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(HANSARD)

Monday, December 5, 2016

The Honourable GEORGE J. FUREY
Speaker

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THE SENATE

Monday, December 5, 2016

The Senate met at 6 p.m., the Speaker in the chair.

Prayers.

[*Translation*]

SENATORS' STATEMENTS

INTERNATIONAL DAY OF PERSONS WITH DISABILITIES

Hon. Chantal Petitclerc: Honourable senators, this past Saturday was International Day of Persons with Disabilities. On such days, we often take the opportunity to talk about the challenges that remain. When it comes to accessibility, there is still a lot of work to be done.

This year, we are also marking the anniversary of the establishment of the United Nations Convention on the Rights of Persons with Disabilities. Canada was proud to be one of the first countries to sign that convention in 2010.

Ensuring better accessibility for Canadians with disabilities remains a top priority and the coming year will be significant because the Government of Canada will be concluding its consultations to help inform the development of new accessibility legislation.

[*English*]

Today I would like not to focus on the challenges that remain when it comes to persons with disabilities but to give us a little pat on the shoulder as a country. Sure, it's not perfect, but in Canada people with disabilities can study, work, travel, have access to good health care and be contributing members of our society. It is easy to forget that this is not the case in most of the countries in the world, even today.

Even more importantly, people with disabilities in Canada are respected, welcomed, and we as a country recognize that everyone is different and that our differences are our strength and that persons with disabilities have more potential than limits.

If I only look at my friends with disabilities, some are doctors, lawyers, artists, athletes, politicians and parents. This happens because we have this open mind. What we, as a country, tell all our kids with disabilities is that here in Canada you can do and be anything you want. I mean, you can even be a senator. How cool is that?

Hon. Senators: Hear, hear!

THE LATE KAY SIGURJONSSON

Hon. Nancy Ruth: Kay Sigurjonsson, 1933 to 2016. She grew up in small-town Manitoba, part of the Icelandic heritage of that province, the eldest of five children of Eddy and Clara Sigurjonsson. After undergraduate work and a scholarship at the United College in Winnipeg, Kay obtained a BA and a teaching degree from the University of Manitoba, winning gold medals in both programs.

Why is this important? Because in the end it made a huge difference. She taught high school in Manitoba, Quebec City, Alberta, British Columbia, and at the United College in Winnipeg, where she joined a number of colleagues in resigning over a landmark case involving academic freedom.

Kay moved to Toronto in 1960 to take up a graduate fellowship at Trinity College. After that start at the University of Toronto Press, she found a natural niche with the Federation of Women Teachers' Associations of Ontario, known as the FWTAO, where she rose to associate executive director, editing the federation's publications, supervising the work of the collective bargaining department and coordinating the federation's affirmative action programs aimed at bringing more women into decision-making positions in school systems.

Both the time and the setting were right. The 1960s saw a resurgence of feminism in which the FWTAO lent its resources, enabling people like Kay to be influential beyond the organization. It was in that place, in the FWTAO offices, that LEAF was initially housed and nurtured by Kay and others of the FWTAO.

Among her many professional associations, Kay was a founding mother of the National Action Committee on the Status of Women. She served as National President of the Canadian Association in Support of Native Peoples, she was on the board of directors of the Canadian Civil Liberties Association, and she was a member of the Judicial Appointments Advisory Committee to increase the pool of women and racial minorities for appointment to the Ontario bench.

In all these initiatives, Kay's complete grasp of the issues, her keen political awareness, her articulate presence in the meeting rooms and on the public platforms made her a formidable advocate and earned her a permanent place in the history of the women's movement in Canada.

THE ATLANTIC CHARTER

Hon. Fabian Manning: Honourable senators, today I am pleased to present Chapter 10 of "Telling Our Story."

The Atlantic Charter was negotiated at the Atlantic Charter Conference — code-named RIVERA — by British Prime Minister Winston Churchill and U.S. President

Franklin D. Roosevelt. They were each aboard their respective warships in a safe and secure anchorage site several hundred yards from land near the small community of Ship Harbour in Newfoundland and Labrador. The charter was issued as a joint declaration on August 14, 1941.

Roosevelt travelled to Ship Harbour aboard the USS *Augusta*, and Churchill made the journey to Newfoundland aboard the battleship HMCS *Prince of Wales*. Both leaders were escorted and protected by a flotilla of U.S., British and Canadian navy vessels. At one point Prime Minister Churchill took a walk along the beach in a small inlet called Job's Cove to gather his thoughts and help keep his mind clear.

The Atlantic Charter was an agreement between the United States of America and Great Britain that established the vision of Franklin Roosevelt and Winston Churchill for a post-World War II world.

One of the interesting aspects of the charter was that the United States was not even part of the war at the time. However, Roosevelt felt strongly enough about what the world should be like that he put forth this historic agreement with Winston Churchill.

The Atlantic Charter can be summed up in eight points: The United States and Great Britain agreed to seek no territorial gains as a result of the outcome of World War II. Any territorial adjustments would be made with the wishes of the affected people taken into consideration. Self-determination was the right of all people. A concerted effort would be made to lower trade barriers. The other four points were global economic cooperation and the advancement of social welfare; freedom from want and fear; freedom of the seas; and disarmament of aggressor nations, postwar common disarmament.

At a subsequent Allies meeting in London, England, on September 24, 1941, the governments of several other countries unanimously adopted adherence to the common principles of policy set forth in the Atlantic Charter.

The Axis powers interpreted their diplomatic agreements as a potential alliance against them. Adolf Hitler saw it as evidence of collusion between the U.K. and the U.S. in an international Jewish conspiracy.

On the other hand, this agreement proved to be one of the first steps toward the formation of the United Nations, which we now know as an international organization serving as an arbiter of disputes and the protection of the peace where member countries believe in world governance by democratic processes.

To recognize the seventy-fifth anniversary of this historic event, on Sunday, August 14, 2016, a large crowd gathered at the site of the Atlantic Charter monument in Ship Harbour only a short distance from where the two world leaders met. Among those in attendance was Duncan Sandys, a great-grandson of Winston Churchill. During the ceremonies he had this to say, "The ability of these two men in just a matter of days to write and agree [to] such a clear and powerful and succinct document that has lasted

and will last through the ages is in itself remarkable, and is something for which all peace loving men and women should be grateful."

The Atlantic Charter changed in a very positive way the course of history, and this pivotal wartime meeting between two of the most powerful world leaders at that time took place in Placentia Bay, Newfoundland and Labrador.

Fellow senators, if you ever have the opportunity to visit Newfoundland, I encourage you to visit the Atlantic Charter site in Ship Harbour, Placentia Bay, and experience the place where world peace began.

Hon. Senators: Hear, hear!

• (1810)

ROUTINE PROCEEDINGS

TAX CONVENTION AND ARRANGEMENT IMPLEMENTATION BILL, 2016

BILL TO AMEND—EIGHTH REPORT OF BANKING,
TRADE AND COMMERCE COMMITTEE
PRESENTED

Hon. Joseph A. Day (Leader of the Senate Liberals), Deputy Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Monday, December 5, 2016

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

EIGHTH REPORT

Your committee, to which was referred Bill S-4, An Act to implement a Convention and an Arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and to amend an Act in respect of a similar Agreement, has, in obedience to the order of reference of November 29, 2016, examined the said bill and now reports the same without amendment.

Respectfully submitted,

JOSEPH A. DAY
Deputy Chair

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

(On motion of Senator Greene, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

BUDGET IMPLEMENTATION BILL, 2016, NO. 2

NINTH REPORT OF BANKING, TRADE AND
COMMERCE ON SUBJECT
MATTER TABLED

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable senators, on behalf of Senator Tkachuk, I have the honour to table, in both official languages, the ninth report of the Standing Senate Committee on Banking, Trade and Commerce, which deals with the subject matter of those elements contained in Divisions 3, 4, 5, 6 and 7 of Part 4 of Bill C-29, A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016, and other measures.

The Hon. the Speaker: Honourable senators, pursuant to the order of the Senate of November 22, 2016, the report will be placed on the Orders of the Day for consideration at the next sitting of the Senate, and the Standing Senate Committee on National Finance is simultaneously authorized to consider the report during its study of the subject matter of all of Bill C-29.

**INTERNAL ECONOMY, BUDGETS AND
ADMINISTRATION**

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO
APPROVE FUNDING FOR THE INDEPENDENT
SENATORS GROUP

Hon. Larry W. Campbell: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the *Rules of the Senate* and the *Senate Administrative Rules*, the Standing Committee on Internal Economy, Budgets and Administration be authorized to approve funding for the Independent Senators Group for the current fiscal year and for the fiscal year 2017-18.

BANKING, TRADE AND COMMERCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO
EXTEND DATE OF FINAL REPORT ON STUDY OF
THE DEVELOPMENT OF A NATIONAL
CORRIDOR IN CANADA AS A MEANS OF
ENHANCING AND FACILITATING COMMERCE
AND INTERNAL TRADE

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

That, notwithstanding the order of the Senate adopted on Wednesday, September 28, 2016, the date for the final report of the Standing Senate Committee on Banking, Trade and Commerce in relation to its study on the development of a national corridor in Canada as a means of enhancing and facilitating commerce and internal trade be extended from February 28, 2017 to May 31, 2017.

**INCREASING OVERREPRESENTATION
OF INDIGENOUS WOMEN IN
CANADIAN PRISONS**

NOTICE OF INQUIRY

Hon. Kim Pate: Honourable senators, I give notice that, three days hence:

I will call the attention of the Senate to the circumstances of some of the most marginalized, victimized, criminalized and institutionalized in Canada, particularly the increasing overrepresentation of Indigenous women in Canadian prisons.

[Translation]

QUESTION PERIOD**EMPLOYMENT, WORKFORCE DEVELOPMENT
AND LABOUR**

STATISTICS CANADA—EMPLOYMENT

Hon. Claude Carignan (Leader of the Opposition): Mr. Speaker, my question is for the Leader of the Government in the Senate. Statistics Canada's labour force survey for the month of November was bad news: only part-time jobs were created. Other full-time jobs disappeared, more people simply stopped looking for work, and the youth unemployment rate remained virtually unchanged.

In its economic statement, the government lowered its own economic growth forecasts for 2016-17. The Bank of Canada, the OECD and the International Monetary Fund recently did the same.

The Prime Minister promised Canadians that his supposedly modest deficit would ensure jobs and growth. On the contrary, forecasts indicate weak GDP growth and suggest that we are unlikely to see any net new full-time jobs. Plus, the deficit is much higher than promised.

Mr. Leader, considering all the money the Liberal government has spent over the past year, can you explain why Canadians should accept such a poor job creation outcome?

[English]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. With respect to the performance of the economy and various indicators to which the honourable senator made reference, the last report on quarterly economic growth, honourable senators will note, was higher than projected. I don't by any means expect that is the rate it will keep the rest of the year, but it is encouraging to see some increase, particularly as it is trade-led, in the economy.

It is true that we all need to work to ensure that the unemployment rate is reduced. That's why the government has undertaken a number of measures, including those before this chamber in the last budget, in the Budget Implementation Act and, indeed, in the tax measures there, too, that are designed to deal with the economic policy of the government, which includes, as honourable senators will know, a significant investment in infrastructure designed to meet infrastructure needs as well as taking advantage of both tax rates and employment opportunities.

This is a challenge that Canada is facing along with a number of other economies. Our relative performance, as the OECD has indicated, is quite good. The prescriptions of the government have been endorsed, as you will know, by both the OECD and the IMF.

[Translation]

Senator Carignan: Mr. Leader, the Statistics Canada report indicates that the construction sector shed 14,000 jobs in November and that national employment in construction was little changed compared with 12 months earlier. If the government's infrastructure spending had any effect on the economy, why isn't the construction sector's job creation performance any better?

[English]

Senator Harder: The quarterly Statistics Canada report reveals a number of underlying issues in the economy. I would point to the return, thankfully, of some increased labour market activities involved in Fort McMurray and its regaining some of its pre-fire employment levels.

• (1820)

This is an issue that we are all going to have to pay attention to over the next number of months as we seek to have the economy return to robust growth rates. I would refer to the increase in GDP, which reflects the export-led opportunities for the Canadian economy, particularly as the American economy rebounds.

[Translation]

Senator Carignan: Statistics Canada figures show that the manufacturing sector lost 12,000 jobs in November, bringing job losses in that industry to a total of 50,000 over the past year.

Leader, what tax measures does the government plan to take to make up for those job losses and support this important manufacturing sector in order to create jobs and prosperity for Canadian workers and families?

[English]

Senator Harder: Again, I would reference a number of the measures in the last budget, some of which are still before this chamber, to remind senators that there is a comprehensive

[Senator Harder]

economic strategy of investments in infrastructure, investments in people, investments in innovation that are key to Canada's ongoing economic performance.

I would also note that the Minister of Finance is appearing before the Standing Senate Committee on National Finance tomorrow, where I'm sure he will address this and other questions.

