SENATE SÉNAT

CANADA

# DEBATES OF THE SENATE

1st SESSION • 41st PARLIAMENT • VOLUME 148 • NUMBER 179

OFFICIAL REPORT
(HANSARD)

Friday, June 21, 2013

The Honourable NOËL A. KINSELLA
Speaker

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Published by the Senate
**Available on the Internet: http://www.parl.gc.ca**

# THE SENATE

**Friday, June 21, 2013**

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

Prayers.

## SENATORS' STATEMENTS

### FEDERAL BRIDGE CORPORATION

**Hon. Bob Runciman:** Honourable senators, last year I contacted New York State elected officials asking for their support for the designation of Dark Island, the home of Singer Castle in the Thousand Islands, as a U.S. port of entry.

As part of that effort, I considered approaching the Thousand Islands Bridge Authority for its support and was surprised to learn not only that Canadians are on the short end of representation on the authority, but also that none of our representatives reside in the region most affected by the management of the bridge and the authority's other assets, which include Boldt Castle.

Canada, under the current governance structure, nominates three members to the bridge authority board, compared to four U.S. members.

The Federal Bridge Corporation, a federal Crown corporation, submits the names of Canadian nominees, who have historically been officials of the same corporation — essentially, Ottawa bureaucrats, none of whom live in the vicinity of the bridge. In contrast, the four U.S. board appointments are the responsibility of the democratically elected county legislature. All U.S. board members live in the area and, in some cases, are involved in the tourism industry.

Our American friends clearly believe that having Thousand Islands residents on the board ensures their representatives are in tune with the needs of the area's economy. That view is shared not only by U.S. legislators but also by the same Federal Bridge Corporation when it comes to other international bridges in Ontario. Sault Ste. Marie, Sarnia, Niagara Falls — all three have Canadian board members living in the area of the bridge, and a number of them are involved in the tourism and hospitality industry.

Despite this paradox, the Federal Bridge Corporation, in a letter to me in May of this year, said, in effect, "We're happy with the current closed-shop appointment process and have no intention of changing." They should have added, "Go fly a kite."

This request is not intended as a slight to the current board members; I am sure they are good people. However, I do believe the residents and businesses on the Canadian side of the bridge would be better served if at least two of the three Canadian board members were residents of the Thousand Islands area.

I point also to the disparity in employment numbers between the two countries. According to the Thousand Islands Bridge Authority's website, it has 62 full-time employees: 43 Americans and 19 Canadians.

I urge the Minister of Transport to require the Federal Bridge Corporation to nominate at least two of the Canadian representatives on the recommendation of the United Counties of Leeds and Grenville. Strong local representation is the best way to ensure that Canada receives its fair share of the benefits of this important international partnership.

### FLOODING IN ALBERTA

**Hon. Douglas Black:** Honourable senators, I rise today to pay tribute to the tens of thousands of Albertans offering assistance to their neighbours in need due to the historic flooding in southern Alberta yesterday, and first and foremost, to the emergency services personnel — police, fire, ambulance and provincial and municipal emergency workers who I know are working day and night to ensure the safety of Albertans.

I would also like to acknowledge and thank Prime Minister Harper for providing Canadian Armed Forces support to assist with urgently needed rescue and evacuation efforts. These floods have hit southern Alberta hard, and many communities have had to be evacuated.

As of this morning, Calgary, the Stoney Reserve, Turner Valley, the Siksika Reserve, High River, Bragg Creek, Black Diamond and the District of Foothills are all under critical alert. This means imminent life-threatening danger. Many other communities, including my home of Canmore, are under emergency alert.

We are still praying for a woman who is missing after being swept into the Highwood River near Black Diamond.

Colleagues, to give you a sense of how significant this current flooding is, yesterday marked the city of Calgary's first state of emergency declaration in nine decades.

Last night, I was sent photos and videos of rivers across southern Alberta and in the Rockies that were truly shocking. As I watched the news yesterday and spoke to family and friends, I was particularly struck by the response of individual Albertans, the incredible outpouring of support from friends and neighbours for those affected by these floods. Albertans were knocking on doors, calling on the phone and writing on Twitter to open their homes to those in need of a bed to sleep in last night. Countless volunteers were and are lined up this morning wanting to find some way, any way, to lend a hand.

Albertans are always at their best when times are at their worst. As our first premier, Alexander Rutherford, said in 1906 of Albertans:

> We are a hopeful people. We have no pessimists in Alberta, - a pessimist could not succeed. We are optimistic, and always look on the brighter side of affairs...

Alberta is a collection of communities, First Nations later joined by settlers, who survived and thrived despite a harsh environment and vast distances. This simply could not have been done without relying on our neighbours. I can tell you from what I saw yesterday and this morning that the spirit of community that drives Alberta is as strong as ever.

I know that many of you will be heading to Alberta next week, or perhaps at other times during the summer. You will be able to experience this sense of community in our province first-hand. I know that, water or no water, Albertans are ready to welcome you with open arms and a smile.

## ENERGY EAST PIPELINE PROJECT

**Hon. John D. Wallace:** Honour senators, I wish to speak about a tremendous opportunity that is being proposed for Canada's energy industry, one that has the realistic potential to be of long-lasting, significant benefit to Canadians from coast to coast.

TransCanada PipeLines' proposed Energy East Pipeline project would link new and existing petroleum energy infrastructures across the country. Western Canadian crude oil producers in Alberta and Saskatchewan would at long last be linked directly to oil refineries located in Eastern Canada. This 4,400-kilometre pipeline would have the capacity to transport up to 850,000 barrels of crude oil per day to our Eastern Canadian refineries.

To accomplish this, TransCanada proposes to convert an existing underutilized natural gas pipeline to transport crude oil from producers in Western Canada to refineries in Quebec, together with a potential new pipeline that would further extend to Saint John, New Brunswick, the home of the Irving Oil refinery, Canada's largest, with a production capacity in excess of 300,000 barrels per day. It is also important to realize that the Irving Oil refinery is connected directly to Irving Canaport, which is the deepest ice-free petroleum port facility located on the North American Eastern Seaboard.

• (0910)

Honourable senators, I believe there can be no doubt that Saint John is the leading option and the natural Canadian East Coast destination for this pipeline project.

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

**Senator Wallace:** During this past week, TransCanada concluded an "open season" to obtain firm long-term commitments from interested parties across the country. TransCanada's next step, if they so choose, would be to apply for regulatory approvals from the National Energy Board. Should the proposed Energy East Pipeline project be approved, Western Canadian crude oil from Alberta and Saskatchewan could reach Montreal and Quebec City by 2017 and Saint John, New Brunswick, by 2018.

Honourable senators, this pipeline project has the potential to be a huge Canadian game changer, one that would generate significant lasting benefits for our country. It would create much-needed employment throughout the petroleum industry and across Canadian provinces. The project, including new employment, would provide substantial increases in both federal and provincial revenues and, more specifically in the case of my home province of New Brunswick, increased revenues that are of critical importance.

Directly linking Western Canadian crude oil producers with Eastern Canadian refineries would create a new domestic market for our Western crude. Consequently, it would enable our Canadian crude oil producers to reduce their reliance and vulnerability on the United States marketplace. This would undoubtedly have a positive and significant impact on the pricing of Western Canadian crude, which is currently selling at a substantial discount compared to other world crudes.

This pipeline project, including the extension to Saint John, would enable our Eastern Canadian refineries to reduce or even eliminate their current reliance on imported foreign crude and in so doing enable them to purchase crude oil at prices that would be considerably more price competitive than what exists in the international marketplace.

