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(HANSARD)

Friday, December 8, 2017

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Friday, December 8, 2017

The Senate met at 9 a.m., the Speaker in the chair.

Prayers.

[*Translation*]

SENATORS' STATEMENTS

LIBRARY OF PARLIAMENT

CANADA 150 EXHIBIT

Hon. Paul E. McIntyre: Honourable senators, over the past few months, Canadians across the country have been taking part in countless activities to celebrate Canada's 150th anniversary.

One such activity worth highlighting is the exhibit going on now at the Library of Parliament, entitled Foundations: The Words That Shaped Canada. It consists of a selection of priceless documents lent to the Library of Parliament by Library and Archives Canada for the enjoyment of all Canadians. Since March 9, 2017, visitors have had the opportunity to view six documents that mark important stages in Canada's constitutional development and shaped Canada into the land we know today. Each of these documents has its own story, which I would like to share with you.

One of the documents on display, unquestionably one of the most important documents in our history, is the British North America Act (1867). You may be impressed to hear that the copy on display belonged to Sir JohnA. Macdonald himself.

The exhibit also includes the opening pages of the English and French copies of Canada's first Speech from the Throne, which was delivered twice, in English and in French, on November 7, 1867, by our first Governor General, Sir Charles Stanley Monck. The interesting thing about this speech is that it refers to "Western Territorial extension."

Another pivotal document that had a major impact on our history is the North-West Territories Proclamation of 1869. This is the document that transferred Rupert's Land from the Hudson's Bay Company to Canada for the sum of $1.5 million. It is considered to be one of the factors that "aggravated relations with the Métis" and sparked the Red River Resistance of 1869-70, which was led by Louis Riel.

Also included in the exhibit is a photo of the Statute of Westminster, the original of which is preserved in London. The statute is an extremely important document because Canada did not acquire independence in matters of foreign policy until 1931, well after it gained legislative autonomy in 1867.

The last two documents came into being against a backdrop of protection of human rights and basic freedoms. One is the 1960 Canadian Bill of Rights, the very first federal law protecting human rights and freedoms in Canada. The bill of rights is remarkable for both its content, which was quite innovative and revolutionary in its day, and its presentation, with its beautiful calligraphy and illumination.

The final document on display for visitors to admire is the Proclamation of the Constitution Act, 1982. This document is kept in total darkness, and visitors must press a button to see it because the pen the Queen used to sign it was not filled with stable ink, which means that exposure to light could eventually cause her signature to fade away.

Honourable senators, if you have not yet admired these priceless treasures that shaped our nation, I strongly suggest you go because the exhibit will be closing this month and the documents will be returned to their usual places in the Library and Archives Canada vaults. Who know when they will be put on display again.

[*English*]

CANADIAN FRIENDS OF A DEMOCRATIC IRAN

Hon. Linda Frum: Honourable senators, earlier this week I was honoured to speak at a multi-partisan event hosted by the Canadian Friends of a Democratic Iran with distinguished guests including the Honourable Irwin Cotler, Judy Sgro, Tony Clement, Peter Kent, former Senator David Smith and our colleague Senator David Tkachuk.

Over 200 Iranian-Canadians from across Canada gathered in Ottawa to share their views on the Liberal government's proposed re-engagement with Iran.

Two things were made clear by these representatives of the community. First, they believe that diplomatic relations with Iran must be tied to an improvement of human rights. Second, they strongly believe that the Islamic Revolutionary Guard Corps, known as the IRGC, must be listed as a terrorist entity under the Criminal Code of Canada.

Honourable senators, these are exactly the same objectives of Bill S-219, and grassroots support for this legislation was demonstrated by the extraordinary, cross-country turnout for the event.

I salute all those who attended the event because I know it takes great courage, even in Canada, for activists to denounce the cruel and criminal Iranian regime. Even inside our own borders, agents of the Iranian regime use malicious and threatening tactics to silence opponents in the diaspora.

Iranian-Canadians are spied upon and targeted, a situation that was even worse when the Iranian embassy was in operation in Canada.

Opposition to the normalizing of diplomatic relations with Iran could not have been expressed more clearly by attendees of the Canadian Friends of a Democratic Iran event.

I hope that, over the upcoming parliamentary break, you all will take the opportunity to speak to Iranian-Canadians in your own communities to understand their perspective on the proposed re-establishment of diplomatic relations with Iran. As senators, we are here to represent the rights of the oppressed and the vulnerable rather than the powerful.

I wish to thank former Member of Parliament David Kilgour for organizing the event and for his dedication to human rights advocacy.

I would also like to recognize Shahram Goledani from Ottawa, Mr. Fereidoun Shirazi from Montreal, Ms. Zahra Fallah from Toronto and Ms. Sepideh Tehrani from Vancouver, along with the delegations who travelled from far and wide to be here in Ottawa. They are true heroes, and I applaud their fearless commitment to fighting for justice and peace in Iran.

[*Translation*]

ROUTINE PROCEEDINGS

SENATE ETHICS OFFICER

CERTIFICATE OF NOMINATION AND BIOGRAPHICAL NOTES TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the certificate of nomination and biographical notes of Pierre Legault, the nominee for the position of Senate Ethics Officer.

• (0910)

[*English*]

THE SENATE

MOTION TO RESOLVE INTO COMMITTEE OF THE WHOLE TO RECEIVE MR. PIERRE LEGAULT, SENATE ETHICS OFFICER NOMINEE, AND THAT THE COMMITTEE REPORT TO THE SENATE NO LATER THAN NINETY MINUTES AFTER IT BEGINS ADOPTED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

> That, at 7 p.m. on Monday, December 11, 2017, the Senate resolve itself into a Committee of the Whole in order to receive Mr. Pierre Legault respecting his appointment as Senate Ethics Officer; and
>
> That the Committee of the Whole report to the Senate no later than 90 minutes after it begins.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

NOTICE OF MOTION TO APPROVE APPOINTMENT

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That, in accordance with section 20.1 of the *Parliament of Canada Act*, R.S.C., 1985, c. P-1, the Senate approve the appointment of Pierre Legault as Senate Ethics Officer.

[*Translation*]

ADJOURNMENT

NOTICE OF MOTION

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5g), I give notice that, later this day, I will move:

> That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Monday, December 11, 2017, at 6:30 p.m.; and
>
> That rule 3-3(1) be suspended on that day.

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

Hon. Senators: Agreed.

[*English*]

QUESTION PERIOD

NATIONAL REVENUE

CANADA REVENUE AGENCY—RECOVERY OF TAX AVOIDANCE FUNDS

Hon. Larry W. Smith (Leader of the Opposition): Good morning, Your Honour. It's so great to have a sellout crowd here today, as they say in sports. It's beginning to look a lot like Christmas.

I have a question for you, Senator Harder. Lots of deep thought went behind this one.

My question is for the Leader of the Government in the Senate. On November 8 Senator Harder stated during Question Period:

> . . . there has been almost $1 billion of additional investment in the CRA for enhanced ability to recover what has been, as I understand it, the recuperation of $25 billion from the efforts against tax evasion and tax avoidance.

The statement echoes claims made by the Minister of National Revenue in the other place in recent weeks. However, Senator Harder may be aware of the *La Presse* article on Monday in which the Canada Revenue Agency confirmed that this $25 billion has only been identified and not recovered.

We're all in good humour today and it's just a simple question. Would the government leader like to take this opportunity to correct the record and tell us how much the government has actually recouped? If not, could he do research so we could find out the answer?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his Christmas question. Let me assure him that in responding on behalf of the government I would be happy to ensure that the latest information is brought to this question.

Senator Smith: The Canada Revenue Agency also told *La Presse* that only a small percentage of the $25 billion amount cited by the minister and the government leader is directly related to tax havens and tax evasion. Could Senator Harder please make inquiries and tell us exactly what is this small percentage related to tax avoidance so that we could have the specifics on it? Has it actually been recouped or just identified?

Senator Harder: I would be happy to do so.

Senator Smith: Merry Christmas.

[*Translation*]

CANADIAN HERITAGE

CULTURE POLICY—TAX EXEMPTIONS

Hon. Claude Carignan: Honourable senators, my question is for the Leader of the Government in the Senate. Two days ago, the leader answered one of my questions regarding Minister Joly's culture policy with the following, and I quote:

> The minister has made it clear that the Netflix announcement she made does not, by any means, absolve the company concerning its obligations with the tax regimes of Canada.

Minister Joly, however, said the opposite, admitting that Netflix will not be required to charge GST on the services it provides to Canadian consumers, and the Finance Minister's press secretary, Chloé Luciani-Girouard, confirmed this in a statement, and I quote:

> The Trudeau government doesn't want to increase the tax burden on Canadians and isn't planning to change its approach.

Senator Harder, you are the government representative in this chamber. Is the information you gave us the correct information, or rather are the statements of the Finance Minister's press secretary and Minister Joly more accurate?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for the question. I'd like to think it was both; that is to say the minister and her press attaché are describing the decision of the government with respect to HST. I was referencing — and if I wasn't clear enough, let me reiterate — that the other obligations of any corporation remain those that are applicable to Netflix in this case.

FINANCE

DISABILITY TAX CREDIT

Hon. Yonah Martin (Deputy Leader of the Opposition): I, too, have a question for the Leader of the Government in the Senate. It's regarding some concerns with the Disability Tax Credit. We know that other issues have been raised in the news recently.

In October I asked the leader a question regarding Canadians with Type 1 diabetes who had been denied coverage under the Disability Tax Credit despite certification from their physicians that they meet the eligibility requirements to receive this tax break. Earlier this week, Diabetes Canada and the Juvenile Diabetes Research Foundation of Canada revealed internal Canada Revenue Agency emails obtained through access to information. According to these organizations, the email reveals "that a decision was made and communicated internally on May 2 of 2017 to begin systemically denying Type 1 diabetes patients who apply for the Disability Tax Credit."

In light of this revelation, leader, I'm wondering if you can find out and report back to us whether the Minister of National Revenue approved this memo.

Hon. Peter Harder (Government Representative in the Senate): I would be happy to make that inquiry. I would also, though, take the opportunity to note that the beneficiaries of the Disability Tax Credit are at an all-time high. I would also note, as I did the other day, that the minister has reinstated the advisory committee to ensure the CRA is up to date with the best stakeholder advice possible in ensuring how evolving technologies can be taken into account in the management of this program.

Senator Martin: So leader, in response to the first comment you made that there's an all-time high in people making such applications, I don't want in any way to disregard the importance of those who are living with Type 1 diabetes and the fact that there actually are increasing numbers of people suffering from

this disease. I understand what you're saying, but we're really focusing on the difficulties that these families are facing and on top of it to be denied a tax credit.

A supplementary to my question is that Diabetes Canada and JDRF Canada have stated that Canadians with Type 1 diabetes have also been told by the Canada Revenue Agency that they will have to close their Registered Disability Savings Plan with the government clawing back up to three quarters of the value in those accounts.

• (0920)

Registered Disability Saving Plans help families to save for the long-term financial stability of persons with disabilities.

This is a very concerning revelation. Again, leader, will the government do the right thing, rescind its decision and restore access to both the Disability Tax Credit and the Registered Disability Savings Plan to Canadians with Type 1 diabetes?

Senator Harder: Again, I thank the honourable senator for her question. I share her concern. Most senators here have people in our families with whom we are close who are confronted with the realities of diabetes, either as juvenile diabetics or as adult onset.

My point with respect to the disposition of the program and the increase of its monetary contribution, if I can put it that way, to Canadians is reflecting the age cohort and the nature of the illness. Let me take the question under advisement and seek from the minister a more detailed answer.

I want to reassure all senators through the Senate that the existing program has not changed, that the technology is causing the department to meet with stakeholders. The benefit of the advisory committee is to ensure that that takes place so that the management of the program is relevant and up-to-date for all stakeholders concerned so that those who are in need of the benefits of the Disability Tax Credit are able to benefit from it.

Senator Martin: Watching the news this morning, I just really empathize with parents who are faced with caring for their children with disabilities 24-7, no break. We all know this from family members and friends and neighbours who live with this reality every day. I just think there's a lot of red tape through the CRA and other ministries.

The question is just regarding reducing red tape for families and parents dealing with this illness that they face every day. Would you also confirm that there is an attempt, a tangible effort, to absolutely reduce red tape for such families?

Senator Harder: I will indeed. Let me simply reiterate that one of the advantages of the advisory committee is to ensure that there's up-to-date stakeholder input into how the management of the tax credit is modernized but also how it can be communicated, without jargon, to the potential beneficiaries.

[*Translation*]

TRANSPORT

NATIONAL SHIPBUILDING STRATEGY

Hon. Claude Carignan: My question is for the Leader of the Government in the Senate and concerns the Davie shipyard.

Leader, in case you were unaware, this week, mere days before Christmas, 281 workers will have to go home and tell their children that there is no work for them at Davie because the shipyard has no contracts.

