



DEBATES OF THE SENATE

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 66

OFFICIAL REPORT
(HANSARD)

Wednesday, October 26, 2016

The Honourable GEORGE J. FUREY
Speaker

CONTENTS

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

Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
Publications Centre: Kim Laughren, National Press Building, Room 926, Tel. 613-947-0609

Published by the Senate
Available on the Internet: <http://www.parl.gc.ca>

THE SENATE

Wednesday, October 26, 2016

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

Prayers.

SENATORS' STATEMENTS

TURKEY

NINETY-THIRD ANNIVERSARY OF REPUBLIC

Hon. Anne C. Cools: Honourable senators, October 29 is the ninety-third anniversary of the birth of the Republic of Turkey. That day in 1923, the Grand National Assembly of Turkey declared the new Turkish Republic. That day, that same assembly unanimously elected the republic's first president, Mustafa Kemal, later styled Atatürk, "Father of the Turks." This began a new and glorious chapter in the life of the Turkish nation, once the heart of the Ottoman Empire.

Interestingly, in Ankara just three and a half years prior, on April 23, 1920, Turkey's Grand National Assembly itself was established, marking the dawn of Turkey's liberation war, the postlude to World War I. This national assembly was a large and powerful initiative that announced Turkey's wish for modernity, constitutionalism and democratic principles. This assembly drove modern Turkey's remarkable beginning, the clear indication of its great and promising future.

Colleagues, the Republic of Turkey's birth ended the peculiar five-year fight after the Great War's end, when the Allies fought a proxy war with the Turkish Nationalists led by Mustafa Kemal. Wishing to drive the Turks "bag and baggage" out of Europe, British Prime Minister David Lloyd George asked the British dominions to send troops to help him. The dominions, particularly Canada, led by Prime Minister Mackenzie King, declined to send troops.

In the fall of 1922, Canadian Andrew Bonar Law replaced Lloyd George as Prime Minister of Britain. A man for peace with the emerging Turkey, he dispatched his foreign minister, Lord Curzon, to negotiate peace with Mustafa Kemal. Lord Curzon and Atatürk reached that peace in the Treaty of Lausanne, on July 24, 1923, the only treaty from World War I that is still extant and in force. Shortly thereafter, the Republic of Turkey was born and embarked on reforms in its political, economic and cultural affairs.

Turkey is a beautiful and glorious country and a respected and powerful member of the international community. Canada and Turkey share history, particularly the Gallipoli campaign and the Çanakkale wars. Canada and Turkey work together in many international projects. On October 29, Canadians will join and uphold their Turkish friends to celebrate this defining day that set Turkey on its successful journey of transformation into a modern democracy.

THE LATE SHIRLEY RYAN

Hon. David Tkachuk: Honourable senators, it is fashionable today to talk about glass ceilings, and I want to say a few words about a woman who was shattering them long before the term was coined.

Shirley Ryan, who died on October 10, was born in 1929. She came of age in the 1950s. That would be right around the time that June Cleaver of the hit television show "Leave It to Beaver" typified the suburban stay-at-home housewife. While June Cleaver was vacuuming the house in pearls, a dress and elegant footwear, Shirley was entering what was at that time the very male-dominated world of high finance in Toronto. She carved out a career at Wood Gundy, eventually rising in the ranks to the head of public relations.

In 1971, Shirley moved to Saskatoon with her husband Bill. She cut a swath through town and the province for decades in both politics and business, and usually in elegant red footwear. They were her trademark.

As her obituary points out, Shirley worked in a variety of careers, all while raising her sons Robert and Peter. Shirley sat on the Airport Authority Board, was president of the Mendel Art Gallery board and published a weekly newspaper in Saskatoon with her husband.

But she realized her fullest potential as the executive director of the North Saskatoon Business Association. She turned that organization into one of the most vibrant and influential groups in Saskatchewan. If you were a politician, you wanted to speak at one of her many events. The place was always packed. Such was her work there that she was honoured as one of the most influential women in Saskatchewan.

I knew her from the world of politics as well as business. She was a hard-working Conservative partisan; make no mistake about it. But she was a wonderful woman and she lived a full and long life.

She was also a straight talker, told you exactly what she thought, and just because she disagreed with you didn't mean she didn't get along with you. She had real friends in all the political parties.

On behalf of all senators and the people of Saskatchewan, I offer my sincere condolences on her passing to Bill, her husband for 55 years, her sons Robert and Peter and her extended family and many friends.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mr. Bruce Fitch, MLA for Riverview in the Legislative Assembly of New Brunswick. He is the guest of the Honourable Senator Mockler.

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

Hon. Senators: Hear, hear!

[Translation]

RICHARD SAILLANT

A TALE OF TWO COUNTRIES: HOW THE GREAT DEMOGRAPHIC IMBALANCE IS PULLING CANADA APART

Hon. Percy Mockler: Honourable senators, today it is my honour to congratulate the team at the Canadian Institute for Research on Public Policy and Public Administration, renamed the Donald J. Savoie Institute, of the Université de Moncton in New Brunswick.

Professor Richard Saillant, Director of the Donald J. Savoie Institute, has just published a book entitled *A Tale of Two Countries: How the Great Demographic Imbalance is Pulling Canada Apart*.

Honourable senators, Professor Saillant said, and I quote:

Population aging is hardly a new topic. . . . This phenomenon can no longer be ignored by any government and yet until recently few people had noticed it.

• (1410)

[English]

Honourable senators, in the book entitled *A Tale of Two Countries: How the Great Demographic Imbalance is Pulling Canada Apart*, by Professor Saillant, in his foreword, Donald J. Savoie, the winner of the Donner Prize for 2015-16, calls the great demographic imbalance “one of the country’s most demanding challenges for the next two decades.” He goes on to say that Professor Saillant “charts a path forward to ensure our future does not lead to balkanization of the welfare state in Canada” with an aging population. *A Tale of Two Countries* is a must-read for those seeking an accessible, well-documented analysis of Canada’s democratic future.

Honourable senators, Professor Emeritus, Queen’s University, Thomas J. Courchene says:

This book will be very welcome in most policy circles. It is clearly very timely and very well written and will have an important policy influence. . . . The demographic analysis is a tour de force.

That is according to Courchene.

Honourable senators, if you have not received it yet, you will be receiving your book in the next 48 hours. To Professor Saillant, *chapeau levé*, a job well done for Canadians.

SUGAR CONSUMPTION

Hon. Nancy Greene Raine: Honourable senators, earlier this week the Minister of Health announced that major revisions will be done to update the Canada food rules and the nutrition facts table that is found on all processed foods. This is very good news.

Everyone is concerned with the rising rates of obesity, and there’s no doubt that too much sugar is being consumed, which is part of the problem. Canadians want to know how much sugar is hidden in processed foods, and they want it to be clear on the labels.

There has already been extensive consulting on the issue, starting as far back as when Leona Aglukkaq was Minister of Health. In June 2015, under the leadership of Rona Ambrose, Health Canada published proposed regulations in the *Canada Gazette*, Part I, seeking input from the public throughout that summer. These regulations sought to propose a daily value for total sugar intake and required that the percentage daily value of these foods be included in the nutrition facts table.

In addition, all sources of added sugars would be grouped together in the ingredients list of the foods. This would help consumers understand the proportion of total added sugars in a food compared to other ingredients.

The daily value for total sugar intake that was proposed by Health Canada was 100 grams. As we learned when doing the Senate study on the rising rates of obesity, defining a daily value in grams, as was proposed, is not directly comparable to the World Health Organization’s recommendation that less than 10 per cent of total calories per day should come from added sugars.

The U.S. government just came out with new targets for sugar that are similar to the WHO’s. Incidentally, the WHO is now proposing to recommend only 5 per cent of added sugars in your diet as a percentage of the calories you expend. Using a percentage of calories makes us realize that if we’re sedentary and not burning up a lot of calories, we should have less sugar. If we’re more active, we will need more.

Colleagues, 100 grams of sugar, which is what Health Canada proposed as a daily value, equals 20 per cent of a 2,000-calorie diet. Why would Health Canada allow Canadians to think this is a good target? I hope the consultation period we’re going to go through will revise this to a form of information that the public can better understand.

Honourable senators, one can of pop contains more than the daily recommended level of added sugar as recommended by the WHO. We learned during the obesity study done by the Standing Senate Committee on Social Affairs, Science and Technology that the rising rates of obesity are very complex and there is no silver bullet, but it is really important that we get the sugar facts right on our food labels. Canadians want and need to know how much added sugar they should be consuming.

THE LATE BRYAN PEARSON

Hon. Dennis Glen Patterson: Honourable senators, Bryan Pearson has been described as a curmudgeon, abrasive, and even by his beloved brother Robert at Bryan’s memorial service in

Iqaluit this week, as a “cuss.” But he also displayed warmth, generosity and a willingness to perform acts of charity that he usually kept secret. And Bryan devoted 60 years of his life to his community in business and in public service.

