumscribed by the desire to comply with the Prime Minister's reasonable request for confidence.

However, surely, when one receives a letter from the Prime Minister asking for advice on his proposed recommendation, one is entitled to assume that the nominee he put forward meets the qualifications that are set out in the government's own job posting.

Would the leader ascertain why the government chose to post a job stating that bilingualism was mandatory and then change that without advising the party leaders, parliamentarians or other potential candidates that that change had been made?

Senator LeBreton: Honourable senators, I go back to the point I made earlier. There appears to be some discrepancy between the notice and what was actually required by the government for this position. I indicated that I would inquire as to why this occurred.

The fact is that this individual has a proven track record of public service. He is competent and non-partisan, and he filled this position in the province of New Brunswick for five years.

Senator Cowan: Will the leader undertake to find out why there appeared to be a difference between the job posting and the process that was in fact followed, and will she report back to this house before the nominee appears here in Committee of the Whole?

Senator LeBreton: Honourable senators, I said that that is exactly what I will do. I said that I will inquire about what appears to be a difference between the posting and the law. I will do my best, but I will not make any firm promises.

[*Translation*]

Hon. Jean-Claude Rivest: Honourable senators, I believe that the minister realizes that this situation makes all French Canadians feel ill at ease. I dare not ask the minister how many unilingual French Canadians have been deputy ministers in the Government of Canada. It is still somewhat up to francophones to make an effort to speak Canada's two languages. Those are the facts. I am not making accusations; that is the reality. And the government's decision, no matter the competency of the person chosen — which I do not doubt at all — creates an ambiguous situation.

Moving beyond that and the questions raised by the Leader of the Opposition, does the minister not agree that the Auditor General, unlike a deputy minister who is never in the public eye, who never talks to the public because there is a minister who speaks on behalf of their department, has a responsibility to update Canadians on his work and his research? Is that not the reason why it would be preferable, and it should even be required, that this position be held by someone who is fluent in both our official languages?

[*English*]

Senator LeBreton: Honourable senators, I would like to think that if Mr. Ferguson was a unilingual francophone with exemplary qualifications as an auditor and had formerly been an auditor general for five years, conducting himself in a very professional and non-partisan way, he would be chosen on his merit, not on the fact that he does not speak English.

Again, there seems to be some misunderstanding about what is required by the law and what was in the published notice. I have undertaken to try to determine exactly why there was this discrepancy.

Hon. Joan Fraser: Honourable senators, as Senator Rivest has eloquently outlined, the Auditor General of Canada is not just any old accountant. I am sure Mr. Ferguson is an excellent accountant, but the Auditor General of Canada is an officer of Parliament with particular public responsibilities in the Parliament of Canada. The Parliament of Canada is, by law and by practice, the institution of the country that upholds both of our official languages.

It is at least 20 years since we had an auditor general who did not speak both official languages. With the exception of Mr. Ferguson, all of our officers of Parliament speak both official languages, for the very good reason that they are responsible to Parliament and, through Parliament, to all the people of Canada, in both official languages.

Does the appointment of Mr. Ferguson mean that that fundamental principle no longer matters to the Government of Canada and that, as I am afraid I gathered from the leader's answer to the last question, the ability to function in both official languages is no longer considered a component of merit?

Senator LeBreton: Senator Fraser is flat-out wrong. I was simply saying that I did not think that anyone should be automatically excluded, especially if bilingualism is not a requirement under the law.

Having said that, this government has a solid track record of adhering to and promoting Canada's linguistic duality. I indicated to Senator Cowan that there appears to be some discrepancy between the notice and the law. We are not all involved in the process.

• (1410)

I am given to understand that Mr. Ferguson is a former deputy minister and auditor general and has exemplary qualifications. I am also given to understand that he has made a commitment that he will be able to fully perform his duties in both official languages.

I will find out about the discrepancy. Mr. Ferguson will be appearing before this house. I will do my best to get the answer before he appears. However, I do understand that Mr. Ferguson has already indicated that he intends to perform his functions as the Auditor General in both official languages.

Senator Fraser: I ask for one clarification of my question to the leader. While she is doing her research, could she please ascertain and tell us whether this appointment of someone who is not proficient in both official languages shall be taken as a precedent or whether it is simply, for some reason, a one-off, unfortunate circumstance?

Senator LeBreton: Again, honourable senators, Mr. Ferguson has indicated that he fully intends, if approved by Parliament, to perform his functions mindful of our linguistic duality, and will perform his functions cognizant of both of Canada's official languages.

I am not familiar with the process, but I can imagine that quite a number of people applied. I do believe that the act clearly does not state the necessity of this position to be bilingual. I will clarify that. However, I do believe that the Auditor General, once he is approved by Parliament, will live up to the commitment he has made, that he will take steps to make sure he fully complies with Canada's Official Languages Act in the performance of his duties.

Hon. Tommy Banks: Honourable senators, I want to make clear that no one here questions the qualifications, other than the linguistic ones, of the nominee. I want to make clear too that this question would have been asked earlier were it not for the fact that Mr. Ferguson, who is a resident of New Brunswick, Canada's only officially bilingual province, bears a surname that is borne by many people in New Brunswick who are unilingually francophone. Therefore, a reasonable assumption was made that Mr. Ferguson was functional in both languages. However, I do not want to ask about the law. I want to ask about the notice.

There is no confusion between the law and the notice because the notice said that functional bilingualism was a requirement of the job. The Leader of the Government just mentioned applicants for the job. One assumes that there might have been many applicants for the job who were unilingual, either francophone or anglophone, and who, without the bilingualism requirement, might have applied. They did not because the notice was unequivocal. The notice did not say anything about a preference, and the notice did not refer to the Auditor General Act. I know that the leader will check on that and let us know. The notice said "is a requirement." That would, if I were to consider applying, dissuade me because I cannot speak, as honourable senators well know, a word of French.

My question is, what about those folks who might otherwise be completely competent in this area and who might have applied but for the fact that the notice said "do not bother"?

Senator LeBreton: I do not have the document in front of me, but I do not believe it said it was a requirement, as Senator Cowan read. Honourable senators, I do not know how many people applied. I do not know the process. I, like Senator Cowan, received a letter from the Prime Minister some weeks ago indicating that this process had produced the name of Mr. Ferguson. Mr. Ferguson obviously has an exemplary record. I do not know whether other bilingual or unilingual candidates applied. I have no knowledge of that, so I cannot add anything more to what I have already said, which is that I will attempt to clarify the apparent discrepancies between the notice and the law.

The fact is, Mr. Ferguson is qualified and understands that he must take steps to be able to perform his functions as an Officer of Parliament in both official languages. He has indicated that he plans to do that, and we should applaud him for doing so.

Senator Banks: There is actually a conflict here. The honourable senator said Mr. Ferguson will learn to speak French. Can she actually look us in the eye and contemplate the appointment of a unilingual francophone Auditor General with the promise to Canada that he will learn to speak English? Is the leader serious?

Senator LeBreton: Well, why not? Absolutely. We have gone through a debate on the Supreme Court.

Mr. Ferguson has indicated that he is going to take steps to perform his responsibilities in both official languages. We should take him at his word. I have no reason not to believe what he says. I have never met him, but he has obviously worked in a circumstance where he was dealing with the two official languages. I am just speculating, but I imagine that he has a pretty solid base in French.

In any event, I cannot add anything more, other than what I have already indicated to Senators Cowan, Rivest and Fraser.

[*Translation*]

Hon. Francis Fox: Honourable senators, I have a question for the Leader of the Government on the same subject. Let us be clear. No one here is attacking the subjective qualifications of the individual in question. He may have all the qualifications in the world, and he probably does. We are instead attacking the conditions of employment, objective conditions, namely whether or not a candidate has certain objective qualifications set by the government and by tradition. There is no other officer of Parliament at this time who is not bilingual. One would have thought there was a strong tendency toward official bilingualism of officers of Parliament.

This brings me back to last week, when a unilingual judge was appointed to the Supreme Court of Canada. It is not my intention to attack the individual, who has all the necessary qualifications to be a justice of the Supreme Court of Canada, but he is missing an objective qualification that I believe to be essential: bilingualism.