Furthermore, the extension of this pipeline to Saint John would open up new international market potential for Western Canadian crude. These potential markets would include the European Union, India, Asia and South America. Additionally, this pipeline project would facilitate an alternative means via crude oil tankers for Western Canadian crude to be transported from Saint John to United States refineries located along the Gulf of Mexico.

Honourable senators, it is also important to realize that this project has received unanimous support from federal and provincial governments. In particular, it has been enthusiastically endorsed by federal Minister of Natural Resources Joe Oliver. As one would expect, two of its most forceful and effective advocates have been Alberta Premier Alison Redford and New Brunswick Premier David Alward.

The proposed Energy East Pipeline project is a bold and highly progressive initiative that I and many other Canadians consider to be a critically important component of our country's continuing nation-building process.

Honourable senators, I do believe that a new day is dawning — a very positive and progressive day and one that will be of long-lasting significant benefit to our country.

# QUESTION PERIOD

## FOREIGN AFFAIRS

### USE OF OFFICIAL RESIDENCES

**Hon. Terry M. Mercer:** Honourable senators, I will have to give Senator LeBreton the list of her house guests for Canada Day.

I want to continue with the discussion about Macdonald House in London. Depending on what one reads or where one reads it, whether the news or from the government, some put the value of the property at $800 million and some put it at $500 million. Since the government is interested in selling this property, it would be interesting to know, and Canadians would like to know the true value. Is the value $500 million, $800 million, or what will the government try to sell the house for?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, I will have to take that question as notice. I am not completely familiar with the status of Macdonald House and the price they hope to get for it.

**Senator Mercer:** Thank you, I appreciate that.

In 2008, the *Ottawa Citizen* reported a value of $600 million; in February 2013, *The Globe & Mail* put the value at $500 million; and the most recent CBC story of Minister Baird's travels put the value at $800 million. The government has embarked on selling a series of our embassies or various residences around the world. They sold the residence in Dublin, I understand, and they are trying to sell other embassies.

Is it the intention of the government that we move from a country that puts our presence in these international capitals at the forefront? Are we moving to a case where we will have our embassies over convenience stores in the suburbs of some of these capitals? It seems that our presence is felt when physically seen by the people in these various capitals.

**Senator LeBreton:** Well, that is a ridiculous suggestion. That is not the government's intention; of course not.

In terms of the Dublin property, I believe that one of the reasons it was sold was that it was completely removed and distant from the activity centre where all of the diplomatic community operates in Dublin.

With the combined efforts of the government through Foreign Affairs and International Trade, we are very much focused on countries where we can trade and benefit not only the countries we are working with but also Canada.

**Senator Mercer:** With the government rationalizing the existence of these residences and embassies around the world, I have become very concerned about some of our prominent addresses. Canada is the only country to have an embassy on an extremely important street in the world, Pennsylvania Avenue in Washington, D.C. Between the White House and the Capitol, one finds the Canadian Embassy across the street from part of the Smithsonian American Art Museum. Is there any intention of the government to rationalize this? If we are selling Macdonald House, will our property on Pennsylvania Avenue be next? Will Canada House on Trafalgar Square be on the market next? Will the embassy in Paris be next?

• (0920)

**Senator LeBreton:** It sounds like you know these properties better than I do. Obviously you have been there.

The fact is, and Senator Mercer would know, there are no plans. We are very proud of our embassy in Washington, as we are of Canada House on Trafalgar Square. The department and the government obviously look at the various properties and the role they play in promoting Canada around the world.

Very clearly, the Embassy of Canada in Washington is in a prime location, proudly displayed by Canadians, and of course Americans, at least those who are in the know, know that that is, in fact, the Canadian embassy and it is in a prime location.

**Senator Mercer:** Honourable senators, I can assure the minister that I am only concerned about where Minister Baird will be staying if we sell these different residences.

**Senator LeBreton:** Honourable senators, I was interested to note yesterday the former Canadian ambassador to the United States, Raymond Chrétien, actually made it very clear that when he was the ambassador he often invited family and friends to stay at his place and oftentimes they stayed there when he was not there.

Obviously, Mr. Chrétien was stating the case for the point I was making yesterday. Our high commissioners and ambassadors, in their own personal living accommodations, can invite whom they like.

**Hon. Joseph A. Day:** Honourable senators, my question is for the Leader of the Government in the Senate as well. The minister will know that the Conflict of Interest Act applies to ministers of the Crown. The minister will also be aware of the "gifts from friends" exception that appears in that particular piece of legislation.

I have been following the leader's answers with respect to Minister Baird and his six friends, and I am told and I understand from reading their reports that he is describing this gift of staying at the residence in London as simply staying with personal friends.

Is this invoking the exception to the Conflict of Interest Act on gifts from friends that need not be declared?

**Senator LeBreton:** Honourable senators, I am the Leader of the Government in the Senate and I answer for the government; I do not answer for the Conflict of Interest Commissioner. Obviously, I am very well aware of the guidelines and so is Minister Baird.

**Senator Day:** Honourable senators, I am not asking the leader to speak for the Conflict of Interest Commissioner. I am asking her if this particular description of merely staying with personal

friends is an attempt to fit within the exception of gifts from friends.

The minister will know that there is a gaping hole in the conflict of interest legislation, to which Minister Baird is subject and to which the Leader of the Government in the Senate is as a member of cabinet. The provision, as it now stands, is that public office-holders, ministers, can accept any gift, even one that might reasonably be seen to have been given to influence the public office-holder in the exercise of an official power, duty or function.

Will the minister agree that this example we are now seeing with respect to Minister Baird and his six friends, in accepting the gift from a friend, is reason for supporting the bill that is before this chamber now, Bill S-222, to correct an obvious gap in the Conflict of Interest Act?

**Senator LeBreton:** I thank Senator Day for the question.

The point I made yesterday was that this trip did not cost the Canadian taxpayer one single cent.

With regard to his pitch for changes in the conflict of interest guidelines, with a bill that is before the Senate, I will not comment on that. This is a bill that is before the Senate and the Senate will decide.

**Hon. James S. Cowan (Leader of the Opposition):** Honourable senators, does the minister not see that there is an incongruity here and there is a problem when a minister stays in a residence which, as she says, is for the private use of the high commissioner in London? The high commissioner, in effect, works for the minister; he reports to the minister. The minister may say, "Look, a few friends of mine happen to be in London, can we stay at your place?" What is the high commissioner going to say? Is that not putting the high commissioner in a very difficult position? Does that not fly in the face of the kind of accountability, openness and transparency that she crows about every day?

Honourable senators, it is wrong. Canadians see this as wrong. Does the leader not agree?

**Senator LeBreton:** No, I do not agree. Obviously, honourable senators, what Senator Cowan is saying is hypothetical. He is presuming that the events occurred as he has stated.

The fact is — as Raymond Chrétien pointed out yesterday — when Mr. Chrétien was the Canadian ambassador to the United States, he frequently invited friends and family to stay with him at his residence.

With regard to our embassies in Paris and the high commission, oftentimes people — and I know Minister Baird was one of them — stayed at these residences when on official business to save money to the taxpayer.

**Senator Cowan:** Honourable senators, how would High Commissioner Campbell know that Minister Baird and his friends were coming to London if Mr. Baird did not tell him?

**Senator LeBreton:** Again, honourable senators, that is hypothetical. The fact is I do not know of the conversation between the high commissioner and Minister Baird. I am not even going to speculate. I have no way of knowing. Perhaps he, in an informal conversation, heard of their plans. I do not know. We are speculating.

