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(HANSARD)

Thursday, May 23, 2013

The Honourable NOËL A. KINSELLA
Speaker

CONTENTS

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

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THE SENATE

Thursday, May 23, 2013

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

INTERNATIONAL DAY TO END OBSTETRIC FISTULA

Hon. Mobina S. B. Jaffer: Honourable senators, today is the International Day to End Obstetric Fistula. More than 2 million women and girls in developing countries are living with obstetric fistula, a hole in the vagina or rectum caused by labour that is prolonged, often for days, without treatment. Usually the baby dies. Since the fistula leaves women leaking urine or feces, it typically results in social isolation, depression and deepening poverty.

As Dr. Babatunde Osotimehin, Executive Director of the United Nations Population Fund, points out, obstetric fistula is preventable and in most cases treatable, yet more than 50,000 new cases develop each year. Dr. Osotimehin stated:

> The persistence of fistula... reflects chronic health inequities and health-care system constraints, as well as wider challenges, such as gender and socio-economic inequality, child marriage and early child bearing, all of which can undermine the lives of women and girls and interfere with their enjoyment of their basic human rights.

Honourable senators, I want to share my encounter with the father of a young girl, Amina, who had a fistula. I saw him enter Khartoum Hospital with his daughter on his back. He was sweating profusely and, besides being exhausted, he looked like a man who was completely dejected.

A few days later I spoke with him. He told me that his daughter was married at the age of 14, as was the community's custom. She went to live with her husband in a village very far away from him. A month previously he found out that Amina had been abandoned by her husband because, while delivering her child, she had torn her vagina.

There was no medical help, she had no control of her bladder and she smelled all the time. Amina's father found out that Amina had been abandoned and he went to her village. To his absolute horror he found his daughter cowering in a small hut with no food or water; she was unable to walk.

The father spoke to Amina's husband, who had remarried and had no desire to help Amina. Amina's husband went further, blaming Amina's father for her poor health and insisting that Amina's father return the cows he had provided when Amina married.

Amina's father carried his daughter out of that compound. He could not take her on a bus as the drivers would not accept Amina because she smelled and would disturb the other riders.

The father walked for three days to Khartoum.

Honourable senators, Amina would not have suffered for so many years if she had received proper health care. When I returned to Khartoum six months later I met a renewed Amina who was not only walking but also helping other young women. She had once again regained her dignity and purpose to live.

Honourable senators, obstetric fistula destroys the lives of young women who do not get help while delivering babies. They are not statistics or stories from another time. This is happening today, on our watch. We can do more for girls like Amina.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mr. Michael Dan, President of Aspenware, and Mr. Mike Fedchyshyn, Director of Corporate Services, Aspenware. They are the guests of the Honourable Senator White.

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

Hon. Senators: Hear, hear!

ASPENWARE

Hon. Vernon White: Honourable senators, I rise today in praise of a great Canadian innovation — an innovation that promises to make radical improvements to our environment and to the economies of First Nations reserves. I speak today of Aspenware.

Aspenware is a product made in Vernon, British Columbia, that begins to partially address a previously unsolved issue of incredible scale: to find an alternative to the 100 billion pieces of single-use plastic cutlery discarded every year in North America. That is enough cutlery to fill Scotiabank Place to the brim more than twice over every year.

Aspenware is single-use, compostable cutlery made from sustainably harvested, underutilized Canadian hardwood veneer. The veneer is sourced from a mix of First Nation's owned and operated businesses and salvaged wood that would otherwise be discarded by the softwood lumber industry in British Columbia. The company creates five-fold more jobs per tree than the forestry sector average and adds twenty-fold more value than typical industry uses for the same wood fibre. Up to 25,000 pieces of Aspenware are created from a single tree, and every single piece is made in Canada using Canadian resources and Canadian labour.

In Aspenware's business model, more than half of this value chain accrues to the First Nation partners that produce the veneer to make the cutlery. Aspenware has a veneering plant, for

example, in the Wabauskang Reserve in northwestern Ontario, with plans for more on other reserves coming.

Aspenware's wooden knife is so strong it will cut through a plastic knife and yet will completely compost in a matter of weeks. It is the only product on the market with these attributes.

Aspenware's Canadian inventor, Terry Bigsby, was awarded a Manning Innovation Award, and the founding partner, Dr. Michael Dan, is a progressive philanthropist who seeks to prove that partnering with First Nations people in entrepreneurial ventures is the best way to bring positive change.

Since going to market at the beginning of 2013, Aspenware is being used in centres of higher education, the military and national hallmark events like the Calgary Stampede and is being distributed in Europe and South America.

Let us hope that we will soon find this innovative green Canadian product in the cafeterias of our red and green chambers here on the Hill.

NATIONAL HOUSEHOLD SURVEY

Hon. Catherine S. Callbeck: Honourable senators, two weeks ago, Statistics Canada released the results of its voluntary National Household Survey — the survey that replaced the very objective and very reliable mandatory long-form census.

We know already that this new voluntary survey simply does not measure up. Even Statistics Canada itself has included disclaimers in its publications, warning about the unreliability of some data. We are left with gaps and questions about the information that was collected.

First, the response rate for this survey did not come close to the response rate from the long-form census. While 94 per cent of Canadians replied to the 2006 long-form census, only 69 per cent felt compelled to complete the voluntary survey. Low-income families, Aboriginal peoples and new immigrants are least likely to participate, and they probably would benefit the most from the census.

• (1340)

This high non-response rate makes results even less reliable for communities of fewer than 25,000 people. As a result, Statistics Canada withheld the data on more than 1,100 municipalities across the country. Only 75 per cent of all communities were published, which is far less than the 96.6 per cent that were published under the last real census. Exactly 30 per cent of the communities in my province have not been published, leaving more than 20 per cent of Islanders not represented at all.

Canadians and Canadian organizations across the country voiced their concerns about the cancellation of the mandatory long-form census. Provincial governments, volunteer groups, churches, charities and others all worried about their ability to serve: where to set up hospitals or schools, where to schedule bus routes, where to locate services for seniors or for immigrants. All these depend on accurate information about the people in those communities. However, this new voluntary survey does not provide adequate or reliable information. People are rightly worried about whether or not its results can be trusted, and Canadians can no longer rely fully on the data provided by Statistics Canada the way we did for the long-form census.

Munir Sheikh, former Chief Statistician of Canada, who resigned over the voluntary survey issue, said recently in *The Globe and Mail*, in an op-ed, May 9, 2013:

> The more important issue of replacing the census with the NHS is the potential for producing a downward spiral in the quality of social and household data over time. For a statistical agency that ranks among the best in the world, this should be serious cause for concern.

Honourable senators, we have lost a vital source of information. Mr. Sheikh proposes that it is not too late for the government to bring back the mandatory long-form census for 2016. I urge the federal government to do so.

CARASSAUGA FESTIVAL

Hon. Victor Oh: Honourable senators, I rise today to speak for the first time in this esteemed chamber.

Hon. Senators: Hear, hear!

Senator Oh: I would like to thank Prime Minister Stephen Harper for recommending me and bestowing on me the honour and privilege of serving Ontario and Canada in our upper house.

I must also acknowledge our leader in this place, Senator LeBreton, as well as my sponsor, Senator Frum.

I wish to thank all my colleagues on both sides for welcoming me to their ranks. We all have a great duty to our fellow citizens, and I look forward to working with senators to fulfill this duty. It is also a true honour to be the first Canadian of Singaporean descent to receive this prestigious appointment. I am fully aware of the responsibilities of this position and am truly grateful for the chance to serve here.

Honourable senators, as a resident of Mississauga, it is with great pride that I rise to speak about one of our city's greatest cultural institutions, headed by our long-time mayor, Hazel McCallion. Since its inception in 1985, the Carassauga Festival of Cultures has grown to become the largest multicultural festival in Ontario and the second largest cultural festival in Canada. This three-day event celebrates the cultural diversity of Mississauga, promoting understanding and respect among Canadians of different heritages.

When Carassauga was created in response to a challenge by Mayor Hazel McCallion, the festival featured 10 cultural pavilions. This weekend, Carassauga celebrates its twenty-eighth anniversary, showcasing 72 countries in 28 pavilions in 13 locations across the city. Citizens of Mississauga are proud of the growth and success of this important community event.

I would like to thank the Carassauga chair, Jack Prazeres, and the executive director, Linda Siutra, for their hard work and dedication in making this event successful. I would also like to commend the wonderful volunteers who give up their time on Carassauga weekend in order to share the histories and traditions of our global neighbours.

I invite all honourable senators to share in this celebration throughout Mississauga on May 24, 25 and 26.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of the Honourable Jim Reiter, Minister of Government Relations, and the Honourable Russ Marchuk, Minister of Education for the Province of Saskatchewan, who are accompanied by Mr. Marlin Stangeland. They are the guests of the Honourable Senator Denise Batters.

In the name of all honourable senators, welcome to the Senate of Canada.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, whilst on my feet, might I also draw your attention to the presence in the gallery of His Worship Jim Diodati, the distinguished mayor of Niagara Falls, accompanied by Mr. Matt Marchand, President and CEO of the Windsor-Essex Chamber of Commerce, as well as some of their coalition associates. They are guests of the Honourable Senator Runciman.

To you I also extend, on behalf of all honourable senators, a warm welcome to the Senate of Canada.

Hon. Senators: Hear, hear!

BREAKFAST FOR YOUNG CANADIANS ON PARLIAMENT HILL

Hon. Lillian Eva Dyck: Honourable senators, on May 8, I hosted the ninth annual Era 21 Networking Breakfast for Young Canadians on Parliament Hill. This event was started by the Honourable Vivienne Poy. After her retirement last year, I was humbled to be asked to serve as the patron of this wonderful event.

In its ninth year, the breakfast is held annually in the Parliamentary Restaurant to celebrate Asian Heritage Month and Black History Month, and it brings together about 100 young Canadians in grades 11 and 12. Those students of Asian, African and Aboriginal heritage invite a peer who is not of their own ethnocultural community to attend this inclusive event. Parliamentarians and local business, professional and cultural leaders are also invited to network with the students at their tables.

This event is a joint Asian Heritage Month and Black History Month diversity celebration supported by our outstanding community partners, the Ottawa Asian Heritage Month Society, the J'Nikira Dinqinesh Education Centre, and our sponsor, the Royal Bank of Canada. I would like to thank them for their hard work on this event. I would also like to thank the Ottawa-Carleton District School Board for their participation in this event year after year.

The intent of the breakfast is to encourage the idea of networking across the diverse cultures that reflect Canada's unique multicultural heritage and to help students understand the great advantage of Canada's diversity in terms of the opportunities it provides them as global citizens.

The event started off with a traditional Aboriginal song from the Picody Family Aboriginal singers and drummers. We were honoured to have three outstanding young panellists to speak to the students about their struggles and triumphs of being a young leader in Canada today. The panellists were Caitlin Tolley, a band councillor at the Kitigan Zibi Algonquin First Nation and bachelor's student at the University of Ottawa; Jorge Barrera, a reporter from the Aboriginal Peoples Television Network; and Jenna Tenn-Yuk, a slam poet and master's student at the University of Ottawa. Each of these speakers offered a unique story of what pushes them to understand their own heritage and use it as motivation for achieving change in their communities, Canada and the world. I would like to thank Caitlin, Jorge and Jenna for inspiring the students and also me.

Honourable senators, Canada's diversity allows us a great opportunity to expand upon our own cultural identification and connect with those around us. This country is our shared home, and understanding and celebrating our differences will only strengthen our society.

• (1350)

Looking out into the crowd that morning and seeing all of those young, bright and multicultural faces looking back at me really gave me hope that this new generation can achieve great things, not just in the future but right now. There was definitely an energy in the room that morning; these young people were ready to act. I wish them all the best in their endeavours.

[*Translation*]

NEW BRUNSWICK

ARTISTIC ACHIEVEMENTS AT BOUCTOUCHE

Hon. Rose-May Poirier: Honourable senators, I rise to congratulate a town in my home region that recently earned the distinction of being the most artistic town in Canada. The town of Bouctouche was recognized for its arts community in a *Reader's Digest* contest.

Darlene Lawson, who lives in the region, saw something quite special in this small town and that is what prompted her to enter Bouctouche into the contest.

Located at the mouth of the Bouctouche River on the Northumberland Strait, this small town in southeastern New Brunswick was founded in 1785 by the LeBlanc and Bastarache

families. From those beginnings the population of Bouctouche has grown to more than 2,400 today, and includes M'ikmaq, Acadian and anglophone families.

A large number of Leblancs and Bastaraches still live in Bouctouche. What makes Bouctouche so wonderful is its cultural diversity and the people who express their cultural heritage and artistic talents in their own way at festivals and celebrations and the like, as well as its vast rural landscape and its sandy beaches where life is good. It is a must-see. The air is pure and nature is at its finest.

André Cormier, the town manager, was not surprised that Bouctouche won the title of most artistic town in Canada, since the Town of Bouctouche has long recognized the talents of its citizens. According to Mr. Cormier, if you go door to door, every other house is home to an artist: a singer, an actor, a writer, a musician, a painter, and so forth.

The town's reputation as an artistic community grew out of the fact that it is the setting for a play about a humble character called la Sagouine, a poor cleaning lady who earns a living by the sweat of her brow and who speaks for those who cannot speak for themselves. Le Pays de la Sagouine has become a major tourist attraction for thousands of visitors every summer.

The 2008 Global Travel and Tourism Summit held in Dubai ranked Bouctouche eighth as a global destination. It was the only Canadian town to make the final list.

It was in Bouctouche that author Antonine Maillet wrote such works as *La Sagouine*. As Senator Day mentioned, Viola Léger has interpreted the role every summer in Bouctouche and has won a Governor General's Performing Arts Award for her performance.

Congratulations to the mayor of Bouctouche, Albéo Saulnier, and especially to its proud residents. Honourable senators, I can assure you that the people of Bouctouche are warm and welcoming. As la Sagouine would say, come and see us!

[*English*]

CANADIAN MEDICAL ASSOCIATION

Hon. Jane Cordy: Honourable senators, today we are welcoming Canada's doctors for their annual day on Parliament Hill.

The Canadian Medical Association represents more than 78,000 doctors from coast to coast to coast. The CMA's existence dates back to when this country was founded in 1867, and that is quite remarkable for a national association that is advocating by serving and uniting the physicians of Canada, in partnership with the people of Canada, for the highest standards of health and health care in our country. In fact, the CMA has been advocating for numerous years to transform our health care system, and I would like to encourage honourable senators to read their Health Care Transformation policy paper and the principles behind them.

This morning, Canadian physicians invited us for breakfast at the Parliamentary Restaurant for a presentation by Ipsos Reid and CMA President Anna Reid. Also throughout the day, you are invited to get your health checked by a physician in Room 238-S from eight o'clock this morning until four o'clock this afternoon. Finally, I would like to encourage honourable senators to meet with a doctor from their regions to discuss the challenges our populations are faced with when thinking about the health of Canadians and the health care system in Canada.