FOREIGN AFFAIRS

BURMA—PERSECUTION OF ROHINGYA MUSLIMS— HUMAN TRAFFICKING OF CHILDREN

Hon. Yonah Martin (Deputy Leader of the Opposition): I have a question for the Leader of the Government in the Senate. Leader, during these 16 days of activism against gender-based violence, which ends on December 10, International Human Rights Day, I draw your attention to the abhorrent and growing epidemic of child rape and trafficking cases occurring in Burma.

According to a recent article in *The Independent*, child rape cases are up 40 per cent, and a staggering 380 cases have been reported as of the end of October — 150 more than last year. Activists fear that the numbers may be even higher in a state with a culture of victim blaming. Rampant poverty and weak laws make children particularly vulnerable to sexual abuse and slavery. Many are sold into labour or to fight in the Burmese countryside.

In late November, UNICEF warned that Rohingya Muslims may be the victims of gang rape, torture and murder at the hands of the military. Analysis of satellite photos by Human Rights Watch found 1,250 homes and other structures in Rohingya villages were burned down.

According to the Global Affairs Canada website, the previous Conservative government spent millions to help the Burmese government by providing humanitarian assistance to conflict-ridden and displaced peoples, increased opportunities for women, and food security, water and sanitation to name but a few items.

My question is what is the Trudeau government doing to combat the systematic persecution of Rohingya Muslims and to prevent the sexual violence and human trafficking of Burmese children?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question and can assure her and all honourable senators that the Government of Canada has been active on this file both in discussions with like-minded countries and in the bilateral relationship. The issues you raise are very important for all Canadians and certainly for the Government of Canada. I would be happy to inquire for a more up-to-date response in light of the most recent reports that you reference in *The Independent*.

Senator Martin: Yes, thank you, leader. I would appreciate such an update. I noted that only one program has been instituted by the new Liberal government, one that provides over \$5 million to promote a better understanding of federalism, but as I indicated, there is the urgent need to address the violence and trafficking of children in the country. We know that with our bilateral

relationship we will continue to assist Burma and its people toward democracy, but if you could find out specifically what the government is doing to save the Burmese children from rape, torture and slavery, I would appreciate that update.

Senator Harder: I will do so.

ORDERS OF THE DAY

INCOME TAX ACT

BILL TO AMEND—THIRD READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Black, for the third reading of Bill C-2, An Act to amend the Income Tax Act.

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable senators, the Government Representative in the Senate very kindly stepped in to move third reading of this bill last Wednesday while I was chairing the Standing Senate Committee on Banking, Trade and Commerce on another government matter.

Some of what I have to say, therefore, may repeat some of what honourable colleagues have already heard from the Legislative Deputy to the Government Representative in the Senate, namely the deputy leader, who spoke on third reading last Wednesday, but I hope that you will not mind as I give you my own views on this bill as the sponsor.

I want to begin by expressing my appreciation to Senator Smith, the Chair of the Standing Senate Committee on National Finance, and Senator Cools, the deputy chair, and the other members of our National Finance Committee for their work with respect to this bill.

The committee examined this bill over six meetings. They heard a range of considered opinions: that the bill goes too far in certain respects; that it doesn't go far enough in exactly the same respects. And the Minister of Finance said it strikes just the right balance, as you might expect.

There was vigorous debate, particularly during clause-by-clause consideration when, as colleagues know, Senator Smith proposed an amendment to the bill. That amendment, it turned out, would have increased the taxes to be paid by certain Canadians, something that of course we cannot do here in the Senate. So our Speaker, using the term for this type of process, evacuated the committee report, and the bill was, therefore, deemed reported here without amendment.

I will take a few minutes to describe the bill that we're now dealing with at third reading.

Bill C-2 makes three fundamental changes to the Income Tax Act.

First, the bill enacts in the Income Tax Act what has been called "the middle class tax cut." That reduces the federal personal income tax rate from 22 per cent to 20.5 per cent for individuals with taxable income of \$45,000 to \$90,000. Those are approximate figures.

The second change would create a new tax bracket in the Income Tax Act for taxable income above \$200,000. That income would be taxed at a new rate of 33 per cent.

Both those changes were major planks in the Liberal party platform in the last federal election.

The third major change contained in Bill C-2 concerns Tax-Free Savings Accounts, or TFSA's, as they are commonly referred to. Colleagues will recall that the previous government had increased the maximum annual contribution limit for these Tax-Free Savings Accounts, doubling it from \$5,000 to \$10,000 per year, at the same time that it did away with the annual indexation of the contribution limit to account for inflation. When that change was announced by the previous government, the current Prime Minister, Justin Trudeau, announced that a Liberal government would reverse that increase.

• (1830)

Bill C-2 makes good on that promise and returns the annual maximum contribution limit to the previous limit of \$5,000 while also returning indexation for inflation, which means a limit of \$5,500, which will increase in line with inflation in years to come. We heard evidence at committee that the projected next increase to \$6,000 is likely to occur in 2018.

Following traditional practice in financial budgetary matters, these three changes took effect January 1, 2016, shortly after they were announced. That means that Canadian taxpayers will have had the advantage of these initiatives for nearly one year now.

Colleagues, many of us who participated in the work of the committee on this bill were disappointed to learn that 65 per cent of Canadians would not benefit from the tax reduction in Bill C-2, and furthermore that most of the benefits would be concentrated in the top 20 per cent of Canadians, leaving the bottom 80 per cent with very little change in their after-tax income.

Part of the reason for this is that the median income in Canada, honourable senators, is just over \$30,000. This means that half of Canadians have annual incomes below \$30,000. In fact, 35 per cent of Canadians don't pay any tax at all; their incomes are too low. Another 31 per cent pay taxes but have taxable income below the \$45,000 threshold for that bracket of \$45,000 to \$90,000 that we're referring to, with the reduced rate of 22 to 20.5 per cent. They do not benefit at all from these tax savings because their income is too low.

As witnesses told our committee, most of the gains from the new tax rate accrue to the top 20 per cent of Canadian families, that is, families that make over \$97,000 a year.

I believe that this is part of what motivated Senator Smith to propose his amendment. His amendment also proposed to increase revenue to make the changes revenue neutral.

But, honourable senators, the Liberal Party didn't promise the broader tax reduction for all taxpayers, as much as many of us would like to have seen. They promised to do exactly what is set out in Bill C-2.

Let me read to you from the election platform of the Liberal Party of Canada. It said:

We will cut the middle income tax bracket to 20.5 percent from 22 percent — a seven percent reduction. Canadians with taxable annual income between \$44,700 and \$89,401 will see their income tax rate fall.

We often round that off to \$45,000 to \$90,000.

Those people will see their income tax rate fall. Honourable senators, that is what the government felt it could do at this time, taking into consideration all of the other government initiatives, including a major change relating to the Canada Child Benefit.

Colleagues, that was a very clear, unequivocal promise. The bill before us is numbered Bill C-2 because it was the first substantive bill introduced by the newly elected government, introduced specifically to implement this central promise in the Liberal platform.

As senators, we have to respect the policy decisions of the elected branch of government, especially so when that policy alternative had been put to the people of Canada in a general election and approved by Canadians. It is not for us to say that we have a better plan. This is the plan promised by the Liberal Party, approved by Canadians in the general election and waiting to be passed into law by Bill C-2. That is what is before us today.

Indeed, one might suggest that if the Liberal government had done anything else, including the arguably more progressive tax changes proposed by Senator Smith, that many Canadians, including some in this chamber, might have felt betrayed, arguing that a major promise had been broken by the government.

As Sir John A. Macdonald said in his famous quote that has been so often referenced in this chamber. The Senate:

... must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill considered legislation which may come from that body —

This is the part of that quote I would like to emphasize.

— but it will never set itself in opposition against the deliberate and understood wishes of the people.

Let me repeat that:

... it will never set itself in opposition against the deliberate and understood wishes of the people.

If we ever needed an example of what that particular quote meant, Bill C-2 is a perfect example.

Honourable senators, the second change in Bill C-2, the new tax bracket of taxable income over \$200,000 a year with a new tax rate of 33 per cent for income in that top bracket, that too fits into that definition of what Sir John A. Macdonald said, "never set itself in opposition against the deliberate and understood wishes of the people."

The Liberal platform with respect to this particular matter says:

To pay for this tax cut —

The middle class tax cut, that is.

— we will ask the wealthiest one per cent of Canadians to give a little more. We will introduce a new tax bracket of 33 per cent for individuals earning more than \$200,000 each year.

With respect to the Tax-Free Savings Account, which is the third element in this bill that I mentioned at the beginning, it was also another clear election promise. In fact, very few Canadians, only 6.7 per cent, were investing the maximum in the Tax-Free Savings Account when that maximum was \$5,500. The average contribution, the committee was informed, was \$2,880 a year, and that was before the change to \$10,000. So doubling the maximum annual contribution limit to \$10,000 was a benefit that would have gone to a very small group of Canadians.

A number of senators were concerned that this change would have a particular impact on senior citizens. The argument is that quite a few seniors who have accumulated considerable wealth in their RRSP encountered the mandatory withdrawal from the RRIF, and you convert an RRSP to a Registered Retirement Income Fund so that they take the money out of their RRIF and put it into the Tax-Free Savings Account. That was the argument being made.

• (1840)

Many people have assumed that seniors want the higher Tax-Free Savings Account contribution level to be able to move from a RRIF to a Tax-Free Savings Account. But, colleagues, we heard from Wanda Morris of the Canadian Association of Retired Persons. Her organization, which represents some 300,000 individuals across the country, conducted a recent poll of their membership to dig down into what tax options their members actually want. They learned that in fact increasing the contribution level for the Tax-Free Savings Account is not the first priority of most seniors.

The most important issue for their members is to remove the mandatory withdrawal of the RRIF, or the Registered Retirement Income Fund. They wanted the mandatory

percentage withdrawal each year reduced. Almost half their members listed that as their first or second choice of policy priority for a tax option.

As Ms. Morris explained, the second policy matter, with 43 per cent of CARP members ranking it either as first or second, was to follow through with the government's promise of a special index for seniors in Old Age Security and Guaranteed Income Supplement. They wanted a special index for those two items for seniors in order to keep up with inflation.

This illustrates how various fiscal initiatives are inter-related, but we don't have all programs before us for consideration when we consider Bill C-2. That's the important point, honourable senators. There are many other things that we might want to look at, and maybe we should look at, but we're dealing with some very narrow issues in Bill C-2.

The previous higher limit for the Tax-Free Savings Account was quite far back on the list of priorities for seniors; that is, leaving the Tax-Free Savings Account at \$10,000 as opposed to the current government changing it back to \$5,500. It was tied for third place, with only 38 per cent of members choosing it. That is the same number who chose returning the age to qualify for Old Age Security to 65 rather than staying at age 67, which had been planned by the previous government.

Those of us who were concerned about the possible impact of this policy change on seniors can take some comfort from this, reassurance from seniors themselves that they have more concern about items other than these particular changes to the TFSAs.

Colleagues, Bill C-2 is a short, straightforward bill that would fulfill and enshrine in the Income Tax Act three important promises made during the last election. This is something I think everyone in this chamber supports, that this government keep its promises to Canadians.

Before I conclude, I want to highlight an issue that I know is of concern to a number of us, which has not yet been addressed by the government, and that is the extreme complexity of the Income Tax Act. Several witnesses who appeared before our National Finance Committee on Bill C-2 highlighted this as an increasingly critical issue.

Aaron Wudrick of the Canadian Taxpayers Federation told us that his organization tracks the size of the Income Tax Act, and it is now over a million words, twice as long, honourable colleagues, as Tolstoy's epic *War and Peace*.

There has not been a thorough review of the Income Tax Act since the Royal Commission on Taxation, the well-known Carter commission in 1966. Honourable senators, that is 50 years ago. Think of the transformations that have taken place in the past 50 years here in Canada and around the world.

Colleagues, I asked the Minister of Finance about the need to simplify our tax system. He assured me that he shares this concern, and it is indeed something to which the government is committed.

Honourable senators, therefore, I support Bill C-2 and, perhaps even more, I support the principle that the government should

keep its election promises, and they are doing so here. That is what Bill C-2 would do.

I respectfully request honourable senators to support this bill, as I shall be doing.

The Hon. the Speaker pro tempore: Will you accept a question, Senator Day?

Senator Day: I would be pleased to.

Hon. Elizabeth (Beth) Marshall: Could you tell us the cost of Bill C-2? I'm not talking about tax-free savings. I'm just talking specifically about the changes to the tax rates and the tax bands.

The Parliamentary Budget Officer and the Department of Finance have released figures, and they say the bill is going to cost a certain amount of money. What they focus on is the cost of the reduction of the second personal tax rate from 22 per cent to 20.5 per cent as well as revenues raised from the new 33 per cent tax rate. They're just focusing on those two tax bands.