The fact is — and I keep repeating this — that this trip did not cost the Canadian taxpayer one single solitary cent.

I again repeat the words of Raymond Chrétien and I urge the honourable senator to read them. Of course, I am quite sure Mr. Chrétien had many people staying with him at his residence who had very influential positions in the government. I doubt very much that that could be construed as anything other than what it was — allowing members of the government and family and friends to stay in the quarters for which he pays rent.

**Senator Cowan:** The fact of the matter is, to use the leader's favourite phrase, he received a benefit. He received a benefit using facilities which belong to the Government of Canada.

How can that be proper? How can the leader say that I am speculating, while she is speculating? She is the minister. Why not find out and tell us?

**Senator LeBreton:** What Senator Cowan is actually suggesting is that Raymond Chrétien did something improper by inviting family and friends to stay in his quarters in Washington.

Obviously, and I repeat again, there was not one single cent of taxpayers' money spent on Mr. Baird's trip.

**Senator Cowan:** Honourable senators, I suggest there is a great difference between Minister Baird being in London on official business and the high commissioner says, "Why don't you stay in the residence? That will give us an opportunity to deal with official business." It is entirely appropriate for the high commissioner and the Minister of Foreign Affairs to catch up on things that they would normally. Nobody would suggest otherwise.

However, to suggest that when the high commissioner is not there, that a vacationing minister and his friends would use assets that belong to the Government of Canada is wrong. With the discussion and the controversy that has been around this in the last few days, I suggest the minister has an obligation to find out. She is the only minister who is accountable to Parliament as we speak today. Why not find out and tell us?

• (0930)

If you cannot tell us today, we will be here next week; you can tell us then.

**Senator LeBreton:** I am glad I have my marching orders from you, Senator Cowan. This trip, again, did not cost the taxpayer a cent. The apartment in question, where Minister Baird and his friends stayed, is the high commissioner's personal apartment. The high commissioner pays for the apartment for his personal use, so surely it is his right to invite whomever he wants to his apartment.

**Hon. Percy E. Downe:** You have indicated the high commissioner pays the rent. He pays the rent, but it is on an Ottawa scale, not a London scale. If the high commissioner was paying the London

rate on a $500 million property, the rent would be $30,000 or $40,000 or $50,000 a month. That is part of the benefit Minister Baird received for staying there.

As for your comments about former Ambassador Chrétien, he specifically referred to family and friends. We have a third category here — family, friends and minister. Where does Minister Baird fit into taking this benefit from someone who directly reports to him?

**Senator LeBreton:** Minister Baird could also fall into the category of friends. I happen to be a minister of the Crown, and I do have friends. You are allowed to have friends when you are a high commissioner. You are allowed to have friends when you are an ambassador. You are allowed to have friends when you are a minister of the Crown.

**Hon. Wilfred P. Moore:** I have a supplementary question for the leader. I am wondering, is a log kept of the guests who stay at this property and the dates that they stay there? If such a log is kept, is it available to the public?

**Senator LeBreton:** Again, High Commissioner Campbell, just like Ambassador Chrétien, obviously has very important responsibilities. I do not believe that anyone would suggest that their own personal living quarters and the people that they invite there personally would be something that would be kept in a log.

**Hon. Serge Joyal:** I have a supplementary question, Your Honour. Would the Leader of the Government in the Senate accept another question on this issue?

When I was a minister of the Crown, I travelled abroad many times and, of course, visited Canadian ambassadors in positions. I was told that there were regulations at Foreign Affairs prohibiting members of the public, or anyone, from staying in the embassy. I remember, for instance, when Ambassador Bouchard was in Paris. He had invited a friend to stay with him. The Department of Foreign Affairs informed him that that person could not stay for that long with him. I understand that there are regulations at the Department of Foreign Affairs on the use of premises, even though they are the private quarters of the ambassador or high commissioner.

Would the honourable leader table those bylaws so that we know exactly what applies for an ambassador or a high commissioner?

**Senator LeBreton:** I think, in the back of my mind, I recall the incident with regard to Ambassador Bouchard. I do not think we were talking about people staying in his residence for a few days. I think this was quite another matter. I think you know that too, Senator Joyal.

**Senator Joyal:** You have not answered my question.

If what you allude to exists, it means there are regulations. What I asked of you is to table those regulations because an ambassador does not have not complete freedom to invite whomever he wants, for however long he wants, for however long the friendship with the person is.

I ask again: Could you table those regulations from the Department of Foreign Affairs so that we know clearly what the framework is that an ambassador has to comply with in order to invite friends or family to stay with him or her?

**Senator LeBreton:** Again, the incident you referred to was obviously not a case, as it would have been with Ambassador Chrétien, of inviting family and friends for a short stay. It was quite another matter, if my recollection serves me properly.

Therefore, Senator Joyal, again, the trip did not cost the taxpayers any money. The apartment in question is the high commissioner's personal apartment, and the high commissioner pays for the apartment for his personal use. I would dare say that, just like Ambassador Chrétien, he can invite whomever he wants.

**Senator Joyal:** Again, my question is not in relation to Mr. Baird or Mr. Chrétien or what Mr. Chrétien did during his days as ambassador to Washington. I am asking you simply this: Could you table the bylaws that Foreign Affairs implements when an ambassador or a high commissioner takes his or her charge and the kind of framework that presides over the use of the premises of the ambassador? That is a simple question. I am not alluding to what Mr. Baird is doing or what Ambassador Chrétien has been saying.

**Senator LeBreton:** Inasmuch as I am able to be, I am sure everyone who joins the foreign service and represents Canada abroad is provided with rules and guidelines, and I am sure it is a public document. If such a document exists, of course I will try to find it.

## NATIONAL DEFENCE

### ASSISTANCE FOR FLOODING VICTIMS IN ALBERTA

**Hon. Grant Mitchell:** Honourable senators, earlier this week Mayor Nenshi of Calgary was in Ottawa and gave a very powerful, compelling speech about how it is that cities and municipalities in Canada are underfunded. Tragically, he has had to return to a Calgary that is now literally under water, and our colleague, Senator Black, outlined clearly and eloquently that this crisis is affecting not only Calgary but also many municipalities in Alberta. It is fair to say that it is absolutely a crisis.

I wonder whether the leader could give us a status report on what funds, resources and programs are available from the federal level to assist Albertans in this time of crisis.

**Hon. Marjory LeBreton (Leader of the Government):** Thank you, Senator Mitchell. Of course, everyone is just shocked at the footage, the news coverage of this flood. The home of our own colleague, Senator Tannas, has had to be evacuated because he lives in High River. Many towns and villages are affected, as is the city of Calgary.

The government has offered any and all possible assistance to the province of Alberta in response to the situation. As you probably know, Canadian Armed Forces assets have already been deployed and are assisting Alberta in the rescue and evacuation efforts. The Prime Minister issued a statement last night about this situation, and it is to be hoped that all possible efforts are

made to deal with the obvious infrastructure and clean-up problems that will be affecting those communities once the flood waters subside.

**Senator Mitchell:** Could the leader indicate to the house, for the benefit of all Albertans, which federal minister is specifically responsible for coordinating the efforts of the federal government with the provincial and other authorities in the province?

**Senator LeBreton:** Right now, the Department of National Defence has already deployed, so that would be Minister MacKay. There are so many good and interested ministers from the province of Alberta.

However, at the moment, it is Minister MacKay because, at the moment, the efforts are being coordinated through the Department of National Defence.

## ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

### LIVING STANDARDS—GOVERNMENT PROGRESS

**Hon. Jim Munson:** Madam leader, today is National Aboriginal Day. It is the summer solstice, the longest day of the year, and many First Nations, Inuit and Metis people are reflecting on the many challenges, past and present. I know I have been on to this for a great deal of time. You have answered me, but I do not think satisfactorily. I cannot stay silent on this issue.

This week, the Canadian Human Rights Commission and the Canadian Centre for Policy Alternatives released more reports highlighting some sobering statistics. Aboriginal people in this country — and it bears repeating on National Aboriginal Day — "have lower median after-tax income; are more likely to collect Employment Insurance and social assistance; are more likely to experience emotional, physical and sexual abuse; are more likely to be victims of violent crimes; and are more likely to be incarcerated and less likely to be granted parole."

• (0940)

The Canadian Centre for Policy Alternatives' report focused on indigenous children in this country and found that "indigenous children in this country are over two and a half times more likely to live in poverty than non-indigenous children." These statistics are alarming. The report states that: "Indigenous children trail the rest of Canada's children on practically every measure of well-being: family income, educational attainment, crowding and homelessness, poor water quality, infant mortality, health and suicide."

Madam Leader, on this special day, I would like to ask this: What are your thoughts about these staggering statistics and the crisis that continues to grip Aboriginal communities across the country?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, obviously the government and all of us are well aware of the challenges that have been facing First Nations communities for many years. We also know that education is key to ensuring First Nations can take advantage of opportunities that Canada has to offer. That is why we signed an education agreement to benefit thousands of First Nations people recently in Ontario. Then in Saskatchewan, Minister Valcourt announced the details of the actions we are taking to equip First Nations youth with personalized job skills training and career coaching for real jobs that are in demand.

Obviously, in order to lift people out of this current abysmal situation, it is important to create a climate where they can actually have the education and skills to work. We will also provide these youth with all of the job supports they need. Of course, this news was welcomed by Aboriginal leaders and, most important, by Aboriginal youth, who want to secure a job and achieve success.

I wish to point out, Senator Munson, that this budget before us, Budget 2013, includes investments to continue addressing claims; makes significant investments in infrastructure; expands the First Nations land management regime; supports the family violence prevention program; and designates new resources for scholarships and bursaries to First Nations and Inuit students.

Obviously, the situation and the reports of various organizations are very disturbing. Having said that, this government and the Minister of Aboriginal Affairs and Northern Development have taken all of these issues very seriously; we have the record to prove it. There is a lot to do, but I believe that, working with our First Nations leaders across the country and with the government, real positive change can be effected. Again, this goes back to proper education and making sure that Aboriginal Canadians have the same opportunities as other Canadians.

**Hon. Lillian Eva Dyck:** Honourable senators, I thank the minister for her answer. You said you are well aware of the challenges and that you have the record to prove it.

Today, National Aboriginal Day, we have marchers coming all the way from northern Saskatchewan, 3,450 kilometres. They are here because they are frustrated. I am frustrated. This government has put forward a tsunami of legislation over the last few years that has failed to listen to First Nation leaders. We have not been consulted. At least four bills have been foisted upon First Nations within the last two years. In addition to that, we had Chief Teresa Spence going on a hunger strike. The Prime Minister refused to meet with her. We had Elder Ray Robinson, who went on a hunger strike twice; we had Shelley Young and Jean Sock, from the Millbrook First Nation, who also went on a hunger strike. We had Elder Emil Bell from Saskatchewan, who went on a hunger strike; and we had Shawna Oochoo, from Regina, who went on a hunger strike; and others. Yet this government did not listen.

What do First Nation people have to do to get a response from this government?

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

**Senator LeBreton:** Honourable senators, first, I cannot imagine how the legislation that we have brought in, including matrimonial property rights for Aboriginal women, would not be a positive step for Aboriginal women living on-reserve.

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

**Senator LeBreton:** Obviously, we acknowledge and recognize the determination of the walkers. We had the young Cree group from northern Quebec a few months ago. Minister Valcourt met with them when they were here and indicated that he would be going up to their community over the summer.

Again, honourable senators, as I pointed out in my last answer, we have designated new resources for scholarships, bursaries and personalized job skills training, all to help First Nations youth achieve success. We have had many good treaty negotiations that have been successful and have been applauded by First Nations leaders. Other First Nations leaders do not necessarily agree with the government, but there are many who do.

Honourable senators, it was our government that made the official apology on the residential schools issue. It has been our government that has worked very determinedly over the last number of years, since we have been in government, to address many of these issues. I would argue very strenuously that we are making considerable progress.

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[*Translation*]

# ORDERS OF THE DAY

## ECONOMIC ACTION PLAN 2013 BILL, NO. 1

THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Buth, seconded by the Honourable Senator Marshall, for the third reading of Bill C-60, An Act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures.

**Hon. Céline Hervieux-Payette:** Honourable senators, I am pleased to join the honourable senators who have shared their views on certain parts of Bill C-60.

First, I must say that if we were talking about only the first two parts of this bill, we would be talking about a budget bill. However, the third part makes this a catch-all bill full of all sorts of measures that the government does not have the courage to introduce in separate bills, measures that go against our economic system.

A number of witnesses appeared before the committee, and I would like to go over some of their testimony in order to explain our position. I am referring to the notes that some witnesses submitted that explain why the section on foreign workers — a measure that was introduced by Liberal governments a number of years ago — is more in line with the needs of employers than the needs of workers.

Allow me to put this into context. According to Statistics Canada, there are currently 1.4 million unemployed workers in Canada, which is less than the record 1.6 million unemployed workers during the recession, but more than before the recession, when there were 1.1 million unemployed workers.

Right now, there are about six unemployed workers for every job vacancy in Canada. Even in the provinces with the most serious labour shortages, such as Alberta and Saskatchewan, there are two unemployed workers for every available job.

According to Statistics Canada, the job vacancy rate is just 1.5 per cent nationally and does not exceed 3 per cent in the provinces with the highest unemployment rates. Even a recent Human Resources and Skills Development Canada analysis showed limited incidence of imbalances between labour demand and supply in recent years, and with the projections for 2011-2020 showing similar levels of job openings and job seekers for each broad skill level, no major imbalances by skill level are projected over the next decade.

• (0950)

These two expert reports suggest to me that this is a minor phenomenon in Canada. Workers are available; if there is a labour shortage, it is a very small one. In past years, we had about 70,000 to 80,000 foreign workers, and now we have over 300,000. That is not in line with reality at all.

A United Steelworkers study suggested that the changes in clauses 161 to 166 would further enhance the already considerable powers of the Minister of Citizenship and Immigration and the Minister of Human Resources and Skills Development. Such discretionary powers are not subject to the legislation and regulation process. I am not saying this has become a bad habit, but it does seem to be a new approach to running a country: the executive branch makes all of the decisions, and neither Parliament nor those directly affected have a say in the matter.

Honourable senators, as a legislator, I find this method unacceptable. This part of Bill C-60 will certainly not improve our democratic process. It will prevent us from deciding for ourselves whether there is a shortage and whether we should bring in foreign workers. We need standards and rules. The government is using its budget bill to pass a measure that has nothing to do with the budget because there is no revenue associated with it except for a nominal amount for processing. This measure should not be in this bill, and that is one of the many reasons I cannot support the bill.