My question is the following: senators spoke of the job posting and I would like to know whether the government read its own job posting. It was quoted in English. I would like to quote it in French. I do not have the text in front of me. I have what Marie Vastel wrote this morning. She quoted the job posting and the following condition: "la maîtrise des deux langues officielles est essentielle," or "proficiency in both official languages is essential." As far as I know, it does not say "eventual proficiency in both official languages is essential." Proficiency is required now so that the individual can commence his job as soon as possible.

Again, it is not a subjective condition. It is an objective condition that the government was right to set and that I would have applauded if the government had abided by its own job posting. Did the government read its job posting?

• (1420)

[*English*]

Senator LeBreton: Honourable senators, I cannot add anything further to what I have already said. I do not know how many people responded to the position offer. I do not know whether any other people who responded were unilingual English or unilingual French. I do not know that, so I cannot answer that I know what I do not know.

Therefore, honourable senators, I ask the Honourable Senator Fox to allow me, as I said in my answer to Senator Cowan, to ascertain for the Senate what the process was. Obviously, if there were a number of candidates, there may have been a situation where no bilingual candidates offered themselves. That is a possibility. In this case — and this is hypothetical — if no officially bilingual candidates offered their services, Mr. Ferguson may have been chosen on merit out of that group.

Having said that, I believe Mr. Ferguson has already apparently indicated his intention to perform his duties, if he is approved by Parliament, fully cognizant and in respect of Canada's linguistic duality and our commitment to the Official Languages Act.

Hon. Percy E. Downe: Honourable senators, Senator LeBreton would be well aware, because of her previous position as director of appointments in the Prime Minister's Office, that when a position is posted, thousands apply and only those who are screened in and meet the basic criteria go forward in the competition. If that does not happen, then the position must be re-advertised.

How was this person, who did not meet the qualifications, screened in for consideration?

Senator LeBreton: Honourable senators, I do not know about Senator Downe, but, for some of these difficult and contentious officer of Parliament positions, we did not have thousands of people applying. I do not know what special attraction there would have been for them applying under the honourable senator's government and not under ours.

Having said that, I do believe that the act did not require it. Therefore, anyone working on this would be cognizant of that. I also know, as Senator Cowan pointed out, that the notice went out stating something different. I undertake again to ascertain the real facts here and what happened.

When I was in the same position that the honourable senator held in the Prime Minister's Office, handling appointments, officers of Parliament and some of these high-level positions were entrusted to the bureaucracy and senior staff at the Privy Council Office. We did not delve into these in any political way whatsoever.

Senator Downe: That is exactly right. The Privy Council Office staff reviewing the CVs would have rejected those that did not meet the criteria. That was exactly the point I was making. You would never see those because they did not meet the advertised requirements of the position.

If the government was advised that no one met the requirements, could the minister find out why the job was not re-advertised indicating that unilingual candidates would be considered so that all unilingual Canadians could have applied and have had an equal opportunity for the position?

Senator LeBreton: I think I have already answered that, honourable senators. The act clearly did not specify that requirement. Obviously, the job posting said something different. I have indicated that I will ascertain the reason for the discrepancy and that is all I can add to this debate.

Hon. Grant Mitchell: Honourable senators, as important a question as how many unilingual anglophones decided not to apply because they actually believe what they read, namely that proficiency in both official languages is essential, equally important is why would this person who had been selected, who was clearly unilingual — and he, of course, would have known it — apply when he would have read this and should have ruled himself out at the outset entirely? I suggest that it is because he was picked from the outset, he was asked to apply, making the entire process a sham because it was stacked from the beginning.

What does that say about this government's open hiring process and fairness or lack of fairness when Canadians apply for a job which should have been open and fair in the process?

Senator LeBreton: Honourable senators, it is entirely consistent with the way the honourable senator behaves that he would make such charges. He should be ashamed of himself.

The fact of the matter is that, if one were to use the honourable senator's criteria, I would dare say that several of the officers of Parliament would probably not have made it through the system. That is how ludicrous it is.

This matter was handled by Treasury Board and by senior staff in the Privy Council Office. I think the honourable senator's accusation that a former deputy minister in New Brunswick, a former Auditor General in New Brunswick, an exemplary public servant, in some underhanded way would have participated in the process is actually a shame. The honourable senator should be apologizing.

Some Hon. Senators: Hear, hear!

ORDERS OF THE DAY

FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Nancy Ruth, seconded by the Honourable Senator Champagne, P.C., for the second reading of Bill S-2, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise before you today to speak on Bill S-2, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves.

For me, the Senate of Canada is a trustee of two main issues: Canadian national interests and protection of minority rights in Canada and abroad.

Honourable senators, the bill that is before us today is a reflection of the work we do in the Senate. It was in the Senate Human Rights Committee that the issue of matrimonial real property rights on reserves was initially addressed and it is in the Senate that the issue of human rights on reserves should be championed. I believe it is our responsibility to ensure that minority groups have the same rights and protections as the rest of us. In a diverse Canada, basic human rights should be the same for all.

In 2003, I was a member of the Standing Senate Committee on Human Rights which studied property rights for women on reserves. In a report entitled *A Hard Bed to Lie In*, the committee addressed the need for legislation to be drafted to help ensure that Aboriginal women enjoy the same rights as the rest of Canadian women when a marriage or common-law relationship breaks down. In 2004, the committee released a subsequent report entitled *On Reserve Matrimonial Real Property: Still Waiting*, which further emphasized the need for legislation to be drafted and implemented.

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

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

There is a legislative gap. The courts have no authority to protect the matrimonial real property interests of spouses or common-law partners on reserves.

• (1430)

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

Under section 88 of the Indian Act, subject to treaties concluded by First Nations with the Crown and to the federal government laws, First Nations people are bound by all provincial laws of general application except to the extent that such laws are not consistent with the Indian Act.

The provinces are responsible for family law matters, including matrimonial property under section 92(13) of the Constitution Act, 1867. At first glance, there would be an assumption that provincial or territorial legislation would also govern property rights upon a breakup of marriage on reserves. However, because of the legal status of Indian reserves, there needs to be a distinction between real and personal property.

There is no law in place for division of matrimonial real property on reserves, and, therefore, there is a need for legislation so all Canadians can enjoy the same rights. Bill S-2 is trying to right a wrong and be just for all Canadians.

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

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

Honourable senators, first, there is a gap for people living on reserves, and second, there is the issue of ownership of land and collective rights on reserves. Most Canadians who own land have full fee simple ownership of the land itself. Reserve land is not "owned" in the usual meaning of the word by the people of the First Nations. Underlying title is held by the Crown. Section 18 of the Indian Act states the following:

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

Although First Nations people can obtain possession of land on reserves on which they are able to erect buildings and the buildings will belong to them, in most cases, they cannot have full fee simple ownership of the land itself.

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

The result of *Derrickson* and *Paul* and the lack of legislation have meant that people on reserves do not enjoy the same matrimonial rights as the rest of us have.

Upon the breakup of marriage, the people on reserves cannot seek the help of provincial or territorial courts to divide their assets.

Since 1986, the *Derrickson* decision of the Supreme Court of Canada and the gap in the law has meant that the courts cannot grant relief, such as ordering that one spouse — normally the spouse who has the sole custody of the children — have possession of the house or ordering that the spouse who has the house in his or her name not further encumber the property.

This means that any legislation that is developed regarding matrimonial real property on reserves must successfully balance the individual rights, which protects spouses and common-law partners, and, at the same time, protects the collective interests of the First Nations on their reserve lands.

In addition, the resulting legislation would set out provisions for the enactment of First Nations laws respecting on reserve matrimonial real property as well as provisional and federal laws. These federal and provisional laws would apply unless and until First Nations communities establish their own matrimonial real property law, as the legislation provides a mechanism for First Nations to apply their own matrimonial real property laws, which would then be applied by courts across Canada.

Bill S-2 is our government's fourth attempt at doing just that. The most recent incarnation, Bill S-4, passed through the Senate in June 2010.

Throughout the committee meetings and during a speech I delivered at third reading of Bill S-4, I brought up several points of concern, and I am extremely pleased to see that the bill that is before us today has improved in three important ways.

The first change is the removal of the verification process, including the role of the verification officer. When I spoke at third reading on Bill S-4, I referred to the paternalistic undertones that were embedded in the legislation. I spoke to the part of Bill S-4 that called for a verification office and a verification officer whose job it would be to oversee and approve First Nations matrimonial real property laws. This was problematic for a number of reasons, particularly because the verification officer would determine whether or not the First Nations community approval and ratification process were acceptable.

