



# DEBATES OF THE SENATE

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OFFICIAL REPORT  
(HANSARD)

Friday, December 14, 2012

The Honourable NOËL A. KINSELLA  
Speaker

## CONTENTS

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

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## THE SENATE

Friday, December 14, 2012

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

Prayers.

[*Translation*]

### ROYAL ASSENT

#### NOTICE

The Hon. the Speaker informed the Senate that the following communication had been received:

#### RIDEAU HALL

December 14th, 2012

Mr. Speaker,

I have the honour to inform you that the Right Honourable David Johnston, Governor General of Canada, will proceed to the Senate Chamber today, the 14th day of December, 2012, at 11:30 a.m., for the purpose of giving Royal Assent to certain bills of law.

Yours sincerely,

Stephen Wallace  
*The Secretary to the Governor General*

The Honourable  
The Speaker of the Senate  
Ottawa

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[*English*]

## SENATORS' STATEMENTS

### STATUTE OF WESTMINSTER

**Hon. Hugh Segal:** Honourable senators, earlier this week, on December 11, the Commonwealth of Nations and champions of Canadian sovereignty celebrated the eighty-second anniversary of the Statute of Westminster. This U.K. law created full legislative independence for all the dominions, including Canada, Australia, South Africa and New Zealand, and was the direct result of the Imperial Conferences held in 1926 and 1930. Especially important as a result of those conferences was the Balfour Declaration, which inspired the Statute of Westminster.

Certain parts of the process that we will go through today, such as Royal Assent, are touched by the Statute of Westminster and its roots in the Balfour Declaration. For example, the Governor General ceased to have any diplomatic role between the U.K. and

Canada because of the statute, with those responsibilities transferred to a system of High Commissioners between Commonwealth states. The U.K. Parliament could not legislate from that moment forward for any of the dominions, and neither did any of the dominions have to hypothecate their legislation to the Parliament of the United Kingdom, and the provisions of the statute applied to our provinces as well as the Parliament in which we serve.

Just to reassure honourable senators about the perpetual reality of the Canadian federal-provincial condition, the British North America Act was not referenced by the statute as a result of a disagreement between the provinces and Ottawa over how the BNA Act might be amended. That disagreement stayed in effect until the new Constitution Act of the early 1980s, half a century later.

Many of the key provisions of the Statute of Westminster were suggested in the late 1920s by Prime Ministers Hertzog of South Africa and Mackenzie King of Canada. I thought that might give some comfort to my colleagues across the way on this difficult morning.

History is more than a shallow and unidimensional recitation of events from the past. History is a living platform of ideas, debates, engagements and undertakings that form, in their imperfect but underlying way, the basis of our progress and development as a civil, democratic and orderly society.

The Statute of Westminster is a pillar of both the independence and sovereignty of Canada and the continuing role of the Commonwealth of Nations, two very real forces for good in a world that needs as much of that kind of force as one might imagine.

### HUMAN RIGHTS IN CHINA

**Hon. Jim Munson:** Honourable senators, in recent weeks Canadians have been captivated by the takeover of Nexen by the China National Offshore Oil Corporation, or CNOOC. The chatter we heard was mostly about Canada being open for business, and China an ideal customer. That may be so, but the fact is that China is still ignoring its human rights obligations, and that has been, it seems to me, completely forgotten. Despite our economic ties with China, we cannot forget that it is a country where democracy and free speech are in short supply.

Last week, for example, a Chinese author received the Nobel Prize for literature, Mo Yan. He is a communist party member, and it was felt at that time that he should at least speak out for his fellow writer who has won a Nobel Prize laureate, Liu Xiaobo. Mr. Liu was recognized for his peaceful human rights activism and his promotion of free speech and thought. Now where is he? In prison, I believe an 11-year term, and his wife may as well be living in a prison. She is under house arrest. She is permitted to see her husband only once a month and just to go for lunch, and the guards follow her wherever she goes.

It is unimaginable what is happening in some of the gulags in China where there are people who advocate human rights and free speech — the kind of free speech we have every day here in this Senate. Earlier this month, 134 Nobel laureates published an open letter calling on China's new president, Xi Jinping, to help release Mr. Liu.

Honourable senators, I lived in China for five years and I covered the massacre in Tiananmen Square. I have seen the rights of Chinese dissidents and ordinary Chinese people abused. Therefore, I urge us, at a time we are paying so much attention to what is going on in China and China-Canada economic relations, to just stop for a moment during this particular time and remember as well that there are those who hunger for the kind of free speech that we have.

#### MR. KEVIN MACLEOD, C.V.O., C.D.

##### USHER OF THE BLACK ROD—TRIBUTE

**Hon. Don Meredith:** Honourable senators, I rise today to pay tribute to a great Canadian who has had a profound impact on this place.

Since being appointed Usher of the Black Rod by Prime Minister Stephen Harper almost five years ago, Kevin MacLeod has conducted himself with the utmost professionalism and attentiveness.

As a floor officer of the Senate, he has kept this chamber safe so that we can do our jobs with confidence and peace of mind.

He also played a key role in the appointment of our current Governor General, the Right Honourable David Johnston, serving on the Governor General Consultation Committee.

Out of all his accomplishments, perhaps his greatest is his impact on the next generation. As a long-time youth advocate, I want to thank Mr. MacLeod for his work in overseeing the Senate Page Program, which prides itself on “giving the leaders of tomorrow a remarkable opportunity to be the leaders of today.” I often tell our youth that they are not only our future; they are our present. As the Usher of the Black Rod, Kevin has exposed our young people to the rich tradition of Canada's parliamentary system and the Senate of Canada, encouraging them to be more engaged and empowered citizens.

Since being appointed to this place, I have come to know Kevin as a class act who approaches his work with such a pleasant, professional and positive attitude.

He has always greeted me with great respect and sincerity. When thanking him for his great effort in ensuring a successful visit for the Duke and Duchess of Cambridge in 2011, he responded with a big smile, saying, “Senator, I am just doing my job and I love it.”

Honourable senators, I am sure you will attest to the fact that Kevin's contributions to this place will be greatly missed. His staffer Alana Blouin describes him as an honest, understanding and dedicated human being. She looks forward to moving on with him as he begins his new position.

• (0910)

Kevin continues to be an example to all parliamentarians and Canadians of what it means to dedicate one's life to serving this country. He will be sorely missed, but I truly wish him the best in his future endeavours.

Honourable senators, please join me in expressing our heartfelt thanks to this great man for his dedicated service to the Senate of Canada and to young Canadians.

**Hon. Terry M. Mercer:** Honourable senators, I would like to join with my colleague opposite in paying tribute to Kevin MacLeod, the Usher of the Black Rod, but I would like to make it a touch more parochial in the sense that it is always great to salute a fellow Nova Scotian and Cape Bretoner. There used to be a term many years ago, the “Gentleman Usher of the Black Rod,” and I think in Kevin's case we could have put the word “Gentleman” back in because he has indeed been that.

From Boularderie, Cape Breton, he has made us Nova Scotians very proud of his work in this chamber. We also recognize his service over the years as chief of staff to a minister in the public service and, of course, most notably as secretary to Her Majesty. We know he will continue in that role, and we know that Her Majesty will continue to be well served in all three official languages, English, French and Gaelic.

#### BRITISH COLUMBIA

##### CITY OF GREENWOOD—WATER

**Hon. Nancy Greene Raine:** Honourable senators, in early September I visited Greenwood, British Columbia, to present a Queen's Diamond Jubilee Medal to one of the city's most active seniors, Marge MacLean, who runs the local museum. At the reception afterwards, Mayor Nipper Kettle proudly served Greenwood's municipal water and told me all about it.

The City of Greenwood, British Columbia, was founded in 1897 and, at its heyday, had a population of close to 5,000 people, 28 hotels, with saloons open 24-7. The courthouse, built in 1903, housed the first Supreme Court of British Columbia. Built on the riches of mining, Greenwood experienced a classic boom and bust and almost became a ghost town with its population eventually dropping to only 250 people.

In the mid-1950s, Granby Mines developed an open mine pit not far from Greenwood and built a large tailings pond above the city. Residents warned that the tailings pond was in a bad location, and on September 12, 1969, their fears were realized. The tailings dam failed and part of the town, including the reservoir was flooded. In compensation, the mining company put in two new water wells, tapping into a pristine aquifer 35 metres under the city. The city, being as small in size as in population, was able to pipe their water from the main lines directly into their homes. No chlorination is required as there is no surface water entering their supply. Greenwood's water is tested weekly and is regulated by the B.C. Interior Health Authority, and their reservoir, which is used as backup storage, is also tested regularly.

In late 2011, a sample of Greenwood's tap water was sent to the Berkley Springs International Water Tasting in West Virginia where it competed against cities from 22 countries and all across the U.S. On February 25, 2012, after a blind taste test, the water from Greenwood, the smallest city in Canada, was declared the best tasting municipal water in the world.

**Hon. Senators:** Hear, hear.

**Senator Raine:** Within a few months, the city was bottling the water, and people passing through town were taking it home as a souvenir.

On September 17 of this year, Greenwood water was back in the news. City workers discovered a broken lock at the municipal reservoir, and as a precaution, the city asked the citizens not to use the water until testing was done. The B.C. Health Authority then issued a boil water advisory. Because Greenwood's water had been in the news for its award, the media, including the national media, picked up the story. "World's Best Tap Water" title temporarily flushed down the drain was typically the headline, even though the mayor insisted the water source had not been compromised. It took five days to get the boil water advisory lifted, but the damage to the city's water's reputation was done.

Now Greenwood, with a population of just over 700 people, must get the true story out. There was never a problem with their water. All tests were normal. It was never compromised in any way. Unfortunately, though, if you Google "Greenwood water," all the bad news stories come up.

Honourable senators, a few weeks ago, on the mayor's behalf, I was delighted to deliver cases of Greenwood water to the Speaker of the Senate, and the other day I delivered some to the Prime Minister. Yesterday I invited honourable senators to taste it for themselves. I am sure they enjoyed it.

Please help the City of Greenwood spread the word about their great water. Thank you, honourable senators, and have a wonderful holiday season.

#### COMMENTS BY SENATORS

**Hon. Michael Duffy:** Honourable senators, as Your Honour knows, the *Rules of the Senate* say at 6-13(1), "all personal, sharp or taxing speeches are unparliamentary and out of order." During debate last night, at least two senators on the opposition benches engaged in sharp personal attacks on me in clear violation of the rules. Every senator knows the tragedy of suicide, and none of us in this chamber need any lessons on this very important issue from the members opposite.

[Translation]

## ROUTINE PROCEEDINGS

### THE SENATE

#### MOTION TO PHOTOGRAPH ROYAL ASSENT CEREMONY ADOPTED

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

That photographers be authorized in the Senate Chamber to photograph the Royal Assent ceremony today, with the least possible disruption of the proceedings.

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

**Hon. Senators:** Agreed.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

#### COMMITTEES AUTHORIZED TO MEET DURING ADJOURNMENT OF THE SENATE

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

That, pursuant to rule 12-18(2)(b)(i), committees be authorized to sit from January 28, 2013 through February 1, 2013, even though the Senate may then be adjourned for a period exceeding one week.

