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(HANSARD)

Tuesday, May 6, 2014

The Honourable NOËL A. KINSELLA
Speaker

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THE SENATE

Tuesday, May 6, 2014

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

Prayers.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, just before calling for Senators' Statements, I would like to draw your attention to the presence in the Governor General's Gallery of Mr. Mark Audcent, Law Clerk and Parliamentary Counsel of the Senate, who, after 32 years of loyal service, will be retiring from the Senate on May 16, 2014.

On behalf of all honourable senators, I wish to thank you, Mark, for your years of service and wish you health, happiness, fulfillment and a long retirement.

Honourable senators, Mark Audcent.

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

THE SENATE

MR. MARK AUDCENT—LAW CLERK AND PARLIAMENTARY COUNSEL—TRIBUTE ON RETIREMENT

Hon. Anne C. Cools: Honourable senators, I rise today to honour our most beloved Mark Audcent, our devoted and industrious Law Clerk and Parliamentary Counsel of the Senate.

A Bachelor of Laws magna cum laude graduate of the University of Ottawa, he has served us for 32 years. Assistant Law Clerk from 1982, in 1996 he was elevated to Law Clerk. Mark was distinguished by his clarity of mind and his superb drafting skills. I thank him for his good and faithful service to the Senate, to senators and to Canada.

For senators, public men and women in public service, service is our duty and vocation. Our service needs the service of others. Mark Audcent is one of those who have served us well and faithfully. There is something in what we do here which attracts the best qualities of the people who work here. There is something compelling about service, with its deep and abiding human need to share, which need to share is found in our inner persons. This is connected to the deep human and psychic need to love and be loved.

As a senator called to serve, I note Mahatma Gandhi on the human impulse to give of self. In the 1967 book *The Mind of Mahatma Gandhi*, edited by R.K. Prabhu and U.R. Rao, at page 229, Gandhi said:

> He who devotes himself to service with a clear conscience will day by day grasp the necessity for it in greater measure and will continually grow richer in faith. The path of service can hardly be trodden by one who is not prepared to renounce self-interest, and to recognize the conditions of his birth.... If we cultivate the habit of doing this service deliberately, our desire for service will steadily grow stronger, and will make not only for our own happiness, but that of the world at large.

Honourable senators, life is a journey, a pilgrimage, through which we must pass. We move from stage to stage of our journeys, as skilful, sometimes not-so-skilful, pilots, navigating the courses that have been set before us. A man of the law, Lawyer Audcent has served us with distinction, study and generosity.

I also thank Michel Patrice, Melanie Mortensen, Janice Tokar and others for their good work and for their service to us as senators in this place.

In adversity and triumph, all are sojourners in life. Our Abrahamic faith heritage demands the duty of love and service. The New Testament book 1 Corinthians 13:4-7 says:

> Love is always patient and kind; love is never jealous; love is not boastful or conceited, it is never rude and never seeks its own advantage, it does not take offence or store up grievances. Love does not rejoice at wrongdoing, but finds its joy in the truth. It always is ready to make allowances, to trust, to hope and to endure whatever comes.

As Mark Audcent embarks on his new course, retirement, we say bon voyage. I pray that his time of retirement will be as successful as his time as our Senate Law Clerk.

To you, Mark, sitting in the gallery, I thank you profoundly, from the bottom of my heart, for all our contacts and for all your information and good advice. I especially thank you for your brilliant drafting on my shared parenting bill, Bill S-216. Au revoir.

NEWFOUNDLAND AND LABRADOR

Hon. Fabian Manning: I believe I would receive full agreement within the Senate Chamber today in stating that we all have the fortunate privilege to live in the greatest country in the world. Canada is a beautiful and diverse country where people from all walks of life are welcome to live and prosper.

Since arriving in Ottawa as a member of Parliament in 2006, and in my years serving as a senator for Newfoundland and Labrador, I have been struck by the incredible lack of knowledge many people have of my home province.

• (1410)

A few weeks ago, when I stood here and delivered a statement concerning the tremendous tragedy of the Great Sealing Disaster of 1914, many of my colleagues in the Senate spoke to me afterwards about their lack of understanding and knowledge of this terrible and sad moment in our province's history.

During my years here in the nation's capital, I have dealt with politicians and bureaucrats on all sides who I feel have little or no understanding of Canada's youngest province and the contribution Newfoundland and Labrador has made to Confederation and still makes to Canada today. It is incredible the number of people who have said to me, "I have been everywhere in Canada except Newfoundland and Labrador." Or, "I love those Newfoundland tourism ads; I would love to visit, but I really don't know much about your province."

Well, my friends, I've decided I'm going to attempt to shed some light on my home province and capture for you and other Canadians something of the essence of this remarkable and beautiful place.

In the very near future, I will begin presenting on a regular basis to the chamber what I will refer to as "Newfoundland and Labrador Moments." I will speak of places, people and events that are part of our unique and distinct history. There will be sad moments as well as happy moments. There will be stories of triumph and stories of tragedy. I will tell you about our culture, our heritage and the people and events that have shaped us into this exceptional and wonderful place that we are today. I will address many of the myths, misunderstandings and outright misrepresentations that have been spoken about us.

Newfoundlanders and Labradorians have played many notable, significant and important roles in shaping this great country. From our efforts during times of war and peace to our politicians, our athletes and our regular citizens, we have been there, and I want to tell you about it.

Prior to Confederation in 1949, our world on that rock in the Atlantic Ocean was a much different place. I will talk about days before Confederation and days since March 31, 1949.

I'm excited about the opportunity to enlighten and educate my colleagues here in the Senate, and indeed all Canadians, about what I truly believe is the greatest treasure on the earth — my home — Newfoundland and Labrador.

So please stay tuned, and I hope you enjoy each and every "Newfoundland and Labrador Moment."

THE SENATE

MR. MARK AUDCENT—LAW CLERK AND PARLIAMENTARY COUNSEL— TRIBUTE ON RETIREMENT

Hon. Mobina S. B. Jaffer: Honourable senators, I too rise today to honour the tremendous contribution of our retiring Senate Law Clerk, Mark Audcent.

Mr. Audcent's career in the Senate began 32 years ago as an assistant law clerk and parliamentary counsel. Since that time, he has continually refined his skills to become one of the most valued individuals in the legal section and in the Senate of Canada.

Mr. Audcent is responsible for providing legal services to the Senate and to senators. His office gives constitutional and legal advice to the Senate and to individual senators to assist them in carrying out their parliamentary functions.

The most significant function of counsel in the legislative process is that of drafting bills and amendments for use in the Senate. The office also provides corporate legal services to the Senate administration.

It is not an understatement to say that without Mr. Audcent's contribution, none of us would be able to do the work that we were appointed here to do. His mastery of legal issues, as well as his sound advice and accuracy, has been the bedrock of all the bills that I have introduced in the Senate.

Mark, on a personal level, I want to thank you for the past 13 years during which you have given me sage advice and worked with me on different legal issues and bills I have wanted to introduce in the Senate. Your commitment, loyalty and dedication to the Senate and senators was exceptional. What is also exceptional is that you are leaving a great team under the leadership of Michel Patrice: Michel Bédard, Marie-France Bonnet, Shaun Bugyra, Melanie Mortensen, Suzie Seo and Isabelle Tétreault. You are leaving us in capable hands.

Mark, the knowledgeable and competent team that you have left behind is your legacy to this place. We will miss you, and I thank you for all of your service to senators and to the Senate of Canada. I know that all senators will join me in wishing you a wonderful retirement and great success in your future endeavours.

Hon. Senators: Hear, hear!

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I draw your attention to the presence in the gallery of Mr. Jeffrey Astle, who is the President of the Intellectual Property Institute of Canada. He is on Parliament Hill to help us celebrate World Intellectual Property Day.

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

Hon. Senators: Hear, hear!

WORLD INTELLECTUAL PROPERTY DAY

Hon. Joseph A. Day: Honourable senators, as the Speaker has just indicated, today is World Intellectual Property Day.

Intellectual property plays a huge role in the Canadian economy. Intellectual property encompasses patents, which relate to how something works; trademarks, which relate to the distinguishing identity of a product, such as the name Bombardier for snowmobiles, for example, or lululemon for clothing; and copyright is also included in intellectual property, which covers the creativity of works of art, such as paintings or a song and music.

Intellectual property is important as it ensures our inventors and entrepreneurs can make a livelihood from their new concepts. We traditionally associate patents with innovations in the mechanical realm. Increasingly, however, as more of the world logs in online, patents are proving just as important in our virtual lives. As this trend continues, it is important that we continue to update our patent laws to keep pace with the speed of technological innovation.

Some problems have begun to emerge that could stifle innovation rather than encourage it. When a patent application is prepared, the patentee always tries to cover as broad an area as possible, which leads to many instances of overlap in various product patents. We have witnessed this in the lengthy and costly court battles between Samsung and Apple.

Furthermore, we have seen an increase in what has been termed "patent trolls." These individuals or corporations file a patent not with information or an intention of producing goods or services, but rather to prosper from the activity of others who might infringe on those troll patents. This leads again to lengthy court battles, sapping the resources of potential entrepreneurs, and denying the market of what otherwise could be a great advancement in a particular product.

It is important that we as lawmakers remain ever vigilant to the effectiveness of our patent system and ensure that it evolves to meet the ever-increasing pace of innovation.

There will be an Intellectual Property Day reception today in Room 256. This year, as in the past, regional youth will bring their science projects for display. I am always impressed with the degree of intelligence and innovation these young Canadians demonstrate. What inspires me the most, however, is the eagerness with which they describe their projects. They are involved not because they feel this will make them a lot of money, but rather because they feel this is a way they can contribute to improving the lives of fellow Canadians and citizens of the world.

I hope you will join the intellectual property practitioners and students this afternoon in Room 256 between 5 p.m. and 7 p.m.

[*Translation*]

ROUTINE PROCEEDINGS

AUDITOR GENERAL

SPRING 2014 REPORT AND ADDENDUM TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the 2014 Spring Report of the Auditor General of Canada, as well as an addendum that includes environmental petitions received between July 1 and December 31, 2013, pursuant to the Auditor General Act.

CANADA GRAIN ACT
CANADA TRANSPORTATION ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-30, An Act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures.

(Bill read first time.)

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

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

• (1420)

THE SENATE

NOTICE OF MOTION TO STRIKE SPECIAL COMMITTEE ON SENATE MODERNIZATION

Hon. Pierre Claude Nolin: Honourable senators, I give notice that, two days hence, I will move:

> That a Special Committee on Senate Modernization be appointed to consider methods to make the Senate more effective, more transparent and more responsible, within the current constitutional framework, in order, in part, to increase public confidence in the Senate;
>
> That the committee be composed of nine members, to be nominated by the Committee of Selection, and that five members constitute a quorum;
>
> That the committee have the power to send for persons, papers and records; to examine witnesses; and to publish such papers and evidence from day to day as may be ordered by the committee;
>
> That the committee be authorized to hire outside experts;
>
> That, notwithstanding rule 12-18(2)(b)(i), the committee have the power to sit from Monday to Friday, even though the Senate may then be adjourned for a period exceeding one week; and
>
> That the committee be empowered to report from time to time and to submit its final report no later than December 31, 2015.

[*English*]

QUESTION PERIOD

JUSTICE

PRIME MINISTER'S OFFICE—CHIEF JUSTICE OF THE SUPREME COURT—SUPREME COURT APPOINTMENTS

Hon. James S. Cowan (Leader of the Opposition): My question is about a very serious matter and is for the Leader of the Government in the Senate. So that he would not be surprised by my line of questions, I gave his office notice this morning that I would be asking about this issue today.

My question concerns the comments that were made in recent days about the alleged misconduct by the Chief Justice of Canada, the Right Honourable Beverley McLachlin.

I think it would be helpful to follow these questions and the answers if I set out the chronology of events.

On April 22 of last year, Supreme Court Justice Fish announced that he was going to retire from the court effective the end of August 2013.

That day, the Chief Justice met with Prime Minister Harper as a courtesy to give him Justice Fish's retirement letter. As is customary, they briefly discussed the needs of the court.

On June 11, a month and a half later, then-Justice Minister Rob Nicholson issued a press release outlining the process to choose a successor to Justice Fish. That press release referred to consultation with the Chief Justice: First, the list of qualified candidates would be put forward by the Minister of Justice "in consultation with the Prime Minister, the Chief Justice of Canada" and several other leading members of the legal and judicial communities in Canada.

The names of those qualified candidates were then to be given to a Selection Panel of five MPs. Notably, the Justice Minister stated in his press release, "The members of the Selection Panel will also consult with the Chief Justice of Canada."

Indeed, on July 29, the Chief Justice met with the Selection Panel and, according to a statement issued by the Chief Justice last week, "provided the committee with her views on the needs of the Supreme Court."

Two days later, on July 31, her office called the Minister of Justice's office and the Prime Minister's chief of staff in order, again reading from the Chief Justice's statement:

> . . . to flag a potential issue regarding the eligibility of a judge of the federal courts to fill a Quebec seat on the Supreme Court. Later that day, the Chief Justice spoke with the Minister of Justice, Mr. MacKay, to flag the potential issue. The Chief Justice's office also made preliminary inquiries to set up a call or meeting with the Prime Minister, but ultimately the Chief Justice decided not to pursue a call or meeting. The Chief Justice had no other contact with the government on this issue.

Of course, in July, no choice of a successor to Justice Fish had yet been made — the Selection Panel was considering a list of names provided by the Minister of Justice. Indeed, it wasn't until September 30 — two months later — that Prime Minister Harper announced the nomination of Justice Marc Nadon. And, of course, the Federal Court application by Mr. Rocco Galati was only filed on October 7, and the government's reference to the Supreme Court about the appointment was made on October 22.

Leader, in view of these facts, will you identify precisely how the Chief Justice acted improperly in these circumstances?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): I thank the honourable senator for his question. As the Prime Minister indicated, after being consulted on the matter and having learned of the possibility that there would be a legal debate on the eligibility of judges of the Federal Court for the Supreme Court, the Prime Minister acted appropriately and asked for expert legal advice. He asked for advice from legal experts in the Government of Canada and constitutional and legal experts outside of Canada as well. Anyone who claims that the Prime Minister did not ask for expert advice is wrong.

As for the telephone call, people would be outraged if they thought that the Prime Minister or any other government minister were consulting judges about cases before them or — even worse — consulting judges on cases that might come before them, before the judges themselves had the opportunity to hear all of the evidence.

Judges must make their own decisions based on the information they have.

[*English*]

Senator Cowan: I went through the chronology of events very carefully, Senator Carignan, because those dates are very significant.

At the point in time when there was consultation, and you remember that the consultation was not at the instance of the Chief Justice, it was at the instance, set out in the press release issued by the Minister of Justice, in accordance with the procedure established by Prime Minister Harper himself.

