

## Speech Notes

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Thanks so much for your gracious introduction and, of course, for this wonderful opportunity to join you at this conference. I am delighted to share my thoughts about what the future might hold in store for legislative drafters.

As you well know, with a minority Liberal government in place, the only prognostication anyone can make — with any degree of certainty — is that the 38<sup>th</sup> Parliament will be interesting.

I anticipate that it will try the patience of many legislative drafters. Rewrites, turnabouts and complete surprises will rule the day. It will appear at times that hours of solid and sound legislative drafting will all be for naught.

Let me assure you that I — like all the members of the Senate — am committed to avoiding the pitfalls. As always, our collective goal is to enact forward-looking legislation that will benefit all Canadians.

I know it won't be easy. After all, consider some of the laws on the books today. In Canada, for example, it is illegal to kill a sick person by frightening them.<sup>1</sup> It is also illegal to pretend to practice witchcraft.<sup>2</sup>

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<sup>1</sup> No person commits culpable homicide where he causes the death of a human being (a) by any influence on the mind alone, or (b) by any disorder or disease resulting from influence on the mind alone, but this section does not apply where a person causes the death of a child or sick person by wilfully frightening him. R.S., c. C-34, s. 211.

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In Nova Scotia, you are not allowed to water your lawn when it's raining. In Wawa, Ontario, you cannot show public affection on a Sunday. Here in Ottawa, it's also illegal to eat ice cream on Bank Street on a Sunday.

And the next time you stay at the Queen Elizabeth in Montreal, remember this. If you rent a room there, the hotel must feed your horse freely.

South of the 49<sup>th</sup> parallel, some of the laws are even more ridiculous. For example, in Walnut, California, it is illegal to fly a kite more than 10 feet above the ground. In Morrisville, Pennsylvania, a woman needs a permit to wear cosmetics.

In Little Rock, Arkansas, dogs are not allowed to bark after 6:00 p.m. In Marion, Ohio, you cannot eat a doughnut and walk backwards on a city street. And in Trout Creek, Utah, pharmacists may not sell gunpowder to cure headaches. Thank goodness for that!

But seriously, despite all the uncertainty, I don't think you'll have to worry about drafting similar inanities during the coming months. At the very least, let's hope not.

Today, I would like to first underscore the value of the Senate in

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<sup>2</sup> Every one who fraudulently (a) pretends to exercise or to use any kind of witchcraft, sorcery, enchantment or conjuration, (b) undertakes, for a consideration, to tell fortunes, or (c) pretends from his skill in or knowledge of an occult or crafty science to discover where or in what manner anything that is supposed to have been stolen or lost may be found, is guilty of an offence punishable on summary conviction.

helping to ensure that effective federal legislation is passed in Canada. Second, I would like to tell you about some of the legislative initiatives that I am advancing in the Senate.

My message is that the Upper House can be — and often is — a valuable ally in drafting wise and enduring legislation. Indeed, all my colleagues in the Senate and I consider this responsibility to be a sacred trust.

To begin, let's take a closer look at the role of the Senate in enacting legislation.

As you know, the Senate has virtually all the powers of the House of Commons respecting legislation. It can alter, amend, and indeed defeat government legislation from the House of Commons.

As the body of sober second thought, we spend a lot of time in committee and in the Chamber itself, carefully analyzing each word, phrase and clause of a Bill.

We do this to ensure that the language not only complies with the charter, but also that it is logically consistent with other clauses and phrases in the Bill. Most of all, we want to ensure that it makes good “public policy”.

This “oversight” role cannot be underestimated. In my fourteen years in the Senate, Cabinet Ministers have frequently asked Senate committees to carefully review, analyze and consider words, clauses and phrases in a Bill.

And, if we believe it is advisable and in the best interests of Canada, they have also asked us to amend legislation and send it back to the House of Commons.

In addition, we can and do introduce both Government Bills and Private Members Bills in the Senate for first, second and third reading.

Pre-study most relevantly, we can do an analysis of the subject matter of a Bill. What this means is that a government Bill introduced in the House of Commons can be introduced in the Senate at the same time for a review of the “subject matter” of a Bill.... even before the Bill goes to committee stage in the Commons.

I did this in the case of *Bill C-62*, the *Telecommunications Act*. As Chair of the Senate committee, I held extensive hearings for many weeks and heard from dozens of key witnesses.

We recommended 22 major and substantive amendments to the Bill from the Senate before it went to committee in the House of Commons.

All of our amendments became law. As a result, Canada has one of the most modern communications statutes in the western world.

So even though you hear about Senators having fancy mansions in Mexico and falling asleep under their Globe and Mail when they do come to the Chamber, it is simply not true. Senate bashing helps to sell newspapers, but it is not a reflection of reality.

But yes, there is room for reform. The debate continues on whether Senators should be elected. I believe we need some form of election, but it should start with our electing our own speaker.