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

**Hon. Senators:** Agreed.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

### ADJOURNMENT

#### MOTION ADOPTED

**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, February 5, 2013, at 2 p.m.

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

**Hon. Senators:** Agreed.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

• (0920)

[English]

## QUESTION PERIOD

### FISHERIES AND OCEANS

#### NOVA SCOTIA—SEAWALL MAINTENANCE

**Hon. Terry M. Mercer:** Honourable senators, a small village in Cape Breton, Gabarus, has been told by the federal government that it is not responsible for repairing a 70-year-old seawall that is threatening to harm the local fishing industry, road access to the village and several private homes. In a letter to the residents of Gabarus dated November 30, Acting Fisheries Minister Gail Shea said:

The Government of Canada cannot assume a general responsibility for shoreline protection throughout the country regardless of the owner of the land or adjacent property.

Furthermore, repair of the seawall in Gabarus is not within the mandate of Fisheries and Oceans Canada nor does the Department have an appropriate mechanism for channeling funds for such undertakings.

Some months ago, it was suggested by a senior Conservative that the federal government would be fixing the seawall. Could the leader tell us why the sudden change of heart?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, I do not know who the honourable senator was referring to, but the statement of Minister Shea that he read into the record is correct. Of course, this falls within the jurisdiction of the Province of Nova Scotia.

**Senator Mercer:** It is interesting the honourable leader would say that because the seawall was constructed over 70 years ago by the federal government and then repaired by the federal government. When the transfer of some responsibility went from Transport Canada to Fisheries and Oceans, this is one of the things that fell through the cracks. It is still difficult for the people of Gabarus to understand why suddenly their community is being put at risk because of this bureaucratic change in rules.

**Senator LeBreton:** I really have nothing to add to what I said a moment ago. The fact of the matter is the seawall does fall within provincial jurisdiction, and a significant part of it, I believe, is on provincially owned property.

[Translation]

### FOREIGN AFFAIRS

#### UNITED NATIONS OPERATIONS OVERSEAS

**Hon. Roméo Antonius Dallaire:** Honourable senators, my question is for the Leader of the Government in the Senate.

Recently, the Minister of Foreign Affairs said that he was deeply concerned about the situation in the Democratic Republic of Congo and deeply concerned about the situation in Syria, particularly because of the possibility of chemical weapons. The minister says that he is deeply concerned about the situation in Mali and, on a slightly more pertinent note, the situation in Iran, about which we received the Foreign Affairs Committee report yesterday, incidentally.

Could you explain to me what the expression “deeply concerned” actually means in a country like ours, a middle power, which developed the concept of responsibility to protect? Does the minister intend to act or is he just saying that he is concerned for the benefit of the local media?

[English]

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, obviously the Minister of Foreign Affairs, with the serious situations in Mali, the Congo and Syria, is expressing the concerns that I believe would be shared by all Canadians. This was not directed to the media; it is directed to the situation in these trouble spots. The minister is properly putting on the record, as I hope all of us support, the high level of concern the government has for the situations in these particular areas.

The Minister of Foreign Affairs is working with his counterparts around the world to seek resolution to many of these situations, and as would be expected, Canada does work with our allies and with the world community in seeking resolution.

For the honourable senator to simply dismiss as a message to the media the genuine concern of the government on behalf of the people of Canada for what is going on is really beneath his dignity.

**Senator Dallaire:** The problem, honourable senators, is that in 1994, when they were slaughtering them by the tens of thousands a day, the government at the time was using the same terms and no one came. It continued for 100 days, and it was in the media.

We now have scenarios where we have seen hundreds of thousands of people being displaced by an internal revolution in the Eastern Congo. We even have a UN mission there that seems to be totally emasculated. In Mali, the situation involves al Qaeda and the overflow from the Libyan operation, which was half done because we did not put boots on the ground. Those extreme elements have moved into Northern Mali and are building a terrorist capability that will spread across Northern Africa and

probably well beyond. We have cut aid, while in the south there will be a significant drought that will destabilize the coup d'état there. In Syria we are still sort of threatening.

Honourable senators, we are a leading middle power. We were not country number 163 out of 193. There used to be 192 countries, but South Sudan makes it 193. We are part of the 11 most powerful nations in the world, and all we can get is *vivement préoccupé*. Surely there is a leadership role there of far more offensive capability and influencing the situation. Norway is doing more work than we are.

Can the leader tell me why our diplomatic corps and our Minister of Foreign Affairs are not taking a leading role as a leading middle power, not only in the UN but internationally, to influence those situations?

**Senator LeBreton:** Honourable senators, that is absolutely not true. At the Francophonie Summit in the Democratic Republic of Congo, so named, we had occasion to raise issues of human rights with members of the Congolese civil society. The Prime Minister met with these people directly. Canada will continue to express our deep concern for the situation in that country, working through the Francophonie and other organizations.

With regard to Mali, the situation there is very severe, but our diplomats, along with other countries that share the same concerns, have urged Mali to take steps to return to constitutional rule. What has happened there, of course, is a big step backwards. Free and fair presidential elections and a focus on major security challenges in the country's north are essential to the need to restore stability.

I am sure the honourable senator knows as well as anyone that Canada supports international efforts to preserve Mali's territorial integrity and combat extremism, but our suspension of bilateral aid will continue given the events.

**Senator Dallaire:** On Wednesday I met with the head of peacekeeping operations at the UN. I asked him where Canada was with regard to engaging in contingency planning, either in changing the mandate of MONUSCO in the Congo, as an example, and even providing it with assets, with the African Union in Mali where the Americans are engaged, or even within the Syrian operation where the UN is attempting to at least present itself as an option. His response to me was, "Canada who?" "Where is Canada?" That was his question. Canada is not there.

• (0930)

I said to him that we have been to Afghanistan, of course. He said that, yes, Afghanistan is over and many of the nations that were engaged in Afghanistan have now significantly moved assets to reinforce the UN. He said Canada is nowhere to be seen.

Can the leader tell honourable senators whether we have developed a policy to not re-engage in operations with the UN, be it diplomatically through DPA, political affairs, or through the new generation of peacekeeping under the rubric of "responsibility to protect," which we created and sold to the world?

**Senator LeBreton:** Honourable senators, I do not think Senator Dallaire is correct in saying that Afghanistan is over. We still have a large contingency of troops in Afghanistan. I will not respond to the comments of some official that Senator Dallaire spoke to at the UN.

Minister Baird was speaking at the UN a few weeks ago. For some official to say "Canada who?" or "Where is Canada?" I would like to have more detail on this. Canada is a major contributor to the United Nations and we have a Canadian ambassador at there. Our government contributes significantly to the United Nations in many programs around the world.

I do not know the individual the honourable senator was speaking to, but I am sure my colleague, the Minister of Foreign Affairs, and our officials, who work extremely hard at the United Nations and around the world, will be most interested in his dismissal of our country.

**Senator Dallaire:** Honourable senators, I wish to pursue this point, if I may. The leader is absolutely right that Afghanistan is not over. We made quite a point of saying our fighting side is over. We are into the training mode, so we still have about 1,000 troops there. The leader seems to articulate that, because we are still committed and maybe do not have capabilities to do anything else than continue to support that, we are back home licking our wounds.

In 1992, when I was commanding 5 Brigade, out of 5,200 troops I had under my command, 3,700 were deployed overseas, from Cambodia through Africa and Central America.

If we rebuilt our capabilities — and we have extraordinary potential now and new equipment — why are we not making a far more overt gesture to the UN to provide it with contingency planning, command and control and assets, both diplomatic and military, to respond to these crises that will affect us, particularly in Mali in the North with all the terrorism capability that is building up in that area?

**Senator LeBreton:** Honourable senators, I cannot answer for the actions of the government in the early 1990s. Obviously, the honourable senator is in a better position to do that. It sends conflicting signals, honourable senators.

In any event, Senator Dallaire used the word "maybe" and said that we have come home to "lick our wounds." That is insulting to the Canadian Forces.

The fact is we have had extremely positive results in Afghanistan, although I will acknowledge it is a very difficult situation. Minister MacKay and the government are extremely supportive of our armed forces and never would we want to create a situation where they would have to come home to "lick their wounds." That is rather insulting to anyone who proudly serves in the Canadian Armed Forces.

With regard to actions in the United Nations, Minister Baird was in Tunisia and Morocco just this week attending meetings to deal with the Syrian situation. Obviously, the honourable senator chooses only to read what he wishes to and does not deal at all in the facts.

**Senator Dallaire:** Honourable senators, it is not much of a response for the government to say that I do not know what I am reading and am not providing facts. In fact, I am looking for facts.

If I may, the expression that I used is an expression used within the military milieu. After 20-odd years in the field — because Afghanistan was only one of nearly fifteen major operations we have been involved with since the first Gulf War in 1991 and taking casualties — they are, yes, finally home to be able to lick their wounds with a quality of life program that is now under significant duress with budget cuts. Hopefully, they will be able to reconstitute themselves in order to be prepared. In fact, the minister stated that, with the operational scenario coming back, we will have time to recoup, rebuild and be prepared to relaunch. That is factual.

As the troops prepare and readjust for the next mission, are the diplomatic corps and the government, through its minister, actually looking at initiatives in which, with the extraordinary capabilities we have, we are offering to be an instrument of advancing peace, security and human rights around the world, and, by extension, our own security here, by ensuring that the festering scenarios of terrorism in places like Mali will not cross the pond and end up on our borders?

**Senator LeBreton:** Nice try, trying to dig yourself out of the “licking our wounds” remark.

The fact is, as Senator Dallaire and I both know, people in our armed forces, people who work in foreign affairs, the Minister of Foreign Affairs and the Minister of National Defence all work, as any government would, to advance peace, security and human rights in the world. That is a given. By virtue of his question, I hope the honourable senator is not suggesting for a moment that that is not what we are doing. That is exactly what we are doing.

## NATIONAL DEFENCE

### AIRCRAFT PROCUREMENT

**Hon. Wilfred P. Moore:** Honourable senators, my question is directed to the Leader of the Government in the Senate. I want to repeat and read into the record what I said on Tuesday and again yesterday.

On April 8, 2011, Mr. Harper said:

You have to understand that in terms of the F-35 costs, we've been very detailed with those to the Canadian public. A lot of the developmental costs you're reading in the United States, the contract we've signed shelters us from any increase in those kinds of costs. We're very confident of our cost estimates and we have built in some latitude, some contingency in any case. So we are very confident we are within those measures.

I want to explore various aspects of this comment by Mr. Harper.

With regard to having detailed costs with the Canadian public, in February I brought to the attention of the chamber the fact that the Chinese had hacked into the Lockheed Martin site and

sat there for three years, sat in their digital universe, sat in on the meetings, and have now built their own stealth fighter jet.

At that time, when this became public knowledge, the Pentagon made it clear that the additional costs, the resulting costs from that hacking, would not be borne by them but by the industry. We know that the law in the United States says that they cannot sell materiel to allies for less than what it cost them.

We were in for \$65 million per airplane. I think, at that time, Israel was in for up to \$125 million or \$130 million per airplane.

• (0940)

Mr. Harper had to know that, and I want to know why he said they had provided a detailed costing to the Canadian public. He had to know that this happened; he had to know that those costs had gone up. Could the leader explain to me how he can make that statement?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, we have gone through all kinds of news stories that are not factual, that are speculation, people writing stories and regurgitating them, not based on facts. I can only answer to what the facts are.