Yesterday, the mayor of Lévis, Gilles Lehouillier, launched an appeal to elected officials to cut through the bureaucracy that is preventing the Davie shipyard from getting contracts. In the meantime, the Irving and Seaspan shipyards have so much work they can't meet their deadlines, while the shipyard in Lévis is in need of work, has the qualified staff and all the necessary skills and expertise.

Could the government finally respond to the workers' request, get involved in this file and fix the employment problem at the Davie shipyard?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. Last week, when Senator Maltais asked a question with respect to Davie, he provided me with a monograph describing the history of the shipyard. That certainly enlightened my understanding of how far back the shipyard goes in the history of Canada and its contribution to our navy and our broader shipbuilding sector, which I appreciated.

With respect to the recent announcements, of course the Government of Canada remains concerned about any layoffs in Canadian industry and has put in place measures to ensure that workers are well aware of the benefits that are available to them in these circumstances.

With regard to the question the honourable senator is asking about government policy, let me reiterate that the shipbuilding policy of the Government of Canada is one that seeks to ensure appropriate engagement of Canadian capacity through a competitive process and that that process is very much at the heart of the shipbuilding policy.

With regard to the immediate prospects of Davie, I will make inquiries.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it is not yet 9:30, but I see that the witness for Committee of the Whole has arrived. So, rather than begin the next item on the Order Paper, with leave of the Senate, we will commence the Committee of the Whole now. Is leave granted, honourable senators?

Hon. Senators: Agreed.

COMMISSIONER OF LOBBYING

NANCY BÉLANGER RECEIVED IN COMMITTEE OF THE WHOLE

On the Order:

> The Senate in Committee of the Whole in order to receive Nancy Bélanger respecting her appointment as Commissioner of Lobbying.

(The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Nicole Eaton in the chair.)

The Chair: Honourable senators, rule 12-32(3) outlines procedures in a Committee of the Whole. In particular, under paragraphs (a) and (b), "senators wishing to speak shall address the chair" and "senators need not stand or be in their assigned place to speak".

Honourable senators, the Committee of the Whole is meeting pursuant to an order adopted by the Senate on December 5. The order was as follows:

> That, at 9:30 a.m. on Friday, December 8, 2017, the Senate resolve itself into a Committee of the Whole in order to receive Ms. Nancy Bélanger respecting her appointment as Commissioner of Lobbying; and
>
> That the Committee of the Whole report to the Senate no later than 90 minutes after it begins.

I would now ask the witness to enter.

(Pursuant to Order of the Senate, Nancy Bélanger was escorted to a seat in the Senate chamber.)

The Chair: Honourable senators, the Senate is resolved into a Committee of the Whole to hear from Ms. Nancy Bélanger respecting her appointment as Commissioner of Lobbying.

Ms. Bélanger, thank you for being with us today. I would invite you to make your introductory remarks, after which there will be questions from senators.

Nancy Bélanger, Nominee for the Position of Commissioner of Lobbying: Madam Chair, honourable senators, I am truly honoured to be here today and humbled to have been nominated for the position of Commissioner of Lobbying.

I am pleased to have this opportunity to discuss my candidacy for this position. The role of the Commissioner of Lobbying is an important one. It is defined by statute, the Lobbying Act. Its ultimate goal is to increase the confidence of Canadians in the integrity of decision making by public office-holders. It does so by recognizing that lobbying is a legitimate activity but that it also must be transparent.

First, let me briefly introduce myself and outline how my career to date has helped me to prepare for this role.

[*Translation*]

I was born and raised in New Brunswick in a home filled with love, humour, and encouragement. I did most of my post-secondary education at the University of Ottawa. I wanted to study in both official languages and pursue a career in public law. I earned a Bachelor of Social Sciences with a major in political science and criminology, as well as a Bachelor of Laws and a Master of Laws. I have been a member in good standing of the Law Society of Upper Canada since 1995.

It was also here in Ottawa that I met my husband. We have some amazing teenagers who help me keep my balance.

• (0930)

[*English*]

I have had the privilege of working in the public service for over 20 years and have met and worked with countless highly skilled and dedicated professionals.

As you will observe from my curriculum vitae, I started my career as a lawyer with the Department of Justice. I moved on to work at the Federal Court, the Immigration and Refugee Board and, for the last 10 years, two agents of Parliament, the Conflict of Interest and Ethics Commissioner and the Information Commissioner.

The positions I held with these organizations increased in responsibility. Very early on in my career I became a manager, my first real passion. I lead by example and strongly believe that communication is paramount. I motivate and engage employees so they feel valued and supported in their daily work while achieving their career aspirations. In turn, I am very thankful for the dedication and support that my colleagues and employees have given me over the years.

Having served almost exclusively with institutions that are independent from government, I profoundly understand the need to live by and perform my duties with the highest standard of integrity and impartiality. I also understand the important role of agents of Parliament vis-à-vis Parliament and Canadians.

The Office of the Commissioner of Lobbying supports the integrity of public officials' decision making by ensuring that those who lobby them are behaving in an ethical and transparent manner.

[*Translation*]

The commissioner's mandate is threefold. First, the commissioner must maintain a registry that contains and makes public the information disclosed by lobbyists. The registry is an essential tool to ensure the transparency of lobbying activities. It must therefore employ the most current technology, and be effective and easy to access.

Second, the commissioner must develop and implement educational programs to foster public awareness of the requirements of the act. I welcome that responsibility. I have had the opportunity to give presentations to many stakeholders. Public awareness activities play a major role in ensuring that all stakeholders, in this case lobbyists, their clients, and public office holders, understand their obligations and the requirements of the act.

Third, the commissioner must ensure compliance with the act and the Lobbyists Code of Conduct through comprehensive administrative reviews and investigations. As a lawyer, I have a great deal of experience in interpreting laws and codes. I am also very familiar with investigation processes that are subject to the rules of natural justice and procedural fairness. I think it is always a good idea to review and reassess practices in order to ensure that they are understood and that the act is being implemented in the best way possible.

[*English*]

Ultimately, my experience working with the agents of Parliament in the areas of transparency, conflict of interest and ethics would enable me to bring this acquired knowledge and expertise together under one mandate.

I want to acknowledge the outstanding work of Commissioner Shepherd during her tenure and that of the dedicated professionals in her office. Should I have the privilege to be appointed as Canada's next Commissioner of Lobbying, I would build on her accomplishments with the continued support of this team.

My plan would be to enhance the profile of the office through maximized awareness and outreach initiatives with stakeholders, including the Canadian public. Not only should lobbyists or future potential lobbyists instinctively have a good command of their obligations, but Canadians should also be aware of the role of the office in supporting the integrity of decision making by public office-holders.

[*Translation*]

I believe I have the experience and abilities required to take on the important responsibilities of the position of Commissioner of Lobbying. I am ready to take on this challenge.

[*English*]

Should Parliament entrust me with the honour of being the next Commissioner of Lobbying, I will continue to abide by the highest level of integrity and professionalism, perform the mandate to the best of my abilities and provide my unwavering commitment to service that you, our parliamentarians and all Canadians deserve.

You thank you, Madam Chair and honourable senators, for considering my nomination.

[*Translation*]

Thank you. I would be pleased to answer your questions.

The Hon. the Speaker: Thank you, Ms. Bélanger. We will now proceed to questions.

[*English*]

Senator Smith: I will stand up because I can't see Ms. Bélanger from here. You have such a great voice and are so interesting to listen to.

Ms. Bélanger: Thank you.

Senator Smith: My questions concern the process surrounding your nomination as Commissioner of Lobbying.

Your appearance before us today has been a long time in the making. As you know — and you mentioned her — the Commissioner of Lobbying, Ms. Karen Shepherd, has had her mandate extended three times while the government searched for her replacement.

Can you briefly outline the process that you underwent which led you to be here before us this morning?

Just a little caveat. I understand from reading in the papers that you actually interviewed and applied for the Information Commissioner position and not the Commissioner of Lobbying.

Could you fill us in in terms of your motivation and how you modified your position so that you could get to this position today?

Ms. Bélanger: Thank you for the question. I was approached beginning of July of this past year from Boyden, a headhunter. They asked me whether I would consider applying for the positions of both Commissioner of Lobbying and Information Commissioner.

They advised me that they had made calls around town and that I had a good reputation and I really should consider applying.

I applied for the position only of Information Commissioner on July 12, two days before the deadline, through the PCO process, the online application process.

I will make it clear that the only reason I applied only for the Information Commissioner's position is that that's where I work now. I had been there for years. I thought it's almost a natural process to just stay in the field that I was at the moment.

I'm also not title oriented, and I was extremely concerned that if I applied for two positions it would look like I only wanted to be an agent at any cost and not because I thought I had the capabilities of doing that particular job, so I applied for only one.

I have my dates in front of me, just to make sure I'm accurate. It was on August 10 of this past year that I was invited to appear to an interview for August 16, the following week, for the position of Information Commissioner. I did the interview, and at the end of the interview I was asked if I would consider being considered for the position of Commissioner of Lobbying, to which I said yes because I did believe I had the capabilities of doing it. But again, I had my reasons not to do both. I was told they were asking this of all candidates.

The following day, August 17, I received a call to submit my references and also to invite me to an interview to be held on August 28 for the position of Commissioner of Lobbying, which I attended. So I participated in an interview on August 28. On September 5, I went through the psychometric tests.

After that, the next thing I heard was a call from the chief of staff of the President of the Treasury Board, Mr. Brison. It was on November 14, simply asking me if I was still interested in the position of Commissioner of Lobbying, to which I said yes. It was a 20-second call.

The next thing I know, November 22, I received a call from PCO to let me know that my name was going to be submitted through consultation letters and that things might start running quickly from there. So that's the process I went through.

Everything is in the public domain after that.

Senator Smith: May I ask another question just to follow up?

From the experience that you've gathered and your education and all the background that you have built for your career, how will your past experience help you in your new job? As you look at it initially, what key priorities would you focus on?

• (0940)

Ms. Bélanger: My experience has mainly been with independent offices, and I think that has really shaped my thinking, my analysis and how I conduct myself.

My experience as well from early on has been to be a manager, so I am extremely aware that we do nothing on our own. We rely on people, we count on people, and we need to work together. I can tell you that I've always surrounded myself with individuals who have the same level of integrity and impartiality that I do. I know that that will be an important component of what I bring to the table.

I also have experience working in the area of transparency and conflict of interest and ethics, so I'm not coming into this completely unaware of the rules that apply.

As for my priorities, of course, I'm not in the office, and I do not want to start shaking things up so that employees feel completely destabilized by my arrival. It certainly would not be my objective. But I do believe that of the three components of the mandate, the registry is in really good shape. Commissioner Shepherd has done a fantastic job making it accessible and useful to the users. I think my priority will be to focus on awareness and making sure that lobbyists understand the rules. Sometimes they're not that easily understood. I do want Canadians to know that lobbying is a legitimate activity, and there's nothing wrong with it as long as it's transparent. My focus will likely be on awareness pretty quickly.

Of course, there are priorities of the hot files that I will need to be briefed on. The five-year review is about to begin. There are ongoing investigations and ongoing litigation, and I will have to be on top of those files as well.

[*Translation*]

Senator Dawson: As a University of Ottawa alumnus, I welcome you. I'm also a former lobbyist. I was previously a member of Parliament, then I became a lobbyist, then a senator. Like the majority of my colleagues in this place, I have lobbied and I have been lobbied.

I did not notice any lobbying in your resumé. Have you ever been lobbied? I understand that you were sought out to oversee lobbying in Canada. However, I'm wondering if you, like us, have been actively lobbied. Have you had experience with people presenting different opinions, sending mass mailings and exerting all kinds of pressure?

Ms. Bélanger: Not at all. I have always worked for independent agencies, and I have never experienced registered lobbying. I have always worked in government and I have never been a lobbyist. I know that one of my priorities will be to build my credibility with lobbyists. Over the years I have developed relationships with a number of stakeholders who were not necessarily lobbyists. I think that I have the personality and open-mindedness to learn, understand and listen to what the lobbyists have to say, and to then determine whether there are improvements to be made and see what we can do. This is actually the purpose of the five-year review.

To answer your question, no, I have never been a lobbyist.

Senator Dawson: I know that you have experience and are quite familiar with ethics. However, lobbying legislation can sometimes conflict with ethics legislation. There is sometimes a misalignment in the application of these acts and in the way these two institutions treat the lobbyist and the person being lobbied. For the benefit of the public, I would like us to acknowledge that these two acts are often in conflict.

You have experience in the field of ethics. However, you do not know the people in this industry, nor have you been pressured by lobbying. How will you make sure that you come to know this industry? You know that there is an association.

I was a lobbyist and I was lobbied before the registry existed. God knows that things improved tremendously with the registry. This registry was developed in conjunction with the industry. At the time, lobbyists had met with the government to denounce the so-called "rotten apples" of the industry, and to find a way to control what is said and what is done.