ROUTINE PROCEEDINGS

ROYAL CANADIAN MOUNTED POLICE

REQUEST FOR SENATE POLICY INSTRUMENTS—CORRESPONDENCE TABLED

The Hon. the Speaker: I wish to inform honourable senators that we have received a request from the Sensitive and International Investigative Unit of the RCMP National Division for copies of our Policy Instruments Relating to Living Expenses and Travel Policy for the purpose of their examination of Senators Brazeau, Harb and Duffy.

Further to this request, we have provided the information that has been requested and we will continue to cooperate with them during the course of their work.

Accordingly, with leave, I have the honour to table the related correspondence.

CRIMINAL CODE

BILL TO AMEND—TWENTY-SEVENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. Bob Runciman, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, May 23, 2013

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TWENTY-SEVENTH REPORT

Your committee, to which was referred Bill C-299, An Act to amend the Criminal Code (kidnapping of young person), has, in obedience to the order of reference of Wednesday, February 6, 2013, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

BOB RUNCIMAN
Chair

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

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

[*Translation*]

NATIONAL FINANCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTINGS OF THE SENATE

Honourable Joseph A. Day: Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

> That, for the purpose of its study of the subject-matter of *Bill C-60, An Act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures*, the Standing Senate Committee on National Finance have the power to sit even though the Senate may then be sitting, and the application of rule 12-18(1) being suspended in relation thereto.

ROYAL CANADIAN MOUNTED POLICE VICTIMS OF HARASSMENT

NOTICE OF INQUIRY

Hon. Grant Mitchell: Honourable senators, I give notice that, at the next sitting of the Senate:

> I will call the attention of the Senate to members of the RCMP who have been victims of harassment and sexual harassment in the RCMP.

THE SENATE

NOTICE OF MOTION TO AMEND THE *RULES OF THE SENATE OF CANADA*

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I give notice that, two days hence, I will move:

That the *Rules of the Senate* be amended by:

(1) replacing rule 4-5(b) with the following:

"Presenting or Tabling Reports from Committees**";**

(2) replacing rule 5-5(f) with the following:

"to adopt a report of a standing committee or the Committee of Selection**";**

(3) amending rule 12-2 by adding of the following subsections (4), (5) and (6):

"Powers of the Committee of Selection

12-2. (4) The Committee of Selection is empowered to inquire into and report on any other matter referred to it by the Senate, and also has the power:

(a) to publish from day to day such papers and evidence as may be ordered by it; and;

(b) to propose to the Senate from time to time changes in the membership of a committee.

Committee of Selection is neither a standing nor special committee

12-2. (5) For greater certainty, the Committee of Selection is neither a standing nor a special committee.

"Quorum of standing committees

12-2. (6) The quorum of the Committee of Selection shall be six of its members.**";**

(4) replacing rule 12-6 with the following:

"Quorum of standing committees

12-6. Except as otherwise provided, the quorum of a standing committee shall be four of its members.

EXCEPTION

*Rule 12-27(2): Quorum of Conflict of Interest Committee***"; and**

(5) amending the definition of "Committee" in Appendix I by:

(a) adding the following definition:

"(a) **Committee of Selection:** A Senate committee appointed at the beginning of each session to nominate a Senator to serve as Speaker *pro tempore* and to nominate Senators to serve on the standing committees and the standing joint committees.**"; and**

(b) changing the alphabetical designation of current points (a) to (e) as points (b) to (f), and changing all cross references in the Rules accordingly.

• (1400)

[*English*]

QUESTION PERIOD

THE SENATE

TWENTY-SECOND REPORT OF INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION COMMITTEE— REQUEST FOR PUBLIC PROCEEDINGS

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my questions again today are for the Leader of the Government in the Senate. As we all know, the twenty-second report of the Internal Economy Committee dealing with the examination of Senator Duffy's expenses has been referred back to that committee so that it can be reconsidered in view of the events of the last few days and the last few weeks.

Yesterday, I asked you at this time if you would co-sign a letter with me addressed to the chair and deputy chair of that committee, requesting that the committee conduct its reconsideration in public. I prepared a letter and delivered it to your office. You sent a message back that you declined my request and refused to sign the letter.

Madam leader, I do not have to point out to you the level of concern that Canadians have with respect to the way in which our Senate, this institution and its committees, have handled these issues. Therefore, I would ask you again today: Will you now support my request, which I have sent to the committee, to hold these proceedings in public?

Hon. Marjory LeBreton (Leader of the Government): Thank you, Senator Cowan.

Yesterday, in answer to a question from Senator Furey, I made it very clear that I would fully support any decision made by the Committee of Internal Economy. That is their decision to make.

Senator Cowan, I know what you are doing here, but the fact of the matter is that you, as Leader of the Opposition, and I, as the Leader of the Government in the Senate, are not or should not be directing or instructing any committee in the Senate how they should proceed. That is a decision for the committee to make. We have outstanding senators on the committee on both sides. I have faith in the members of the committee, both the Liberals and Conservatives on the committee. I have full confidence that when they meet, they will take your views into consideration, plus my answer to Senator Furey yesterday, and they will make a decision that is in the best interests of the Senate, the best interests of the committee, and in the best interests of the Canadian public.

Senator Cowan: Senator LeBreton, I am not suggesting now nor did I suggest yesterday that you or I or together should direct the committee to do anything. I entirely agree with you that it is up to the committee.

The request that you and I made some months ago that we signed together, requesting that the committee make its report public at the earliest possible opportunity, was exactly that: It was a request. The committee complied with our request. They acknowledged our request. The letter which I put on your desk, delivered to you yesterday, was a request as well. It was not a direction from you or me or both of us. It was a request, and I will read the precise words: "We request that you proceed with the reconsideration of the report in public."

The committee is perfectly entitled to disregard our request, but I think, as leaders, we have a responsibility to provide our opinion on this issue. My opinion is very strongly that this matter demands the kind of public attention that requires that those proceedings be held in public. Do you share that view?

Senator LeBreton: Senator Cowan, again, we have a Committee of Internal Economy. It is a committee of the Senate. I obviously feel that the events that occurred since the release of the reports on May 9 change the dynamic of the situation.

However, again, Senator Cowan, the Parliament of Canada has the House of Commons and the Senate. They have committees. I, as Leader of the Government in the Senate — and I would hope you, as the Leader of the Opposition — would trust the members of the committee. You have made your views known to them by letter, and that is your right. I have made my views known in this chamber yesterday in answer to Senator Furey. I think the senators on the committee are fully cognizant and seized with the matter at hand. I think they realize how serious this is. I think they realize how much public interest there is.

Senator Cowan, while I understand, sympathize with and am very interested in your sentiment, I believe that, in view of the seriousness of this, and because we have returned it by a motion to the committee, I actually do believe that the members of the committee are responsible, serious, hard-working, honest and ethical senators, and I trust that they will make the right decision. Bearing in mind what you would like to see, I am confident that senators on this side, as I am in senators on your side, particularly the deputy chair, who used to be the chair of the committee — I have full confidence that all the things that have happened, and taking into consideration all of the information we have had since May 9, and taking into consideration the public's demand for more information here, I am confident that they will make the right decision.

PRIME MINISTER'S OFFICE

PAYMENT OF FUNDS—TWENTY-SECOND REPORT OF INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION COMMITTEE

Hon. James S. Cowan (Leader of the Opposition): I appreciate the honourable senator's sympathy and interest. I would have appreciated her support more.

Yesterday, the Prime Minister said that he was frustrated and angry by what took place within his government and his own office. Those are words that I think all of us would recognize from the email traffic that we all receive and the conversations that we have with our fellow Canadians on the street corners and coffee shops and elsewhere where we run into people. Those are understatements, I think.

I want to read a quote:

> On behalf of the Canadian public, we parliamentarians should be dismayed and outraged that the Prime Minister and government have moved the bar of accountability.... The Prime Minister answers to no one....
>
> Parliamentarians and members of the media and, through them, members of the public have been subjected to every tactic imaginable by the propagandists and apologists, who take their marching orders from the Prime Minister or his praetorian guard over in the PMO. Any tactic to confuse the public, divert attention or simply misinform is used to attempt to shut down debate.

Those are your words, Senator LeBreton, March 27, 2001, page 450. You were talking about that prime minister. I quote those words to you because you sometimes suggest that I put words in your mouth. Those are your words from the Senate debates.

• (1410)

I suggest to you that the overwhelming majority of Canadians share your Prime Minister's frustration and anger. Does all of this make you frustrated and angry?

Hon. Marjory LeBreton (Leader of the Government): Actually, when you were reading the quote, I thought you were reading out of the new book on Pierre Elliott Trudeau that was just released as to the way he conducted the Prime Minister's Office.

Of course I am frustrated, Senator Cowan. Of course I am not happy with the situation. Would I like it to be otherwise? Absolutely. Going back to the events over the winter and in February, we put in place a process that I was completely comfortable with. We followed the process. We did what we said we were going to do, and we released the audits of Deloitte. We also followed up with the changes to the rules, which I spoke to yesterday.

Of course I am frustrated. As I said in my speech yesterday, I take very seriously my role as Leader of the Government in the Senate. I have always taken very seriously my role as a senator and my obligation to be respectful of taxpayers' dollars, and I would argue that I have been extremely respectful of taxpayers' dollars.

Of course I am frustrated. Would I like to stand here and say that these things never happened? Absolutely. However, the point I made yesterday is that we are facing a crisis in the Senate. The public is absolutely within their right to be outraged. I have to listen to members of my family and my community as well. However, as I pointed out yesterday, and I think it bears repeating, the rules in the Senate and a lot of the practices of the past that have gone on for years have to change.

I know people get upset when I say this, but it happens to be the truth. Over a vast number of years, the Senate has been overwhelmingly a Liberal institution. It has been overwhelmingly controlled by a majority of Liberals. The moment that we got the majority in the Senate, we took steps to inform the public of the expenses of the senators. That is when we started releasing quarterly reports on the monies senators spend, and that is what has produced — quite rightfully — this new attention to the expenses of the Senate.

As difficult as releasing the information in those quarterly reports has been, the fact is that it is a good thing for the institution and for all of us. It will ensure that, going forward, we do not have situations like those I have witnessed in the 20 years that I have been here, where senators carried on their duties as senators and strayed away from the intent of the rules, which was to provide travel and living expenses for senators to come to Ottawa to conduct Senate business, conduct committee business and do the work of the Senate. That is what the rules were intended for. That is why it was necessary to tighten up the rules.

In answer to your question, there is no one any more frustrated than I am about this. However, as I said yesterday, out of all difficult situations comes some good, and the good that will come from this is that we will have a much more transparent, open and accountable Senate where the public can actually access and view what is going on in here.

Senator Cowan: Think of the amount of paper that is consumed by governments generally and collectively across the country. Do you think Canadians find it strange that a transaction involving the transfer of more than $90,000 from the Chief of Staff of the Prime Minister to a senator could be conducted, carried out, without a single piece of paper, not even one yellow sticky note? Does that not strike you as odd?

Senator LeBreton: I answered these questions before, Senator Cowan. I think it is very clear that the developments following our release of the reports in the Senate on May 9 have changed the dynamic here. There is no question about that. However, I can only repeat what I have said before. This arrangement was something that the government was totally unaware of. The Prime Minister addressed it while away on his trade mission. I cannot comment on a transaction and situation that I am totally unaware of.

Senator Cowan: You referred just now to the Prime Minister finally answering questions from the relative safety — I am sure he thought — of Peru. In that response he said that when Mr. Wright gave the $90,000 to Senator Duffy — and these are his words — "he did this in his capacity as Chief of Staff." Those are Mr. Harper's words. Therefore, any documents, papers or emails that he produced in his capacity as Chief of Staff belong not to him but to the office-holder, to the Prime Minister.

Will the government not only produce the documents that it currently has in its possession, but will it endeavour to track down any papers and correspondence that it legally owns, which would include any documents that Mr. Wright produced or had produced on his behalf, acting, as Mr. Harper said, in his capacity as Mr. Harper's Chief of Staff?

Senator LeBreton: If you fairly quote the Prime Minister, he went on to say that because of these actions the Chief of Staff resigned and he accepted his resignation.

I can only report again, Senator Cowan, what I said yesterday. Because this was an agreement between two individuals, our understanding is that there is no legal document. That is our understanding, and that is all I can report to you today, Senator Cowan.

Senator Cowan: The statements have been very, very carefully written, Senator LeBreton, as they appropriately should be. This is a very serious matter, as you say, and one would not suggest that people should answer questions or ask questions without being very careful in so doing.

However, the answer was, the statement was, that the government had no documents; they knew of no documents in their possession. My question was that Mr. Wright, acting, as the Prime Minister said, in his capacity as the Prime Minister's Chief of Staff, any documents that he produced in that capacity would belong not to him but to the Government of Canada. I am asking you, if you have not already done so, will you ensure that the government asks Mr. Wright to return or to deliver to the government any documents that he might have, which the government might not now have, might never have had in its possession with respect to any part of this transaction?

Senator LeBreton: With regard to Mr. Wright — and it is very clear that this is in the hands of the Ethics Commissioner. Knowing of the thoroughness of the Ethics Commissioner's work, I would suggest to you, Senator Cowan, that she will have the opportunity to ascertain answers to a lot of questions, and I would suggest that it is prudent to allow the Ethics Commissioner to fully examine this matter and allow her to do her work.

Hon. George J. Furey: I was just reading, Senator LeBreton, an interview that Senator Tkachuk must have just recently given to *Maclean's*. I am sorry he is not here, and I do not blame him for not being here. Our health is the most important thing we have. I wish him well and I wish him a speedy recovery.

I would like your reaction to what is said in here.

> Q: Did anyone in the Prime Minister's Office ever suggest to you how the report should be written?

He is talking about the report of the steering committee that went eventually to the full committee.

His answer is:

> A: Not really.
>
> A: Because when I ask for advice, people will give advice. I did ask for advice, I'm not denying that. But all I'm saying is, no one gave me any orders, no one came to my room and told me what to do.

• (1420)

Then the next question is:

> Q: Can you say though that any of the Prime Minister's Office's advice ended up impacting how that report was written?
>
> A: Well, I don't know, I suppose. It's hard for me to say. It's hard for me to say. Only because I asked for advice from many, many people, so it's all in the report.

Given the problems surrounding this whole issue, and particularly in light of the fact that we now know $90,000 changed hands, do you think it would be appropriate for Senator Tkachuk to step aside as chair for this review process to be seen as open, clear and honest by the whole of the Canadian population?

Some Hon. Senators: Hear, hear!

Senator LeBreton: Thank you, Senator Furey. I was only just made aware of the interview; I have not really read it. I appreciate your informing me.

Obviously, I will have to read the whole interview, Senator Furey. As I indicated here yesterday, my knowledge was obviously we were advising all of our colleagues of the process we were going through in the Senate because people were very concerned, and quite rightly — especially members in the House of Commons, when they went back to their ridings. They were asking what we were doing and how we were going to fix this. I kept assuring them of the process we had set up in the Senate. I kept assuring them that it would be an open process, that we would table the Deloitte reports, that we would table the committee reports and make new changes to the rules. From my knowledge, any consultations back and forth with people in the government and people in the caucus in the other place were along those lines.