The other measure that is of great concern to me is the one pointed out by the Association of Municipalities of Ontario. Ever since it was introduced by the Right Honourable Paul Martin, this measure has garnered a great deal of support and has been especially welcomed by municipalities, because the government proposed giving them part of the tax revenue collected. This time, however, the rules are being changed again in midstream by means of a tax bill. We do not need psychic powers to know that, in order to eliminate the deficit, the Minister of Finance and the Prime Minister must consider any kind of cuts. The office of the President of the Association of Municipalities of Ontario took the time to write to us to say that the new formula will cost Ontario

$185 million over a certain period of time, but that over the next 10 years this represents an estimated loss of $500 million in Canada.

These unilateral decisions affect the management and governance of both the provinces and the municipalities. Personally, I have always believed in the partnership between the provincial and federal governments. In this case, there is acceptance of municipalities as provincial entities, and I do not believe that many provinces rose up against a certain portion of the gas tax being handed over to municipalities.

In the end, this measure was surreptitiously inserted into the bill, and it changes the rules of the game. It muddies the waters for those who engage in long-term planning and provide good management. Good planning allows for good management and outcomes that our partners can count on.

Another rather large group shared its concerns: the Board of Trade of Metropolitan Montreal. The board is speaking out this time on behalf of workers. It is important to note that there is a partnership between workers and employers. The employers — it is the Board of Trade of Metropolitan Montreal that is getting involved, not a union — object to the fact that the government is going after the Fonds de solidarité. A total of 35,000 jobs have been created with the $2.3 billion that has been invested in businesses in the greater Montreal area, and by going after that sector, the government is going after the heart of the Quebec economy, which is made up of small and medium-sized businesses. It is going after something that addresses a fundamental problem in our economy, namely, the funding of SMEs.

As you know, honourable senators, on numerous occasions the Banking, Trade and Commerce Committee has examined the issue of funding for SMEs and the difficulty they have in getting venture capital. Our workers' savings are used to create other jobs. It is difficult to imagine a more positive formula and a better example of solidarity than workers using their savings to help other workers.

The board and other stakeholders in the industry are saying that the government should not be making decisions on these issues or implementing measures without holding consultations and without looking at the impact these measures will have. There is no going back. Who is going to replace the $2.3 billion that is lost? It is certainly not the Business Development Bank. The bank has just announced a $250 million investment in new energies, but there are SMEs in Quebec operating in sectors other than new energies. Take for example the communications and IT sectors, where Quebec is on the cutting edge. We must think about all the sectors and, right now, I do not think that the federal government is prepared to put billions of dollars at their disposal.

Another measure that concerns us, of course, relates to sections 174 to 199 and the merging of the Department of Foreign Affairs and International Trade with the Canadian International Development Agency. That department is already an enormous apparatus that is experiencing problems in its embassies precisely because the employees do not feel as though they are being treated the same as other staff here in Ottawa. Ostensibly, this government only wants to be charitable if it gets something in return. It seems as though Canada plans to give priority to CIDA programs aimed at funding new entrepreneurial initiatives that help developing countries create more small and medium-sized businesses.

Some very serious questions need to be asked about the direction and the distribution of budgets, as well as the future of assistance programs geared towards early childhood, women in need and ecological initiatives, especially given that CIDA's budget has been cut from $1.842 billion a year in 2010 to just $378 million in 2012. There will be less money, and apparently, our charity has to yield something in return. That is probably why the organization's mandate was changed. I do not believe that these files can be studied by the Department of International Trade or simply by diplomacy. Foreign aid is a special field, and many non-profit organizations have supported government initiatives to provide developing countries with all kinds of tools to help them get out of their financial difficulties. Once again, this measure was included in the budget in a completely iniquitous manner.

• (1000)

Since there was no discussion with the persons and groups involved, not only do I have reservations about this bill, I categorically oppose it.

I would also like to reiterate, for the benefit of those who were not at the committee, that if the tree lighting at Christmas is to be managed by Canadian Heritage rather than the National Capital Commission, there is no need for a bill to do this. This is absolutely ridiculous, but maybe next year we will all be in the dark — unless we already are. This is inappropriate, unreasonable and unjustifiable.

This is why that I am strongly opposed to this bill and I support all organizations — whether they be provincial institutions or organized groups of workers or employers — that claim to feel cheated because they were not consulted and the issues were not put on the table. This is not the way a national government should address the people. We must allow the people affected to discuss the issues and find the best solutions. We must not impose ready-made solutions in an already tight budget.

[*English*]

## CIVIL MARRIAGE ACT

### BILL TO AMEND—THIRD READING

**Hon. Douglas Black** moved third reading of Bill C-32, An Act to amend the Civil Marriage Act.

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

**Hon. Senators:** Agreed.

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

## CANADA TRANSPORTATION ACT

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Unger, seconded by the Honourable Senator Smith (*Saurel*), for the third reading of Bill C-52, An Act to amend the Canada Transportation Act (administration, air and railway transportation and arbitration);

And on the motion in amendment of the Honourable Senator Mercer, seconded by the Honourable Senator Robichaud, P.C., that Bill C-52 be not now read a third time, but that it be amended,

(a) in clause 8, on page 4, by adding after line 20 the following:

"(1.6) For the purposes of this Division and without restricting the generality of the term, ''service obligations'' includes obligations in respect of

(*a*) the timeliness and frequency of the receiving and the delivery of traffic by the railway company;

(*b*) dwell times, estimated times of arrival, transit times and cycle times regarding the carriage of traffic;

(*c*) the quantity, condition and types of rolling stock to be provided by the railway company;

(*d*) the furnishing of adequate and suitable accommodation for the carriage, unloading and delivering of the traffic;

(*e*) accommodation and facilities for the exchange of information regarding the billing, receiving, carriage and delivery of traffic; and

(*f*) car order fulfillment, car spotting performance and car placement at destination.

(1.7) For greater certainty, a railway company shall be considered to have fulfilled the service obligations referred to in paragraph (1.6)(*d*) if it has carried them out in a manner that meets the rail transportation needs of the shipper."; and

(*b*) in clause 11,

(i) on page 5,

(A) by replacing line 9 with the following:

"(*a*) the terms that the railway",

(B) by replacing lines 14 to 16 with the following:

"(*b*) the terms that the railway company must comply with if it fails to comply with a term described in",

(C) by replacing lines 18 to 20 with the following:

"(*c*) any term that the shipper must comply with that is related to a term described in paragraph (*a*)", and

(D) by replacing line 28 with the following:

"to a term described in paragraph",

(ii) on page 6, by replacing line 28 with the following:

"company with respect to a term",

(iii) on page 7, by replacing line 24 with the following:

"(*a*) any term described in para-", and

(iv) on page 8, by replacing line 38 with the following:

"lish any term described in paragraph".

**Hon. Art Eggleton:** Honourable senators, I rise to speak on third reading of Bill C-52. In terms of background to this issue, the companies within Canada that ship by rail have long complained about the unfair advantage the railways had over them, the difficulties they had in getting their products to market on time, and having no other choice but to deal with the railways, particularly the big two, that have a virtual monopoly in the country.

An independent railway review panel was established to help sort this through. Meanwhile, the rail shippers got together in a coalition. That coalition includes just about anybody that ships by rail, such as various associations in the canola industry, steel industry, forest products, automakers, grain growers, pulse, the Canadian Fertilizer Institute, and the Canadian Industrial Transport Association, which includes literally dozens upon dozens of major corporations in this country. Wheat growers, the Western Grain Elevator Association and many others became part of this coalition and impressed upon the government the need to take some action to balance the situation in terms of their dealing with the railways.

The minister, in putting this bill forward, said:

> The Harper government is taking action in the interest of all Canadians to enhance the effectiveness, efficiency and reliability of the entire rail freight supply. This bill will help shippers maintain and grow their businesses while ensuring that railways can manage an efficient shipping network for everyone.