What's the cost of the changes that are occurring to the other two tax bands? I don't see it disclosed anywhere.

I do want to add that the PBO states that the net cost for the two tax bands you're talking about is \$1.6 billion. The Department of Finance on its website says \$1.4 billion, so they are close. I'd just like to know the total cost of the impact on all of the tax bands.

Senator Day: Thank you. I bow to the figures of the Parliamentary Budget Officer and the Finance Department. I'll take the average of \$1.5 billion.

Nobody knows until after the fact what this is going to cost because we don't know whether there's a disincentive or an incentive, if the economy will pick up. If the economy picks up and there are more people in the upper bracket, over \$200,000 at 33 per cent, there will be more revenue to the government. If the economy goes down, then there will be less. All of this is speculation. That's why you see a band between \$1.4 billion and \$1.6 billion. The answer is in the wind.

Senator Marshall: I would have thought that the Department of Finance would have estimated a cost for all the tax bands. That would be an issue for me.

When the Minister of Finance released his fiscal update last month, he stated the revised deficit is now estimated to be \$25.1 billion. Can you confirm whether the cost of Bill C-2 has been factored into that \$25.1 billion deficit?

• (1850)

Senator Day: I fully expect that all potential deficit has been factored in. That may be an outside figure with a number of contingencies built into it, but absolutely, when you hear from Finance what they project at the year-end deficit, they're looking at all the different possibilities where there might be a deficit and to what extent that individual item might contribute to the whole.

[*Translation*]

Hon. Larry W. Smith: Honourable senators, I am going to speak in both official languages to ensure that those who speak French can clearly understand the important points I am making.

[*English*]

I'll do a little in both French and English, if that's okay with everyone.

I thank Senator Day for his presentation. It's a perspective, and I think all of us have varying perspectives when we see laws come into place. With that in mind, I will start.

[*Translation*]

Honourable senators, let's take the time to think about the objective or the purpose of Bill C-2, which is currently before us. The Prime Minister travelled the country promising to help the middle class and asking the wealthiest Canadians to pay a little more in taxes. According to his election platform, this election promise was supposed to be fiscally neutral.

[*English*]

Once they were elected, the bill was the second piece of legislation drafted by the new government and tabled on December 9, 2015. One of the questions that I developed was why has it taken so long for us to consider the bill?

I began studying the bill in February 2016 and learned very quickly that it does not deliver what was promised to the people.

At the request of Mr. Guy Caron, the NDP finance critic, the Parliamentary Budget Officer produced a report in January 2016 calculating the impact of Bill C-2 as well as the impact of reducing the first tax bracket.

Important to understand as a side note is that the tax brackets were reduced by 7 per cent. The taxes were not reduced by 7 per cent. I'm not saying it was a misleading fact that was put out, but the tax brackets changed, and the taxes did not go down by that percentage for the intended audience, which was the group from \$45,000 to \$90,000. That is the targeted group.

The report showed Bill C-2 would take from the wealthiest 1.4 per cent of the population, those who earn over \$200,000, and would cost an average of approximately \$1.7 billion. Senator Day said he would accept the number of \$1.5 billion annually between 2016-17 and 2020-21.

I asked the Minister of Finance, when he was before our committee with his economic update, "Is this \$1.7 billion going to be revenue neutral, or is it going to be part of your actual deficit of \$25.1 billion which you announced?" Unfortunately, the Minister of Finance was not able to give me an answer. When people don't give you answers, you have to presuppose that there are various responses that could come out, but I'm not going to get into that.

I asked the Parliamentary Budget Officer to calculate different distribution scenarios to evaluate how much we could give back to the middle class if we were to redirect the revenue from the wealthy into just the middle-income group, which was targeted between \$45,000 and \$90,000.

I also asked the Minister of Finance — in fairness we asked all of our witnesses — for the definition of "middle class." No one can come up with a definition of "middle class."

The challenge I see when looking at this legislation is when the majority of the benefit goes to people between \$100,000 and \$200,000 and the small part goes to people between \$45,000 and \$90,000, who are targeted, and I'm asking myself, is the middle class in Canada defined as \$45,000 to \$200,000? I think that would be absurd, because that's not the intent of the bill. They are talking about the second bracket, which is \$45,000 to \$90,000.

[*Translation*]

Honourable senators, perhaps you were surprised by my speech at second reading because this is the first time in six years that I have had to examine a bill that fails to meet its intentions.

That being said, the amendments proposed by the House of Commons finance committee were defeated and the bill was sent to the Senate without amendment in May 2016.

[*English*]

Bill C-2 was passed, with votes of 167 yeas versus 122 nays. Hardly a resounding success, and more disturbing was that the Prime Minister, as well as 10 other cabinet ministers, was not there to vote on this bill.

This was the second major piece of legislation put forward in an electoral campaign, so you might think people would have been more on alert to vote this thing through with a larger majority. They've certainly had large portfolios to learn as new ministers. However, one third of the cabinet not voting on one of the first new bills is surprising. Certainly some newly elected members did not fully understand the implications of this new bill and had not had time to hear the testimony of experts the Finance Committee was privileged to hear.

In our Standing Senate Committee on National Finance, we had one briefing, as Senator Day said, and six committee meetings; we were referred to 12 reports on the bill by experts; we heard from the Minister of Finance, officials, an agent of Parliament; and we heard eight experts testify from differing philosophical perspectives, including the far left, the centre and the far right. We had people with all sorts of different views. We did that for a purpose: We wanted to get the feedback required to do the proper evaluation.

All agreed that the tax system, as Senator Day said, is excessively complex. All agreed that Bill C-2 gave a benefit to the 30 per cent of the wealthiest Canadians. Again, what Senator Day said.

I think it's important for senators to hear what led our Finance Committee to table an amendment to the bill.

Angella MacEwen of the Canadian Labour Congress felt it did not deliver to the middle-income group and stated:

In the case of Bill C-2, I find that the result is mixed. The first part of the bill deals with the proposed middle-class tax cut. This proposal reduces personal income tax rates on income between \$45,000 and \$90,000 a year and then increases tax rates on income over \$200,000.

I might add that people earning over \$200,000 in Quebec will be taxed at 54.7 per cent, which is one of the highest tax rates in any of the G7 or G8 countries. You have to ask yourself: As Donald Trump gets involved in the U.S., will there be tax reductions if he's going to rebuild that economy? That's a very strong and powerful economy, as we know. That's just a thought.

We're not against the increase for \$200,000 a year. What we're focusing on is the \$45,000 to \$90,000, which is supposed to be the class that's going to get the benefit of this particular tax.

And because of how our tax system is structured, the maximum benefit under Bill C-2 of \$670 per year is only available to people who earn more than \$90,000. So we're really off that chart that the Parliamentary Budget Officer showed us. So the maximum benefit is available to people between \$90,000 and \$200,000. This is arguably a group that doesn't need it and certainly wouldn't be in the qualified middle class.

On top of this, we know that tax cuts are the least effective form of government spending in terms of reducing inequality or stimulating the economy.

Another way to evaluate this proposed middle class tax cut is on its stated purpose. During the last election, the promise was made to lower taxes for the middle class and to pay for that by raising taxes on the wealthiest. The government bill does not fulfill the spirit of this promise.

This is not me saying it. This is one of our experts.

As I just argued, the tax cut as designed does not benefit middle-income earners, and the government has since admitted that the increase at the top end will fall at least \$1 billion short. As Senator Day outlined and agreed to, it's about \$1.5 billion, and multiply that by four years and it's \$6 billion over this government's term.

• (1900)

The Parliamentary Budget Officer said it will be more than \$1 billion short, maybe \$1.7 billion short, so let's agree to the \$1.5 billion. Let's understand one thing: Because of the fact that this bill has been in place for a year come the end of this month, we're already in the hole \$1.5 billion.

I did ask Senator Harder to give us an illustration of the benefits of all these various programs. The question we need to know: Is this \$1.5 billion over and above the \$25.1 billion of the economic update that the minister gave? It would be nice to have an answer to the question. He was asked but didn't give an answer. I'd like to find out the answer, for all of us.

We have already had the policy in place for the year and so we now know what the shortfall will be over four years. Ms. MacEwen elaborated two better options for targeting the middle class, such as amending the GST.

Charles Lammam, Director of Fiscal Studies for the Fraser Institute, told the committee:

It's not just the top rate that's uncompetitive in Canada. In most provinces, a Canadian making \$50,000 of Canadian labour income faces a higher statutory rate than in most U.S. states. This is despite the reduction in the federal rate from 22 to 20.5 per cent. In other words, Bill C 2 does little to address uncompetitive tax rates, even for middle income Canadians. To put it plainly, Bill C-2 will reduce Canada's overall tax competitiveness and ultimately undermine economic growth and prosperity.

Again, this is not our committee saying this. This is one of the experts from the Fraser Institute.

Mr. Lammam also told the committee the following:

Going back to the earlier point about the effect, while there is an effect on personal taxes as a result of Bill C-2, it's important to also look holistically at the government's tax plans.

When you look at all the various changes that have either been announced and implemented, or will be announced, it's really important to know that middle-income Canadians will actually be paying more tax. So if you think through changes to the Canada Pension Plan, for example, that will require Canadians to pay higher payroll tax and account for the elimination of the income splitting for couples from the previous government, the elimination of various other tax credits, middle-income Canadians are actually going to be paying more in taxes when all of these changes come into effect. Critically, lower income Canadians, those under \$45,000 of income, will see no benefit from the personal tax reduction because the rate applies to just those between \$45,000 and \$90,000, so they don't see any of that reduction, but they will see their tax bill increase as a result of higher CPP payroll taxes, as well as elimination of those other tax credits

Again, from the experts, David Macdonald, another senior economist from the Canadian Centre for Policy Alternatives, stated:

The top 2 per cent of families in Canada, who make at least \$300,000, pay more under this new tax. They will pay roughly \$8,500 more every year, although the average family income in that bracket is almost \$600,000.

Now, that's an extreme.

So they probably can afford to pay slightly more. However, all of the money gained from those top 2 per cent is spent on the next 18 per cent more or less —

This means the people from \$100,000 to \$200,000.

— with little or nothing going to the middle and nothing at all going to the bottom. So, for instance, the fourth and fifth deciles —

When I sent this out to you, we had this. Some of the new people haven't seen what we sent out, but the fact is we have five major tax brackets, but under \$45,000 David Macdonald is saying there's no benefit to those folks.

So, for instance, the fourth and fifth deciles of families get under \$50, on average, for this tax bracket change.

In other words, Canadians at the beginning of second tax bracket, which is \$45,282. The top 20 per cent, excluding the top 2 per cent — and that's that \$100,000 to \$200,000 — make between an average of \$500 and \$800 per family. Mr. Macdonald also suggested a GST credit would be better than the actual policy put in place.

Let me sum up the facts based on what we had from expert testimony: Bill C-2 will not give money back to middle-income Canadians. Middle-income Canadians was defined in the election campaign as \$45,000 to \$90,000. It's not \$100,000 to \$200,000. It's not \$45,000 to \$200,000.

We have a little point here because I wanted to make sure I had my notes properly organized. Fact: 17 million Canadians are in the first bracket, under \$45,000. Fact: 9 million of these people do not pay tax, as they are offset by credits and they don't earn enough to be taxed. Fact: 7.4 million are in the second tax bracket between \$45,000 and \$90,000, of which 2 million of these people are earning between \$45,000 and \$53,000.

So here we go — a policy that's supposed to help 7.4 million Canadians. What are they getting out of this? Literally, not very much.

Eighty-one bucks is a tax credit. You're going to say that's really going to help these people? Other people will say, "There's a child benefit program. We put that in. It's going to be good." Wait a sec. Take the amendment we made, which is double what Bill C-2 does, and add that to the child benefit and they're going to be even better off. But you have to do something to give something to the people between \$45,000 and \$90,000. Three million people are earning above \$90,000 to \$200,000, and then have you 340,000 approximately, above \$200,000. And that gives you your 27 million Canadians.

We're not addressing the group that's supposed to be addressed. That was the promise. You've got to keep your promises when you make a promise.

So here we go: We're tasked with voting on this middle class tax cut bill that takes from the wealthiest 2 per cent to give to the wealthiest 20 per cent to 30 per cent and will cost \$1.7 billion annually. And I will accept Senator Day at \$1.5 billion. Thank you, senator. For which we will rely on all the taxpayers to pay back in the future.

Don't forget, the \$1.5 billion we've already lost, we're all going to have to pay it back. We all have to pay it back. When you go into debt, you have to pay it off. So you either pay me now or pay

me later. And it's great to say, "Well, geez, we'll get it back; the economy will pick it up." But right now we're still in a very tight economic state and we don't know what's going to happen down the road.