Our government set aside \$9 billion for the purchase of new fighter aircraft. This amount is for the purchase of the new aircraft and will not change. The remaining costs are long-term costs associated with owning and flying these planes, such as maintenance, fuel and salaries.

These costs, as per the Auditor General's report in the spring, are now presented over 42 years, as compared to 20 years previously. It goes without saying that the dollar figure is higher because of the longer period.

Those are the facts. I know it is difficult to accept that the figures and facts put out by the government were verified by an independent auditor, namely, KPMG.

**Senator Moore:** The leader mentioned the sum of money set aside. That was based on \$65 million per airplane, and we know the cost is at least double. What the leader is saying just does not add up.

**Senator Mercer:** Maybe they will get a calculator for Christmas.

**Senator Moore:** As I mentioned yesterday, Mr. Harper said, just four days after the election, that their costs are well within their estimates and well on track. That is not so, and he did not come clean with the Canadian public. He knew those costs had gone up and he did not tell us. He said they have been sheltered by a new contract. There is no such sheltering. The law of the U.S. drove that, and he had to know that. The U.S. was not going to sign a contract and have an open end and accept less than it was going to cost them per unit. That just does not make sense. I do not think that is right.

If the Prime Minister was so sure of that and so confident about the cost estimates, why did he have to bring in KPMG anyway? We have a minister who is doing his job, supposedly, with all the

civil servants backing him up, so why did the government have to bring in someone else if they are so confident of the costs? Could the leader please explain that to me?

**Senator LeBreton:** Honourable senators, the Auditor General, in an appearance before the committee in the other place, indicated that no money was misspent. This is a fact that has been overlooked a lot. Of course, it does not fit the narrative. The truth of the matter is that the government has set aside \$9 billion for the purchase of aircraft. That figure will not change, and that is a figure that we have put out. As a government, that is what we will spend to purchase the aircraft.

DND did a cost analysis based on a 20-year life cycle, which has been the normal practice forever, under the previous government as well. The Auditor General wanted a full life-cycle cost attached to these aircraft, and that is why the government bought in outside auditors to verify and to look at all the numbers. That is why we put a halt to the process and brought in the seven-point plan. That is why we now have the report of KPMG tabled before Parliament. I would recommend that the honourable senator read it. I cannot satisfy the honourable senator's great desire to find something wrong when there is nothing wrong here, and it has been verified by KPMG.

**Senator Moore:** It is interesting that the leader talks about bringing in KPMG to help them out. They also needed some other help, or at least the Minister of National Defence did. He must have felt really warm all over when the government brought in Mr. Fantino as the Associate Minister of Defence. I do not know what he was going to contribute to the cause. However, now we have KPMG, which will come through with recommendations. It will be a good study, will all kinds of options in the future, but this is what Mr. Fantino says:

There's a plan A, there's a plan B, there's a plan C, there's a plan Z and they're all F-35s.

There is no great study for other options, and now the government has changed the channel again — or tried to, unsuccessfully — with a three-person panel to merely look at the options. When this panel is looking at these options, are there in fact options or is it set up such that it will come around to the F-35s only? Will it be an open competition so that all suppliers of aircraft and materiel have an opportunity to bid?

**Senator LeBreton:** First, the honourable senator continues to read into the record statements to suit his narrative. I have answered the options analysis question.

I would suggest to the honourable senator that we not question the integrity of the people who will be on the options analysis review panel. Mr. Keith Coulter's professional career includes experience in the Canadian Forces, the private sector and the Public Service of Canada. Dr. Phil Lagasse is an assistant professor of public and international affairs at the University of Ottawa and has, of course, been on the record as being quite critical. He is part of this group. Mr. James Mitchell is a former outstanding public servant who served all governments with great distinction, including the previous government. Finally, Mr. Rod Monette is a former Comptroller General of Canada.

It is a bit of a stretch, honourable senators, to question the integrity of these four outstanding Canadians.

**Senator Moore:** Honourable senators, no one on this side or the other side made a comment about the integrity of the panellists. I said that I want to know that their mandate includes providing an opportunity for all suppliers to submit a bid that will be an open competition; and that the government did not structure the mandate so that these four honourable people are locked into one conclusion. That was my question. It had nothing to do with their integrity, nothing at all. Would the leader like to try answer that question again?

**Senator LeBreton:** The honourable senator does not like the answer, and so he changes the question. The fact of the matter is that I have answered the options analysis question. As both ministers stated on Wednesday —

**Senator Mercer:** You cannot hide the incompetence.

**Senator LeBreton:** If I am looking for incompetence, Senator Mercer, I would put you in the window first.

**Some Hon. Senators:** Oh, oh!

**Senator LeBreton:** It is clear that the options analysis, as I have explained here many times, is absolutely on the table, and we will trust these four outstanding citizens to advise the government going forward.

**Hon. Hugh Segal:** Honourable senators, my question is for the Leader of the Government in the Senate. In view of the fact that all the analysis of the various costs — whether by the Parliamentary Budget Officer, KPMG, the Auditor General, and whether it is over 10 years, 15 years or 42 years — brings us to a total cost of \$1 billion a year for the air defence of Canada. That is 5 per cent of the defence budget and 1/250th of the federal budget. Would it be her view that \$1 billion per year for the defence of Canada, for the support of our allies and for the advancement of our values worldwide is an excessive amount?

**Senator LeBreton:** I thank the honourable senator. He is absolutely right.

• (0950)

As I pointed out yesterday, honourable senators, we are looking at \$1 billion to properly equip our Canadian Armed Forces with a fighter jet fleet. It will cost \$1 billion a year, but I think we have a lot of Canadians who would prefer us not to have a well-armed fighter fleet. Maybe that is the objection here, that they just do not want us to spend any of this money. However, the fact is it will cost \$1 billion a year; Senator Segal is absolutely correct. Whether it is the CF-18 as we have now, the F-35, or other aircraft, it will cost \$1 billion a year. As the honourable senator points out, there are many other areas of government that have a lot more than \$1 billion a year allocated. If we look at the CBC, it is \$1 billion a year, so, guess what, over 42 years it is \$42 billion.

[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I have the honour to table the answer to the oral question asked by the Honourable Senator Callbeck on May 2, 2012, concerning veterans affairs and the answer to the oral question asked by the Honourable Senator Roméo Dallaire on November 7, 2012, also concerning veterans affairs.

## VETERANS AFFAIRS

### VETERANS INDEPENDENCE PROGRAM

*(Response to question raised by Hon. Catherine S. Callbeck on May 2, 2012)*

Primary caregivers, being those spouses or others who were caregivers of Veterans who were in receipt of Veterans Independence Program when they entered long term care or passed away, may be eligible to retain housekeeping and/or grounds maintenance service(s) whichever the Veteran was receiving and to which the primary caregiver became accustomed.

Low income or disabled survivors of certain Veterans who were not in receipt of Veterans Independence Program while the Veteran was living can receive housekeeping and/or grounds maintenance services if they have a need for the service.

Once determined as eligible for Veterans Independence Program as a primary caregiver, an individual cannot be considered eligible as a survivor.

### SERVICES AND BENEFITS

*(Response to question raised by Hon. Roméo Antonius Dallaire on November 7, 2012)*

Veterans Affairs Canada places the highest priority on making sure Veterans have the support they need, when they need it, and that includes support for long term care.

Veterans Affairs Canada supports all eligible Veterans — whether they are traditional War Veterans or modern-day Canadian Forces Veterans.

Veterans Affairs Canada's authority to provide Veterans with a broad range of health care benefits, including treatment benefits through 14 programs of choice, home care support and services through the Veterans Independence Program, and support in nursing homes and other long-term care facilities, is outlined in the *Veterans Health Care Regulations*.

Veterans Affairs Canada contributes to the cost of long-term care for Canadian Forces Veterans who need care due to a disability from an illness or injury related to

their military service. Veterans Affairs Canada is currently supporting more than 400 Canadian Forces Veterans in long-term care facilities across the country.

Under the *Veterans Health Care Regulations*, modern-day Canadian Forces Veterans are eligible for long-term care, Veterans Independence Program and treatment services and benefits. As well, the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, more commonly referred to as the New Veterans Charter, provides them with access to other benefits and services, including disability awards, rehabilitation services, various financial benefits, and individualized case management.

[English]

## ORDERS OF THE DAY

### POINT OF ORDER

**Hon. Claudette Tardif (Deputy Leader of the Opposition):** Your Honour, I rise on a point of order in regards to Senator Duffy's uncalled for comments this morning. Last night, during the course of debate on Bill C-300, several senators on this side quoted from comments made by Senator Duffy in the Standing Senate Committee on Social Affairs, Science and Technology. If honourable senators wish to check the transcript, please do so. The comment made by Senator Duffy that the observations drafted made by Liberal senators on this side were but "ornaments on a tree" are exactly what appears in the transcript of the committee hearings.

There was no rule broken on this side, as indicated by Senator Duffy in his statement. I sincerely regret that Senator Duffy has compounded the problem by making this ludicrous statement this morning.

**Hon. Jane Cordy:** Honourable senators, I agree with the comments made by Senator Tardif. It is truly unfortunate because this bill, Bill C-300, really is a step in the right direction. I congratulated MP Albrecht last night. He deserves our congratulations. The bill went through unanimously. Senators from both sides of this chamber voted in favour of it. The reality is this bill should have been passed Tuesday of this week. It was a bill that we all agreed with, a bill that is a step in the right direction. It is the process that the people on this side have been very upset with.

The rule that Senator Duffy referred to this morning was not broken. In my speech yesterday, I did not name the senator. Senator Duffy stood up this morning and said that he in fact was the senator who made reference to the ornaments on the tree. What I said in my speech yesterday was "We were told at the committee by a Conservative senator," and then I quoted the unnamed senator and I said, "I think this is what" — well I said

“unnamed senator” yesterday. Senator Duffy has said today that it was he, so what Senator Duffy said at the committee meeting was:

I think that the more ornaments we hang on this tree, the more in danger we are of confining rather than expanding the base of the work.

This reference to ornaments was made on two additional occasions during the discussion. That is what I said in my speech yesterday. I did not state a name. I said “a Conservative senator.”

I did, honourable senators, find these comments offensive. Several senators in this chamber, including Senator Callbeck, Senator LeBreton and me, were part of the study that the Social Affairs Committee did entitled *Out of the Shadows at Last*, on mental health, mental illness and addiction. If I have left anyone out, I apologize. This report done by this committee was held in very high esteem around the country. We were very proud of that work. Within that report we also talked about suicide prevention, particularly with young Aboriginals, so I did find the comments offensive. In fact, I made the comment at the committee, if you would like to check it, because it is on the public record, that I found that these were not ornaments, they were observations.

The bill, as I said earlier, passed unanimously in this chamber. That was a positive thing. It is unfortunate when glib comments are made at a committee. It is on the public record. I did not break the rule. Thank you very much.

**Hon. Art Eggleton:** I want to point out, honourable senators, that the draft observations that I drafted and put before the committee, which were described in the way they were by Senator Duffy, were the very ones that the man who is just two rows behind him put in a letter to the Minister of Health — an unprecedented letter from the chair of the committee — supporting those very items that his colleague called ornaments on a tree.