Will you work with the industry? Will you meet with the people at the GRIC? Have you previously worked with these people? The success of the Canadian registry and that of the Quebec registry are not comparable. I speak from experience because my name was in the registry. The Quebec registry was established without any input from the industry and it is virtually unenforceable. The Ottawa registry is reviewed every five years in collaboration with the industry.

Does the mandate you were given include the obligation to work with the industry?

Ms. Bélanger: I completely agree with what you said. I am not certain that the two acts conflict. However, the interpretation of these laws does not always lean on the side of ethics with respect to lobbyists.

I am ready to tackle that, and, as I have repeated many times, I believe that there is an opportunity and an opening to expand relations with lobbyists and public office holders to ensure that everyone is on the same page and interprets the rules the same way. Every case is unique and hinges on the person who is doing the lobbying, who they are lobbying, and why. However, I am open to collaborating. That is my style, that is how I work. I will listen to them, I will work with them, I will meet with them, and I will attend their meetings and conferences. That is the only way to ensure that I have credibility.

I also hope to work with the ethics offices so that we can all plan some training together. It would be something for the lobbying and ethics commissioner to take training. We would need to create a shared awareness program so that we are all on the same page.

Senator Dawson: As legislators, we must ensure that our laws are well drafted. However, the enforcement of these laws can sometimes leave something to be desired.

Thank you and good luck.

[*English*]

Senator Omidvar: Thank you very much for being with us, Ms. Bélanger. You're not yet in the job, but I'm sure you have had thoughts about what some of your priorities will be, what you'd like to change and what you'd like to review.

I have a particular question around the Lobbyists' Code of Conduct, which, I understand, was last reviewed and changed in 2014. It's only a few short years ago, but still there have been lots of changes in our context. There's more digital technological space. We see ever-increasing numbers of ex-parliamentarians, ministers and staffers becoming lobbyists. So I wonder: Are you so far as to thinking about the code of conduct and what changes you'd like to make, what process you'd like to use to get there?

Ms. Bélanger: I think the Lobbyists' Code of Conduct was worked on in 2015; you're right. We have two years of experience with it. Will be my top priority when I first arrive? I'm not certain. Certainly what I'd like to do, because in preparing for the interviews and in preparing to come here and to the other place, I reviewed the code, and I do see maybe places where it could be tweaked, but I think it would be irresponsible of me to try to express those right now.

I think what I need to do is work with the employees in the office, because they've certainly received comments from lobbyists. I would like to possibly even do some form of consultation, and maybe within the next two years start a revamp and do another version. There has been a lot of interpretation in a guidance document written in support of the code, and maybe there's a way now to put it all together and see where we can have some improvements.

• (0950)

Two years of experience with it, I don't know if it's too soon or not to change it right away. I certainly would be open to listening and decide whether or not it should happen sooner.

Senator Martin: Welcome to our chamber. This opportunity to ask you some more questions is very helpful to us. For further clarification, I want to go back to some of the responses you have already given.

In response to Senator Dawson, you said you think the Lobbying and Ethics Commissioners can work together. I'm trying to imagine that. These are big responsibilities. How would that coordination potentially take place? Could you expand on how you think that sort of cooperation could happen?

Ms. Bélanger: Yes, absolutely. First of all, whatever we do jointly could never in any way, shape or form jeopardize the impartiality of the decision maker. I will make that very clear from the get go.

Having said that, I haven't completely thought this through. I haven't consulted the colleagues who would be working with me on this, but I do think there are opportunities to do some outreach programs, some training. There are meetings of the bench and bar. It could be commissioners and lobbyists, and commissioners and public office-holders. I'm trying to think of joint initiatives to clarify the rules and get the perspective of both the Commissioner of Lobbying and the Ethics Commissioner side. I'm thinking more about the awareness and outreach program.

Senator Martin: When you said that rules are not easily understood, the onus is on lobbyists to be transparent and disclose their activities, but other parties are involved. What onus is on them? I have been aware of certain investigations or cases that are being conducted under your office. The rules are complex, and it is important for people to understand them in order to ensure that they're following all the rules. How would you go about making improvements in this regard? Because until people clearly understand what needs to happen, there will always be these ambiguities and potential conflicts. Have you analyzed during your process what those gaps and issues are so that you can address them when you are in the office? Would you expand on this matter?

Ms. Bélanger: Certainly. When I say the rules are complex, it's because there are a lot of details. There are a lot of things that lobbyists need to think about, and sometimes they may not be top of mind.

There are also rules in relation to gifts, for example, and what is a conflict of interest. It's always making sure that the lobbyist does not put the public office-holder in a situation where the public officer feels a sense of obligation towards the lobbyist. This has to be analyzed on a case-by-case basis.

I don't know if there are gaps in the rules as much as gaps in the understanding of what that means. Again, I think I will have to work with the employees who are there now. I'm certain they've heard from lobbyists already about their concerns and issues. The five-year review will be an opportunity to go through the rules and listen to lobbyists — are some rules necessary or are there improvements to be made? — and develop a sense of the gaps or the misunderstandings from there.

I haven't been in that office, so I want to be careful not to assume that there are problems when maybe there aren't, or maybe I haven't seen all the issues and there is a lot more than I've thought of. It would certainly be about consultation, listening and promoting awareness.

Senator Martin: One final question: You talked about your experience in management or understanding the importance of working with a team. How big is the office?

Ms. Bélanger: It's small. It's 28 employees. I can't wait to meet them all should I be appointed Commissioner of Lobbying.

[*Translation*]

Senator Joyal: Welcome, Ms. Bélanger. If I understand the nature of your nomination correctly, Parliament's objective when it legislated to create the registry and the position of commissioner was to make transparent those who have access to power, those who are privileged in some way because they can hire representatives and individuals whose only goal every day is to convince government representatives, whoever they may be, that the government's interests would be best served if it went along with their views and demands. That is essentially the goal of lobbying.

Most people cannot afford to hire lobbyists to assert their views on tax adjustments or to ensure that their specific needs are recognized. For most people, lobbying is for the wealthy. In the current climate, where cynicism about power and governments partly explains the rise in populism and the increasing numbers of people who feel voiceless and powerless, your role is particularly important. You are our agent, not that of the government. You are the agent of Parliament, and Parliament consists of two chambers, as you know. You are the agent of this chamber today. That is who you want to serve. That is the objective that you are proposing to meet.

How do you see your role and what type of initiatives do you intend to take to deal with this very specific context, which is very different from the context of a few years ago when the act was passed, and to combat this public cynicism about those who have privileged access to power and influence?

Ms. Bélanger: That is an excellent question. I'm not sure I've thought about it enough to give you an answer. The Lobbying Act exists to legislate and make transparent the lobbying activities of paid lobbyists. They could well be privileged individuals. My perspective is that lobbying is an activity that all Canadians should understand is in their best interest. Many non-profit organizations lobby the government. Their purpose is to raise awareness of interests they believe would better serve their organization and Canadians as a whole. Not all lobbyists are in it just for their own personal interest. Many of them represent the interests of a segment of the Canadian population.

If I become the Commissioner of Lobbying, my role will be to help Canadians understand that lobbying can be a good thing. Yes, there is a lot of cynicism and negativity, but the more information and details you have, the more you are aware of what's going on and of the various interests, the more likely you will be to make informed decisions that are good for lobbyists and Canadians in general.

That would be my answer to your question. I will give it more thought, however, because your perspective had not occurred to me before. I do apologize if my answer falls short.

• (1000)

Senator Joyal: In that context, should you not focus on the act's mechanisms and the definition of lobbyists' obligations in order to highlight those essential aspects of transparency and fairness for Canadians? Section 15 of the Charter states that we are all equal before the law. That implies that we should all be equal in the eyes of the government when it comes to defining and developing programs and making budgetary decisions.

As commissioner, would you be open to reviewing how lobbyists' obligations are defined and whether the sanctions provided for in the act are suitable and appropriate in the current context?

Ms. Bélanger: Certainly. I think that would be timely, because the five-year review is set to begin any time now. Yes, absolutely, we could look into lobbyists' obligations.

Currently, the sanctions consist of either criminal charges or reputational damage through reports tabled in Parliament. There is really nothing in between, so we will have to look at possible sanctions. That is an excellent idea, and I will consider it in context.

Senator Joyal: With regard to the act's objectives, should we adopt a narrower definition of the fairness that the system should normally strive to promote with regard to citizens' access?

Moreover, in our definition of access to power, should we bear in mind that we need to be equally attentive to making sure that all Canadians, including those who cannot afford to lobby government through paid representatives, are able to better express their wants and needs to government?

Ms. Bélanger: Yes, but I'm not sure that that is the role of the Lobbying Commissioner. As for access to public office holders, I could have a look at whether there are any provisions in the act to address this situation, but I'm not sure whether that will part of my mandate. I will reflect on your question.

Senator Joyal: Thank you.

Senator Saint-Germain: Welcome, commissioner nominee. It's always a particular delight for me to hear from a fellow Canadian who is equally at ease in French and English. Congratulations.

Ms. Bélanger: Thank you.

Senator Saint-Germain: You stated that lobbying is, justifiably, a legitimate activity. You added that, and I will quote you in English to use your exact words:

[*English*]

There is nothing wrong as soon as it is being transparent.

[*Translation*]

I am a former public office holder, the equivalent of a designated public office holder within the Government of Quebec, and I met with lobbyists. My sole responsibility was to ensure that they were registered properly on the Quebec registry. When working with a law-abiding lobbyist, as an office holder I could have acted in such a way as to make that activity illegal. I could have also given the lobbyist preferential treatment, or I could have asked for a favour in exchange for a better position to help the lobbyist win a public contract.

Do you think the act and its implementing regulations are strict enough? Should we not require more than the simple disclosure of meetings between lobbyists and designated federal public officer holders?

Ms. Bélanger: That is an excellent question. Indeed, at this time, the requirements related to the registry relate only to the undertaking to engage in lobbying. After that, it is a question of registering the fact that a verbal exchange or meeting has taken place. Details are included in the registry. The code of conduct is a complement to the registry. The registry is not a standalone mechanism; it certainly wouldn't be enough on its own.

The code sets requirements for lobbyists to ensure that their behaviour does not put public office holders in a situation where they might feel beholden to the lobbyists. However, the behaviour of public office holders is not subject to scrutiny by the Commissioner of Lobbying. This is the responsibility of the Senate Ethics Officer and the Conflict of Interest and Ethics Commissioner.

Obviously as the Commissioner of Lobbying I will have to remain vigilant as far as the behaviour of lobbyists is concerned in order to ensure that they do not put us in a situation that might cause us to act improperly. However, the behaviour of public office holders does not come under the mandate of the Commissioner of Lobbying.

In some discussions, people have suggested that the offices be amalgamated. I have not yet taken position on the issue. There is certainly work to be done to ensure that both sides understand what might put a public office holder in a difficult situation. Monitoring the conduct of office holders is not within the purview of the Commissioner of Lobbying.

Senator Saint-Germain: Thank you. I would like to say that when it comes time to review the legislation, we might consider creating a stronger link between the ethics code governing the issues and activities of lobbyists and responsibility. This could come under the legislation for designated public office holders.

My second point has to do with the lobbyists themselves. Your institution will serve as a watchdog. Often, when institutions are not backed by legislation and regulations with enough teeth, they are referred to as paper tigers. I was a watchdog myself at one time; I was the Quebec ombudsman.

Do you think that the sanctions should be reviewed when the act is reviewed? Senator Dawson, who has experience as a lobbyist, brought up that large corporations have the means to hire experienced, professional lobbyists who work within the law. However, sanctions must be imposed if lobbyists take illegal action or violate the act. Do the current sanctions seem stiff enough to you?

Ms. Bélanger: I've had the opportunity to examine the report produced by the committee in the other place on the 2012 review of the act, as well as the recommendations of the current commissioner. It seems clear that the sanctions and penalties in the act are not stiff enough to ensure compliance with the act and the code. Right now, it is up to the RCMP to pursue criminal prosecution if there is reason to believe that the act has been violated. There could also be a report explaining the facts. It would be a public shaming, since otherwise, there are no real consequences.

Commissioner Shepherd sometimes ordered training and more rigorous monitoring for a lobbyist, but there are actually no consequences. Therefore, I believe that we will have to look at the whole issue of sanctions and consider the possibility of introducing a range of incremental sanctions or penalties. Commissioner Shepherd had recommended establishing administrative monetary penalties. The Canadian Bar Association even suggested that she should be given the power to prohibit a person from lobbying.

Therefore, yes, I believe that we will have to take another look at the power of sanction.

• (1010)

[*English*]

Senator Mercer: Madam Bélanger, thank you for being here. I appreciate it.

Ms. Bélanger: Thank you.

Senator Mercer: One of the things that is important for the Commissioner of Lobbying and her office to do is to understand what we as parliamentarians use lobbyists for, and we do use them. I'm sorry to tell Senator Dawson that, but we use them for information and contacts, and we use them to help us do our jobs.