If we just say that it's the will of the government, is it the will of the government to fulfill its promise to the people they're supposed to make promises to? I think that's very important, and I'm going back to what Senator Day said. If the will of the government is to give to the people between \$45,000 and \$90,000, then just do it. We're not complaining about the \$200,000 tax increase. We're not complaining about the TFSA's. By the way, there are 15.1 million TFSA accounts in Canada. Yes, the average is \$2,880 per year, but guess what? People don't want to be told that they can't save after they've already paid taxes. We're telling people they can't save more than 5,500 bucks a year. That's what we're telling them. Is that what we're about in Canada; telling people they can't save more money? Think about it, because you've already paid tax.

Anyway, that's just a thought. And we're not complaining about that. We're trying to fix one thing — \$45,000 to \$90,000.

We have a bill that requires fixing. It should be sent back to the house, where they have the power to fix it. The house can fix this. Question: Are you personally ready to vote on a bill knowing that you, as senators, will get a credit of \$820 while a single Canadian earning \$48,000 gets \$81?

Senator Raine: Way to go. Shame!

Senator Smith: Honestly, are you willing to do that? To me it makes no sense. That's what bothers me so much. I'm not doing this because I'm a Conservative. I'm doing this because I'm a Canadian and I want Canadians to benefit — 7.4 million Canadians.

When you vote for the bill, you're voting to run an annual deficit — take Senator Day's numbers — \$1.5 billion to give money to 30 per cent of the richest Canadians, including ourselves, while 65 per cent of the population get nothing but will bear the burden of paying this additional debt.

We have a duty to serve all Canadians. We're in the chamber of sober second thought on bills that originate from the other place. I respect the will of the people, but the will of the people has to be supported by the promises made to the people by the elected representatives.

The bill does not deliver what it was intended to do. It does not deliver on the promise — \$45,000 to \$90,000. It is not a partisan issue. This is an issue for all senators, no matter which side of the fence you sit on.

• (1910)

As Senator Paul Massicotte wisely stated in an article: "Party should never trump country. Canadians deserve better."

This is about Canadians. I would encourage all senators to abstain from voting for Bill C-2 if you have not read the bill. I'm not sure if our new members have had a chance to read the bill,

because there are a lot of things in front of us. For people on the committee like myself, when I saw it, it is part of my job, and I think it is important we do that. If you have not read the report by the PBO, if you have not read the testimony from some of our committee meetings, you should abstain.

With all due respect, the Canadian public voted based on a promise to give to the middle class. This bill does not deliver on the promise. We must serve Canadians and send the bill back to be rewritten. Remember that we're not asking to rewrite all 10 clauses. We want to rewrite that one clause.

The only power we have as senators to fix Bill C-2 is to vote against it and send it back to be rewritten. We have done the work for the government. The amendment gives more back to the middle class and is revenue neutral. I respect the Speaker's ruling. He ruled and did what he had to do. We're trying to find a solution.

The house has the power to implement the amendment or, better still, adjust the GST credit to better target the middle class. In order to send that message we need to vote against Bill C-2.

Senators, one last time: Are you willing to pass a bill intended to help the \$45,000 to \$90,000 income group which will give you an \$820 yearly credit, plus create a \$1.5 billion deficit? Are you willing to do that, or are you willing to support hardworking Canadians, \$45,282 to 90,563, by voting against Bill C-2 and asking the House of Commons to rewrite the bill so the government can deliver on its promise to 7.4 million Canadians, who constitute a large percentage of Canadian taxpayers that we represent? Thank you.

Some Hon. Senators: Hear, hear!

Senator Marshall: Honourable senators, I would like to say a few words about Bill C-2, but I would like to start off by thanking Senator Day and Senator Smith for their remarks.

I can assure you I won't be as animated as Senator Smith when I deliver my remarks. However, I want to speak because I'm a member of the National Finance Committee which recently studied the bill.

We conducted our study of Bill C-2 between October 25 and November 22. As Senator Day has already said, we conducted six meetings. We heard from a number of witnesses regarding the bill, including the Parliamentary Budget Officer and his officials; the Fraser Institute; the Canadian Labour Congress; the Conference Board of Canada; the Canadian Centre for Policy Alternatives; the Canadian Taxpayers Federation; CPA Canada, which is the umbrella organization for professional accountants in Canada; and the Canadian Retired Persons Association. So we did have a good cross-section from left to right and in the middle, and of course, we heard from the Minister of Finance and his officials.

The primary focus of the witnesses was on proposed section 1 of Bill C-2, which is the section changing the tax brackets as well as the tax percentages, which we refer to now as the "tax break."

The government's commitment to Canadians regarding the "tax break" is outlined in their 2015 election platform. Specifically, the government had committed to give "middle class" Canadians a tax break by making taxes "more fair."

Here is how they said they would do this — and I am quoting from their platform — "We will give middle class Canadians a tax break, by making taxes more fair." They continue on to say:

When middle class Canadians have more money in their pockets to save, invest, and grow the economy, we all benefit.

We will cut the middle income tax bracket to 20.5 per cent from 22 per cent — a seven per cent reduction. Canadians with taxable annual income between \$44,700 and \$89,401 will see their income tax rate fall.

This tax relief is worth up to \$670 per person, per year — or \$1,340 for a two-income household.

The platform goes on to say:

To pay for this tax cut, we will ask the wealthiest one per cent of Canadians to give a little more. We will introduce a new tax bracket of 33 per cent for individuals earning more than \$200,000 each year.

There are approximately 340,000 taxpayers in this group.

So in their election platform, the government makes a commitment to reduce the tax rate on taxable income for taxpayers with a taxable income between \$44,700 and \$89,400. They continue on and say that it is worth up to \$670 per person.

I would like to point out that the taxpayer, as Senator Smith has already indicated, has to be at the very top of the second tax bracket to save \$670 in taxes. The individual at the lower end, with taxable income, say, of \$45,000, will only save \$21.

Individuals at the lower end of the tax bracket receive the least benefit. By focusing on the "middle class" in their election platform, the government is defining the "middle class" as Canadians with a taxable annual income between \$44,700 and \$89,400. However, when I look further at the impact of Bill C-2, it is obvious that individuals with taxable income above the defined range will benefit the most.

For example, an individual with a taxable income of \$120,000 will have their taxes reduced by \$766 under Bill C-2, while those individuals in the targeted tax bracket will receive significantly less.

Let me summarize: An individual at the lower end of the targeted tax bracket, at \$45,000, will save \$21. An individual at the top end of the targeted tax bracket of \$89,000 will save \$696. But an individual who is not in the targeted tax bracket, because their taxable income is higher, for example \$120,000, will save the most, with a tax savings of \$766.

Obviously, the greater benefit is not going to those in the targeted “middle income” tax bracket. Rather, it is going to those individuals whose income exceeds the targeted tax bracket: that is, those Canadians who are more affluent.

In fact, under Bill C-2, taxpayers with up to \$220,000 of taxable annual income will see their taxes reduced.

This was first issue that I had with Bill C-2, honourable senators.

The second issue I had with Bill C-2 relates to the government’s commitment that the reduction to the middle income tax bracket would be revenue neutral and that it would be paid for by the new 33 per cent tax rate on taxable income exceeding \$200,000.

Specifically, the government had committed that to pay for the tax cut the wealthiest 1 per cent of Canadians would pay more. This would be achieved, they said, by introducing a new tax rate of 33 per cent for the approximately 340,000 individuals with a taxable income of more than \$200,000 a year.

The Liberal platform specifically states, and I quote, “. . . to pay for this tax cut, we will ask the wealthiest 1 per cent of Canadians to give a little more.” In other words, the tax cut would be revenue neutral.

We now know that the tax cut is not revenue neutral. That brings me to my third issue with Bill C-2.

The Parliamentary Budget Officer has told us that the net cost of Bill C-2 will be \$1.7 billion annually. This is a net cost of tax changes made only to the second tax bracket and the new 33 per cent tax bracket.

What is the cost of the tax cuts to individuals with taxable income above the targeted tax bracket? In other words, those individuals with taxable income between \$89,400 and \$200,000 — individuals such as those making the \$120,000, as I previously mentioned?

If you look at the website of the Department of Finance, there’s a table there outlining the fiscal cost of the proposed tax changes. The Department of Finance estimates that reducing the second personal income tax rate from 22 per cent to 20.5 per cent will cost \$3.4 billion, and introducing the 33 per cent tax rate will increase tax revenues by \$2 billion. So the net cost to the treasury of these two changes will be \$1.4 billion.

I cannot find any fiscal costing of the tax reduction which will be given to taxpayers with taxable income between \$89,400 and \$200,000.

A number of witnesses who testified during our study of Bill C-2 expressed the opinion that Bill C-2 does not meet the objectives of the government as outlined in their platform: first, that the bill is not revenue neutral; and, second, that the middle-income group identified in their platform is not the biggest beneficiary. I agree with those two conclusions.

[Senator Marshall]

• (1920)

The fourth issue I am raising relates to the deficit for the current year. When the Minister of Finance attended our Standing Senate Committee on National Finance on November 2, the chair of the committee, Senator Smith, asked the minister if the cost of Bill C-2 had been factored into the new budget deficit of \$25 billion, which was announced by him last month. This question was never answered.

In summary, I want to outline the four issues that I have with Bill C-2. First of all, the targeted middle income group does not receive the biggest tax benefits. Those at the lower end receive the least benefit and those near the top and over the top receive the biggest benefit.

The second issue is the cost of Bill C-2 is not revenue neutral, as the government had committed.

My third point is we haven’t received any confirmation that the estimated cost of all tax cuts being made by Bill C-2 has been disclosed. We do not know if the cost of Bill C-2 is included in the recently released deficit figure of \$25.1 billion for the current fiscal year.

I would also like to address some remarks that Senator Bellemare spoke to on Bill C-2 last week. I would like to provide additional comments to her comments.

When Senator Bellemare spoke of tax cuts, her comments included the financial impact of other budgetary initiatives, including the Canada Child Benefit, the increase in the GIS and the elimination of income splitting for couples with children. The savings cited are not the savings resulting solely from the tax cuts included in Bill C-2.

She stated that the major winners are people whose annual taxable income is between \$30,000 and \$60,000 because they will gain an average of \$3,195. If these people do gain \$3,195, it is not from the tax cuts included in Bill C-2.

In fact, individuals with taxable income between \$30,000 and \$44,700, as indicated by Senator Smith, will save nothing under Bill C-2, while those with taxable income between \$44,700 and \$60,000 will probably save between \$1 and \$261. Individuals with taxable income between \$90,000 and \$200,000 will save approximately \$680 annually.

While there is a new tax rate of 33 per cent on taxable income over \$200,000, these individuals do receive a tax reduction of \$680 on their income below \$200,000. So taxes on individuals do not actually increase until taxable income is around \$215,000.

This is why the government is saying that we have to examine all their budgetary measures together rather than individually because Bill C-2 alone does not do what the government promised.

I would like to make one final comment about deficit financing by the government. There’s an old saying that says the deficits of today are the taxes of tomorrow. The government in its election

platform committed to modest deficits of less than \$10 billion annually for each of the next two fiscal years. We now know the deficit for this year is approaching \$30 billion.

My final comment is this: Why are we pushing the costs of Bill C-2 off to the future for our children and our grandchildren to pay? Thank you.

(On motion of Senator Martin, for Senator Neufeld, debate adjourned)

**CANADA PENSION PLAN
CANADA PENSION PLAN INVESTMENT BOARD ACT
INCOME TAX ACT**

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Dean, seconded by the Honourable Senator Moncion, for the second reading of Bill C-26, An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act.

Hon. Carolyn Stewart Olsen: Honourable senators, I rise today to speak at second reading of Bill C-26, An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act.

As you can see by the title of this legislation, it is very broad and impacts the government's retirement plan for Canada as well as Canada's general financial status through its changes to the Income Tax Act.

Bill C-26 proposes amendments to the Canada Pension Plan, CPP, which would provide for a gradual increase in premiums by both employers and employees, starting in 2019.

To justify this, it promises a matching increase in the Canada Pension Plan payouts, which will not take effect for at least 40 years.

There are other amendments in the bill which provide for changes to additional benefits like disability payouts or funds for those whose spouses have died, and also amendments which raise questions as to how the government will deal internally with the money they collect through CPP deductions.

Finally, Bill C-26 amends the Income Tax Act to increase the Working Income Tax Benefit, and this is a measure the government introduced in 2008 to ease the tax load on the working poor.

These amendments would, among other things, raise the maximum amount of the Working Income Tax Benefit to \$1,192 for single individuals and \$2,165 for families. This is an increase from the currently posted \$1,015 for single people and \$1,844 for families.

The government's intention behind this part of the legislation is to offset the increase in CPP deductions that people will be burdened with when Bill C-26 comes into effect.

According to Finance Canada, the increased Working Income Tax Benefit will lead to \$250 million in extra spending. This represents yet another increase in our budget deficit.

The direct cost to individual Canadians will be an extra payroll deduction of up to \$1,100 for some and a matching expense for businesses of all sizes.