[Translation]

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, is this really a point of order? Could senators cite the rule in question? We are currently debating Senator Duffy’s statement. A statement is not subject to debate. An attempt is being made to circumvent the rules by debating the senator’s statement, which is not subject to debate.

I realize that this is a time when people have been working hard and they are tired and, therefore, perhaps more irritable. However, I believe that we must keep our emotions in check and vent them at home. And if a specific rule has been broken and senators wish to debate it, then I would ask them to please cite the specific rule.

[English]

**Hon. Jim Munson:** Honourable senators, when I was in the news business, I liked to report the facts. Basically, what happened here was simply a senator said these things in the Social Affairs Committee. It sort of struck me at the moment, “ornaments on a tree.” I can read it into the record again, but I

think we all have the record. Not only did the senator say it once, he said it twice. It seems to me that in these observations all we were trying to do was to enhance and strengthen a bill. They were minor observations. It did not change anything except move it forward. To me, it trivializes the whole process.

Honourable senators, if we are all sensitive to this issue of a framework or the prevention of suicide, I, too, come at it from a personal place. Senator Dallaire talked very candidly about four attempts at suicide yesterday. This is real. As a child of New Brunswick — I never met my grandmother. She committed suicide in the Saint John hospital. My father always tried to find out why. I am coming at this from a very personal place, and I consider it extremely important. I do not like to cast aspersions. I have never been like this or personally attacked anyone in this chamber, but I did report what was there.

When it comes down to this debate, I think there has to be a lesson learned here somewhere along the line, that at some point, if we are going to work together on something, in particular at this Christmas season, there must be a little give from time to time.

• (1000)

We recognize that we are in a minority position and we have ways to get our points of view across. We try through our amendments, which do not work. I am simply saying that at some particular point along the line, when it comes to work on social issues that we all care about, observations would be helpful. It would be helpful for our work here in this chamber.

I came here nine years ago. My anniversary was two days ago. I love this place and I love the privilege of this place, but at some point, as we continue into 2013, we have to learn how to compromise on certain issues that we all care about.

I rest my case.

**Some Hon. Senators:** Hear, hear.

**The Hon. the Speaker:** Honourable senators, I thank the Honourable Senator Tardif for raising the point of order. I will take the matter under advisement.

[Translation]

## FIRST NATIONS SELF-GOVERNMENT RECOGNITION BILL

### SECOND READING—ORDER RESET

On the Order:

Second reading of Bill S-212, An Act providing for the recognition of self-governing First Nations of Canada.

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, this bill stands in the name of Senator St. Germain. I will likely be taking over with regard to this bill. Therefore, I would like to adjourn the debate for the balance of my time.

[English]

**The Hon. the Speaker:** Honourable senators, this bill was at second reading stage of debate standing in the name of Senator St. Germain. Is there unanimous consent that the matter now stand in the name of Senator Carignan?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** When the matter is called and the honourable senator rises to deal with it, it will be his responsibility to move the motion.

(Order reset.)

### CRIMINAL CODE

#### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Braley, for the second reading of Bill C-217, An Act to amend the Criminal Code (mischief relating to war memorials).

**Hon. Roméo Antonius Dallaire:** Honourable senators, I am not delaying speaking on this bill for any other reason than the fact that I am getting information from other nations that have gone through similar scenarios with their places of significant commemoration. I wish to put that information together for my continued participation in the debate, which will not be ready until the new year. Therefore, I would like to continue debate at a later date for the balance of my time.

(On motion of Senator Dallaire, debate adjourned.)

### STUDY ON CANADIAN FOREIGN POLICY REGARDING IRAN

#### NINTH REPORT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Andreychuk, seconded by the Honourable Senator Martin, for the adoption of the ninth report of the Standing Senate Committee on Foreign Affairs and International Trade entitled: *Iran in Focus: Current Issues for Canadian Foreign Policy*, tabled in the Senate on December 12, 2012.

**Hon. Percy E. Downe:** Honourable senators, the committee worked very hard on this report. Senator Andreychuk did an excellent job yesterday in her remarks. I had a rather long speech on the Canada-Panama free trade agreement. Rather than take the time, I will spare you that and simply say that I want to associate myself with the comments of Senator Andreychuk.

I move that we proceed with this report.

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

**Hon. Senators:** Agreed.

(Motion agreed to and report adopted.)

### STUDY ON ISSUE OF CYBERBULLYING

#### NINTH REPORT OF HUMAN RIGHTS COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator Munson, that the ninth report of the Standing Senate Committee on Human Rights, entitled: *Cyberbullying Hurts: Respect for Rights in the Digital Age*, tabled in the Senate on December 12, 2012, be adopted and that, pursuant to rule 12-24(1), the Senate request a complete and detailed response from the government, with the Minister of Public Safety being identified as the minister responsible for responding to the report, in consultation with the Minister of Justice and Attorney General of Canada and the Minister of Health.

**Hon. Claudette Tardif (Deputy Leader of the Opposition):** Question.

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

**Hon. Senators:** Agreed.

(Motion agreed to and report adopted.)

### RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

#### MOTION TO AUTHORIZE COMMITTEE TO STUDY THE POWERS AND RESPONSIBILITIES OF THE OFFICERS OF PARLIAMENT AND THEIR REPORTING RELATIONSHIPS TO THE TWO HOUSES— DEBATE SUSPENDED

On the Order:

Resuming debate on the motion, as amended, of the Honourable Senator Comeau, seconded by the Honourable Senator Di Nino:

That the Standing Committee on Rules, Procedures and the Rights of Parliament be authorized to examine and report on the powers and responsibilities of the officers of parliament, and their reporting relationships to the two houses; and

That the committee present its final report no later than March 31, 2013.

**Hon. Anne C. Cools:** Honourable senators, I rise to support —

**The Hon. the Speaker:** Honourable senators, so that all honourable senators will understand the flow, the honourable senator obviously has 15 minutes and an additional 5 upon consent. We have a house order that the bells must begin to ring in 7 minutes, so I want senators to be aware that there will be an interruption and a pause.

**Senator Cools:** Honourable senators, I rise to support Senator Comeau's motion, as amended, to refer the powers and role, and this letter of the seven self-styled agents of Parliament, to our Rules Committee. Today, as on December 11, I hold that self-styling and self-designation are no part of our constitutional order. Our *lex parliamenti* and its parent, *lex prerogativa*, know no class of persons styled "agents" or "officers of Parliament," as applied to these seven offices with bureaucracies. The *lex* and the *rex* will reveal if they are our agents, our officers, or neither. They will explain how and by whom these officers are designated and styled, and how such affiliation to Parliament is decided. They will tell if such self-styling can pass from one to the next, and if they are "agents" of all our 41 Parliaments held. I note that the Privy Council website has a PowerPoint piece by former clerk Kevin Lynch that speaks of 12, not 7, such offices. Even their number is in doubt.

Honourable senators, the word "Parliament" is used as a fixed thing, like its buildings, but it is a transitory assembly, summoned and dissolved at the pleasure of, and for the causes declared by, the sovereign. Parliaments come and go. The old terms "a Parliament" and "the Parliaments" are better. Parliament is the Queen, this upper house styled the Senate, and the House of Commons. It works by absolute concurrence among these three independent parts, each of which holds and exercises its powers jealously. A single, highly structured unity, it is indivisible and inseparable, but its two houses are separate and independent. Its enacting power is our liege Lady Queen Elizabeth II. She is head of Parliament, head of state, head of government, and the actuating power in our constitution. Our seat of government is Government House, the Governor General's quarters in Ottawa. Neither house, nor the two, are "Parliament." Their names, "Senate" and "House of Commons," describe their history and independence. The term "officers of Parliament" is unclear and could be why the seven authors prefer the newer, but still self-assigned, "agents of Parliament."

• (1010)

Honourable senators, it is not well known that the houses of Parliament have no power to appoint or style their own officers. By the *lex prerogativa*, the Queen, by commissions and letters patent, appoints them. These crown servants serve her by serving their assigned house. Her Royal hand affiliates and attaches them by name, inseparably, to the house they are sworn to serve and attend, unalterable but by her. The exception is the Commons speaker, who is the only high office of state not appointed by the Queen, and there is a long history to that. He is its mouth, not its officer. The term "officers of Parliament" is not helpful, even to describe the total of both houses' officers. There is no united affiliation and no united or aggregate commission to Parliament. Our constitutional order is independence. The Queen's houses are masters of their proceedings, members and servants, officers. House officers, like members, are defined by their individual legal attachment and affiliation to their house. The Queen grants the force of law to house officers. Constituting house officers, like house membership, is deeply personal. She commissions

individual human persons, not buildings, not animals, but human persons, by name as officers for each house. These royal grants, as grants in property, are theirs to hold, hence the words "holding office" and "officeholders." Tenure is the time of personal tenancy in the office. I repeat there is no legal aggregate attachment of officers to Parliament, no "officers of Parliament." It is slang.

Honourable senators, these parliamentary principles, settled in the seventeenth century in Britain, were received in Canada by the Constitution Act, 1867. That century, one of bitter contest over power, taxation, the public revenue, representation and members' free speech, brought the independence of Parliament, the houses, their members and their officers. The Commons House resisted the king's absolute control by his numerous officeholders, placemen and servants, but it still needed officers with legal force, power only the king could give by royal grant since all executive power was, then as now, the king. Large constitutional questions were settled, and therein began the notion of the subjects' birthright and entailed inheritance of these inviolable rights, as the royal power, the *rex*, adapted to the common power of the subjects.

Honourable senators, I come to our houses' officers, their affiliations, their commissions and oaths to attend the houses. "Attend" is a key word. All senators must attend, appear, in the Senate. John George Bourinot, at page 100 of his 1916 *Parliamentary Procedure and Practice*, writes that for the throne speech, our Black Rod informs the Commons of His Excellency's pleasure that they "... do forthwith attend him in the Senate. . . ." Dissolution proclamations state at his page 104 that "... the senators and members of the House of Commons are discharged from their attendance . . ." Our Senate Clerk is sworn to "attend upon the Senate."

Honourable senators, our Senate Clerk, like past and present House of Lords Clerks, is styled the "Clerk of the Parliaments." Note the plural: "of the Parliaments," not "of Parliament." However, our Clerk swears the oath, not of the Lords Clerk, but of the ancient British Commons Clerk, then styled the "Under Clerk of the Parliaments." This is because our Constitution Act, section 18, defines our Senate and Commons privileges, immunities and powers as those of the British Commons House. This oath of the ancient British Commons Clerk, sworn by our Clerk, was adapted from the oath of the Lords Clerk, then styled "Clerk of the Parliaments." The phrase "to attend upon the Commons" was added to it. This Commons Clerk's office is found in early Journals.

Honourable senators, John Hatsell, Commons Clerk, in his 1781 *Precedents of Proceeding in the House of Commons*, Volume II, states, at page 168:

The office of Clerk of the House of Commons, or, as it is sometimes called, "Clerk of the Commons House of Parliament," or, perhaps still more properly, as it is stiled in the patent, "Under Clerk of the Parliaments, to attend upon the Commons," is an office granted by the King . . . by letters patent . . . Before the Clerk enters upon his office, he takes the following oath, kneeling . . . before the Lord Chancellor; which oath is administered by the Clerk of the Crown.

(Debate suspended.)