So the question is: Exactly what was the impropriety that Prime Minister Harper has accused Chief Justice McLachlin of committing?

[*Translation*]

Senator Carignan: The honourable senator should be careful about making inferences or drawing conclusions in his questions. The Prime Minister was very clear, as was the Minister of Justice. As Minister MacKay clearly stated, the Chief Justice was consulted about vacant seats on the Supreme Court of Canada. His office then received a call from the Chief Justice. After speaking with her, he decided that it was not necessary for the Prime Minister to take the call. The Prime Minister and the Minister of Justice would never call a sitting judge to discuss a case that could be brought before the court that same judge presides over.

[*English*]

Senator Cowan: The suggestion of a discussion took place in July. There was no court case at that point. There was no suggestion of legal proceedings taken by anyone until Mr. Galati's action in October and then the Quebec government suggested that they would take action as well. That's two months after this event that you speak about.

What was the impropriety? What is it that Chief Justice McLachlin did wrong in your view?

[*Translation*]

Senator Carignan: As I said, the senator is drawing his own conclusions in his question.

• (1430)

It is important to point out that both the Minister of Justice and the Prime Minister have reiterated that people would be outraged if they thought that the Prime Minister or any other government minister were consulting judges about cases before them or — even worse — consulting judges on cases that might come before them, before the judges themselves had the opportunity to hear all of the evidence. Both have indicated that judges must make their own decisions based on the evidence before them.

[*English*]

Senator Cowan: Senator Carignan, the point of the matter is that there was no suggested court case at the time that these conversations were supposed to have taken place. That was months before any action was taken. It was long before the nomination of Justice Nadon was even made.

Let me try it a different way. If, as you suggest, and as the Minister of Justice and the Prime Minister have suggested, there was this impropriety on the part of the Chief Justice and it would have been improper for the Prime Minister to have spoken to the Chief Justice at that time — and we're talking about July of 2013 — if it was so important, if it was so egregious, why did it take until last week before the Prime Minister's Office made a statement about this issue?

[*Translation*]

Senator Carignan: Senator Cowan, as Minister MacKay has said, the Supreme Court justice was consulted about the vacancies on the Supreme Court of Canada. Minister MacKay's office received a call from the Chief Justice. After speaking with her, he decided that it was not necessary for the Prime Minister to take her call, and neither the Prime Minister nor the Minister of Justice would ever call a sitting judge about a matter that is or could be before that judge's court.

[*English*]

Senator Cowan: My question, Senator Carignan, was, if this behaviour that the Prime Minister now finds so objectionable took place at the end of July 2013, why didn't he say something about it then? Why was it only last week that he made a statement about this? What is the explanation for the delay? Why was it not serious enough to make a public statement about it in July of 2013 but so outrageous and so pressing that he chose to make a statement or have his office make a statement last week? Why not then and why now?

[*Translation*]

Senator Carignan: Senator, sometimes, news evolves or puts more emphasis on some points than on others. One thing is certain: The Department of Justice was aware of the eligibility issue. It asked for an outside legal opinion from a former Supreme Court justice on whether Federal Court justices can be appointed to the Supreme Court of Canada. The legal opinion was reviewed and received the support of another former Supreme Court justice, who is also an eminent professor and expert in constitutional law, and that opinion was made public. All the legal experts agreed that there was no basis for the Supreme Court's final opinion, and their own view was similar to Justice Moldaver's dissenting opinion.

As the Prime Minister said, we will respect both the letter and the spirit of the decision, and we will act quickly to ensure that all the seats on the Supreme Court are filled.

[*English*]

Senator Cowan: The Prime Minister was certainly entitled to seek the advice of former justices of the Supreme Court of Canada and other experts. He was certainly entitled to do that; I don't question that. My question again is, if he found the action of the Chief Justice of the Supreme Court so objectionable, why didn't he do something about it last July? Why did he wait till last week? That's the question I asked and that's the one I would like an answer for.

[*Translation*]

Senator Carignan: As I explained, Minister MacKay received the call from the Chief Justice and he spoke to her. The minister decided it was not necessary for the Prime Minister to take the call.

[*English*]

Senator Cowan: But the question, Senator Carignan, is this: Let's assume that that was correct and that it was improper for that call to be made and that the advice Minister MacKay gave to the Prime Minister was correct. Why didn't he say something about it then? Why wait till last week?

[*Translation*]

Senator Carignan: As I already explained, Minister MacKay received the call from the Chief Justice and he spoke to her. The minister decided it was not necessary for the Prime Minister to take the call, period.

[*English*]

Senator Cowan: I'm not going to get anywhere with that question, I guess. I'll try another supplementary.

In his opening statement to the ad hoc committee of members of the other place on the appointment of Supreme Court justices, Justice Minister MacKay referred to his own and his predecessor's — that would be former Justice Minister Nicholson's — consultations "with senior members of the Canadian judiciary, including the Chief Justice of Canada, all with a mind to identifying a pool of qualified candidates for appointment to the Supreme Court of Canada." He also said, "The panel members," that is the Selection Panel of MPs, "also consulted extensively with members of the judiciary and the legal community, including the Chief Justice of Canada."

That was October 2 of 2013, two months after this exchange that he had with Chief Justice McLachlin. So if there was a problem, why did the Minister of Justice cite the Chief Justice's involvement in the process as something lending credibility to that process? Why would he do that?

[*Translation*]

Senator Carignan: As I said, there was an all-party committee process. The Chief Justice was consulted on the needs of the Supreme Court. After that consultation, Minister MacKay's office received a call from the Chief Justice and he decided it was not necessary for the Prime Minister to take the call.

[*English*]

Senator Cowan: The Chief Justice has stated: "Given the potential impact on the Court, I wished to ensure that the government was aware of the eligibility issue. At no time did I express any opinion as to the merits of the eligibility issue."

Is the government saying that the Chief Justice of Canada should not have alerted them to this serious eligibility issue as they were drawing up the list of qualified candidates to replace Justice Fish? In fact, since she was being consulted, according to the Justice Minister, specifically to assist in "identifying a pool of qualified candidates" — that is the Justice Minister's wording — wouldn't it be your expectation, wouldn't you expect that it would be her duty to advise on what could or could not make a candidate qualify? Wouldn't that be logical? Wouldn't you expect that when the Chief Justice is being consulted for that purpose to identify what the Justice Minister himself described as "identifying a pool of qualified candidates"?

Those are the Justice Minister's words, "a pool of qualified candidates." Wouldn't you expect, wouldn't it be reasonable that a Chief Justice consulted on that basis would want to raise an issue, would be expected to raise an issue as to the qualifications of potential applicants or potential candidates?

[*Translation*]

Senator Carignan: The Chief Justice was consulted about the vacancy on the Supreme Court and the needs of the Supreme Court. After this consultation, Minister MacKay's office received a call from the Chief Justice and, as I explained, he decided it was not necessary for the Prime Minister to take the call.

[*English*]

Senator Cowan: But the words that the Justice Minister used were that one of the purposes of the consultation was to identify a pool of qualified candidates. If the Chief Justice had concerns

about the eligibility of persons who served on the Federal Court of Canada, surely it was her responsibility to draw that concern to the attention of the Justice Minister; wouldn't you agree with that?

[*Translation*]

Senator Carignan: The Chief Justice of the Supreme Court is consulted regarding vacancies and the needs of the court.

• (1440)

[*English*]

Senator Cowan: Where we are now is that we have a former Minister of Justice, 11 former Presidents of the Canadian Bar Association and many other eminent Canadians who have expressed deep concern about the suggestion that the Chief Justice somehow acted inappropriately. I'm sure you would agree with me that a suggestion of impropriety on the part of the Chief Justice of Canada — the highest judge in our system — can seriously erode confidence not only in the Chief Justice, who I point out is the longest serving Chief Justice in Canadian history, but indeed in our justice system itself.

Will you take this opportunity, Senator Carignan, as Leader of the Government in the Senate, to clearly state for the record that the Chief Justice did not conduct herself inappropriately in any way in relation to these proceedings?

[*Translation*]

Senator Carignan: Senator, you would agree that if people thought that the Prime Minister or any government minister was consulting a judge about a case the judge was deliberating or, worse, was consulting a judge about a case that might come before that judge's court, before the judge had the chance to hear all the evidence, they would be scandalized.

[*English*]

Senator Cowan: They are scandalized.

[*Translation*]

Hon. Jean-Claude Rivest: In this whole unfortunate mess, with the government's completely inappropriate behaviour, the fact remains that Quebec's constitutional rights have not been respected for months.

For months the Supreme Court of Canada has been hearing cases, deliberating and making decisions with only two Quebec judges on the Supreme Court when there should be three. My question is simple: When will the government appoint the third Quebec judge?

Senator Carignan: As the Prime Minister said, we will respect the letter and the spirit of the decision and will act quickly to ensure that every seat on the Supreme Court is filled.

Senator Rivest: You will let us know.

Senator Carignan: As soon as possible.

[*English*]

Hon. Wilfred P. Moore: Honourable senators, my question is also for the Leader of the Government in the Senate and a follow-up to Senator Cowan's questions. I have been trying to figure out, trying to rationalize what happened here, and the months of delay in comments from the Prime Minister.

He didn't want to talk about it back in July. I have to wonder, had he already made up his mind? Did he already decide that Justice Nadon was going to be his appointment and he did not want to talk to anybody about it because there could be questions raised; is that possible?

[*Translation*]

Senator Carignan: The Prime Minister was clear. The Minister of Justice was also clear that when he learned that there might be a legal debate on the eligibility of Federal Court judges in general for the Supreme Court, the Prime Minister acted appropriately and asked for legal advice from experts, advice from legal experts within the Government of Canada and constitutional and legal experts in Canada. Anyone claiming that we did not seek expert advice is wrong. All the experts consulted said they believed that Federal Court judges were absolutely eligible for appointment to the Supreme Court. At that point, the question was on the eligibility of Federal Court judges. What is more, as the Prime Minister said, the opposition proposed candidates from the Federal Court. Clearly, the opposition was not opposed to appointing a member of the Federal Court.

[*English*]

Hon. David P. Smith: Honourable senators, after the appointment was announced, the National Assembly of Quebec — and given the intense political divisions in there — passed a motion unanimously supported by every single member of that legislature, of all the parties, saying that that appointment did not comply with the provisions of the Supreme Court Act. Every single member of the legislature supported that unanimously. That virtually never happens.

For it to be flagged ahead of time, it better comply with the provisions of the Supreme Court Act, without any reference to a particular name. Isn't that pretty telling? You say that all the experts consulted. I don't know of any experts that agree other than the ones that they paid for an opinion.

[*Translation*]

Senator Carignan: Senator, I don't know who you know, but to my knowledge, the opposite is true. All the constitutional experts who were consulted, even those who gave their opinion without being consulted by the government directly, said that there was no basis for the position adopted by the court in the end, and their perspective was similar to the dissenting opinion of Justice Moldaver, the constitutional expert, Mr. Hogg, and former Justice Binnie, who, along with others, issued opinions that were published.

Senator Smith, you are a lawyer, and I am sure that when you read the opinion that was released before the challenge, you must have found that there was some common sense to it.

[*English*]

Hon. Joan Fraser (Deputy Leader of the Opposition): Leader, you have repeated several times the Prime Minister's words shortly after the Supreme Court decision about Justice Nadon, to the effect that the government would respect the letter and the spirit of that decision, which was — it bears repeating — a decision of the Supreme Court of Canada, the highest court in the land. But the tone of your answers on this matter today increasingly suggests to me that you do not respect the letter, let alone the spirit of that decision. Can you please clarify for me whether the government does or does not accept and agree with the considered opinion of the Supreme Court of Canada in this matter?

[*Translation*]

Senator Carignan: As the Prime Minister said, we are going to respect both the letter and the spirit of the decision and appoint a new judge to fill the vacancy from the new pool of judges, which was reduced by the Supreme Court decision.

[*English*]

Senator Fraser: Yes, but the letter and spirit of that decision were to the effect that there are some general rules for which nomination to any seat on the Supreme Court must be followed. But then in addition, in the very next section of the law, they set out further requirements for judges from Quebec. There is good reason for that as you, a lawyer from Quebec, know. The legal system in Quebec is not the same as it is in the rest of the country. I ask again: Do you respect that decision in both its letter and its spirit?

[*Translation*]

Senator Carignan: Senator, you will see that, with the appointment that is made — in the coming weeks, I imagine — the Prime Minister will respect both the letter and the spirit of the decision.

[*English*]

Hon. Mobina S. B. Jaffer: Leader, what really upsets me is why did the Prime Minister wait until now? There was an opportunity in July, there was an opportunity in October, and there was yet another opportunity when this matter was being heard by the Supreme Court of Canada. As you and I know as lawyers, from time to time there are judges that we feel have a certain bias and they should not hear the case and we make an application right away at the beginning of the case to say we would like that judge to excuse herself. Why did the government's lawyer not make that application if the Prime Minister was concerned? Why wait until now?

• (1450)

[*Translation*]

Senator Carignan: As the Minister of Justice said, he received a call from the Chief Justice, and after speaking with her, he did not feel that the Prime Minister needed to take the call.

[*English*]

Senator Jaffer: Mr. Leader, you are a lawyer; I am a lawyer. There are many lawyers in this place. One rule we learn as soon as we finish law school is that judges in our country are not able to speak out for themselves. Our first duty as lawyers is to protect the integrity of the institution, and the integrity of the Supreme Court of Canada has been challenged. I believe it's every lawyer's and every Canadian's duty to protect that. Today, that integrity has been challenged and I say to you, leader, that it is not appropriate to call on the integrity of the longest-serving Chief Justice, who has done nothing wrong.

Do you accept today that the Chief Justice has done nothing inappropriate?

[*Translation*]

Senator Carignan: Senator, you are correct. People would be outraged if they found out that the Prime Minister — or any government minister — was consulting judges about cases before them or, even worse, consulting judges on cases that might come before them, before the judges themselves had the opportunity to hear all of the evidence.

Hon. Serge Joyal: Honourable senators, I have listened carefully to the Leader of the Government. He mentioned the opinions provided to the government by the Honourable Justice Binnie, the Honourable Justice Charron and Professor Peter Hogg.

The honourable senator was in this chamber when I spoke during the debate on clauses 370 and 371 of the budget implementation bill. I explained what I thought were the grounds for the unconstitutionality of appointing a Federal Court judge.

I relied on the 1982 constitutional debate to explain that a special status had been given to Quebec at the time. That was when the composition of the Supreme Court was enshrined in section 41 of the Constitution and other organic provisions for the Supreme Court were enshrined in section 42. I remember my explanation clearly. I think the Honourable Senator Nolin was here that day.