I commend our government for acknowledging the various concerns that were brought forward, for it has deleted the entire verification process from the legislation. Now First Nations citizens are the sole approving authority for First Nations matrimonial real property laws, and their councils are responsible for reporting the community approval outcome in writing to the minister if the First Nation law is approved.

The second change is a lower ratification threshold. During committee, several of my colleagues and I spoke out the against the high ratification threshold which appeared unreasonable as it would make it extremely difficult for First Nation communities to pass their own laws relating to matrimonial real property on reserves. Bill S-4 required a double majority for the adoption of First Nations laws, which meant a majority of eligible voters had to participate in the vote, and of that, 50 per cent plus one, the majority, had to vote in favour.

I again commend our government for lowering the ratification threshold to a single majority with a set participation in the vote of at least 25 per cent of eligible voters. This will indeed make it easier for First Nations to adopt their own laws.

The third change is the inclusion of a transition period. In Bill S-4, there was no transition period, meaning that legislation would have to come into force on a day or days to be fixed by order of Governor-in-Council. Bill S-2, which we have here today, includes a 12-month transition period before the federal provisional rules come into force. This transition period has been incorporated to allow those First Nations that are well advanced in developing their own laws with time to enact them before the provisional federal rules take effect.

I commend our government for having taken the recommendations we made while studying Bill S-4 and having adapted Bill S-2 which is before us today accordingly.

Honourable senators, although I am pleased to see that several troublesome components that were present in Bill S-4 have been amended in this piece of legislation, there are still, however, several areas of concern as we are granting rights to people living on reserves but not providing them with resources necessary for those rights to be exercised.

Today I would like to share with you the concerns I have, namely, lack of resources, housing shortages, legal aid and adequate consultation.

In June 2010, when the Standing Senate Committee on Human Rights was studying matrimonial real property on reserve legislation in the form of Bill S-4, we heard from Member of Parliament John Duncan, who is presently the Minister of Aboriginal Affairs and Northern Development. In his remarks, he stated:

> Enacting this proposed legislation is the right thing to do for three reasons. First, Bill S-4 affords residents of First Nation communities a level of protection similar to that enjoyed by other Canadians. Second, it enables First Nation communities to design and implement matrimonial real property laws tailored to their own cultures and traditions. Third, the immediate and concrete solution articulated in Bill S-4 is informed by considerable research and consultation conducted by independent groups, including national Aboriginal organizations.

After studying Bill S-4 closely, I learned that, although the legislation was indeed needed to deal with the issue of matrimonial real property on reserves, Bill S-4 was not the answer.

Although I am pleased to see many improvements in Bill S-2, I am still concerned that the three priorities that Minister Duncan set out will fail to be met.

First, rights without resources: I firmly believe that the Aboriginal men and women are entitled to the same rights granted to the rest of Canadians. However, I am not sure how this bill will make that a reality.

• (1440)

Honourable senators, it is important we remain mindful that First Nations men and women living on reserve are subject to different circumstances than the rest of Canadians. Unfortunately, those living on reserves do not have access to the same resources as the rest of us.

If we are going to recognize the rights of First Nations communities and work with First Nations citizens to ensure those rights are protected, we need to remember that a right without resources is not a right. It is a hollow right. We need to do more than acknowledge that men and women living on reserve are entitled to the similar rights that the rest of Canadians enjoy. We need to ensure that the proper resources are in place and can be exercised. If we are going to fight for the rights of Aboriginal women living on reserves, we must realize those rights come with corresponding duties. We have to ensure they have the ability to exercise their rights. Not doing so would be comparable to giving a woman the right to vote in Ottawa, but having the ballot box in Vancouver.

Another concern is housing shortages on reserve. While working on this issue for many years, I have heard a number of heartbreaking stories told by women who were displaced from homes with no place to go. A story that still stands out in my mind is one of an Aboriginal woman who committed suicide after authorities apprehended her children. This woman, who was the mother of five children, was forced to leave her reserve because of the housing shortage. Unfortunately, she was unable to find affordable housing off-reserve and was forced to move herself and her five children into a rundown boarding house. When the authorities found out about this, they apprehended her five children. Unfortunately, having felt she had lost everything, this woman decided to take her life.

The unfortunate reality is that this is one of the many devastating examples of how dire the housing situation on reserves is. When a marriage breaks down, the lack of housing is one the main reasons forcing people to leave the reserve. This needs to be appropriately acknowledged and addressed as part of a broader, more comprehensive approach to this subject.

Another issue that men and women are confronted with is access to justice. Accessing legal aid is difficult for all Canadians, however it is even more difficult for those living on reserves. Bill S-2 requires one to rely heavily on provincial courts. In light of the fact that legal aid systems are severely underfunded, I worry about the fact that this piece of legislation requires First Nations communities to further exhaust these already exhausted resources. For example, imagine a woman who comes home to find her husband has changed the locks on their home, leaving her and her children with nowhere to go. In clause 16 of Bill S-2, there exists an emergency protection clause that ensures that this woman must go to court, obtain a lawyer, and obtain an order to re-enter her house. However, this order will only protect her for 90 days. After the 90 days, this woman is left in the same position she was in initially, and she and her children once again have no place to go.

Honourable senators, many women living on reserve do not have the money, the transportation or the ability to access justice through such a court order. We must ask ourselves, "What recourse does this woman have?" In order for this bill to be successful, we need to ensure the proper resources are in place so that our goal of granting Aboriginal people the same rights that are granted to the rest of the Canadians becomes a reality. If this is not done I fear that this will be yet another example of out how our government raises the hopes of Aboriginal people only to let them down.

In the 2004 case of *Haida Nation v. British Columbia (Minister of Forests)*, the Supreme Court of Canada outlined principles that were set out to help guide consultations that ensured the Government of Canada engages in effective and efficient consultations with the First Nations people. These principles can be described as follows:

First, shared commitment: Consultation will be based on a commitment to cultivate a climate of good faith, mutual respect, reciprocal responsibility and efficiency.

Second, sound decision making: The consultation process will ensure that the results of meaningful consultation are sustainable.

Third, transparency: Effective and efficient consultations must be timely, accessible, inclusive of all potential stakeholders, and be based on clear, open, two-way communication and accountabilities.

It has been argued that First Nations members did not have a meaningful opportunity to consult with the government, in clear contradiction of the principles set out in the *Haida* case.

In 2006, the then Minister of Indian and Northern Affairs appointed Chief Wendy Grant-John as the ministerial representative whose job it was to examine the issue of matrimonial real property rights on reserves. After working with several First Nations representatives and community members, Chief Wendy Grant-John advanced several recommendations to help ensure that a proper consultation process occurred. She stated:

> Situating matrimonial real property issues within the legal, social and cultural context in which they are experienced by First Nations families, including the particular experience of First Nation women, is an important reference point for the recommendations I have made.

Although consultations have taken place, there have been uncertainties surrounding whether or not they are meaningful. Although some First Nation groups had the opportunity to participate in the consultation process, many of the witnesses who have appeared before our committee in the past have made it clear that they did not feel as though they were heard, as their concerns were not reflected in the resulting pieces of legislation.

It is my understanding that no further consultations were undertaken for Bill S-2. Presently, it appears that the guidelines that emerged from the *Haida* case have been overlooked as were the recommendations provided by Chief Wendy Grant-John, who was the minister's representative. As a result, I am afraid that Bill S-2 appears to be another example of how we have failed to fulfill our duty to consult.

Honourable senators, I know this bill will be thoroughly studied at the committee stage, where we will have the opportunity to hear the voices of those who will be most affected by this legislation. I look forward to reporting back to you.

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

[*Translation*]

THE SENATE

MOTION TO RESOLVE INTO COMMITTEE OF THE WHOLE TO RECEIVE MICHAEL FERGUSON, AUDITOR GENERAL, AND THAT THE COMMITTEE REPORT TO THE SENATE NO LATER THAN NINETY MINUTES AFTER IT BEGINS ADOPTED

Hon. Claude Carignan (Deputy Leader of the Government), pursuant to notice of October 25, 2011, moved:

> That, at the end of consideration of Government Bills on Tuesday, November 1, 2011, the Senate resolve itself into a Committee of the Whole in order to receive Mr. Michael Ferguson respecting his appointment as Auditor General of Canada;
>
> That the Committee of the Whole report to the Senate no later than ninety minutes after it begins.