The financial implications of this bill will impact everyone. It is a general hit to Canada's balance sheet, and a personal blow to the paycheques of every single Canadian worker in the businesses which employ them.

At a certain point, these numbers become an abstraction for some, and it is easy for them to forget that we are talking about real Canadians and real businesses.

To make it clearer, let me give you an example of how this will impact us. No adult who is alive today will likely see the full Canada Pension Plan payout that this bill proposes.

Those who would be the first to benefit are now 16 years old. They will start paying in as of 2019 and will need to pay for 40 years before they see a cent of this.

But all Canadians will be paying after Bill C-26 passes, starting in 2019, including the working poor and those in the middle of their careers now. Almost none of the seniors who currently live in poverty and who seem to be the inspiration for the government to make these changes will be alive to see the increased payout.

As of September, the average wage for a Canadian worker was just under \$50,000 per year. With Bill C-26 in effect, a business of 40 to 50 employees will lose this amount each year, \$50,000 coming off your small businesses.

Senators, when you look at it this way, it is not just a number anymore. It is a person's job. You know what will happen in a bad year. The businesses may have to do layoffs or terminations of good, middle class jobs that will simply disappear.

It is important to keep in mind the government's self-declared emphasis on growing and strengthening our middle class. When it comes down to it, workers and business owners are worried about this bill and this does nothing to calm their fears.

Hendrik Brakel, senior director for the Economic, Financial & Tax Policy at the Canadian Chamber of Commerce said in May:

... we're worried a big tax increase is headed for the middle class like an elbow to the chest.

He continued:

... this comes at the worst possible time — an economy reeling from weak commodity prices and slower consumer spending will be lucky to eke out the growth of 1.5% next

year. It's difficult to stimulate the economy while pulling money out of the pockets of Canadians.

• (1930)

This bill will take the money from the pockets of all working Canadians and they will have no choice about this, so that talk of "contributions" and "forced savings" is really just talk about a tax.

In a survey conducted by the Canadian Federation of Independent Business, it was found that less than 20 per cent of Canadians would opt to put more of their savings into the Canada Pension Plan. In another Canadian Federation of Independent Business survey, over one third of employed Canadians say that the proposed increases are unaffordable.

Only 11.4 per cent will ever draw the maximum from the Canada Pension Plan. As of July, the average payout was \$550 a month, but few seniors today need the maximum from the Canada Pension Plan when they retire, which means this tax is disproportionately levied on the middle class for benefits they will never receive.

It is also worth noting that you cannot tax your way to prosperity. In this case, you cannot positively impact the lives of Canadians by taxing them for a benefit they will never collect.

For those who will receive the payouts tied to this tax hike, they will have to wait for the far-off-distant future. And these changes, should they still be there at that point, will do nothing to help today's seniors or our workers who are soon to retire.

The real tragedy of this is that the public's perception of the government's action does not match the reality of the legislation. A recent Ipsos poll found that over 25 per cent of those who are currently retired think they will see bigger Canada Pension Plan cheques, and 70 per cent of those asked did not realize that current seniors will not see a single dime from this effort.

Senators, Canadians are simply unaware of the implications of this bill. An Angus Reid poll found only 9 per cent were following the CPP changes closely, which is disturbing since this legislation ultimately affects everyone. If we cannot really say how this bill affects average Canadians in the long term, what can we say about it in the near term?

Simon Gaudreault, the Chief Economist at the Canadian Federation of Independent Business, stated that this:

... will have serious negative impacts on workers and the Canadian economy. The announced changes, including increased contributions, may put Canadian wages, hours and jobs in jeopardy.

In 2015, the Canadian Federation of Independent Business looked at a similar scenario for changing the Canada Pension Plan and found it would result in the loss of 110,000 jobs and a 1 per cent permanent pay cut for everyone.

The Fraser Institute, in a separate study, found that a 1 per cent increase in Canada Pension Plan premiums causes a 0.9 per cent cut in the personal savings rate.

This legislation is paternalistic. It assumes that Canadians are not taking advantage of private savings vehicles, like the Registered Retirement Savings Plan or the Tax-Free Savings Account.

It's worth considering whether this government had this legislation in mind when they reduced the maximum contribution levels for the Tax-Free Savings Account. I wonder.

In his speech, Senator Dean said that Canadians sleep well knowing someone is looking after them, and he characterized Bill C-26 as an example of federalism working at its best. The government knows best, senators, and this is the attitude that Bill C-26 envisions. The facts, of course, do not match the perception at all.

According to C.D. Howe, Canada's rate of individual savings has climbed from 7.7 per cent in 1990 to 14.1 per cent today. Canadians are saving more than ever, and we should trust them to make the right decisions with their own money. If this bill passes, Canadians will take less money home with every paycheque. Senators, every penny the government takes is a penny people cannot save.

When the Canada Pension Plan was originally conceived, it was never intended to be a complete income replacement scheme. The government of the day intended for the Canada Pension Plan to be an aid for poor seniors, not the primary vehicle for a secure retirement.

Judy LaMarsh, who was then Lester Pearson's Minister of National Health and Welfare, crafted the Canada Pension Plan and what was to become Canada's medicare system. When asked about the Canada Pension Plan, she said:

... it is not intended to provide all the retirement income which many Canadians wish to have. This is a matter of individual choice and in the Government's view, should properly be left to personal savings and private pension plans.

Individual choice is the main driver of our economic system. That's why we enjoy great wealth in Canada, and the lack of it is why some countries have great poverty.

The government claims that the increase in benefits will result in a boost to the economy because of seniors having more money to spend, but their own numbers, when compared to long-term projections, show that the GDP will be reduced by 0.3 per cent to 0.5 per cent as a result of this tax.

Finance Canada's analysis shows that the higher pension plan premiums will do real damage to our economy. They will reduce employment by 0.04 to 0.07 per cent, which in real terms means 1,050 fewer jobs per year for 10 years. You don't have to be an economist to figure out that fewer jobs and less growth mean more poverty for working Canadians.

As it stands, our retirement system is internationally recognized as one of the best. Poverty among seniors has been falling. Figures from Statistics Canada show that the share of Canadian seniors

today living in poverty has dropped from 29 per cent in 1970 to just 3.7 per cent today.

Let me be clear, senators. No senior should live in poverty. It is a duty of our government to help those in need live with dignity.

It is true that it has been a long time since the Canada Pension Plan was last altered. All parties in Canada have at one time or another advocated for some kind of change in the system since the last set of amendments passed in 1997.

At the time, these amendments changed the plan from a pay-as-you-go kind of system to a fully funded benefit. The change was made to protect the viability of the plan, and this difference meant you can be guaranteed under the current Canada Pension Plan that you get what you have actually paid for.

The most recent report of the Chief Actuary of Canada suggests that the Canada Pension Plan fund is very healthy and will be solvent for the next 75 years. Officials who briefed me on the legislation assured me that the Canada Pension Plan is not just performing well, it is actually performing above their expectations.

With this healthy balance sheet in the Canada Pension Plan fund and the increase in personal savings rates we have seen, I do not see the rationale for this vast imposition on all working Canadians and all businesses.

In June, Charles Lammam and Hugh MacIntyre from the Fraser Institute authored a piece in the *Financial Post*, stating:

Instead of expending political energy on debating CPP expansion in the misguided belief that many middle- and upper-income Canadians are not saving enough for retirement, the focus of public debate should be on how to best help financially vulnerable seniors.

I would expand on that to suggest we should be looking at how to really help the poor right now, not debating a middle class tax grab.

I support reasonable, evidence-based policies that help real people. The expansion of the Guaranteed Income Supplement was highly successful and it immediately helped those who are in the most need.

If families are at risk of not saving enough for retirement, then the natural solution would be for the government to make it easier for them to save through increased economic growth and policies like the Tax-Free Savings Accounts, which are widely used by the middle class.

If the decline of workplace pension plans is a problem, then how on earth does imposing a tax on all businesses help incentivize employers to expand them?

Less money for Canadians means less cash in hand for students paying off their loans, or a smaller savings account for the young couple trying to make a down payment on a new home. Less money for businesses means hiring freezes, layoffs and an added obstacle to new investments and innovation.

• (1940)

The government, and Senator Dean in his speech, characterized the increase in Canada Pension Plan premiums as “modest,” but, when asked, the Canadian Federation of Independent Business noted that 70 per cent of small business owners disagreed with the idea that this tax hike will have a “limited” impact on their businesses.

In March, Dan Kelly, President and Chief Executive Officer of the Canadian Federation of Independent Business said:

Two thirds of small firms say they will have to freeze or cut salaries and over a third say they will have to reduce hours or jobs in their business in response to a CPP/QPP hike.

If this is what things will look like for small businesses, what will things look like for the working poor and low-income Canadians? The actual benefit the poor will receive is questionable. Low-income seniors receive the Guaranteed Income Supplement in addition to their Old Age security payments. The Guaranteed Income Supplement is means-tested. If you earn a certain amount of money or have a high enough income, the government claws back the Guaranteed Income Supplement, dollar for dollar. If increased Canada Pension Plan benefits result in more income for a senior, then the GIS payment to that senior will, in turn, be reduced. Senators, if this is the case, then do seniors in poverty end up with more or remain in a status quo situation?

The C.D. Howe Institute addressed this question in a paper they released on the government’s Canada Pension Plan strategy. They noted that low-income workers will see no benefit from this. They will be taxed now when the premiums go up, and they will see little increase later when the higher Canada Pension Plan payment they have been promised is offset by clawbacks to their Guaranteed Income Supplement.

Another issue we must consider is how the government can ensure that the proposed taxes in the Working Income Tax Benefit are coordinated with similar programs at the provincial level. Finance Canada’s only word on this is a commitment that the government will consult with the provinces before the final changes are in effect.

Senators, we are essentially being asked to pass this legislation and then wait three years for them to figure it out and tell us.

As you can see, Bill C-26 leaves us with a number of unanswered questions. The bill before us also leaves women and the disabled behind. Bill C-26 makes no reference to the “child rearing dropout provision” or the similar plan that exists for those who have received disability payments in the past.

The dropout provision has always been important to the Canada Pension Plan. Pierre Trudeau’s government introduced it in the 1970s as a means of protecting working women from being penalized.

Women already get less from the Canada Pension Plan than men because of the pay gap in the workforce. The lack of a dropout provision for women who take time off to have children

will result in greater gender inequality in this country. It is passing strange that the government would neglect this, considering the heavy emphasis they have placed on women's issues in the past.

Speaking of the past, the debate on this bill from the government side in the House of Commons has harkened back to a period when workplace pensions were common and well-funded. The government seems to believe that the present decline in pensions we have seen since the Great Recession will continue forever into the future. The attitude behind this belief is a perception that Canada's best days are behind us and that Canadians need the government to step in and protect them from a dark future.

Senators, this suggests the government is betting against Canada — betting against the possibility that we can one day return to great economic growth and a work environment where Canadians have more money to spend and, more importantly, more money to save. This is a bad bet that promises to take money out of our economy and transfer it to government coffers with no hope of a return for more than 40 years. The government is betting taxpayers' money, gambling against our prosperity in a way where few Canadians will ever see the return.

Senators, the problem with prophecies is that they tend to become self-fulfilling if we put too much behind them. This bill only increases the risk to Canadians in the workforce by cutting jobs, growth and personal savings rates and by giving businesses more incentive to get rid of workplace benefits.

I'm not as pessimistic as the government is about the days ahead. We are a young country with a bright future, and enacting a tax of this kind, whatever the government chooses to call it, will only hold us back.

Some Hon. Senators: Hear, hear!

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: 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 Dean, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.)

[Senator Stewart Olsen]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

COMMITTEE AUTHORIZED TO MEET DURING THE SITTING OF THE SENATE

Leave having been given to proceed to Motions, Order No. 142:

Hon. Kelvin Kenneth Ogilvie: Honourable senators, I move:

That, if Bill C-26, An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act, is read a second time and referred to Standing Senate Committee on Social Affairs, Science and Technology, that committee have the power to meet for the purposes of its study of the bill even though the Senate may then be sitting, with the provisions of rule 12-18(1) being suspended in relation thereto.

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

Hon. Senators: Question.

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

(Motion agreed to.)