I pointed out that, as lawyers, if we want to maintain our licences to practice, as you yourselves know, we have to stay current in our knowledge of legislative provisions and take continuing education. A candidate who is not a member of the bar and who cannot readily prove his knowledge of Quebec's civil law provisions as they exist today would not qualify, to my mind.

There was definitely a major debate in the legal community that prompted the government to do two things: first, it added two provisions to the budget bill to try to clarify the issue; and second, the government itself referred the matter to the Supreme Court of Canada. The court itself did not choose to study the matter.

When we look at the concerns and see where those concerns came from, I think it is clear that the government itself had concerns about the constitutionality of appointing a candidate from the Federal Court.

Dare I say that it might be a good idea as we debate this issue to review the sequence of events so that we can avoid further politicizing the debate and ensure that the Supreme Court, which is made up of the lawyers most qualified to sit on its benches, can continue to hear cases?

Senator Carignan: Senator, as I said earlier, when we found out about the possibility of a legal debate over whether Federal Court judges were eligible for Supreme Court appointments, the Prime Minister acted appropriately and asked the experts for their legal opinion. The possibility of a legal debate led directly to the request for an opinion.

[*English*]

ORDERS OF THE DAY

DISABILITY TAX CREDIT PROMOTERS RESTRICTIONS BILL

THIRD READING—DEBATE ADJOURNED

Hon. JoAnne L. Buth moved third reading of Bill C-462, An Act restricting the fees charged by promoters of the disability tax credit and making consequential amendments to the Tax Court of Canada Act.

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

Some Hon. Senators: No.

The Hon. the Speaker: It is important to remind honourable senators that the Speaker asks, "Are honourable senators ready for the question?" so that, should there be a senator wishing to participate in debate, they might rise and do so.

Senator Buth: Thank you for that clarification, Your Honour.

Honourable senators, I am pleased to speak in favour of Bill C-462, which advances our government's goal of ensuring the full and equal participation of people with disabilities in our society. Promoting the participation of Canadians with disabilities in our communities helps to build a stronger economy and a more vibrant and diversified society. We provide a variety of financial benefits for people with disabilities, many of whom struggle on a daily basis to make ends meet.

A key component of our strategy to assist the estimated 4 million Canadians with disabilities is the use of tax measures, particularly personal income tax provisions. Our tax system includes the Disability Tax Credit, the Child Disability Benefit, the Medical Expense Tax Credit and other important tax relief measures that recognize the daily challenges faced by Canadians with disabilities.

Let me first explain the rationale for this bill.

One of the most important tax relief measures aimed at Canadians with disabilities is the Disability Tax Credit. This tax credit helps to offset the additional costs that Canadians with a severe and prolonged impairment in physical or mental functions incur in order to cope with of everyday life. These are the things that most of us take for granted: seeing, hearing and walking, as examples. To do these everyday things, people eligible for the Disability Tax Credit must rely on and, in some cases, pay for special assistance.

[*Translation*]

The purpose of the credit is to provide tax relief to cover the cost of the services and support needed to help improve the standard of living and quality of life of Canadians with disabilities.

[*English*]

The Canada Revenue Agency receives about 200,000 new Disability Tax Credit applications each year. A corresponding credit is available for the calculation of the provincial tax. For those who satisfy the criteria, the federal tax savings of 2013 was up to $1,154 for adults and as much as $1,828 for children under the age of 18 or for a family member supporting the person.

• (1500)

Honourable senators, the reason for this bill is that some of the so-called disability tax promoters have been marketing the Disability Tax Credit as difficult to obtain. They offer their services to file the Disability Tax Credit claim form on behalf of Canadians with disabilities in exchange for a percentage of the tax refund. These are people who go from town to town, booking hotel rooms and advertising their services as experts with insider knowledge of the Disability Tax Credit. Some have been known to brag that only they know how to navigate the system and ensure that potential applicants receive all the money to which they are entitled.

This is not accurate. The fact is they only fill out the first section of the two-part application form, and the Canada Revenue Agency has made the process to claim the credit as easy as possible. All the instructions and forms are available online. There is usually no need to get outside help to help fill out this

paperwork. Some non-profit groups and the constituency offices of members of Parliament often provide assistance to local residents at no cost.

It is true that the second part of the application is more complicated. However, it can be completed only by a recognized medical practitioner with specific knowledge of the person with a disability. This includes medical doctors, optometrists, speech-language pathologists, audiologists, occupational therapists, physiotherapists or psychologists. Filling out this part of the form is not something that anyone without medical qualifications could do.

The concern is that the rates charged by some promoters can vary from 15 per cent to 40 per cent of the refund. They are often paid hundreds and at times even thousands of dollars for very little work because people with disabilities can claim the credit retroactively for up to a decade. That means that if their application is approved, some stand to receive tax refund cheques in the amount of $10,000 or even $15,000.

However, after paying a promoter's 30 per cent to 40 per cent contingency fee, someone with a disability might walk away with anywhere from $3,000 to $4,500 less than the amount to which they were entitled, and these are often people for whom every penny counts.

All of this translates into over $20 million a year in funds earmarked for Disability Tax Credit recipients that is paid to third-party promoters.

We need to ensure that promoters do not cash in on money that is intended to help Canadians with disabilities recover some of the extra costs they incur due to their challenging health conditions.

Honourable senators, the legislation would restrict the amount of fees that can be charged by businesses that request a determination of Disability Tax Credit eligibility on behalf of someone with a disability.

The bill would prohibit firms from charging, or accepting, more than an established maximum fee. What that fee should be would only be decided following consultations to determine an appropriate rate that reflects the value of the services being provided. Once an appropriate fee was set, the bill would prohibit charging more than the established amount.

To discourage companies from overcharging their clients, Bill C-462 would also require businesses to notify the CRA of any fee charged in excess of the maximum amount permitted. A minimum penalty of $1,000 would apply if the limit were exceeded — and persistent offenders could face heavier fines for charging excess fees.

The Standing Committee on National Finance heard from several witnesses who either receive the Disability Tax Credit or help disabled people apply for the credit. The committee took into account the comments of the witnesses and attached a list of observations that are meant to guide the consultation that Canada Revenue Agency will conduct prior to setting the maximum fee. The observations are as follows:

- Review the Disability Tax Credit form to simplify it and to consider its online availability.
- Clarify the word "promoter" to more accurately reflect the different groups that fill out the Disability Tax Credit form, for example, health care practitioners, accountants, consultants, et cetera.
- Review the service level and the promotion of the credit by Canada Revenue Agency to increase awareness and reduce the difficulty of applying for the credit.
- Discuss with industry the potential of developing a code of practice to improve the level of service and set standards for certain items, such as advertising.
- Ensure that the interpretation of clause 3(2) of the bill is that the promoter repays the overcharged fee C to the claimant.

Let me reiterate: The legislation is not aimed at legitimate tax preparers. The Government of Canada recognizes the necessity of having a fair and functioning marketplace. Our objective is not to hinder businesses that charge reasonable amounts that represent the fair value of the services they provide.

We realize that the vast majority of tax preparers are doing good work at a fair price. We just want to ensure that companies completing applications for the Disability Tax Credit charge rates that represent the value of the service they provide.

I want to be equally clear that this legislation is not an attempt — in any way — to limit anyone's chances of qualifying for the Disability Tax Credit. Quite the opposite: The goal of this private member's bill is to ensure the fair and equitable treatment of people with disabilities when it comes to applying for the Disability Tax Credit.

We firmly believe that this tax credit is intended solely for the people facing these serious challenges. It is meant to support eligible individuals and family members that care for them. In fact, this bill also benefits caregivers of people with severe disabilities by decreasing the cost of applying for the tax credit. This would free up even more money to help people in their care.

Honourable senators, please join me in supporting Bill C-462. Thank you.

(On motion of Senator Eggleton, debate adjourned.)

NATIONAL HEALTH AND FITNESS DAY BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Raine, seconded by the Honourable Senator Gerstein, for the second reading of Bill S-211, An Act to establish a national day to promote health and fitness for all Canadians.

Hon. Jim Munson: Thank you, Your Honour. I may not sound too fit today, but I hope I'm fit enough to support Senator Nancy Greene Raine's bill. This is the bill to establish a national day to promote health and fitness for all Canadians.

Senator Nancy Greene Raine, the sponsor of the bill, has long been committed to motivating Canadians to be more active. She is yet another example among us of how we can use our role as senators to raise the profile of important issues and to improve people's lives. Senator Raine is also drawing on her experiences and reputation as an Olympic medallist — even I remember her skiing downhill — and a well-known, respected athlete and promoter of alpine skiing through programs like the Nancy Greene Ski League, which provides entry-level racing instruction to young children.

This bill is simple, but it's so important and has a significant purpose. We all know that sedentary pastimes and unhealthy eating patterns among children and across the Canadian population have been on the rise too long. One in three children in this country is overweight or obese.

The causes of this alarming trend are clear: overeating; eating foods that are unhealthy — high in sugar, salt and fat, with negligible nutritional value; and failing to get enough exercise. Only a small percentage of Canadian children, fewer than 15 per cent, are getting the daily amount of physical activity recommended for them.

Senator Raine and our colleagues who have already commended the purpose of this Bill S-211 have painted a detailed picture, a picture that is quite different from what I think most of us knew as children. Instead of running around in the fresh air and riding bikes and playing road hockey with neighbourhood friends, children are planting themselves in front of televisions and computers every day after school and on weekends.

I was just thinking that the only time they look up in the playground is when they bump into each other while trying to stay focused on their iPhones or BlackBerrys.

Imagine giving up one tweet to play hockey on your street.

They are missing out on what to me is the epitome of being carefree, like being so caught up in having fun that they don't even notice they're sweating and short of breath. This might sound awful, but if you've ever felt it, you know it's anything but; it's invigorating.

• (1510)

For the span of at least one generation, the decline in fitness levels has impacted all age groups of our population. In 2007, more than 25 years after the last thorough study of fitness at the national level, Statistics Canada, in collaboration with Health Canada and the Public Health Agency of Canada, undertook a comprehensive assessment of the fitness of Canadian adults.

Findings from the Canadian Health Measures Survey show that since 1981, suboptimal fitness levels have become increasingly prevalent, especially among young adults. As we know, this phenomenon will inevitably lead to higher risk of health problems, four times higher within this age group than in the 1980s.

Depending on where you look and what you choose to reflect on — the fate of our population, including millions of children; the role of parents; or the intentions of companies profiting from current-day behaviours — you might feel sadness. You might also feel disgust or frustration, anger, even a bit of culpability.

We cannot be the last generation who remember the options outside of electronic games, specialty and on-demand television programming, instant and fast foods and socializing via our smartphones. Maybe I sound like an old curmudgeon, but I sure don't feel like one, certainly not after watching Montreal win one of those games on the weekend; and they'll win tonight. Maybe criticizing the inventions and habits of modern society makes me sound out of step, but I strongly believe that the alternatives help keep us young and that anything in excess is unhealthy.

Though I have never been a professional athlete, I learned so much about the merits of practice, being a team member and powering through my limits from playing pond hockey, river hockey and trying to beat my friends to the finish line. Sport and physical play render some irreplaceable life lessons, as well as a feeling of becoming stronger and better coordinated.

On a personal note, as a senator for Ottawa—Rideau Canal, I'm fortunate to have the canal near my home. Not only is it a UNESCO World Heritage site, it is my playground all year, from rollerblading to biking to skating. Last year, I skated on it 32 times. I would have done it more if it hadn't have been so damn cold. Each year, I see children from a local school skate on the canal once. It is once a year; it should be once a week.

More than any statistics and studies, it is the distinct sense of satisfaction and enjoyment associated with these experiences that should be the hook. Everyone should have the opportunity to feel this, and once they do, chances are good that fitness and health will become a greater and greater priority for them.

It is a process, and Bill S-211, the National Health and Fitness Day Bill, is well aligned with it. What Canadians need is to be introduced to the idea that health and fitness matter, that they are

worthwhile and attainable goals. Step by step, we can achieve this and then we can advance further.

On another personal note, I have a novel idea where senators could lead by example in this new era of independence.

I was described by a reporter the other day as a free-range senator, so it's in this capacity that I'm inviting my Conservative senators to walk with me, not down any political path, but down the path of fitness. Perhaps every Wednesday after you have digested all you need to know in your Conservative caucus, we could take a walk along my beautiful canal, nourished in the thought that not only are you doing something good for your country but that you are doing something good for you.

Now, if that isn't too much for your liking, then let's launch a "Take a Senator for a Walk" campaign. I don't know where, but take a walk. Or if you're Senator Dan Lang, it can be "Take a Senator for a Run" campaign. The added bonus is that if you are fit enough, reporters can't catch you.

Seriously, for Senator Nancy Greene Raine, this is not a downhill race but an uphill battle to get Canadians to get fit. We can do it but only if we do it together.

In 2010, speaking in her capacity as both a senator and Canada's Olympic ambassador to that year's Winter Olympic Games, Senator Raine launched an inquiry here into how to inspire Canadians, especially children, to become more fit and healthy. I will repeat what she said at that time because it is a comment that holds true today. She said:

> ... everyone knows we have a serious problem. The research has been done. We do not need any more studies to convince us. We also know that it is not a problem that can be easily solved or without the involvement of all levels of government and our citizens themselves.

In the late 1980s and 1990s, Health Canada began working in partnership with private and non-profit sector organizations, conducting national campaigns aimed at improving Canadians' health. From Canada's Food Guide to advertisements about the dangers of smoking and second-hand smoke, these campaigns included a vast range of tactics to reach individuals and society at large. This is when the term "social marketing" really took hold here.

One of the best explanations of social marketing that I've heard and that helped me understand how it works is this: Social marketing is not about changing people's behaviour directly; rather, it's about affecting the public environment so that people are more prone to reflect on and eventually take certain actions.

I realize that it might be hard to get your mind around this right away, but these words do provide a broad outline of the steps towards motivating people to improve their lives.

If you would like a good current example of how social marketing can be used to improve Canadians' fitness levels, I encourage you to have a look into the ParticipACTION program. Do you remember that word from so long ago? We should be right back there again. I'm sure that name rings a bell. This program, which originated in the 1970s and only gradually lost our attention after several years of success, has been revived and is once again encouraging us to be more active and to help others in our communities do the same.

One of the initiatives that I particularly like is for children but is aimed at parents, teachers and others who influence them. It is called Bring Back Play.

Just as there are stages to achieving the goal to becoming more fit and healthy, so too are there stages to engaging individuals, communities and all levels of government in inspiring people to achieve better health. If Parliament agrees to pass Bill S-211 and make it law, we will have an important new vehicle for improving Canadians' health. June 1 will become a day for groups, clubs, individuals, senators and MPs from across the country to hold events to promote active living, to invite people in their communities to try out fitness facilities and participate in fun sport challenges, to do whatever they choose to do to support the crucial goal of national health and fitness day.