He started the first taxi business in Iqaluit, the first movie theatre — well, it was really more like a converted Quonset hut — the first arcade and the wondrous Arctic Ventures store, which carried exotic merchandise and gourmet foods from all over the world.

Bryan’s attitude toward his businesses was expressed by him in a recent video tribute posted on Facebook following his death, when he said of his Astro Theatre venture:

The Astro Theatre, in my estimation, is the most important single recreation facility that ever happened in this community in the past 50 years, because it’s a morale booster.

Bryan was also known for an acerbic and ready sense of humour. One of his more recent businesses was being the town’s only undertaker. While terminally ill with the cancer that took his life, he recently quipped to a long-time friend, “Who’s going to bury the undertaker?”

Bryan was the first Mayor of Iqaluit and founded the city’s world-famous Toonik Tyme spring festival, which has run for 57 consecutive years.

He also served two terms on the territorial council representing South Baffin. One of Bryan’s colleagues in the territorial council represented Rankin Inlet in the legislature. He was waxing eloquent one day that Rankin Inlet was the “centre of the North.” “Yes, dead centre,” interjected Bryan.

Here are only a few of his accomplishments as mayor and territorial councillor: Bryan brought the first pavement to the city.

As a councillor, he quietly intervened with an Edmonton hospital to stop the practice of involuntary tubal ligations of Aboriginal mothers there to give birth. Imagine the lives that were saved by that.

As councillor, he focused the territorial government’s attention on the dire housing needs in the Eastern Arctic through constant interventions, including once brandishing pictures of a baby swaddled in blankets that were frozen to the wall in sub-zero conditions inside a poorly insulated house. Bryan included a thermometer in the picture that showed the sub-zero temperature in the dwelling. He is credited with successfully pushing for the creation of the Northwest Territories Housing Corporation.

He was also instrumental in the creation of the first Interpreter Corps. He did this by talking to Commissioner Stu Hodgson after one of his speeches in Pangnirtung. The commissioner expected a hapless interpreter to repeat the long and complex message, which the interpreter tried to do, unsuccessfully, making people laugh. “Great interpreter, eh?” the commissioner said to Bryan. “They don’t understand a bloody word you said,” Bryan told the commissioner. He then and there persuaded the commissioner to

establish the first Interpreter Corps, recognizing simultaneous interpreters as worthy of recognition and respect as highly skilled professionals.

In the 1970s, Inuit prisoners were sent south to be imprisoned in far-away foreign institutions, isolated from families. Bryan found two available buildings and created Ikajuktauvik, an enormous success.

Today I want to pay tribute to a man who was devoted to his community and its citizens, made a difference in their lives but also put the Northwest Territories and his community of Frobisher Bay and later Iqaluit on the map, and I mean the world map. He was a man who was known to and friends with movie stars, a man who knew prime ministers and the Royal Family — Her Majesty, Prince Charles and Prince Philip — who knew them because he brought them to the North. He put our little town on the map and made the citizens of this isolated place feel recognized by the most important people in the country and in the world.

• (1420)

ROUTINE PROCEEDINGS

TREASURY BOARD OF CANADA SECRETARIAT

PUBLIC ACCOUNTS OF CANADA— 2015-16 REPORT TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the Public Accounts of Canada for the year ended March 31, 2016, pursuant to section 64 of the Financial Administration Act.

[Translation]

SENATE MODERNIZATION

TENTH REPORT OF SPECIAL COMMITTEE PRESENTED

Hon. Serge Joyal, Deputy Chair of the Special Senate Committee on Senate Modernization, presented the following report:

Wednesday, October 26, 2016

The Special Senate Committee on Senate Modernization has the honour to present its

TENTH REPORT

Your committee, which was authorized by the Senate on Friday, December 11, 2015, to consider methods to make the Senate more effective within the current constitutional framework, now reports as follows:

In its first report tabled on October 4, 2016, your committee examined the nature of a senator's constitutional role and now recommends the following:

That the Senate develop a mission and purpose statement modeled on the following:

The Senate is the appointed Upper House in Canada's bicameral Parliament. It plays an important complementary role to the elected House of Commons by:

- (i) Providing independent "sober second thought" to legislation, with particular respect to Canada's national interests, aboriginal peoples, regions, minorities and under-represented segments of Canada's populations;
- (ii) Undertaking policy studies, reports and inquiries on public policy issues relevant to Canadians; and
- (iii) Understanding, sharing and representing the views and concerns of different groups, based on a senator's unique perspective.

That the Senate direct the Committee on Rules, Procedures and the Rights of Parliament and the Committee on Internal Economy, Budgets and Administration to review the totality of its administrative rules as embodied in the *Senate Administrative Rules*, its procedural rules as embodied in the *Rules of the Senate*, as well as the Senate administrative processes, and revise them such that they incorporate the multiple roles of the modern Senate.

That the Senate direct the Senate administration to develop appropriate guide books and manuals that reinforce and support senators in discharging their multiple roles.

Respectfully submitted,

SERGE JOYAL

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Joyal, report placed on the Orders of the Day for consideration two days hence.)

THE SENATE

NOTICE OF MOTION TO AFFECT QUESTION PERIOD OF NOVEMBER 1, 2016

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, in order to allow the Senate to receive a Minister of the Crown during Question Period as authorized by the Senate on December 10, 2015, and notwithstanding rule 4-7,

when the Senate sits on Tuesday, November 1, 2016, Question Period shall begin at 3:30 p.m., with any proceedings then before the Senate being interrupted until the end of Question Period, which shall last a maximum of 40 minutes;

That, if a standing vote would conflict with the holding of Question Period at 3:30 p.m. on that day, the vote be postponed until immediately after the conclusion of Question Period;

That, if the bells are ringing for a vote at 3:30 p.m. on that day, they be interrupted for Question Period at that time, and resume thereafter for the balance of any time remaining; and

That, if the Senate concludes its business before 3:30 p.m. on that day, the sitting be suspended until that time for the purpose of holding Question Period.

ADJOURNMENT

NOTICE OF MOTION

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, November 1, 2016, at 2 p.m.

QUESTION PERIOD

INTERNATIONAL TRADE

CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

Hon. Claude Carignan (Leader of the Opposition): My question is for the Leader of the Government in the Senate and has to do with the Canada-European Union Comprehensive Economic and Trade Agreement. I raised the specific case of Belgium last week, because the Wallonia region objects, in part, to the agreement.

We know that this free trade agreement would have had huge economic benefits for Canadians, if a deal had been reached. In fact, Canada would have been one of the only developed countries to enjoy guaranteed, preferential access to more than 800 million consumers in the world's two largest economies, the United States and the European Union.

We cannot simply throw in the towel and give up, as the Minister of International Trade did last week. Unfortunately, as I see it, she dropped the ball at the one-yard line.

Is the Liberal Party okay with the fact that the minister has completely given up and stopped fighting to get the agreement signed, when that deal would have had huge economic benefits for Canadians?

[English]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. He is quite correct in pointing out the importance of CETA for Canada. It is an agreement that is, in the government's view, a 21st century gold-plated standard for free trade agreements, and it is one the government is actively pursuing and will continue to pursue.

I do not accept the premise of the question with respect to the diligence and excellent work the minister is doing being characterized as the question poses. The government has continued to have conversations and discussions with the appropriate officials in the European Union. As the government has made clear, the ball is now in the European Union's court, and those conversations with respect to how they solve their internal issues regarding Wallonia's concerns are ones that they will have to deliberate upon and come to a conclusion on.

In the meantime, the Government of Canada is actively involved in pursuing all avenues available to us to remind the European Union of the advantages. As recently as this morning, I would note that the President of the European Council, Donald Tusk, made a very strong statement of how important this agreement was for Canada and for the European Union, and how Canada was a valued partner of the European Union.

It would be wise for us all to be as supportive of the negotiating teams on both sides when it comes to this opportunity.

[Translation]

Senator Carignan: I am surprised by the Leader of the Government in the Senate's assessment of the minister's work on this failed deal. I think we still need to make every effort to get the agreement signed. Former Quebec premier Jean Charest publicly called on the Prime Minister of Canada to engage with the French President, Mr. Hollande, and the German Chancellor, Angela Merkel, to urge them to get involved in the negotiations. The reality is that Europe's credibility is at stake as well.

Prime Minister Trudeau spoke to the President of the European Commission on Monday and to the President of the European Parliament on Tuesday, but has he spoken to President Hollande and Chancellor Merkel? If not, does he intend to do so soon in order to clean up the mess his minister made?

[English]

Senator Harder: The negotiating team, including the Prime Minister, is pursuing all possible avenues for making Canada's case, but as I stated in my earlier answer, it is clear that the issue of the day is really within the European Union itself.

If you read the article from former Premier Charest a little further, he also suggests that now is not the time for some of the calls to be made. It is appropriate that we exercise some restraint

[Senator Carignan]

in our public comments and that we put as much concerted public pressure on the European Union to advance, from their side, the circumstances that would allow Canada and the European Union to sign this important agreement.