[*Translation*]

THE SENATE

STATUTES REPEAL ACT—MOTION TO RESOLVE THAT THE ACT AND THE PROVISIONS OF OTHER ACTS NOT BE REPEALED—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Bellemare, seconded by the Honourable Senator Harder, P.C.:

That, pursuant to section 3 of the Statutes Repeal Act, S.C. 2008, c. 20, the Senate resolve that the Act and the provisions of the other Acts listed below, which have not come into force in the period since their adoption, not be repealed:

1. Parliamentary Employment and Staff Relations Act, R.S., c. 33(2nd Supp):

-Parts II and III;

2. *Contraventions Act*, S.C. 1992, c. 47:

-paragraph 8(1)(d), sections 9, 10 and 12 to 16, subsections 17(1) to (3), sections 18 and 19, subsection 21(1) and sections 22, 23, 25, 26, 28 to 38,

- 40, 41, 44 to 47, 50 to 53, 56, 57, 60 to 62, 84 (in respect of the following provisions of the schedule: sections 1, 2.1, 2.2, 3, 4, 5, 7, 7.1, 9 to 12, 14 and 16) and 85;
3. Agreement on Internal Trade Implementation Act, S.C. 1996, c. 17:
 - sections 17 and 18;
 4. Comprehensive Nuclear Test-Ban Treaty Implementation Act, S.C. 1998, c. 32;
 5. *Preclearance Act*, S.C. 1999, c. 20:
 - section 37;
 6. Public Sector Pension Investment Board Act, S.C. 1999, c. 34:
 - sections 155, 157, 158 and 160, subsections 161(1) and (4) and section 168;
 7. Modernization of Benefits and Obligations Act, S.C. 2000, c. 12:
 - sections 89 and 90, subsections 107(1) and (3) and section 109;
 8. *Marine Liability Act*, S.C. 2001, c. 6:
 - section 45;
 9. *Yukon Act*, S.C. 2002, c. 7:
 - sections 70 to 75 and 77, subsection 117(2) and sections 167, 168, 210, 211, 221, 227, 233 and 283;
 10. An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts, S.C. 2003, c. 26:
 - sections 4 and 5, subsection 13(3), section 21, subsections 26(1) to (3) and sections 30, 32, 34, 36 (with respect to section 81 of the *Canadian Forces Superannuation Act*), 42 and 43;
 11. Assisted Human Reproduction Act, S.C. 2004, c. 2:
 - sections 12 and 45 to 58;
 12. Public Safety Act, 2002, S.C. 2004, c. 15:
 - section 78;
 13. Amendments and Corrections Act, 2003, S.C. 2004, c. 16:
 - sections 10 to 17 and 25 to 27;

14. Budget Implementation Act, 2005, S.C. 2005, c. 30:
 - Part 18 other than sections 124 and 125; and
15. An Act to amend certain Acts in relation to financial institutions, S.C. 2005, c. 54:
 - subsections 1(1) and 27(2), sections 29 and 102, subsections 140(1) and 166(2), sections 168 and 213, subsections 214(1) and 239(2), section 241, subsection 322(2), section 324, subsections 368(1) and 392(2) and section 394.

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I'm rising today to speak to Motion No. 55, which lists the acts and provisions of acts that should not be repealed on December 31. This is a very technical motion and is a response to a bill that received Royal Assent in 2008. This bill, which was initiated here in the Senate by Senator Banks, sought to clean up some of our federal legislation and trim it down by repealing acts or provisions of acts that have not come into force within 10 years of receiving Royal Assent.

The act was enacted in 2008 and came into force in 2010. Every year in early January the Senate and the House of Commons receive an annual report from the Minister of Justice listing laws and provisions of laws that received Royal Assent but that have not been brought into force for 10 years.

The Senate received such a report on January 27, 2016. After receiving that report, the ministers determine whether, indeed, the acts or provisions of acts under their purview can be repealed.

• (1950)

The motion currently before the chamber is calling on us not to repeal an act and provisions in 14 other acts, either because they came into force since January 31 or because there are important reasons why they should not be repealed, for instance because they have to do with international treaties or because they are in the process of being amended.

I would like to explain a little about the various points of this motion on the Order Paper. Unfortunately, they are not presented in order.

Nine ministers have asked the Minister of Justice not to repeal certain acts or certain provisions of acts. In passing this motion, we can ensure that these acts will not be repealed, as these nine ministers have requested. Next year's annual report will therefore outline the acts that will not have been repealed and implemented.

Let's begin with the Minister of Finance.

[*English*]

The Minister of Finance is recommending a deferral of certain provisions in two acts. The first recommendation concerns several provisions of "An Act to amend certain Acts in relation to financial institutions." These provisions relate to the forms that shareholders of financial institutions can use to vote by proxy.

The provisions also exempt certain communications to shareholders from the framework that governs communications about proxies under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act and the Trust and Loan Companies Act. Additionally, these provisions amend the Green Shield Canada Act to abate cross-references to the Insurance Companies Act as the section references have changed over time.

A deferral of the repeal of these provisions is recommended as they are currently under review by the Department of Finance. The results of this review must be considered when determining whether to bring these provisions into force.

The second deferral recommendation concerns sections 17 and 18 of the Agreement on Internal Trade Implementation Act. Those provisions would amend certain sections of the Interest Act to provide for the eventual creation of regulations relating to a cost of credit disclosure harmonization initiative that was referenced in the Agreement on Internal Trade.

Negotiations are ongoing at this time to renew Canada's internal trade framework, and those negotiations will affect all areas of the existing Agreement on Internal Trade. As a result, until renegotiations are concluded and the exact implications for sections 17 and 18 of the act are known, a deferral of the repeal of these provisions is recommended.

[Translation]

The Minister of Foreign Affairs, Stéphane Dion, is recommending the deferral of the repeal of an entire act and the provision of another act. The first recommendation has to do with the Comprehensive Nuclear Test-Ban Treaty Implementation Act. We can bring this act into force once the Comprehensive Nuclear Test-Ban Treaty comes into force. However, that treaty needs to be ratified by 44 nations before it comes into force, and eight countries still haven't ratified it. Deferring the repeal is recommended so that Canada can go ahead with the legal, technical and administrative requirements of the treaty, pending its entry into force.

The second recommendation concerns section 37 of the Preclearance Act. The act implements a 2002 bilateral treaty called the "Agreement on Air Transport Preclearance Between the Government of Canada and the Government of the United States of America." As part of the Beyond the Border action plan, a new preclearance agreement called the "Agreement on Land, Rail, Marine, and Air Transport Preclearance" was signed by Canada and the United States in March 2015. The new agreement is more comprehensive and, once implemented, will replace the 2002 bilateral treaty on air transport preclearance. A deferral of repeal for section 37 is being sought to avoid duplication and to ensure a harmonious transition to the new preclearance regime.

[English]

The Minister of Health is recommending a deferral of sections 12 and 45 to 58 of the Assisted Human Reproduction Act as a result of a decision of the Supreme Court of Canada in 2010. The federal government's ability to regulate the complex area of

assisted human reproduction has been redefined and reduced. In 2012, the Assisted Human Reproduction Act was amended to that effect. A deferral of repeal is recommended as Health Canada is currently developing the regulations necessary to implement these sections. The provisions will be brought into force once the accompanying regulations are ready.

[Translation]

The Minister of Indigenous and Northern Affairs is recommending deferral for sections 70 to 75 of the Yukon Act. These provisions will allow the Yukon government to appoint its own auditor general and cease to use the services of Canada's Auditor General. The Government of Yukon must create a position of auditor general before these provisions can be brought into force.

The rest of the provisions of the Yukon Act are consequential amendments to other acts that should be brought into force when the Yukon Surface Rights Board Act is repealed and new legislation is enacted in its place. Deferral for these provisions is recommended to allow Yukon sufficient time to take the necessary measures.

[English]

The Minister of Justice and Attorney General of Canada is recommending a deferral for provisions in two acts. The first concerns certain provisions of the Contraventions Act. The act provides a procedural regime for prosecuting federal offences designated as contraventions. It sets out two options for implementing the regime: either through an autonomous federal infrastructure or existing provincial penal schemes.

The Minister of Justice and Attorney General of Canada has entered into agreements with several provinces to implement the federal contraventions regime through existing provincial penal schemes. The Department of Justice is still in negotiations with three provinces: Newfoundland and Labrador, Saskatchewan, and Alberta. The Department of Justice remains committed to implementing the contraventions regime throughout the country using the existing provincial penal schemes for issuing tickets in respect of federal contraventions.

However, negotiations and progress depend largely on the priorities and capacity of the provinces. Therefore, in the event that agreements cannot be reached with the remaining three provinces, the Department of Justice may need to implement an autonomous federal penal scheme in those provinces by bringing into force the remaining provisions of the act. A deferral of repeal is recommended to allow negotiations for implementation with the three provinces to continue.

The second deferral recommendation concerns the five outstanding provisions of the Modernization of Benefits and Obligations Act. This comprehensive act amends 68 federal acts to ensure equal treatment of married and common law couples. The coming into force of two of the remaining provisions is based on two negotiated agreements and is under discussion with the relevant First Nations government. A deferral of repeal is recommended to allow negotiations with the First Nations government to continue.

[Senator Bellemare]

• (2000)

The other three provisions authorize a regulatory scheme to allow payment of parental benefits under the Employment Insurance Act, in the event of an unconstitutional exclusion caused by a determination of parentage under provincial and territorial laws.

A deferral of repeal is recommended to allow the federal government to preserve its legal position until provincial and territorial laws are amended.

[Translation]

The Minister of National Defence is recommending deferral of repeal for provisions in two acts.

The first recommendation concerns certain provisions of An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts. These provisions would amend the Canadian Forces Superannuation Act, specifically with respect to supplementary death benefits and elective service rules. These provisions cannot be brought into force before the supporting regulations are passed. The policy analysis is ongoing.

The transfer of responsibility for the administration of the Canadian Forces pension plan to the Department of Public Services and Procurement, as part of the Government of Canada's Transformation of Pension Administration Initiative, will also influence when these provisions will come into force. The transfer will be complete on January 3, 2017. The deferral is recommended in order to mitigate the effects any major change made to the pension administration system until the transfer of responsibility is complete.

The second deferral concerns section 78 of the Public Safety Act, 2002. This section would add a Part V.2 to the National Defence Act in order to authorize certain activities to ensure the integrity of information technology systems at the department and in the Canadian Forces, as well as the data saved on those systems. The department is currently preparing the coming into force of this section, but its deferral of repeal is recommended in the event that the necessary authorizations are not obtained before the end of the calendar year.

[English]

The Minister of Public Service and Procurement is recommending a deferral for certain provisions in two acts. The first recommendation concerns part 18 of the Budget Implementation Act, 2005 other than section 124 and 125. The provisions amend several provisions of the Department of Public Works and Government Services Act and give the Minister of Public Services and Procurement the exclusive authority for contracting for services, as the minister currently has for goods.

Although the intent is to bring these provisions into force, a deferral of repeal is recommended because the Department of Public Services and Procurement Canada is not yet able to implement this provision, as it does not currently have the capacity to exercise exclusive authority for services.

[Translation]

The Hon. the Speaker: Senator Bellemare, your time is up. Are you asking for five more minutes?

Senator Bellemare: Yes, please.

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

Hon. Senators: Agreed.

[English]

Senator Bellemare: The second recommendation concerns Part 2 of the Parliamentary Employment and Staff Relations Act. Part 2 provides that labour standards such as tender hours, wage and leave will apply to parliamentary employment as per the Canadian Labour Code. Part 3 provides the same occupational health and safety coverage to parliamentary employees as exists for private industry and the federal public service under the Canada Labour Code.

The Minister of Canadian Heritage was responsible for this provision until April 14, 2016, when responsibility was transferred to the Minister of Public Services and Procurement.

A deferral of the repeal of Parts 2 and 3 is recommended because further analysis of the possible impact on parliamentary privilege is necessary before bringing them into force.

[Translation]

The Minister of Transport has recommended that the repeal of section 45 of the Marine Liability Act be deferred. This provision would implement the Hamburg Rules, an international convention on the carriage of goods by sea adopted by the United Nations in 1978. However, the Hamburg Rules have not yet been ratified by Canada's major trading partners.

The Department of Transport is currently conducting research, analyses and consultations with various stakeholders to determine the best way to update Canada's legislation on the carriage of goods by sea, including the Marine Liability Act. It has been recommended that the repeal be deferred because this review is not yet complete.

[English]

The President of the Treasury Board is recommending a deferral for certain provisions in two acts. The first recommendation concerns certain provisions of the Public Sector Pension Investment Board Act that address supplementary death benefits for the Canadian Armed Forces. These provisions would amend the Canadian Forces Superannuation Act to permit regulation to be made prescribing the amount of supplementary death benefits payable and the amount of premiums to be established by regulation.

These amendments cannot be brought into force before the necessary regulations are made. A deferral of repeal is recommended because policy analysis and interdepartmental

consultation are ongoing. The goal is to update the Canadian Forces Superannuation Act supplementary death benefit to harmonize with the public service Supplementary Death Benefit Plan.

Also a deferral of repeal is recommended because of the transfer of responsibility for the administration of the pension benefits plan to Public Services and Procurement Canada in January 2017. This will reduce the likelihood of any significant pension administration system changes before the transfer.

The second deferral recommendation comes from certain provisions of the Amendment and Correction Act 2003 that amend the Government Superannuation Act, the Salaries Act and Supplementary Retirement Benefit Act.