(Motion agreed to, on division.)

• (1450)

[*English*]

WORLD AUTISM AWARENESS DAY BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Munson, seconded by the Honourable Senator Hubley, for the second reading of Bill S-206, An Act respecting World Autism Awareness Day.

Hon. Judith Seidman: Honourable senators, Bill S-206, An Act respecting World Autism Awareness Day, has benefited enormously from the support and advocacy of Senator Jim Munson. He has pursued his cause with energy and compassion and has listened carefully to the input and suggestions of his colleagues.

On June 3, 2010, Senator Munson appeared before the Standing Senate Committee on Social Affairs, Science and Technology and presented a compelling argument for this bill. Since then, he has continued to work tirelessly to see it through. I am sure we all admire him, not only for his determination, but for his compassion for the cause. Senator Munson is a true sponsor and advocate for autism spectrum disorder and I would like to lend my voice in support of his efforts.

Autism spectrum disorder, also known as ASD, has many faces. When trying to understanding how ASD affects Canadians, it is important to remember that each case is unique. The Autism Society of Canada puts it best:

> The term *spectrum* refers to a continuum of severity or developmental impairment.

It is this concept that makes ASD especially challenging and difficult to diagnose. ASD can vary by type of symptoms, severity, age of onset, level of functioning and degree to which a person is challenged by social interactions.

How is it that we begin to combat such a complex yet nuanced disorder? It is widely understood that a child can be tested for autism around the age of three or four. However, scientists in the field are almost unanimous in their understanding that signs of autism can appear in children as young as nine months old.

An ongoing study at McMaster University is exploring the science behind early detection and diagnosis of ASD. The early autism study, initiated in the spring of 2005, tracks and monitors the eye movements of babies in their first year of life. Lack of genuine connection with faces of adults around them is a true marker of early ASD. If diagnosed, therapy can begin immediately.

Such studies are invaluable to ASD families. They offer the opportunity to begin treatment while the child's brain is still developing, and they provide hope to those who are devastated by an ASD diagnosis. Early intervention will not only allow for a jump start with appropriate educational supports and treatment, but it will also give families time to learn how autism will affect their child in the present and what they can expect for the future. The more tools and training that families receive, the better equipped they will be to support and connect with their child.

Although studies like the early autism study at McMaster are contributing to the evolution of our understanding of this complicated disorder, more research is needed. Early detection is a critical area of study. With good information, parents should be able to recognize the signs of autism in their children early on. Once diagnosed, these children can begin a therapeutic process which will help them develop social and communication skills. For example, without appropriate and timely speech therapy, more than 40 per cent of children with ASD do not speak at all.

The Autism Society of Canada estimates there are currently 200,000 Canadians living with autism. This number is alarming in itself; however, it does not begin to capture the complete number of people who are touched by ASD. This disorder also affects family members and caregivers who devote their lives to assisting those living with ASD. Not only do family members work tirelessly to support their loved ones both emotionally and financially, they often initiate their own system of behavioural therapy in the home.

A study from the Canadian Autism Intervention Research Network concludes that parents who participate in a training program focused on joint attention and engagement with their children will see an improvement in communication skills. Another study found that parents who play a role in their children's treatment, in addition to professional therapy, helped improve cognitive ability and language use. Parent training also improved their knowledge about autism in general. In other words, the role of parents in raising autistic children is very important.

Acting as a primary caregiver to a child with ASD is difficult. A diagnosis can mark a permanent change in the dynamic of a family. Parents can expect to devote countless hours to their autistic children. That is why the Autism Society of Canada encourages families to seek outside help in the form of counselling services and caregiver assistance.

Parents often become ASD experts themselves. We all know a colleague of ours who has become just that. Member of Parliament for Edmonton—Mill Woods—Beaumont, Mike Lake, as well as other parents of children with ASD need to be recognized. This bill is the first step toward achieving that goal.

In his recent speech on this subject, Senator Munson pointed to a significant fact. Although each case of autism spectrum disorder is unique, all parents of autistic children share anxiety about what will happen to their children in the future. Resources that are available for autistic children in schools and community settings may not be accessible to them when they reach adulthood. It is clear that providing opportunities in the workforce is a smart way to help those living with ASD integrate into society and achieve independence. However, as Senator Munson pointed out, the resources for adults with autism are often slim and they can have difficulty finding an employer who is willing to work around the unique challenges they face. The symptoms of adults living with autism can also range in severity. However, one thing is certain; these adults often possess unique talents.

A recent article from the CBC website shares the story of a non-profit software testing company called Aspiritech. It takes its name from a combination of the words "Asperger's," "spirit" and "technology." The idea behind this company is to utilize the exceptional abilities of autistic adults, while embracing the characteristics that usually make them difficult to employ — social awkwardness, poor eye contact and the tendency to be overwhelmed by the workload.

Aspiritech creates a relaxed environment and adapts to the needs of its staff. In doing so, the company benefits significantly from the talents that are common in people with ASD — focus, attention to detail, memory recall and aptitude for working with computers.

The Autism Society of Canada recognizes these unique abilities, describing how people with ASD sometimes have unusually good spatial perception and exceptional long-term memories, allowing them to excel in areas of music, math, physics, mechanics, science and technologies, and architecture. Aspiritech not only offers its employees a sense of accomplishment and belonging, but it also organizes group activities to ease social interactions in the workplace. This story gives us an excellent example of how autistic adults can excel, given the right environment.

Honourable senators, we have heard how early detection and treatment can substantially change the course of ASD in a child. We have heard that it is the parents and the primary caregivers who are on the front lines. We have heard how autistic adults can become happy, contributing members of society.

Before these advancements can be realized, autism spectrum disorder needs to be recognized on a national stage and brought to the attention of the Canadian public. Promoting an understanding of autism in Canada will not only create a more considerate and knowledgeable society, it will also pay tribute to those who are touched by ASD.

Honourable senators, Senator Munson has worked tirelessly to see this bill through. He has appeared before committee and argued his case with compassion and reason. This bill began as one man's awareness mission and it should end as a testament to the compassion of all Canadians. We stand beside those who are touched by ASD, and we recognize both their struggles and their triumphs. Thank you.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Munson, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.)

• (1500)

HUMAN RIGHTS

COMMITTEE AUTHORIZED TO STUDY ISSUES OF DISCRIMINATION IN HIRING AND PROMOTION PRACTICES OF FEDERAL PUBLIC SERVICE AND LABOUR MARKET OUTCOMES FOR MINORITY GROUPS IN PRIVATE SECTOR

Leave having been given to proceed to Motions, Order No. 29

Hon. Mobina S. B. Jaffer, pursuant to notice of June 23, 2011, moved:

> That the Standing Senate Committee on Human Rights be authorized to examine issues of discrimination in the hiring and promotion practices of the Federal Public Service, to study the extent to which targets to achieve employment equity are being met, and to examine labour market outcomes for minority groups in the private sector; and
>
> That the committee submit its final report to the Senate no later than June 30, 2012.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*Translation*]

BOARDS OF DIRECTORS MODERNIZATION BILL

SECOND READING—DEBATE ADJOURNED

Hon. Céline Hervieux-Payette moved that Bill S-203, An Act to modernize the composition of the boards of directors of certain corporations, financial institutions and parent Crown corporations, and in particular to ensure the balanced representation of women and men on those boards, be read the second time.

She said: Honourable senators, I am very proud to speak today at second reading of Bill S-203, as it is the product of painstaking work and brings hope to future generations of women and men.

Bill S-203 would modernize the composition of boards of directors of certain corporations, financial institutions and parent Crown corporations, in particular to ensure the balanced representation of women and men on those boards.

During its study of the now-defunct Bill S-206, the Standing Senate Committee on Banking, Trade and Commerce heard testimony from several experts on the representation of women on boards of directors. After hearing them present their research, which clearly shows that greater diversity on boards of directors leads to greater economic performance, the Conservative members of the committee killed Bill S-206 by refusing the clause-by-clause vote and demanding that the proceedings be in camera. The way in which the Conservative senators tossed this bill aside is quite simply disrespectful of our institution and contemptuous of our parliamentary conventions, not to mention of women.