[Translation]

Senator Carignan: Prime Minister Trudeau and the leaders of the European Union were supposed to sign CETA at the Canada-European Union summit, but since talks are still under way between the European Union and the Walloons to repair the damage done by the minister, can the Leader of the Government in the Senate tell us whether the Prime Minister plans to go to Europe and whether the Government of Canada still expects to sign CETA tomorrow and ratify it in 2017?

• (1430)

[English]

Senator Harder: It is the desire of the Government of Canada to have this agreement signed as soon as the European Union is able to come to a common position that would allow the European Union and Canada to sign this. No announcement with respect to the postponing of any summit has been made, and it is my ongoing hope that the European Union will find a way to achieve the objective of being able to sign this in the coming, literally, hours. I would hope that it is the view of all senators in this place that the European Union come to such a view so that all sides can take advantage of what has been successfully negotiated, which was begun, I will acknowledge, by the previous government and pursued by this government. Honourable senators, this is a Canadian agreement.

[Translation]

Senator Carignan: The agreement was both initiated and pretty much done by the former government. All the minister had to do was carry the ball one yard to the end zone, but she dropped it. What is more, the current government has failed to negotiate a softwood lumber agreement with our next-door neighbour, the United States.

With regard to the Trans-Pacific Partnership, the Minister of International Trade told the Canadian American Business Council the following last December, and I quote:

It's not my job to persuade anybody that TPP is good.

The trade agreement between Canada and Europe is in jeopardy because the minister dropped the ball at the one-yard line. That is not a great record on trade for the Liberal government, and particularly not for the minister. If CETA cannot be signed — and that would be unfortunate — what is the Liberal government's plan B for international trade? What does it plan to do to repair the damage caused by the minister's incompetence?

[English]

Senator Harder: Without accepting the premise or, frankly, side remarks of the question, I think it's occasion for, again, all parliamentarians to underscore the importance of free

trade agreements for Canada. By my own count, there were at least three or four times, in the course of the CETA, where the Government of Canada of the day appropriately thought that the agreement was at a faster pace than it ultimately was. These things take time, and I do think it would be useful for us all to try to convince all parties, including the Walloons, of the advantages of this agreement. With respect to the broad area of trade agreements, it is the policy of the Government of Canada to pursue a wide number of those agreements, while ensuring they fulfill the obligation of the government to ensure that the agreements are in Canada's interests. For those reasons, the government is undertaking a series of consultations with respect to the TPP. It wouldn't be out of context to reference that those conversations are both bilateral and with other stakeholders and in the multilateral sense.

So I think that the position of the government is well understood. The tireless efforts of the minister have been noted by all stakeholders, and let's come together on this to pursue Canada's interest in the coming days.

Hon. Percy E. Downe: To achieve the CETA agreement, Canada had to waive the visa requirements for Bulgaria and Romania, at the request of those countries, notwithstanding serious security concerns, for many years. Would it be the intention of the government to still waive those visa requirements if, by chance, CETA does not proceed?

Senator Harder: I thank the honourable senator for his question, but I think it's premature.

Senator Downe: Could you explain to us then: The government — and you may have been there at the time as Deputy Minister of Foreign Affairs — had serious security concerns, still ongoing, with Romania and Bulgaria. We all know what they are. Why did the government agree to waive the visa requirements? Was that simply to secure the deal, or did it hurt Canadians at the same time, under some security concerns, to get this deal?

On the question about CETA not going through, I assume the government has a backup plan. Either they will agree to waive visas for Romanians and Bulgarians, or they will go back to our original position. Could you find that out, please?

Senator Harder: I thank the honourable senator for his question. By "premature," I think that it is premature for a government to state publicly what it might do and what the consequence would be of a situation that is ongoing.

With respect to the question posed, I'd be happy to pursue that, but I would caution that I would think that the answer would not be forthcoming in the present circumstances.

PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

CHILDREN IN IMMIGRATION DETENTION

Hon. Victor Oh: My question, Senator Harder, is one that I didn't get an opportunity to ask Minister Goodale yesterday. It is related to the immigration detention of children.

Based on an access-to-information request from the Canadian Council for Refugees, it is estimated that 82 children were detained in 2015.

In my home province of Ontario, there were 33 detained for an average of 42 days and a maximum of 222 days. Problematically, these numbers do not paint the complete picture because children accompanying a parent as guests are not being counted.

Minister Goodale has committed to finding alternatives to housing children in immigration detention, but how can we get an accurate understanding of this issue if we do not have access to complete statistics, including those related to the number of children held in detention, with details of their age, gender, length of detention, reason for detention and place of detention? How can we know how many Canadian-born children are being detained for immigration-control purposes inside facilities that resemble medium-security prisons?

After being elected, the Liberal government committed itself to setting a higher bar for openness and transparency. My question is: Will this commitment extend to publishing detailed statistics on immigration detention, including how many minors without a formal detention order are being housed with their parents?

If so, could you please ask the government to provide us with a timeline for when this information will be made available to the public?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. Like him, I wish he had posed it to the minister yesterday. I will undertake to seek an answer to the question.

Hon. Mobina S. B. Jaffer: Leader, the minister was in front of the Defence Committee some time ago, and I asked him about children's detention. He did commit to look into this, and I gave him examples of a 12-year-old child being detained. He assured me, and I accepted his assurance, that he would review this policy.

Over the summer, I wrote him a number of letters because this situation is still continuing, and I have not received an answer from him as to what he is doing. So, when you are making the inquiry, can you please find that out as well?

Senator Harder: I will indeed.

JUSTICE

JUDICIAL VACANCIES

Hon. Denise Batters: My question is for the Leader of the Government in the Senate. Senator Harder, after months of pressure from the Senate Legal Committee, the Justice Minister has finally appointed 24 judges. That leaves 40 more to go. Last week, I asked about the huge number of judicial vacancies. This is a major factor in criminal court delays, and it recently led to a first-degree murder charge being dismissed. You replied that we only have 5 per cent judicial vacancies in Canada.

Last week, Nunavut's Justice Deputy Minister told our Legal Committee: "... our main concern respecting delays in the criminal justice system is the ongoing shortage of judges ..."

• (1440)

Two out of their six judicial seats are vacant. Senator Harder, that is a 33 per cent vacancy rate, and none of the judges named last week will fill these Nunavut spots. Why are the people of Nunavut being left out in the cold? Is it because their only M.P., Hunter Tootoo, is no longer a Liberal M.P. or cabinet minister?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question and ongoing interest in judicial appointments.

You are quite right, senator, to refer to the announcement last week of, I believe, 24 justice appointments. I would note that 14 of them are women and that the desire of the government to have a judiciary that is more reflective of us, the citizens, is a desirable outcome.

I look forward to the minister continuing to make those appointments in a timely fashion. And I will, of course, bring your question to the attention of the minister.

This is an ongoing issue of concern to a number of members of the judiciary. The minister is very sensitive to this and is taking appropriate steps to seek an acceleration while ensuring that the process of identifying and selecting judges is more transparent, more open and more inclusive in its conclusions.

Senator Batters: Senator Harder, there has been no indication from the justice minister, who approved the names of these new judges. Hopefully, it was someone other than just Gerry Butts. I did note that several of these new appointments are Liberal Party donors. So, Senator Harder, did these names come from more pay-to-play fundraisers like the \$500 private reception with the justice minister held at a Bay Street law firm? Or did the Trudeau government finally take our advice, and the advice of the Supreme Court's Chief Justice, and use approved names from the conservative government's judicial advisory committee lists? If you did use the lists, then why is the Liberal government dismantling our well-functioning JAC system? This will only compound Canada's court crisis.

Senator Harder: I thank the honourable senator for her question and, of course, I would not accept the premise of a large part of her rhetoric.

The government is very confident that we have put in place a process of appointing judges that is transparent and accountable to Canadians and promotes greater diversity on the bench. That is the objective that the minister has stated for herself. The application process is rigorous and detailed, and it is the expectation that the judicial advisory committees, as they are rebalanced in size and composition, will reflect this in the recommendations that come forward as the minister makes her decisions.

[Senator Batters]

Hon. Mobina S. B. Jaffer: Leader, as you know, the Legal Committee has been travelling, and when we were in Alberta the Chief Justice there was very vocal on the vacancies. And when I asked him the question of how long these vacancies had been in place, he very promptly informed me that these vacancies are not since the Liberal government came into power. These vacancies are long-standing.

Some Hon. Senators: Oh, oh!

Senator Jaffer: I am one of those people who want judges to be appointed as soon as possible, so that's not the issue. But Leader, what the minister is trying to do is to have committees that suggest names of people the judicial committees should be looking at as representatives. What the Prime Minister and the minister are trying to do is form committees that will reflect the new Canada. At the moment, as you know, there is no person of colour on the Supreme Court of Canada. We have very few — one or two — in the British Columbia Supreme Court.

So the question I would like to ask you is if you can tell us how many Aboriginal judges are in the Supreme Court of Canada and in the Court of Appeal, and how many people of colour are on the Supreme Court of Canada and the Court of Appeal. What the minister is trying to do is to reflect the new face of Canada, and that's why she is taking her time. And I applaud her for that, but I ask you to find this information out for me.