The minister also said:

> We are not dealing with the normal free market. The reality is that many shippers have limited choices when it comes to shipping their products. It is therefore necessary to use the law to give shippers more leverage to negotiate service agreements with the railways.

It was in that context that the bill was then brought forward.

However, when we had the hearings before the Transport and Communications Committee, we heard from witness after witness that they did not think the bill, as is, would work. Chairman Robert Ballantyne, the spokesperson of the Coalition of Rail Shippers, all those organizations I just mentioned, said:

> ... this bill will not be effective and may not be used very much in its present form.

Why are we proceeding with an unamended bill when the people who brought this case originally do not think it is going to be effective or that it will get much use?

There was only one representative of one of the organizations — the Canadian Fertilizer Institute — who suggested maybe it is not what they would like it to be, but perhaps we should go ahead with this and perhaps get some amendments further down the line. That was the only view that was expressed in that direction. Everyone else in the coalition was saying it would not be effective.

In his amendments, Senator Mercer is attempting to bring about a better balance. The coalition had six areas of amendments they suggested would bring it into better balance and make it much more useful. Therefore, Senator Mercer, in his amendments — which I support — will attempt to bring that about. Otherwise, what is the point in passing a bill where the people that have the very concern about this do not think it is going to work?

That raises another issue, which is an issue that is not only reflected in this process of Bill C-52, but I see it in many other committees and many other circumstances in the Senate, and that is the erosion of the concept of sober second thought.

Sober second thought is fundamental to the purpose of this institution. We would all agree on that. Yet, I think what we get too much of these days is rubber-stamping; if the government wants it, the government gets it. Our prime duty is the public good, is it not?

**Senator Moore:** Correct.

**Senator Eggleton:** Public good before blind adherence to what the executive branch of the government wants to put forward. Yet, here we have a case where people came in and said, "No, it isn't going to work the way it is." Did the other side, the government members, pass any amendments to try to make it work better, having listened to the deponents? No, they did not.

Then what is the point, honourable senators? If the decision has already been made that this bill shall pass without amendment, then why do we bring these people in? They come from different parts of the country as witnesses, and what are we doing? Are we just misleading them because we have no intention of implementing anything they say?

They all said this bill needs improvement, okay? Nobody on the government side, the Conservative side, was willing to support any amendment — not only any amendment, but any observations whatsoever. Nothing. Leave it just as it is. We are seeing too much of that in this chamber, and that is an erosion of our duty and our purpose.

Honourable senators, I will support the amendments that Senator Mercer has put forward. It is the only way to make the bill work. If honourable senators do not support the amendments and continue to have blind adherence to what the government demands rather than the public good, then we will also vote against the bill.

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

• (1010)

**The Hon. the Speaker** *pro tempore*: Is there further debate? Are honourable senators ready for the question?

In amendment it was moved by the Honourable Senator Mercer, seconded by the Honourable Senator Robichaud, P.C., that Bill C-52 be not now read a third time but that it be amended, (*a*) in clause 8, on page 4, by adding after line 20 — shall I dispense?

**An Hon. Senator:** Dispense.

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

**Some Hon. Senators:** Yea.

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore*: All those in favour, please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker** *pro tempore*: All those opposed, please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore*: In my opinion, the "nays" have it. The amendment is defeated.

Are honourable senators ready for the question?

**An Hon. Senator:** Question!

**The Hon. the Speaker** *pro tempore*: It was moved by Honourable Senator Unger, seconded by Honourable Senator L. Smith, that the bill be read a third time now.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yea.

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore*: All those in favour of the motion, please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker** *pro tempore***:** All those opposed, please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore***:** In my opinion, the "yeas" have it. The motion is carried, on division.

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

[*Translation*]

## INCOME TAX ACT

BILL TO AMEND—THIRD READING—MOTIONS IN AMENDMENT AND SUB-AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carignan, seconded by the Honourable Senator Marshall, for the third reading of Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations);

And on the motion in amendment of the Honourable Senator Ringuette, seconded by the Honourable Senator Jaffer, that Bill C-377 be not now read a third time, but that it be amended in clause 1,

(*a*) on page 2, by replacing line 30 with the following:

"the period is greater than an amount that is equal to the maximum total annual monetary income that could be paid to a Deputy Minister, shown as"; and

(*b*) on page 3, by replacing line 13 with the following:

"ees with compensation that is greater than the maximum total annual monetary income that could be paid to a Deputy Minister and disbursements";

And on the motion in amendment of the Honourable Senator Segal, seconded by the Honourable Senator Nancy Ruth, that Bill C-377 be not now read a third time, but that it be amended in clause 1,

(*a*) on page 2,

(i) by replacing line 1 with the following:

"(2) Subject to subsection 149.01(6), every labour organization and every", and

(ii) by replacing line 30 with the following:

"the period is greater than $150,000, shown as";

(*b*) on page 3, by replacing line 13 with the following:

"ees with annual compensation of $444,661 or more and";

(*c*) on page 5, by replacing lines 34 to 35 with the following:

"poration;

(*b*) a branch or local of a labour organization;

(*c*) a labour organization with fewer than 50,000 members;

(*d*) a labour trust in respect of one or more labour organizations that, in total, have fewer than 50,000 members; and

(*e*) a labour trust the activities and operations"; and

(*d*) on page 6,

(i) by replacing line 6 with the following:

"described in paragraph (6)(*e*)), that is limited",

(ii) by replacing line 10 with the following:

"(6)(*e*);", and

(iii) by adding after line 16 the following:

"(8) For greater certainty, nothing in this section shall be interpreted as affecting solicitor-client privilege.";

And on the subamendment of the Honourable Senator Cowan, seconded by the Honourable Senator Tardif, that the motion in amendment be amended as follows:

That Bill C-377 be not now read a third time, but that it be amended in clause 1, on page 2,

(*a*) by replacing line 23 with the following:

"(*b*) a set of the following statements for the fiscal period"; and

(*b*) by replacing line 36 with the following:

"that is to be paid or received, namely,";

And on the motion in amendment of the Honourable Senator Chaput, seconded by the Honourable Senator Mercer, that Bill C-377 be not now read a third time, but that it be amended in clause 1,

(*a*) on page 4,

(i) by replacing line 12, in the French version, with the following:

"sés relatifs aux activités de recrutement,", and

(ii) by replacing line 22, in the French version, with the following:

"liés aux activités juridiques, sauf s'ils ont trait à des"; and

(*b*) on page 5, by replacing line 36 with the following:

"of which are limited to the".

**Hon. Diane Bellemare:** Honourable senators, I am speaking in this chamber today with the permission of Senator Cools. I would ask that, at the end of my speech, the debate remain standing adjourned in her name.

Honourable senators, I am speaking today to explain why I cannot vote in favour of Bill C-377 as it currently stands. When I read the wording of the bill in January, I quickly realized that it contained a number of flaws. I did my homework and did some research. I also listened, as an observer, to testimony from witnesses who appeared before the Standing Senate Committee on Banking, Trade and Commerce.

Liberal and Conservative senators have brought forward several amendments that are all similar in nature. Among other things, the senators were motivated by testimony heard by the Committee on Banking, Trade and Commerce that the scope of the bill was unnecessarily broad.

In my opinion, Senator Chaput's amendments are of particular importance. There are some major inconsistencies between the French and English versions of the bill that we cannot abide.