When these provisions are brought into force, they will require new regulation under the Salaries Act. Planning is underway to have the required regulation ready before the end of 2016. A deferral of repeal is recommended in case the requisite approval cannot be maintained in time to bring the provision into force this year.

[*Translation*]

As I was saying, under the Statutes Repeal Act, repeal deferrals are valid for only one year. Any act or provision of an act whose repeal is deferred this year will be included in the next annual report.

Honourable senators, it is important that we adopt this motion. If we do not adopt it before December 31, then all of the acts and provisions I just listed will be repealed, and in many cases they will have to go through the entire process in the House of Commons and the Senate to be passed again.

I therefore ask honourable senators to pass the motion expeditiously, before December 31, 2016.

[*English*]

Hon. Wilfred P. Moore: I wonder if Senator Bellemare would accept a question?

Senator Bellemare: I hope I will be able to answer this question as well as my predecessor, Senator Martin.

Senator Moore: This is a sweet little bill that my former seatmate Tommy Banks brought in. It is an interesting bill. I look at the date of the enactment of some of these acts, and they are well beyond the 10 years. Can they not be repealed or at least continued, retained, more than once?

[*Translation*]

Senator Bellemare: May I have more time to answer the question?

The Hon. the Speaker: Senator Bellemare, are you asking for more time to answer the question?

[Senator Bellemare]

Senator Bellemare: Yes.

That is a good question, and I can assure you that all requests for repeals have already been made, for the most part, perhaps also for certain provisions, but for the vast majority, these were requests for repeals from the fourth report, specifically, so they also appear in the fifth report.

As for your question to Senator Martin regarding the fourth report and how many acts were repealed, I have asked the appropriate people and I have not heard back from them yet. As soon as I get an answer, perhaps I could forward it to you.

• (2010)

[*English*]

The Hon. the Speaker: Senator Bellemare is out of time.

Are you moving an adjournment, Senator Raine?

Senator Raine: I have a short question.

The Hon. the Speaker: Agreed?

An Hon. Seantor: No.

The Hon. the Speaker: I hear a “no,” Senator Raine.

(On motion of Senator Day, debate adjourned.)

CANADA EVIDENCE ACT CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Claude Carignan moved second reading of Bill S-231, An Act to amend the Canada Evidence Act and the Criminal Code (protection of journalistic sources).

He said: Honourable senators, I am pleased to speak today to explain the reasons why I felt it necessary to table Bill S-231. This bill seeks to protect a pillar of our democracy — the protection of the whistle-blower or the protection of anonymity of sources.

[*Translation*]

Over the past few weeks, Canadians, as well as the political, legal and journalistic communities, have been dismayed to learn that the Montreal police force and the Sûreté du Québec placed a number of journalists under electronic surveillance after seeking and obtaining warrants.

[*English*]

More recently, during his testimony before the Standing Senate Committee on National Security and Defence, Mr. Brian Rumig, Assistant Director of Operations for the Canadian Security

Intelligence Service, admitted that in the 30-year existence of CSIS, it was probable that journalists could have been the subject of surveillance.

[*Translation*]

Journalistic sources or whistle-blowers who provide information to the media or blow the whistle on abuse they have witnessed play a critical role in our society. They help keep the government accountable to Canadians. Journalistic sources or people who blow the whistle on abuse in their workplace or elsewhere in the public administration system take a great deal of risk when they expose wrongdoing, fraud, abuse or the misappropriation of public funds.

As the Supreme Court ruled in *The Globe and Mail* decision, and I quote:

The fact of the matter is that, in order to bring to light stories of broader public importance, sources willing to act as whistleblowers and bring these stories forward may often be required to breach legal obligations in the process.

In the *National Post* ruling, Supreme Court justices were clear about the fundamental importance of protecting confidential sources, those who are known as whistle-blowers. In this case the Supreme Court wrote, and I quote:

It is in the context of the public right to information about matters of public interest that the legal position of the confidential source or whistleblower must be located. The public has an interest in effective law enforcement. The public also has an interest in being informed about matters of public importance that may only see the light of day through the cooperation of sources who will not speak except on condition of confidentiality.

The role of investigative journalism has expanded over the years to help fill what has been described as a democratic deficit in the transparency and accountability of our public institutions. There is a demonstrated need, as well, to shine the light of public scrutiny on the dark corners of some private institutions.

The Supreme Court also addressed the disruptive effects as follows:

... unless the media can offer anonymity in situations where sources would otherwise dry-up, freedom of expression in debate on matters of public interest would be badly compromised. Important stories will be left untold, and the transparency and accountability of our public institutions will be lessened to the public detriment.

Honourable colleagues, the infamous sponsorship scandal is just one of the journalistic revelations that happened because confidential sources wanted to disclose information about a democratic deficit. A *Globe and Mail* journalist, Daniel Leblanc, relied primarily on information from a confidential source who later became known by the pseudonym “Ma Chouette” to write a series of articles about the sponsorship program.

Without that whistle-blower, who remains unknown to this day, hundreds of millions of dollars would have been spirited away without honest citizens ever finding out. The source’s confidential information was mainly about a number of problematic and fraudulent activities related to program administration. The most serious allegations had to do with the misuse and misappropriation of public funds. For the entire period they were in contact, Mr. Leblanc agreed to protect his source’s anonymity and the confidentiality of their exchanges.

In a healthy democracy, the role of the media is to keep those in power in check. Inadequate protection for sources could compromise that ability to counterbalance judicial, political or police powers, an ability that relies in part on information provided by men and women who are not prepared to reveal anything if doing so could pose a significant risk to their physical, financial or material safety.

They will do it only on condition that their anonymity is guaranteed.

Basically, journalists are the active agents of freedom of the press, which is recognized as a fundamental right in our society. However, in order for journalists to be able to act as the effective force behind freedom of the press, they must be allowed to enter into confidentiality agreements with the sources who guide them in their research, inform them of dubious schemes and provide them with crucial information in their search for the truth.

Without these sources, the sometimes scandalous stories that undermine the integrity of our democratic institutions or that violate the most basic rules of probity and good governance may never come to light. The blight affecting public administrations could therefore spread even further until it finally reaches the very core of our institutions.

Honourable senators, without these sources, the sponsorship scandal of the late 1990s would never have come to light. Therefore, without journalistic sources, there would have been no Gomery Commission, and this serious scandal would never have been uncovered and made public.

More importantly, the discovery of this wrongdoing served to prevent other similar and equally insidious abuses. This notorious scandal also served to clarify and define the confidentiality of journalistic sources. At the time, Groupe Polygone was being sued by the Government of Canada — which wanted to recover the \$35 million it had paid the Groupe through the sponsorship program — and it wanted to know the source Daniel Leblanc had used to get very sensitive information from the government bureaucrats. First, the Superior Court of Quebec ruled that Mr. Leblanc had to reveal his source and could not assert his right to protect the source under the Wigmore test to protect that anonymity. I will come back to this test a little later on.

• (2020)

This case made it all the way to the Supreme Court. In October 2010, the highest court in the country determined that, on the contrary, the protection of Mr. Leblanc’s source’s confidentiality was just as legitimate under Quebec civil law as it was in the rest of Canada under the common law system.

In this important unanimous decision written by Justice Louis Lebel, the Supreme Court indicated, and I quote:

. . . bearing in mind the high societal interest in investigative journalism . . .

The judge indicated that an anonymous source should only have to be identified if it is “vital to the integrity of the administration of justice.”

The Globe and Mail decision therefore confirmed that anonymous sources are protected in Quebec by applying the Wigmore doctrine in the evidentiary process. The Wigmore doctrine sets out four criteria that help a judge determine whether a request for the disclosure of a source’s identity is justified.

The courts use this test to determine whether the identity of a confidential source can be disclosed. The relationship must be one that should be sedulously fostered in the public interest. It also must be determined whether the public interest served by protecting the identity of the informant outweighs the public interest in getting at the truth. In such conditions, the right to protect a source is not automatically granted. The courts decide on a case-by-case basis, in accordance with the importance of the case and especially the public interest.

Unlike solicitor-client privilege, journalist-source privilege is not a constitutional privilege, and like solicitor-client privilege, the right not to disclose the identity of a confidential source must be weighed against the underlying democratic values. As with solicitor-client privilege, it is the client that benefits. When it comes to journalist-source privilege, it is not a privilege of journalists but rather a right to protect sources.

Honourable senators, in the case of the surveillance warrants targeting journalists that were exposed this fall, we think it unlikely that the justices of the peace who authorized these orders were actually compelled to apply the criteria set out by the Supreme Court.

The Government of Quebec launched a public inquiry into the matter, but it aims only to examine the practices, without any constitutional jurisdiction to examine the many aspects that fall under federal jurisdiction. However, beyond the merits of a commission of inquiry in Quebec, whose recommendations would only be submitted in a few years’ time, these cases nevertheless reveal the weaknesses of the current systems.

These troubling cases show that the pillars of our democracy remain fragile. In addition, since the jurisdiction of such a commission could not extend to federal legislation, which includes the Criminal Code and the Canada Evidence Act, federal action is needed.

Prior to that ruling, in 2009, the Fédération professionnelle des journalistes du Québec was already very worried about the tactics being used to try to uncover the identity of Mr. Leblanc’s source. It called for legislation to guarantee the protection of journalistic sources. Without such legislation, the Fédération professionnelle des journalistes du Québec said that confidential sources would always be at the mercy of people who sometimes do not fully

understand these other facets of public interest that include freedom of the press, the public’s right to information and the duty of our public institutions to be accountable.

Honourable senators, considering the recent revelations, it has become extremely important that we provide a framework for the protection of sources or whistle-blowers through formal legislation. That is the purpose of Bill S-231.

In concrete terms, this bill recognizes the fundamental role of the work of investigative journalists, of their sources and of whistle-blowers in our democracy. It protects the journalistic source privilege that has not been expressly recognized in our legislation to date.

It provides procedural tools that will help journalists meet the obligation of confidentiality that they have to their sources who are acting in the public interest.

More specifically, Bill S-231 amends the Canada Evidence Act and the Criminal Code. The bill defines what constitutes a “journalist” and what constitutes a “journalistic source” for the purposes of applying the Canada Evidence Act and the Criminal Code.

If this bill passes, only a judge of a superior court within the meaning of section 552 of the Criminal Code — in Quebec that means a judge of the Court of Quebec — may issue a search warrant, authorization or order relating to a journalist.

Any information obtained as part of an investigation pursuant to a duly authorized search warrant and the conditions set by the court is to be placed in a packet and sealed by the court, and none of the parties can consult it without the court’s authorization.

If an officer wants to consult the sealed evidence, a notice must be sent to the journalist in question and the relevant media outlet. They will then have 10 days to object if they feel that the information could identify one of the journalist’s anonymous sources who was acting in the public interest.

If the journalist objects to the information being disclosed, it would be up to the officer soliciting the information to provide evidence to show that the information in question is vital to the investigation under the Evidence Act and the Criminal Code.

An objection can be raised before any court or federal agency, which will make it possible to extend protection to the many administrative agencies that often manage issues that are not known to the public but that are still in the public interest.

[*English*]

The four criteria of the Wigmore test would continue to apply. This means that, first, the communications must originate in a confidence that they will not be disclosed.

Second, this element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.

Third, the relation must be one which in the opinion of the community ought to be sedulously fostered.

Fourth, the injury that would insure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

The fourth criterion is important. It means that the court must weigh the importance of disclosure for the administration of justice and the public interest in preserving the confidentiality of the journalistic source.

The judge issuing an order referred to in the Criminal Code, *Lessard*, can establish the conditions to minimize the disruption of the news organization's activities. The request procedure for search warrants must consider the need to limit excessive or overly invasive disruptions of these activities and enable the organization to voice its concern at the first opportunity.

The new act will override all existing legislation.

[*Translation*]

Bill S-231 would codify the practice shaped by the jurisprudence on this matter. Codification would result in a single process that respects the distinctness of the media and freedom of the press while adopting a uniform approach across the country.

This bill will preserve the rights of all parties. Its primary goal will be to protect the source, not the journalist. Journalists will have to protect the identity of sources to whom they have guaranteed protection, and police forces will be able to pursue their investigations if they are in the public interest.

This law will put an end to fishing expeditions in which police forces opt for the ease of following a journalist to reach a suspect rather than use conventional investigative methods.

• (2030)

Finally, the purpose of the bill is to not to put journalists above the law or to shield journalists from law enforcement if they are under criminal investigation or if they have committed a criminal offence. However, this bill will prevent what I call the Trojan horse technique.

What is more, it is important to legislate in such a way as to ensure that police officers or Canada's intelligence services cannot use a journalist without his or her knowledge to spy on someone else or gather information in order to catch another person.

In Canada, this would help earn the public's trust to help blow the whistle on government abuses. Outside Canada, in war zones, when journalists venture into risky territory, this measure would prevent them from being used unwittingly as a tool for spying on the enemy, which, should they be captured, might put their physical integrity or life in jeopardy while detained.