Senator Harder: I thank the honourable senator for her question and her commitment to hold the government to account for diversity to which it has committed itself.

I, of course, will find the information that is requested, but I do think the honourable senator knows the answer to that with respect to the Supreme Court, and I would be happy to share that information with all senators.

And the honourable senator is quite proper in highlighting the distance that we have to go in this country and that the first step has begun with the courage the minister has taken to take the time to put in place the mechanisms that will achieve the diversity that Canada ought to have in its judicial system at this most senior level.

CITIZENSHIP AND IMMIGRATION

APPOINTMENT OF CITIZENSHIP JUDGES

Hon. Thanh Hai Ngo: Honourable senators, this question is for the Leader of the Government in the Senate. Canada's citizenship and immigration system is in crisis due to the government's paralysis in appointing citizenship judges. An article posted on the CBC News web site October 21 said that wait times for more complicated citizenship cases have been getting worse.

The citizenship judges provide a vital role in Canada's immigration system. They rule on complicated citizenship applications and officiate in citizenship ceremonies.

In September 2015, there were 26 citizenship judges. Today there are merely 7. And I know that there are none, currently, in Ottawa.

The government has not appointed a single citizenship judge since it came to power last year. As a result, the system is facing a growing backlog and the processing times for citizenship applications are getting longer as well. The immigration minister, the Honourable John McCallum, states that the government is currently identifying candidates to fill these vacancies.

My question is: Why is the government only now identifying these vacancies, and when they will be filled? Are you planning to change the appointment process for citizenship judges as well?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question and ongoing interest on matters respecting citizenship and immigration.

I would like to make two points. The first is that I will check, but I believe from my briefing with Minister McCallum, that, in fact, the wait times on citizenship have been reduced over the last year. I will check to confirm that and report to the honourable senator because I think that's an important piece of context.

And with respect to the appointments, in this case, as in the case we just spoke about, it is the desire of the government to ensure that the appointment process has a respected mandate of ensuring that the candidates for consideration reflect the broad diversity that is Canada.

[Translation]

Senator Ngo: I have a supplementary question. Citizenship judges are quasi-judicial independent arbiters in the citizenship application process. They ensure the integrity and accountability of the citizenship processes. They are the gatekeepers of the oath of citizenship that every new citizen must take.

Between July 2015 and July 2016, Canada welcomed more than 320,000 immigrants, a level of immigration not seen since 1913. How can we expect our citizenship judges in Canada to manage the increased workload and the huge number of new citizens without extra help from the government?

[English]

Senator Harder: As I indicated in my response earlier, I will examine the data to ensure whether or not the numbers, as are reported, are accurate and I will be happy to share that information with the senator and all senators here.

PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

SECURITY OF RAIL PASSENGERS

Hon. Leo Housakos: My question is to the government spokesperson in the Senate, and it is with regard to passenger rail security in Canada. Unfortunately, I wasn't able to ask the

question yesterday to the Minister of Public Safety and Emergency Preparedness, but maybe Senator Harder can address this issue.

• (1450)

As a former member of the board of VIA Rail, I've seen through the years successive governments neglect this very important issue. We have thousands of kilometres of track running from coast to coast to coast in this country. We've taken steps to ratchet up security measures at airports and ports, but it's crystal clear that the security system at VIA Rail and passenger rail service across the country is porous.

If we compare with our neighbour to the south, Amtrak spends over \$80 million a year on security. Above and beyond that, they have Department of Homeland Security contribution budgets. They have national transportation agency budgets. They have a better hookup system in terms of terror and security systems in the United States to track down risks and threats.

VIA clearly doesn't have that capacity. In the case of VIA Rail, their total budget is in the hundreds of thousands of dollars in order to deal with security issues. Clearly, that isn't sufficient.

I know that the government has been in discussions with VIA Rail. Can we and can this chamber be assured that this particular security risk to the country and to communities across the country will be addressed?

Hon. Peter Harder (Government Representative in the Senate): As the spokesperson, I'm happy to respond.

As the honourable senator made clear in his comments, this has been an issue with VIA Rail for some time, both in his role as a board member and as a spokesperson for the government of the day in the house here.

These issues ought not to become partisan. They are serious issues of concern for national institutions when security is at play.

As the Minister of Transport indicated when he was here in questioning on the issues of transportation infrastructure, he reported to the Senate the priority that he placed on this and also spoke of the ongoing conversations he is having with VIA Rail to assure Canadians that their infrastructure security issues are in hand.

I will take the occasion of this question to bring to the attention of the minister the ongoing concern of honourable senators to this important issue.

Senator Housakos: I just want to assure the house and the Government Representative in the Senate that by no means is there any partisan attack in this particular issue. This is an issue that concerns Canadians. It's an issue that concerns me as a member of the board.

I brought this issue up with previous governments, with very little success. The current government has to step up and provide Canadians the security that VIA Rail warrants.

Senator Harder: I agree.

HERITAGE CANADA

RECOGNITION OF KOREAN WAR VETERANS IN CANADA'S ONE HUNDRED AND FIFTIETH ANNIVERSARY CELEBRATIONS

Hon. Yonah Martin (Deputy Leader of the Opposition): Leader, I have a question that was actually posed to me by one of the veterans of the Korean War.

I begin with a question to the chamber. I wonder what the Fathers of Confederation may have imagined what Canada would become on the threshold of our one hundred and fiftieth birthday. It's a very significant time in our history, and we are all anticipating a very important year ahead. But Canada is more than just the values and beliefs of its people. Canada is the country it is today because it chose to stand tall, where the deeds and sacrifices of its people in committing to uphold and protect those values and beliefs spoke louder than mere words ever could.

Canada has answered the call and sacrificed far above our weight to protect those liberties that Canadians hold dear in our 150 years as a nation. One such occasion was in the early years of the 1950s, when more than 26,000 Canadians answered the call and 516 paid the ultimate sacrifice to give the fledgling nation of South Korea a chance to enjoy the liberties and peace that Canada enjoyed. To these Canadians, I literally do owe my life.

I know that since August 4, the Government of Canada, in collaboration with an array of partners, has been counting down the last 150 days of 2016 through a variety of activities being held across the country to celebrate the story of Canada's 150 years.

Leader, could you please inform this chamber what the Government of Canada is doing as part of Canada's 150 program to recognize the chapter our Korean War veterans wrote in the story of our great nation and to honour their sacrifices and struggles in the air, on the seas and on land?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question, and ongoing concern and interest in matters Korea-Canada, both bilaterally and with respect to the Korean community and the role Canada has played in Korea.

I don't have the specific answer to the question, but I will take notice of it and also take the occasion to express the importance of Canada 150 being an ongoing celebration, commemoration and aspiration for what Canada has been and has yet to be in terms of its participation in global endeavours.

ORDERS OF THE DAY

CITIZENSHIP ACT

BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Omidvar, seconded by the Honourable Senator Gagné, for the second reading of Bill C-6, An Act to amend the Citizenship Act and to make consequential amendments to another Act.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak to Bill C-6. This bill's provisions will amend elements of the Strengthening Canadian Citizenship Act, Bill C-24.

Before examining the substance of the bill, I would like to start by discussing what it means to become a citizen of this country. For Canadians, citizenship means far more than the benefits that come from being a citizen. It means that Canada is their home, where they will be spending their futures.

Just like any homeowner, citizens tend to their country through their work and participation, making it flourish. Just as a better home ultimately gives its residents a better life, a better Canada provides Canadians with a better quality of life.

This is equally the case for Canadians who have earned the privilege of getting their citizenship. When Canada becomes their home, they join their fellow Canadians as equals and assume the rights and responsibilities of citizenship.

Honourable senators, their children, who are born here, earn the right to obtain citizenship. Thus, they ultimately work together to see their country flourish.

This was also the case for me as a refugee. When I came to Canada long ago, I knew my future would be here. Canada is my home. I knew that this would be my home, and I proudly took up the responsibilities and privileges that came with living in Canada.

I knew that this would also be the case for my children, my grandchildren and my great-grandchildren. My children, my grandchildren and my great-grandchildren would have the right to gain citizenship. I knew that even if they would share my dual citizenship, they too, would be able to join their fellow Canadians as equals as they take on their own duties and roles as citizens of Canada.

Since we see this country as our home and a permanent commitment, we are driven to look after it and contribute as part of the greater Canadian community. Unfortunately, recent changes to the Strengthening Canadian Citizenship Act, Bill C-24, have been made in complete opposition to this idea of Canadian citizenship.

Two years ago, the former government passed Bill C-24, also known as the Strengthening Canadian Citizenship Act. Under Bill C-24, if a Canadian citizen without dual nationality commits a terrorist or criminal act in Canada, our government cannot affect their citizenship. However, if that same person was a dual national, the minister could move to revoke their citizenship. The bill also created several requirements for Canadians that either had serious practical concerns or held them to different standards than other Canadians.