**The Hon. the Speaker:** It being 10:15, pursuant to the order of the house, the bells will now call in the senators for the vote at 10:30.

Harb  
Hubley  
Jaffer

Watt  
Zimmer—27

• (1030)

## JOBS AND GROWTH BILL, 2012

### THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Buth, seconded by the Honourable Senator Unger, for the third reading of Bill C-45, A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures.

Motion agreed to on the following division, and bill read third time and passed:

### YEAS THE HONOURABLE SENATORS

Andreychuk  
Ataullahjan  
Bellemare  
Braley  
Brazeau  
Brown  
Buth  
Carignan  
Comeau  
Dagenais  
Demers  
Doyle  
Duffy  
Eaton  
Enverga  
Fortin-Duplessis  
Frum  
Gerstein  
Greene  
Housakos  
Johnson  
Lang  
LeBreton  
MacDonald  
Maltais

Manning  
Marshall  
Martin  
Meredith  
Mockler  
Ngo  
Nolin  
Ogilvie  
Oliver  
Patterson  
Plett  
Poirier  
Raine  
Rivard  
Runciman  
Segal  
Seidman  
Seth  
Smith (*Saurel*)  
Stewart Olsen  
Tkachuk  
Unger  
Wallace  
Wallin  
White—50

### NAYS THE HONOURABLE SENATORS

Callbeck  
Chaput  
Cordy  
Cowan  
Day  
De Bané  
Downe  
Dyck  
Eggleton  
Fraser  
Furey

Kenny  
Mercer  
Mitchell  
Moore  
Munson  
Ringuette  
Rivest  
Robichaud  
Sibbeston  
Smith (*Cobourg*)  
Tardif

### ABSTENTIONS THE HONOURABLE SENATORS

Cools—1

### RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

MOTION TO AUTHORIZE COMMITTEE TO STUDY  
THE POWERS AND RESPONSIBILITIES OF THE  
OFFICERS OF PARLIAMENT AND THEIR REPORTING  
RELATIONSHIPS TO THE TWO HOUSES—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion, as amended, of the Honourable Senator Comeau, seconded by the Honourable Senator Di Nino:

That the Standing Committee on Rules, Procedures and the Rights of Parliament be authorized to examine and report on the powers and responsibilities of the officers of parliament, and their reporting relationships to the two houses; and

That the committee present its final report no later than March 31, 2013.

**Hon. Anne C. Cools:** Honourable senators, I had been saying that the Under Clerk took his oath before the Lord Chancellor on his knees.

This Under Clerk's oath reads, in part, at page 169 of *Precedents of Proceeding in the House of Commons*, Volume II:

Ye shall also well and truly serve his Highness, in the office of Under Clerk of his Parliaments, to attend upon the Commons of this realm of Great Britain, making true entries, remembrances, and journals of the things done and past in the same.

Hatsell prompts us to compare this oath to that of the 'Clerk of his Parliaments' in the 1620 *Journals of the House of Lords*, at page 59. These oaths, the same in substance except for "to attend upon the Commons," show the emerging independence of the houses.

Honourable senators, in his 1966 book *The Officers of the Commons 1363-1965*, Philip Marsden, once a British Commons Speaker staff, wrote on the separation and origin of the two distinct houses and officers. He tells at page 29:

It fell to the Lord Chancellor to provide the earliest clerical assistance to the Commons, though the precise date of this innovation is not known — principally because we do not know exactly *when* the Commons were first recognised as a "House" with rights of its own as well as duties to the Crown . . . it was probably early in the fourteenth century

that the Chancellor was ordered to provide “a clerk” for the service of the Lower House and it is almost certain that one or other of his own Clerks in Chancery was seconded to the . . . task. A “clerk” . . . was simply one who could read and write; a Clerk in Chancery possessed, in addition, legal training and qualifications.

. . . the original appointment (made by the Chancellor but on behalf of the Crown) was not made directly to the Commons; the new officer was designated as Under-Clerk of the Parliament . . .

The early Under Clerks were assistants to their superior, the Clerk of the Parliaments, and, like him, were Chancery Clerks.

Honourable senators, on September 16, 2009 our beloved Speaker Kinsella told us that a commission by letters patent under the Great Seal of Canada was granted to Gary O’Brien, then sworn as Clerk of the Senate, and Clerk of the Parliaments. His Commission at Senate *Journals* page 1229 reads:

Know you that, reposing special trust and confidence in your loyalty, integrity and ability, We, by and with the advice of Our Privy Council for Canada, did, on the ninth day of September in the year of Our Lord two thousand and nine and in the fifty-eighth year of Our Reign, constitute and appoint you, Gary William O’Brien, Clerk of the Senate and Clerk of the Parliaments.

To have, hold, exercise and enjoy the office of Clerk of the Senate and Clerk of the Parliaments unto you, Gary William O’Brien, with all the powers, rights, authority, privileges, profits, emoluments and advantages unto that office of right and by law appertaining during Our Pleasure for a term of seven years, effective the sixteenth day of September in the year of Our Lord two thousand and nine.

• (1040)

Honourable senators, I now read our Clerk’s solemn oath sworn in this deeply personal rite of passage in his life, which has been a life of faithful service to this place. *Journals* at page 1230 reads:

Ye shall be true and faithful, and troth ye shall bear to our Sovereign Lady Queen Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, and to Her Heirs and Successors; Ye shall nothing know, that shall be prejudicial to Her Highness, the Crown, Estate, and Dignity Royal, but that you shall resist it to your power, and with all speed ye shall advertise Her Excellency the Governor General thereof, or at least some of Her Council, in such wise as the same may come to Her Knowledge. Ye shall also well and truly serve Her Highness in the Office of Clerk of the Senate of Canada, to attend upon the Senate of Canada, making true entries and records of the things done and passed in the same. Ye shall keep secret all such matters as shall be treated in the said Senate, and not disclose the same before they shall be published, but to such as they ought to be disclosed unto; and generally Ye shall well and truly do and execute all things belonging to you to be done appertaining to the Office of Clerk of the said Senate. As God you help.

Honourable senators, our Clerk, the highest officer, is constituted to attend upon the Senate. He is a royal gift, affirming the Senate’s independent and representative role in our federal constitutional order and its national finance. Enacted by Queen Victoria, this design — this order — reveals the mind of British North American and British statecraft and the genius of the BNA Act, 1867. That year, November 6, the day before our first Throne Speech, the first Senate Clerk, John Fennings Taylor the Elder, swore the same oath as Gary O’Brien. The Senate Speaker said that, by usage, the Senate Clerk, at *Journals* page 57:

. . . is required to take the oath of office before the Chancellor or the Honourable the Speaker of this House.

His oath reads partly:

Ye shall also well and truly serve Her Highness in the Office of Clerk of the Senate of Canada, to attend upon the Senate of Canada, making true entries and Records of the things done and passed in the same. . . . As God you help.

Honourable senators, the Senate Speaker also reported the first Black Rod’s commission. It reads in part, at *Journals* page 56:

Know You, that having confidence in the loyalty, integrity and ability of you, the said *René Kimber*, We . . . by these Presents do nominate, constitute and appoint you to the office and place of Gentleman Usher of the Black Rod of the Senate . . . to perform the duties incumbent . . . of and attending upon the said Senate. . . .

Next day, after the Throne Speech, the Speaker reported commissions for three Masters in Chancery. They were Senate Clerk John Fennings Taylor the Elder, Robert LeMoine and Fennings Taylor. The Elder Taylor’s commission, in *Journals* at page 61, reads partly:

Know Ye, that reposing especial trust and confidence in the fidelity, ability, and integrity of you . . . we . . . by these presents do nominate, constitute and appoint you, the said *John Fennings Taylor*, the Elder, to be Master in the Chancery of Our Dominion . . . to attend our Senate . . . and to do, perform, and execute all such acts . . . in Our Parliament as appertain to the said office, and as you shall be required and ordered to do in the said office of Master in the Chancery by us, or by the said Senate . . . sitting in Our Parliament. . . .

Honourable senators, vacant until 1884 and ended on May 26, 1926, the Senate Sergeant-at-Arms’ commission, at page 76, *Journals of the Senate*, February 22, read:

Know You, that reposing trust and confidence in your loyalty, integrity and ability, We . . . by these presents Do nominate, constitute and appoint you the said *Juchereau St. Denis LeMoine* to be Sergeant-at-Arms of the Honourable the Senate. . . .

Honourable senators, en passant, I have not found the commission for the Clerk of the Crown in Chancery, Edouard Langevin, appointed July 13, 1867, who signed the commissions

for the newly appointed senators. About this office, which ended in 1920, John George Bourinot, in his 1916 *Parliamentary Procedure and Practice*, said at page 189 that he:

... is appointed by the Crown to perform certain duties by its command in connection with elections, and also to attend in the upper house on the occasion of the exercise of certain royal prerogatives. ...

And, at page 188, that he:

... is always present at the table of the House of Commons. ...

Further, at Confederation, the British Commons Clerk was styled — this is en passant — “Under Clerk of the Parliaments to attend upon the Commons” as Erskine May was appointed in 1871. Unlike Senate unbroken custom, Bourinot says at page 167 that Canada has not used this style of British practice.

Honourable senators, our officers’ commissions are specific to the Senate. In Canada’s 41 parliaments assembled, the Senate has known no officer by commission styled “officer of parliament.”

May I continue?

**The Hon. the Speaker:** Five minutes?

**Hon. Senators:** Agreed.

**Senator Cools:** I have been speeding it up trying to get through.

Our officer, the Senate Clerk, is not styled “officer of parliament.” He is styled “Clerk of the Parliaments,” and “attends upon” the “parliaments,” right here in Parliament’s house, the Senate. This is our constitutional order in its equipoise. The independence of Parliament is in its houses, members and officers. The *lex prerogativa* and the *lex parliamenti* meet in “proceedings in parliament.” These, moved by members in their houses who are served therein by their house officers, are assigned and governed by this same constitutional order. There is one constitutional order in this land, carefully designed in the well-travelled journey of custom, practice and usage, received here in Canada, aboard Her Majesty’s ship of state, the British North America Act 1867. This is the independence of her parliaments. Her Majesty the Queen is their absolute head and heart. She affiliates persons by name to her independent parliaments and to her independent houses, over which she stands on guard in her battleship, the HMCS *lex prerogativa*. This, honourable senators, is our fixed and entailed constitutional order. The question that we are asking this committee to look at is whether or not these office-holders’ claims and demands for greater powers are within or outside of this constitutional order.

Thank you, honourable senators. Had I known that I would have had additional time, I would have moved more slowly, but I do want to impress upon us that this Senate was intended, in the British North America Act and in the minds of the British North Americans who created it, led by Sir John A. Macdonald, to be a strong and powerful house in the business of raising taxes and spending money. As I said some days back, this house was equipped with stronger powers than the House of Lords at the time of Confederation. Many are not aware of the important

place that the Senate occupied in the Constitution design and in the Confederation debates, and even in bringing together all the legal variables to make the fruition possible.

Honourable senators, many do not know that the Queen’s proclamation in 1867, which brought the BNA Act into force, lists and contains the names of the senators who were to be appointed, called to the Senate. It is fascinating. It shows that unlike members of the House of Commons who were to be elected later, the British North America Act, under Her Majesty’s hand in that proclamation, left nothing to chance and listed every single individual senator by name.