It's important for you as the commissioner to meet with parliamentarians, both in the other place and here, on an individual basis and ask us how we use lobbyists, so that when a complaint is lodged by whomever, you have an understanding of where we're coming from.

I've been in this place since 2003, but I've also been around politics in this town and other towns for most of my adult life. I've been lobbied, and I've lobbied. Each time I'm lobbied, I have a different objective when I meet with a lobbyist. Sometimes it's because I want to meet the lobbyist's client, who is someone with an interest in legislation we're considering, or they may have information that is not readily available to me otherwise. I also want to make sure I have those contacts for future legislation. That all works.

It's important for you to have a plan in place. I don't expect to see you in my office next week to talk to me about it, but I would like to see you in the offices of MPs and senators over the next year or so, soliciting their input, trying to get an understanding.

One of the problems we've had in this chamber, in particular in the recent past, is that officers of Parliament have come to the Senate, done work and have had absolutely no idea what we do or how we do it. It's really important that officers of Parliament get a grip on what we do and how we do it.

By the way, you should also be very clear that what we do at this end of the building is in many ways very different from what they do at the other end of the building. It's not apples and apples; it's apples and oranges.

I would encourage you to do that.

Ms. Bélanger: I very much appreciate your comment, and I commit to coming to meet with you. It would be a pleasure to hear your perspective. I very much appreciate the fact that you have offered. I will be here. I will come and meet you, absolutely. Thank you.

Senator Mercer: Thank you.

Senator Wetston: I think our paths have crossed in the past.

Ms. Bélanger: We have crossed paths in the past, yes.

Senator Wetston: Congratulations on your nomination.

Ms. Bélanger: Thank you very much.

Senator Wetston: How can we ensure that senior public servants understand the importance of good advocacy and good lobbying in the context of developing good government policy? My experience is such that a bit of a chill factor seems to occur, and you lose the benefit of good advocacy and good lobbying, which does assist the development of legislation, policy and regulations. Do you have any thoughts about that, Ms. Bélanger?

Ms. Bélanger: If I understand your question correctly, you think that senior public officials are afraid to meet with lobbyists?

Senator Wetston: Yes, there's considerable anxiety about what is and what isn't. Being able to share information and have those kinds of meetings — I've seen it myself. Frankly, I was lobbied more in my previous role than I am in this role, so maybe there's something wrong with me, or maybe they feel it's not worthwhile, which I can understand.

But yes, I've experienced the chill factor. I wonder whether your future work as Commissioner of Lobbying — which I'm very supportive of and of your nomination. I would suggest that maybe there's work to be done there.

Ms. Bélanger: Absolutely. I wasn't aware that was a bit of an angst that was happening. It is likely because every time we hear of the concept of lobbying, it's negative. I could understand public office-holders maybe saying, "Are you going to register, and is this going to put me in trouble?"

Again, awareness and promotion of the good work needs to be done. In terms of the benefits of receiving lobbyists, you need to know and understand the perspective.

Right now under the Lobbying Act, the commissioner is supposed to approach you public office-holders to verify the information that has been given by lobbyists. Recently, in October, Commissioner Shepherd launched an automated process, so you may get emails that ask you to check information and whether it's accurate. That just started in October, so I don't know if anyone has benefited from that email.

But I do take your point, and I'll make sure I'm aware of that when I develop some form of outreach program. Thank you very much.

Senator Wetston: Thank you.

[*Translation*]

Senator Ringuette: Hello. It is always a pleasure to see you. As a New Brunswicker, I am very proud to have you here today as a candidate for the position.

My question is not a trick question; it is a real question. The role and the mandate of the Commissioner of Lobbying, just like the role and the mandate of the Ethics Commissioner, address the integrity and transparency of all stakeholders and activities concerned. You have some experience as the Information Commissioner.

With respect to the five-year review of the legislation, let us suppose that the findings indicate that we would have a more effective system — and by the way, I think the registry is excellent and I consult it regularly — if we merged the Office of the Commissioner of Conflict of Interest and Ethics and the Office of the Commissioner of Lobbying into a single entity. As the head of one of these offices, would you find it difficult to consider that merger?

Ms. Bélanger: I will do as I am asked. I'm here today as an Officer of Parliament, the Commissioner of Lobbying. If Parliament were to decide to merge these two positions into a single position, I would accept that. I can promise you that if I make recommendations, one way or the other, they won't be based on my personal interests. I will make recommendations for the common good and I will try to do my best to provide advice.

I'm aware that the Conflict of Interest and Ethics Commissioner believes that the two offices should be merged into one. For her part, Commissioner Shepherd has said that she doesn't think it's a good idea. As for me, I've not formed an opinion on the matter since I'm not the incumbent.

However, if Parliament wants me to examine the issue, I'm prepared to consult, to talk to people and to give you the best objective advice I can. I can promise you that. Therefore, no, I would not have any difficulty with the two offices merging. What will be my advice? I will give honest advice if I'm asked.

• (1020)

[*English*]

The Chair: Honourable senators, I know that you will join me in thanking Ms. Bélanger.

Hon. Senators: Hear, hear!

The Chair: Honourable senators, is it agreed that I report to the Senate that the witness has been heard?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Nicole Eaton: Honourable senators, the Committee of the Whole, authorized by the Senate to hear from Ms. Nancy Bélanger respecting her appointment as Commissioner of Lobbying, reports that it has heard from the said witness.

STATISTICS ACT

BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED

Hon. Jane Cordy moved third reading of Bill C-36, An Act to amend the Statistics Act.

She said: Honourable senators, I am pleased to speak to third reading of Bill C-36, An Act to amend the Statistics Act.

I would like to thank members of the Social Affairs Committee for their attention to details within the bill and the excellent questions that were asked of the many witnesses. I would also like to thank Senator Frum, who is the critic for this bill. Neither of us was an expert in this field, and we both had to do a lot of reading and listening, and I have great appreciation for the work that she did.

This bill proposes to strengthen the independence of Statistics Canada and to protect the professional integrity of this very important institution.

Honourable senators, we all agree that trusted and high-quality information is essential. It enables the government to make informed and evidence-based decisions on matters of importance to Canadians.

And it helps Canadians to hold the government to account for its decisions.

Statistics are a public good. They are produced by the government for and on behalf of all Canadians. That's why the statistics produced by the government must be of the highest quality possible and be responsive to the needs of those who depend on them. That includes all levels of governments, businesses, researchers, non-profit organizations, Canadian citizens and us, as parliamentarians.

Those statistics must also be impartial.

Indeed, there is widespread agreement internationally that statistical agencies must operate with a high level of professional independence on statistical matters from day-to-day government direction and oversight. This bill will align Statistics Canada's legislation with international norms set out in the UN Fundamental Principles of Official Statistics and the OECD recommendations on good statistical practice.

It was interesting to hear witnesses tell us the high regard in which Statistics Canada is held around the world.

Honourable senators, this bill strikes the right balance between the need to strengthen the operational independence of Statistics Canada and the need to ensure government accountability for the statistics it produces.

The bill clearly assigns to the Chief Statistician the roles and responsibilities related to the agency's operations and procedures. This includes any decision over statistical matters such as how statistics are collected, compiled, analyzed, shared, disseminated and communicated.

And because statistics are a public good, the bill ensures that there are open and transparent rules and mechanisms in place in cases where government intervention may be needed. This, in my opinion, is critical. There must be mechanisms for the government to issue directives when, in the national interest, it is deemed necessary to do so. This is the essence of a democracy.

That is why I believe this bill strikes the right balance between greater independence on the one hand and transparency and accountability on the other.

The bill also proposes to create the new Canadian statistics advisory council that will work in a transparent manner and publish an annual report on the state of our national statistics system.

The council will complement the comprehensive advisory committee structure already in place at Statistics Canada, which includes nearly 200 members from every province and every territory and a cross-representation of Canadian society.

This will be a strategic and highly focused group who will provide a well-informed view on the state of our system to the Chief Statistician, the minister and, through its annual report, to all Canadians.

In addition to these elements, the bill proposes that the Chief Statistician be appointed on a renewable term of not more than five years.

This ensures that, based on merit, a Chief Statistician can serve up to 10 years. At the same time, it ensures that new ideas can be infused into a system on a periodic basis.

To further reinforce the agency's independence and professional integrity, the bill proposes to appoint the Chief Statistician on good behaviour rather than at the pleasure of the minister, as it was in the past.

This means he or she can only be removed for cause by the Governor-in-Council.

Combined, these elements of the bill protect the professional integrity of our national statistical agency.

The bill ensures transparency and accountability for decisions that affect the quality of our national statistics.

The bill also proposes additional amendments.

It amends the Statistics Act to remove the penalty of imprisonment for those who do not comply with mandatory requests for information. The fines will remain in place.

It allows the transfer of census records to Library and Archives 92 years after the census.

This will apply to all censuses of populations conducted from 2021 onwards.

For censuses taken in 2006, 2011, 2016 and for the 2011 National Household Survey, the government will honour the rules set at the time and records will only be released where consent has been given.

Honourable senators, concerns were raised at committee regarding the data gap that exists because of the respondents who did not give consent to have their records released 92 years from now. Honourable senators, this is invaluable historical data and it potentially could be lost to future researchers and genealogists.

• (1030)

The concerns raised at committee and that are reflected in an observation attached to the committee's report on Bill C-36 address the concern that the proposed new section 18.1(2) does not appear to reflect the current practice at Statistics Canada of allowing responders to provide consent after the fact, a practice this committee would like to see continue.

Members of the committee were told during testimony that responders who originally refused consent can at any point in the future change their mind and inform Statistics Canada that they now consent to having this information released 92 years from now. But 18.1(2) appeared to contradict the testimony.

However, honourable senators, there are still mechanisms in place in the current Statistics Act that can be used to allow this data to be released, and this mechanism will still be entrenched in the Statistics Act following the implementation of Bill C-36 in its current form and without amendment.

Section 17(2) in the current act authorizes the Chief Statistician to release information relating to a person if consent by that person has been given in writing. The addition of the new section 18.1(2) included in Bill C-36 does not change that fact. While some may view these sections independently, they should be read harmoniously.

Bill C-36 amends the Statistics Act to remove the requirement to seek consent for the transfer of census data to Library and Archives Canada 92 years after the taking of a census. This is consistent with the government's commitment to open and accessible data.

As I said earlier, there were concerns by the committee about data that was lost in 2006, 2011 and 2016 because Canadians did not give their consent to have their information released. It would not be released if the box was checked "no" or if no box was checked; if no box was checked, that was taken to be a "no."

There was also hope expressed that those who did not give their consent retain the option to change their minds and be able to have their information released after 92 years.

The committee attached two observations, as I said earlier, related to the lost data from 2006, 2011 and 2016, when people had to opt in to have their data released. I'd like to read into the record these observations, which show the committee's concern and what we did to address them in the observations.

The first one related to the data was:

> As well, in consideration of the proposed legislative change that removes the consent requirement for the release of census records to Library and Archives Canada after 92 years, the committee calls upon the Chief Statistician of Canada to explore all options to encourage Canadians to consent to the release of information for the 2006, 2011, and 2016 censuses and national householder surveys.
>
> Statistics Canada should, before the upcoming census, highlight to Canadians the historical value of census records for future generations.

The second observation related to that says:

> Finally, the committee would like to suggest that proposed new section 18.1(2) does not appear to reflect the current practice at Statistics Canada of allowing responders to provide consent after the fact, a practice this committee would like to see continue.

Honourable senators, I want to reassure my colleagues that the current act already allows for the collection of data from 2006, 2011 and 2016. And, of course, Bill C-36 makes it automatic that the data is released after 92 years.

Section 17(2) of the current act authorizes the Chief Statistician to release information relating to a person if consent by that person is given in writing. We heard from the department official at the committee yesterday that this practice is done; we heard from the minister that this practice is done; and we heard from the Chief Statistician that this is done. The addition of the new section 18.1(2) does not change this fact.

In speaking to department officials, they stated that while we may view these sections independently — that is, section 17(2) of the current act and 18.1(2) of Bill C-36 — as I said earlier, they should be read in harmony.

Honourable colleagues, Canadians can give consent after the fact.

I understand that the Minister of Innovation, Science and Economic Development may be reopening the act for further amendments in 2018 in his effort to continue to improve the quality of publicly available data in Canada. The modernization of the act is indeed in the minister's mandate letter.

Finally, honourable senators, this bill updates some of the language in the act to reflect technological advances in data-gathering methods.

Honourable senators, high-quality, reliable and impartial information is essential to inform decisions. It's essential for researchers in developing the next generation of scientific discovery and informing important policy debates. It's important for business in developing new products or determining the best places to establish themselves. It is important for Canadians who are making decisions about where to live, where to work, where to learn, where to play, and it's important for modern democratic governance.

It supports governments in making informed decisions about programs and services that matter to Canadians, and it enables Canadians to hold the government to account.

The amendments proposed in Bill C-36 strengthen Statistics Canada's independence and protect its professional integrity. It also increases transparency and accountability for the decisions that are made about statistics — an important public good.