So next month, I will be reintroducing my *Private Members Bill* for an elected speaker in the Senate.

Let me add that I support the concept of an elected Upper House and I believe that the idea has widespread support with reason.

However, it would be dangerous to simply elect Senators without also changing their term of office and the Senate's jurisdiction. For instance, imagine how long it could take to enact legislation with a majority government in the Commons and a minority ruling in an elected Senate. Think about the conflicts that would inevitably arise.

I guarantee that the troubles inherent in today's minority government would be magnified many times over.

Under the current structure, by contrast, the risks of an impasse between the upper and lower houses are generally avoided.

That's because the Senate, being appointed, has traditionally, with very few exceptions, been respectful of the decisions taken by the elected house.

Consequently, I believe that the current debate about the Senate should focus on how we should safeguard its traditional role in our parliamentary system as the “house of sober second thought”.

That role is essential. The Senate brings to Parliament a wealth of experience, which can be found in no elected Chamber in Canada.

And because its members are appointed, Senators can be selected with a view to ensuring that this valuable diversity continues.

At this time, the Senate is comprised of former members of the House of Commons as well as former members of provincial and territorial legislatures. Some Senators have municipal political experience.

And leading representatives from the fields of law, business, medicine, labour, education, arts, journalism and even sports are key Senatorial players.

I know that similar talents exist elsewhere, but it is only in the Senate, where by design, Canada has assembled an impressive body of diverse talents, experiences and abilities under one roof.

That value of this diversity is most apparent in committees, where the Senate has proven its worth time after time.

Over the years, the Senate committees have engaged in the thorough study of issues central to the interests of Canadians.

For example, I chair the Standing Senate Committee on Agriculture and Forestry. Recently, we issued an interim report on the impact of bovine spongiform encephalopathy — or BSE — on Canada’s cattle industry and its rural communities.

Comprehensive in scope, it detailed the sharp drop in Canadian farm income resulting from BSE and other factors. Essentially, it concluded that, over the long term, Canada’s dependence on the US for meat processing is detrimental, both to farmers and to our country’s trade in livestock.

Our report also demonstrated that Canada’s best insurance against future incidents is to maintain the best animal health standards in our country, while advancing international standards.

We put forth two important recommendations. First, we called upon the Government to funnel some of the venture capital funding announced in the budget towards the development of long-term meat processing facilities in Canada.

Second, we laid out a strategy for harmonizing standards for the safe processing of meat among all the partners in NAFTA.

In his letter to me, Andy Mitchell, the Minister of Agriculture called the report “timely and relevant” and wrote that: “it is very incisive about the pressures faced by the Canadian agriculture industry.”

More importantly, he outlined that the government is already moving forward decisively on these fronts. And as legislative drafters, you will particularly appreciate that the precise language of our recommendations is being acted upon.

It is equally interesting to note that in many of the Senate’s endeavours, there’s a high level of non-partisan cooperation between members of the Red Chamber.

This brings me to the second subject I would like to talk to you about today – namely some of the legislative thrusts that I am advancing.

In addition to pushing forward a *Private Members Bill* for an elected Senate speaker, I am also pursuing a *Private Members Bill* against “spam”.

Before actually drawing up the bill, I interviewed and had discussions with a wide variety of people — lawyers, consumers, Internet users, politicians, media people, an ISP association, and several companies.

I also consulted with Industry Canada and several world authorities.

I found out that Canada does not have any laws in place specifically designed to reduce or to track the source of unwanted commercial e-mails. Everyone I talked to told me that there is no single answer to this problem.

To stem the influx of unwanted e-mail, you really need a multi-faceted approach. A number of people and groups must come into play,

including Internet and e-mail service providers, marketers, companies, anti-spam organizations and consumer protection associations.

You must also consider the legal and regulatory ramifications. Education and awareness are also part of the solution. So is technology.

New Zealand, Australia, the European Community and the United States have enacted anti-spam. Some of the largest ISPs in the world, including America Online, Microsoft and others, have now used those statutes to bring major lawsuits against well-known spammers.

In short, other countries have effective legislation that is being used to address this problem. And I believe it's vital that Canada go forward with a form of legislation.

I have also been working with Liberal Senator Jaffer to bring greater attention to the issue of racial profiling. We have held consultations in Toronto, Calgary, Edmonton, Vancouver, Ottawa and Montreal.

In the wake of the 2001 anti-terrorism legislation, participants reported that customs officials routinely harass Canadians with legitimate Canadian passports because they are not white or have Arab/Muslim names.

They also expressed concern that a Canadian Citizenship and Immigration ombudsman had not been established, as promised.

They asked that a central agency be created to report incidents of racial profiling. They said that Canada's multiculturalism policies no longer have any "teeth".

Over the past year, I have also championed the Conference Board of Canada's new research on visible minorities.