From one year to the next, we will see positive momentum among Canadians, organizations from all sectors working together to plan and hold special events. More and more municipalities signed on to do their part. Above all, a growing number of people recognize the importance of health and fitness and are being inspired to take action.

In closing, I would just like to mention a personal note about an old friend in New Brunswick where I grew up in the North Shore, where there is no shore like the North Shore, that's for sure. I've always been inspired by the physical work ethic of an old hockey friend in New Brunswick. He played hockey for Scotty Bowman here in Ottawa — the Hull Canadiens — a long time ago. He should have been in the NHL. His name is Joe Hachey and he's in his seventies. We just called him "Number 7" of the Bathurst Papermakers, and he is still one heck of an athlete. He literally runs across the Acadian Peninsula, runs, bikes and swims almost every week, from one end to the other. Joe walks, runs, swims and bikes every day. In fact, he was an Ironman triathlete.

I asked Joe last summer, "Why so much focus on fitness?" Now, well into his seventies, he answered, "It doesn't matter how long I live, but as I live, I want to live well." It was just a wonderful thing to say.

I would like to thank the good senator, Nancy Greene Raine, for bringing Bill S-211 to us, and I promise to do whatever I can to ensure that it is passed. Once that happens, you can count on me, senator, to continue to be supportive of and involved in this important day, June 1. It will be a pleasure.

The Hon. the Speaker *pro tempore***:** Are senators ready for the question?

Hon. Senators: Question!

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 Raine, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.)

• (1520)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Fraser, for the second reading of Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence).

Hon. A. Raynell Andreychuk: Honourable senators, I wish to speak to Bill S-206. Bill S-206 would repeal section 43 of the Criminal Code. This is not the first time that Senator Hervieux-Payette has introduced a bill with this objective, nor is it the first time that I have stated my concerns with the bill.

Senator Hervieux-Payette continues to address her opposition to corporal punishment. I do not support corporal punishment. I do not dispute the harmful effects of corporal punishment on children, parents and society. In my speech, however, on this bill on April 23, 2013, I stated my support for the government's position on child discipline. This position is articulated by the Public Health Agency of Canada:

> The goal of discipline should not be to punish children.
>
> Rather, it should be to change their behaviour, help them develop self-control and foster their self-esteem.
>
> Discipline or guidance will be the most effective if it's given with respect and love, and in ways that are consistent and reasonable.

The government appreciates the evolutionary nature of our society's shift away from corporal punishment, and I should say that this has been the stance of several governments. Senator Hervieux-Payette has informed us that this shift in Canadians' attitudes is progressing. Supporting this shift is, however, not what Bill S-206 is about. In this sense, the subtitle of Bill S-206 is misleading.

Drawing on my past experience as a family court judge and lawyer, however, I do not believe that repealing section 43 will, as the bill's subtitle suggests, protect children against child-rearing violence. Instead, I believe Bill S-206 will create confusion and contradiction at a delicate intersection between law and society.

The Convention on the Rights of the Child recognizes that children are maturing and that their capacity to handle their own rights increases into adulthood. Children's rights are therefore generally considered to be progressive. The convention strikes a balance between children's rights to a family and their right to protection from violence.

Section 43 strikes the same balance within the Canadian context. Recognizing the special circumstances of children and those who care for them, it provides a narrow defence from the sections of the Canadian Criminal Code dealing with assault. Absent section 43, any touching by a parent or a teacher in the course of caring, disciplining or controlling the behaviour of the child could lead to a criminal prosecution.

What section 43 does not do, however, is provide a blanket protection for physical violence against children. This was confirmed in the 2004 case by the Supreme Court of Canada. The court's ruling in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* provided detailed analysis of the constitutionality and the applicability of section 43. It also established clear parameters for acceptable use of that section.

Section 43 does not, for example, apply to the use of corrective force for any child under 2 or over 12 years of age; expert testimony informed the court that there is no educative or corrective value in the use of force outside of those age brackets. Nor does section 43 justify actions taken in anger or frustration, or force involving the use of any instrument or object, or blows to the head. Most important, the Supreme Court stated that section 43 applies only to: "minor corrective force of a transitory and trifling nature."

Allow me to quote further from the court's decision:

> Section 43 does not exempt from criminal sanction conduct that causes harm or raises a reasonable prospect of harm. It can be invoked only in cases of non-consensual application of force that results neither in harm nor in the prospect of bodily harm.

Some have argued that section 43 is redundant, because the use of trifling or trivial force is protected by the defences of *de minimis* and necessity.

In her speech on Bill S-206, Senator Hervieux-Payette cited Justice Arbour's dissenting opinion in the Supreme Court case that I have been citing. In Justice Arbour's opinion:

> The common law defences of necessity and *de minimis* adequately protect parents and teachers from excusable and/or trivial conduct.

The majority, however, represented by Chief Justice McLachlin, had a different perspective, and I quote:

> The defence of necessity, I agree, is available, but only in situations where corrective force is not in issue, like saving a child from imminent danger. As for the defence of *de minimis,* it is equally or more vague and difficult in application than the reasonableness defence offered by section 43.

The Supreme Court judgment clearly shows that section 43 is a necessary and narrowly defined defence. Its repeal would leave parents and teachers without resort to any justified use of physical contact by way of correction or restraint of a child.

The point has often been made that some 35 countries, including Denmark, Sweden, and New Zealand, have prohibited corporal punishment. "If they can do it, why can't we?" it is often asked. As I have stated in this place before, this comparison is misleading. That is because these countries have separate measures for justifying physical intervention by an adult to restrain or correct a child.

Take New Zealand, for example. In May 2007, the Parliament of New Zealand passed a private member's bill amending section 59 of that country's Crimes Act, and their section 59 is very close to our section 43. The old section 59 was New Zealand's "reasonable force defence" for parents' use of what the act called "domestic discipline." However, the new section 59, passed after considerable study in Parliament in 2007, did not do away with the defence. It rather changed and, in my opinion, expanded it.

This is what the new section 59, now entitled Parental control, says:

> (1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of —
>
> (a) preventing or minimising harm to a child or another person; or
>
> (b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or
>
> (c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or
>
> (d) performing the normal daily tasks that are incidental to good care and parenting.
>
> (2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.
>
> (3) Subsection (2) prevails over subsection (1).
>
> (4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

New Zealand set out to eliminate section 59. Instead, in my opinion, it elaborated and it expanded section 59. New Zealand's experience bears important lessons for Canada. Our legal system requires some form of protection for parents and teachers who restrain or correct children in their care.

• (1530)

If we are going to remove section 43, we must at the same time reinsert an equal or improved defence elsewhere.

Underlying the discussion around section 43 is the question of differential treatment. Some are uncomfortable with the notion that the Criminal Code treats force differently depending on whether it is applied to a child or an adult.

Indeed, one effect of repealing section 43 would be to place children in the same position as adults under law. The Convention on the Rights of the Child warns against this approach. Article 5 of the convention reads:

> States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Therefore, parents, guardians and teachers are occasionally required to intervene physically to correct behaviour or to prevent a child from harming themselves or another.

The Supreme Court came to the same conclusion. It found that section 43 did not contradict section 15 of the Charter. Section 15 provides that every individual is equal before and under the law without discrimination.

The Supreme Court found that section 43's distinction of acceptable force on the basis of age was not discriminatory but, rather, "firmly grounded in the actual needs and circumstances of children."

A further quotation from the court:

> Parliament's choice not to criminalize this conduct does not devalue or discriminate against children, but responds to the reality of their lives by addressing their need for safety and security in an age-appropriate manner.

The United Nations Convention on the Rights of the Child is clear on the need to balance children's rights to protection from violence, against the special circumstances of those who care for them.

It is noteworthy that the convention does not require state parties to ban all corporal punishment.

Aided by the wisdom of the Supreme Court, section 43 achieves this balance in Canadian society while upholding our international obligations.

In April 2007, the Standing Senate Committee on Human Rights tabled its report, *Children: The Silenced Citizens*. The report noted our committee's stance against corporal punishment. It also underscored the "clear need for further research into alternative methods of discipline, as well as the effects of corporal punishment on children." The report further encouraged the government to "launch education programs in the public sphere to foster a societal movement against corporal punishment, creating a contextual framework from which individual families can draw support."

I still stand by that advice.

Senator Hervieux-Payette has noted that most Canadians condemn the use of physical correction, and I believe that to be the case. This reflects the progress we have achieved in recent decades. However, this progress has not been the result of laws. It has, rather, been the result of education and awareness in our society. This is where I believe our best prospects for future progress lie.

Bill S-206, by contrast, is neither about corporal punishment nor about education and awareness building. It is about removing a defence under our assault laws that is tailored to the special circumstances of those who care for children.

I therefore believe that Bill S-206 is most appropriately studied by the Standing Senate Committee on Legal and Constitutional Affairs. I believe this committee is best positioned to investigate the legal consequences of Bill S-206, separate from a discussion about corporal punishment.

I very much believe that if we have the best interests of the children in mind, section 43 needs to be studied and evaluated as a legal proposition that supports parents and children in the best interests of children of Canada.

(On motion of Senator Martin, debate adjourned.)

[*Translation*]

CONTROLLED DRUGS AND SUBSTANCES ACT CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator Ringuette, for the second reading of Bill S-203, An Act to amend the Controlled Drugs and Substances Act and the Criminal Code (mental health treatment).

Hon. Jean-Guy Dagenais: Honourable senators, I rise to speak to Bill S-203, An Act to Amend the Controlled Drugs and Substances Act and the Criminal Code concerning mental health treatment.

It proposes to amend section 10 of the Controlled Drugs and Substances Act and subsection 720(2) of the Criminal Code to permit a court to delay imposing a sentence — which, in some cases, might be a mandatory minimum penalty — to allow the offender to receive mental health treatment. Where the offender is charged with an offence under the Controlled Drugs and Substances Act, the successful completion of the treatment would allow the court to depart from a prescribed mandatory minimum penalty and impose a lesser sentence.

By way of background, let me add that the proposals in Bill S-203 mirror, in part, those in subsection 10(4) of the Controlled Drugs and Substances Act, which came into effect on November 6, 2012, as part of former Bill C-10, the Safe Streets and Communities Act.

This provision permits a court to delay sentencing and to impose a lesser sentence than the applicable mandatory minimum penalty if the offender successfully completes either a drug treatment court program approved by the Attorney General or a treatment program under subsection 720(2) of the Criminal Code to which the Attorney General of Canada has consented.

Honourable senators, while the challenge that people with mental health issues pose for the criminal justice system is real and pressing, and while the goal of this Senate public bill is laudable, there are two main reasons why the government cannot support Bill S-203.

First, the measures proposed in this bill are inconsistent with the focus of the Controlled Drugs and Substances Act on convicted offenders whose crimes are directly connected to their addictions and who have the capacity and the motivation to successfully complete a standardized drug treatment program within a specified period of time.

Mental health treatment is different. There is not necessarily a connection between an offender's crimes and his or her mental health condition, nor is it possible to provide these individuals

with standardized treatment because of the wide variety of issues they may have, which may range from cognitive, personality and anxiety disorders through to full-blown mental illnesses such as schizophrenia or psychosis.

Treatment must therefore be individualized, flexible and aimed at stabilizing the condition of such individuals in order to allow them to be diverted or otherwise transitioned to the civil mental health care system.

Unlike drug treatment programs, where participants are considered to have successfully completed the program if they stop taking drugs, the success of mental health treatment cannot be measured in that way because people do not stop having a mental health condition just because that condition has been stabilized.

Honourable senators, allow me to provide a bit more detail on the issue of drug treatment programs, particularly those available under the supervision of drug treatment courts, since this is key to understanding why the government cannot support this Senate public bill.

• (1540)

Let us begin by recalling that subsection 10(4) of the Safe Streets and Communities Act was enacted expressly to address the fact that offenders with addiction issues commit a significant amount of crime, especially lower-level property crimes, in order to obtain money to purchase drugs.

Conviction typically leads to short jail terms that, in turn, create a "revolving door" phenomenon whereby recently released offenders quickly re-offend to obtain money to feed their addictions.

Drug treatment programs have been designed to help such offenders overcome their addictions and break the revolving door cycle. These programs are given effect primarily through six specialized drug treatment courts that are co-funded by the federal and provincial governments. Their purpose is to closely monitor offenders to ensure they comply with the treatment program.

Drug treatment courts have intervened on an ad hoc basis to manage the growing number of people with mental health issues entering the criminal justice system. While there is some overlap with drug treatment, since people with mental health problems self-medicate with illegal drugs, court-supervised mental health treatment targets a different subset of the offender population. It targets offenders whose treatment needs are caused by major societal issues such as institutionalization of the mentally ill and deficits in the mental health care system that have left many vulnerable people without care or supervision.

The approximately 30 courts in Canada supervising mental health treatment typically bring different psychological and social service providers together to provide a comprehensive response to the mental health conditions underlying the criminal behaviour of a person with mental health issues.

[Senator Dagenais]

Unlike drug treatment courts, these courts do not operate under a uniform model or according to standardized procedures, are not funded on a permanent, consistent basis and rely almost entirely on the assignment to them of judges and court personnel with knowledge of mental health issues.

As a result, they vary widely in the services they offer, the type of accused persons they accept, and the extent to which they require them to accept responsibility for their actions before offering supervised mental health treatment.

Given that formal criminal processes may not be appropriate for many persons with mental health issues, it is not surprising that these courts generally aim to divert such persons from the court system where possible. This is unlike drug treatment courts, which enter a conviction prior to treatment.

In this regard, Judge Schneider of the Toronto Mental Health Court had this to say in an article he wrote in 2008:

> To dangle the prospect of leniency in front of the mentally disordered accused and promise a lenient outcome only if a guilty plea is made completely undermines the voluntariness of the plea.

Honourable senators, I wonder whether it is appropriate to require a person with a mental health condition to admit guilt in exchange for treatment, and I suggest that this raises an issue of fundamental fairness with regard to the most vulnerable among us.

[*English*]

The second reason why the government cannot support this bill has to do with the sheer breadth of the issues it raises.

Honourable senators, the challenges for the criminal justice system posed by persons with mental health issues merit more comprehensive examination — including consultations with psychiatrists, social service providers and the judges who deal with these issues on a daily basis — than can be afforded within the confines of a Senate public bill focused on a single piece of criminal legislation.

[*Translation*]

Unilateral action would also not be appropriate in light of the complex, multifaceted and diverse nature of the mental health challenges to criminal justice that not only touch federal responsibility for criminal law, but also extend to the administration of justice and to other areas of provincial and territorial responsibility including health care and the delivery of social services.