Honourable senators, I am hopeful that you will see the positive changes this bill will make in support of our nation's statistical agency and that you will help protect its professional integrity with the passage of this bill.

(On motion of Senator Martin, debate adjourned.)

APPROPRIATION BILL NO. 4, 2017-18

THIRD READING

Senator Bellemare moved third reading of Bill C-67, An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2018.

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?

Hon. Senators: Agreed.

(Motion agreed to and bill read third time and passed.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Boniface, seconded by the Honourable Senator Omidvar, for the second reading of Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts.

Hon. Kim Pate: Honourable senators, I rise today to speak to Bill C-46, which amends the Criminal Code's provisions concerning drug-impaired and alcohol-impaired driving.

I support the important objective of this bill — that of decreasing the prevalence of impaired driving, for which so many colleagues, including the sponsor of the bill, Senator Boniface, have eloquently advocated. I will not repeat the issues raised by other colleagues. Rather, I wish to raise some concerns about the penalty provisions of this bill.

Bill C-46 variously reinforces, creates and increases mandatory minimum punishments. All available empirical evidence suggests that this is a step in the wrong direction.

In the other place, multiple witnesses, including the Canadian Centre for Justice Statistics, the Insurance Brokers Association of Canada and Dr. Barry Watson of Queensland University of Technology's Faculty of Health, testified that there is no evidence to suggest that severe penalties have any deterrent effect on impaired driving.

Moreover, as the head of prisons in Nova Scotia has said, in order to justify his work to move away from a punitive model over the past several years:

> Anyone who's taken a basic psychology course in university knows punishment isn't effective in changing behaviour.

• (1040)

Mandatory minimum sentences will not prevent impaired driving, and they will not save lives. There can be no doubt that we must address issues at the root of impaired driving, issues of inequality, issues of public education, and issues of access to health care, particularly treatment for addictions — drug and alcohol addictions alike.

However, I urge us to take note that a key regret expressed by experts in the states of Washington and Colorado regarding the experience of introducing a regulatory system for cannabis was that a system for public education was not put into place soon enough.

The result, among other consequences, was actually higher rates of impaired driving. Research and numerous witnesses before the committee in the other place credit public education as key to the gains that have been made in limiting alcohol-impaired driving here and elsewhere. The government has set aside up to $161 million to support Bill C-46 to be allocated to law enforcement, research and raising public awareness regarding impaired driving.

The details regarding allocation of funds have not yet been released, other than the fact that the majority of this amount is being directed towards law enforcement initiatives. This raises concerns about inadequate resources for education and prevention efforts. The Canadian Automobile Association testified:

> We and other non-profit groups in this country have been left to carry the burden of creating and executing public education campaigns on our own. We're going to continue to do our part, but we want help.

Effectively addressing impaired driving also requires a focus on issues related to addictions in addition to coexisting mental health issues that often underlie and are associated with experiences of past trauma. Individuals who seek to anaesthetize themselves with drugs or alcohol can be among some of those most marginalized by race, sex, income and other discriminatory experiences.

Criminalization and institutionalization only make their circumstances and path to obtaining treatment more difficult. This injustice is particularly abhorrent for those who lack the resources needed to access treatment, whose addictions go untreated and unaddressed, except and until police or criminal justice involvement.

Many of us are very concerned that harsher penalties will only further burden and punish and limit avenues of treatment for those already struggling with issues of addictions and mental health.

While Bill C-46 acknowledges the importance of a health care approach to issues of impaired driving, and I certainly know this is the view of its sponsor in this place, the current penalty provisions risk perpetuating systemic inequalities and injustices within the criminal law system. In the bill, proposed new section 320.23 of the Criminal Code, for instance, creates an exception to the mandatory minimum punishments that apply to impaired driving. Where impaired driving does not cause bodily harm or death, the provisions allow the court to delay sentencing while an individual attends a treatment program and then, at the sentencing phase, to not apply a mandatory punishment. This sounds good.

As a preliminary issue, this key potential to obtaining a treatment order and to avoid a mandatory minimum does not extend, though, to all individuals. Mandatory minimum sentences in general infringe individuals' rights to a sentence that reflects their individual circumstances, and this is no different.

The logic of the mandatory minimums in Bill C-46 in particular is problematic in an additional way, however. The treatment order exception applies only to cases not resulting in bodily harm or death. This exception to mandatory minimums therefore generates two very different outcomes for two individuals who create the same risk of harm by driving while impaired. Regardless of need or potential for rehabilitation, only one of them will have the option of a treatment order and of having the fairness of a mandatory minimum punishment assessed in light of his or her individual circumstances.

Furthermore, the availability of a treatment order and, by extension, the possibility of an exception to a mandatory minimum is dependent on the consent of the Crown prosecutor. Besides the problem of further limiting the availability of treatment orders, this provision is discouraging because it perpetuates a key concern relating to mandatory minimums, that of transferring discretion regarding sentencing from judges, whose reasons must be recorded, to prosecutors who can act without this mechanism of accountability.

The availability of treatment orders is also dependent on the availability of treatment programs and services. There is already a need for more such services in most jurisdictions.

An additional and more fundamental problem relates to systemic discrimination in the criminal law system. In speaking to this bill, several of our honourable colleagues, including Senator Pratte and Senator Saint-Germain, have already discussed the imperative of guarding against racial profiling in the implementation of random alcohol screening of drivers. I support Senator Saint-Germain's call to explore the option of mandatory screening only at organized and announced roadblocks, as is done currently in Ireland, or only following a traffic accident that results in injury or death. To do otherwise risks simply and too hastily accepting a regime more likely to infringe constitutional rights when more appropriate alternatives may exist.

These alcohol-screening provisions are not the only part of Bill C-46 that, while appearing neutral on their face, have the potential to perpetuate discrimination. Mandatory minimums have a long history of being recognized as being problematic in this respect. Mandatory minimums also run contrary to principles of restorative justice and contravene section 718(2)(e) of the Criminal Code of Canada, which requires that all other available sanctions be considered before imprisonment is ordered, particularly with respect to indigenous individuals. This principle recognizes the failure of the criminal justice system to recognize indigenous law and to respond adequately to indigenous social history and experiences of substantive inequality, particularly ongoing legacies of racism and colonialism that have led to alarming rates of overrepresentation of indigenous peoples in the criminal and prison systems.

The role that mandatory minimums have played in creating the current overrepresentation of racialized prisoners, particularly indigenous peoples, in prisons in Canada cannot be denied. Call to action number 32 of the Truth and Reconciliation Commission focuses on allowing judges to depart from any mandatory minimum sentence and establishes this as a necessary step toward redressing a legacy of colonialism and discrimination in the criminal justice system.

Impaired driving charges are the criminal charges most likely to be challenged in Canada's courts. This is notably because, in this area of the law, more individuals than usual tend to have the means to hire lawyers and more fully litigate their cases. Well-resourced individuals will be well positioned to make use of Bill C-46's exception to mandatory minimums based on obtaining a treatment order. For those most marginalized in our society, however, access to this treatment order exception is significantly restricted by lack of knowledge of the provision, lack of representation in court, all of which further is compounded by a lack of available treatment resources. These are additional issues related to systemic discrimination. I urge us all to be mindful that as part of our responsibilities to ensure any legislation does not disproportionately impact those who are already most marginalized, we must ensure that all individuals will have knowledge of — and then access to — treatment orders and other exceptions to the mandatory minimum sentencing provisions in Bill C-46.

More broadly, I also encourage us, whether in our deliberations on Bill C-46 at committee or here in this chamber, to seek to ensure that alternatives to criminal law responses exist for those with addictions and mental health issues, particularly for those in our societies whose experiences of trauma and abuse are compounded by inadequate or non-existent supportive interventions, those who anaesthetize themselves as part of trying to cope with past victimization, to negotiate poverty, racism, sexism, violence.

I discussed earlier some of the devastating effects of criminalization on those who are in need of positive intervention. They need intervention, not further condemnation or punishment. There are also costs for the criminal law system of failing to more fully implement proactive responses to addictions. The Canadian Bar Association and the Barreau du Quebec both agreed that this bill's approach risks placing a significant additional burden on a system that is already struggling with delays.

As we learned from the legal committee's report on court delays, mandatory minimum penalties burden the criminal and correctional system in many ways, from increasing rates of trials for those who have the means, to pressuring those who do not into guilty pleas, resulting in too many individuals, especially poor and racialized people, as well as those with mental health issues and addictions, being imprisoned. As the Human Rights Committee is hearing in its study of human rights in prisons, this results in their issues not even being fully acknowledged, much less addressed.

• (1050)

The Legal Committee ranked as one of its top priorities for action on court delays the over-representation of persons with mental health issues, including those with drug and alcohol addictions in Canada's court and prison system. In our considerations of Bill C-46, we have before us an opportunity to act against this injustice, and I urge honourable senators that we not let this opportunity pass. We must ensure that treatment orders and judicial discretion with respect to sentencing are available to all. More fundamentally, we must support this approach with investment in public education and increased accessibility to community-based addiction and mental health treatment services and supports. I suggest we could also buttress these measures with guaranteed livable income, housing and education supports that cumulatively are far more likely to prevent individuals from being rendered more vulnerable to begin with.

We all know that the criminal law is the least effective and in fact can be a very destructive means of intervening when past trauma, mental health and addictions are the issues that most need to be dealt with and addressed. We must ensure that the experience of the criminal law of marginalized individuals reflects this reality. I look forward to working with all of you on this issue and urge that we move Bill C-46 to committee for just such further examination. *Meegwetch*, thank you.

(On motion of Senator Martin, debate adjourned.)

TRANSPORTATION MODERNIZATION BILL

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Gagné, for the second reading of Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts.

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Honourable senators, I rise today to speak to Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and make related and consequential amendments to other Acts.

In reality, the bill should be called an act to amend the Canada Transportation Act, CN Commercialization Act, Railway Safety Act, Canadian Transportation Accident Investigation and Safety Board Act, Canadian Air Transport Security Authority Act, Coasting Trade Act, Canada Marine Act — honourable senators, it doesn't stop there — Bankruptcy and Insolvency Act, Competition Act, Companies' Creditors Arrangement Act, Air Canada Public Participation Act, Budget Implementation Act, 2009 and the Fair Rail for Grain Farmers Act. That is 13 individual acts of Parliament, 67 pages long, an omnibus bill like we haven't had here for a while.

Let's have a look at timing now, because the government seems to have a little problem with timing and dates and what's been going on. The bill was introduced in the other place on May 16, 2017. That was approximately seven months ago. The Senate received the bill on November 2. Let us talk about some more numbers now.

The sitting days in the other place that were used to dispense with this bill, six over a four-month period, not including the summer break. Number of days the committee studied the bill, five. Amount of time spent in committee was over 40 hours. Witnesses heard were approximately 83. Number of sitting days the bill has been discussed in the Senate, six, including today. Number of meetings with stakeholders that I've had, on my own, so far, 17. Far be it from me to lecture my colleagues here or in the other place on how the legislative process works, but I think it is worthy to note that after hearing that summary of the bill so far, the process is indeed working as it should.

Our job as senators is to read the bills, study the bills, question the contents of the bills and possibly amend the bills to improve them. The undue pressure being applied with regard to this bill and other bills in the Senate is unwarranted, unnecessary and quite frankly disrespectful.

Some Hon. Senators: Hear, hear!

Senator Mercer: The simple fact of the matter is that this bill is quite large, amending 13 acts of Parliament. What would have happened if each one of these items had appeared as separate pieces of legislation? One has to wonder if we would have dispensed with some of the provisions contained in the bill already. For example, the Fair Rail for Grain Farmers Act probably would have been dealt with quickly.

Honourable senators, let us briefly examine some parts of the bill now before us at second reading. The bill aims to do many things, but I will focus on the following today: initiate an air passengers bill of rights, changes to the interswitching rules, and the installation of locomotive voice and video recorders.

Bill C-49 will add a new section to the Canada Transportation Act to establish an air passengers bill of rights through regulation that will be done by the Canadian Transportation Agency.

What will the regulations be? We will not know until sometime in 2018. But the minister has said the new rules will protect Canadians from such things as flight delays, cancellations and denied boarding. But the bill really does nothing to protect passengers' rights as we must wait to see what the actual regulations will be. It's a nothing bill to protect airline passengers really.

Will these new rules be strong enough? Will they prevent the situation that passengers face on those Air Transat flights held up on the tarmac of the Ottawa airport? Eventually the airline was fined a few days ago. I truly hope so, because if not, what would the point of this exercise be?

Ask yourself this question: Why is it not being done through legislation rather than regulation? It is not as though they didn't know there was a demand for this change. It's been ongoing for years, and I'm sure somebody paid attention.

Honourable senators, for those of you who do not know what interswitching is, I'll try to explain it in simple terms. It is complicated. It is an operation performed by a railway company where one railway picks up railcars from a customer and transfers the cars to another carrier that actually performs the shipment. Customers require this in cases where there's only one railway near them. It gives them access to other railways in order that their businesses remain competitive.

