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THE SENATE

**Motion to Resolve into a Committee of the Whole
to Receive the Commissioner of Official Languages
and that the Committee Report to the Senate
No Later than One Hour After it Begins—
Debate Adjourned**

Speech by:

The Honourable Claudette Tardif

Thursday, February 3, 2011

THE SENATE

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[*Translation*]

THE SENATE

MOTION TO RESOLVE INTO A COMMITTEE OF
THE WHOLE TO RECEIVE THE COMMISSIONER
OF OFFICIAL LANGUAGES AND THAT
THE COMMITTEE REPORT TO THE SENATE NO LATER
THAN ONE HOUR AFTER IT BEGINS—
DEBATE ADJOURNED

Hon. Claudette Tardif (Deputy Leader of the Opposition),
pursuant to notice of December 9, 2010, moved:

That, at the end of Question Period and Delayed Answers on the sitting following the adoption of this motion, the Senate resolve itself into a Committee of the Whole in order to receive the Commissioner of Official Languages; and

That the Committee of the Whole report to the Senate no later than one hour after it begins.

She said: Honourable senators, today I would like to speak about the notice of motion I tabled in the Senate on December 9, 2010.

To begin, I would like to respectfully acknowledge the importance of Senator Comeau's participation in the debate on Bill C-232. His opinions and arguments are highly respected and the ensuing discussions are always fruitful.

Honourable senators, let me get to the heart of the issue. I believe it is imperative that we invite the Commissioner of Official Languages to appear before the Senate in Committee of the Whole so that he can respond to Senator Comeau's statement that the commissioner has overstepped his boundaries by speaking out about Bill C-232.

On Tuesday, December 7, 2010, during his speech concerning Bill C-232, Senator Comeau made the following statement:

I suggest that the commissioner publicly justify how and under what mandate he is using the considerable powers and resources of the Office of the Commissioner of Official Languages to lobby for bilingualism policies that clearly fall outside the commissioner's mandate.

I would like to point out that this motion is based on the principle that the mandate of the Commissioner of Official Languages may have been misinterpreted. It is therefore vital that the commissioner be allowed to appear before the Senate in Committee of the Whole so that he can shed some light on his mandate, responsibilities and public statements since Bill C-232 was introduced in the other place.

This motion regarding the commissioner is completely justified. Given his right to be heard and to provide a public explanation, is it not therefore only appropriate to invite the commissioner to appear before the Committee of the Whole in the Senate to give him an opportunity to answer our questions and to provide us with clarification on his mandate and responsibilities?

I would also like to point out that, in his speech, Senator Comeau said that he wanted to hear the commissioner speak about his mandate at the Office of the Commissioner of Official Languages.

I would like to remind you of an excerpt from Senator Comeau's speech in which he questioned the role of the commissioner and expressed his disappointment. He said:

This is why I am particularly disappointed and disturbed with the decision of the Commissioner of Official Languages to lobby for passage of legislation that takes away the language rights of candidates for the Supreme Court of Canada and supports the imposition of bilingualism.

Senator Comeau said that the bill has nothing to do with the Official Languages Act. He even questioned how the commissioner could use his office to lobby for a bill that goes against the principles of the Official Languages Act and the constitutionally protected rights of Canadians. According to Senator Comeau, "the commissioner is wrong and is outside his mandate to downgrade the right to a privilege to serve their country." The commissioner sent Senator Comeau a letter on December 23, 2010, in response to these statements, with a copy to me. In that letter, the commissioner stated the following:

As I understand it, I may be summoned to appear before the Senate when it resumes in 2011. I would be happy to take that opportunity to respond to your statement.

Clearly, Senator Comeau's statements are worthy of our attention. The Commissioner of Official Languages should have the opportunity to explain his position in this chamber.

Furthermore, I would like to draw your attention to the fact that my honourable colleague's comments about the commissioner's mandate have been criticized and questioned by constitutional law and language law experts. Contrary to what my honourable colleague has said, these experts have stated that Bill C-232 has everything to do with the concept of official languages and is part of the evolution of Canada's linguistic duality. The Constitution Acts, as well as the Official Languages Act, have the purpose of guaranteeing the preservation and development of official language communities in Canada, not guaranteeing the unilingualism of individuals.

Allow me to quote an excerpt from a letter published in *La Presse* on December 15, 2010, which was signed by experts such as Linda Cardinal, a professor in the School of Political Studies of the University of Ottawa, and Pierre Foucher, a professor of law at the University of Ottawa and a constitutional expert:

We must look at this bill in terms of its restorative aspect, that is, we must look at it as an attempt to right the past wrongs that French-speaking minorities have been subjected to in Canada. Let us not look at this as being motivated by revenge, but instead as being an opportunity for Canada to build new relationships with its francophone population, to encourage better dialogue and to give equal recognition to

the historic contribution both peoples and both cultures have made to our country. This could also be an opportunity to strengthen the francophone identity and the French language in Canada by making it genuinely valuable.

On December 31, 2010, in a letter published in *Acadie nouvelle*, nine professors from the faculty of law at Université de Moncton said:

The debate is not whether a unilingual lawyer has the right to be appointed to the Supreme Court of Canada, but whether the defendant has the right to speak and make written observations in the language of his choice before a court that is able to understand him directly, without the assistance of an intermediary.

What the opponents of Bill C-232 seem to forget is that at the heart of the linguistic provisions is the principle of a society in which the members of the official language communities are equal partners.