Recognizing both the importance and the scope of these challenges, federal, provincial and territorial ministers responsible for justice and public safety have made mental health issues a standing agenda item for their annual meetings and agreed last year to move forward in close collaboration to address them in a coordinated and comprehensive manner.

In this vein, the federal Department of Justice, the Department of Public Safety, the Alberta Ministry of Justice and the Solicitor General co-sponsored the "Building Bridges" symposium on mental health issues that brought experts from various disciplines together to discuss how best to address the challenges posed by these issues.

The government, through the Department of Public Safety and the Department of Justice, also participated in the 2013 symposium of the Canadian Association of Chiefs of Police that focused directly on the issue of mental illness and the criminal justice system.

[*English*]

In short, federal, provincial and territorial ministers are seized of the issue. Given these broader initiatives and despite the well-intentioned nature of these measures, I would suggest that it is premature to consider a one-off solution to look at this broader problem, as has been proposed in Bill S-203, without a more thorough examination of how it may fit in with the ongoing federal, provincial and territorial efforts to which I have referred.

[*Translation*]

Honourable senators, I thank you for your attention.

The Hon. the Speaker *pro tempore*: It has been moved by the Honourable Senator Jaffer, seconded by the Honourable Senator Ringuette, that the bill be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

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

• 1550

STUDY ON CBC/RADIO-CANADA'S OBLIGATIONS UNDER THE OFFICIAL LANGUAGES ACT AND THE BROADCASTING ACT

THIRD REPORT OF OFFICIAL LANGUAGES COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE— DEBATE ADJOURNED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Official Languages, entitled: *CBC/Radio-Canada's Language Obligations, Communities Want to See Themselves and Be Heard Coast to Coast!*, tabled in the Senate on April 8, 2014.

Hon. Claudette Tardif: Honourable senators, I move:

> That the third report of the Standing Senate Committee on Official Languages, entitled *CBC/Radio-Canada's Language Obligations, Communities Want to See Themselves and Be Heard Coast to Coast!*, tabled in the Senate on Tuesday, April 8, 2014, be adopted and that, pursuant to rule 12-24(1), the Senate requests a complete and detailed response from the government, with the Minister of Canadian Heritage and Official Languages being identified as the minister responsible for responding to the report.

Honourable senators, I am pleased to rise today to speak to the motion to approve the report of the Standing Senate Committee on Official Languages, entitled: *CBC/Radio-Canada's Language Obligations, Communities Want to See Themselves and Be Heard Coast to Coast!*, tabled in the Senate on April 8, 2014.

If I may, I would like to share with you a few highlights from this report, which was unanimously adopted by the Standing Senate Committee on Official Languages.

First, I would like to thank my honourable colleagues, Senator Champagne, the committee's deputy chair, and Senator Fortin-Duplessis, both members of the steering committee, for the vital role they played in drafting the report.

I would also like to draw attention to the significant contribution of Senator Chaput, who initiated this study when she was chair, and the invaluable contribution of all the senators who helped with this study. I would also like to commend the remarkable work of our analyst, Marie-Ève Hudon, and the clerks, Danielle Labonté and Daniel Charbonneau. I would like to thank the CBC/Radio-Canada representatives who cooperated with us throughout the study. All the members of the committee express their gratitude and appreciation to the witnesses who agreed to share their experiences, their knowledge and their suggestions.

In the fall of 2011, the members of the committee undertook a study on CBC/Radio-Canada's obligations under the Official Languages Act and some specific aspects of the Broadcasting Act. Your committee had previously conducted a number of studies on the issue. However, this was the first time that the committee took an in-depth look at the key role that this federal institution plays in the advancement of Canada's linguistic duality and the development of official language minority communities.

The report is divided into three chapters. The first chapter defines CBC/Radio-Canada's language obligations under the Broadcasting Act and the Official Languages Act. The second chapter summarizes the key arguments of the witnesses who appeared before the Senate committee. The third chapter sets out the Senate committee's findings with regard to the public broadcaster's respect for language obligations and presents 12 recommendations to CBC/Radio-Canada and the Minister of Canadian Heritage and Official Languages on what improvements are needed.

In making its recommendations, the Senate committee first considered the conditions of licence recently issued to the corporation by the Canadian Radio-television and

Telecommunications Commission. It then highlighted the importance for the corporation to act in the spirit of the Official Languages Act.

More than 40 witnesses, represented by 81 spokespersons, gave testimony at public hearings. As a result, the committee was able to obtain a realistic and complete picture of the situation in all regions of the country.

The Senate committee's study examined various issues, such as the offer of services in English and in French, reflection of regional diversity, communications with the public and measures to enhance the vitality of English and French linguistic minority communities and advance linguistic duality. The study highlighted the concerns and expectations of a number of stakeholders with regard to CBC/Radio-Canada's language obligations. All the witnesses who appeared before the committee said that they believe in the importance of the services provided by the public broadcaster.

Honourable senators, one thing that everyone agreed on during this study is that CBC/Radio-Canada plays a key role in supporting the development and enhancing the vitality of official language minority communities. The corporation is considered to be essential to the development of communities in two ways: it provides a vital French presence and forms partnerships with community members.

To illustrate the importance of a vital French presence, the president of the Fédération culturelle canadienne-française pointed out that:

> . . . the Canadian francophonie cannot survive, grow and thrive unless it is heard, seen and experienced.

In some places in Canada, Radio-Canada is the only French news medium available, whether on television or radio. Under such circumstances, there can be no doubt that the public broadcaster's presence is considered essential. All of the witnesses who spoke on behalf of francophone and Acadian communities recognized that the corporation plays a critical role in maintaining a French presence across the country. Radio-Canada also plays a role in bringing communities together. According to the witnesses, it promotes key partnerships across many sectors, such as arts and culture, that directly affect the development of official language minority communities.

Unfortunately, CBC/Radio-Canada still falls short of expectations. The same complaints are made year after year: The broadcaster must provide an increased presence in the regions and has to do more to fully meet its language obligations. Even though the public broadcaster has made progress over the years, it still has many challenges in terms of official languages.

This study finds that CBC/Radio-Canada must take urgent action in order not to hinder the development of official language minority communities. Any cuts to services could have a negative impact on their survival and vitality in the long term.

Communities unanimously expressed their desire to see, hear and read about themselves on radio and television. Coverage of local events by journalists, reporters and video journalists in the regions was cited many times as being important to ensuring that the realities of official language minority communities are reflected not just in the regions, but also at the national level and on all platforms. The failure to reflect the regional diversity of francophones across the country on national programs broadcast in prime time was one of the strongest criticisms.

Consequently, CBC/Radio-Canada must demonstrate that its decision-making process, its mechanisms for consultation and accountability and its programming take into account the needs of communities.

Honourable senators, here are a few of the 12 recommendations made by the committee:

• (1600)

According to the conditions of licence issued by the Canadian Radio-television and Telecommunications Commission and in the spirit of the Official Languages Act, the committee recommends:

> That CBC/Radio-Canada take concrete and positive measures to enable all francophones across Canada to see, hear and read about themselves in French.

> That CBC/Radio-Canada ensure that all anglophones and francophones are offered programming of equivalent quality in all regions of Canada. CBC/Radio-Canada must be a leader in promoting linguistic duality.

That said, several witnesses noted significant differences in organizational culture between the French and English networks. They brought up the notion of the two solitudes. I would like to quote the president of the Fédération des communautés francophones et acadienne du Canada, who also brought up the notion of the two solitudes:

> This commitment to linguistic duality applies just as much to CBC as it does to Radio-Canada. But the fact that there are still two solitudes in a number of regions cannot be denied. When it comes to the CBC, it is as though our communities do not exist, most of the time. And yet, if ever we had an ideal agent to build bridges and foster a better understanding between English-speaking and French-speaking Canadians, it is indeed CBC/Radio-Canada.

That is also the opinion of our colleague, former Senator Pierre De Bané, who had the opportunity on several occasions and at various forums to share his thoughts on the CBC's failure to "contribute to shared national consciousness and identity."

An important point that was raised during the public hearings is that French-language services in Northern Canada are very limited. When the Association franco-yukonnaise appeared before the CRTC, the representative said:

> There is a clear imbalance between the services provided in English and French in the Canadian North. Because of the very structure of CBC/Radio-Canada, the situation is not comparable. On the English side, CBC North broadcasts programs for the North produced by people from the North for a northern audience. On the French side,

there is no SRC North, no specific budget, no office and no proper programs. This region of the country quite simply does not exist in French.

In my province, Alberta, CBC/Radio-Canada's French radio signal is not available in Jasper National Park whereas the English signal is.

The Executive Director of the English Language Arts Network pointed out a specific case of a community that did not have access to CBC's regional signal. He was talking about the community of Wakefield, near the Ontario border. He said:

> One ongoing problem with CBC is that the entire Ontario border receives the service from Ontario. Communities like Wakefield do not get a signal from Quebec so they feel completely isolated from the rest of the community.

Your committee also recommends that CBC/Radio-Canada immediately increase opportunities for collaboration between its English and French networks and that the board of directors share its collaboration plan with the Senate committee by December 31, 2014. The Senate committee believes that since the corporation has anglophone and francophone counterparts, it embodies linguistic duality and must ensure that it acts as an ambassador for this principle, as set out in Part VII of the Official Languages Act.

The Hon. the Speaker *pro tempore***:** Is it agreed that we will give Senator Tardif five more minutes?

Hon. Senators: Agreed.

Senator Tardif: It is important for CBC/Radio-Canada to increase opportunities for collaboration between its two networks and foster a common understanding of its language obligations. Based on the testimony the committee heard, it seems clear that the current mechanisms for dialogue between the two networks are flawed.

The committee recommends that CBC/Radio-Canada commit to reflecting the regional diversity and realities of official language minority communities in its national programming, during prime time, by promoting greater collaboration between its regional stations and its national network and facilitating exchanges from one station to another, one platform to another — radio, television and the Internet — and one network to the other.

The committee recommends that CBC/Radio-Canada demonstrate how feedback from consultations with official language minority communities was taken into consideration in its decision-making process and that the board of directors notify the Senate committee of action taken by December 31, 2014. Many witnesses called for changes to existing consultation mechanisms and the corporate culture so that the corporation is more aware of the needs of official language minority communities.

Over the course of the public hearings, official language minority communities called for the creation of a formal consultation mechanism that reflects the obligations set out in Part VII of the Official Languages Act.

Your committee also recommends that CBC/Radio-Canada commit to reflecting the artistic and cultural talents of anglophone and francophone minority communities in its national programming, during prime time, across all of its platforms — radio, television and the Internet. The public broadcaster must showcase many francophone and anglophone artists in Canada. The president of the Fédération culturelle canadienne française described how CBC/Radio-Canada contributes to independent producers as follows:

> The partnerships with independent producers are also beneficial to the development of the entire French-Canadian cultural industry, and particularly to the development of television production. Moreover, these partnerships help us to keep artists and cultural workers in our communities and prevent the exodus of talent to the large centres, an issue that is particularly problematic in the Canadian francophone community.

Your committee recommends that the Government of Canada, through the Minister of Canadian Heritage and Official Languages, provide targeted financial assistance to CBC/Radio-Canada so that it can continue to support local production in official language minority communities after August 31, 2014. Let's not forget, honourable senators, that in 2012, the CRTC decided to phase out funding until August 31, 2014, which represents a loss of $47.1 million to CBC/Radio-Canada.

The Senate committee recognizes that eliminating funding for improving local programming could have a devastating impact on official language minority communities.

• (1610)

The witnesses who appeared before the Senate committee were unanimous in saying that support for local programming was key to enhancing the vitality of official language minority communities.

Honourable senators, in light of recent events, from budget cuts to demographic changes, the development of new technologies to the realities of an increasingly competitive market, your committee is aware that the public broadcaster is facing significant challenges. However, as a federal institution, CBC/Radio-Canada is required to meet its obligations under the Official Languages Act.

Honourable senators, we believe that, in light of the testimony, CBC/Radio-Canada must work much harder to meet its official language obligations. The recommendations in this report are aimed at improving the situation, without delay. The Senate committee will very closely monitor the public broadcaster's actions in light of the recommendations in its report. The tagline "ICI Radio-Canada" must reflect everyone in Canada in every way.

Honourable senators, I therefore strongly recommend that you support this motion and adopt the report.

(On motion of Senator Fortin-Duplessis, debate adjourned.)

[*English*]

THE SENATE

MOTION TO CALL UPON MEMBERS OF THE HOUSE OF COMMONS TO INVITE THE AUDITOR GENERAL TO CONDUCT A COMPREHENSIVE AUDIT OF EXPENSES—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Downe, seconded by the Honourable Senator Chaput:
>
> That the Senate call upon the Members of the House of Commons of the Parliament of Canada to join the Senate in its efforts to increase transparency by acknowledging the longstanding request of current and former Auditors General of Canada to examine the accounts of both Houses of Parliament, and thereby inviting the Auditor General of Canada to conduct a comprehensive audit of House of Commons expenses, including Members' expenses, and
>
> That the audits of the House of Commons and the Senate be conducted concurrently, and the results for both Chambers of Parliament be published at the same time.

Hon. Percy E. Downe: Colleagues, when I announced this motion in advance of tabling it in the Senate, I did so with the intent of allowing MPs who have been so concerned with transparency and accountability in the Senate the time to prepare their own motion in the House of Commons to invite the Auditor General to audit the administration and members' expenses.

Given their past comments, I assumed MPs would immediately spring into action and I would not actually have to proceed with speaking on this motion. But it appears that the NDP MPs, who were so vocal on the issue of Senate expenses and the needs for openness and transparency with the spending of all taxpayers' money, have gone into the witness protection program. There has been no action from them on moving a motion to follow the lead of the Senate and invite the Auditor General to review the expenses of MPs. It turned out they wanted accountability for everyone else, but they did not want it for their own expenses. What a strange position.

After all, when former Bloc Quebecois leader Gilles Duceppe was accused of using parliamentary funds to compose a book and other expenditures for his political party, NDP MP Charlie Angus said, "I think the public needs to be assured that the MPs' offices are all meeting their obligations." I agree.

Now the cat has got his tongue. There are pages and pages of quotes from the NDP MPs reporting mock outrage over the alleged conduct of others, but their lack of action on transparency regarding their own expenses speaks louder than their words.

What a disappointment their actions must be to their supporters and to the Canadians who actually believed what they said.

I do, however, want to salute the leadership shown by Green Party leader Elizabeth May for her commitment to introduce a motion in the House of Commons asking the Auditor General to conduct a comprehensive audit of MPs' expenses. This comes in response to a letter I sent to all party leaders asking them to consider such a measure.