The bill replaces temporary, extended interswitching with long haul interswitching. In the previous bill, the former government had a number, and this government has brought in and changed the number to a significantly larger number.

While on the outside this looks like a good idea, there are some concerns by stakeholders that this change could potentially allow too much access for U.S. railways into the Canadian market. This threatens Canadian sovereignty, Canadian jobs and Canadian investment.

Why this is being done while NAFTA negotiations are ongoing has also been raised. It is beyond me that, while we are renegotiating NAFTA, we are giving away access to American railways with little or no guarantees for Canadian railways, no

reciprocity. It makes no sense. Anybody in business 101 will tell you not to give away a negotiating point like that at the beginning of the negotiations.

Perhaps the most troubling part of this bill is the installation of locomotive voice and video recorders, or LVVR. Proponents of this clause say that this is about safety and preventing accidents. Opponents say it is a serious violation of privacy and could be used for disciplinary purposes.

Could we potentially alleviate privacy concerns in a way that satisfies both sides of this argument? We shall see.

Privacy is a real concern, especially when you consider whose rules will apply. As I asked Senator Lankin the other day, when a Canadian train goes into the United States, after a certain distance they have to switch to an American crew. So now we have Americans in the Canadian train. If they're being recorded by video and voice, whose privacy rules are we going to follow, the Americans or the Canadians? Whose rights are being affected? All very important questions.

• (1100)

Lastly, honourable senators, I would like to comment on grain. If the government is or was so concerned about the movement of grain, why did they not extend the previous legislation, like they did once already, to help get the product to market, rather than put it in this omnibus bill that has so many changes that the concern over the movement of grain gets lost?

We need to ensure that grain can get to market, and I'm happy to support the parts of the legislation that do that. But the sheer size of the bill means that it has to be studied as a whole and that takes time.

New data shows that the crop this year has been fruitful. I'm very pleased for western farmers, and indeed all Canadians, that they've had a great year again despite some bad weather in the early going. So yes, let us help farmers get their crops to market, but let us not do so by overlooking other parts of this bill that may not be good for other stakeholders.

Bring in a separate bill in the House of Commons today or Monday and pass it quickly. Send it down here and I can assure you it will have my support to get it through here quickly if it deals with that subject matter.

Honourable senators, all of these questions and more need to be asked and we will ask them. We will do our jobs and the legislative process will persevere despite the best efforts of some to rush this bill through the Senate. I would rather get it right than do it quickly, as I'm sure all of us here would agree. I would remind those who want to see this bill rushed through quickly that we are doing our duty in this chamber for all Canadians.

I do commend the government for some very important work that has been done on these files, and I look forward to hearing from the minister and officials.

I also look forward to hearing from railways, airlines, a number of unions and other stakeholders as we move the legislation to committee. Honourable senators, thank you.

Hon. André Pratte: Would the senator take a question?

Senator Mercer: Yes.

Senator Pratte: On the LVVRs, there are really three parts in the bill. There's access by the transport agency after an accident, there's access by the railways after an incident that's reported to the agency and there's access through a sample process. Are there parts of it that you would be more agreeable with — for instance, after an accident — and others that you are more uncomfortable with, or would you reject the whole LVVR system?

Senator Mercer: To answer the last part first, I wouldn't reject the whole thing. I think there's a compromise here. If the information were to go to the Transportation Safety Board exclusively, for them to manage, hold and secure and they have access to it post-incident if there's an incident on the railway, they can go to that record, see what might have happened that could be fixed or could have been avoided and use that to help manage the process.

The major objection I have is that this should not be put in the hands of the company to be used for disciplinary purposes. Sometimes a crew gets on a train and they're running for upwards of 13 hours. A lot of things can happen in 13 hours with people, and if this was available to the companies for disciplinary matters it would be of great concern to me. This should be used for managing better safety on the railways. It should not be used by the management of the railways to discipline workers.

Senator Pratte: What if there was — maybe there is already; it's not clear — an iron-clad guarantee in the act that the companies could not use these recordings for disciplinary purposes?

Senator Mercer: I'd be happier if there were an iron-clad guarantee that the company shouldn't have access to it, period, that the Transportation Safety Board had access to it, and there should be a provision that at some point in the future if the Transportation Safety Board were to review it and determine they've got a problem with railway X or railway Y or maybe both, to say, "Look, here's a problem we need to fix." The railways will ask, "How do you know that?" Well, we know that because we've observed it on the video recordings that happens on various trains, without giving them access to the actual employees involved. It's the privacy issue. Perhaps we should have the Privacy Commissioner back and have him review it. My major concern is the privacy of the individuals but it is important and it could be helpful for safety reasons.

Hon. Donald Neil Plett: Would Senator Mercer take another question?

Senator Mercer: Yes.

Senator Plett: Thank you, Senator Mercer. As we do so often, I again find myself entirely agreeing with everything you said. Thank you for your speech. I have a couple of questions.

I'll make a comment first. We have all been lobbied, as I'm sure you have, by government, both on this side and in the other place. For somebody like myself, who is quite passionate about the western grain farmers, I certainly endorse simply extending the act already or bringing in a separate bill. However, we are now being kind of browbeaten and told that the western grain farmers are going to suffer if we don't pass these 13 bills here.

I got a call from the minister the other day. The minister was very kind and suggested he would make himself available Monday if we would want to meet Monday and then by Monday evening or Tuesday we could have 13 bills passed here. He saw no reason because they, of course, had given it every consideration over there and we should trust him.

I will quickly ask my question. And yes, we will give him five more minutes, Your Honour, if the honourable senator asks for it.

My question, Senator Mercer, is the fact that this is the equivalent of 13 bills, would it not seem fair that we give this at least 13 hours of discussion, one hour per bill or maybe two hours per bill, and that would give us from 13 to 26 hours of committee time and, of course, then do whatever amendments we need to do to make this a reasonable bill and then bring it back here? Would that possibly be an appropriate amount of time?

The Hon. the Speaker: Senator Mercer, your time has expired. Are you asking for five minutes?

Senator Mercer: Please.

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

Hon. Senators: Agreed.

Senator Mercer: Senator Plett, you started off by saying you agreed with me. Where were you when you sat over here and omnibus bills were coming in and we asked similar questions? The road to Damascus is pretty short.

I think you're right; we should do our job here, we should study the bills and take the time. It is a complicated bill. There are some complicated things in it. I didn't go through the 13 different acts that it amends and go piece by piece, but we should look at all 13. I don't know that they all require a full hour before the committee, but they could. When we get into it, as you know, Senator Plett, having served here for quite some time that one question often leads to another and to another. It's important that we have open and solid hearings and bring in the witnesses. Let's be prepared to amend the bill, if that's what's required to make it a better bill to serve the transportation industry better in Canada.

[*Translation*]

Hon. Pierrette Ringuette: Would Senator Mercer take other questions?

[*English*]

Senator Mercer: Yes.

Senator Ringuette: Senator, with regard to the recorders for locomotives in the bill, two weeks ago we all received from the minister a copy of the letter that was sent to railways and railway associations trying to clarify this issue.

• (1110)

Has that satisfied your concerns with regard to the use of video recorders?

Senator Mercer: No. I'll tell you why. It was a nice letter. It was nice to get a letter from the minister. I'm sure everybody enjoyed it, and I'm sure the railways enjoyed getting a copy of it too, but it's not legislation. If you want to guarantee that, put it in the bill.

You should have thought of that first, minister. You should have thought of that beforehand. You should have thought about protecting the workers. You should have thought about their privacy. You should have thought about the fact that the trains cross the American border on a regular basis.

You should have thought of these things. Somebody didn't think of them, and I don't think we should allow this to proceed without some further protection of Canadian workers.

The Hon. the Speaker: Senator Ringuette, Senator Mercer's time is running out. There's one other senator who wanted to ask a question, so I'll come back to you if we have time.

Hon. Michael Duffy: I'm following up on Senator Plett's comments and Senator Mercer's speech.

Senator Mercer, I'm getting email and phone calls, as I'm sure everyone is, especially across Western Canada on the grain issue. What should we tell those people about when we're likely to see something?

The message coming in is, "Why are you guys so interested in getting off on a Christmas break that you won't do something for western farmers?" How do you suggest we answer those emails?

Senator Mercer: Give them Minister Garneau's email and suggest they ask why he took this very important message about the movement of grain and put it in an omnibus bill instead of a separate bill and address the issues. Farmers anticipated the problem. Railways anticipated the problem. Guess who didn't anticipate the problem? The Government of Canada.

Senator Plett: Good answer.

The Hon. the Speaker: Senator Mercer, your time has expired again. I know Senator Ringuette wanted to ask another question. Are you asking for more time?

Senator Mercer: Yes.

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

One question, Senator Ringuette.

Senator Ringuette: One question. I better make it good, then.

I'm going to my previous question to you, Senator Mercer, as a follow-up. The question is as follows: In regard to the letter, in that letter I recall distinctly that the minister said he would consult the industry and employee groups in regard to those video recordings when making the regulation.

My concern, and I would like your opinion on this, is that letter was sent to the railway companies and sent to all of us, but that letter was not sent to the principal concerned parties in this issue, and a copy of that letter was never sent to Unifor nor to the Teamsters.

How do you interpret such a letter?

Senator Mercer: I've had so many visits from Unifor and the Teamsters. I asked my staff to check to see if the lobbyist from the Teamsters was now on staff since he was here so often.

I think telling people you're going to consult with them and consulting with them are two different things. He said he was going to consult with them. It looks like in the legislation he may have consulted with the companies, but from my discussions with Unifor and the Teamsters, there was little or no consultation going on there. So don't tell us you should consult if you already haven't, and don't tell us don't worry about it, I've written a letter to the companies and they're not going to have access.

If you don't want them to have access, put it in the legislation. Protect the workers' interests. Protect the privacy of Canadians and protect Canadian interests above all.

Senator Plett: Absolutely.

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?

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Mitchell, bill referred to the Standing Senate Committee on Transport and Communications.)

[*Translation*]

THE SENATE

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

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of December 7, 2017, moved:

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. *Amendments and Corrections Act, 2003*, S.C. 2004, c. 16:

-sections 10 to 17 and 25 to 27;

13. *Budget Implementation Act, 2005*, S.C. 2005, c. 30:

-Part 18 other than section 125;

14. *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; and

15. *An Act to amend the law governing financial institutions and to provide for related and consequential matters*, S.C. 2007, c. 6:

-section 28, subsection 30(1), subsection 30(3) in respect of paragraph 439(3)(a) of the *Bank Act*, subsection 88(1), subsection 88(3) in respect of paragraph 558(3)(a) of the *Bank Act*, subsection 164(1), subsection 164(3) in respect of paragraph 385.04(3)(a) of the *Cooperative Credit Associations Act*, section 362 in respect of subsections 425(1) and (2), paragraphs 425(3)(a) and (c) and subsection 425(4) of the *Trust and Loan Companies Act*.

She said: Honourable senators, this motion took me a while to read yesterday with all of its parentheses, apostrophes, and so on.

The motion before you, which I read, was moved pursuant to provisions in Bill S-207, An Act to repeal legislation that has not come into force within ten years of receiving royal assent. If the motion before us is adopted, it would defer the repeal of acts and provisions that have not come into force within 10 years. The acts and provisions we are being asked to allow to stand were recommended by the relevant ministers, who consider it worthwhile to keep them on the books for the time being even though they are not in force so as not to create a legal void.

Before I continue, I would like to provide a little background. Many people here are seeing this motion for the first time, and experienced senators will correct me if I forget something.

The Statutes Repeal Act was introduced in the Senate by Senator Tommy Banks. He felt that an act or provision of an act that had not come into force within 10 years should be repealed, so he introduced a bill in this chamber to do a little housekeeping in our statutes.

[*English*]

Bill S-207, which enacted the Statutes Repeal Act, was passed with unanimous support in both houses of Parliament and received Royal Assent on June 18, 2008. It came into force two years later.

The Statutes Repeal Act is a housekeeping measure for federal statutes and seeks the regular repeal of provisions that are not in force. It encourages the government to consider whether legislation that has not been brought into force within 10 years or more of being enacted is still needed, and it helps keep the Government of Canada's statute book in good order.

[*Translation*]

To ensure that everyone understands the legislation, allow me to read the summary, which is very informative.

[*English*]

This enactment provides that any act or provision of any act that is to come into force on a date to be fixed by proclamation or order of the Governor-in-Council must be included in an annual report laid before both houses of Parliament if it does not come into force by the December 31 that is nine years after Royal Assent.

The act or provision is repealed if it does not come into force by the following December 31 unless during that year either house resolves that it not be repealed.

The enactment applies to all acts, whether introduced in either house as government bills, private members' bills or private bills, that provide for a coming-into-force date to be set by the Governor-in-Council. It does not apply to acts or provisions that are to come into force on assent or an a fixed date provided by the act.