These changes created two different classes of Canadian citizens. One is a Canadian citizen who is able to face justice before a court and is given an appropriate punishment for their actions. On the other hand, dual citizens face additional punishment with the revocation of their citizenship. By creating this unequal standard for children of new immigrants, while providing them with the knowledge that our laws can strip them of their citizenship, we are telling our dual citizens that they have not gained a home at all.

• (1500)

Amendments to the Citizenship Act, like those made by Bill C-24, make some Canadians into tenants who can be removed from this country at the whim of the government. A tenant does not share a homeowner's motivation to work toward seeing their country flourish. When a Canadian knows their time in the country could be cut short at the whim of the government, they cannot hold the same loyalty as a Canadian who knows this is their home forever.

Honourable senators, Canada works because we are all proud Canadians who want to build a great Canada together.

Furthermore, when a dual citizen is treated under a different set of standards and laws that puts them at a disadvantage compared to normal citizens, we cannot expect them to have the same drive to work for their country as a person with the whole set of rights Canada has to offer.

I discuss this view of citizenship because it motivates me to rise today in support of Bill C-6. With the passage of Bill C-24, Canada's citizenship law has become unjust and sets a precedent stating that dual citizens alone can be expelled from this country at the whim of the government. I believe this is a bad precedent for Canada to set, and I support the government in their attempts to restore equality to our citizenship laws.

Bill C-6's provisions will address the parts of strengthening Canada's Citizenship Act that place Canadians under unequal standards. By bringing the Citizenship Act in line with the principles of the rule of law, Bill C-6 restores certainty in the fact that Canada is the future for all Canadians, whether they are mono-citizens or dual citizens.

I will begin by examining the element of Bill C-24 that plays the greatest part in creating two classes of Canadian citizens, and the solution Bill C-6 proposes. If passed, Bill C-6 will repeal the minister's authority to revoke the citizenship of dual citizens who have been convicted of terrorism or other serious crimes.

Honourable senators, by supporting this provision, I am not condoning the actions of terrorists or criminals who have committed heinous crimes in Canada. My support for this bill is based on one principle central to Canada's form of justice — the rule of law.

Before I became a senator, I practised law in British Columbia. Every day as a lawyer I witnessed a principle that is central to our idea of justice in Canada — the rule of law.

The rule of law states that every Canadian citizen is subject to the same laws and will face the same justice system when being charged with their crimes. Rather than leaving justice in the hands of government, all individuals are treated under the same fair system that treats all individuals equally and holds them to account for their actions.

Our laws embody the most basic social values we hold in Canada. We agree it is wrong to commit heinous crimes, like terrorism and other serious criminal acts, and therefore codify them in our laws. Canada also holds, as a core value, that all citizens are ruled by the law, rather than the decisions of government.

In recognition of this principle's importance, the rule of law has been written into our Constitution. Most notably, section 15 of our Canadian Charter of Rights and Freedoms declares that "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law . . ." regardless of origin. This equality includes the administration of justice, where all individuals are subject to the same criminal laws, in the same manner.

The fact that the rule of law embodies our most basic social values is why the changes to the Citizenship Act made by Bill C-24 worry me so much.

When the government has the ability to revoke the citizenship of dual citizens for criminal or terrorist acts, while mono-citizens are instead tried before the court system, it is not acting in accordance with the principle of the rule of law. Effectively, it is against the core values that make Canada.

Bill C-24 has left a worrying legacy in Canada's law. In an attempt to punish terrorists and criminals, it loses sight of justice and creates a different system for some Canadians fraught with legal concerns.

I want to be certain that my children, grandchildren and great-grandchildren will always be regarded as having equal status as other Canadians. By repealing the ability of the government to strip the citizenship of dual citizens and pushing for equality in the administration of law, Bill C-6 restores certainty in the fact that all Canadians will be treated equally under its laws.

To summarize, Bill C-6 does not forgive those guilty of the worst criminal and terrorist acts for their actions. Instead, it ensures that they face justice through the appropriate system and that an appropriate punishment is handed out.

Justice for criminal and terrorist acts has its place, and it is not by politicians in Parliament. It is in court, where all Canadians are tried under the same legal system.

With Bill C-6, our government has taken great steps to ensure that the Citizenship Act respects the rule of law, and attempts to ensure as much procedural fairness for applicants as possible.

Honourable senators, however, I caution: The bill still continues to allow for a Canadian citizen to have their citizenship taken away without any hearing or right to full disclosure of the case being made against them. Given that revocation may affect the life, liberty and security of the revoked citizen, a failure to provide a fair hearing may well be a breach of section 7 of the Charter.

If the government truly wishes to stay in accordance with the Charter and the principle of the rule of law that it embodies in the other sections of Bill C-6, it should consider addressing this unjust part of the Citizenship Act created by strengthening the Canadian Citizenship Act.

Honourable senators, I rise to support Bill C-6 because the bill represents a return to the important Canadian values that define us as a country. The rule of law and equality are for all individuals. We do not divide citizens; we unite citizens. However, my support for Bill C-6 goes beyond mere legal principles. I also welcome the message it will send to Canadians.

In Canada, we respect the rule of law and equality for all individuals, regardless of their origins. These principles bring about 250,000 new permanent residents to Canada every year. They know that while their past may be in the country they left behind their future will always be in Canada. These people know that they, along with their children, will be able to enjoy the fairness that is inherent in the Canadian system.

As I mentioned before, this fairness has an incredibly significant impact. The knowledge that Canada will always be the future for all Canadians will inspire them to join other Canadians in working to build our great country in the same way that a homeowner would improve their own home to improve their living conditions.

Honourable senators, you've heard me say this many times before. I believe that the House of Commons, the other place, is the place that caters to the majority. The Senate was created to protect the rights of the minorities. I believe that the House of Commons can often act as a scissor, and divide communities. I believe the Senate is a needle that sews up divisions. The Senate creates beautiful quilts with the work we do. In the Senate, we keep our country united. Stop the seeds of divisiveness even before they are planted or bear fruit. Why? Because that is why the Senate was created. We, the senators, are the guardians of the rights of minorities. Seeds of division fragment us; seeds of unity flourish.

Honourable senators, I have thought about whether I would share this story with you.

• (1510)

Two weeks ago, I was speaking to my granddaughter, who is three years old. In her house, her parents have no television, and they do not use many electronic devices. I picked her up from school — and children, when they learn some new information, they think they're the first ones who know it — so they always ask you, "Do you know?" She asked me, "Do you know Donald Trump?" I said, "Yes." She asked me, "Do you know what Donald Trump says?" I said that I did. She said, "Do you know

that Donald Trump says that Muslims are not good?" I said, "No, he doesn't say that." She said, "Yes, yes, yes. My friend said you're a Muslim, so you're not good."

This is from a three-year-old girl who has no TV in the house.

Senators, the seeds of divisiveness in the south are also being planted here. As a grandmother, I am crushed, because I'm a proud, practising Muslim. I know in my great country, nobody will say that to me.

I say to you that Bill C-6 is more than anything we can ever do. When I travel around the world, people say to me, "How does this work? Uganda threw you out. You became a refugee, and you come back to Africa as a senator? What do Canadians drink?"

May I have five more minutes?

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Jaffer: I say to my fellow Africans that the wonderful thing about Canada is that the minute we land here, we are proud. When we get the privilege of becoming citizens, we build our country. Nobody treats us differently; we are the same. Yes, there are some issues that we have to figure out, but we are a great country.

So I ask you that when the three-year-old girl is told — not from our leaders, I'm glad to say — that Muslim is not something you are proud of, we in the Senate are the needles that will keep our communities together. So I ask you to think very carefully about your decision on Bill C-6. Thank you.

Hon. Nicole Eaton: I have a question. Senator Jaffer, thank you for your speech. I would never dream — and I don't think anybody else would — of putting your rather exemplary life of hard work in the same mould as someone like Zakaria Amara, who came to this country at 14 and was sentenced as one of the Toronto 18 for planned acts of terrorism against the Parliament buildings. Do you really think he wanted to be a Canadian if he came here at 14, yet four or five years later he's plotting to destroy our democracy and create chaos? Do you not see a difference between not revoking his passport and somebody who came to this country, who, years later we find out, was a war criminal in Bosnia, and we render him stateless and revoke his passport instantly? Do you not see a little bit of a difference there — some injustice?

Senator Jaffer: Senator Eaton, let me tell you that every time there is a bombing or some similar problem around the world, every Muslim I know sits down and says a prayer that they hope it's not a Muslim. We are not proud of the acts of some people who commit crimes in our name. I don't hold any brief for those people who try to destroy my great country.

But as a senator, I know that we cannot create a law to take care of that kind of situation and put all dual citizens, all law-abiding citizens, in the same category. The way we deal with the person who commits that heinous crime is we deal with them in our court system, we give them great punishment, and we make

sure that they get the wrath of our country. But we don't put all dual citizens, all Canadian hard-working citizens, in the same category.