Honourable senators, the purpose of this bill is to protect the best interests of Canadians and preserve their trust in the integrity of their institutions. It is about protecting ourselves against

attacks on one of the pillars of our democracy, Canadians' right to information and sound administration of their public institutions.

I invite you to support Bill S-231.

Some Hon. Senators: Hear, hear!

(On motion of Senator Pratte, debate adjourned.)

[*English*]

FOOD AND DRUGS ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Raine, seconded by the Honourable Senator Eggleton, P.C., for the second reading of Bill S-228, An Act to amend the Food and Drugs Act (prohibiting food and beverage marketing directed at children).

Hon. Elaine McCoy: Honourable senators, I'm pleased to speak today to a bill that addresses food labelling directed at children.

I must say that I really wasn't interested in this bill until Senator Chantal Petitclerc described her riveting experience in a supermarket with her son on her lap who suddenly grabbed some food and then escaped, and then she, our Olympic champion, raced after him.

Now I have this movie in my head of Chantal going full tilt in a grocery store, doing a wheelie around the end of an aisle, and catching little Elliot before he got into real trouble. That's when I started listening. Then I started having conversations with our other Olympic champion, Senator Nancy Greene Raine. So we have two speed queens, both of whom are devoted to children and to athletics. I know Nancy Greene Raine has a long, outstanding career in the skiing world and both of them are recommending this bill.

I'm saying, "Just a minute now." I really do think we better slow down. Because when I started thinking about it, after all this time, I started giving it some serious consideration, and I really think this bill should go to committee. I will be supporting it at second reading so it goes to committee for detailed consideration. Then it will come back for detailed consideration here. I would like our senators to give it very detailed consideration because I'm not at all sure that this is actually a path we want to encourage Canadians to walk down.

For example, have you considered the impact this will have on small companies? Of course it's as easy as pie for Kraft, for example, to take those cute little bears off their peanut butter jars and continue to sell peanut butter in Canada. I am saying take those cute little teddy bears off those bottles.

I'm asking: Is that how Annie's is going to be able to respond? Maybe you do not know what Annie's is. Annie's is an amazing, totally organic and natural company that makes the most

delicious macaroni and cheese. I have it on faith and evidence from a nine-year-old child, a young woman named Kathryn, that it tastes even better than Kraft. But Annie's depends on bunnies. It is so dependent on bunnies for its advertising that it has this amazing picture on the website of a very happy child, and says "Organic for Every Bunny."

This amazingly good company, Annie's, was started in 1989 by Annie Withey who actually started making this delicious macaroni and cheese and sold it from her car trunk when she co-founded the company back in 1989. She deliberately set out to make a socially conscious and successful business. They say on their website that it "has no end point, and even though we're proud of how far we've come, year after year we continue to push ourselves to do better." This is how embedded they are with bunnies. They say, "Hop over to our timeline to learn more."

Do you think that Annie's, which is now marketing in Canada, is going to change its entire program, its entire image, its entire reason of being, or how it has built up its image, just to sell in a small market like Canada? Another good choice out the window.

Then again, have you considered the effect on our cable companies? Of course they won't be able to advertise any products that have bunnies or teddy bears or any of those sorts of things directed at children. Do you know how much revenue YTV will lose as a result of this, knowing the somewhat precarious nature of some of our media companies?

You also know, of course, that children watch YouTube; they watch U.S. channels and various sources on their computers. They will see it anyway, but there will be a deleterious effect on some of our Canadian companies.

On a technical note, have you considered where the amendment itself is placed or being proposed? Subsection (1) of the amendment says that:

No person shall advertise any food in a manner that is directed primarily at children.

Unfortunately, though, it is placed after section 7. It's numbered 7.2, but section 7 of the Food and Drugs Act actually deals with unsanitary manufacture, et cetera, of food. Subsection 5(1) of the act states:

No person shall label, package, treat, process, sell or advertise any food in a manner that is

Senators, when this goes to committee, please do consider the placement. It may be much better off being a new section 5.1 because it's dealing with advertising, labelling, et cetera, and generally we try to organize our legislation in a logical fashion.

• (2040)

But, really, my main point is this: Have you considered how many specific products will get caught in the crossfire? Peanut butter, the teddy bears are gone — notwithstanding peanut butter is promoted by health buffs far and wide. You can tell I'm not a health buff because I don't eat it. You know those bottles of honey that are shaped like a bear? What about Oasis juice? It has a weird little monster, a green cartoony thing that

appeals to children on it. It's 100 per cent juice, better than many other brands. Annie's, as I've talked about, is bunny-hopping good.

What about this? Those of you from the Atlantic provinces will remember that in the 1980s Sobeys did a commercial for Christmas. It's iconic. They remade it this year, and I actually watched it. I actually watched a woman on YouTube who said that she sent it out to all her friends, neighbours, relatives, anybody she could think of. She got hundreds of pickups on it because she grew up with this commercial. It was children out in the Sobeys parking lot singing about Christmas, all of it advertising food. If that advertisement was not directed at children, I'd wonder what it is.

The song was "Star of Christmas, shine within us. Make each day seem as bright." That is not going to be possible in the future if this kind of legislation is passed.

Another company came and was actually going to build a plant in Kingston in 2013, three years ago. It was a non-GMO brand called Chobani. It cancelled its plans for other reasons. It couldn't find a long-term supply of non-GMO milk here in Canada, but it was still looking to come back. It advertises its product with Batman, Wonder Woman and Spiderman, among other characters, and it's obviously directing itself towards the children's market. That company will not make any effort whatsoever to come back to Canada.

So you have to ask this question: Have you considered how many other decent, non-mega corporate brands we're missing out on because we don't or won't have the regulatory system that will allow them to flourish? That's going to make it harder for products to get to Canada or even to make sure manufacturers have an abundant supply, and I think it's going to have an adverse effect that's far beyond what we really intend to happen.

This is a quote a parent actually said to me. I wrote it down :

With over 50 per cent of Canadian families living paycheque to paycheque, I would rather see more equitable access to extracurricular and sporting activities and no school fees. I'm savvy enough to say no to my kids when they want bad food. But my heart breaks when they ask to play a sport and I cannot afford to pay for the basic level, let alone let them dream of reaching the competitive levels. That is where the real harm is to kids these days. Our schools lack the physical capacity to offer all the activities they once did and sports are now for the rich who can afford it or the very poor who can qualify for subsidies."

Honourable senators, have you considered just where we should put our legislative efforts to making children the healthiest and most active and to follow our two speed queens who are such wonderful role models in becoming healthy and participatory adults?

Thank you very much.

The Hon. the Speaker: It was moved by the Honourable Senator Raine, seconded by the Honourable Senator Eggleton, that this bill be read a second time.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time?

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

STUDY ON THE OPERATION AND PRACTICES OF THE COPYRIGHT BOARD

SEVENTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ADOPTED

The Senate proceeded to consideration of the seventh report of the Standing Senate Committee on Banking, Trade and Commerce, entitled *Copyright Board: A rationale for urgent review*, tabled in the Senate on November 30, 2016.

Hon. David Tkachuk: Honourable senators, the five-year statutory review of the Copyright Act will take place in 2017. In the Senate Banking Committee's seventh report tabled last Thursday in the chamber by our colleague Senator Day, we strongly recommended that when that review takes place, it include a thorough examination of the Copyright Board. I'm here to explain why that is.

The Copyright Board, as we know it, was established in 1989. It was the successor to the copyright appeal board, which, in one form or another, has been around since 1930. In 1997, its jurisdiction was expanded to include the administration of copyright tariffs with collective societies: Music Canada; the Society of Composers, Authors and Music Publishers of Canada; the Society for Reproduction Rights of Authors, Composers and Publishers in Canada; and the like.

The board is a regulatory body in effect that sets the tariffs or fees to be paid for the use of copyrighted works when the administration of that work is entrusted to one of these collectives.

Senators, when I became Chair of the Banking Committee, I made it my mission to embark on what the members agreed were important studies for Canadians, but also, when a particular issue arose that we thought was urgent and relevant, to be flexible and nimble enough in our operations to stop and take a look at that issue. The committee fully agreed. Our review of the Copyright Board was one of these issues.

• (2050)

What we were hearing is that there were problems with how long it took for the board to come to decisions on tariffs, creating uncertainty in the marketplace — and that these problems were chronic, nearly as old as the board itself. With the Copyright Act

review coming due next year, we thought it timely to take a quick look at the board, to bring them in, as well as the collective societies and some academic experts.

We held two hearings in early November, and what we heard is that the board is badly in need of reform. Its members are part-time, and the time it takes to reach decisions is well beyond the norm for a regulatory body such as this. What we heard from one of the witnesses is that, on average, the time between the filing of a tariff proposal and the board's decision regarding that tariff was 3.5 years over the period from 1999 to 2013. In addition, this witness also estimated that the backlog of tariffs for which a decision has yet to be made has been pending for a period of approximately seven years, on average. That's a long time.

We also heard that the board itself began an internal review in 2012. But four years later, it has yet to be completed.

All our witnesses agreed that the board needs to be fixed, whether it requires more resources, full-time members or a change in the regulations governing it. What we concluded from our two hearings is that the best way to get this done — to get some real action — is for the board to be included and thoroughly examined with a view toward reform during the statutory review of the Copyright Act next year.

That review, at the minister's instructions, can be conducted by a committee of the house, of the Senate, or both. I think the Senate would have a lot to contribute to that review, but whichever route the minister decides to take, I look forward to his implementing our recommendation when he does.

Finally, I want to thank my colleagues on the committee for the excellent work they did on this report, along with the staff from the Clerk's office, the library and communications. I especially want to thank Senator Joe Day, who filled in for me all last week as chair and participated with Senator Black in the press conference on the report last Friday. Thank you both. I know that you, along with the other members and I, agree on at least one thing: It's time to reform the Copyright Board.

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable senators, I was going to ask to take the adjournment on this matter, but I believe our chairman, Senator Tkachuk, has made the point very clearly. It is a good report. Take a look at the report on the Copyright Board.

Senator Black and I had the opportunity to launch the report last week at the headquarters for about 24 different organizations dealing with copyright, either collectives or owners of copyright, and developers of different areas of copyright. We were very well received. They understand that delays of four to seven years are too much, and they have to wait to determine what their remuneration is going to be by way of tariffs; they have to wait for that long period of time before it's fixed.

I think the most important thing we can do right now is to get this report to the minister and get the review of the board in as part of the Copyright Act review next year and get it into their work plan. This is clearly something that is crying out for rectification.

Hon. Ratna Omidvar: Will Senator Tkachuk take a question?

Senator Tkachuk: Sure.

Senator Omidvar: I noticed you said you looked —

The Hon. the Speaker: Sorry, Senator Omidvar. That will require leave of the Senate right now because Senator Day has entered into debate.

Is leave granted, honourable senators?

Or you could ask Senator Day, if you wish.

Senator Omidvar: I can ask Senator Day.

You looked at the board of the Copyright Board of Canada, and I'm looking at their board right now. I wonder if you looked at the demographic makeup of the board. There are three members on this board — all responsible, I understand, in their organization for regulating the flow of tariffs to creators, writers, musicians, artists and all kinds of other people who enjoy the benefits of copyright. There are three people on this board. There is not one single woman on this board. I could be wrong, but if I look at the ages of these three, I don't think there's anyone under 60. I don't see the vibrancy of Canada reflected on this board.

Did your committee reflect on that particular aspect of the board?

Senator Day: Thank you for your question, which will become part of our record to be sent to the government.

We had two days of hearings. It was pretty clear to us that there is a need for an entire review of all parts of the board.

Specifically to your question, we did not look at the demographics of the board. We looked at the fact that the board is part-time and that it is clearly not doing the job that it should be doing. We didn't have enough information to come to a conclusion as to what should be done, but definitely something must be done.

The Hon. the Speaker: If no other senator wishes to speak, this matter is considered debated.

Some Hon. Senators: Question.

The Hon. the Speaker: Honourable colleagues, the adoption of the report has not been moved. If you want to have a question on adopting the report, you first have to move the adoption of the report.

Senator Tkachuk: I move the adoption of the report.

The Hon. the Speaker: It was moved by the Honourable Senator Tkachuk, seconded by the Honourable Senator Nancy Ruth, that the report be adopted now.

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

(Motion agreed to and report adopted.)

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO MEET DURING SITTINGS OF THE SENATE

Hon. Richard Neufeld, pursuant to notice of November 30, 2016, moved:

That the Standing Senate Committee on Energy, the Environment and Natural Resources have the power to sit at 5:00 p.m. on Tuesday, December 6, 2016, and Tuesday, December 13, 2016, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*Translation*]

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE.

Hon. Ghislain Maltais, pursuant to notice of December 1, 2016, moved:

That the Standing Senate Committee on Agriculture and Forestry have the power to meet on Tuesday, December 6, 2016, at 5 p.m., even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until tomorrow at 2 p.m.)

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