• (1050)

So much of our past seems to be unwanted and ignored, and so many novel creations seem to be emerging daily that I find that not only have we lost the thread of the law, but we have even lost the lexicon and the language of the law.

Honourable senators, this has been my tiny little effort to bring some of this information forward and to try to crush it into very few minutes. It really is a matter of enormous complexity. As I said, it will be a huge intellectual and legal challenge, particularly as now these terms, “officers of Parliament” and “agents of Parliament,” have acquired political currency. Much work will have to be done.

Once again, I thank Senator Tardif for supporting this initiative, and I thank Senator Comeau for his very thoughtful work and thoughtful efforts in bringing this before our attention. Thank you very much, honourable senators.

**Hon. George J. Furey:** Would the honourable senator take a question?

**Senator Cools:** Happily.

**Senator Furey:** To begin, I wish to thank Senator Cools for her erudite commentary. When we refer to the Clerk of the Senate as the Clerk of the Parliaments, we use the plural. Can you tell us why we do that? What Parliament other than the Parliament of Canada are we referring to with the plural?

**Senator Cools:** Honourable senators, when I began, I hastened to state that the term “Parliament” is used nowadays as a fixed, inert thing. If you read the old literature, you will read many references to the King about summoning a Parliament and to his Parliaments.

There have been 41 Parliaments since 1867. When our Clerk is constituted as the Clerk of the Parliaments, we know exactly what that means. It does not mean sitting in these houses day in and day out, year in and year out as now. That was unknown. Parliaments assembled for so many months and then were dissolved. Parliaments were shorter.

Our Clerk’s commission means that when Her Majesty calls her councils and her members into her Parliaments assembled in the upper house, that Clerk, not another person named by anybody else, assigned by her, will be the clerk of that meeting, that assembly. This is what that means. It does not mean that he, Gary O’Brien, was the clerk of the past 41 Parliaments. From the day

he is constituted and appointed, which is a very personal thing forward, there is no doubt as to who is in charge of reporting and certifying things done. Her Majesty has named and defined that individual person to that task, that is what that means. I hope I explained that satisfactorily. It is an awfully difficult thing to explain.

**The Hon. the Speaker:** Is there further debate?

[Translation]

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, this is an important debate for both chambers. I certainly intend to take part in the debate once the committee report has been tabled. I will not be contributing to the debate today, but from a technical standpoint, it is moved that the final report be tabled no later than March 31, 2013. Given the scope of the task, this would be impossible.

#### MOTION IN AMENDMENT

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I would like to propose an amendment that the report be tabled no later than March 31, 2014.

**The Hon. the Speaker:** It is moved by the Honourable Senator Carignan, seconded by the Honourable Senator Comeau, that the report deadline be extended to March 31, 2014. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

(Motion agreed to.)

[English]

**The Hon. the Speaker:** Is there further debate on the motion as amended?

(On motion of Senator Nolin, debate adjourned.)

[Translation]

#### POVERTY

##### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Robichaud, P.C., calling the attention of the Senate to the issue of poverty in Canada — an issue that is always current and continues to have devastating effects.

**Hon. Pierre Claude Nolin:** Honourable senators, I am pleased to speak to the debate on the inquiry of Senator Robichaud on the issue of poverty in Canada.

[English]

Failure to adequately address this issue shows that poverty comes in many different forms, including the poverty of our collective imagination.

[Translation]

We have studied this issue a number of times during various Parliaments and, yet, poverty still remains far too widespread in a country as developed as ours.

Speaking to the possible entry of the United States into the allied war effort of World War II, British Prime Minister Winston Churchill said that the United States invariably does the right thing, after having exhausted every other alternative.

[English]

I like to think that we in the northern part of this continent have an understated tendency to behave differently than the sentiment expressed by the then British Prime Minister, that we do not take the path of least resistance when confronting our challenges. We in this country are at our best when we are ruthless and realistic about finding solutions to our problems.

[Translation]

Especially on social matters that have grave long-term costs and economic consequences for the well-being of our society, we have to be innovative, and strive to be early adopters of best practices and approaches that can be deployed both within our domestic jurisdictions and internationally.

If the political leaders of this country and their advisors decided to tackle this issue, certainly Canada could position itself as a leader in providing solutions to this problem.

[English]

On this matter of poverty, but other vexing issues as well, we in this chamber, as it is currently constituted, have a unique opportunity to speak truth to power. Our tenure gives us tremendous opportunities and leverage to influence policies and actions pursued not just by governments but by the charitable and private sectors.

[Translation]

We are much more than an in-house focus group or permanent think tank. I believe we have expertise and, I hope, insight that can be leveraged towards finding ways to solve this societal malady.

[English]

Reading the excellent speeches that have been delivered thus far, and also in the course of doing research for my own speech, one theme that strikes me is how debilitating poverty can be, and not only for the segments of society that subsist below the poverty line; there is also the long-term economic cost poverty engenders for all of our society.

[Translation]

Economic research by both the International Monetary Fund and the OECD illustrates how rising levels of poverty or income inequality in a society lead to shorter spells of economic expansion and thus less growth over time.

• (1100)

In other words — and this is not just relevant to our neighbours to the south, but to Canada as well — a country's capacity to recover from economic shocks of the sort that started in 2008 with the bursting of the U.S. housing bubble is very much hampered when there are significant levels of poverty or income inequality in that country.

[English]

Viewing Canada's poverty problem through this prism, how poverty has a disabling effect on our economy's long-term growth prospects, should provide the impetus for our government to adopt a renewed sense of urgency in tackling this issue. None of us is immune when Canada's long-term growth prospects become diminished. The emerging existence of this dynamic in our economy, as borne out by IMF and OECD research, should be seen as the canary in the coal mine.

[Translation]

Honourable senators, confronting poverty and its causes requires a complex mix of approaches where there is a role for both the private or charitable sector and governments.

I am leery about strictly private sector solutions in areas of social policy, in the same way that I do not subscribe to the view that bigger and more government will solve all of our problems.

That said, we have to be smart about the policy tools and measures we do deploy to help society's most vulnerable, or those people and communities most at risk of falling into a downward trajectory in their economic and social well-being.

Specifically, we have to be vigilant about ensuring that interventions and policy measures that society and governments deploy are guided and executed by people who excel at good judgment and not just good intentions.

Good intentions poorly executed, or expressed in flawed legislation or public policy, can often have negative, albeit unintended consequences.

[English]

Everyone, from those who work for private foundations and work in areas related to counteracting some of the causes of personal and societal poverty, to educators and front-line social workers, is important in dealing with this issue. Beyond directly or indirectly providing funding, governments and the charitable sector must ensure these individuals have access to the best practices and training to execute their functions.

[ Senator Nolin ]

[Translation]

Consider how changing technology has had both positives and negatives for facilitating the work of these workers and volunteers.

The Internet, for instance, is a great tool for learning and sharing expertise on issues and practices related to combating poverty and its causes.

But the best front-line worker needs training and expertise that goes beyond sitting at a computer or being glued to their smart phone.

They need social skills and the sound judgment that only comes from hands-on experience derived from dealing with people not just as numbers on case files, but as human beings.

[English]

The reality is that no problem in society can be solved simply by throwing more money at it or by building bigger bureaucracies to deal with it. The reality in this age is that governments must walk a fine line between measures to spur economic growth and innovation and striving for the fiscal discipline of governments, agencies and charities and must often find ways to do more with fewer financial resources.

[Translation]

Whether it is through measures to ensure progressiveness in our tax system and social programs, or other legislative and regulatory initiatives, we have the capacity to strive for excellence in our approach to combating poverty.

If policy decisions by successive governments, both Liberal and Conservative, and guidance by our financial regulators have established Canada's reputation for having the soundest banking and financial system in the world, certainly we are just as capable of being as effective in fighting poverty.

[English]

This chamber has always been very good at using the analytical window provided by experts in various fields to make constructive suggestions with respect to policy. Beyond some of the individuals who appear as witnesses before our committees, consider the role of health care workers and former health care workers who have sat, and continue to sit, in this chamber as senators.

I am proud of the fact that prime ministers, past and present, have appointed current and former health care workers to this chamber so society can leverage their expertise into sound public policies.

Occasionally we have to challenge conventional thinking on government policy, particularly if it is policy that can have an indirect impact on whether our children are given the support from a young age to be in a position to realize their full economic and social potential when they grow to be adults. Governments can act as enablers for civil society to root out many of poverty's long-term causes, even if it means going against the grain of conventional thinking, or occasional predilection toward ideological preoccupation.

[Translation]

I would also like to say a few words about preventative health care.

I have come to the view that a robust promotion of preventative health care will ensure a healthier, smarter population throughout everyone's life cycle. For a healthier, smarter population is less susceptible over the short term and long term to poverty-causing illnesses and disabilities of both the mental and physical variety.

Consider the benefits of emphasizing and educating society on healthy dietary and physical fitness habits from an early age.

Children are products of the environment in which they are raised. Again, children are products of the environment in which they are raised.

As legislators, we are in a position to push for policies that emphasize the value of school curriculum programs geared not just towards marketing physical fitness and healthy diets, but towards ensuring that society and children from a young age understand the science behind what they are being taught.

Marketing campaigns, interventions and educational curriculum that have shame and shun elements to them should be avoided in favour of raising awareness within society and among our children through careful explanation.

[English]

As we debate poverty-reduction strategies, I also feel we must avoid tactics of the sort that are a routine part of the highly politicized approach to social policy in the United States. There we have seen that calculated efforts by influential political actors have had a corrosive effect on the accessibility of inexpensive and readily available services for women's reproductive health and scientifically based sex education in the domains of that nation's health care system, public school system and institutions.

Anyone who cannot see the correlation between a closed or repressed approach to these matters and the poverty-inducing impact of teen and unwanted pregnancy in some of society's most vulnerable communities, including minority communities, should just look at the well-researched article in a recent edition of *The Economist*.

[Translation]

Research shows a strong correlation between a higher incidence of teen pregnancy and single parenthood in states that take a socially conservative approach towards sex education and women's reproductive health versus states that are more progressive on these matters.

• (1110)

[English]

The preoccupations of a significant segment of the Republican Party with regressive social policy in the realms of reproductive health, health care in general, and sex education and their

attempts to delegitimize scientifically driven and empirically supported best practices for dealing with these issues act as an accelerant for poverty.

We can learn from this experience in Canada by the policies, positions and postures that we promote. That is the sort of preventive health care that will yield long-term dividends for all of society.

[Translation]

Another area that we have to acknowledge is the role of the private sector in addressing societal poverty and its causes.

Like the health care field, this chamber has also over the years been graced by some very effective and thoughtful philanthropists.

Honourable senators, may I have five more minutes?

**Some Hon. Senators:** Yes.

**Senator Nolin:** One of these philanthropists is the Honourable Michael Meighen, who has always been generous with his time and insights.

The best philanthropists are not just those who excel at financial or charitable philanthropy, but those who are also philanthropists of ideas.

As a friend of this chamber, the former senator continues to be generous with his advice and counsel, as demonstrated in his excellent acceptance speech when he recently received an Honorary Doctor of Laws from McGill University.