The enactment includes a transitional provision for provisions that were amended during the nine-year period before the enactment comes into force.

• (1120)

[*Translation*]

Basically, this enactment relates only to laws or legislative provisions that are to come into force on an unspecified date to be determined by proclamation or decree. It automatically repeals any law or legislative provision that has not come into force after 10 years. Let's have a look at how the Statutes Repeal Act works.

Under that piece of legislation, at the beginning of every calendar year, the Minister of Justice shall table in both houses of Parliament a report listing every act of Parliament and all legislative provisions that have not come into force at least nine years before the previous December 31. Every act or provision

listed in the annual report shall be automatically repealed on the following December 31, unless it comes into force, has been amended or has been spared by this motion.

After the report is tabled, the ministers in question are consulted in order to confirm that no problems or legal vacuums have been created by the process set out in the act. When in doubt, the minister shall request that the repeal be deferred. Ministerial requests are then grouped together in a motion, and that is the motion before us today.

To sum up, the report prepared by the Justice Minister and tabled in the Senate on February 2, 2017, which is the seventh report, presents a list of the acts and legislative provisions that will be automatically repealed on December 31 because they will not have come into force in the past 10 years as of December 31 of this year.

The 2017 report contains 17 items. It repeats 15 unrepealed legislative provisions from 2016, and adds two new items, namely, provisions from two acts that have not yet come into force. I will talk more about those later. For your information, the 2016 report included 19 provisions, four of which were automatically repealed, as well as part of another provision.

The motion before you today refers to 15 of the 17 provisions that were listed in the report. It proposes deferring the repeal of 15 — I am repeating myself, but it is important to understand what we are doing — of the 17 provisions in the report.

Therefore, this year, two of the 17 provisions appearing in the report will be automatically repealed. They are item 12 of the report, or section 78 of the Public Safety Act, 2002, the repeal of which had been deferred last year, as well as item 14, which refers to subsection 7(1) of the Act to amend the Federal-Provincial Fiscal Arrangements Act and to make consequential amendments to other Acts, 2005. This subsection will be repealed and so does not appear in the motion. That is why I mention it.

Why is the repeal of so many provisions being deferred? Some of these provisions will be affected by legislation that has not yet passed. Others — like the Comprehensive Nuclear Test-Ban Treaty Implementation Act, which I will talk about later — are not in force because not all the associated regulations have come into force due to a very lengthy regulatory process.

This year, nine ministers recommended deferring the repeal of provisions for which they are responsible. The nine ministers are the President of the Treasury Board, and the Ministers of Finance, Foreign Affairs, Health, Crown-Indigenous Relations and Northern Affairs, Justice, National Defence, Public Services and Procurement, and Transport. Last year, I explained all of the reasons invoked by the various ministers, but I had to speak very quickly and ran out of time. I won't do the same thing this year. Rather, I will describe three of the provisions whose repeal has been deferred so that you may better understand. These items were carefully selected, as they are significant.

Allow me to talk about the reasons given for deferring the repeal of the Comprehensive Nuclear Test-Ban Treaty Implementation Act. The repeal of this act has been deferred for several years. The Minister of Foreign Affairs thinks that we could implement this bill once the Comprehensive Nuclear-Test-Ban Treaty is in force. However, this treaty must be ratified by 44 states before coming into force, and eight of these states have yet to ratify it. The act will implement the treaty as soon as the treaty comes into force. Although the act is not in force, the government is implementing some parts of the act that describe the departmental responsibilities of Global Affairs Canada, Natural Resources Canada, Health Canada, and Environment and Climate Change Canada, in order to respect the political, technological and administrative requirements of the treaty.

If the UN receives the missing ratifications in the coming years, Canada needs the legislative framework to fully implement the treaty. Therefore, it is recommended that we defer the repeal, to allow the departments involved to continue their work.

I now want to share the reasons given by the Department of Finance regarding the deferral of the repeal of clauses 14 and 15 of the motion before us. Clause 15 is new to the list.

[*English*]

The Minister of Finance is recommending a deferral concerning 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 and 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 update 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 Bill C-25, currently before this chamber, is proposing to update corporate governance provisions under the Canada Business Corporations Act, including those related to the form of proxy. Additionally, the Department of Finance is currently consulting with the public on issues related to shareholder voting. This work would likely have consequential amendments to the regulations that have not been brought into force.

A deferral of the repeal of the above-mentioned provisions is recommended to provide the Department of Finance the opportunity to assess whether bringing into force the amendments is necessary to ensure that the legislative framework remains robust and technically sound.

[*Translation*]

Now let us address the new provision that appears in the report and on this list.

[*English*]

The Minister of Finance is recommending a deferral concerning several provisions of An Act to amend the law governing financial institutions and to provide for related and consequential matters. This act amends the Bank Act, the Cooperative Credit Associations Act, and the Trust and Loan Companies Act.

This is the first year these provisions have been subject to the Statutes Repeal Act process. One provision of the Bank Act relates to the Bank Act special security, BASS, regime, a legislative framework that allows banks to offer loans to borrowers involved in certain types of primary resource production and manufacturing on the security of what they produce. The amendments would move elements of the regime from legislation to regulation in order to ensure the regime is kept up to date with evolving operational requirements.

• (1130)

The remaining not-in-force provisions amend parallel sections in the Bank Act, the Cooperative Credit Associations Act and the Trust and Loan Companies Act to create a requirement for financial institutions to attempt to communicate with unclaimed balance holders via email.

The Canadian public is being consulted through the publication of a consultation paper on the federal financial sector framework. Deferral of the repeal of these provisions is recommended so that the results of the ongoing consultations and the impact of the potential legislative amendments on the provisions can be assessed, as well as that of their potential coming into force.

[*Translation*]

Esteemed colleagues, before I conclude, I would like to emphasize that repeal deferral is temporary. The Statutes Repeal Act specifies that repeal deferrals are valid for one year only. Any act or provision whose repeal is deferred this year will appear in the next annual report and perhaps in the motion. We will see.

We must adopt a resolution by December 31, 2017.

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

Senator Bellemare: One more minute, please, unless there are questions.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Bellemare: In other words, if we do not adopt this motion, the entire act and the legislative provisions listed in the motion will be automatically repealed on December 31, 2017, pursuant to the Statutes Repeal Act.

If this resolution is not adopted by then, the result could be gaps in federal legislation. Repealing certain provisions could even cause tension between the federal government and the provinces and territories and affect Canada's international relations.

Furthermore, if the resolution is not adopted in time, federal departments will have to introduce new bills to address the gaps in legislation that will occur if these provisions are repealed. Such bills would have to go through every stage of the legislative process from policy formulation to Royal Assent. That would be very costly.

In conclusion, I ask that you support this motion and vote in favour of the resolution that the entire act and the legislative provisions listed in the notice of motion not be automatically repealed on December 31, 2017, pursuant to the Statutes Repeal Act.

Thank you very much. I can answer any questions senators may have.

Hon. Joan Fraser: Will the senator take a question?

Senator Bellemare: Certainly. I will try to answer.

Senator Fraser: Thank you for explaining how this bill works and why it was passed in the Senate and the House of Commons, particularly for the benefit of our colleagues who are less experienced than you and I.

I would also like to thank you for the explanation you gave of certain aspects of the motion. That was very useful. However, as you know, I firmly believe that every aspect of the motion should be explained in the Senate before we vote on it.

You are right in saying that that would take time. Every year, we encounter the same problem with time, but there are members on the government side who are given time to explain these proposals to us. A member of your team has even been granted an unlimited amount time, if need be.

Would you be prepared to give your colleagues the responsibility of explaining to us the aspects of the motion that you did not already explain today?

Senator Bellemare: The aspects that I did not explain were all explained last year. It is basically the same thing. Today, I explained the new element. We can review those explanations. I have all of that information here in my binder. If the chamber wants, we can do that. That is my answer.

Senator Fraser: Thank you. I do not know whether someone would like to take over now or whether I should move the adjournment of the debate to give you a little bit of time.

Senator Bellemare: Honourable senators, I have all the explanatory notes in front of me. If I may, we could read all the explanations, because I have them here. We will do so. It would be a good thing to do, unless you decide otherwise.

[*English*]

The Hon. the Speaker: Excuse me, Senator Bellemare, your time is going to run out in exactly 10 seconds. Again, if you're going to read all of that, I assume you're going to need at least another half hour or so. You will need leave of the Senate to do that.

Is leave granted, honourable senators?

Some Hon. Senators: No.

The Hon. the Speaker: I hear a "no." Are honourable senators ready for the question?

Hon. Senators: Question.

(On motion of Senator Fraser, debate adjourned.)

[*Translation*]

ADJOURNMENT

MOTION ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of earlier this day, moved:

> That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Monday, December 11, 2017, at 6:30 p.m.; and
>
> That rule 3-3(1) be suspended on that day.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

CANADA ELECTIONS ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Frum, seconded by the Honourable Senator Housakos, for the second reading of Bill S-239, An Act to amend the Canada Elections Act (eliminating foreign funding).

Hon. Yuen Pau Woo: Honourable colleagues, elections are at the core of our democracy, but as we in the upper chamber are acutely aware of, they are not the entirety of our democratic system. The legitimacy of our colleagues in the other place, however, rests on an electoral process that is seen to be free and fair, and one that is for Canadians and Canadians alone to participate in. For this reason, I want to commend Senator Frum on her bill, Bill S-239, An Act to amend the Canada Elections Act (eliminating foreign funding).

[*Translation*]

First, let's be honest and recognize that our version of democracy is imperfect — as are all versions of democracy — and that although we must try to improve how we give a voice to Canadians by developing the laws that affect them, there is no magic solution that addresses the many deficits of our electoral system.

• (1140)

[*English*]

These deficits include issues of inequitable representation among regions and populations; the undue influence of big money in elections; fairness in nomination and leadership campaigns; the double-sided risk of, on the one hand, "winner take all" in our current system and, on the other hand, giving voice to extremist views through proportional representation.

There are also shortcomings in our electoral system related to Canadians who do not have the franchise because they have lived overseas for more than five years, and Canadians who should have the right to vote but face barriers in doing so because of onerous registration requirements. Perhaps most importantly, we have the long-standing challenge of increasing the participation rate of eligible voters in elections at all levels of government, especially the votes of younger people.

In the context of the multiple deficits in our democracy, the problem of foreign funding in Canadian elections is, in my view, a lesser problem. Now, it is the kind of problem that inflames Canadians because we hate the thought that foreigners might be influencing our elections. I think we should be much more outraged by the fact that about 30 per cent of eligible voters don't or can't exercise their franchise and that some votes, in effect, count for less than others because of where the voter happens to live.

When it comes to issues that involve "us," Canadians, and "them," foreigners, there's a tendency to create simple dualities of right and wrong, when in fact there should be much more shading in our understanding of such issues. In thinking about foreign influence on one's political views, where do you draw the line? Do you read the *Wall Street Journal*, *Nikkei Keizei Shimbun*, *The Guardian*, or *Le Figaro*? What subversive foreign ideas have you picked up from these publications, which are widely available in our country?

Nothing in what I have said should leave you with the impression that I support foreign funding in our elections. I am, of course, alive to the issue, especially so in the context of what we have seen about the repugnant Russian influence in the recent U.S. presidential election. But even there, the $100,000 that Russian operatives paid to place so-called "fake news" in Facebook pales in comparison with the over $1 billion that political action committees spent —legally — on the campaign.

Colleagues, are mistruths by a country's nationals less harmful than mistruths by foreign nationals? Can you imagine a situation where foreign nationals may be conveying truthful information to counter untruths propagated by sources within the country? In our zeal to defend the right to make decisions ourselves, let's not go down the road of parochialism that privileges nationality or place of residence over reason.

I applaud Senator Frum's effort to fix the loophole — or, as she calls it, the "canyon-sized loophole" — in section 358 of the Canada Elections Act. To refresh your memory, that loophole has to do with a very permissive definition of election advertising, which allows third parties in an election campaign to, in effect, use foreign funds for election-related purposes. It also has to do

with the difficulty in separating foreign funds from the general budget of an organization that received those funds before the six-month period ahead of an election.

Putting myself in Senator Frum's shoes, I can imagine that she had three options to close the loophole. The first is to expand the definition of third parties and the application period for foreign funding rules, in other words, weaving a larger net to catch potential offenders and deploying it over a longer period of time.

Second, she could have expanded the definition of the prohibited uses of funds provided to third parties. That is, to have a less permissive definition of "election advertising." Finally, she could have taken the approach of prohibiting all foreign funding to third parties and expanding the definition of what foreign funding means.

She chose the third option, which was to, in effect, turn off the tap entirely. In her words:

> My bill . . . will amend section 331 of the Canada Elections Act to provide clarity that foreigners may not contribute to election-related activities at any time.