If Senator Furey does not mind, I would like to be able to read the full interview. I know what you are suggesting, but I think, in fairness, I should at least have an opportunity to read the whole interview.

Senator Furey: Thank you. I think that is a very appropriate response, Senator LeBreton. I would ask that you report back to the chamber after you have had an opportunity to speak to Senator Tkachuk. I have worked extremely well with Senator Tkachuk in the past, but some of these comments caused me grave concern. I am sure you will speak to him and get to the bottom and report back to us.

Senator LeBreton: I can assure you I absolutely will.

Hon. Dennis Dawson: Honourable senators, in light of what has been said by Senator Furey and the fact that you want an open process, if Senator Duffy agreed that this review of the report be made in public, would you agree that it be made public?

Senator LeBreton: Senator Dawson, again, I very much respect the rules and processes of Parliament. We have a committee system. We have Senate committees. They do great work. They are the masters of their own committees. However, we can make suggestions to them. We do have senators on both sides. I think it was the first committee I served on when I was named to the Senate. I called it the "inferno economy committee."

I really do believe that all of us in this place, no matter what side we sit on, have to have faith in our colleagues on both sides, and we have to have faith in the people we put on this committee to do the right thing.

Senator Dawson: Was that a no?

Senator LeBreton: That was that I cannot speak for what Senator Duffy might say. Obviously, Senator Cowan has views on how this committee should be conducted. I am simply saying we have outstanding senators on the committee on both sides who, given the information that they have had since they made the reports on May 9, will be seized with this very serious issue. Obviously, they are also taking note of the reaction of the public and the things we are trying to do to correct the situation. I am simply saying, Senator Dawson, that I am confident that members of the committee on both sides, when they meet — and I am not even sure when they are meeting; it should be soon — will take into account Senator Cowan's suggestions, they will take into account other suggestions that they may have, and they will take into account my commitment that whatever decision or whatever route they decide to go, they will have my full support.

Senator Dawson: That sounded like a "maybe," so I thank the Leader of the Government.

Hon. Grant Mitchell: Honourable senators, if ever there were a conflict of interest, surely it would be that the chair of the committee reviewing the problem that is before this Senate has undertaken actions that would implicate him in the very review that the committee is charged with doing. How could it be that we would leave a chair in that committee when he has such a clear conflict of interest? He changed the report that had been approved by that committee. He took direction, it seems like — and I know you want to reserve on that — from the Prime Minister's Office, and now he is chairing a committee that will actually be reviewing, among other things, his own actions. How does that work?

Senator LeBreton: First, we are dealing with a lot of speculation here. Having said that, Senator Mitchell, I do understand that you do not have it in your capacity to accept the legitimate answer that I gave to the Deputy Chair of the Internal Economy Committee, namely, that I would look into this very seriously. However, I understand, Senator Mitchell. You can never rise to accept a proper answer on a matter that is very serious.

Senator Mitchell: What Senator Furey was talking about, of course, was a specific indication of a conflict of interest, but it is pretty much on the record that that chair, the Conservative majority, changed a report, and that change in the report will itself be part of the subject of the review of this committee. How can the chair, when he was involved in the changing of that report, review his own actions? How could there be a shred of credibility for that particular process if the chair is implicated and his actions need to be studied as well?

Senator LeBreton: As I reported to Senator Furey when he made a suggestion, I will have to get more information. However, Senator Mitchell, this is a committee of the Senate. I do not know what went on inside the walls during that in camera committee meeting. I was not part of the debate; I did not participate in the debate. It was an in camera meeting, so there is not even a public record of the debate. All I know is that on May 9, that committee tabled reports in the Senate that are now the property of the Senate. Two of them are still on the floor of the Senate and two of them have been dealt with. That is all I can say at this point in time.

I believe that the members of the committee — and it is a rather large committee, the Internal Economy Committee — the members on this side and the members on that side, will obviously be factoring in everything that has been said and everything that has happened since May 9. This is, again, a decision that will be made within the committee.

Senator Mitchell: Can you not at least admit that it is important not only that this process be above reproach but also that it absolutely appears to be above reproach in the eyes of a very, very cynical and skeptical public? Could you not at least admit that it is a great conflict of interest for the chair of that committee to be reviewing a set of problems in which he inevitably has been implicated? Why would he not recuse himself to begin with from the whole process? Why would he not step down to allow this process to proceed without his presence, and why would you not insist that he do that?

Senator LeBreton: Actually, I agree with you that this is a grave situation and that it must be dealt with properly. However, I repeat: This is a large committee made up of very responsible people on both sides. I actually have great faith that the committee will do the right thing in the interests of the public and in the interests of the taxpayer and in the interests of the Senate and in the interests of Parliament.

• (1430)

Senator Mitchell, you are asking me to pass judgment on some information that is still speculation. I think this is something obviously the committee, when they meet, will be seized with and the committee will deal with these things. I am quite confident, and I have great faith that they will do so.

Senator Mitchell: By definition, it is all speculation. Otherwise, we would not have to do the investigation. The fact of the matter is that speculation really is not a defence. This chair has a conflict of interest. It is clear it is a conflict of interest. No matter how you parse it, how you shave it, how you chop it up, it is a conflict of interest. How can you sit there and not ask him, wherever he is, to resign that position and put somebody else in there who can at least have a chance to appear to be objective?

Senator LeBreton: Senator Mitchell, at this point in time, Senator Tkachuk is not here to defend himself. He, as —

Senator Mitchell: He reports to you.

Senator LeBreton: He reports to the Senate. He actually reports to the Senate. He does not report to me.

Senator Mitchell: I guess he reports to the PMO, sorry.

Senator LeBreton: No, he does not. He reports to the Senate. He is a chair of a committee of the Senate. He does not report to me. He reports to the Senate. That is what all Senate chairs do. We make up the committees, people on both sides. However, he is not here to defend himself. There have been some ideas advanced today with regard to actions that he could or should take. Those were put on the floor today, and I am sure that we will take — or he will take your comments into consideration.

ORDERS OF THE DAY

QUESTION OF PRIVILEGE

TWENTY-FOURTH REPORT OF STANDING COMMITTEE ON INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION— SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, I wish to rule on a question of privilege.

On May 21, the Honourable Senator Harb raised a question of privilege concerning the twenty-fourth report of the Standing Committee on Internal Economy, Budgets and Administration, presented on May 9. Senator Harb argued that the content of the committee report harmed his reputation and undermined his ability to fulfil his duties, and damaged the Senate itself. He took issue with the process followed in the review of living allowances, arguing that it amounted to a violation of basic principles of natural justice. He also challenged the conclusions reached by the committee. In presenting his position, Senator Harb outlined how, in his view, the question of privilege fulfilled the four criteria of rule 13-3(1).

[*Translation*]

A number of honourable senators made interventions on the question of privilege. Senator Carignan noted that Senator Harb himself recognized that he had been able to participate throughout the process that led to the twenty-fourth report. He emphasized that the report's recommendations would only take effect if adopted by the Senate, so the Senate itself would make the final decision. Senator Harb himself could take part in the debate. This being the case, Senator Carignan argued there was no prima facie question of privilege.

[*English*]

Senator Furey then posed questions to Senator Harb about the pattern of travel reviewed in the report. Afterward, Senator Nolin cited the second edition of *House of Commons Procedure and Practice* and Erskine May in arguing that Senator Harb had not raised a proper question of privilege. Senator Fraser generally endorsed Senator Nolin's comments, identifying the complaint as one involving a reassessment of living expenses, which falls within the mandate of the Internal Economy Committee and the authority of the Senate. She noted "nowhere does it cast aspersions on Senator Harb's character or anything else. It does not say that he made the claims in bad faith... It simply says that the claims should not have been made."

[*Translation*]

As honourable senators know, a question of privilege is "An allegation that the privileges of the Senate or its members have been infringed." Privilege is made up of "The rights, powers and immunities enjoyed by each house collectively, and by members of each house individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals." These definitions are from Appendix I of our Rules.

[*English*]

There are a range of privileges and rights enjoyed by this house and by its members. One of these rights is to regulate internal affairs. In exercising this right, the Senate can implement measures intended to safeguard its public reputation, even if it appears to be detrimental to the interest of individual members. This is confirmed at page 88 of the second edition of *House of Commons Procedure and Practice*, where it is stated that "... individual Member's rights are subordinate to those of the House as a whole in order to protect the collectivity against any abuses by individual Members." That is to say that the privileges and rights exercised by the Senate itself take precedence over those of individual senators.

[*Translation*]

The report by the Internal Economy Committee involves a proposal to the Senate on the use of Senate resources and the application of Senate policies with respect to these resources. The committee has a clear mandate to do this. Rule 12-7(1)(a) allows it "to consider, on its own initiative, all financial and administrative matters concerning the Senate's internal administration." The report is an exercise of this mandate. Of course, the report will only take effect if it is adopted by the Senate.

[*English*]

Senator Harb raised his question of privilege at the earliest opportunity. However, it does not meet the three other criteria of rule 13-3(1). The complaint raised by Senator Harb does not directly concern the privileges of the Senate, a committee or a senator. No grave or serious breach has been identified. There is nothing prima facie to substantiate a claim that Senator Harb's ability to function as a parliamentarian has been damaged.

The report falls within the Senate's legitimate control over its internal administration. The question of privilege does not meet the second and third criteria. Concerns about the fairness of the process for developing the report and its conclusions can be explored during debate, and any senator can propose that the report be referred back to the committee for further study.

Indeed, this is what has happened with respect to the twenty-second report. The report could also be amended or rejected. There are a range of reasonable parliamentary processes available to address the issues raised by Senator Harb. Consequently, the condition of the fourth criteria has not been met.

[*Translation*]

The ruling is that a prima facie case of privilege has not been established.

[*English*]

ROYAL CANADIAN MOUNTED POLICE ACT

BILL TO AMEND—THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Martin, for the third reading of Bill C-42, An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts.

Hon. Grant Mitchell: Honourable senators, I would like to say that I have the pleasure of speaking on Bill C-42 on third reading, but I cannot say that it is actually a pleasure. I have some serious concerns about this bill. I have serious concerns about what this bill is intended to address, and particularly I have a serious concern because, in the final analysis, or maybe not even so final, it will not address that and it may actually make the situation worse.

• (1440)

There is no doubt that the RCMP, to some degree — although we do not know to what degree — is a troubled organization. It is not just me in the opposition saying that. The commissioner himself has said there are problems there. The minister himself has said there are problems there. The very existence of Bill C-42 is a reflection of their acknowledgment that there are problems in the RCMP.

The question that that begs is just what is the magnitude of these problems. There has been precious little effort put into establishing the magnitude of the problem by the senior staff of the RCMP. That is the first concern I have about this bill and about the debate more generally with respect to sexual harassment, harassment and the cultural problems in the RCMP. There was some witness testimony that addressed that question. There are two forms of magnitude here: The first is quantitative, how many problems are there, what is the depth of the problem in that regard; and the second is qualitative. I will address both.

We had very limited insight because we have had difficulty getting a broad range of witnesses before the committee for various reasons, in part because there has been some effort in the past at least to limit that from the government side on the committee.

There was a suggestion in one exchange in the committee that only 117 problems had ever been reviewed in the various processes that exist in the RCMP to review problems. I want to clarify that. There were 117 issues over a decade or so that had ever gone to the external review board. The external review board is just one avenue of review of problems in the RCMP. There are many other avenues. There is a grievance process; there is the quasi-external public review process of the CPC committee; there are the tribunal process, the adjudicative board processes and so on. Therefore it was very misleading to suggest that there really is not much of a problem because there are 30,000 people in the RCMP and only 117 cases ever got to this particular body. That is very misleading.

Honourable senators, we know some of the figures, but there are not enough figures because not enough effort has been made to assess this problem. First, we know that in the five-year period studied by the CPC, under Ian McPhail's direction, 718 cases were reviewed. They were cases that existed in that five-year period. That looks like 140 cases a year for five years, and some might say that is not a lot, but let us remember those were only the cases that got as far as the process where they began to record.

There is quite a step in the RCMP where cases can come up. Before they actually progress to a certain level they are never recorded at all. There are probably many instances — at least the question is begged — where cases have arisen and people have either given up before getting to the stage of filling out paperwork, or the cases have been resolved perhaps before they filled out paperwork, and so on.

The second reason for that figure being undoubtedly low is that there is tremendous evidence that many people in the RCMP, both regular and civilian members, are very afraid to raise a problem, to complain about a problem or to suggest a solution to a problem because they have seen what has happened to so many of their colleagues who have stuck their heads up, as it were, to do that. Again, the committee has not been allowed — because the Conservative members have prevented this — to have members who have been injured in this process come before us. I will get to talk a bit about that because I have certainly talked to many members who have been injured.

Honourable senators, the fact of the matter is we hear a common theme over and over again that many people are afraid to present and get into the process of a complaint about harassment or bullying because of what they feel will be the consequences: They will not be heard adequately, there will not be an adequate resolution and, in fact, they will be ostracized and there will be damage to their career and possibly damage to their mental health. That has happened very frequently.

Yes, we have 718 cases that the McPhail report viewed. Those are official cases. I should point out, first, that he did not audit the files of the RCMP; he was given those files by the RCMP, and therefore we have no guarantee that we even received all the files. Second, there are many cases that never get that far; and third, there are many cases that never even start because people are afraid to start them.

Honourable senators, we do have another process that was a good process in the B.C. region. It was undertaken by Simmie Smith, a civilian member, who solicited views, input and interviews from members in that region. I believe there are 6,000 civilian and regular members in that region. Simmie Smith set up a process that heard from 462 of those members. That is getting to be pretty close to 8 per cent or 9 per cent of the membership in that particular region where this was done.

Of those 462 members, only five were men since they excluded the men because the women were very restricted and concerned about speaking of this sexual harassment, which is so intimate and so personal that it was felt by Simmie Smith that this would impede the women's ability to be open and to express their concerns adequately in a way that fulfilled their need to express those concerns. Therefore, there were five men.

Considering the number of cases we know about in the McPhail report, there is about an even percentage that affects women and men. It is about 44 per cent to 49 per cent. For the remainder, we do not know who was affected because there no gender was indicated. If one considers that about 456 cases in the Simmie Smith study were women, and there is an even balance percentage-wise, you have another 450 potential men who would have had similar problems.

Honourable senators, we are now at 900 out of 6,000 people. That is getting to be a significant amount. That is 15 per cent. To some extent that again excludes people who simply would be afraid to come forward because they have no confidence that they will be treated in any way that is fair and just and that they will be heard properly. There is a huge magnitude.

Let us take it one step further. There is a class action pending of 300 members. Again, that is only women because in this case they have limited their class action to women. That is a pretty strong tip of the proverbial iceberg because, of course, if you are prepared to go through all of that process and the horror that many people have encountered in that process in the RCMP, and then you are prepared to invest the money involved in this kind of legal process and take the public exposure that is involved in very personal matters, clearly that represents, I would think, the tip of the iceberg, and there are many more cases below. We are not talking about hundreds of cases; we could well be talking about thousands of cases in an organization of 30,000 people. It is a significant percentage of cases.