To start, I would like to point out that the conclusions of their report, the report prepared solely by the group of Conservatives and issued on February 3, in no way reflect the witnesses' conclusions.

In their report, the Conservative majority on the Standing Senate Committee on Banking, Trade and Commerce was quick to point out that gender diversity and strong corporate performance go hand in hand. And I agree. The senators also said that they sympathized with the objectives of Bill S-206. Were they being ironic or were they just not aware of what they were doing when they supported my bill? Then suddenly, the group recommended that the bill not proceed — for reasons I do not know to this day — and it ignored the consensus of the expert testimony, which was that legislation is required to ensure that women are fairly represented on boards of directors.

One of the reasons given by the committee's Conservative majority was that Bill S-206 would have significantly changed the corporate governance provisions of the Canada Business Corporations Act. According to the report, my bill would have disrupted the framework that allows companies to decide how they should operate, which would penalize shareholders. A quick lesson in the law would have been helpful at that point, since it is the shareholders who choose the board, not the officers of the company.

This conclusion is completely false and does not represent the facts presented by the experts during the committee hearings. The idea behind my Bill S-206 was not to tie shareholders' hands but rather to offer them a more diverse range of potential directors.

In her testimony on December 9, 2010, Deborah Gillis, Vice-President of Catalyst Canada Inc., explained why it is important to give shareholders more choice in directors, and I quote:

> Of course, shareholders want to have the most qualified people leading and running their organizations, and I would argue that shareholders also would like to see their organizations reflect the marketplace that they serve. When women represent 50 per cent of the population, influence the majority of purchasing decisions — much research says it is 80 per cent or higher — and are the majority of employees in many organizations, reflecting the marketplace also becomes a key consideration for shareholders to consider.

Moreover, how can the Conservative majority on the committee give this as a reason when Bill S-206 was never given a clause-by-clause study or vote?

The Conservative majority on the committee then claimed in its report that the so-called voluntarism of the business world would improve the representation of women on boards of directors, and Conservative committee members innocently wrote that:

> Canadian corporations are already increasing the number of women on their boards.

After reviewing the expert testimony, I found that all the witnesses said exactly the opposite. For example, the Norwegian expert, Liv Monica Stubholt, Chief Executive Officer and member of the board of directors of Aker Clean Carbon and the former State Secretary of the Ministry of Petroleum and Energy, explained quite clearly that, and I quote:

> [Women] do not come in sufficient numbers unless you introduce legislation, if we are to look at this in an empirical way.

And of course, Norway was the first country to pass legislation, after asking for voluntary compliance. Her view is also shared by several reputable research firms such as Catalyst and the Conference Board of Canada. Anne Golden, current President of the Conference Board, recently said that at the current pace it would take another 151 years — long after our time — for parity to go all the way up the corporate ladder. If we think that reaching parity or balanced representation in 151 years is progress, we have to review our definition of the word.

Finally, the last reason given in the February 3 report by the Conservative majority on the committee was that the requirements of Bill S-206 would have increased the regulatory and paper burden on corporations. This is once again the complete opposite of the testimony provided by Poonam Puri, Associate Professor of Law at Osgoode Hall Law School. She confirmed that the bill was entirely appropriate in the current legislative context and that it would not disrupt the framework established by the affected acts. She added that, and I quote:

> Bill S-206 is a technically sound piece of proposed legislation that works with existing corporate law, banking law and insurance law.

And contrary to the concerns expressed in the Conservative majority's report regarding the hypothetically greater regulatory burden that Bill S-206 would impose, Professor Puri — a professor emeritus of law who has a doctorate and is regarded as one of the most remarkable women in Toronto's business community — stated that the bill had been drafted so that the regulations would not become more onerous.

• (1510)

On this point, let me quote from her testimony of December 9, 2010:

> [U]nder the bill, companies are given reasonable lead time to put into place the practices and the procedures, the governance and nominating procedures, so that they can comply with the proposed rules and there will not be a shortage of qualified people to meet the new rules.

The ideological conclusions of the Conservative majority on Bill S-206 were thus a complete fabrication.

With that reminder out of the way, I would like to speak more specifically about Bill S-203, which was inspired by testimony and consultations.

Honourable senators, the new Bill S-203 is different. It is innovative for two main reasons: first, it requires balanced representation of women and men on boards of directors; and, second, at the request of the Pension Investment Association of Canada, it allows shareholders to expressly vote against a director at annual general meetings.

In regard to the composition of boards of directors, unlike my previous bill, Bill S-203 does not impose a quota of 40 per cent or 50 per cent for women's representation on boards of directors. This new bill requires a minimum of 40 per cent for each gender on boards of directors. This change offers a better balance of opportunities for women and men. I feel it sends a clear message of equality of opportunity since, from now on, not only is anything possible for women, it is also probable. As for the process leading to the highest decision-making positions, it will no longer be simply hypothetical.

It is true that women today play a greater role in several areas of civil society. However, it is also true that there are too few women in the upper decision-making levels of our society. This is particularly true of the boards of directors of large corporations, which are probably the last bastion of the "old boys' club."

After the 2008-09 recession, which was the result of mismanagement and countless outrageous financial practices, the time has come to review the effectiveness of governance and management practices. Since boards of directors play a crucial role in the operation of large corporations, it is only logical that certain practices be reconsidered.

The economic uncertainty of the past few years has shown that corporate governance is constantly being put to the test. It is therefore crucial that corporations have qualified and competent directors, both male and female. A diverse board of directors is an indispensable asset for Canadian businesses, and I am not the only one who says so. The Conference Board of Canada came to

that conclusion in its 2002 study titled *Women on Boards: Not Just the Right Thing. . . But the 'Bright' Thing*. Its conclusion was very clear: appointing women to boards of directors significantly improves the economic well-being of Canadian companies. Given that the Conservative government is "greatly" concerned about the health of the Canadian economy, is it not time to take concrete measures to improve Canada's economic performance, such as those proposed in Bill S-203?

The answer is in the question.

This is especially true in Canada, where there is no shortage of competent women. Marie-Soleil Tremblay, a professor at the École nationale d'administration publique, pointed out in committee that Canada has 60,000 female professional accountants, 20,000 female lawyers, more than 16,000 female engineers, thousands of female university professors and hundreds of female actuaries. Why would boards of directors deprive themselves of this rich resource?

According to Paul Tellier, former president and chief executive officer of CN and Bombardier and former clerk of the Privy Council, the deficit of women on boards of directors is a serious problem that is undermining Canadian corporate governance. He raised this issue in a speech to the Conference Board of Canada on November 17, 2010. For Tellier, the problem is simple: if we continue to find reasons to exclude available female talent, Canada's senior decision-making bodies will never reach their full potential.

We must not forget that boards of directors have the heavy responsibility of both ensuring the survival of the business and identifying the means for it to remain profitable. By bringing in new blood and balancing board membership, businesses and investors will benefit from a greater range of experience that can contribute to their success. Passing my new bill would send a positive message to Canadian society, namely that the political class is paying attention to the interests of Canadians by pushing corporations to create structures and conditions in the workplace that enable women and men to become directors.

We must also stop naively thinking that the representation of women on Canadian boards of directors is increasing year by year, as the outrageous report produced last February by the Conservative majority on the Standing Senate Committee on Banking, Trade and Commerce indicated. Unfortunately, the numbers and trends show that women are not valued among boards of directors of Canadians corporations.

In April 2011, the research firm Catalyst reported that even though women make up 50.4 per cent of the Canadian population and 47.3 per cent of the Canadian labour force, they hold only 14 per cent of Financial Post 500 corporate board seats. Moreover, women hold only 3.2 per cent of board chairperson positions, which are clearly coveted solely by men.

Those least amenable to the idea of requiring more women on boards of directors have long argued and still argue that businesses should voluntarily establish action plans to include more women as board members. I would like to know what these same people think of the fact that the proportion of women on boards of directors went from 6.2 per cent to 14 per cent between 1998 and 2009. At this rate, women will not even reach the 30 per cent mark by 2040. This is completely unacceptable for a society like ours that wants to remain open, equal and prosperous and that guarantees the right to equality in the Canadian Charter of Rights and Freedoms.