[English]

Government and public policy has very much to be there to act as enablers, not obstacles, to the philanthropic sector, which is involved in a vast array of causes related to countering individual and societal poverty. Senator Meighen's stellar philanthropic work dealing with post-secondary education, learning disabilities research, and physical and mental health is an example that should inspire all to continue giving.

Philanthropy is not only good for the soul, but it is also good for everyone's economic bottom line and Canada's macroeconomic resilience. The effectiveness of any charity or philanthropic endeavour is very much influenced by the calibre of people who are involved in administering it. It is the difference between the Movember campaign to raise awareness and funds for men's mental health and prostate cancer, which raised \$43 million last year and, as a comparison, the campaign for epilepsy research — epilepsy can affect children starting younger than five years old and can stay with them all their lives — which raised only \$500,000 in the same year.

[Translation]

Honourable senators, the charitable sector has to compete with other sectors of the economy to hire and retain the most qualified and effective marketing experts, professional fundraisers and charitable workers.

In order to make it possible for the charitable sector to secure the services of dynamic and talented people in these areas, governments should not treat it any differently than other economic sectors with respect to regulating salaries and compensation.

In past parliaments, private members' bills have been introduced in the other place that have sought to put legislative caps on the salaries of workers in the charitable sector.

If such a bill ever came before this chamber, I would vote against it.

[English]

Philanthropy, and the examples set by philanthropists of Senator Meighen's calibre and effectiveness, exemplify the sense of responsibility to our fellow citizens.

On the matter of compensation for workers in this sector, we should reflect on the wisdom and insights they continue to offer.

I would like to conclude by highlighting the fact that, similar to most other issues that we confront, the solution to societal poverty entails more than just throwing money at it. The solutions are more complicated than that because the underlying problems are complicated. Beyond poverty or income inequality, the matter of poverty encapsulates matters like homelessness, mental health, learning disabilities and physical disabilities. The costs of ineffective action in these areas are not borne just by certain segments of society. In fact, everyone is diminished by a failure to arrest poverty and its causes.

[Translation]

Ignoring the debilitating costs that poverty entails for individuals and societies alike is not going to make it go away. The practice of denial usually leads to unintended, and often unexpected, consequences.

Let us move forward in tackling Canada's poverty problem and embrace more outside-the-box thinking.

Being open to new ideas, especially from people with different backgrounds than our own, provides the intellectual seed capital for innovation.

We do not want to let our failures and denials define us. We can do better than that — much better.

(On motion of Senator Cowan, debate adjourned.)

[English]

## IMPROVED MENTAL HEALTH FOR INMATES

### INQUIRY—DEBATE SUSPENDED

**Hon. Bob Runciman** rose pursuant to notice of November 21, 2012:

That he will call the attention of the Senate to the need for improved mental health treatment for inmates, especially female inmates, in federal correctional institutions and the viability of providing such treatment through alternative service delivery options.

[ Senator Nolin ]

He said: Honourable senators, I rise today to draw the attention of the Senate to the need for improved mental health treatment for inmates, especially female inmates, in federal correctional institutions and the viability of providing such treatment through alternative service delivery options.

This is not a new problem. Personally, I have been pursuing this issue since my days as a correctional services minister in the province of Ontario.

I am not alone; I know many of you in this chamber, on both sides of the aisle, have long been concerned about the treatment of mentally ill offenders. The problem has been studied many times, by many people, including recently by the Standing Committee on Public Safety and National Security in the other place. The Correctional Investigator of Canada, Howard Sapers, has highlighted this issue time and again.

Our own Standing Senate Committee on Legal and Constitutional Affairs, in the lead observation in its report on Bill C-10 earlier this year, noted that:

One of the most consistent concerns heard throughout the committee's hearings was the difficulty that the correctional system faces in dealing effectively with the multitude of challenges posed by offenders who suffer from mental illness, especially severe mental illness, and the "revolving door" impact this has on costs to the justice system and society at large — police and courts, correctional facilities, victims of crime, and property damage. . . .

It is no secret there was a lot of disagreement on Bill C-10. It was as contentious as any piece of legislation in my almost three years in the Senate. However, there was no disagreement on this observation. Senators on both sides of the table agreed there is an urgent need to act. This is not a partisan issue.

• (1120)

The committee heard testimony that treatment is often successful and that equivalent or lower-cost service delivery options are available, but, as our observation said, they have not been appropriately utilized or seriously considered by federal corrections officials. The committee urged the Correctional Service of Canada to address this challenge, particularly in relation to female offenders.

(Debate suspended.)

## VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I am sorry to interrupt the honourable senator, but I would like to do two things.

First, I should like to call the attention of all honourable senators to the presence in the Prime Minister's gallery of His Excellency, Jorge Hernán Miranda Corona, the distinguished Ambassador of the Republic of Panama.

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

**Hon. Senators:** Hear, hear!

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** I wish to advise honourable senators that we will have the honour of having present, during the Royal Assent ceremony in the Governor General's Gallery, Her Excellency Dr. Sharon Johnston, the spouse of His Excellency the Governor General.

Honourable senators, is it your pleasure that the sitting be suspended to await the arrival of His Excellency the Governor General?

**Hon. Senators:** Agreed.

(The Senate adjourned during pleasure.)

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• (1140)

[Translation]

### ROYAL ASSENT

His Excellency the Governor General of Canada having come and being seated on the Throne, His Excellency the Governor General was pleased to give the Royal Assent to the following bills:

An Act to amend the Food and Drugs Act (non-corrective contact lenses) (*Bill C-313, Chapter 25, 2012*)

An Act to implement the Free Trade Agreement between Canada and the Republic of Panama, the Agreement on the Environment between Canada and the Republic of Panama and the Agreement on Labour Cooperation between Canada and the Republic of Panama (*Bill C-24, Chapter 26, 2012*)

An Act to amend the Canada Labour Code and the Employment Insurance Act and to make consequential amendments to the Income Tax Act and the Income Tax Regulations (*Bill C-44, Chapter 27, 2012*)

An Act to amend the Criminal Code (elder abuse) (*Bill C-36, Chapter 29, 2012*)

An Act respecting a Federal Framework for Suicide Prevention (*Bill C-300, Chapter 30, 2012*)

A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures (*Bill C-45, Chapter 31, 2012*)

The Honourable Barry Devolin, Acting Speaker of the House of Commons, then addressed His Excellency the Governor General as follows:

May it Please Your Excellency.

The Commons of Canada have voted supplies required to enable the government to defray certain expenses of the public service.

In the name of the Commons, I present to Your Excellency the following bill:

An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2013 (*Bill C-50, Chapter 28, 2012*)

To which bill I humbly request Your Excellency's assent.

His Excellency the Governor General was pleased to give the Royal Assent to the said bill.

The House of Commons withdrew.

His Excellency the Governor General was pleased to retire.

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(The sitting of the Senate was resumed.)

• (1150)

[English]

### IMPROVED MENTAL HEALTH FOR INMATES

#### INQUIRY—DEBATE CONTINUED

On the Order:

That he will call the attention of the Senate to the need for improved mental health treatment for inmates, especially female inmates, in federal correctional institutions and the viability of providing such treatment through alternative service delivery options.

**Hon. Bob Runciman:** Honourable senators, as a reminder, this inquiry deals with mental health care in prison, with an emphasis on female inmates, and it references the Legal Committee's observations in their report on Bill C-10.

The committee urged the Correctional Service of Canada to address this challenge particularly in relation to female offenders, who suffer from a higher incidence of mental illness than males, and to consider alternative service delivery options.

Honourable senators, it is not like this is a new or unrecognized problem, but for many Canadians the tipping point has been the inhumane treatment and the tragic death of a 19-year-old woman, Ashley Smith, while in federal custody. Canadians have seen

appalling videos that show Ashley bound with duct tape, while forced to sit in her own feces on a flight between institutions. They have seen guards clad in riot gear inject her with anti-psychotic medications against her will. They now know that guards were ordered by supervisors to stand outside her cell and watch her kill herself in 2007.

The system failed Ashley Smith and it continues to fail hundreds of mentally ill inmates every day in Canada. Ashley Smith's case was a worst-case scenario, but it was not an isolated incident.

According to the 2011-12 Annual Report of the Office of the Correctional Investigator, Correctional Service of Canada data shows that "the proportion of offenders with mental health needs identified at intake has doubled" between 1997 and 2008. One in seven men and nearly one in three women are identified at admission as having mental health problems.

The figures for women, in particular, are shocking. This same report notes that half of federally sentenced women report they have harmed themselves, more than half have addiction problems, and the vast majority have suffered physical or sexual abuse.

There are various reasons for this epidemic of mentally ill offenders flooding into federal prisons. Provincial policies of deinstitutionalization have failed, leaving mentally ill people on the street without adequate support.

There is some legitimacy to the argument that provincial policies have uploaded the problem to the federal level. However, the fact remains that these are offenders who have been found criminally responsible for crimes that merit federal prison time. Regardless of the reason for their criminality, and what government let them down at what stage, these people are a federal responsibility. We cannot let a jurisdictional squabble get in the way of a solution.

The response of the Correctional Service of Canada has been inadequate, to say the least, although I acknowledge the difficulty of their situation. They did not create this situation and they are not equipped to handle it, no matter how many resources are poured into the system.

The Correctional Service of Canada knows how to run prisons. It does not know how to run hospitals. We heard in our hearings on Bill C-10 that the federal prison system cannot attract and retain experts in this field, in part because a federal prison is a very challenging environment in which to work.

The preoccupation of CSC is control and security, not treatment. They view the people within their walls as inmates, not patients. Prisons are not hospitals and they never will be, no matter how much money we spend on them. It is clear they did not have a clue how to handle Ashley Smith. That is why she spent her entire 11 and a half months in federal custody in segregation. That is why she was transferred 17 times.

There are people who know how to deal with these types of serious problems. There are treatment options in secure settings outside the federal prison system. There are solutions, and I do fault CSC for failing to seriously consider them.

Correctional Investigator Howard Sapers, in his latest annual report, recommends, again, that CSC look at using external health care providers to provide mental health to the most seriously ill inmates. It is similar to the Senate's observation on Bill C-10.

CSC is considering alternative service delivery. They have had reports prepared and the service's executive committee has discussed it, but in my view the discussion at CSC is preoccupied with process, to the detriment of focusing on the desired outcome — better treatment. At least that is the impression I get from reading CSC reports on alternative service delivery.

Am I optimistic that CSC will give this the consideration it deserves? In a word, no. We saw their obstructionist tactics in the planning phase for the Ashley Smith inquest, where they used teams of lawyers at taxpayers' expense to try to limit the scope of the inquest and block the release of videos.

My understanding of their plans for a new regional treatment centre in the Kingston area is that the design is that of a typical prison, with traditional cells, no decompression rooms or areas for mental health staff to interact with offenders, and with clinical staff situated apart from the offender population — not at all like a treatment unit, but very much like a prison.

I must say that I find this approach surprising, given that CSC understands its limitations when it comes to other forms of health care. It routinely contracts out for chemotherapy, dialysis or medical emergencies, but will not do so for inmates with mental illness.

No one would think of asking a correctional officer to perform heart surgery, but they are routinely asked to deal with inmates with acute and complex mental illnesses.

Often I think they fail to distinguish between typical disruptive or manipulative behaviour and the signs of serious mental illness. I understand how these mistakes are made, considering that staff are operating far outside their realm of expertise. I do not blame them. Most of them, from top to bottom, are dedicated and professional, but they are being put in an impossible situation.