We do not know, though. No one has done a baseline audit. The Simmie Smith study in B.C. was very good. Why was that not done across the country? We see some statistics in the Ian McPhail report; however, B.C. was not the highest percentage. It was not the worst region. I will not say which one was worse, but if it was bad enough in B.C. for the Simmie Smith study to be invoked, why would Commissioner Paulson not want to do that completely across the country to form a baseline so they would know what the nature of the problem was and they could deal with it?

What is begged in this whole process is the question, quantitatively, of what the magnitude of the problem would be. We have received some insight into the qualitative nature of the problem. When I say qualitative, I mean the problem, in several words, is of how the senior staff view these issues and the way in which they have not adequately responded to these important issues.

• (1450)

This, of course, by its very nature, is anecdotal, but there are some very disturbing observations. It is interesting, for example, that the commissioner said he needs this bill because he needs to be able to get rid of bad apples. However, they have had no problem firing people along the way who have made complaints.

When there is a complaint lodged by a woman against a man, it is often the woman who is fired. One case went to tribunal, and these are public facts. A male staff sergeant and a female constable had a relationship, an affair; they both lied about it; they both admitted it later. The male staff sergeant was docked 10 days' pay and the female constable was fired. That would underline that to some extent there is a bias in this process, if not a cavalier attitude or a prejudice that goes even deeper than that.

Second, despite the fact the commissioner said he could not really fire, it is interesting that he did specify when he first became the commissioner in late December 2011 that he wanted to crack down on cases like these. Good for him. Several weeks later the Donald Ray case was before the three-person board of adjudicators, RCMP officers, who were quoted in the media as saying that they considered firing him — which would mean that they could, so there are powers to fire — but they decided that they would not.

The case of Donald Ray, as I have explained before in this house and I will mention it again briefly, is sordid. He was convicted in the adjudication board of exposing himself in the office to female members on more than one occasion. He also brought liquor into the office and had sexual relations in the office. For all of that, he was docked 10 days' pay, reduced from staff sergeant to sergeant, and sent to British Columbia. That would say to me that there is a problem and that is that, despite the fact that the commissioner says he wanted Donald Ray or people like him dealt with differently and harshly, in many respects one could argue that those people on that tribunal really defied his initiative in that regard, and I believe that says something about the nature of the culture.

We have not been able to call witnesses before our committee, witnesses who have been victims. I would rather use the words "who have been grievously injured" as one cannot even say they are survivors yet because they are still going through it. If honourable senators could see and talk to these people, they would be profoundly moved.

MP Judy Sgro and I called hearings in Ottawa, where we had four presenters who had been injured, and we were joined by other MPs and senators. We also did the same thing in Vancouver last week, where we had five presenters and two in a private meeting because they were just too afraid at this point to come out, as it were. Their stories are immensely powerful.

One, for example, Sherry Benson, who appeared before the House committee, the one injured person who did so, related a story of profoundly consistent and devastating harassment. She

was called names that I will not even use in this debate, they were so horrible, and she was repeatedly called those names, very diminishing for a female, very aggressive sexual names. They were used in front of the public with her. They were used over the radio system with her.

When she asked the people who were doing that to simply stop doing that — just asked, which is not an unreasonable thing to do — that is when the process of ostracizing her, pushing her out and isolating her began. It went on for years. At one point, she opened her locker and there was a dead prairie chicken bleeding in her locker. Could honourable senators imagine if that occurred in a locker of one of our employees? Can you imagine what would happen? No, nothing happened to anyone who did anything in that process.

We had Catherine Galliford. Many honourable senators will know her because she was the very articulate and presentable spokesperson for the RCMP during the Pickton inquiry. I think she also was in that role for the Air India inquiry. She presented us with a tale of devastating harassment over many years.

Jamie Hanlon and Krista Carle are similarly extremely articulate and very powerful. These are not people who will tell you they want money. They are not people who will tell you they want to hurt the RCMP. They are people who went into the RCMP because they believed so profoundly in that institution and the role they could play to make Canada better and serve the public. All they want to do is fix it. There is not a viciousness or recrimination there. They want to be heard and they want to fix it.

There is also this idea that things are getting better because some steps have been taken, but that is not immediately obvious either. As recently as about a year ago, a case was ruled on of a young woman who was in Depot in training. She was called in her hotel room one evening and asked by a regular constable, "Why don't you come down and join me for a drink?" She did; there was nothing wrong with that. She got there and there were 12 or 15 colleagues and, in front of them all, he touched her inappropriately. He made an offhand snide comment about her in front of these people. She sat down; what could she do? She was a recruit. She was new. She tried to tough it out, as so many of these injured people do. At the end of the session, he touched her inappropriately in front of them all again.

What happened to her? To the RCMP's credit, the adjudicator found that the constable was inappropriate in what he did and he had to apologize to this young woman, in Cree, so I presume she was an Aboriginal member. We would want to encourage, in any event, a female Aboriginal member of the RCMP. What happened? She was so ostracized in her unit and so isolated that she eventually asked to move.

I pursued that with Commissioner Paulson when he was before the committee. I asked, "Why would she have to move?" His answer was, "She asked to." Of course, she had no choice. What I would say to Commissioner Paulson is, "Why did you not pick up the phone and talk to that young constable and say, 'You know what, I do not think you should have to move. You did not do anything wrong, so I am going to move the people who are isolating you and harassing you now and have ostracized you. We are going to make them move. We will find out who they are and make them move.'"

What kind of message would that send to the organization about changing the culture of this organization? I think it would be a very powerful message.

The fact that he would say "She asked" is again an indication, I believe, of a qualitative problem in the culture of that organization.

Finally, in assessing the qualitative magnitude of the problem we see the case that the Speaker ruled on last week or the week before of Roland Beaulieu, who we believe has a strong case to say he was intimidated from attending a Senate committee hearing by senior staff in the RCMP. What happened was that he was asked to come and he consented. He told his superior. He is on sick leave, but he told his superior. He soon received a letter from a doctor — a doctor who has never met him, never talked to him or examined him — who said, "If you are well enough to go and speak to a committee for an hour, then you are well enough to go back to work." It is almost incomprehensible that they would do that when they are under the kind of scrutiny that the Senate committee is trying to shine on them. It is incomprehensible. It verges on the unbelievable that they would do that.

If we have not been able to assess the quantitative nature of the problem because they will not do the studies that need to be done, then surely these qualitative ideas and observations underline that there is a problem in the culture at some level in some places. I am not saying everywhere; I do not want to taint all RCMP, by any means. Many — probably the vast majority — are excellent and conduct themselves in a way that is exemplary and above reproach; but when one begins to see this kind of thing at senior levels and decisions made in this way, it underlines that there is a cultural problem.

This is all about leadership. One does not solve cultural problems unless the leadership gets it and understands it. The first thing that the leadership needs to do is come to grips with the fact — as the military did, eventually, and successfully — that this is changing a culture and it is not done easily, which brings me to Bill C-42.

• (1500)

Bill C-42 has been construed by the minister and by Commissioner Paulson as the antidote to the problem, which they admit exists. They do not know how widespread it is, but they do admit that it exists. This is going to solve the problem. The commissioner says this will allow him to fire the bad apples, which he has not been able to do to this point.

Here is the problem: Almost every feature of this bill that will institutionally restructure the RCMP deals with problems after they occur. It will give the commissioner greater powers to fire, but one would only fire after a problem has occurred. It will give

the commissioner greater power to restructure the grievance process, but the grievance process is only invoked after a problem occurs. It outlines more objective ways to investigate serious incidents involving RCMP officers, but again, that kind of a process, with the investigation of serious incidents, only happens after the incident occurs.

Finally, with the new Public Complaints Commission, again, it will only review problems after they have occurred. What is not in this bill, and what is not anywhere else, I would argue, at least not dramatically and intensely enough in the RCMP yet — we have not had witness testimony to suggest there is enough of it yet — is an initiative to change the culture so that these problems do not occur in the first place, or far fewer of them occur in the first place.

The RCMP will tell us — and senior staff has — that they have the Respectful Workplace Program that will deal with problems at that level. I pursued that with the witnesses, and others did too. First, I asked if they have a budget. Senior staff could not tell us whether there was a dedicated budget for it. If there is no budget for it and if the people responsible for it do not know what the budget is, which is equally bad, then how could the claim ever be made that somehow it is a priority in the policy, the programs, the institution and the leadership of that organization?

I asked, "Have you done a baseline audit so we know what the problem is across the country, the nature, the level, the magnitude of the problem, so you can compare progress of your Bill C-42 against that?" Well, they have done something in B.C., but they have not done that all across the country, so there is no basis.

The person responsible for audits was before the committee. I asked, "Do you have a plan in place to audit the organization over the next months and years to see if you are making progress?" No, they did not have one.

If they do not have a budget, if they have not assessed the problem in a scientific baseline way and if they do not have an audit program to see whether they are improving and making progress, how much commitment is there to doing it, and why would anyone think it will be successful? It simply will not be successful. As much as anyone could stand here and guarantee it, I am standing here saying that it will not be successful.

Not only that, but it has been left to regional initiative to do. There are no national standards. There is no standard nationally to look at how to structure a program of that nature. Maybe one group will do it quite well, but the other four or five regions might not. There is no evidence of a process of establishing best practices. There is no real evidence of top-down direction and leadership. Otherwise, all of the elements of this program would be in place, and they are not.

In fact, my feeling is that not only will Bill C-42 not address the cultural problem in the RCMP, it may actually make it worse. If it so happens that it gives, and it will, more power to fire — as the commissioner has said, that will be delegated down the ranks of leadership — then what is to say if the culture has not changed, it will not just give the harassers more power to fire the people who have complained about being harassed?

There will be another conduct board process to replace the adjudicator board process to review decisions on serious discipline, but what is to say that the three people who sent Donald Ray to B.C. as his punishment, plus 10 days of docked pay, are not going to be the three people who show up on some of these new adjudicator conduct boards? There is nothing to say that will change at all, and this will not guarantee it.

My concern and the concern of many of the injured is that it will make it far worse for people in that organization who have a problem and want to deal with and present it.

There are a couple of specific issues here. For example, there are provisions in the bill to allow for certain techniques to be used in the investigation of RCMP members. Let us be fair to all RCMP members; this bill will allow for the continuation of telephone warrants. One can get a warrant to investigate an RCMP member's home over the telephone or through email. It says "other telecommunications techniques." If that were done to one of us, we would think that was a gross, desperate violation of our rights. I think it is only fair that if they are to be investigated, they should be investigated fairly. Certainly I think telephone warrants indicate that that is simply not appropriate.

Second, an RCMP member can be forced to give a statement that could be self-incriminating. There is no provision in the bill to allow them a period of time to prepare or the right to have counsel before they present. They could be in the thick of a terribly difficult incident in which they shot and killed someone. They could be forced to comment on that immediately in the stress and the turmoil of that situation, literally almost immediately. That is a weakness in this bill as well.

Repeatedly in reports from Justice O'Connor to David Brown and others there has been a recommendation and a great deal of discussion about the need to have a full-fledged, non-political, public police commission that would monitor and supervise the RCMP. Most, if not every, major modern city police force in Canada has one of those. The danger is that people might think the new complaints commission, the CRCC, provided for in this bill is actually being construed or will amount to that kind of public monitoring and supervisory board. It is not. It will simply have the power to investigate issues that are brought to it. It will have the power to initiate the investigation of certain issues. However, even those powers are gravely limited.

The commissioner can write a letter saying, "Sorry, I do not want you to do that investigation because it competes with an ongoing investigation internally." The commissioner can also say, "Sorry, I am not going to give you the information you are requesting because it is too sensitive, secret," et cetera. While there are some processes that can get around the latter problem, they are cumbersome processes.

In the case of SIRC's review of CSIS, the members have a very high level of security clearance. They can get the information.

Not only does this board not do what we have heard over and over again needs to be done, which is a full public monitoring and supervisory board, but to the extent it is even being construed as

having the opportunity to do a somewhat independent inquiry, its powers can be limited, believe it or not, by the commissioner, who could conceivably be the subject of the inquiry.

As an example of how a public supervisory board might work effectively — and does work — in the case of Edmonton, the police commission is fully civilian. It is responsible for developing the budget of the police force each year, in consort with the chief. It is responsible for developing that budget and for developing the plan each year, in consort with the chief, but it has that responsibility. It presents the budget and it presents the plan to city council. It is also responsible for hiring the chief.

City council can overrule them. They had done that once, apparently, but it is a big decision. Again, we see the difference between a body that has a managerial and a supervisory, literally, almost a day-to-day role in the management of a police force versus this new board that is being created that will be very after-the-fact, can only review issues and certainly does not have anything to say at all about budget matters.

Another restriction is that there must be the money for it. Who controls the money for it? The government controls the money for it. The budget of the RCMP controls the money for it, which again is a limiting factor to its power.

• (1510)

I think our investigation of this bill and further study of harassment more generally in the RCMP has really been limited by virtue of the fact that we have not been able to call injured witnesses. The concern was that it would be a witch hunt.

It is not. I have talked to them, and they have presented in public. They do not mention names. These are highly sophisticated people, good enough and smart enough to be hired by the RCMP in the first place. They get making public presentations on matters of legal import, they get libel and all of that, and they have been treated so unfairly that they are reluctant to be unfair in their treatment of others, I would say.

There is certainly heightened awareness of that in the presentations that we have had, many of which were public and on the record. Our two round tables were exceptionally good, and they would lend a huge amount of context and motivation, I believe, to the Senate committee in its ability to embrace this issue, to understand it fully and, therefore, to be better able to come up with recommendations to fix it.

The case of Roland Beaulieu again is sufficient evidence that we had a witness we wanted to see, and they would not let us see that witness. Maybe that witness has something we really needed to see that would have a bearing on Bill C-42 and our appreciation and assessment of it. It would have a bearing on the harassment study, so significant that the RCMP went to great lengths allegedly to intimidate this witness from coming to speak to us. How could we legitimately proceed to endorse and support a bill that has been subjected to that kind of interference with someone who might have been a very crucial witness?

Another weakness in this bill is something that it forgets to do again. It will not deal with the problem of people being afraid to come forward. So many of them feel that they cannot trust the grievance process they have now, and we have heard much witness testimony on this. They cannot trust it. They cannot be confident that it will really represent their interests adequately, and they are fearful that they are so exposed when they enter that process that they become ostracized and are treated in ways that are almost incomprehensible at times because it is not a process that is objective enough to give them the security and confidence that they require.

This process is called the staff relations process. It has representatives. They are from the RCMP. They are in the chain of command. Their budget is established by the RCMP. They say that they too, therefore, would be to some extent vulnerable in a way, for example, that a union rep might not be, more outside the process, to pressure from management, from the leadership.

There is a great deal of testimony that has thrown into question the objectivity, security and safety of the current review process. There is no guarantee that just redoing the grievance process, which would be in the hands of the commissioner, will solve that problem in any way. It raises the question of whether or not there should be a union. I am not saying definitively there should be a union, but right now, there is no provision for that even to be explored in a structured, proper way.