When I read these statistics, I can only conclude that the so-called voluntarism of the business world has failed. The witnesses who appeared before the Standing Committee on Banking, Trade and Commerce reached the same conclusion. Almost all of these experts agreed that the solution to the stagnant representation of women on boards of directors is undoubtedly a law requiring a minimum number of women.

As Ms. Stubholt indicated during the committee hearings, gender equality, although obviously desirable, is not the main reason for supporting such legislation. In her view, the most important reason is strategic, even economic.

Ms. Stubholt argued that:

> . . . in this age, requiring extremely professional boards with a wide variety of backgrounds to assess risks properly, we need women to be able to do that.

Norway's performance in the current crisis clearly demonstrates that this country has met its objectives.

This kind of legislation produces concrete results. The example closest to home is certainly Quebec's legislation, An Act respecting the governance of state-owned enterprises, in force since 2006. This law has resulted in a 66 per cent increase in the number of women on the boards of directors of state-owned enterprises since it came into force. Apart from Quebec, which took action, the winds of change blow stronger in Europe than in North America.

The most famous example is certainly Norway, but this Nordic country is not the only one to require more equal representation of men and women on boards of directors.

• (1520)

As I told the Senate in 2010, Spain followed Norway's example in 2007 with a law requiring that women eventually comprise 40 per cent of the directors of publicly traded corporations. In March 2010, it was Iceland's turn to enact a similar law for public and private enterprise. Currently, several other countries, such as Belgium, Germany, Sweden, the Netherlands and the United Kingdom, are working on legislative measures similar to Norway's.

More recently, in January 2011, France adopted its *Loi relative à la représentation équilibrée des femmes et des hommes au sein des conseils d'administration et de surveillance et à l'égalité professionnelle*, an act respecting the equal representation of women and men on boards of directors and boards of trustees and professional equality. It was this law, and discussions with the law's sponsor, Marie-Jo Zimmerman, that inspired me to make certain changes to my bill on the representation of women on boards of directors. Like the French law, Bill S-203 focuses on balanced representation and flexibility. Not only does the 40 per cent requirement apply to both genders, but its

application is also deferred — I want to emphasize the word "deferred" — so that corporations can adapt as easily as possible. Affected corporations will have three years after the law comes into force to give men and women at least 20 per cent of the seats on their boards of directors. The 40 per cent mark must be reached six years after the law comes into force.

Despite all these encouraging developments, the European Union has also seized on the issue, as shown by the report on equality adopted by the European Commission in December 2009 and the resolution of the European Parliament. The commission recently made a strong statement when it denounced the underrepresentation of women in senior management positions in the EU's largest corporations. Although several countries have passed laws establishing quotas for women, the commission is growing impatient that things are not moving as fast as it would like. On July 12, the commission declared that it was even ready to pass legislation in 2012 to encourage increased female representation on the boards of directors of the EU's biggest companies.

Meanwhile in Canada, the status quo reigns, and the Harper government continues to defend the obsolete culture of the old boys' club — unless it has decided otherwise without informing me — even though that was what drove the world into the worst financial and economic crisis since 1929. The current boards of directors are responsible for today's crisis. We must change this culture in Canada and encourage diversity at the highest levels of decision-making. One witness, Ms. Deborah Gillis, told the committee that Canada is trailing, not leading other countries in taking action on an issue that is central to the question of gender equity.

All the experts who testified before the committee last winter think that it is important to follow the example of progressive countries and ally ourselves with those that have already passed legislation to ensure that women are better represented on boards of directors.

The second major innovation in Bill S-203 is that it grants shareholders the power to vote against directors. Everyone agrees that under the current economic and legal framework, the shareholder's role is paramount. It is therefore high time that they be given the option of expressly voting against a director during board elections at annual general meetings.

This position was also expressed by Judy Cotte, General Counsel and Director of Policy Development at the Canadian Coalition for Good Governance in her testimony. In her view, the way directors are elected in Canada is obsolete. She pointed out that shareholders still cannot vote against directors. Under the Canada Business Corporations Act, a shareholder cannot expressly vote against a director. The act offers shareholders only two options: voting in favour or abstaining. Legally speaking, abstaining has no practical effect. Ms. Cotte gave us the completely absurd scenario in which a director could be elected with only one vote, which could be his or her own. This could mean:

> If a majority of shareholders or even 99 per cent of shareholders withhold their vote against a director, that director will be elected or, if sitting, will not have to vacate their seat on the board.

Starting from the principle that the shareholders are the owners of large corporations, I believe it is totally logical and legitimate to give them the ability to expressly vote against a director.

Moreover, this type of measure is already in place in certain American states. One example is Delaware, where the Delaware General Corporation Law grants shareholders the ability to vote against a director during board elections. In Delaware, shareholders can therefore vote against directors who hold their seats only because of their network of contacts, who do not have the necessary skills or who do not contribute to the board's deliberations because they are absent or because they have nothing relevant to offer.

So, it is clearly time to give shareholders full voting rights.

Thus, the two main objectives of Bill S-203 are balanced representation of women and men on boards of directors and full voting rights for shareholders.

I would also like to remind honourable senators that, very recently, during a G20 meeting, a communiqué issued by a group of young female delegates from all participating countries —

[*English*]

— stressed the ongoing gender inequality throughout the world and how this ultimately has a detrimental impact on global growth.

The French delegate said political, economic and social representation are essentials that leaders and change makers need to consider in order to sustain long-term growth in their countries.

[*Translation*]

When the finance ministers met, they realized and were told that having women involved in the decision-making process is essential to economic recovery.

Honourable senators, in this time of economic uncertainty, the Parliament of Canada has the opportunity to move forward with legislation that promotes social justice and economic prosperity. Therefore, in keeping with this spirit of innovation, I ask you to pass Bill S-203.

(On motion of Senator Frum, debate adjourned.)

LIBRARY OF PARLIAMENT

REPORT OF JOINT COMMITTEE PURSUANT TO RULE 104 ADOPTED

On the Order:

> Resuming debate on the consideration of the first report of the Standing Joint Committee on the Library of Parliament (*mandate of the committee and quorum*), presented in the Senate on October 4, 2011.

Hon. Marie-P. Poulin moved the adoption of the report.

(Motion agreed to and report adopted.)

[*English*]

THE SENATE

MOTION TO CALL UPON THE PAKISTANI GOVERNMENT TO RELEASE ASIA BIBI FROM PRISON ADOPTED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Downe:

That,

Whereas, in accordance with the Universal Declaration of Human Rights proclaimed by the United Nations:

"Everyone has the right to life, liberty and security of person" (Article 3);

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment" (Article 5);

"Everyone charged with a crime is presumed innocent until proved guilty according to law in a public trial at which all the guarantees necessary for his defense have been provided" (Article 11, paragraph 1) and

"Everyone has the right to freedom of thought, conscience and religion" (Article 18);

Whereas Pakistan is an active member of the United Nations since 1947;

Whereas, the international community has demonstrated its compassion and solidarity with the Pakistani people when it is faced with suffering, as was the case during the devastating floods during the summer of 2010;

Whereas Ms. Asia Bibi has been detained since June 2009 in conditions unworthy of human beings without a fair trial and that her health has been compromised,

That, the Senate of Canada calls on the Government of Pakistan to immediately release Ms. Asia Bibi, to ensure her safety and wellbeing, to hear the outcry of the international community and to respect the principles of the Universal Declaration of Human rights; and

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

Hon. Salma Ataullahjan: Honourable senators, I rise today regarding the motion that the Senate request the Government of Pakistan to immediately release Asia Bibi, a woman who has been jailed for the past two years and sentenced to death for committing blasphemy.

I greatly appreciate that Senator Hervieux-Payette has brought this matter to the attention of the Senate once again, as the international outcry for Asia Bibi's release continues to escalate.

I spoke to Pakistani ministers and senators upon a visit to the flood-devastated regions of Pakistan in November 2010.

• (1530)

As Pakistan is an active member of the international community — exemplified by its involvement with the United Nations, and the incredible support it received for flood relief efforts — I urged Pakistani officials to consider repealing their laws concerning blasphemy. In particular, I spoke to Foreign Minister Shah Mehmood Qureshi, who indicated that serious discussion was in effect in relation to the laws.