However, her motion did not go forward, and yet Stephen Harper, Thomas Mulcair or Justin Trudeau could easily move that motion, and I look forward to their leadership on this issue.

I am hopeful that one or all of them would do just that because, colleagues, the reality is that times change. What was acceptable 20 years ago, 10 years ago, is not acceptable now, and all parliamentarians have to keep up with the public demand for greater accountability.

Many MPs claim they are confident that their expenditures are in order. I believe them. Canadians, however, want proof.

In a study that was conducted for the Privy Council Office last August, accountability of politicians is one of the top-of-mind priorities for Canadians. Let me quote from that study:

> Recent allegations regarding misspending were perceived as a sign that more accountability was needed for all use of public money. The events of the past few months created a sense among participants that overspending or using public money for personal benefit may be widespread. Many participants spontaneously contrasted what they viewed as a waste of tax dollars by rich politicians to their more difficult personal situation. They were frustrated to think that public servants used Canadians' hard-earned tax dollars to live lush lifestyles while taxpayers personally struggled to make a decent living.

Canadians are requesting that Parliament be more forthcoming in how it spends and where it spends. It is not enough for parliamentarians to tell Canadians that they're managing their budget with careful consideration. Canadians want transparency when it comes to the way public institutions are run. To that end, parliamentarians must provide proof of their fiscal accountability. Canadians deserve nothing less.

Auditors General past and present have advocated for independent comprehensive audits of the Senate and the House of Commons. In an appearance before the House of Commons Standing Committee on Procedure and House Affairs this past November, Auditor General Michael Ferguson noted that an audit would "not only strengthen Members' accountability but would also enhance the public's confidence in the governance mechanisms of the House of Commons."

Mr. Ferguson's remarks echo those of his immediate predecessor, Sheila Fraser, who once said simply, "I think Parliament's auditor should audit Parliament." I agree.

In the Senate of Canada, we've already agreed to allow the Auditor General to conduct a comprehensive audit of all senators' expenses. However, to audit the upper chamber and only the upper chamber without doing the other half is to do half the job. Less than half, actually, because the budget of the House of Commons is more than four times that of the Senate.

No reasonable argument can be made against independent review of the fiscal management of a public institution. Canadians want the job done and the Auditor General is eager to do it. The only problem remaining is the unwillingness of some members of the House of Commons to invite him in.

I hope you join me in asking our counterparts in the House of Commons to follow our example and our lead and bring in the Auditor General to conduct a thorough examination of their accounts. A joint audit of both houses of Parliament is the only way to show Canadians that we take our responsibility for the public purse seriously.

Speaking of changing standards, let me conclude by speaking briefly about the CBC.

On February 26 of this year, our colleague Senator McInnis said at a meeting of the Standing Senate Committee on Transport and Communications, when the President of CBC was appearing as a witness:

> I want to help you tonight, if you can accept my words of wisdom. Whenever there is a dollar of Canadian money put into an institution, a Crown corporation, there is an obligation to tell the public exactly the expenditure.

• (1620)

Those are indeed words of wisdom. According to the CBC's annual report, 64.1 per cent of their budget totalling $1.54 billion comes from the Government of Canada. That's why many Canadians find it shocking that CBC senior staff and on-air personalities will not disclose their expenses to the same level that senators are currently releasing theirs to the public. Why not?

For example, on February 24, 2014, Peter Mansbridge led off *The National* with:

> Senators' expenses are at the top of our broadcast once again tonight. This time we're talking about how much senators, who were Liberal until recently, spent on their travel, or more precisely, how much you spent on their travel. Like with the Conservatives, some of the totals are high, and some senators show a liking for executive-class travel.

I have breaking news for you, Peter. Our expenditures are public. Why aren't yours? You see, colleagues, it's not about how the CBC spends its money; it's that it won't say how it spends the money. What's good for the goose is good for the gander, and I would invite the CBC to match the disclosure level of the Senate of Canada and tell the Canadian public how it is spending our tax dollars.

In conclusion, honourable senators, expectations change and standards of what is considered to be true accountability and transparency have changed dramatically. It is our responsibility as parliamentarians to address the public discussion, which has been lacking in the way our institutions govern themselves. We are doing our part in the Senate; it is now time for the House of Commons and the CBC to join us in the fight against the transparency deficit.

Hon. Elizabeth Hubley: Honourable senators, I would like to speak in favour of Senator Downe's motion. I, too, believe there should be an Auditor General's study in the House of Commons. There is simply no good reason not to. The audit will either find problems that can be addressed or it will praise members for their sound management. It is hard not to acknowledge the appropriateness of having members of the House of Commons subject to the same level of scrutiny as their fellow parliamentarians in this chamber. Similarly, it would be fitting to conduct both studies at the same time. After all, it makes sense to examine Parliament as a whole and to report on Parliament as a whole. That way, the Canadian public can have a more complete picture of how this institution spends their money.

In doing so, we might demonstrate to Canadians that we are indeed conscientious in managing our affairs and that as we perform our duty to hold government to account, we in both houses of Parliament are not afraid of being held to the same standard.

For our part, we in the Senate have already taken that crucial first step of requesting an audit. It is time for the House of Commons to join us in making this a true audit of the whole of Parliament. That is why I call upon our counterparts in the house to follow our lead and ask the Auditor General to conduct the same comprehensive audit as is taking place here.

Proper management must be seen to be done, and the only way to accomplish that is through the work of an official like the Auditor General with the authority and the resources to do the job that needs to be done. All that remains is for the House of Commons to allow the auditor to do that job.

Hon. Jane Cordy: Honourable senators, I am also going to speak to Senator Downe's motion, which calls upon the members of the House of Commons to join the Senate in its efforts to increase transparency by acknowledging the long-standing request of the Office of the Auditor General of Canada to examine the accounts of both houses of Parliament. This audit would help to ensure that Canada's tax dollars are spent justly. I would also like to thank Senator Downe for bringing this motion to the Senate of Canada in the spirit of more openness and accountability for all parliamentarians. Canadians deserve no less.

Current and former Auditors General of Canada have long expressed their willingness and readiness to conduct an audit of both houses, the Senate and the House of Commons. Indeed, Michael Ferguson, in an appearance before the House of Commons Standing Committee on Procedure and House Affairs in November, touted his office's "unique ability to contribute" to such a study. With his office's extensive

experience and expertise with government procedures and financial practices, he feels that his office is best able to take on this task.

Mr. Ferguson also cited a discussion paper his office had produced, a passage from which neatly summarizes what is at stake:

> As long as there are questions about the transparency of payments made to members, the public will have doubts about the integrity of the whole system. It is essential for the well-being of Canada that its Parliament enjoys public respect, rather than being criticized for a lack of transparency in public spending that would be open to scrutiny in other jurisdictions.

Fortunately, honourable senators, members of the House of Commons have a simple solution to this problem: Invite the Auditor General in to conduct the same kind of comprehensive audit that is currently under way in the Senate. We can't tell the other place how to manage their affairs any more than they can tell us how to manage ours; but we can urge them to listen to Canadians who are calling for a Parliament that is transparent in its affairs.

I urge honourable senators to join in and support Senator Downe's motion. Canadians demand that the House of Commons face the same level of scrutiny as the Senate. I'm sure we would all agree it is necessary to maintain an accountable and transparent government when it comes to the spending of public funds. Inviting the Auditor General of Canada to conduct such a comprehensive audit of House of Commons' expenses, including members' expenses, would be the prudent course of action. Canadians demand this scrutiny. I know that senators welcome this scrutiny. The Auditor General believes this type of financial scrutiny is necessary.

This type of audit can only be conducted at the request of MPs themselves. There's something inherently wrong with this procedure. In Nova Scotia, former Auditor General Jacques Lapointe simply announced he was doing the audit of MLAs because it was public money. The Auditor General of Canada should be allowed to do his job and subject all of Parliament to the same level of financial scrutiny as the upper chamber. This is what Canadians are demanding.

I've quoted the current Auditor General Michael Ferguson. I shall close by quoting his predecessor. In 2006, following an appearance before the Senate Legal Committee at which she referred to discussions regarding an audit of Parliament, the well-respected then Auditor General Sheila Fraser remarked, "I think Parliament's auditor should audit Parliament."

Honourable senators, it is difficult — it is impossible — to argue that point.

I would like to thank Senator Downe again for his courage in bringing forward this motion for transparency of all of Parliament in light of what he has been hearing from Canadians.

Hon. Jim Munson: Honourable senators, I want to thank Percy Downe for finally giving me a pay raise in the Prime Minister's Office 12 years — no, that's the wrong speech. He was once my boss.

Honourable senators, I'm thankful for Senator Percy Downe's motion calling on the House of Commons to invite Auditor General Michael Ferguson to conduct an audit of its members' expenses.

Like others in this chamber and indeed throughout the country, I have contemplated the same idea. With this motion, we now have a vehicle for urging our colleagues in the House of Commons to strengthen Canadians' trust in Parliament and the work we do on their behalf.

• (1630)

What is remarkable about this motion is that it is founded on the most basic principles of accountability. As Senator Downe has said:

> No reasonable argument can be made against the Auditor General conducting a review of the fiscal management of a public institution.

Conservative MP Peter Goldring's alarmist reference to a possible audit of the House of Commons as a "witch hunt" demonstrates just how far detractors of our colleague's motion will go to convince Canadians that it will take us down a wrong path.

To be a senator is an honour. I've always seen my role in this way, and I know you do as well. We have been personally and professionally impacted by the wrongdoings of colleagues. But, as challenging as this period has been for us, what matters first and foremost is public trust. Canadians deserve to feel confident that their interests matter and their tax dollars are spent responsibly.

Those of you in this chamber and those MPs who insist that an audit of the House of Commons is unnecessary are supporting a double standard, and worse. Can we really afford to ignore the possibility that financial reporting rules for MPs are as confusing and susceptible to abuse as they have proven to be here?

This is no time to highlight the differences between the Senate and the House of Commons. Whether we are elected or appointed, we are here to serve Canadians. We are joined in the process of creating and adopting laws to fulfill important social purposes and economic purposes. To insist that a comprehensive audit be confined only to the Senate is like telling Canadians that we are not united in our duties to them. It is important that the Auditor General be allowed to do his job. What is good for the Senate should be good for the other chamber, the lower chamber. In fact, the house is a much larger institution than the Senate. Our expenditures represent a fraction — less than a quarter — of MPs' expenditures.

The Auditor General recently made this comment on a report about the administration of the House of Commons. He said:

> The House of Commons is the keystone of Canadian democracy and is funded with public money. Canadians expect their public institutions to be well managed and accountable for the safeguarding of public assets and the use of public funds. This makes it important that the expenditures of the House and its Administration withstand public scrutiny and that appropriate policies

> and practices are in place to ensure fairness, consistency, and transparency. Transparency and accountability help to support the House's credibility and its reputation.

Those are the words from the Auditor General.

What applies to its administration applies to its members. It is time to recognize this and for the House of Commons to join the Senate in undergoing a complete audit. In doing so, MPs will demonstrate to Canadians that their talk about transparency and accountability is more than just talk and that they are willing to stand up to the same level of scrutiny the Auditor General is currently applying to senators.

I, too, would like to praise Senator Downe for this work. In saying so, I hope that, as we speak on this particular motion, some of our Conservative colleagues feel the same way. We are in a new era here, and I hope some Conservative senators will stand and support this very important motion.

(On motion of Senator Fraser, for Senator Mercer, debate adjourned.)

[*Translation*]

ROLE IN REPRESENTING THE REGIONS OF THE CANADIAN FEDERATION—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Nolin, calling the attention of the Senate to its role in representing the regions of the Canadian federation.

Hon. Dennis Dawson: Honourable senators, as others before me have done, I would first like to congratulate Senator Nolin on all the inquiries he has raised. He has set the tone for the changes needed in this institution, and I congratulate him on that.

These inquiries are interesting on a number of levels, but I will limit myself to one aspect only, namely regional representation. The action that I am proposing today has nothing to do with Senator Nolin's motion, even though we are looking forward to debating the motion.

I will start by wishing Senator Nolin every success in fulfilling his wish of convening an exploratory and extraordinary caucus consisting of all the senators from Quebec, regardless of political stripe. Since he is on the government side and is the dean, he is the right person to take the leadership of this initiative.

A number of people have talked about the similarities between the regions. There is no better example than the province of Quebec. Let me humbly make some specific recommendations for the agenda of this extraordinary caucus, starting with the promotion of federalism.

Last month, I had the opportunity to talk about the election of a federalist government in Quebec City, but, unlike other people, I don't believe that separatism is dead. The death of separatism has been announced all too often in the past. However, federalist Quebecers are the only ones who can promote federalism. That is something we have in common as senators, regardless of which side of the chamber we are on. We are certainly no longer able to count on the Canadian Unity Council, an entity that brought together Quebec members of Parliament and senators to promote Canada. If the caucus combining both sides could take on this responsibility, there would be some progress in promoting federalism.

Protecting and promoting the French language is a second item on the agenda. I would like to congratulate Senator Tardif, Chair of the Standing Senate Committee on Official Languages, on protecting official language minority communities. However, Quebec senators have a responsibility that goes beyond francophone minorities outside Quebec. They have a responsibility to promote and protect French in North America and to ensure its long-term survival. We have the critical mass to do it, and we must do it. As senators, that could be on our agenda.

This mandate is international in scope, too. The Association des parlementaires francophones, the APF, will meet in Ottawa in July. Canada — and Quebec senators in particular — must make sure to keep the pressure on the APF to protect and promote French not only in Quebec and Canada, but around the world.

It starts with Parliament. It is clear that we have a responsibility as francophones to talk about the French fact in both Houses of Parliament. One characteristic that most Quebec senators have in common is the language, and one of their duties is to protect it.

When the Fathers of Confederation created the special arrangement with respect to Quebec senators, their goal was to protect the French language.

I will also talk about protecting the anglophone minority later on, and about the $4,000 qualification that applies to Quebec senatorial divisions, which was instituted to defend that anglophone minority in Quebec.

We should really look at why it took so long for bilingualism to be made mandatory for officers of Parliament. Why is it that, even today, we are still debating whether Supreme Court justices should be bilingual? Once again, it seems obvious that this is something that affects not only francophones in Quebec, but also those outside Quebec, and we have to do it together. However, we have a greater responsibility in that respect because we represent a province with a francophone majority.

Looking around at some of my colleagues, I have to acknowledge the progress made by the anglophone senators who are now speaking in French in the Senate. I see my colleague from Alberta, who is asking the Leader of the Government in the Senate questions in French. I would also like to congratulate Senator Carignan, who responds in French. We are making progress. That did not happen in the past.

Take the deputy leader, for example. She is second only to Senator Mitchell in terms of the French she has learned since she came to the Senate. That deserves to be recognized.

Some Hon. Senators: Hear, hear!