Pretty much every major police force in the country has a union, and there is a great deal of evidence that that union can make things better because, through the process of collective bargaining, one can define behaviours and punishments, and one can ensure processes so that if disciplinary action is to be taken against a constable, that constable will be very well and adequately supported and represented from an objective point of view.

I raise that issue because it has come up in witness testimony, and certainly, there are models that could be studied. As part of solving and addressing this problem, I think it is evident that these models need to be studied. At the very least, what would be required, and we received witness testimony to this effect, would be an independent appeal process that is final, outside, at the end of the line. It would be the last resort. One could appeal, and that appeal — an arbitration, really — would be final. It could not be overruled by the commission.

That is another weakness of the CRCC, the complaints board that is being established here. The commissioner does not have to take the recommendations. He can just deny the recommendations. Some police forces have a final appeal board that is definitive, outside the process, and makes the ruling, and someone who is in jeopardy or feels they have been mistreated knows he or she has that, at least, as an objective step. That is not provided for in this bill either.

One other specific issue that has big ramifications for fairness and justice is the treatment of civilian members of the RCMP. A provision in the bill will cause civilian members in the RCMP to be transferred to the status of former public servants. There are concerns that these are very specialized roles, such as the technologies involved in forensic investigation. There is an

argument that they do and should have a separate status within the RCMP. The fact is that even if one could argue that they should be transferred in their status to the public service, none of the details have been worked out. It can have huge ramifications for what they will be paid, their benefits — pension benefits in particular — and these details have not yet been worked out. Why could the government not simply hold back and work out the details and then, when they are worked out, bring in legislation to make the transfer, knowing it would be fair, not arbitrary, and will not hurt people in a way that simply is not fair?

That is the range of weaknesses in Bill C-42 that gives me great cause for concern.

I think the minister really wants to fix this problem. I think he may have been convinced, for whatever reason, by whomever, that Bill C-42 will fix the problem. Bill C-42 will not fix the problem. The problem is a cultural one that needs to be addressed at a cultural level, and that cannot be done with one piece of legislation, particularly with a bill that in almost each of its facets provides processes to deal with cases after the fact. We need a strong and profound commitment in the leadership to create a culture that will inhibit the existence and the occurrence of these problems long before they ever occur.

There are things that can be done. One thing that should be done would be a very specific analysis of what occurred in the Canadian military. Senator Dallaire, of course, was instrumental and integral in the process of recreating and curing the culture of the military. I think no one would say it is perfect, but it is way better. It could not be perfect since Senator Dallaire has left. However, it is significantly and immensely improved.

They went through the same kind of process that is occurring now. As Senator Dallaire would say, they were good at deflecting the puck, but they had no idea how to change the game. That is what we need: a game changer. I am paraphrasing Senator Dallaire. I take no credit for that. It is a very good way to capture what is going on.

The government brings out Bill C-42 and says, "Look, we are doing something that will solve the problem, but it is just deflecting the puck. It is not a game changer. It has not gotten to the profound root of the problem.

Eventually, because of the pressure built so incredibly in the military and, ultimately, the Somalia affair, the leadership realized they really had to do something fundamental. One of the major steps they took was to set up a public/civilian monitoring and supervisory board that I think existed for six years. It ran the military. It took a lot of responsibility outside of the military and ran the military. There were six civilian advisory groups established to supervise different facets of the issues that were related to the cultural problem.

They looked profoundly and in a significant way at the education of the military. They restructured the curriculum at the Royal Military College in Kingston for officers. They set up a new master's program for officers. They required not just technical engineering education but also liberal arts education, where you think about philosophies, ideas and ethics in different ways. Today, 90 per cent of military staff officers have post-secondary degrees; 50 per cent have graduate degrees. It makes an immense difference to the way they view the world and the way they can lead other people.

• (1520)

On the other hand, we do not know what the education level of the officer corps of the RCMP is. I have a written question on the Order Paper on that, to which I have not received an answer. I will give you a little example that is perhaps indicative of the premium or lack thereof put on education.

There are two programs for senior staff. One is called the supervisor development program and the other is the manager development program. These are courses that involve, among other things, how to deal with culture and harassment. Over the period for which I saw figures, only about one third of the staff finished the supervisor development course, and just over 40 per cent finished the manager development course.

These courses are held out to be part of the solution to the problem, but it is not mandatory to take them. When I raised that with Commissioner Paulson, he said that it could be mandatory for promotion, but he did not say it was mandatory. Make it mandatory for promotion. I now have a written question on the Order Paper asking for the written policy stating that it is mandatory for promotion to have finished at least these two courses.

I think there is much to be learned from the military. Senator Dallaire was responsible for rewriting the entire structure for the development of the officer corps there, which now includes much more than education.

They should be bringing in outside expertise. In that regard, I think they should be bringing in outside expertise on how to change culture. I am sure that Commissioner Paulson and his senior staff are exceptionally good police officers, but this is a $3-billion organization with 30,000 people over 14 jurisdictions. This is not a small police detachment. To change the culture in an organization of that magnitude requires a great deal of depth, and I would be surprised if people who have spent their life in the RCMP, albeit doing great things, would have the experience and depth to do that effectively. There is no evidence that they brought in outside help.

We were told that they have consulted some police forces. Commissioner Paulson wants to modernize the police force so he talked to other forces, but every major police force he would have talked to would have a public police commission and a union. If you want to modernize the police force, surely you would accept at least that a public police commission is integral to doing that.

As I mentioned, we need to look at civilian oversight as a solution. We need to give strong consideration to a union. I am not definitively coming down on either side of that, but it needs to be considered in a structured way. The existing models must be viewed and analyzed. We need to look at the education levels and the curriculum that the officer corps in the RCMP goes through.

We need to have an external review process that is completely independent and definitive with a final appeal for police officers who have concerns. There are any number of other lessons that the RCMP could learn by looking at what was done in the military.

It is important, and Commissioner Paulson is right: The RCMP needs to be modernized. We do not know the magnitude of the problem that makes modernization necessary because it has not been adequately studied, and it should be. I asked the staff relations person who appeared before the committee whether they had undertaken a study and audit of the baseline. The answer was no. I said that if they had a union, they would have done it.

It has not been assessed properly. There are any number of indications that there is a problem with the leadership grappling with the intensity with which they need to approach this. Unfortunately, there are weaknesses in the bill that cause me to have real doubts about it.

The Hon. the Speaker: Senator Mitchell, are you prepared to rise to ask for more time to answer questions?

Senator Mitchell: I am happy to do that. Thank you.

Hon. Roméo Antonius Dallaire: In the extensive review that the honourable senator presented to us today he spoke of the background of the discussions on Bill C-42, the limitations that we had on getting into certain elements of it, and the responses we got from the minister and the commissioner. However, he never raised the question of why the RCMP should continue to be a paramilitary entity. It does provincial police work, municipal police work and national police work, but it is police work. We are no longer in the 19th century with the North West Rebellion when the RCMP were ex-military people and their commander was an ex-artillery colonel.

Was there any indication that anyone wanted to look at that dimension, which may itself be a significant cause of problems, because it is not military and it is not police but rather somewhere in between?

Senator Mitchell: I am very glad that the honourable senator raised that point. We are so accustomed to the way the world is that we often do not realize that there is a question on a particular feature that we should be asking. I am not sure that in the witnesses' testimony we got anything explicit on that. I know that the honourable senator had mentioned the concept.

I have learned from talking to people in the force that there is a sense that they are a paramilitary organization. It begs the question of why. The majority of the staff involved in the RCMP today are in municipal and rural police forces. In this day and age of modern policing we do not need a paramilitary organization in the sense that I believe Senator Dallaire is speaking of. In fact, it may run contrary to the philosophy of policing that has evolved successfully in Edmonton and Calgary where it is not a force. They are police services.

It may be that that value is a remnant of the past that needs to be considered seriously and probably done away with in the modernization of the force.

Senator Dallaire: The idea was not introduced of perhaps becoming a gendarmerie? That is a structured, specific police capability that some countries have, particularly Franco-countries. Consideration was not given to checking out how they do things.

Nearly 10,000 people who are part of the RCMP are civilian staff. The honourable senator said that the RCMP has decided to streamline its HR problem of having three or four types of civilians in the RCMP by simply dumping them all into the public service. The answer that we got from Treasury Board on that was just about that clear, that they are going to dump them on us and we will try to figure out how to pay them, structure them and classify them.

The public servants in the military are exceptionally loyal. They are often kept at lower classifications than they would be in other ministries. Their commitment to those who serve in uniform is unequalled. I have never had that problem.

• (1530)

In the RCMP they brought those civilians inside their realm. They are special civilians; they are RCMP civilians. There is a loyalty from them to those in uniform, to the RCMP. Does the honourable senator think we have a problem here of the RCMP being loyal to its civilians by simply wanting to make an administrative change that can fundamentally change the culture of those civilians within that organization and put that at risk?

Senator Mitchell: Honourable senators, I think that we have not got anywhere near enough information and that they have not done enough work to work out the details of this transfer, first, to assess or convince anyone that is necessary and has been adequately studied; and, second, to make absolutely certain that we are treating those staff members fairly.

Just because we have a government that may not like government, it does not mean that it should be dismissive of the people who work for it. It is their employer ultimately and they should be sure that they are treated fairly and there is no indication.

(On motion of Senator Nolin, debate adjourned.)

[*Translation*]

THE ESTIMATES, 2013-14

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (A)

Hon. Claude Carignan (Deputy Leader of the Government), pursuant to notice of May 21, 2013, moved:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2014.

(Motion agreed to.)

[*English*]

CANADIAN HUMAN RIGHTS ACT
CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Dyck, for the second reading of Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity).

Hon. Donald Neil Plett: Honourable senators, I rise today to speak to Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity). I would like to begin by saying this is a very complex and difficult issue. However, I would be remiss if I did not bring forward the very valid concerns that many Canadians have raised with me.

Before I begin I would like to recognize that Senator Grant Mitchell, sponsor of the bill, believes that passing this legislation would contribute to a more equal and accepting society, which is a principle we can all get behind. However, I respectfully disagree that this bill will accomplish that. I hope that Senator Mitchell will, in turn, respect my opinion as I voice my serious concerns with this legislation.

Over the past couple of years, we have seen a strong effort from our government to address bullying in schools and online as we have seen bullying reach new levels, resulting in depression and, in some cases, even suicide. I believe we need to encourage and promote a culture of tolerance and acceptance. I think we, as a society and as law makers, must ensure that we are doing everything in our power to make that happen. In fact, I am very proud of our government's undertaking of education, awareness, prevention and enforcement activities to address the problems of bullying and cyberbullying.

As we keep hearing, transgendered people may be more likely to be victims of assault, sexual assault and harassment than the rest of the population. However, as honourable senators know, assault, sexual assault and harassment are illegal in Canada. This bill will not and cannot change the prevalence of assault and harassment in our country for any population. We can, however, put in measures that will effectively reduce the incidence of violence for all Canadians. As a matter of fact, our government has taken a stand to protect victims of violent crime and, as a result of our crime legislation, the incidence of violent crime has been decreasing since 2006.

Senator Mitchell pointed out that trans youth are twice as likely as their non-trans counterparts to consider suicide. I think this is a startling and extremely saddening statistic. Our government has taken measures to address the issue of suicide, specifically having recently passed the Federal Framework for Suicide Prevention Act. Our government recognizes our role as legislators and that we can put in measures to reduce bullying, harassment, discrimination and suicide, with an understanding that we cannot prevent it entirely.

As honourable senators know, this bill once contained both "gender identity" and "gender expression." Member of Parliament Randall Garrison, who introduced this bill in the other place, claimed that in removing the "gender expression" element of the bill and adding a definition for "gender identity," that this bill is now clearer and defined.

Honourable senators, let me refresh your memories by reading the proposed definition of "gender identity:"

> ... "gender identity" means, in respect of an individual, the individual's deeply felt internal and individual experience of gender, which may or may not correspond with the sex that the individual was assigned at birth."

Let me repeat that:

> ... the individual's deeply felt internal and individual experience of gender, which may or may not correspond with the sex that the individual was assigned at birth.

Honourable senators, does this sound like a clearly defined, objective piece of legislation? This provision would add an entirely subjective and self-defined characteristic to the Canadian Human Rights Act and to the Criminal Code. How can a court fairly judge a case based on someone's internal feeling and subjective experience?

I know some members in the other place were criticized for using the term "bathroom bill." I will not call it that because, of course, I do not believe that was the intention in introducing this legislation. However, this issue cannot be ignored as a very possible consequence if this bill is passed.

There are reasons for separate male and female bathrooms. The reason for this, honourable senators, is that men and women are biologically different, whether we like it or not. Many concerned Canadians have written to me asking me to stand up for women and girls. Many women have expressed that they would feel extremely uncomfortable in a restroom or a change room with a biological male, whether or not that person identified as female.

In the debates in the other place and in the preliminary discussions that we have had in this chamber, the terms ''transgender'' and ''gender identity'' have been used interchangeably, implying that the definition would include only transgender people. However, the proposed definition of "gender identity" extends well beyond that.

• (1540)

Australia's human rights commission did specify the variations of gender identity when Australia was considering similar legislation. The list includes but is not limited to transgender, transsexual, intersex, androgynous, agendered, cross dresser, drag king, drag queen, gender fluid, gender queer, intergender,

neutrois, pansexual, pan-gendered, third gender and third sex. Yes, these are all variations of gender identity, not gender expression. For the purposes of this discussion, it is not necessary to define each term. However, I will raise a few that concern me in the context of this legislation.

For example, the term "genderfluid" describes a person considering him or herself male or female based on how he or she feels at any given moment. If I identified as genderfluid, theoretically I could go into a male change room one day and a female change room the next, with no recourse. I do not feel that it is my or anyone else's place to dictate how a person should or should not feel. What I take issue with is society having to accept all of the implications of those feelings and having those feelings being recognized as specific grounds for discrimination.

What about those who identify as pan-gender? These individuals feel they do not fit exclusively into either gender category, so they identify as all genders. Alternatively, those identifying as agender identify as being without gender. Honourable senators, what are the implications of ensuring an individual is not being discriminated against based on gender identity when that identity is defined as not having a gender at all?

One concerned Canadian citizen sent me an article about a case at a Washington college where a transgender man was walking around a woman's change room, where a concerned parent stated:

> He was sprawled out nude in the sauna, exposing himself to women and girls as young as six. The college shares a change room with a local swimming club and a high school. When he was asked to leave by a female coach, the transgendered man said he felt discriminated against. He said this is not 1959 Alabama and we do not call police for drinking from the wrong water fountain, a comparison that I find inconceivable. The coach then had to apologize. She said she had not realized he was transgendered.

Senator Mitchell has discussed time and again, including earlier today, the case of an RCMP officer who had exposed himself to an adult woman and who did not receive enough recourse for it. Under this provision, where a nude man could be sprawled out in a sauna in front of a six-year-old girl, there would be no recourse. The only person who could be penalized under this law would be a person who might ask the individual to leave the change room or to cover up because they would be discriminating based on gender identity.

The college is granting special rights to a transgendered person at the risk of causing trauma to a six-year-old girl. Honourable senators, this is wrong. At this point, we have to ask ourselves, why even have male and female bathrooms and change rooms? The language in this bill is so vague that it begs the question: where do we draw the line?