Asia Bibi is a Christian woman who was accused of making derogatory remarks after fetching, and supposedly contaminating, water from a well in a predominantly Muslim village. While her situation has intensified scrutiny of the blasphemy laws, it is only one of many cases that highlight the injustices committed under them. In many of these indictments, the charges against the accused are unfounded, stemming from personal bias or enmity.

The usual victims are religious minorities such as Christians or the Ahmadiya, but now more than ever, the law is also directed at Muslims. In January 2011, Muhammad Samiullah, a 14-year-old Muslim boy, was charged with blasphemy after writing derogatory remarks on a school exam. He was sent to juvenile prison pending a trial. Out of 4,000 cases, 3,000 Muslims have been accused of blasphemy.

The laws are rooted in the Indian Penal Code of 1860, and were subsequently adopted by British rulers in 1927. They were retained by Pakistan when the country gained independence in 1947. Several additions were made to the laws from 1977 until 1986, under military ruler General Muhammad Zia-ul-Haq, including penalties of life imprisonment or death.

National dissent against the blasphemy laws is suppressed by fear. Individuals are silenced by real threats of violence or death. In February 1995, Salamat Masih, a 14-year-old Christian boy, was sentenced to death for vandalizing the wall of a mosque with offensive statements. He was eventually acquitted by Justice Arif Iqbal Bhatti because he was found to be illiterate. Two years later, Justice Bhatti was assassinated in his chambers because of Masih's acquittal.

Many honourable senators may remember that I spoke in the Chamber of the late Honourable Shahbaz Bhatti. I had the pleasure of meeting with Mr. Bhatti, Pakistan's former Minister for Minorities Affairs, on several occasions. As the only Christian in the Pakistani Cabinet, he was an outspoken critic of Pakistan's blasphemy laws, despite numerous threats against his life. He was assassinated this past March.

In order to honour Mr. Bhatti's efforts, I attended his funeral in Pakistan along with Minister Jason Kenney. Again, in meetings with the Pakistani Prime Minister, the interior minister and members of minority communities, Minister Kenney and I encouraged discussion and reconsideration of the blasphemy laws.

Internal reform of the judicial system, however, is difficult due to the terror faced by agents of change and the deaths of high-profile individuals. I mentioned the assassinations of Justice Arif Iqbal Bhatti as well as my good friend Shahbaz Bhatti. This year, Salman Taseer, Governor of the province of Punjab, was assassinated by an assigned bodyguard for his opposition of the blasphemy laws, especially with regard to Asia Bibi, with whom he participated in a press conference. Mr. Taseer's killer was recently found guilty and sentenced to death. Mr. Taseer's son was kidnapped in August and his fate unknown.

After Mr. Taseer, it has widely been reported that Sherry Rehman, a prominent politician and former information minister, would be targeted next for proposing legislation to amend the blasphemy laws this past November. She has since gone into hiding and has been persuaded to withdraw any plans she might have had to table a bill for the laws' reform.

A prominent Islamic cleric, Javed Ahmad Ghamidi, has also gone into hiding. One of the only religious scholars to publicly oppose the blasphemy laws since the assassination of Salman Taseer, Ghamidi and his family have fled to Malaysia after a bomb plot was foiled in their home.

There is a need for the international community to be aware of the situation in Pakistan and to be the voice of tolerance. It is our duty to examine laws that enable atrocities against those they ought to be protecting, especially when most of the accusations are against the disempowered.

I was surprised to learn, however, that blasphemy laws are prevalent not only in Pakistan, but in exist in one form or another around the world. Human Rights First, an international non-profit, non-partisan, international human rights organization, published a study this month that documented:

> Over 100 cases in 18 countries where the enforcement of blasphemy laws have resulted in death sentences and long prison terms, as well as arbitrary detentions, and have sparked assaults, murders, and mob attacks.

At the end of the last Parliament, the Subcommittee on International Human Rights of the other place adopted a motion to hold a hearing on the persecution of religious minorities in Indonesia and Pakistan. I urge the subcommittee to also examine the persecution suffered by all individuals, belonging to both major and minor religions.

Honourable senators, I support the motion put forth and believe it is our duty as part of the international community to push for the release of Asia Bibi. I have done my utmost, but there is strength in collectivity.

In addition, I would greatly encourage study into blasphemy laws in Pakistan and beyond. It is our duty as a member of the international community, and as a member of the United Nations, to uphold the Universal Declaration of Human Rights where it says, in Article 18:

> Everyone has the right to freedom of thought, conscience and religion; . . .

Some Hon. Senators: Hear, hear.

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

Hon. Senators: Agreed.

(Motion agreed to.)

THE HONOURABLE LOWELL MURRAY

INQUIRY—DEBATE ADJOURNED

Hon. James S. Cowan (Leader of the Opposition) rose pursuant to notice of September 29, 2011:

> That he will call the attention of the Senate to the remarkable record of public service of our former colleague, the Honourable Lowell Murray, P.C., who served with us in this chamber for 32 years before his retirement on September 26, 2011.

He said: Honourable senators, I rise to correct a grievous wrong. Last June, one of our members — indeed the former dean of this chamber — tried to slip quietly from this place, with no opportunity for us to honour his 50 years of public service. I am speaking of course of Senator Lowell Murray who retired from the Senate on September 26, the day before the Senate resumed sitting.

He came to the Senate to represent Pakenham, Ontario, which he did for 30 years. However, he is a Cape Bretoner born and bred. As any Nova Scotian will tell you, our province has a powerful pull on its native children, however long they have been away. It is no surprise that Senator Murray and his wife Colleen chose to return to Cape Breton to live. Our former colleague, Allan J. MacEachen, asked me to note that Senator Murray has taken up residence in the home originally built by Dr. Moses McGarry. He was a former speaker of the Nova Scotia legislature, member of the House of Commons and, most importantly, an ardent Liberal. Senator MacEachen hopes — particularly with Dr. McGarry's portrait displayed prominently in the living room — that Senator Murray's political evolution and development will continue and reach its natural conclusion.

Honourable senators, what is now taking place in Dr. McGarry's former residence is just one illustration of the unusual character of Cape Breton. I suspect that if an enterprising researcher were to investigate, they might find that on a per capita basis that small geographical area has produced more Canadian statesmen and stateswomen than any other part of the country. Even in such august company, Senator Murray stands out. Historian Jack Granatstein has described him as "a master of the political back rooms."

That is certainly true. He is an exceptionally astute political strategist, but — perhaps unusually for political back room operatives — he is driven first and foremost by his belief in the possibilities of government and public policy and his desire to seek out and implement the best possible results for Canadians.

He said that he grew up surrounded by politics. Although his father was a Conservative, other family members were Liberals. Growing up in this environment crystallized for him the vital role government can play raising standards and helping its citizens.

• (1540)

It no doubt helped that he attended St. Francis Xavier University in Antigonish, Nova Scotia. In 1955-56, he became the leader of the St. F-X Progressive Conservative party and faced what must have seemed a Herculean task. The students of St. F-X had never elected a Conservative government in a model parliament, but then Lowell Murray became the party's leader and history was made.

That was quite an illustrious parliament, honourable senators. Robert Higgins, who went on to head the New Brunswick Liberal Party, served as the model parliament's governor general, and a 17-year old named Brian Mulroney served as minister of fisheries. In his memoir, former Prime Minister Mulroney wrote that he reluctantly accepted the fisheries portfolio, and did so only after Prime Minister Lowell Murray had assured him that he would not be embarrassed if he did not know the difference between a halibut and a flounder.

Honourable senators, what does a former prime minister do upon graduation from university? In Senator Murray's case, he moved on to provincial politics, which in 1956 was an interesting place for a young Progressive Conservative to be in Nova Scotia. That was the year Robert Stanfield became the premier of our province — and, incidentally, elected my own father to the opposition benches. Locally, Lowell worked to elect Bill MacKinnon in Antigonish, a riding that had not elected a Progressive Conservative in more than 40 years. Once again, Senator Murray helped to break a record and helped elect Bill MacKinnon to the legislature.

Lowell then turned to federal politics, working with Donnie MacInnis and Bob Muir — our former colleague here in the Senate — in Cape Breton in 1957 and 1958 elections.