I wanted to use my privileged political office — as a member of The Senate of Canada — to help make the cultural changes required to defeat racism and promote equality.

As a businessman, I also have grave concerns about whether Canada can survive as a trading nation without immediately beginning to maximize the talents of visible minorities.

The Conference Board's research provides a compelling business case for why Canadian companies must take steps now to build more inclusive and diverse workforces.

Within another decade, the baby boomers — the largest generation ever — will be leaving the workforce.

But, as we all know, this isn't a uniquely Canadian phenomenon. Given the low fertility rates across most of the industrialized world, all G-7 countries, particularly Germany, will face the consequences of the greying of the baby boomer generation.

Historically, most immigrants to Canada came from European countries. Today, China, India, other Asian countries and South America are our main sources. The same is true for most other major economies.

Consequently, the competition for talent will be ferocious. And it will largely determine who wins and who loses in the world economy.

For example, the Government of Canada expects that immigrants will account for all labour force growth in Canada by 2011. By 2016, the Conference Board projects that visible minorities will constitute about 20 per cent of our population — or a full 6.6 million people.

And visible minorities will account for a full \$80.9 billion or more than 10 percent of Canada's total gains in GDP growth by that time.

These gains could be even greater if Canada establishes the public policies and fosters an overall employment culture that welcomes visible minorities.

But there are many problems with the current employment culture.

For one, there is a huge gap in average wages between visible minorities and other Canadians. In its study, the Conference Board uncovered that visible minorities earned 11 per cent less than the Canadian average in 1991. This gap grew to 14.5 per cent in 2000.

A second problem is that visible minorities are apparently not treated with the fairness and respect they deserve.

Earlier this week, the Conference Board released the results of seven focus group discussions with successful immigrant and Canadian-born managers and professionals.



This research shows that immigrant visible minorities face daunting barriers to achieving career success — from lost opportunities because they speak with an accent to non-recognition of their work experience and professional credentials. These barriers clearly point to systemic discrimination.

And this discrimination is widespread. According to Statistics Canada, one in five members of the Canadian visible minority community reported experiencing discrimination or unfair treatment in the last five years. This figure is four times greater than that for non-visible minorities.

Taken as a whole, this research points to a devastating truth. Canada is wasting talent. And Canada will continue to waste talent unless we act now with foresight and vision.

This is not just an equity issue. It's an economic imperative. The most successful countries in the emerging global battle for talent will be the ones that create a welcoming environment for new immigrants.

This is also not just a corporate issue. The latest *Employment Equity Act* Report on federally legislated organizations, for example, shows that only 46 per cent of visible minorities with the skills and competencies for senior manager positions were, in fact, in such positions.

What's more, visible minorities now make up 13.4 percent of the Canadian population, yet persons in a visible minority group represent just 7.4 percent of the federal public service workforce.

That represents an increase of only .6 percent over last year. And the percentage of new hires from visible minority groups actually declined last year.

I believe that the federal government must set an example for Canadian business. I have written to the Clerk of the Privy Council eight times to inquire about the government's progress in advancing the interests of visible minorities within the federal public service.

And I set down an inquiry in the Senate, calling on the government to take action immediately to address the deplorable lack of policies and programs for federal employees of colour.

Helping to build a more inclusive Canada for all Canadians has been a lifelong goal for me. In addition to the Conference Board study, I

will continue to strive to make diversity a reality in the federal public service.

But again, diversity is a multi-faceted issue. To put an end to systemic racism, you need to prove it exists. With the Conference Board research, we will have that proof. You also need to educate people and organizations about the issues. And you need to bring a variety of people and groups together to devise effective, long-term solutions.

And I believe you need effective anti-racism legislation as well. That won't be easy. Can you legislate against attitudes or bureaucracies that tell you some employees don't "fit" because they have an accent or have developed their qualifications elsewhere?

Can you legally obligate companies and governments to implement best practices that promote diversity? Would it be possible to make it a "quasi-criminal" offence for government, including police, to engage in conduct based on stereotypes about race or country of origin? Would you have to change existing laws?

As I said last month in Winnipeg at a panel discussion during the Canadian Bar Association conference, with the current minority government in place, I think it is highly unlikely any diversity issues will be on the radar screen for at least another year.

The June federal election produced Canada's first minority government in 25 years. Things are going to be very different indeed. And the Liberals will have to strike a fine balance between competing interests, while addressing the so-called democratic deficit within their own party.

To ensure that the minority government works, as deputy House leader Mauril Bélanger said, the government is going to have to be "nice to people."

And once more, the Senate — as well as legislative drafters — will be caught in the middle. In many cases, we will have to pick up the pieces, correct the mistakes and handle the problems.

However, you can count on us to be on your side — to be the ears of understanding and the voice of reason. That's our job — and we are proud of it.