• (1200)

Honourable senators, I want to talk a bit about one possible solution to this problem, and I would like to use an example I am very familiar with, the St. Lawrence Valley Correctional and Treatment Centre, which was conceived and built when I was corrections minister in Ontario.

This facility came about after I became increasingly concerned about the incidence of mental illness in Ontario's jails. I was convinced that this was not only a human tragedy but also a public safety issue of the highest priority. If we put people back on the street without resolving their underlying problems, we are endangering the public. The possibility of reoffending is very high for mentally ill offenders. Not treating these people creates a revolving-door justice system, with new victims and higher costs for policing, courts and prison.

The St. Lawrence centre is a 100-bed secure treatment unit for male offenders. It has been in operation for nearly a decade now. It was a unique example of cooperation between my then-ministry and the Ministry of Health in Ontario, at the time under Tony Clement. If you look at it from the outside, it looks like a prison. If you look at it from the inside, it looks like a hospital. The security mandate is handled by the Ministry of Community Safety and Correctional Services. The treatment and care mandate is handled by the Royal Ottawa Health Care Group. It is a highly advanced hospital built to maximum-security prison standards.

The St. Lawrence centre works. No one has ever escaped from it, no one has ever committed suicide while housed there, and it has reduced recidivism rates by 40 per cent. There are reasons for this institution's success. Dr. John Bradford of the Royal Ottawa, one of Canada's foremost forensic psychiatrists, pointed out to the committee that the ratio of clinical staff to correctional staff is approximately 80 to 20 — 80 clinical, 20 corrections. That is exactly the opposite of mental health facilities within federal prisons, which are 80 per cent correctional and 20 per cent clinical.

Let me give you an example of how this plays out in an actual incident of self-harm, the same type of incident that resulted in the death of Ashley Smith. The Royal Ottawa's protocol in such a case is that the first response is by the primary care nurse, who works to de-escalate the situation. A psychiatrist is called and is there within an hour. The entire response is clinical, not correctional, and it is called the clinical override. It is a different mindset that results in different outcomes.

The Royal Ottawa is proposing a similar secure treatment unit for female offenders. As part of that proposal, the Royal Ottawa hired a consultant to prepare an economic analysis, an analysis to show that every dollar invested will return \$1.50, with a net benefit to taxpayers of \$12 million per year.

Whenever I have raised this matter with Corrections, I have received the same reply: They are looking at it, but they face certain financial restraints. I do not accept that answer. According to 2009-10 federal figures, the average cost of keeping a female inmate in a federal institution was well above \$200,000 per year. There is no doubt that the most severely mentally ill cases cost a multiple of that number. The estimate on the Ashley Smith case in eleven and a half months was well over \$1 million. I believe this is more about resistance to change than it is about dollars and cents. Instead of looking for solutions that work, CSC would rather build a padded cell at its treatment centre for women in Saskatoon.

The Royal Ottawa is not asking for any capital contribution from the government, just a commitment to contract for a certain number of beds at a per diem that is no more, and maybe less, than it is costing the prison system to house these women right now. When we take into consideration the disruptions a few seriously mentally ill women cause within an institution, this is a money-saving proposal here and now, not to mention the long-term benefits to both the offender and society. We can spend less and get better results by sending the hardest-to-serve mentally ill

inmates for treatment outside the regular prison system to facilities like the Royal Ottawa that have demonstrated results. They have proven they can fix problems that the prison system cannot.

Honourable senators, this is a matter that has been studied and discussed extensively. If we want to help the prison system cope with this epidemic, if we want to protect society, if we want to reduce costs now and in the future, and if we want to improve the lives and the prospects of mentally ill offenders, we need to look outside prison walls for treatment that is effective. I do not believe more studies will change the facts. We know there is a problem, and we believe there are solutions. It is time to act.

**Hon. Senators:** Hear, hear.

**Hon. Joan Fraser:** Honourable senators, I would like to thank Senator Runciman for that powerful, necessary speech. I move the adjournment.

(On motion of Senator Fraser, debate adjourned.)

## BUSINESS OF THE SENATE

### FELICITATIONS

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, before we adjourn until the first week of February, I want to take this opportunity to wish all our colleagues Happy Hanukkah, Merry Christmas and Happy New Year. I cannot believe we are already into 2013.

I would especially like to thank all honourable senators for their extremely hard work. It has been, at times, a difficult session. At times, we have our differences. I think we all agree that the work we do here is extremely important, not only in our duty to our fellow citizens but also on the broader view of looking down the road and making meaningful changes that will affect the lives of our citizens in a positive way. Senator Runciman's was a fitting speech to close the session because it is clearly something he feels strongly about and is something that must be addressed.

I would also like to thank the leadership on the other side. We do every once in a while have a few disagreements but, by and large, we work very well together in a cooperative way. I do know the challenges of government, and I also know the challenges of the opposition, having spent more of my life there than on the government side. I want particularly to pay tribute to Senator Cowan, Senator Tardif, Senator Munson and Senator Hubley, the leadership on the other side.

I would also be remiss if I did not thank the Clerk, the table officers, the reporters, the protective staff, all of the support staff in the Senate, and particularly our own personal staff who ultimately have to prepare us for the work we do in this place. We are very fortunate people to live in such a wonderful country.

I also take this occasion to wish everyone a Happy Hanukkah, a very Merry Christmas and an extremely happy and productive New Year.

**Hon. James S. Cowan (Leader of the Opposition):** Honourable senators, I wish to join Senator LeBreton in wishing all members of the Senate family, all those who are here and all those beyond these walls who support us, protect us and make our job possible and provide all of the amenities that support us, a happy, safe and restful holiday season with family and friends.

I also hope that we will all take advantage of the opportunity afforded by the next six weeks to reflect upon the proceedings of the last few days. The Senate is a house of Parliament and this is a parliamentary democracy in which there is a majority and there is a minority. There is a government and there is an opposition.

Each has a distinct and legitimate role to play. The proper functioning of this place depends not only on the outcome of votes, not only the tallying of the yeas and the nays; it depends in large measure upon trust, cooperation, decency, civility and respect for each other. Without these basic elements, we cannot do the job that Canadians expect and are entitled to expect us to do on their behalf. We owe it to them and to ourselves to bear this in mind as we come back next year.

(The Senate adjourned until Tuesday, February 5, 2013, at 2 p.m.)

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## CONTENTS

Friday, December 14, 2012

	PAGE
<b>Royal Assent</b>	
Notice . . . . .	3159

---

### SENATORS' STATEMENTS

<b>Statute of Westminster</b>	
Hon. Hugh Segal . . . . .	3159
<b>Human Rights in China</b>	
Hon. Jim Munson . . . . .	3159
<b>Mr. Kevin MacLeod, C.V.O., C.D.</b>	
Usher of the Black Rod—Tribute.	
Hon. Don Meredith . . . . .	3160
Hon. Terry M. Mercer . . . . .	3160
<b>British Columbia</b>	
City of Greenwood—Water.	
Hon. Nancy Greene Raine . . . . .	3160
<b>Comments by Senators</b>	
Hon. Michael Duffy . . . . .	3161

---

### ROUTINE PROCEEDINGS

<b>The Senate</b>	
Motion to Photograph Royal Assent Ceremony Adopted.	
Hon. Claude Carignan . . . . .	3161
Committees Authorized to Meet During Adjournment of the Senate.	
Hon. Claude Carignan . . . . .	3161
<b>Adjournment</b>	
Motion Adopted.	
Hon. Claude Carignan . . . . .	3161

---

### QUESTION PERIOD

<b>Fisheries and Oceans</b>	
Nova Scotia—Seawall Maintenance.	
Hon. Terry M. Mercer . . . . .	3162
Hon. Marjory LeBreton . . . . .	3162
<b>Foreign Affairs</b>	
United Nations Operations Overseas.	
Hon. Roméo Antónius Dallaire . . . . .	3162
Hon. Marjory LeBreton . . . . .	3162
<b>National Defence</b>	
Aircraft Procurement.	
Hon. Wilfred P. Moore . . . . .	3164
Hon. Marjory LeBreton . . . . .	3164
Hon. Hugh Segal . . . . .	3165
<b>Delayed Answers to Oral Questions</b>	
Hon. Claude Carignan . . . . .	3166
<b>Veterans Affairs</b>	
Veterans Independence Program.	
Question by Senator Callbeck.	
Hon. Claude Carignan (Delayed Answer) . . . . .	3166
Services and Benefits.	
Question by Senator Dallaire.	
Hon. Claude Carignan (Delayed Answer) . . . . .	3166

### ORDERS OF THE DAY

<b>Point of Order</b>	
Hon. Claudette Tardif . . . . .	3166
Hon. Jane Cordy . . . . .	3166
Hon. Art Eggleton . . . . .	3167
Hon. Claude Carignan . . . . .	3167
Hon. Jim Munson . . . . .	3167
<b>First Nations Self-Government Recognition Bill (Bill S-212)</b>	
Second Reading—Order Reset.	
Hon. Claude Carignan . . . . .	3167
<b>Criminal Code (Bill C-217)</b>	
Bill to Amend—Second Reading—Debate Continued.	
Hon. Roméo Antónius Dallaire . . . . .	3168
<b>Study on Canadian Foreign Policy regarding Iran</b>	
Ninth Report of Foreign Affairs and International Trade Committee Adopted.	
Hon. Percy E. Downe . . . . .	3168
<b>Study on Issue of Cyberbullying</b>	
Ninth Report of Human Rights Committee and Request for Government Response Adopted.	
Hon. Claudette Tardif . . . . .	3168
<b>Rules, Procedures and the Rights of Parliament</b>	
Motion to Authorize Committee to Study the Powers and Responsibilities of the Officers of Parliament and Their Reporting Relationships to the Two Houses—Debate Suspended.	
Hon. Anne C. Cools . . . . .	3168
<b>Jobs and Growth Bill, 2012 (Bill C-45)</b>	
Third Reading . . . . .	3170
<b>Rules, Procedures and the Rights of Parliament</b>	
Motion to Authorize Committee to Study the Powers and Responsibilities of the Officers of Parliament and Their Reporting Relationships to the Two Houses—Debate Continued.	
Hon. Anne C. Cools . . . . .	3170
Hon. George J. Furey . . . . .	3172
Hon. Claude Carignan . . . . .	3173
Motion in Amendment.	
Hon. Claude Carignan . . . . .	3173
<b>Poverty</b>	
Inquiry—Debate Continued.	
Hon. Pierre Claude Nolin . . . . .	3173
<b>Improved Mental Health for Inmates</b>	
Inquiry—Debate Suspended.	
Hon. Bob Runciman . . . . .	3176
<b>Visitor in the Gallery</b>	
The Hon. the Speaker . . . . .	3176
<b>Business of the Senate . . . . .</b>	3177
<b>Royal Assent . . . . .</b>	3177
<b>Improved Mental Health for Inmates</b>	
Inquiry—Debate Continued.	
Hon. Bob Runciman . . . . .	3177
Hon. Joan Fraser . . . . .	3179
<b>Business of the Senate</b>	
Felicitations.	
Hon. Marjory LeBreton . . . . .	3179
Hon. James S. Cowan . . . . .	3180





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