Honourable senators, another potential consequence of this bill that has been brought to my attention deals with the blurred lines in the separation of male and female sports teams. In the United States, some states have similar legislation in place which has allowed for biological males to join female sports teams at their high schools and vice versa. This not only creates unfair advantage but could also result in safety issues. Again, there is a clear and valid reason for the separation of male and female sports teams. Honourable senators, let us consider the possibility of a 220-pound, six-foot-five male identifying as a female having the ability to play on a woman's rugby team. This not only provides a clear safety concern but a completely unfair advantage in the rules of sport.

Senator Mitchell asked:

> Why do we not just fast-forward past the arguments now, past the barriers, past the obstacles, avoid at least some of the pain and anguish otherwise to be suffered by trans people in the future if this is not passed and give this recognition and protection to these Canadians who are asking us for our help?

Honourable senators, I am not sure I want to fast-forward to a place where the safety of society is jeopardized for the empowerment of a few.

The senator discusses the progression of the rights of women and Aboriginal peoples as if this is the next logical step toward a progressive society. This is absolutely not the next logical step. This is not about allowing transgendered people to marry or to vote. This is about blurring the lines that were put in place because men and women are biologically different. Again, this is why we have separate change rooms, separate bathrooms and separate sports teams.

When it comes to the issue of discrimination, we heard about several cases of transsexual individuals being protected for legitimate cases of discrimination under the ground of sex by the Canadian Human Rights Tribunal. Therefore, from a legal standpoint, this provision is not needed to protect individuals from discrimination. All this does is open the door to subjective interpretations.

It has been said time and again that the Senate is a place of sober, second thought. I take great issue with legislation so vague that the implications and consequences remain to be seen after the bill has passed. We are here to consider the implications, to consider all the parties affected and then to make the best decision we can with the information we have.

Honourable senators, I would like to highlight the following questions that have been raised by a number of members of Parliament and concerned Canadians. I ask honourable senators: What does it mean in defined terms to have a bias based on a person's deeply held, internal and individual experience of gender? What kind of speech based on someone's subjective or personal sense of being male or female would be considered hate propaganda? What does it mean to have a bias based on a person's subjective sense of being male or female? How do we single out one gender from the other?

Of course the questions are not answerable. The proposed definition of gender identity is vague, subjective and open to wide interpretation. As I have pointed out clearly, the potential consequences of such vague legislation are vast and dangerous.

Honourable senators, I believe in the equality of rights for all Canadians. As I mentioned earlier, transgendered people have been victims of harassment and assault. This is something we as parliamentarians need to address and do everything in our power to prevent. If a member of any party has a piece of clearly defined legislation that will help prevent this population from undue anguish while not compromising the safety of the rest of society, I would be more than happy to hear and consider it.

Could I have one more minute?

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted for an additional —

Some Hon. Senators: Yes, five minutes.

Senator Plett: Five more minutes will allow Senator Mitchell four minutes to ask questions.

As Senator Mitchell pointed out, there was a time when women were not able to vote and when a woman wearing pants would have been highly scandalous. Women have worked and continue to work extremely hard to make headway on the issue of equality and women's rights. We now have the opportunity to protect and defend the rights women have worked so hard to obtain.

I urge all honourable senators to stand up for the rights of women and girls. I urge you to strongly consider the impact that blurring the lines of gender will have.

I urge honourable senators to vote against Bill C-279.

• (1550)

Hon. Grant Mitchell: I thank Senator Plett; I appreciate that he has given this a great deal of consideration and thought, and that was an articulate speech. Of course, I do not agree with it, but he has every right to present, and he has presented his case well.

I want to make one point and then ask a question. We may well all know transgendered people, and we have no idea that they are transgendered because they are so much in that identity; it is just who they are. It goes on around us all the time. However, when they are "found out," as it were, they could be brutally discriminated against. That would be just a point.

One of the heartland points in Senator Plett's presentation is this idea that the definition of transgendered or gender identity is very subjective and vague and, ergo, how could it ever be defended. I want to be very clear that this is a careful comparison that I make, so I hope Senator Plett can understand that I understand the carefulness required: Religion is protected in both of these acts, as well, and religion is every bit as deeply personal. There is nothing that you look like — I do not know what the honourable senator's religion is particularly by looking at him. I have an idea of it, because he has spoken of it, but I do not have any idea by looking at him. It is a deeply held personal belief, yet honourable senators are defended against discrimination on the basis of religion.

Second, the courts practically only deal with subjectivity when it comes to determining whether an incident was an accident or whether it was premeditated and therefore a crime. It is all an assessment by the courts of subjective evaluations of what people were thinking at the time they did things to determine the truth about why they did it. The courts have a huge history in doing that; it is a long-term history and experience in doing that.

If I might go one step further, it is not what the transgendered person believes they are that is the issue; it is the subjective belief of the person who discriminates against such a person. It is their subjective belief of who that person is. Every incident of discrimination under this act, and under the Canadian Human Rights Act and the Criminal Code, is by definition subjective. Discrimination cannot be based on real facts. By definition it is subjective, and the courts evaluate that all the time, not just with respect to, as I say —

The Hon. the Speaker: Senator Mitchell.

Senator Mitchell: My question is this: Can Senator Plett not see the link between subjectivity and the evaluation of the courts everywhere else and how the courts could certainly accommodate subjectivity in this case?

Senator Plett: If His Honour had allowed the honourable senator another minute, I would not have had to answer the question.

First of all, on the topic of religion, very clearly I do not believe that my religion or anyone else's religion is being imposed, in any part, on someone else. As the honourable senator says, it is very personal. In no way will I impact someone else by my belief, unless I accost the person, hold them down, start preaching to them and say, "You have to listen to this." Of course, that would be illegal; it would be harassment.

Further to the case of some people not being known as what they are, the fact of the matter is that is exactly one of the problems I have. The Human Rights Commission has very clearly ruled on transsexuals. Transsexuals I understand, but transgender is saying, "Today in the morning I feel like one thing, and tomorrow I might feel like something else," and innocent victims are impacted by that. I will always yield to the innocent victims, especially if they are children.

Senator Mitchell: What about the RCMP?

Hon. Pierre Claude Nolin: Do I have time for a question? I do not think so. I will move the adjournment of the debate.

(On motion of Senator Nolin, debate adjourned.)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

TWENTY-FIFTH REPORT OF COMMITTEE— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator LeBreton, P.C., seconded by the Honourable Senator Carignan, for the adoption of the twenty-fifth report of the Standing Committee on Internal Economy, Budgets and Administration (Policies and guidelines relating to Senators' travel), presented in the Senate on May 9, 2013.

Hon. Elaine McCoy: Honourable senators, this item has been adjourned in the name of Senator Cools. I have spoken with Senator Cools, and she has agreed to let me speak, even though it does sit in her name.

I ask that after I speak, this item remain on the Order Paper as adjourned in the name of Senator Cools.

Hon. Senators: Agreed.

Senator McCoy: Honourable senators, I speak now about the Internal Economy Committee, which has brought forward recommendations for changes to the Senate Administrative Rules.

I want to start by taking a step back to remind us how all of this got started. Nearly all of these questions and issues — and there are several now, and we need to be clear which is which, and I will come to that sometime this afternoon — but nearly all of them were initiated by our own internal processes. They were brought out and into the light through an internal audit administered by our own staff under the authority of the Clerk of the Senate.

That internal audit brought to light some questions and some issues that were then reviewed. They led to a suggestion that we introduce new rules regarding declarations of residency, which included that we provide a copy of our driver's licence, our health card and the front page of the most recent income tax return that shows what province we reside in for the purposes of reporting income taxes.

At that point, it seems to me the review of 105 senators revealed that 99 — and I believe this was stated earlier by the chair of the committee — passed muster, 6 came under question, 2 were further questioned and cleared, and 4 were not. Of those 4, 3 have been reported back on; Senator Wallin's report is still outstanding. Three were at that point referred to an ad hoc subcommittee of the Internal Economy Committee, chaired by Senator Marshall.

It is unclear to me whether all four were — and it is possible that all four were — but we know for sure that three were. We also know for sure that at that point, after review by Senators Marshall, Comeau and Campbell, the assistance of external auditors was invoked.

It is being clarified from the floor that the committee did two, and those two would be Senators Harb and Brazeau.

External auditors then were asked to clarify, verify and go into more details on the expense claims. Those reports were presumably brought back to the full committee or the steering committee of the Internal Economy Committee.

It is at this point that I think things started to go sideways. It is at this point that we have two out of four inquiries going to an ad hoc subcommittee with the other two going to the steering committee.

That brings me to my first point on this report: It is in large part missing the point.

• (1600)

We are scrambling around dealing with rules when we should be addressing ourselves to our responsibilities in a governance role and our responsibility to one another and to Canadians to look after the dignity and reputation of the Senate and the public trust and confidence in Parliament.

We are the only institution that I know of, of this size, whether public or private, that does not have an independent audit committee. I would suggest, very strongly, that the first thing we do before anything else is instruct the Internal Economy Committee to consider and report back to the full Senate as to the advisability, feasibility and how we would execute implementing a permanent subcommittee of the Internal Economy Committee that would be an independent audit committee. This has precedent. It is true in the House of Lords in England. They have a five-member committee. Three members of that committee are peers of the realm, that is to say, they are lords, sitting members. Two are external, not members of the House of Lords at all.

I would propose we follow that precedent and perhaps bring in someone who is well versed in senior management of large organizations like ourselves, someone who has chartered accountancy experience, auditing experience, someone with judicial experience, someone who is used to adjudicating. Then we have a consistent process, we have consistent expertise, and we have the benefit of impartial advice at every step of the way. That is something that Canadians — and I am sure all honourable senators — could have some faith in.

Honourable senators, I will mention one other thing. All Government of Canada departments now have independent audit committees with external members on it. If it is good enough for the civil service, why not ourselves?

I think that is the first thing we should do.

The second thing I think we should do is look at our operating procedures. What I think we are failing to do is give our people, our staff, the tools they need to operate properly. When we hear, rightly or wrongly, that it was an administrative error in some senator's office, what steps have we taken to ensure that that does not happen? When have we last trained or made it mandatory for at least one person on staff to be absolutely familiar with the rules and to be absolutely in a position to bring the proper procedure to the senator's attention? When have we given them an opportunity, a safe place to go and get advice as to how to do that?

I will mention one precedent in Alberta, the Law Society of Alberta. We have Practice Advisors. These are people who a practising lawyer can go to on a private basis and say: "I do not know the rules. I am not sure of the rules. Will you please advise?" It is on a no-name, no-blame basis. It is a safe place to go to get advice as to what course of action to take.

Have we considered making that sort of tool available to our people so that the burden of due process is given some opportunity to take place?

I will also mention that CN, for example, has a similar policy with regard to maintaining their safety record. They have an outstanding safety record. It is one of the top in their industry because they have this facility, a practice adviser, no-name, no-blame procedure, which allows people a safe place to go to ensure the rules are followed.

To conclude this reference, which I have not heard discussed, to what our operating procedures are. I want to commend the Clerk of the Senate and his staff on the outstanding job they have done. I know they have been working for two or three years now to bring our rules up to date, to introduce new procedures. Many of the recommendations have not yet been accepted. I think they have done an outstanding job, but I am not sure we have given them all the tools they need.

Honourable senators, let me bring myself down to another specific on the twenty-fifth report. The very first recommendation it makes says that section 4 of Chapter 1:02 of the *Senate Administrative Rules* be deleted. Chapter 1:02 of the *Senate Administrative Rules*, which I have here, states that it is the principles by which our administrative rules will be interpreted and applied.

Section 4 says:

> Senators act on their personal honour and Senators are presumed to have acted honourably in carrying out their administrative functions unless and until the Senate or the Internal Economy Committee determines otherwise.

I was personally offended when I heard and saw that this was about to be deleted, because I interpreted that as licence to treat me as guilty until proven innocent. Since that principle applies to no citizen in this country, and it certainly should not apply to any honourable senator or any staff member in this institution, or any other institution, company or organization in this country, I wanted to object strenuously. It has been stated to me since that it has actually nothing to do with the circumstances before us today.

Let me put it on record: I still disagree with that provision being deleted, but it arose out of a case several years ago of a senator being dealt with whose conduct was not deemed to be appropriate to this chamber and has since left. Some senators who were dealing with that case thought that this clause required them to accept whatever that senator said, regardless of the truth of the matter. In my opinion, that is a pretty bizarre interpretation of that statement of principle, but if that is the case, and this is an attempt to avoid that pitfall in the future, then I can understand it. Although, I think I would come back to training the senators on an understanding of rules and responsibilities and conduct, which we have not been doing on a regular basis for some six or seven years now.

It is very unfortunate, in my view, that the phrase being repeated several times now is that the honour system has been stopped; we are no longer on the honour system. That has misled Canadians. We have never been on the honour system. We have always had to support our expense claims with receipts and reasons, and sometimes written reasons, and sometimes visits to Internal Economy. I see all honourable senators nodding their heads. It has never been without justification that we have been paid any kind of expense claim. Internal Economy and indeed our Senate's finance staff have been diligent — and sometimes, in our view, overly diligent — in maintaining appropriate expense claims for each and every one of us.

To say that we have operated on an honour system and we are now off an honour system is totally inaccurate, and I want Canadians to hear that. I would request each and every one of the senators in this chamber to not mislead Canadians in that regard any longer. It will not do and it does not contribute to the dignity and reputation of the Senate, and it certainly does nothing to add to the public trust and confidence in Parliament that we should all be striving for.

The second subject that this report addresses is definitions of national capital residence and provincial residence. It goes on at some length. I do not see the need for this. I am not fully persuaded by the reasons. I have not heard all the reasons.

However, I will say this leads to an issue, the elephant in the house, the elephant in the room, the elephant in the chamber.

• (1610)

There is an outstanding issue that needs to be addressed at some time, and that is the one that is actually dependent on section 33 of the Constitution Act, 1867. That section says:

> If any question arises respecting the Qualification of a Senator or a Vacancy in the Senate, the same shall be heard and determined by the Senate.

I would say there is certainly a question that has been raised regarding the residency and, therefore, qualification of a senator or senators in this chamber. Sooner or later, it is our responsibility —

May I have five more minutes?

The Hon. the Speaker: Agreed?

Hon. Senators: Agreed.

Senator McCoy: It is our responsibility, as mandated by the Constitution Act, to address that question. I would suggest that we do it at the appropriate time and in full view of the public, that we refer the matter to the Committee of the Whole, that we bring in and ask for appropriate legal advice and invite them to join us here, that we obtain constitutional expertise and however many witnesses we wish, that we have a full and lively debate and that we take that major step to ensure that Canadians continue to have confidence and public trust in the Senate and, therefore, in the Parliament of Canada.

Hon. Hugh Segal: If there is more time left in Senator McCoy's time allotment, I wonder if she might entertain a question.

Senator McCoy: Yes.