In light of this and in light of the tenets of linguistic duality, the application of the Official Languages Act and the evolution of the jurisprudence, I truly hope that the commissioner's position in the debate on Bill C-232 will be explained so that it is better understood.

This is a very serious issue. I would like to share a comment made by the Honourable Michel Bastarache, former Supreme Court Justice, in a note that he sent to me on December 9:

The Commissioner of Official Languages must promote the rights of the defendant and equal access to the services of the Supreme Court. He should intervene to force the government to not make exceptions to the equal status of languages with respect to their use in an institution as fundamental as the Supreme Court.

[English]

Allow me to remind honourable senators of the duties of the Commissioner of Official Languages as specified in the Official Languages Act in Part IX, section 56(1):

It is the duty of the Commissioner to take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status of each of the official languages and compliance with the spirit and intent of this Act in the administration of the affairs of federal institutions, including any of their activities relating to the advancement of English and French in Canadian society.

• (1510)

[Translation]

When Graham Fraser was appointed in 2006, Prime Minister Stephen Harper made the following statement, which was published in the newspaper *L'Express* the week of September 19 to 25, 2006:

Graham Fraser is an excellent candidate for the position of Commissioner of Official Languages. He will bring to the position a deep understanding of and sensitivity to Canada's linguistic duality, a profound knowledge of Canada's

language policy and its impact on minority language communities, as well as the independence of mind of a journalist.

Let us therefore give the Commissioner of Official Languages, an officer of Parliament in whom the government has put its full confidence, the opportunity to appear before the Senate. Let us give him the opportunity to testify and explain his role and his statements as part of the debate on Bill C-232.

I am convinced that the clarification the commissioner will provide will serve to enhance and advance the debate on Bill C-232 and make it even more relevant and objective. We will then be able to move on to the next step, which is examination of the bill in committee.

Let us not forget that this bill was passed by the majority of members elected to serve in the other place and that it has been at second reading in the Senate for more than 300 days. The least the Senate can do is to refer Bill C-232 to committee in accordance with the Senate's traditional role as a chamber of sober second thought. Let us keep in mind that all Canadians, without exception, deserve to be treated equally before the Supreme Court, the highest court in the country.

Honourable senators, I therefore ask you to please vote in favour of this motion so that we can hear the Commissioner of Official Languages speak about his role and mandate as part of the debate on Bill C-232. We could all benefit from a better understanding of the issues.

Hon. Claude Carignan: Would Senator Tardif agree to answer a few questions?

Senator Tardif: Certainly.

Senator Carignan: I gather that Senator Tardif's motion responds to a request by an officer of Parliament who wants to testify as part of the debate on the bill currently at second reading stage and respond to arguments made by one of the members of this chamber.

It seems rather unusual to me for an officer of Parliament to want to enter this chamber to take part in a debate on a bill, to respond to a parliamentarian and to give his point of view. To your knowledge, has this ever happened since 1867?

Senator Tardif: I would like to clarify to Senator Carignan that this motion was not moved at the request of the Commissioner of Official Languages. The motion was moved following Senator Comeau's comments to the effect that the commissioner had overstepped his mandate.

These were very harsh comments against the commissioner. I think it goes without saying that we should invite the commissioner to explain his mandate and responsibilities with regard to the Official Languages Act and to answer questions.

Following Senator Comeau's comments and my notice of motion, the commissioner indicated that he was prepared to testify. It should also be noted that Senator Comeau's comments clearly indicated that he believes it is important for the commissioner to publicly explain his intentions with regard to this debate.

Senator Carignan: You have said that the commissioner acted within his mandate. In my opinion, the debate on this matter has to be held between members of the Senate and not by bringing a third party into this chamber. Not being an expert on parliamentary law, I would like to know whether you verified the legality of this in terms of parliamentary law at the time of adoption since we are at second reading stage of the bill.

The Hon. the Speaker *pro tempore*: Senator Tardif's time is up. Are you asking for more time?

Senator Comeau: Five minutes.

Senator Tardif: I must say that, as parliamentarians, we are entitled to invite the Commissioner of Official Languages. He is an officer of Parliament and there is nothing especially unusual about inviting an officer of Parliament to appear.

Also, given the remarks, I do not believe that this is a debate. We can certainly invite the commissioner to come and ask him to talk to us about his mandate, role and responsibilities. The mandate and role of the commissioner have been challenged. And instead of having a debate amongst ourselves, I think it is important to have the opinion of the person in that role and for whom the mandate and functions are well defined.

Hon. Maria Chaput: I move the adjournment of the debate.

Hon. Gerald J. Comeau (Deputy Leader of the Government): I believe that another senator wished to ask a question. Senator Chaput may move the adjournment of the debate afterwards.

Senator Chaput: Very well.

[*English*]

Hon. John D. Wallace: Would the honourable senator accept a question?

Senator Tardif: Yes.

Senator Wallace: Would not the type of input you suggest the Commissioner of Official Languages provide be better placed before committee?

Senator Tardif: Honourable senators, I would hope that after 300 days this bill would be referred to committee. I would agree that the Commissioner of Official Languages undoubtedly would be invited to appear before committee. However, those remarks were made before the Senate as a whole. Therefore, the Commissioner should have the opportunity to present his views before the Senate as a whole.

(On motion of Senator Chaput, debate adjourned.)