Among other things, several errors found their way into the bill that may prove detrimental to certain people. That is why I am in favour of these amendments. We cannot accept that unions be forced to state the aggregate amount of disbursements on organizing activities when said activities involve recruitment or that they be forced to state the aggregate amount of disbursements on legal activities.

However, most of the witnesses we asked to suggest amendments clearly stated that even if it is amended, the bill will remain vulnerable to a constitutional challenge because of its potential breach of privacy.

Even if the amendments are agreed to, the bill will remain unbalanced and very far removed from the transparency measures enacted in France, the U.K. and Australia.

For example, similar transparency legislation in these countries target not only unions, but also employers. The French law passed in 2008 includes financial transparency rules that apply to professional organizations, employer organizations and unions. When their financial resources exceed a certain threshold, these organizations must supply audited financial statements that they must then publish, including on the Internet. The organizations themselves, and not the government, are responsible for publishing them.

In the United Kingdom, there are provisions in the Trade Union and Labour Relations Act that also apply to unions and employer organizations. Each of these organizations must keep financial records and file a return on officers' pay and political donations paid out of union dues. The organizations are required to submit these documents to the Certification Officer, who posts the returns on the Internet with the consent of the unions and the employer organizations. That same officer monitors the organizations' political donations.

In Australia, there are provisions on transparency for labour organizations and employer organizations alike. Those organizations are required to produce certified, detailed financial statements, which are presented to the members at their meeting and also submitted to the Fair Work Commission. These detailed financial statements include memoranda with information on the officers' pay and the donations and contributions made to political parties. These detailed financial statements are not made available to the general public.

Like many of you, honourable senators, I am in favour of transparency and I think it has many virtues. We often hear that Canadians are highly in favour of laws requiring unions to be more transparent.

Let us have a closer look at the questions that are asked.

A Léger Marketing poll asked Quebeckers the following question:

> Should unions be legally required to report on how union dues paid by unionized employees are used, in other words, should the unions have to clearly indicate how this money was spent?

Response: 43 per cent of the general public in Quebec said yes, but only to the union members; and 54 per cent said yes to publicly reporting the results.

Another national survey, this one conducted by Nanos, asked the following question:

[*English*]

Do you completely agree, somewhat agree, somewhat disagree or completely disagree with the following statement, that it should be mandatory for unions from both the private and public sectors to publicly disclose detailed financial information on a regular basis? Answer: 51 per cent completely agree and 32 per cent somewhat agree.

[*Translation*]

As we can see, and you can draw your own conclusions, opinion is more equally divided than what some would have us believe.

However, and this is what counts, Bill C-377 is not a motion about the merits of transparency. It is an actual bill that will result in major expenses for government, unions and their members, and also for society as a whole. The bill is flawed and is not balanced. It was prepared without any consultation of the parties concerned, which is hard to accept in terms of labour relations.

In my previous professional life, I worked for many years with unions and employer organizations on projects to create jobs and increase productivity.

I came to understand that social dialogue was key to job creation, increased productivity and prosperity. However, confrontation can be very costly for society. The respected economic publication *The Economist* recently pointed out that the countries that came through the European crisis in the best shape were the Scandinavian countries, where there is a great deal of social dialogue.

Bill C-377 has been rejected by Canadian unions in general, several investment groups and five provinces. Except for some employer organizations in the construction industry, no other major employer organization came before the committee to support this bill. This shows that the bill is confrontational. As several witnesses noted, it runs the risk of upsetting the delicate labour relations that have been established in the provinces.

For all these reasons, and because I do not see how such a bill can make a difference with respect to employment, I cannot support Bill C-377.

• (1020)

Honourable senators, I am in favour of transparency in labour relations. People who pay union dues should be entitled to financial statements from their union. They should know how much their leaders are paid and how their money is being spent. In fact, accountability clauses to that effect appear in every provincial labour code in Canada. Some Canadian unions already post their financial statements online, on a voluntary basis. For instance, CUPE posts its audited financial statements on its website. That document is nearly 30 pages long and is very thorough in reporting how the association manages membership dues.

In order to improve transparency, many countries have extended these accountability clauses so that they also apply to employer associations, but in every case, these laws are associated with labour relations and not tax laws. In addition, they have been developed in cooperation with unions and managers. As an example, in 2011, Quebec passed Bill 33, which has to do with the construction industry. The bill sets out an accountability process for employer and labour organizations, which must produce detailed audited financial statements as well as a statement to the Minister of Labour. Those documents must be submitted to the Minister of Labour who posts them online. That Quebec bill was unanimously passed by all parties, because it was the result of open consultations.

In closing, I would like to say that, in my humble opinion, Bill C-377 exceeds the basic functions of an MP. I look forward to hearing Senator Cools' remarks on this issue. The countries that have implemented this kind of legislation got high levels of government involved and included all of the stakeholders in the process.

Honourable senators, if the aim of the law is to keep unions from contributing money or services to political parties — as was said in the House of Commons — there are many other legislative means for addressing that problem.

**Hon. Dennis Dawson:** Would the senator accept a question?

**Senator Bellemare:** Yes.

**Senator Dawson:** Honourable senators, as I have already explained, there are always differences between political parties. I would like to congratulate Senator Bellemare for her speech and her bravery today. I completely agree with her views.

I would like to come back to Quebec's Bill 33. A similar bill at the federal level would require that union records comply with Canadian and Quebec regulations. That would make the power struggle between the two levels of government apparent. While we might not be constitutional experts, it is clear that this bill will gain nothing from being amended because it is not well-founded.

Is there a process whereby we could improve it or return it to the other place to ensure that there would be broader consultation in the House of Commons than there has been in the past?

**Senator Bellemare:** There are surely processes that can be used to improve the bill, but I am not able to answer your question.

**Hon. Ghislain Maltais:** Honourable senators, I know that Senator Bellemare attended a great many of the hearings. In her speech, she spoke about the significant costs to the government and unions. Has someone calculated those costs? How much will this cost unions and the government?

**Senator Bellemare:** We have done several cost analyses. It will cost the government about $60 million. For the unions, the cost will depend on the scope of the regulations; however, the greatest costs will be social costs and the impact they will have on businesses' productivity and growth. If we exacerbate an unhealthy climate, it will have a negative impact on production.

**Hon. Jean-Claude Rivest:** Honourable senators, I would first like to reiterate that I am strongly opposed to this bill. We do not know exactly where this bill is coming from. Is the purpose of the bill to increase transparency within unions when we all know that unions are completely democratic organizations?

Obviously, they are not perfect but all Canadians should recognize that unions follow an extremely democratic process that can be used as a model in so many regards. Unions are owned by their members. They hold national and regional conventions. Members can ask their leaders for as many demonstrations of transparency as they like. That is the deep-rooted culture and tradition of our unions. They do not need a paternalistic approach coming from who knows where. We do not know who asked for this.

I know Quebec better than that, and I have never seen or heard any unionized workers calling for any level of government, whether it be the Quebec National Assembly or the Parliament of Canada, to pass legislation to impose additional transparency measures on their leaders and unions. Who came up with this bill? Where did the need or demand come from? It came out of nowhere.

Second, most constitutional experts who have given an opinion on the subject basically agree, and the Leader of the Opposition in this chamber has also said, that this bill will be constitutionally challenged and found to be unconstitutional because it infringes on the authority of the provincial legislatures. That is pretty clear. If this bill passes, it will result in legal debates and additional costs for unions, and there is no reason for that.