Senator Dawson: Moving on to senatorial districts now.

• (1640)

[*English*]

I see my friend Senator Watt over there. In Quebec, as you know, we have senatorial districts. I'm sad to say that Senator Watt comes from a region that represents a third of the province of Quebec but, as they say in French, he's not on the map. These 24 senatorial districts of Quebec exclude everything north of Chibougamau, including the region of our friend Senator Watt. We have that definition of "senatorial districts" in common. Now that the Supreme Court has brought it up, as Quebec senators we should be able to debate what that means from now on. What does it mean that a third of the province is not represented? I have a senatorial district that has 100,000 people and Senator Carignan has a senatorial district that probably has 1.5 million. How can we say that these senatorial districts are supposed to be balanced if they are that disproportionately different? That's another issue that we have in common as Quebec senators, and we should be addressing it.

[*Translation*]

I believe the issue of the $4,000 was also examined by the Supreme Court. We need clarification, particularly in Quebec, with regard to how that applies to the senatorial districts.

Let's talk about our presence and the representativeness of Senate committees. We are not talking about inequality or ill intent. Since Quebec senators make up 23 per cent of this chamber, how is it that only one committee chair is from Quebec? I don't think this situation is a result of a conspiracy. As a region, we have not stood up for our interests. It is important that Quebec senators on both sides of the chamber be able to take on their fair share of representation. This is not a sign of ill intent. The situation is just an anomaly. Coincidentally, I am the chair in question. We need to think not only of our chairs but also of our deputy chairs. Looking at the chart, we can see that, for all sorts of reasons, we are under-represented, just as some other regions are overrepresented. I am the chair of the Transport Committee, which is made up of three senators from Quebec and four from Nova Scotia.

If we want to come back to the very essence of the notion Senator Nolin was talking about, regional representation needs to be reflected not only in this chamber and in what we say here but also in our committees. We must have regional representation on our committees if we want to fulfill our primary role of protecting minorities.

This experimental caucus would give us a chance to see. I gave you a list but we will certainly have the opportunity to work together to come up with other topics of debate in which we have a common interest. We should give ourselves the mandate of making improvements on all non-constitutional issues. The tone has been set. Let's take advantage of this opportunity to do just that.

In order to represent Quebec's interests, and given that we have a minister responsible for federal relations, there would be a caucus that Minister Fournier could meet with so we could support his efforts to defend Quebec's interests. That is the purpose of the regional representation established by the Fathers of Confederation. Let's get back to the grand old tradition of regional representation. Moreover, this applies to the other caucuses.

[*English*]

Let us be clear here. I believe that all regions should have the same objectives we do, but we have a particular number of interests that are different, language being one of them, and the promotion of federalism. You don't have to promote federalism, but we do.

I humbly say thank you, Your Honour, for the work you have done. I'm quite sure if we could have these kinds of occasions we would make this place look much better than it has in the last few months.

[*Translation*]

Hon. Pierre Claude Nolin: Senator Dawson, will you accept a few questions?

Senator Dawson: Yes.

Senator Nolin: Senator Dawson, you have reflected on this important relationship of senators and their representation of the people in their division. Have you thought about how senators' representation could be organized? This is not just about governments, and you alluded to that. Our responsibility is not just to represent what I would call, in the German tradition, provincial governments, but to reach and represent regional populations. Have you thought about how this regional representation would be organized and what it would look like?

Senator Dawson: Thank you for the question. I do not claim to have the answer. However, we could find it by working together as a Quebec caucus.

In recent history, there have been times where, of 24 Quebec senators, 20 were from the Island of Montreal. The goal of the Fathers of Confederation was not to give the Montreal region a disproportionate weight. I am looking at the acting speaker and the Honourable Senator Fortin-Duplessis. The Quebec City region has never been so well represented, in terms of quality and not just numbers.

There is a way to do this. We can improve it. We can do it by working together and not just as individuals.

(On motion of Senator Tardif, debate adjourned.)

MOTION TO URGE THE GOVERNMENT TO ESTABLISH A NATIONAL COMMISSION FOR THE ONE HUNDRED AND FIFTIETH ANNIVERSARY OF CONFEDERATION—DEBATE ADJOURNED

Hon. Serge Joyal, pursuant to notice of March 6, 2014, moved:

> That the Senate urges the Government to take the necessary measures to establish a National Commission for the 150th Anniversary of Confederation charged with the

> responsibility of preparing and implementing celebrations, projects and initiatives across the country to mark the 150th anniversary of Confederation during the year 2017. Further, the Senate urges that the membership of this commission include representatives from all the provinces and territories and that, in addition to any budget voted by Parliament, the commission be able to receive contributions from Canadians.

[*English*]

He said: Honourable senators, it might seem somewhat strange that a subject like the celebration of the one hundred and fiftieth anniversary of Canada, which will take place two and a half years from now, should be raised today, but I personally had a concern. I remember very well the centennial of 1967 and the World Exhibition that took place in Montreal. I said to myself, "If that exhibition took place in 1967, then they should have prepared it some years earlier."

It came to my attention that last year the House of Commons Standing Committee on Canadian Heritage tabled a report in the other place entitled *Canada's 150th Anniversary in 2017*. The report was tabled on September 12.

It is about a year and a half ago.

• (1650)

Of course, in the Speech from the Throne in October 2013, the government announced a celebration, but since then we have heard absolutely nothing. There is no leadership that seems to materialize somewhere.

Being triggered by that, I said I should go into the archives and look into how the Centennial Commission of 1967 was put together. It will please Senator LeBreton because she might remember that. I'll be quoting the Right Honourable Diefenbaker. Prime Minister Diefenbaker, believe it or not, in 1959, already stated publicly the objective of the celebration of the centennial. I will quote from the Hansard of the House of Commons of December 19, 1961. So spoke Diefenbaker:

> I might point out that, on October 4, 1959, at Assumption University in Windsor, I referred to the one hundredth anniversary and said this:
>
> > It is the intention of the government of Canada to communicate with the provinces shortly to secure their views and ideas. My hope is that each province will set up an organization, out of which a national committee will be formed — with representatives of all the provinces of Canada, of church and religious bodies, of cultural organizations, of business, labour and agriculture, and all the elements of Canadian Life — to make and coordinate appropriate plans for national celebration.

So said Diefenbaker in 1959, almost eight years before 1967. The Diefenbaker government — and I went through the archives again — introduced a bill, Bill 127, An Act Respecting the Observance of the Centennial of Confederation in Canada, that was adopted on September 18, 1961. In 1961, six years before the centennial, the government already had an idea of the structure that should be put into place to make the centennial the celebration that I still remember as vividly as if it had happened last year.

I said to myself that we are two and a half years away from the celebration, and where is the person, the body, the organization that is responsible? I bet that it sits with Canadian Heritage, but, again, the House of Commons Standing Committee on Canadian Heritage made recommendations on September 12. I would say they did a serious review of the proposal. They held 18 meetings, heard from 54 groups and individuals and received 15 written submissions. They came out with a voluminous report with 19 recommendations. One of their key recommendations is similar to Prime Minister Diefenbaker's initiative: to establish an overall framework to encourage Canadians to participate in the celebration of Canada's one hundred and fiftieth anniversary.

In section 9 of Mr. Diefenbaker's Bill 127, they:

> ...establish a commission to promote interest in and to plan and implement programs and projects relating to the centennial of Confederation in Canada, in order that the centennial may be observed throughout Canada in a manner in keeping with its national and historical significance.

I think Mr. Diefenbaker's government got it right. They did the right thing at the right time, which is ahead of time, to make sure that the commission would be headed by prominent Canadians with some credibility to rally support and beat the drums — in other words, to raise the money — because in fact one of the purposes of the commission was to raise money, to raise interest. In order to raise interest nationally, somebody has to go to address the Imperial Club, the Canadian Club, the Kiwanis, the chambers of commerce, the churches, all of the groups, the sports organizations, the cultural organizations. Someone has to talk to Canadians, and Canadians have to feel that they have a share in the proposal. I think that the government that succeeded Mr. Diefenbaker, Mr. Pearson and the then Secretary of State Maurice Lamontagne continued exactly the same trend set by the Diefenbaker government, and it was a success.

When I went through the archives again, I got hold of all of those reports about the various activities that were organized, activities like a Confederation train and caravans, activities related to youth travel and folk art, activities related to performing and visual arts, activities related to athletics and voyageurs canoe pageants for our friends the Metis and Manitobans, activities related to ceremonial, historical and general, activities related to federal-provincial grants, activities related to public relations and information and activities coordinating all of the federal departments and agencies.

Honourable senators, again, we are at two and a half years before the celebration, and where are we going? Not that I am desperate that somebody is not talking to the right person in the Canadian Heritage Department, but, again, Canadian Heritage, in its recommendations, in my opinion, got it right also because the committee recommended that, of course, there be a structure and that that commission or national committee — call it whatever name you want — be concerned with leaving legacies to Canadians. It won't be just spending millions of dollars and, the year after, having nothing left.

All honourable senators will know that, for instance, in Parliament there is a legacy, the Centennial Flame. When you enter this building each morning there is something left from the centennial, and it is a symbol that all visitors on the hill can see and appreciate. What will the permanent legacy in Parliament be for the one hundred and fiftieth anniversary? I broaden the question: What is the legacy that this chamber, the Senate of Canada, will leave to our successors in the institution? There is some reflection to have.

Then, the other recommendation of the report addresses the participation of Canadians. Of course we — and when I say "we" I see everybody in this chamber — will want to widen, as much as possible, the participation. I'm looking at Senator Demers.

[*Translation*]

There is no doubt that sports institutions must be involved in celebrating Canada's one hundred and fiftieth anniversary. Why? Because this is an opportunity to celebrate Canada's athletic talent, just like our artistic, scientific and cultural talents, and to celebrate the institutions that have built this nation, as well as the diversity of our population, which makes Canada such a vibrant country and continues to attract thousands of citizens around the world who want to join us and share what we have built together.

[*English*]

It seems to me this is a very important moment to sing together, to come together on some objectives that are beyond our differences. We have to celebrate also what unites us, not only our differences. We in the Senate, as Senator Dawson was alluding to before, all understand the regional distinctions and so forth. That is basic in the federation, but, beyond that, we share something in common. The one hundred and fiftieth anniversary is an opportunity to signal that, to identify that and to flag that.

That's why, honourable senators, I put that motion. I put that motion because I'm concerned about that. Some call it nation building, but I think that there is nothing wrong in the nation building. On the contrary, there is positive substance in the nation building when there is something for everyone. That is something we have to highlight.

I appeal to the government, to our colleagues on the other side and to the government leader and the former leader to press the government to come forward so that we can buy in, so that all Canadians can buy in. You will maybe ask me who I see as being able to beat the drum. We have a Speaker who will be retiring in November, who is well respected on both sides of this house, who speaks both languages, who has long served Canadians. He could be part of the sesquicentennial council.

• (1700)

For instance, there is former ambassador Marc Lortie who has been in France and had a distinguished career, you will remember, as former Press Secretary of Prime Minister Mulroney, and whom everybody will be happy to applaud in such a position. There is the Honourable Hilary Weston, former Lieutenant Governor of Ontario, a distinguished Canadian. I'm sure in all provinces we could find respected people who could be representative of what we have done best in this country, and we need desperately to come together.

This, in my opinion, is a historical moment that won't come back. For the two hundredth anniversary of Canada, we will be gone. We all have a chance to do something in 2017, and I appeal to the government's side to press upon it. I'm sure that there's goodwill for proposals like that.

I read the speech the Mayor of Ottawa made on April 7 at the Economic Club of Canada whereby he's looking for government leadership.

We want to have the opportunity to rally behind the flag of a commission or a committee. Call it whatever you want, but somebody will be there to represent, on a regular and daily basis, those objectives of celebration whereby we will all be proud to be Canadian in 2017.

Honourable senators, that is what I propose to terminate the day, but on a positive note, I'm sure we all have the same sentiment and feeling in relation to celebrating our country. Thank you, honourable senators.

Senator Eaton: I would like to adjourn the motion in my name and also say that he speaks for himself when he says he won't be here for the two hundredth anniversary of Canada.

(On motion of Senator Eaton, debate adjourned.)

HUMAN RIGHTS

COMMITTEE AUTHORIZED TO STUDY HOW THE MANDATES AND PRACTICES OF THE UNHCR AND UNICEF HAVE EVOLVED TO MEET THE NEEDS OF DISPLACED CHILDREN IN MODERN CONFLICT SITUATIONS

Hon. Mobina S. B. Jaffer, pursuant to notice of March 26, 2014, moved:

> That the Standing Senate Committee on Human Rights be authorized to examine and report on how the mandates and practices of the UNHCR and UNICEF have evolved to meet the needs of displaced children in modern conflict situations, with particular attention to the current crisis in Syria; and
>
> That the committee submit its final report no later than December 31, 2014.

She said: Honourable senators, the Standing Senate Committee on Human Rights is proposing to study the mandates of UNICEF and UNHCR through a case study of the situation of Syrian children in that country and neighbouring ones. This will allow us to go beyond theory and generalities and study the situation on the ground for children.

UNHCR, UNICEF and other partners have focused on this issue with the No Lost Generation strategy, which is seeking $1 billion for education and protection programs for Syrian children given the scale of the crisis.

UNICEF recently reported that the Syrian conflict has been the most damaging one in the region in recent times for children, affecting 5.5 million of them. This number includes 1 million children in areas that are under siege and where humanitarian assistance providers cannot reach due to the violence.

Thousands of children have lost limbs and the UN estimates 10,000 children have been killed, with UNICEF saying the number may be far more.

About half of the Syrian school-aged children living in the country or neighbouring countries are not in school. Two million children need psychological support or treatment. One in 10 Syrian children is a refugee, and the situation keeps getting worse. The number of children affected has doubled in the past year.

The Syrian conflict seems an appropriate choice for the committee given the magnitude of its impacts on children. It also provides the opportunity to look at how the mandates of UNHCR and UNICEF function in different settings, such as within Syria itself; in countries where there are designated refugee camps, such as Jordan; and in countries where there are no such camps and refugees are dispersed, such as in Lebanon.

The committee will be assessing whether there will be a need for travel after hearing from a number of initial witnesses. Honourable senators already have the order of reference in front of them, and therefore I ask the Senate to approve this study.

[*Translation*]

Hon. Joan Fraser (Deputy Leader of the Opposition): May I ask the committee chair a question?

The Hon. the Speaker *pro tempore***:** Absolutely.

[*English*]

Senator Fraser: Senator Jaffer, the subject is gripping. Does the committee plan to travel, Syria being a war zone right now?

Senator Jaffer: I did say the committee will look at travel once we have heard testimony from a number of witnesses. We have not decided as of yet.