I mentioned his triumph in electoral politics at St. F-X, but this was not Lowell Murray's only run for public office. Pat MacAdam wrote an article last year in which he revealed that in the 1960 Nova Scotia election, Lowell Murray "offered himself up as a human sacrifice in Cape Breton Centre," running against the popular CCF leader Mickey MacDonald and Liberal Jimmie P. McNeil, who was the mayor of New Waterford. As MacAdam described it, Lowell "lost by a ton"; but in honesty I must say he improved the Conservative vote by almost 700.

Happily for us Liberals, that ended Senator Murray's run for elected office. In 1961, he came to Ottawa, where he served as executive assistant to the Minister of Justice, Davie Fulton. There he worked alongside Marc Lalonde and our former colleague, Michael Pitfield. That must have been quite an office — and the issues they worked on!

The Minister of Justice at that time was responsible for the RCMP, penitentiaries and the Parole Board, as well as the traditional responsibilities of the Attorney General of Canada. The office was involved in extensive correctional reforms that had to pass Parliament and an investigation into the widespread abuse of indentured Chinese labourers.

Following the defeat of the Diefenbaker government, Lowell went to work with Senator Wallace McCutcheon, who, among other things, served on the Special Joint Committee on the Canada Pension Plan. These were heady days indeed for anyone actively engaged in public service. As Senator Murray has said, he had a "ringside seat" for many major, really defining public policy issues for Canadians.

He then served as chief of staff to Robert Stanfield when Mr. Stanfield became Leader of the Opposition in Ottawa in 1967. Honourable senators, this was not a position he applied for. In fact, when Mr. Stanfield tried to telephone him after the leadership convention, he was nowhere to be found. Lowell had gone off to Tokyo to see the world. They spoke. Mr. Stanfield said he would very much like to have Lowell come work for him — a great honour and a great opportunity for a young man so steeped in politics. Lowell's reaction? He suggested they speak when he returned from his travels.

Two weeks later, now in Saigon, he got another call, this one from Davie Fulton, saying, "Stanfield wants to know why you're not here or why you'll not hurry up." Lowell Murray was unmoved; he coolly continued on his way, travelling to Thailand and Lebanon and then finally deciding to come home and see what Mr. Stanfield had in mind. I guess, honourable senators, after that, Mr. Stanfield could be pretty confident that this was a man who would not be cowed, who would see something through no matter what the distractions.

In 1970, Lowell turned his focus once again to provincial politics, but this time in neighbouring New Brunswick. He began by helping out Richard Hatfield, then leader of the opposition and subsequently premier. In 1973, he joined the premier's office as deputy minister. As Senator Murray recently described in an interview he gave to Senator McCoy's office, which is posted on her website:

> Those were immensely significant years. Louis Robichaud was the father of modern New Brunswick. He transformed the province in the early '70s, but it was Premier Hatfield who really made the new government model work. We made sure that educational, social assistance and tax reforms were entrenched and helped the people of New Brunswick prosper for the next two decades.

Lowell has been a long-time friend and supporter of Joe Clark, and served as the Progressive Conservative Party of Canada's national campaign director in 1979. Following his election victory, Prime Minister Clark had him summoned to the Senate. Then, in 1986, Prime Minister Mulroney appointed Senator Murray to cabinet as Leader of the Government in the Senate and as Minister of State for Federal-Provincial Relations.

In the years of the Mulroney government, Senator Murray also served as acting Minister of Communications and the first Minister for the Atlantic Canada Opportunities Agency, or ACOA, as it is generally known. Of course, as Minister of State for Federal-Provincial Relations, Senator Murray was deeply involved in both the Meech Lake and Charlottetown Accords — controversial but highly significant events for all Canadians.

Honourable senators, whether one agreed with or opposed these accords, two things are clear. Senator Murray maintained a consistent position throughout the constitutional debates. He opposed and actually voted against Prime Minister Trudeau's proposed repatriation of the Constitution because the Government of Quebec was not in agreement; and he genuinely believed throughout the often difficult debates over Meech and then Charlottetown that the proposals were in the best interests of the country.

During the years of the Mulroney government, Senator Murray was a member of 12 cabinet committees, chaired 5 and served as vice-chair of 2.

Our former colleague was also very active in this chamber. He served as chair of the Standing Senate Committee on National Finance for years. Indeed, up until his retirement he was certainly a very valued member of that committee. As well, he chaired the Standing Senate Committee on Social Affairs, Science and Technology and the Standing Senate Committee on Banking, Trade and Commerce.

To mention just one important contribution, in 1999 during his time as chair, and with his fellow Cape Bretoner Sister Peggy Butts as his deputy chair, the Social Affairs Committee prepared a special study on social cohesion. They asked: What is it that holds a society together, especially in the face of profound changes being wrought by globalization and technology?

In the opening paragraphs of the foreword to their report, Senators Murray and Butts wrote:

> There are concerns that the drive toward greater economic performance could be undermined if the sacrifices and social costs are seen to fall only on the poorest and weakest segments of society and the benefits accrue to a relative few.

Honourable senators, these are words that could be written today.

Senator Murray also chaired two Joint Committees on Official Languages, and the number of committees that he served as a member of is far too long to list.

Senator Murray has said what should be obvious even from this brief biographical sketch, namely that he believes strongly in political parties and in political partisanship as indispensible elements of our parliamentary democracy. Yet, in December 2003, when his Progressive Conservative Party merged with the Reform/Alliance Party, he refused to join, and chose instead to sit as an independent senator.

We here know what that means on a day-to-day basis, but as most of us are also deeply committed to our political parties, we also know what such a decision entails. It is not a step that anyone, especially someone as experienced as Senator Murray, takes lightly; but Lowell Murray is a man of great integrity who has never shied away from difficult decisions he believes to be right, whatever the personal consequences.

• (1550)

Honourable senators, I began by describing how Senator Murray is driven first and foremost by his belief in the possibilities of government and public policy. While he has been reluctant to give interviews — and ducked out of the chamber before any of us could rise to honour his longstanding public service, he nevertheless has spoken publicly in recent months about issues that concern him greatly. I would be remiss if I did not speak in this inquiry of several of those questions that he believes demand attention.

As one who has spent a lifetime living and studying Canadian government, from opposition benches, as a political staffer, as a senior public servant and as a cabinet minister, his observations and analyses are deserving of very special attention.

He is concerned about what he sees as the growing concentration of power in the Prime Minister's Office and the corresponding diminution of the role of cabinet ministers individually and of the Cabinet as a whole. This has been a long evolving process that has been the subject of criticism for a great many years, particularly by Donald Savoie in his 1999 book, *Governing from the Centre: The Concentration of Power in Canadian Politics*. The result, according to Senator Murray, is that, in his words, "Cabinet government is not working as it should."

Our former colleague is also concerned about the diminution of the role of Parliament. As he has said repeatedly, the point is not for executive powers to be passed to parliamentarians, but rather for parliamentarians to reclaim the powers that are traditionally ours. William Gladstone, the great British statesman and former prime minister, said:

> You are not here to govern; rather you are here to hold to account those who do.

The essential parliamentary tool that Senator Murray believes we have allowed to atrophy over the decades is the power of the purse — our fundamental responsibilities to Canadians to hold ministers and the government to account through the estimates and supply process. Here, he is speaking as one who has chaired the Standing Senate Committee on National Finance and has sat on a cabinet committee dealing with expenditure review.

Senator Murray was interviewed recently on CBC's "The Current." Anna Maria Tremonti pointed out that some people dismiss these concerns as process matters and asked him why they are so important and why Canadians should care. Senator Murray replied:

> Because it is what makes our electoral democracy work, our parliamentary democracy work, our system of governance work. You must respect due process.

Process does matter, honourable senators. Legislation introduced into Parliament goes through a series of steps in both of our chambers. It goes through a process — what we refer to as the legislative process — that is designed to ensure as best as possible that the end result is consistent with the greatest public good.

Without question, the greatest public good has always been Senator Murray's goal. It has been a privilege to serve with him.

Senator Murray, if you take the time to read this, I wish you and your family many happy years of retirement in Cape Breton.

(On motion of Senator Carignan, for Senator LeBreton, debate adjourned.)

(The Senate adjourned until Thursday, October 27, 2011, at 1:30 p.m.)

CONTENTS

Wednesday, October 26, 2011

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