Senator Segal: Senator McCoy, based on your experience in this place and your experience as a senior minister of the Crown in Alberta, I wanted to seek your counsel on how the independent audit committee would work in this one context. I am not troubled by the notion that we would have an independent audit committee with outsiders who provide expertise and fiduciary and analytical frameworks that are appropriate. I think that would be a step in the right direction. My concern is calling upon any amongst us, in the best of faith, who might happen to be on the Internal Economy Committee at any time in the future to be responsible for a retroactive audit on the expenses of any amongst us. It strikes me that that has the unwitting impact of being quite incestuous. It is people we elect serving on a committee assessing us, and that, I think, is problematic.

The honourable senator did make reference to the practice, in other government departments, of having the independent audit committee. One of the other practices in those departments is the fact that the Auditor General is responsible for a regular cycle of auditing and reporting on all of the comprehensive finances of those departments. The Auditor General will not be caught up in internal spats between individual senators on unrelated matters. He or she will go about his or her business based on the Audit Act. I wonder whether, based on the honourable senator's vast experience, she would be prepared to share with us her view of that prospect.

Senator McCoy: I do not see any reason for us to dodge our responsibility. Why abdicate our own responsibilities? Parliament is often said to be the highest court of the land. Why can we not step up to the plate and take on that responsibility? I will say that we would act on proof. Audits are, by nature, retroactive, of course. You cannot audit a fictional number. You cannot audit into the future. You always audit what has been. However, you collect your evidence then you take due process. If we are not prepared to take that kind of responsibility, then I suggest that perhaps we should not take the responsibility of asking others to be appropriately judged, as in the debate this afternoon on the RCMP independent review commission. Many of those comments you listened to and approved. Why not us?

Honourable senators, we know this is a matter of human nature. We know that peer pressure is one of the three most persuasive modes of changing behaviour. If I say to Senator Segal, "I want to see you act in the most honourable manner, as I continue to see you operate," and he says that to me, I think I will listen to him before I listen to some external force.

Senator Segal: Could I ask another supplementary question?

When you have independent auditors who are involved in the audit process in the corporate sector — and I think it is also true with government departments — one of the questions they have to answer, in a long questionnaire, is: Do they have any conflict of interest? Do they have any association with anyone who might be the subject of an audit in a fashion that might get in the way of them being completely dispassionate and professional? They have to declare that fully and broadly. Would the honourable senator be of the view that, if we went the route that she has suggested so constructively in her presentation this afternoon, the members of the audit committee, including those who are senators, would have to fill out a similar declaration so that we are sure of that dispassion?

Senator McCoy: Sure, why not?

(On the motion of Senator Cools, debate adjourned.)

TWENTY-FOURTH REPORT OF COMMITTEE— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Stewart Olsen, seconded by the Honourable Senator Ogilvie, for the adoption of the twenty-fourth report of the Standing Committee on Internal Economy, Budgets and Administration (Examination of Senator Harb's Primary and Secondary Residence Status), presented in the Senate on May 9, 2013.

Hon. Elaine McCoy: Honourable senators, again in this case, the item is standing on the Order Paper in the name of Senator Cools, and she has agreed that I may speak in her place. I would ask that, after I have spoken, the matter continue to stand on the Order Paper as adjourned by Senator Cools.

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

Hon. Senators: Agreed.

MOTION IN AMENDMENT

Hon. Elaine McCoy: Honourable senators, let me start by saying that I wish, first of all, to open my contribution to the debate by moving an amendment. It is seconded by Senator Cools. Therefore, I move:

> That the report be not now adopted, but that it be referred back to the Standing Committee on Internal Economy, Budgets and Administration for further consideration and report.

The Hon. the Speaker: It has been moved by the Honourable Senator McCoy, seconded by the Honourable Senator Cools, that the report be not now adopted but that it be referred back to the Standing Committee on Internal Economy, Budgets and Administration for further consideration and report.

On debate.

Senator McCoy: Again, I think we need to keep clear in our minds that there are many issues flying around. I will not address all of them. Some are, as was mentioned earlier, before the Conflict of Interest Committee, the Senate Ethics Officer and so forth. We must distinguish clearly three issues in regard to the twenty-fourth report of the Internal Economy Committee, which deals with Senator Harb. These are the issues: whether due process was followed; whether the rules were broken; and what consequences should follow.

I will address due process first. I truly believe we should pause and give ourselves the chance to put an independent audit committee together so that we can indeed do the following: to address the serious questions that were raised in Senator Harb's case and in Senator Duffy's case and soon to be in Senator Wallin's case; to ensure we have our process down impeccably; to ensure we are consistent; and to ensure that independence and public access are built into our process.

I was somewhat taken aback today when, in Question Period, the honourable senator said that there were no transcripts even of the process that we have followed so far, which is pretty appalling. Those of you who know English history would know that the Star Chamber was infamous because it was peers of the realm — our equivalents — who met in secret chambers. I think they had stars on the floor or the ceiling. That is why it was called the Star Chamber. It became synonymous with abuse of process. There certainly was no record kept there; but there should be a record kept when we are in these sorts of situations that are quasi-judicial. We have a responsibility to ourselves, to the public and, most particularly, to the person who is being investigated. That is the rule of natural justice.

• (1620)

Honourable senators, in terms of process, it has been brought to our attention that Senator Harb does not feel as though he has had the opportunity to be heard, to present his case and to answer the case that is being put against him. Whether that is true in full or not, in my view, is immaterial.

We sit in judgment on so many others; we pass so much legislation that has to do with due process and fairness for Crown corporations, departments and Canadians; and we deal with the Criminal Code almost every day, it seems, under this administration. How could we not be seen to be fair? If someone says, "I have not been fairly dealt with," then we should be making sure that person feels fairly dealt with.

It is true that Senator Harb can answer the case in this chamber, but there has been no suggestion to move into Committee of the Whole, so we have not been able to have an interchange with him. He needs an opportunity to be heard and to exchange views — to be properly engaged in a quasi-judicial process. I do not think that due process has been given fully in front of our committee. I think it should go to an independent audit committee. That opportunity should be given and it should be made in public.

Let me turn to the second issue on whether the rules have been broken. I do not think a percentage rule is appropriate. It would be easy and I could reduce all of my ethical and moral decisions down to a percentage rule. If I do not eat candy 2 per cent of the time, then maybe I will not get fat. What is that Latin expression?

The Hon. the Speaker: *Reductio ad absurdum*.

Senator McCoy: His Honour is a Latin scholar.

Senator Harb properly pointed out that it is a flexible term, as is often the case. One has to have some judicious approach to these matters. What if you were chairing a committee that was dealing with a huge report, such as the one that dealt with mental health, and you were working with staff almost 100 per cent of the time in Ottawa for almost a year in order to get that out the door within some reasonable time frame? There is an easily understood reason for you to be 100 per cent of your time that year in Ottawa, even though you still have your primary residence in New Brunswick.

Honourable senators, you know that is where it is because your family dog, your photographs from your family history and your grandparents' pictures are all there. You know where your primary residence is. This is not necessarily rocket science. There is no reason to try to suddenly say that it is not based on a percentage of time spent in Ottawa. Maybe you are not well. Maybe you are suffering from arthritis and you cannot get home as often. Maybe you only go home once or twice. Maybe you are in touch all the time by email. Maybe you come from Prince Edward Island, where you just phone people because you know 99,000 out of the 100,000 who live there — whatever the number is, Senator Callbeck — and I think I have done you an injustice there. The point is that you do not need to be there to be fully in touch.

We need flexibility, adaptability and judicious response to these issues. We are not children. It is an abdication of responsibility to try to justify decisions somehow on the basis of some arithmetic rule, especially because the auditor said that is how long they spent there. I object to that rule, and I think there should be a more appropriate and judicious consideration of the question of whether the rules have been broken in this case. The same conclusion might be arrived at, but I want to see better thought-out reasons for coming to that conclusion.

The third issue is consequences. I do not think there has been a wide enough discussion. I do not know if it happened in committee, because there are no transcripts. However, I do not think the discussion has even been among honourable senators in the corridors or in caucus — and I do not belong to a caucus — or wherever.

Senator Cools: I do not either.

Senator McCoy: There has been no discussion as to what range of consequences are available. Always there are rules; always there are consequences; and always there is the possibility of mitigating circumstances. I have not heard any of those discussions arise.

Here are some variations on consequences: How about taking over administration of a senator's office finances if a pattern of irregularities emerges? We do that to First Nations. That would be a very severe consequence.

How about inserting a staff member who is seconded from the Senate Finance Directorate for a period of time to ensure that staff are trained up and regular procedures are put in place?

How about, "Oh, there was a ruling from a former Speaker and you were never informed that the rules were changed and were still relying on it, and you just overlooked that?" Is that a mitigating circumstance?

By chance, I spoke to two individuals, one I met on a committee tour and one I met as I was flying home. One was a senior engineer from a major energy corporation, a trans-national company. The other was a trans-national union person. I asked, "What are your rules about misallocation of organizational funds?" They both said there was zero tolerance. The person is fired if that happens.

However, the energy company representative said, "You know, it happened to me. An employee of mine, a young woman, was using a company credit card to buy food because she needed to feed her children. There was some ghastly unforeseen circumstance that she did not know how to handle and she needed food at home." They dealt with her. They made it impossible for her to do that anymore, but they did not fire her. I dare say her promotional prospects were severely limited, but that was a mitigating circumstance and she was dealt with appropriately.

In the other case, the mitigating circumstance was also dealt with appropriately. The employee realized in advance that a mistake had been made, rushed to his superior with cheque in hand and said, "I am terribly sorry. I overlooked this item. It should not have been on my expense claim. It is personal." His superior said, "If you had not brought it to my attention before we found out about it, you would have been fired; but you did." It was a mitigating circumstance.

This is where that safe place to go comes to light, as well. In that case, that employee was trained and knew well enough what his responsibilities were. If he had been in doubt or his staff member had been in doubt — if we had the no name, no blame facility, the practice adviser — that person could go to that person and self-correct. There should be no adverse circumstances under any scenario in which a person has honestly made a mistake and honestly self-corrects. We need to put those tools in place in favour of ourselves, our office staff and the clerk's staff. We have not done that, and I think we are at fault.

For all of those reasons, I believe we should refer this report back to Internal Economy for further review and consideration, but it is my strong recommendation, only after we have an appropriate process and a facility for dealing with matters of this nature.

• (1630)

The Hon. the Speaker: I think the agreement was that the matter would be adjourned in the name of Senator Cools.

Honourable senators, even though there is a new question on the floor, it has been our practice that we would allow senators to speak either on the amendment or on the main question. Could I have a moment to explain?

Our practice in the past, when we were faced with a main question and then a question in amendment, is that we have allowed senators to rise and speak on the amendment, which technically is the question before the house, but we would also allow them to speak on the main motion, should they wish, in terms of the content. Technically, we do have an amendment, so there is a new question.

The Honourable Senator Cools moves the adjournment of the debate. Is it agreed?

Hon. Senators: Agreed.

(On motion of Senator Cools, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Leave having been given to revert to Other Business, Commons Public Bills, Third Reading, Order No. 1:

On the Order:

> Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator Tannas, for the third reading of Bill C-309, An Act to amend the Criminal Code (concealment of identity).

Hon. Serge Joyal: I wanted to honour my commitment to Honourable Senator Plett that I would speak today. Unfortunately, I was taken out of the chamber momentarily around three o'clock, and of course the item was called.

If the honourable senator will allow me, I will speak in French because the issue of wearing a mask or hiding identity is a very hot topic in my province, and especially in my home city, Montreal. I would like to address those comments in French, with the indulgence of the senator. I think that he will be able to follow my presentation.

[*Translation*]

Honourable senators, this is a timely issue, particularly in Montreal and, I would dare say, in Quebec City as well. Over the past year, public protests have brought thousands of people to the

streets and resulted in hundreds of arrests. Unfortunately, there was some vandalism and property damage during certain protests. Some people were also physically hurt.

This is an extremely delicate question. When Parliament is called upon to legislate on issues where there is significant public pressure, legislators may — in pursuit of peace, order and good government — make decisions or pass legislation that could soon be brought before the courts and challenged by those targeted or those who feel the legislation infringes on their rights.

There is currently a case before the Quebec Superior Court on the specific issue of wearing a mask, and the case challenges the constitutionality of Montreal's P-6 municipal bylaw. I would like to read this short bylaw to shed some light on the extent of the problem. Section 3.2 reads as follows:

> No person who participates in or attends an assembly, parade or gathering on public property may cover their face without a reasonable motive, namely using a scarf, hood or mask.

That means that during any protest of any kind, you cannot wear a mask unless you have a reasonable motive. The bylaw does not specify what constitutes a reasonable motive; therefore, wearing a mask is illegal.

According to Canadian jurisprudence, wearing a mask is a form of freedom of expression. Someone who is wearing a mask and walking or taking part in a protest may have a perfectly good reason for doing so. For example, citizens of a country ruled by a dictator who are participating in a protest outside that country's consulate or embassy and who do not want to be recognized because they still have family in that country, may want to wear a disguise so as not to be recognized.

Let us also think back to the 1970s, when minorities demanded recognition and protection for sexual orientation and could not openly acknowledge that they were gay or lesbian for fear of losing their job in the Canadian army or diplomatic services, losing their job as a teacher or being rejected by their families. This was a divisive issue for some families. As a result, in the 1970s, when these rights were not recognized, many of these individuals participated in demonstrations with their faces covered.

As I just illustrated with these two examples, this is a form of expression that is protected by section 2 of the Charter and that the courts have always been extremely strict about recognizing.

When a provision in a provincial law or regulation or in the Criminal Code, such as the one we have before us now in Bill C-309, seeks to limit freedom of expression, legislative bodies, whether provincial or municipal — for example, the current Montreal municipal government — must ask how the Supreme Court interpreted those limits in the past. By so doing, we can determine whether the limits set out in Bill C-309 — which, in passing, is a private member's bill, according to its sponsors — passes the constitutional test.

Honourable senators, as you know and as I just mentioned, this is a private member's bill. The Minister of Justice has therefore not confirmed its constitutionality under section 4 of the Department of Justice Act. This is a private member's bill. Section 4 of the Department of Justice Act is very clear. The Minister of Justice's obligation pertains strictly to bills introduced by ministers of the Crown. When a bill is introduced by a member of Parliament or a senator, which is often the case, the Minister of Justice does not have to determine whether it is constitutionally valid under section 4 of the Act. When we examine such bills, we therefore have the additional responsibility of determining whether or not the bill in question passes the constitutional test.

What is more, a case is currently before the Federal Court that involves a senior Department of Justice lawyer, Edgar Schmidt, who, according to the information published, has the following title.

[*English*]

He is General Counsel and Special Advisor in the Legislative Services Branch of the Department of Justice.

[*Translation*]

A senior lawyer in the legislative services branch of the Department of Justice is therefore challenging the way that the Minister of Justice has been honouring his legal obligation under section 4 since the early 1990s.

• (1640)

His case was heard in the Federal Court in early January. The government argued that he did not have grounds for legal action. However, Justice Noël of the Federal Court ruled in his favour and ordered that the legal costs to continue his case be covered. This means that a serious concern about the constitutionality of bills, or the constitutional test that is applied to bills, will be argued before the courts. We cannot be sure that the bill before us is constitutional. We cannot assume that the Department of Justice vetted it according to the minister's statutory obligation.