There's a comforting finality in that statement, which I must say resonated with me when it was first uttered in this chamber some weeks ago. But herein lies the danger: It is when we reduce complex problems to simple solutions that we are lulled into complacency and the danger of unintended consequences. It is akin to fixing the leak in our kitchen faucet by turning off the water mains to the house. What about the need to take a shower or to flush the toilet? And besides, have you noticed that there is water dripping from the ceiling every time it rains?

The complacency I am referring to is, of course, the idea that foreign influence in our elections will cease with this bill, or even that the most insidious type of foreign influence has been stemmed. Senator Omidvar has already pointed out that foreign entities can legally donate to third parties during election campaigns under Bill S-239 as long as they incorporate in Canada.

[*Translation*]

Indeed, foreign interests have already made significant investments in some of our major newspapers and are probably among the most influential opinion-makers in an election. Bill S-239 does not change anything in that regard. Moreover, we have not talked at all about social media yet, a huge, noisy, unregulated and largely anonymous world that spreads information that can be designed, or not, to influence the outcome of Canadian elections.

[*English*]

Depending on your point of view, these examples are the equivalent of water dripping into the house from the ceiling — that is to say, negative foreign influences are still entering our country — or not being able to flush your toilet because the water mains have been blocked, in other words, positive foreign influences having been stopped.

The unintended consequences of Bill S-239, on the other hand, have to do with potentially hundreds of public policy advocacy organizations and charities that could be seen to be in violation of the act because they accepted donations from foreign sources at any time, let alone in the six-month period before an election.

Ironically, this loophole — in fact, it is a bear pit — creates the potential for politically motivated mischief on the part of partisans who seek to stymie legitimate public policy advocacy on the false grounds of foreign influence. I leave your imagination to come up with the myriad scenarios under which these unintended and undesired consequences could realistically come about.

It is not just that this bill inconveniences some organizations whose work touches on public policy. It is also that the bill may be in violation of your rights. When prohibitions and free speech are overly broad, such restrictions on speech that may be aligned with a political platform during an election campaign and for which foreign funding may have played a role, fundamental rights are trampled on.

This issue has already played out at the provincial level. In Ontario, the Canadian Taxpayers Federation came under review in 2016 by Elections Ontario because their website included topics such as electricity costs which, surprise, surprise, was a hot election topic.

In my home province of British Columbia, government efforts to impose restrictions on political expressions during a 60-day pre-campaign period ended up in the B.C. Supreme Court. Prompted by a complaint by the BC Teachers' Federation, the court deemed the restriction a violation of Charter-protected freedom of expression. When another B.C. government attempted to revisit the implementation of a restriction period in 2012, this time with a shorter pre-campaign period of 40 days, the court again deemed it a violation.

As Justice Lowry stated:

> The . . . amendments . . . fail to meet the requisite criteria to be constitutionally sound in the main for the same reason the 2008 amendments were held to be constitutionally flawed. It captures virtually all political expression regardless of whether such is intended to influence the election, and, as explained, all individuals and organizations are affected even if their election advertising is voluntary. Further, there is no clear and compelling reason to conclude the limitations on election advertising, and hence the freedom of political expression, in the campaign period are equally necessary in the pre-campaign period to preserve election fairness.

• (1150)

Colleagues, there is another unintended consequence that is very close to my interests. I am an unabashed supporter of deeper integration of the Canadian economy with fast-growing regions of the world, and of the need to internationalize the Canadian workforce. This means encouraging our youth to consider spending time abroad as part of their education so that they can broaden their horizons and potentially bring back the international savvy that is needed for Canadian industry to be competitive in world markets. Some of them may end up living

abroad for extended periods of time, but they remain Canadians and we should look at this population of overseas citizens as part of the country's international assets. In fact, according to the Asia Pacific Foundation of Canada there are some 2.8 million Canadians living abroad — which is more than the population of a number of provinces and territories. As I pointed out earlier, many of these fellow citizens are prohibited from voting simply because they have lived outside of Canada for more than five years. That is a disincentive to stay attached to Canada and to stay in touch with the civic affairs of this country.

I worry that Bill S-239 would further discourage Canadians abroad from taking an interest in the civic life of Canada, including elections. Senator Omidvar has already given a hypothetical example of Canadians abroad donating to a third party in an election campaign by way of a funds transfer that is marked as coming from a foreign country. Will this donation be allowed? If we take the example of a group of Canadian patriots living in Silicon Valley who form a California-based organization to advocate for improved pre-clearance facilities to allow for easier travel between Canada and the U.S., will their donation to a Canadian organization, whether or not it is registered as a third party, be tripped up by Bill S-239?

There may well be answers to these ambiguous situations, but the point is that there are many such ambiguities, and the ambiguities are layered on top of unintended consequences that are troubling, which are, in turn, sitting on a foundation that is much less secure than it would appear. This bill is, well, wobbly. And with most creations that end up wobbly — think about baking a cake or building a house — it is probably best to start from scratch. The same must be said of legislation, however well-intentioned.

Colleagues, Bill S-239 is not the way forward. Senator Frum, however, deserves credit for focusing our attention on what is a real problem in our election process. I am personally grateful to her for giving me the opportunity to think more deeply about this issue. I hope she will persist in suggesting ways to correct the flaws in our electoral system, including but not limited to foreign funding of election campaigns.

Hon. Linda Frum: Will the senator take a question?

Senator Woo: I'll do my best.

Senator Frum: Frankly, I have so many questions for you and I see the clock and I know it's almost time, so I'll reduce it to one question.

To understand the premise of your remarks, I think you made a statement earlier where you said one of your issues with Bill S-239 is that it reduces the issue of foreign interference and influence in Canadian elections down to a simple duality of right or wrong. Is it your position, then — did I understand you correctly — that you think that there are situations in which foreign interference and influence in Canadian elections can be right?

Senator Woo: Thank you, Senator Frum, for your question. Foreign interference in election is unambiguously undesirable and should be stopped. But ideas from outside of Canada, influences from outside of Canada that shape our thinking about our political life, about civic life, about public policy, should be welcome. We should find ways to curb interference in elections without turning off the tap to ideas and other positive influences in our thinking about improving the lives of Canadians.

Senator Frum: You do understand that the bill in front of us applies to the foreign funding of registered third parties; it has nothing to do with whether or not Canadians can read foreign newspapers or log into Facebook. It has to do with money that comes from abroad and is given to a registered third party for the purpose of influencing elections. It's very clear regarding the prohibitions that have been put on foreign funding in Bill S-239. That's what we're talking about. So let's not talk about general influence of the Wall Street Journal.

My question to you, then, is this: When it comes to foreign financing coming from abroad for election purposes to third parties, do you support that?

Senator Woo: Thank you for your supplementary question. The problem with the bill as it's currently drafted — even though it is directed at third parties registered during the election campaign — is that it no longer has this time period associated with the prohibition, and it can inadvertently catch a large number of organizations in this country that receive foreign funding for their charitable works, for their public advocacy, for their foundation-related work that is good for Canada but which may end up tripping them up because they are deemed to have been a third party and interfering unduly in an election.

Senator Frum: For the record, the bill states that the funding cannot be for election-related purposes. It has nothing to do with other charitable purposes. It says explicitly that the money cannot be used for election-related purposes.

Senator Woo: Thank you, Senator Frum. It's entirely conceivable for me to imagine a situation where an organization, to use the example that Senator Omidvar gave that is advocating for refugee resettlement, perhaps even a very large number of refugees to come to Canada and is, for all intents and purposes, a charity that is simply set up to promote welfare and humanitarian support for refugees, for that position of the organization to be very closely aligned with that of a political party. For that reason, it could well be caught up under this legislation and deemed to be in violation — this is what we call an unintended consequence and I worry about that.

Hon. Yonah Martin (Deputy Leader of the Opposition): Senator, would you accept one more question?

Senator Woo: Yes, of course.

Senator Martin: Thank you. You said this bill wouldn't close the loophole entirely and that a foreign entity could still donate to a third party by incorporating in Canada. But that would create a transparency such that we would know what foreign entity is making a donation or contribution. Isn't transparency something that we would welcome? Why would we not want greater transparency to ensure the integrity of our electoral system?

Senator Woo: Thank you, Senator Martin. Transparency is a terrific thing, but I believe the premise in part of this debate is that the foreign influence per se is negative. That was the first

question that was posed to me: Do you accept that there should be foreign interference? I said no and I presume Senator Frum takes that view as well. If there is a back door whereby a foreign influence that we already deem to be undesirable is able to get into the house by buying a room in our house and propagating the very same view propagated from outside the house, that's leakage. It's still debatable whether we want to have that kind of influence. Your question, with due respect, misses the point, I think. If you believe that foreign interference from a given source outside the country is undesirable, having it come inside the house should be equally undesirable.

Senator Martin: My point was specifically on just transparency. When we see who is giving the money and all of us understand it, then we can make better judgments and be clear about what's happening with that third party. My question was simply on transparency. If this bill creates greater transparency, would that not be a good thing for our electoral system?

• (1200)

Senator Woo: Thank you, Senator Martin.

Yes, it would be a good thing, but, of course, the transparency problem can be solved by having the foreign entity be allowed to donate to a third party and for it to be declared.

Transparency can be solved in a number of ways, and as I said in my speech, Senator Frum has chosen an option to solve this problem by turning off the water mains and basically not allowing any foreign funding to come in.

I don't believe that is the only solution. It certainly is one solution, but it doesn't address the specific concern you have, which is the nature of the influence from a foreign party.

Senator Frum: Senator Woo, are you aware of any sovereign nation in the world that allows that? As you said, maybe we could choose to allow foreign donors to donate to national registered third parties.

Are you aware of any country in the world that permits, on its books, the legal passage of foreign funding for election-related purposes?

Senator Woo: Let me be clear. I'll answer the first question that you posed. I am against foreign interference in Canadian elections. I am merely stating that if your intent is to be clear about where funds are coming from for a particular view that is propagated, that objective can be met by creating transparency internally or by creating transparency externally.

Let me be clear again: I do not support, in any way, shape or form, foreign interference in Canadian elections.

(On motion of Senator Gold, debate adjourned.)

[Senator Woo]

[*Translation*]

THE SENATE

MOTION TO AMEND THE *RULES OF THE SENATE* TO ENSURE LEGISLATIVE REPORTS OF SENATE COMMITTEES FOLLOW A TRANSPARENT, COMPREHENSIBLE AND NON-PARTISAN METHODOLOGY—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

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

That, in order to ensure that legislative reports of Senate committees follow a transparent, comprehensible and non-partisan methodology, the *Rules of the Senate* be amended by replacing rule 12-23(1) by the following:

"Obligation to report bill

12-23. (1) The committee to which a bill has been referred shall report the bill to the Senate. The report shall set out any amendments that the committee is recommending. In addition, the report shall have appended to it the committee's observations on:

(a) whether the bill generally conforms with the Constitution of Canada, including:

(i) the *Canadian Charter of Rights and Freedoms*, and

(ii) the division of legislative powers between Parliament and the provincial and territorial legislatures;

(b) whether the bill conforms with treaties and international agreements that Canada has signed or ratified;

(c) whether the bill unduly impinges on any minority or economically disadvantaged groups;

(d) whether the bill has any impact on one or more provinces or territories;

(e) whether the appropriate consultations have been conducted;

(f) whether the bill contains any obvious drafting errors;

(g) all amendments moved but not adopted in the committee, including the text of these amendments; and

(h) any other matter that, in the committee's opinion, should be brought to the attention of the Senate."

Hon. Raymonde Gagné: Honourable senators, I move that further debate be adjourned in the name of Senator Omidvar until the next sitting of the Senate.

(On motion of Senator Omidvar, debate adjourned.)

[*English*]

MOTION TO URGE GOVERNMENT TO ESTABLISH A NATIONAL PORTRAIT GALLERY—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Eggleton, P.C.:
>
> That with Canada celebrating 150 years as a nation and acknowledging the lasting contribution of the First Nations, early settlers, and the continuing immigration of peoples from around the world who have made and continue to make Canada the great nation that it is, the Senate urge the Government to commit to establishing a National Portrait Gallery using the former US Embassy across from Parliament Hill as a lasting legacy to mark this important milestone in Canada's history and in recognition of the people who contributed to its success.

(On motion of Senator Mercer, debate adjourned.)

ABORIGINAL PEOPLES

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF THE FEDERAL GOVERNMENT'S RESPONSIBILITIES TO FIRST NATIONS, INUIT AND METIS PEOPLES

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals), pursuant to notice of December 7, 2017, moved:

> That, notwithstanding the order of the Senate adopted on Tuesday, February 2, 2016, the date for the final report of the Standing Senate Committee on Aboriginal Peoples in relation to its study of the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Métis peoples and on other matters generally relating to the Aboriginal peoples of Canada be extended from December 31, 2017 to December 31, 2018.

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?

Hon. Senators: Agreed.

(Motion agreed to.)

(*At 12:07 p.m., the Senate was continued until Monday, December 11, 2017, at 6:30 p.m.*)