Some Hon. Senators: Hear, hear.

Senator Eaton: Greet him at the prison door with his passport. It would be a lovely picture.

[Translation]

Hon. Claude Carignan (Leader of the Opposition): I agree with much of what you said in your speech, particularly your comments about our great country, the country the rest of the world looks up to, the champion of extraordinary values, a place where life is good. That is why I find it strange that some people oppose the notion that someone who wants to become a Canadian citizen should have to indicate an intention to reside in Canada. Why would anyone disagree with requiring people to reside in Canada if we want people to help build and maintain this country?

[English]

Senator Jaffer: Senator, mostly we are not talking about people who have come here and gotten citizenship. We are mostly speaking about people who are dual citizens.

As I said in my presentation, if you come here and you have no dual citizenship, your citizenship cannot be taken away. But because I am of British and Canadian citizenship — I am a dual citizen, and my children benefit from being dual citizens — it means that if someone's children commit a terrible crime and their parents have dual citizenship, we use a different standard: We take the child's dual citizenship away.

When you said “when you come here, you have the intent to be Canadian,” absolutely you have the intent to be Canadian. Once you have the privilege of being Canadian, then, when you commit crimes, you get punished under the Canadian system because you belong to the great Canadian family.

The Hon. the Speaker: Senator Jaffer, your time has expired.

(On motion of Senator Pratte, debate adjourned.)

JUSTICE FOR VICTIMS OF CORRUPT FOREIGN OFFICIALS BILL (SERGEI MAGNITSKY LAW)

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Andreychuk, seconded by the Honourable Senator Tkachuk, for the second reading of Bill S-226, An Act to provide for the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act.

Hon. David M. Wells: Honourable senators, I stand today to speak in support of Bill S-226, An Act to provide for the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act, also known as the justice for victims of corrupt foreign officials act, the Sergei Magnitsky law.

The importance of the issues that this legislation seeks to address is immeasurable. As you know, Sergei Magnitsky, a senior auditor and tax attorney, died on November 16, 2009, in a Moscow prison. I have spoken of his story previously in this chamber.

His story demonstrates the grave injustice that was committed against him and against the rule of law. Mr. Magnitsky uncovered a \$230 million fraud against the Russian state by its own officials. As a result, he was imprisoned and tortured, and after being denied medical care, he succumbed to his injuries and died in custody.

• (1520)

What is more, his posthumous trial, which is said to be the first of its kind in Russia, set an ominous precedent. Magnitsky's ordeal has become the embodiment of corruption and ruthlessness that has occurred in the Russian government. This case has been referred to as the “canary in the coal mine” that unveiled Russia's politics of oppression, corruption and brutality. It is unlikely that this is the only case where injustice and torture in police custody went unnoticed.

There have been many successful legislative initiatives in both North America and Europe. Today, I rise to endorse an important piece of legislation that seeks to correct past injustices and to ensure that future injustices do not go uninvestigated or unsanctioned. Bill S-226 endeavours to provide, among other things, for the undertaking of restrictive measures with respect to foreign nationals responsible for gross violations of internationally recognized human rights.

On all sides of the House of Commons and in the Senate, there has been an unequivocal call for action against those who were involved in Magnitsky's torture and death. Several motions and questions have been put forth, such as the question by my honourable colleague Senator Moore on June 3, 2016, and now this very important Senate bill, brought forward by the Honourable Senator Andreychuk.

The case of Sergei Magnitsky has garnered enormous attention over the last several years from international politicians, government officials and the general public. One individual who has led a crusade against corruption in Russia and a worldwide campaign to get justice for Sergei Magnitsky is Bill Browder. Mr. Browder, the chairman of Hermitage Capital Management, was once among Russia's biggest foreign investors. Mr. Magnitsky was acting as Mr. Browder's lawyer and was tasked with investigating an extensive tax fraud scheme. In doing so, Magnitsky uncovered the massive fraud committed by the Russian government, for which he paid with his life. Mr. Browder has now made it his life's mission to get justice for Mr. Magnitsky. Mr. Browder has relentlessly and successfully

lobbied to have the U.S. Congress pass the Magnitsky Act. This law essentially blacklists Russian officials thought to be involved in human rights abuses by allowing the U.S. to withhold visas and freeze financial assets of Russian officials.

Senators, as members of Parliament, we have a duty to defend human rights at an international level and to take necessary actions to achieve justice for all, especially for the Magnitsky family. It is now our turn to legislate and impose sanctions on individuals — to the extent that it touches on Canadian jurisdiction — throughout the world who are in violation of internationally recognized human rights.

The events that transpired in Russia in 2006 cast a very dark shadow on our history and must not be ignored. Corruption, impunity, the violation of fundamental justice and the rule of law are a cancer on all democracies that must be dealt with. Senators, the responsibility is incumbent upon us. The global community has already begun to condemn the mistreatment of Sergei Magnitsky through various legislative initiatives. It is now our turn to do the same and to cast our net wider to target all perpetrators of internationally recognized human rights violations and to impose sanctions equally where we should and where we can.

That is why, honourable colleagues, I will be supporting Bill S-226, and I urge all of you to do the same.

Hon. Wilfred P. Moore: First, I wish to commend Senator Andreychuk for this initiative. I wish to be associated with the remarks of Senator Downe that he made yesterday, particularly with regard to the lesson and the message that Canada should, and hopefully will, send to Russia.

On February 23 of this year, Senator Wells and I attended a book signing and a presentation by Mr. William Browder at the University of Ottawa, and it was chilling to hear him talk about what happened. As Senator Downe mentioned yesterday, we should all read the book *Red Notice*.

Sergei Magnitsky could have easily succumbed to the torture, a married man with two very young children. He could have caved and pled guilty, thereby incriminating himself and Mr. Browder. He would not do that. This man was a pillar of integrity. He believed in the rule of law to his last breath. It is that cause that keeps Mr. Browder going.

I should also mention that, in mid-June of this year, I was in Washington for a Canada-U.S. meeting. We met with our counterparts in the Senate. Senator Ben Cardin, a Democrat from Maryland, led the charge in the U.S. and, on December 6, 2012, the Magnitsky Act passed there. He is keen to do more and is so keen to have us pass a similar statute in Canada.

I know Senator Wells mentioned my question back in June, and I did receive a written response from the Leader of the Government in the Senate on September 28. Honourable senators may not have picked this up from the Clerk, but there are some things that I think have to be read into the record in the responses to my questions:

We have made clear the unacceptable behaviour by Russia on many fronts and will continue to defend human rights issues.

[Senator Wells]

Since we have formed government we have already shown a willingness to hold Russia to account. We have increased sanctions, adding new individuals and companies to the sanctions list, in coordination with our allies.

They also mention:

... the House of Commons tasked the Standing Committee on Foreign Affairs and International Development to conduct a comprehensive review of the provisions and operation of the Freezing Assets of Corrupt Foreign Officials Act (FACFOA) and the Special Economic Measures Act, in accordance with Section 20 of the FACFOA. In this review the Committee will give due regard to the circumstances of Sergei Magnitsky, among others, in its consideration of potential measures to respond to violations of internationally recognized human rights. A report with recommendations will then be presented to the government. The Committee is scheduled to commence its study in the fall of 2016.

I would hope that those studies are under way.

Colleagues, I join Senator Wells and others who have spoken to this important bill so that we support it and, in doing so, keep in mind what Sergei Magnitsky died for — the rule of law.

The Hon. the Speaker: Senator Cools, a question?

Hon. Anne C. Cools: Well, I want to speak to it, but, if there's another question — I want to speak to the bill, but not now. I was about to take the adjournment, but maybe he wants to take a few questions. I'll wait.

The Hon. the Speaker: Senator Harder?

Hon. Peter Harder (Government Representative in the Senate): Senators, if nobody wishes to ask a question, I'll take the adjournment, but, if there are others who wish to speak, I'll delay.

Senator Cools: Then I move the adjournment.

Senator Moore: At the outset, Your Honour, Senator Harder held the adjournment, and I asked his permission to speak in his place, subject to it returning to him. So I messed up there. This item should be reverting to Senator Harder.

(On motion of Senator Harder, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Carignan, P.C., seconded by the Honourable Senator Martin, for the second reading of Bill S-230, An Act to amend the Criminal Code (drug-impaired driving).

Hon. George Baker: I'll be very brief.

Some Hon. Senators: Oh, oh!

Senator Baker: I don't have a written speech with me; I left it in the washroom.

I wish to say a few words about this bill introduced by Senator Carignan. I think we all agree, basically, with the principle of the bill, and that is, as Senator Campbell will recognize, to have a test at roadside, using a swab of the mouth to do a drug test, to recognize whether or not the driver of the vehicle has consumed marijuana or cocaine or one of the other listed drugs that is in this particular bill.

• (1530)

There is a problem. I think most of us would recognize that perhaps there is a constitutional question here. But that would be investigated at committee, in the Senate, as to whether or not you can take a bodily substance without judicial authority as a means to establish a reasonable suspicion to refer the matter to a recognized expert at the police station for further testing.