[*Translation*]

Hon. Ghislain Maltais: Am I entitled to a short debate? This is a very important file.

The Hon. the Speaker *pro tempore***:** You are absolutely entitled to that.

Senator Maltais: Thank you, Senator Jaffer, for the work that you have done on this file. For the three years that I have been here, I have been affiliated with the Organization for Security and Co-operation in Europe. I have had the opportunity to attend five meetings, and thanks to our Prime Minister, Canada was the first country to raise the issue of Syrian refugees. Canada is a leader on this file.

Honourable senators, indulge me for a moment. Close your eyes and just imagine 2 million refugees with no water, no shelter and no food. Beyond any religious or political considerations, we are human beings. We are all fathers and grandfathers. There is nothing more important than humanity. The people in Syria are living in inhuman conditions. They are thirsty, they are hungry and they are not sure if they will live to see tomorrow because, unfortunately, there are terrorists among them. It is a real massacre.

As a democratic country, Canada has done more than its share. At the beginning of the Syrian crisis, Canada was the first country to come to the aid of the women, children and men in Syria. The Americans came next. I see that Senator Downe is here with us. We went to Geneva together and joined Senator Massicotte in Istanbul, Montenegro and Vienna to advocate for the refugees, because the 59 countries that had direct responsibility were lagging behind. Canada is not next door to Syria. It is very complicated to deliver humanitarian assistance to that country.

Furthermore, it's not up to the neighbouring countries of Jordan, Lebanon and Turkey, alone, to provide assistance. It's up to humanity as a whole. European countries, and in particular the Mediterranean countries, took their time and are still waiting to provide assistance. I won't name them, but you know who they are.

Since Canada has become involved in these meetings, England, Germany, Belgium and France have started to provide a little assistance. It is much easier for them. I think that, as human beings, we have a duty to encourage people to share what little milk of human kindness we have left.

Honourable senators, if we do not provide assistance to them, they will eventually come to us for what they need. I think that as Canadians, we have a duty to help them, but we also have a duty to put pressure on other countries to help their neighbours and to help alleviate the suffering of those Syrians in refugee camps. Thank you.

• (1710)

[*English*]

Senator Jaffer: Senator Maltais, will you take a question?

Senator Maltais: Yes.

Senator Jaffer: I have looked into what you were saying, and Canada has done an exceptional job in the funding it has provided for UNICEF and UNHCR. One of the reasons Senator Andreychuk has suggested this study is because of the tremendous

support we have given and that we have to look at how the mandate is working and how we can move to make sure the monies provided are going to the children.

Do you agree with the work of the committee?

[*Translation*]

Senator Maltais: I agree with Senator Jaffer, but I believe that under the terms of reference, we should look at what the Department of Foreign Affairs is doing in conjunction with the OSCE and UNICEF. We shouldn't get involved in a lot of different initiatives because we will be overwhelmed. We need to be practical and realistic because people can't wait for centuries. Help is needed immediately, not in the future. It is needed now, today.

[*English*]

Hon. A. Raynell Andreychuk: Senator Jaffer indicated that I proposed this study, and I was very pleased to see her enthusiastic response, and the committee's, in studying it. The purpose was not to look at whether Canada's contribution or activities were adequate or otherwise. In the Human Rights Committee, we have studied areas that other people are not looking at. There is so much coverage now on children and the plight of children in Syria that you would have to be tone deaf not to hear the voices coming out of the Syrian situation; they are always focused on the children.

The problem is that a lot of people don't study the mechanisms as much as they should. We always say, "Well, the UNHCR is there." But the real fact is that, in Lebanon, the refugees are not recognized refugees; they're only now starting to be registered. They're over the borders in a very unknown situation. We also know that UNICEF has its mandate and gets money to do what it has to, but the needs of children are way beyond what UNHCR and UNICEF can provide.

The other thing is that these agencies were started in response to the needs of the day. We haven't really looked at whether UNHCR has the appropriate mandate to fit into today's conflicts. Many of them are now intra-country conflicts, inside a country. This is not a war. This is not a cross-border dispute. This is Syria's internal dynamics. There are children today dying, and there are children who are not being adequately dealt with. Those agencies that can work minimally inside Syria also need to be addressed.

The Human Rights Committee could do a valuable job for the Government of Canada and the UN system in looking at where we need to modernize the mandates and look at the needs of the children today, because they are vastly different than what the expectations were when these were set up. It's absolutely true that we have children who have been born in refugee camps and continue to live in refugee camps, and so it was a timely study.

That's why the travel issue is secondary. There's an urgency to find out what is being done and what needs to be done. Then the committee can look at whether there's a need to go on the ground. But the more urgent thing is to sort out responsibilities and see where there is an adequate response and where there is a need that isn't being covered by agencies or countries, because I think there is a false impression that once UNHCR or UNICEF is involved, somebody is looking after the children. They are only looking after as many as they can within their mandate and in the way they can.

My concern is with what is happening in Syria, which has gotten itself into this situation, and what is happening on ground in Jordan, Lebanon and Turkey. This should be of great concern to us.

The study is very timely, and I trust the Senate will approve it. We will look at the issue whether there is an expense for travelling, but I have a strong feeling that we'll have more witnesses here than we can handle.

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

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON SECURITY CONDITIONS AND ECONOMIC DEVELOPMENTS IN THE ASIA-PACIFIC REGION—FOURTH REPORT OF COMMITTEE ADOPTED

Leave having been given to revert to Other Business, Reports of Committees, Other, Item No. 1:

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Foreign Affairs and International Trade (budget—study on security conditions and economic developments in the Asia-Pacific region—power to hire staff and to travel), presented in the Senate on May 1, 2014.

Hon. A. Raynell Andreychuk moved the adoption of the report.

She said: Honourable senators, this is the study that the Standing Senate Committee on Foreign Affairs and International Trade is undertaking regarding Asia-Pacific. We have identified a number of countries that warrant a specific study. There is ample information on China, but we chose others that are emerging. Indonesia, for example, is one of the significant countries coming up. If you look at all factors, there are some difficulties in these countries that need to be addressed.

The purpose of this study is to look at the opportunities for Canada to increase and strengthen our relationship with the countries in Southeast Asia, but also to look at security concerns. Marrying the economic opportunities always gets you to security concerns, anything from cybersecurity to transport of goods over the Pacific Ocean.

One of the issues regarding security is that we have a security architecture for the Atlantic Ocean, but we have no security architecture in the Pacific. We are starting to build confidence-building measures, plus bilateral and multilateral organizations that may look at it, but we wanted to look at this area in depth from a Canadian perspective.

We submitted a budget and it was approved by the Internal Economy Committee, which is why this report is before us. It was a fairly extensive budget, but we were the committee that was told we would have to put in all 12 members, and we traditionally do not have 12 members travelling. We have always put in what the associated cost is, but on travel costs, particularly in these areas, the minute you know when you're going, you then shop for the discounted airline proposals. So we anticipate the costs will not be what were provided for.

We've also asked the Standing Committee on Internal Economy, Budgets and Administration to provide all of us with how we can put our budgets in so they are more realistic. My deputy chair and I think it would be appropriate.

The other thing that has come up is that even if the Senate approves it, we rarely spend the amount because we're constantly looking for efficiencies throughout our system. We need to find a way of posting the actuals in a way that our press colleagues will understand what we've actually spent rather than the proposed. Putting in the higher amount for a proposal is the way business does it, everyone does it. But when you look at the books at the end of the year, you look at what they actually spent, and we want the Senate to be in the same position.

Honourable senators, I ask for approval of this report.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

• (1720)

UNEQUAL ACCESS TO JUSTICE

INQUIRY—DEBATE ADJOURNED

Hon. Mobina S. B. Jaffer rose pursuant to notice of February 6, 2014:

> That she will call the attention of the Senate to the issue of poverty in Canada — specifically unequal access to justice.

She said: Honourable senators, this was an inquiry originally started by Senator Robichaud and, unfortunately, I was not able to speak to it before we prorogued, so I would like to finish what he said.

I want to begin by thanking Senator Robichaud for initiating this debate on poverty in Canada and for his dedication to this important issue. I want to complete what he had done, because at that time I wasn't able to do it.

Today I want to focus on one particular devastating effect of poverty: unequal access to justice.

Honourable senators, when I attended the Canadian Bar Association's Envisioning Equal Justice Summit, participants from all spectrums of the justice system spent two days considering how to move forward with this serious issue. Equal access to justice simply means that everyone has the same rights and protections under the law. This is essential in a democracy and fundamental to the rule of law.

However, for this to become a reality, we need to ensure that all people have legal help when needed, just like they have medical help when they're ill. When a senior is unjustly evicted from her apartment or a refugee is deported without first exercising available procedural and substantive rights, we fail in our commitment to fostering a just society.

On the issue of equal access to civil justice, the 2011 World Justice Project rule of law index ranks Canada ninth out of 12 high-income countries. Canadians living in poverty are disproportionally affected.

In Canada's court system, many litigants are seeking justice on their own, without the representation of lawyers. Studies show that outcomes are much better when people have access to professional advice. Legal advice comes in many forms, including information, assistance or representation, depending on the situation.

To ensure equal access to justice, we must first end poverty. This requires a holistic approach. Piecemeal policy amounts to a band-aid solution: a temporary fix to our justice and social system tragically devoid of a reliable safety net. Public and private organizations should work together to improve the situation.

Lawyers and other legal service providers are considering ways to get more services at more price points to more people. Let us examine what's happening now. Lawyers are planning to continue doing pro bono work. The courts and judges are working to become more receptive and welcoming to unrepresented litigants, who are by far the majority in the court system.

The other part of this picture is leadership and public funding. All levels of government, and particularly the federal government, must recommit to being part of the solution. Easily understandable and accessible public legal information can be made available for everyone to allow people to prevent or avoid legal problems when that is possible.

Legal education at an early stage can equip young people to become legally capable for their encounters involving legal issues that they will undoubtedly face later in life. In other words, honourable senators, we must work to close the gap in the quality of education between public schools in poor neighbourhoods and affluent neighbourhoods.

Education is a provincial jurisdiction, but we need federal leadership to facilitate support systems and relationships between educators and legal professionals across Canada. Courts and other justice facilities should be reassigned to focus on the needs of people. For example, offering many legal services under the same roof would be very helpful to a single mother whose family lives in poverty and who has difficulty accessing public transportation.

It is critical that governments ensure that adequate funding is allocated to legal aid programs so they are there to ensure that legal help and professional representation are available for the most marginalized and vulnerable populations in our society when serious matters are involved.

Instead, to meet budgetary targets, legal aid plans have needed to lower their financial cut-off of who is eligible for help. Generally, a person working for minimum wage at Tim Hortons won't get help. In Ontario, a person's annual gross income must be less than $10,500 to qualify for legal aid. In British Columbia, the maximum is only a little higher at $17,760.

The other way that legal aid plans are forced to stay within the budget is to narrow what they offer in terms of services. Many do not provide any services for what is called poverty law, which means for such things as tenancy issues or problems with government benefits and income security.

Even coverage for family law, which can involve important and fundamental issues around custody of children or support for those children, is very limited in most jurisdictions.

Many are spending limited resources on websites, hot lines and brochures which can play a useful role. However, when a person is frantic with worry over an urgent family law matter, has literacy challenges, mental health or addiction issues, or doesn't speak an official language, these resources cannot help. People in urgent situations tend to need someone to hear their story and step in to help, rather than being left to navigate complex processes on their own. This is not only a matter of decency, but it is also a matter of fairness and equality. This is a matter of good fiscal sense and sound public policy.

Many studies from abroad have put a price on the savings to the public purse achieved for every dollar spent on legal aid. While the results vary from country to country, depending on the methodology and other factors, a legal aid dollar is generally said to save about $6 or $7 of public funds in other areas: for example, social assistance when people are able to obtain child support.

Emerging studies in Canada have also found that investing in justice saves public money. Furthermore, unresolved legal problems take an incredible toll on individuals and families, often leading to serious health and financial problems which cascade into further legal problems with more serious consequences.

Despite a greater understanding of the devastating impact of unresolved legal problems on the lives of people in Canada, particularly of the more disadvantaged members of our communities, spending on justice is negligible in Canada. Justice spending continues to lose out against spending on health care, yet a small amount of reinvestment in justice would lead to savings in other pockets of the public purse, notably health care.

Simply put, investing in justice, and particularly in legal aid, is sound public policy. The current situation is commonly described as a crisis. Work is being done to address that crisis, but there is no national coordination; it's like a body with no head. No coordinating brain is devising a sensible path forward. Government leadership is seriously lacking.

This is where the federal government needs to step up and take on this challenge, as it did at the foundation of modern legal aid programs in Canada in the early 1970s. The federal government makes a financial contribution for criminal legal aid, but that has diminished proportionately over the years at the same time as the pressures for criminal legal aid grow with the recent legislative changes. There is some constitutional obligation to provide funds for criminal help, and resources spent to meet that obligation take away from those for legal aid services.

Again, there is no leadership at the federal level. No federal minister is even responsible for civil legal aid. Whether a federal contribution exists for civil legal aid at all is controversial. The federal government says it makes a contribution through the Canada Social Transfer, but the provinces disagree that there is anything in the transfer for those services.

A Canadian expert in the area has described legal aid as a social program so tattered and torn as to be unrecognizable to what it was intended to be when first established. Members of the working poor and middle class are increasingly finding that access to legal help is unavailable and unaffordable, and our courts are literally swamped with unrepresented litigants.

We must always keep in mind that the reality is that these shortfalls hit the most vulnerable, marginalized and desperate populations the hardest.

Before I conclude, honourable senators, I want to recognize the incredible work that Dr. Melina Buckley, Ms. Gaylene Schellenberg and the Canadian Bar Association do to improve access to justice. These people and the Canadian Bar Association are on the forefront of those making sure all Canadians have access to justice. I thank them for working on our behalf and bringing this issue of access to justice to our attention.

• (1730)

The Envisioning Equal Justice Summit that they hosted last year I hope will prove a springboard for more concerted policy action on this issue.

Today I have explored the issue of poverty as it connects directly to denials of justice every day in every province and territory; but the federal government and we, as senators, have an important leadership role to play in ensuring access to justice more broadly.

We are far behind the leadership shown by the central governments of other federal states, including the U.S, where President Obama established an Access to Justice Initiative in 2010, and Australia, where the federal government has developed a comprehensive strategic framework for ensuring access to justice for all Australians.

Honourable senators, we need to become part of this discussion and take a lead in finding a solution so that all Canadians will have access to justice. Without access to justice, we will dilute a just society that all of us worked hard to create.

Thank you.

(On motion of Senator Fraser, debate adjourned.)

(The Senate adjourned until Wednesday, May 7, 2014, at 1:30 p.m.)

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