I mention this because Quebec City had a bylaw prohibiting the wearing of a mask. This Quebec City bylaw was ruled unconstitutional by Justice Paulin Cloutier on March 29, 2004. I recommend this ruling to honourable senators who are interested in the issue of prohibiting the wearing of masks in a demonstration. Justice Cloutier's ruling declared the Quebec City bylaw invalid and unconstitutional.

I will read the Quebec City bylaw, which is very straightforward:

> 1. Any person who, by any means, disturbs the peace, without lawful cause, of the inhabitants of a street; or
>
> 5. Wears a mask or is disguised, during the day or at night, on the streets; or

Quebec City prohibited the wearing of a mask on the streets. This bylaw was ruled unconstitutional by a review that examined all the jurisprudence and indicated that the prohibition was too encompassing.

[*English*]

It was too encompassing; anyone in the street with a mask was guilty of an offence.

[*Translation*]

The City of Montreal has the same rules, the same prohibition. I mentioned this earlier. Section 3.2 of the City of Montreal Bylaws states that no person who participates in or attends an assembly, parade or gathering on public property may cover their face without a reasonable motive. What would constitute a reasonable motive?

What about someone who has been injured or has had surgery on their face and therefore has their face covered with bandages? That seems like a reasonable motive. However, the municipal bylaw does not specify what constitutes a reasonable motive. Wearing a niqab, as you know, is not prohibited.

The Government of Ontario has decided that one can testify before a judge or tribunal with one's face covered. The right to wear a mask is recognized even in extremely sensitive situations, such as when the credibility of a witness matters.

As I said, the City of Montreal's bylaw is currently being challenged before the Superior Court by Julien Villeneuve in a case against the City of Montreal. I read the proceedings so far, and I could not help but think that Bill C-309 could also raise some questions, or even some doubts, about its constitutionality.

Consider section 351 of the Criminal Code, a provision that sets out the penalty for anyone who wears a mask with the intention of committing a crime. I repeat, section 351 of the Criminal Code already makes it an offence to wear a mask with the intention of committing a crime.

That section states:

> **351. (2)** Everyone who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

With intent to commit an indictable offence. For anyone familiar with criminal law, this means that there is *mens rea*, or criminal intent. In the case of the Montreal bylaw, there is no criminal intent. Anyone who simply wears a mask and participates in a demonstration would automatically be guilty. Section 351 of the Criminal Code very clearly states that criminal intent is required.

In other words, it is clear that if someone puts on a balaclava and robs a bank, it is not a case of freedom of expression. Just because a person is dressed as Santa Clause does not mean that he is not committing a crime. It is part of the crime itself.

What does Bill C-309 say? It is very short. It contains only one clause — or, actually, two clauses, because it amends two other provisions of the Criminal Code. It amends section 63 of the Criminal Code regarding unlawful assembly. What is unlawful assembly? According to the Criminal Code:

> **63. (1)** An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when they are assembled as to cause persons...to fear, on reasonable grounds, that they will... disturb the peace tumultuously.

What does "tumultuously" mean? I looked at jurisprudence. The word "tumultuous" is commonly defined as "disorderly or characterized by commotion or disturbance".

That is quite clear. I think that most of us have certainly witnessed tumultuous assemblies, in which people are making a lot of noise and chanting, or even banging pots and pans, as we saw last spring in Montreal. These people may be causing an uproar or a tumultuous commotion, and it becomes a public disturbance because they are being so loud. A tumultuous assembly refers more to the idea of making noise than to the idea of threatening a person's safety.

Bill C-309 states:

> 3. (2) Every person who commits an offence under subsection (1)...

That means every person who is part of a tumultuous assembly, an assembly deemed illegal by virtue of being tumultuous.

> ...while wearing a mask or other disguise to conceal their identity without lawful excuse is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years;

In other words, henceforth, if you are part of a tumultuous assembly deemed to be unlawful, the act of wearing a mask instantly makes you guilty of an offence punishable by imprisonment for a term not exceeding five years unless you can prove you have a lawful excuse.

Consider this: you are in a parade...

Honourable senators, may I have five more minutes to finish my speech?

The Hon. the Speaker: Is leave granted, honourable senators, to extend the time allotted to Senator Joyal by five minutes?

Hon. Senators: Agreed.

Senator Joyal: If you are in a perfectly legal parade and that parade draws a crowd that becomes noisy, causes a racket and disturbs the "public peace", that parade becomes an unlawful assembly. If you are wearing a mask in that parade, you are automatically guilty of an offence punishable by imprisonment for a term not exceeding five years.

That offence did not previously exist in the code. I pointed this out to Senator Plett since some members of the other place simply said that these amendments were unnecessary because of section 351. Section 351, as I was just saying, is about committing an offence while wearing a disguise. However, wearing a mask while in a parade that becomes an unlawful assembly is crossing the line and becomes a strict liability offence.

What does that mean? The mere fact that you are there wearing a mask automatically makes you guilty unless you can prove that you had a good reason for wearing a mask.

Obviously, the legislation does not define good reason. It simply says "reasonable grounds".

• (1650)

Put yourself in the shoes of a police officer who is dealing with an unlawful assembly, a riot involving 1,000 people who are gathered in a park and who are yelling and making noise. For this police officer, the mere fact that these 1,000 people are all wearing masks would make them all equally guilty of the alleged offence of wearing a mask and participating in an unlawful assembly.

Honourable senators, the Supreme Court has been extremely clear in its previous decisions. We cannot completely limit freedom of expression without attempting to clearly specify what we hope to achieve with the limits we are imposing.

[*English*]

In other words, what do we want to achieve? If we want to achieve only the objective of ensuring that there is no one with a mask in an unlawful assembly, to use the terms of the Criminal Code, then, of course, we are going much beyond the objective and the way that the Supreme Court has defined it in a case where the freedom of expression was really at stake, the *Zundel* case. I think many honourable senators will know that case. I refer honourable senators specifically to page 1774 of the case and to page 762 of the case.

[*Translation*]

I would like to read the principle that the court established on page 774 of *Zundel*. It says:

> But the harm addressed must be clear and pressing and the crime sufficiently circumscribed so as not to inhibit unduly expression which does not require that the ultimate sanction of the criminal law be brought to bear...

[*English*]

My proposal to honourable senators is that this bill will definitely find itself in court sooner or later. There is no doubt in my mind. The question is too hot. There is too much interest among Canadians, especially in British Columbia. We heard a witness from the riot in Vancouver; we heard about the summit in Toronto; and we heard, of course, from the Montreal witnesses also. There is no question that this issue is a very sensitive one, and I think that the court will pay attention to determine whether there is not another way to achieve that result.

In my opinion, there is another way to achieve the result or the objective that the bill aims for, which is to restrict the use of masks in riots or in unlawful assemblies or to commit a crime, for example, to throw stones at a window, to throw stones at the policemen, or, in other words, to commit physical assault or destroy property. It is a valid objective, but it could have been achieved another way.

[*Translation*]

The government could have set out what we call aggravating factors. In other words, if the government had kept sections 63 and 65, which sought to prohibit unlawful assemblies and riots and make the wearing of a mask merely an aggravating factor, I believe that we would have achieved the objective but in a way that is less likely to be changed by the courts and possibly limited by the Supreme Court, because all of these regulations are going to end up before the Supreme Court sooner or later.

Honourable senators, I wanted to share these thoughts with you because, as I said, they are extremely important, since this bill fundamentally limits freedom of expression.

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?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

FOURTH REPORT OF COMMITTEE— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Smith, P.C. (*Cobourg*), seconded by the Honourable Senator Fraser, for the adoption of the fourth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (*Amendments to the* Rules of the Senate), presented in the Senate on December 12, 2012.

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, Senator Cools informed me that she wants to get her notes together before she speaks to this report. I therefore move that we rewind the clock.

(On motion of Senator Carignan, for Senator Cools, debate adjourned.)

[*English*]

STUDY ON PROVISIONS AND OPERATION OF THE ACT TO AMEND THE CRIMINAL CODE (PRODUCTION OF RECORDS IN SEXUAL OFFENCE PROCEEDINGS)

TWENTIETH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the twentieth report of the Standing Senate Committee on Legal and Constitutional Affairs entitled: *Statutory Review on the Provisions and Operation of the* Act to amend the Criminal Code (production of records in sexual offence proceedings), tabled in the Senate on December 13, 2012.

(On motion of Senator Runciman, for Senator Fraser, debate adjourned.)

[*Translation*]

VOLUNTEERISM IN CANADA

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Mercer, calling the attention of the Senate to Canada's current level of volunteerism, the impact it has on society, and the future of volunteerism in Canada.

Hon. Fernand Robichaud: Honourable senators, I planned on speaking today, but since it is getting late, I move that the debate be adjourned to the next sitting of the Senate for the remainder of my time.

(On motion of Senator Robichaud, debate adjourned.)

DIVERSITY IN THE SENATE

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Oliver, calling the attention of the Senate to the state of diversity in the Senate of Canada and its administration and, in particular, to how we can address the barriers facing the advancement of visible minorities in the Senate workforce and increase their representation by focusing on hiring, retention and promotion.

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I know that Senator Meredith intended to speak to this point, so I move that the debate be adjourned to the next sitting for the remainder of his time.

(On motion of Senator Carignan, for Senator Meredith, debate adjourned.)

[*English*]

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTINGS OF THE SENATE

Hon. Bob Runciman, pursuant to notice of May 22, 2013, moved:

> That, for the purposes of its consideration of Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, the Standing Senate Committee on Legal and Constitutional Affairs be authorized to meet from 3:00 p.m. to 5:00 p.m. on Tuesday, May 28, 2013 and from 3:00 p.m. to 6:30 p.m. on Wednesday, May 29, 2013, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

(Motion agreed to.)

STUDY ON ISSUE OF CYBERBULLYING

HUMAN RIGHTS COMMITTEE AUTHORIZED TO EXTEND THE PUBLICATION DATE OF ITS FINDINGS ON ITS NINTH REPORT

Hon. Mobina S. B. Jaffer, pursuant to notice of May 22, 2013, moved:

> That, notwithstanding the Order of the Senate adopted on Wednesday, November 30, 2011, the Standing Senate Committee on Human Rights retain all powers necessary until March 31, 2014 to publicize its findings in its report entitled: *Cyberbullying Hurts: Respect for Rights in the Digital Age* tabled in the Senate on December 12, 2012.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*Translation*]

ADJOURNMENT

MOTION ADOPTED

Leave having been given to revert to Government Notices of Motions:

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(g), I move:

> That when the Senate adjourns today, it do stand adjourned until Tuesday, May 28, 2013, at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Tuesday, May 28, 2013, at 2 p.m.)

CONTENTS

Thursday, May 23, 2013

PAGE

SENATORS' STATEMENTS

International Day to End Obstetric Fistula
Hon. Mobina S. B. Jaffer . . . 3986

Visitors in the Gallery
The Hon. the Speaker . . . 3986

Aspenware
Hon. Vernon White . . . 3986

National Household Survey
Hon. Catherine S. Callbeck . . . 3987

Carassauga Festival
Hon. Victor Oh . . . 3987

Visitors in the Gallery
The Hon. the Speaker . . . 3988

Breakfast for Young Canadians on Parliament Hill
Hon. Lillian Eva Dyck . . . 3988

New Brunswick
Artistic Achievements at Bouctouche.
Hon. Rose-May Poirier . . . 3988

Canadian Medical Association
Hon. Jane Cordy . . . 3989

ROUTINE PROCEEDINGS

Royal Canadian Mounted Police
Request for Senate Policy Instruments—Correspondence Tabled . . . 3989

Criminal Code (Bill C-299)
Bill to Amend—Twenty-seventh Report of Legal and Constitutional Affairs Committee Presented.
Hon. Bob Runciman . . . 3989

National Finance
Notice of Motion to Authorize Committee to Meet During Sittings of the Senate.
Honourable Joseph A. Day . . . 3990

Royal Canadian Mounted Police Victims of Harassment
Notice of Inquiry.
Hon. Grant Mitchell . . . 3990

The Senate
Notice of Motion to Amend the *Rules of the Senate of Canada*.
Hon. Claude Carignan . . . 3990

QUESTION PERIOD

The Senate
Twenty-second Report of Internal Economy, Budgets and Administration Committee—Request for Public Proceedings.
Hon. James S. Cowan . . . 3991
Hon. Marjory LeBreton . . . 3991

Prime Minister's Office
Payment of Funds—Twenty-second Report of Internal Economy, Budgets and Administration Committee.
Hon. James S. Cowan . . . 3991
Hon. Marjory LeBreton . . . 3992
Hon. George J. Furey . . . 3993
Hon. Dennis Dawson . . . 3993
Hon. Grant Mitchell . . . 3994

ORDERS OF THE DAY

Question of Privilege
Twenty-fourth Report of Standing Committee on Internal Economy, Budgets and Administration—Speaker's Ruling.
The Hon. the Speaker . . . 3995

Royal Canadian Mounted Police Act (Bill C-42)
Bill to Amend—Third Reading—Debate Continued.
Hon. Grant Mitchell . . . 3996
Hon. Roméo Antonius Dallaire . . . 4002

The Estimates, 2013-14
National Finance Committee Authorized to Study Supplementary Estimates (A).
Hon. Claude Carignan . . . 4002

Canadian Human Rights Act
Criminal Code (Bill C-279)
Bill to Amend—Second Reading—Debate Continued.
Hon. Donald Neil Plett . . . 4003
Hon. Grant Mitchell . . . 4005
Hon. Pierre Claude Nolin . . . 4005

Internal Economy, Budgets and Administration
Twenty-fifth Report of Committee—Debate Continued.
Hon. Elaine McCoy . . . 4006
Hon. Hugh Segal . . . 4008
Twenty-fourth Report of Committee—Debate Continued.
Hon. Elaine McCoy . . . 4008
Motion in Amendment.
Hon. Elaine McCoy . . . 4008

Criminal Code (Bill C-309)
Bill to Amend—Third Reading.
Hon. Serge Joyal . . . 4010

Rules, Procedures and the Rights of Parliament
Fourth Report of Committee—Debate Continued.
Hon. Claude Carignan . . . 4014

Study on Provisions and Operation of the Act to amend the Criminal Code (production of records in sexual offence proceedings)
Twentieth Report of Legal and Constitutional Affairs Committee—Debate Adjourned . . . 4014

Volunteerism in Canada
Inquiry—Debate Continued.
Hon. Fernand Robichaud . . . 4014

Diversity in the Senate
Inquiry—Debate Continued.
Hon. Claude Carignan . . . 4014

Legal and Constitutional Affairs
Committee Authorized to Meet During Sittings of the Senate.
Hon. Bob Runciman . . . 4014

PAGE

Study on Issue of Cyberbullying
Human Rights Committee Authorized to Extend the Publication Date of its Findings on its Ninth Report.
Hon. Mobina S. B. Jaffer 4014

PAGE

Adjournment
Motion Adopted.
Hon. Claude Carignan 4015

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