However, the biggest problem with the bill, Senator Carignan, is this — and we're going to have to address this. We're the place of sober second thought, and the Senate does an excellent job on that. I notice, for example, that in the last three months the Senate's committees are quoted by our various boards — I have a list of them here — and by our courts 14 times.

The House of Commons is quoted once, and it is because of the thorough job that the Senate does in committees in examining bills and in identifying what the purpose is, what the law is and what the intent of Parliament is regarding those bills.

Now, here is the problem that we are going to have when this goes to committee: Mr. Blaney, in the House of Commons, has introduced a bill which covers the same sections as Senator Carignan's bill covers. It's Bill C-226. It's 37 pages long, and it has gone to committee in the House of Commons with government support, and therein, I think we recognize, there is a problem. Let me just put on the record what the government representative, Mr. Bill Blair, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, on Thursday, June 9, 2016, as reported in the *House of Commons Debates*, said when he made several statements. For example:

The government is . . . prepared to support the higher mandatory minimum fines for first offenders found with a high blood alcohol concentration . . .

Then he says:

The government supports these enhancements to the drug recognition and evaluation program.

And, furthermore, the government supports — and Senator Carignan is going to be surprised at this — random testing. That's where, in the Senate, it will run into a constitutional examination, because this bill will come to the Senate. So we will have the Legal and Constitutional Affairs Committee addressing a very important constitutional question: random testing. Now, it's fine to say that all these other countries have random testing. All these other countries don't have the Constitution of Canada. All these other countries don't have the Canadian Charter of Rights and Freedoms.

And Senator Carignan's bill, when I look at it, is the less offensive of the two as far as rights are concerned. And it's indeed unfortunate that it didn't originate at the same time Mr. Blaney's bill originated in the House of Commons, where the government put forward its support for these provisions.

What you have here is a high noon situation, if the Senate passes Senator Carignan's bill and Mr. Blaney's bill removes every provision of the Criminal Code that Senator Carignan's bill will amend. It removes every single section.

The wording has also changed. There are no sections 253 to 258 anymore on impaired driving. It's up to sections 330 and 350 of the Criminal Code with completely different wording. Now, somebody could say, "Well, perhaps we could take Senator Carignan's bill and add a major amendment to Mr. Blaney's bill." Unfortunately, it doesn't work, because if we were to do that, first of all, we'd have to know what the new section is and how it could be incorporated. I've looked at it, and it doesn't appear as if it can be incorporated, because the scheme has changed. The entire scheme of the impaired driving provisions is changed by Mr. Blaney's bill.

Let me just for one second try to be very quick at this. We have an institutional memory here in the Senate. We don't go back to 1925 when the first drug-impaired legislation was passed, but we go back to 2008. And in this chamber we addressed a drug-impaired driving bill, and practically everybody who was here in this chamber — Senator Tkachuk is looking at me; he actually sat on the committee at the time.

I didn't attend the committee hearing; I was ill at the time. But Senator Tkachuk knew that I was opposed to certain provisions of the bill, and he asked the question to the officials, "Well, Senator Baker says that if you pass this bill half of Canadians will be judged to be drug impaired because of the physical coordination tests."

Senator Tkachuk: Are you sure that was me, George?

Senator Baker: Yes, I'm sure it was you, because I read it, and the answer to your statement was, "Well, in that case, if they couldn't pass the test, we'd take them to the hospital." Now do you recall? Of course you do.

And my reason for that, senators, is that in the drug-impaired section, the way the cases go is this: An officer will stop a driver. The Blaney bill will give the power to the officer to stop without any indicia of impairment. In other words, somebody could be driving perfectly down the road, with no swaying — no, nothing like that — but it would give the police the power to be able to approach that driver and conduct a physical coordination test at roadside.

Now, we have, in provincial law in Canada today, every Highway Traffic Act in Canada has been amended over the past 10 years to allow an officer to stop you and ask you for your driver's licence, your motor vehicle registration and your proof of insurance. And the officer will make certain observations: whether your face is flushed, how your eyes look and whether you have trouble getting your documents out. Senator Campbell knows exactly what I'm talking about.

Senator Campbell: I'm having trouble getting my documents out.

Senator Baker: He has trouble getting his documents out.

And the legislation says — well, the regime is — that the officer, if he notices that your pupils are dilated, for example, and larger than normal, and if you have these pinks — they call them pink, I call them red — in the mucous membrane of the whites of your eyes, that's an indication of the use of marijuana.

And then you're asked to get out of the vehicle, and then, first of all, there's a test with the eyes, but the next one is you go heel to toe in a straight line, you turn around, and you come back without losing your balance. Then you stand on one leg without losing your balance. And if you fail those tests, you're then sent to the drug evaluator expert.

• (1540)

And they then do 12 tests which are provided by regulation, each one of them where you have to hop on one foot, close your feet, tip your head back, close your eyes and touch the tip of your nose with your index finger.

There you go. I can't do it. That's an indication of impairment.

It has always been my submission that whereas there are people who can pass these tests — Senator Day is a great runner. Five o'clock in the morning, he's out running. He's in great physical condition. He could pass the test. We have Senator McIntyre, the great long-distance runner.

There are many people in here who are physically fit. I cannot stand on one leg and count up to 20 without losing my balance.

An Hon. Senator: You're in trouble.

Senator Baker: I'm in trouble, says the senator. That's exactly the point.

Senator Carignan's bill proposes to use a device to take saliva from your mouth. Now, there is a problem with that. They've discovered in some countries that people who use marijuana have what they call "dry mouth," and there's difficulty in taking saliva. It takes some time to do it.

On the dilated pupil of the eye, as Dr. Dyck will tell you — she has a PhD in biological psychiatry and how the mind operates — when you have fear as an individual, your pupils dilate. That's a natural reaction. Redness in the mucous membrane of the whiteness of your eyes could be lack of sleep.

Senator Carignan: So you need a device.

Senator Baker: It could be too much wine the night before. It could be lack of sleep. It could be you're crying.

All those indicia form — let's be precise — reasonable grounds to suspect, to put you in handcuffs and to take you to the station for those final tests. What do those final tests do? They then

qualify you, if you fail them, to go and get the saliva test — that's the present law — or a urine test, or a blood test.

Senator Carignan's bill asks: Why not take the saliva test, the least invasive test, and put it at roadside? Not that it can be used in a court of law, because it can't be. The breath test at roadside cannot be used in a court of law. It is simply to ground the suspicion, to enable you to be sent to the station for these final tests.

However, as I say, I have great objection to the MP who has now received government support on a bill which rejigs all of those sections of the Criminal Code, which allows for random testing, which will mean that persons can be taken out of a vehicle for no reason — no indicia are required for random testing — and asked to perform physical coordination tests at roadside. That is just offensive.

Now we have a less troublesome bill with Senator Carignan's. The bills don't match. This removes the entire section of the Criminal Code that Senator Carignan wishes to amend. It received the support of the government, going into third reading.

Supposing Senator Harder was to say, "I support Senator Carignan's bill." Then we'd have a high noon. We'd have to tell those who chime the bells on Parliament Hill to learn the theme of *Gunfight at the O.K. Corral*. It would be an incredible event.

I bring all this up just to point out that when this bill goes to committee, the Senate has to somehow try to rectify this problem we are facing. Perhaps the leadership can get together.

It's unfortunate that the Conservative caucus in the other place didn't get together and decide on Senator Carignan's bill. It would be a far better solution to what is being proposed than the one that is now 37 pages long and has received the support of the Government of Canada.

We'll have to deal with all these questions when it goes to committee, but, Senator Carignan, you have to recognize that there are problems associated with the bill, and we're just going to have to deal with it when it gets to committee.

Hon. Wilfred P. Moore: Senator Baker, would you take a question?

Senator Baker: Yes, of course.

Senator Moore: I remember when the Breathalyzer test came in and some of the issues that you spoke about with regard to alcohol-impaired offences. I think the issue was the Borkenstein Breathalyzer. It had to be proven that it was that instrument, that the operator was qualified to use it and that he administered the machine or the testing properly. I remember — and I was successful on some of these myself — many people getting off because of the technicalities involving the testing and the equipment.

How do you see this proposed legislation vis-à-vis the testing, the 12 physical tests? I doubt that most people in this room could pass those today. How do you see that happening, and what do you see it leading to if this legislation goes through?

Senator Baker: Therein lies the problem. For every trial lawyer in this place, there lies the problem, because with the alcohol tests, a presumption is built into the Criminal Code that if the first test is done within two hours of driving, that certificate by the qualified police officer — Senator Dagenais is a qualified person to administer that test — and his signature, when the two readings come out — and the two readings, if it's at 100, the next one must be between 100 and 120 because of the exhaustion rate from your body of the alcohol and so on. There are requirements. You have to wait 15 minutes between tests. You can't be chewing gum. You can't burp.

Senator Moore: You can't drink, can't have water, anything.

Senator Baker: That's right. What you have being presented to the court is a reading that is signed by an expert police officer. That means you don't have to bring the police officer to the police station. His certificate is accepted, and a presumption is built into the Criminal Code at 254(5), 258(5), that says that this is your record while you were driving two hours ago.

In this test there's no such thing. What we have is an evaluation officer.

There's a case right now before the Supreme Court of Canada as to whether or not the evaluation officer that's referred to in Senator Carignan's bill is considered to be an expert without proof having to be provided at trial. That is being decided now by the Supreme Court of Canada, as to whether or not that person would be recognized as an expert. But we still don't have the presumption. We don't have the fact that you must prove that somebody was impaired by a drug at the time of driving — nothing in the Criminal Code.

I think that's probably the next step, to say that if it were written in law that the tests that were done in the police station shall be, there's a presumption that that was your level of impairment at the time of driving.

• (1550)

There's a lot of litigation around the problem you're talking about. My goodness, the impaired driving provisions are the most litigated section of the Criminal Code. The saving grace of the tests is that a presumption is built in that the certificate from the Breathalyzer machine in the police station is proof that cannot be rebutted if the first test was taken within two hours of the time of driving.

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

An Hon. Senator: Question.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

REFERRED TO COMMITTEE

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

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

CANADA PROMPT PAYMENT BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator Martin, for the second reading of Bill S-224, An Act respecting payments made under construction contracts.

Hon. Joan Fraser: Honourable senators, this bill stands at day 14.

I should explain that at the time when I took the adjournment on this bill, I was the deputy leader of my party's caucus, and it is standard practice in this place for a deputy leader to take the adjournment of a bill if no one else is indicating immediate passion to speak to the bill. The purpose of the deputy leader taking the adjournment is to allow space for any interested senator to come back at a later date and speak to the bill.

You can understand that deputy leaders do not always know a great deal about the topics of the bills upon which they are seeking to take the adjournment. I see Senator Tardif smiling ruefully. She had to go through this for many years, and Senator Martin as well.

For sure I do not know a great deal about the system of payments made under construction contracts. When Senator Plett spoke to his bill, he, I think, made an interesting and eloquent case that subcontractors need protection that they don't now have, because the main contractors are not always as honourable and punctilious as we might wish them to be. I think I have this straight. He was arguing for greater protection of them in the bill.

However, that is about the extent of my understanding of what this bill is about. I'm not an engineer. I'm not a contractor. I'm not an entrepreneur. I have never had to deal with any of these matters. Therefore, as I say, when I took the adjournment, the idea was to allow any interested senator to rise and speak to this bill at the time of that senator's choosing. I'm speaking now because it is at day 14.

I do not think I can enlighten the Senate very much about this bill, so I'm going to conclude my remarks. I will leave the floor free for any senators who wish to take part in this debate.

(On motion of Senator Moore, debate adjourned.)

CONSTITUTION ACT, 1867**BILL TO AMEND— SECOND READING—
DEBATE SUSPENDED**

On the Order:

Resuming debate on the motion of the Honourable Senator Patterson, seconded by the Honourable Senator Enverga, for the second reading of Bill S-221, An Act to amend the Constitution Act, 1867 (Property qualifications of Senators).

Hon. Joan Fraser: Honourable senators, I want to begin by thanking Senator Patterson for his enormous patience and forbearance.

When I took the adjournment on this bill, it was not a pro forma matter to allow any senator who was interested; it was because I was passionately interested in it myself. You know how things run away from you in the Senate, and that was six months ago. Senator Patterson has been a model of patience and courtesy, waiting for me to get around to saying what I believe needs to be said.

I believe that quite a lot of things need to be said about this bill, and I know I'm not going to get them all said by four o'clock, but I'm assuming that I will be able to continue my remarks tomorrow.

Honourable senators, Bill S-221 is part of a package, and the other part of the package is Senator Patterson's Motion No. 73. My remarks today, and when I get to conclude them tomorrow, will be addressing both parts of the package because, in my view, it's neither fair nor accurate to single one out without at the same time discussing the other.

Senator Patterson's objective in the bill and motion is laudable. He wants to eliminate the \$4,000 property qualification which applies to everyone who seeks to become a member of this honourable place.

We all have to have \$4,000 worth of real property in the province which we represent. Senator Patterson believes, as I think all of us do, that this is an antiquated and elitist measure — I'm quoting him - that has lost its *raison d'être* in modern society.

It's important, incidentally, to distinguish between the property qualification and the residency rule. They come in the same section of the Constitution, but they are very different. The residency rule says you must live in the province; you must be resident in the province you represent. The property qualification is a separate frill.

In 1867 it meant quite a lot. I am indebted to my staff for discovering an indicator of the value of \$4,000 then. In 1876 the Rideau Club purchased a lot across the street next to the former U.S. embassy for premises for the club for \$4,000.

In 1980, when the lot was again basically vacant because the building had burned down, the club got compensation of \$10.5 million for a slightly enlarged lot, but basically the same property, when the government chose to expropriate it. Thus, \$4,000 then we can say was perhaps the equivalent of \$10.5 million today.

It was a huge requirement, and it was done by design. I believe it was John A. Macdonald who said you had to have protection of minorities, and the rich are always in a minority, so this was the chamber that was going to protect the rich by being sure that it was populated by the rich.

(Debate suspended.)

The Hon. the Speaker: Honourable senators, it is now four o'clock. Pursuant to the order adopted by the Senate on Thursday, February 4, 2016, I declare the Senate continued until Thursday, October 27, 2016, at 1:30 p.m., the Senate so decreeing.

(The Senate adjourned until Thursday, October 27, 2016, at 1:30 p.m.)

CONTENTS

Wednesday, October 26, 2016

	PAGE		PAGE
SENATORS' STATEMENTS		Public Safety and Emergency Preparedness	
Turkey		Children in Immigration Detention.	
Ninety-third Anniversary of Republic.		Hon. Victor Oh	1571
Hon. Anne C. Cools.	1566	Hon. Peter Harder	1571
The Late Shirley Ryan		Hon. Mobina S. B. Jaffer	1571
Hon. David Tkachuk	1566	Justice	
Visitor in the Gallery		Judicial Vacancies.	
The Hon. the Speaker.	1566	Hon. Denise Batters	1571
Richard Saillant		Hon. Peter Harder	1572
<i>A Tale of Two Countries How the Great Demographic Imbalance</i>		Hon. Mobina S. B. Jaffer	1572
<i>is Pulling Canada Apart.</i>		Citizenship and Immigration	
Hon. Percy Mockler.	1567	Appointment of Citizenship Judges.	
Sugar Consumption		Hon. Thanh Hai Ngo	1572
Hon. Nancy Greene Raine	1567	Hon. Peter Harder	1573
The Late Bryan Pearson		Public Safety and Emergency Preparedness	
Hon. Dennis Glen Patterson	1567	Security of Rail Passengers.	
		Hon. Leo Housakos	1573
		Hon. Peter Harder	1573
		Heritage Canada	
		Recognition of Korean War Veterans in Canada's One Hundred	
		and Fiftieth Anniversary Celebrations.	
		Hon. Yonah Martin	1574
		Hon. Peter Harder	1574
<hr/>		<hr/>	
ROUTINE PROCEEDINGS		ORDERS OF THE DAY	
Treasury Board of Canada Secretariat		Citizenship Act (Bill C-6)	
Public Accounts of Canada—2015-16 Report Tabled.		Bill to Amend—Second Reading—Debate Continued.	
Hon. Peter Harder	1568	Hon. Mobina S. B. Jaffer	1574
Senate Modernization		Hon. Nicole Eaton	1576
Tenth Report of Special Committee Presented.		Hon. Claude Carignan	1577
Hon. Serge Joyal	1568	Justice for Victims of Corrupt Foreign Officials Bill (Sergei	
The Senate		Magnitsky Law) (Bill S-226)	
Notice of Motion to Affect Question Period of		Bill to Amend—Second Reading—Debate Continued.	
November 1, 2016.		Hon. David M. Wells	1577
Hon. Diane Bellemare.	1569	Hon. Wilfred P. Moore.	1578
Adjournment		Hon. Anne C. Cools.	1578
Notice of Motion.		Hon. Peter Harder	1578
Hon. Diane Bellemare.	1569	Criminal Code (Bill S-230)	
		Bill to Amend—Second Reading.	
		Hon. George Baker	1578
		Hon. Wilfred P. Moore.	1580
		Referred to Committee	1581
<hr/>		Canada Prompt Payment Bill (Bill S-224)	
QUESTION PERIOD		Second Reading—Debate Continued.	
International Trade		Hon. Joan Fraser	1581
Canada-European Union Comprehensive Economic and Trade		Constitution Act, 1867 (Bill S-221)	
Agreement.		Bill to Amend— Second Reading—Debate Suspended.	
Hon. Claude Carignan	1569	Hon. Joan Fraser	1582
Hon. Peter Harder	1570		
Hon. Percy E. Downe.	1571		

Published by the Senate

Available on the Internet: <http://www.parl.gc.ca>