Third, it is said that unions benefit from tax deductions and should file the relevant information returns with the Canada Revenue Agency. This is of interest, since the public pays for these deductions, but why single out the unions? Do businesses not benefit from tax deductions? They receive subsidies from taxpayers' money and yet there is nothing in the government's plans, or in this bill, that requires them to open their books and put everything they have on the table. How does this make sense? In addition to this preposterous idea, much of our labour relations legislation will be included in the Canada Revenue Agency Act.

Why is the Minister of National Revenue wading into trade union matters? This makes no sense at all. If indeed there is a general public interest beyond that of union members to establish transparency requirements, since union dues are tax-deductible, the rule should at least apply to all companies. Why is there nothing, no provisions at all, that would at least be less onerous than what is being proposed? I do not understand the logic in that.

Finally, Senator Bellemare, along with some others, raised the issue of labour law. Labour Code provisions are measures of balance. The code requires that the two parties negotiate collective agreements in good faith. It grants unions the right to strike, and employers the right to lock out workers. All this is regulated in an even-handed way, to ensure that the rights and responsibilities of both groups are balanced. This is the essence of our labour legislation. Unions are not activist groups or charities; they are organizations whose fundamental purpose is to negotiate collective agreements and to do so with the employer.

• (1030)

The legal framework surrounding labour relations ensures balance and parity and states each party's responsibilities. Now, though, for reasons unknown, the government has decided to tamper with this balance by imposing obligations and responsibilities on unions alone. It makes absolutely no sense.

As was stated time and time again, if the government truly felt greater transparency was needed, which I doubt, it should have imposed the same obligations on businesses. It should have taken a balanced approach to the legislation and respected Canada's labour relations tradition instead of coming down on unions alone.

It is almost as if the people behind the bill drafted it the same way they pick their lottery numbers. They arbitrarily threw around numbers that have no basis in reality.

Honourable senators, please understand what we are imposing on unions as a whole. The list of new obligations is long and includes stating disbursements on political activities. Why not ask the same of businesses? Unions will now have to make a statement of disbursements on lobbying activities, but it would be interesting to ask the same of businesses.

We are asking unions to disclose the gifts and grants they receive. Why not ask the same of businesses? What is more, not only are unions expected to disclose every type of information imaginable, they are expected to do so in such rigid detail that the data will be of interest to no one, much less union members, who tend to rely on their union leaders.

Ultimately, the bill, which is meant to be in the interest of transparency and unionized workers, is actually an insult to responsible union activists, who have absolutely no need for the despicable paternalism that demands that unions comply with a set of requirements that are totally unfair and almost silly given their sheer amount.

Honourable senators, as Senator Eggleton said so well earlier, are we a carbon copy of everything that happens in the other place? This is a case where the government should accept its responsibility and ensure that this bill gets shelved or, at least, does not get passed until it is has been thoroughly reviewed.

If all our labour laws have transparency requirements, then they should be imposed fairly among the parties instead of through a bill that we know absolutely nothing about in terms of its genesis or purpose. It seems like a blatant anti-union sentiment.

**Senator Maltais:** Honourable senators, I am pleased to speak to Bill C-377. I see that by changing chambers the honourable senator has changed his opinion. Everyone adapts eventually.

**The Hon. the Speaker:** Senator Maltais, do you have a question?

**Senator Maltais:** No, since this is a debate.

**The Hon. the Speaker:** Do any other senators have any questions for Senator Rivest?

**Some Hon. Senators:** No.

**Senator Maltais:** Honourable senators, at the Standing Senate Committee on Banking, Trade and Commerce, we read 43 briefs that contained pages and pages of introductory remarks. We heard testimony from lawyers, union representatives, accountants, forensic accountants and extraordinary constitutionalists. I asked one of the constitutionalists who he was representing here. He said he was representing the CSN.

We got a legal opinion from former Supreme Court Justice Bastarache. His opinion was ridiculed by the lawyer for TCA, a lawyer who nobody has ever heard of. Today, I intend to ensure that the opinion of former Justice Bastarache, advised by Don Jamieson and the Right Honourable Jean Chrétien, is considered.

Is there a Brutus in the room who would like to contradict former Prime Minister Jean Chrétien? Unbelievable. I choose to put my trust in former Supreme Court Justice Bastarache, Don Jamieson and Jean Chrétien. As far as I am concerned, their legal opinions carry far more weight than those of every other witness, all of them unknowns in the field of constitutional law.

Another point really made an impression on me. I have never heard so much talk of transparency. Everyone who appeared before the committee used the word "transparency" so much that if bookstores still sold transparencies, I would have bought some. When Senator Rivest talked about transparency, it occurred to me that it must have been in somebody's interest to pay for buses during the crisis that blew up in Quebec last year to cart those pains in the neck from one end of the province to the other. Do the union members have any idea how much that cost them?

Did they know? If unions are going to be transparent, they have to be transparent to all members. I am not a constitutional law expert, but I know from experience that a union's primary role is to negotiate terms and conditions, benefits and insurance and to ensure that the CSST is doing its job.

The other part, the political part, is up to the people. It is up to the people to decide who represents them in their parliaments. Many union members told us that they could not get financial statements. When some union members try to get information from their union representatives, they get bounced around from one person to another and can never get access to the financial statements. I urge senators to go see what kind of financial statements are available on the Internet.

The Canadian Bar Association, the association of Canadian lawyers, objected to the mandatory disclosure of all expenses exceeding $5,000. As far as I know, lawyers have a standard hourly rate that all Canadians use. If they are afraid their names will appear on the list, something is not working. Maybe some lawyers have charged three or four times the going rate, and unions will hire different lawyers for the next round of negotiations. That is clear.

• (1040)

Nobody is asking for anything outrageous. I think real transparency means not being afraid to be transparent. That is all that the bill is trying to achieve: transparency, but in every respect. That is what matters in this bill. We will not embark on such a roller coaster ride for nothing. No, that is not true. When we were hearing from everyone at the Banking Committee, wisdom told us not to ask too many questions, but rather to listen carefully to what people had to say.

This bill will apply across Canada. If it is really as bad as those who oppose it claim it is, then the Supreme Court will settle it. For the time being, in terms of transparency, there is never enough in a society like ours. There is never enough. People want transparency, and that is why Bill C-377 was introduced.

**Hon. Pierre Claude Nolin:** Would the honourable senator take a question?

**Senator Maltais:** Yes.

**Senator Nolin:** When Mr. Bastarache appeared — first of all, did he appear?

**Senator Maltais:** No.

**Senator Nolin:** Oh, well — so everything you just said about his opinion, where did that come from?

**Senator Maltais:** From a letter, from a legal opinion issued by Justice Bastarache, from a business.

**Senator Nolin:** Who paid Mr. Bastarache to give that opinion?

**Senator Maltais:** That is the most important question. I do not know, for he did not tell me.

**Senator Rivest:** I wish to ask the honourable senator a question.

The senator mentioned the fact that unions may have funded certain protests that were part of the maple spring. I lament that as much as the senator. It is one thing for unions to fund activities — the unions are not the ones responsible for the looting — but would it not be fair to require unions to disclose the funding they provide for protests? Should we not also require, as we saw in Quebec with the Charbonneau commission, that big businesses disclose contributions they make to dictators in order to win contracts elsewhere? That would provide balance. That is all we are asking for.

**Senator Maltais:** That is an excellent question. That is why Jean Charest's government set up the Charbonneau commission, to catch these criminals who are funding dictators, to catch the people who give funds to various countries. That is why we have the Charbonneau Commission, and that is why Bill C-377 is necessary.

[*English*]

**Hon. Larry W. Campbell:** Will the honourable senator take a question?

**Senator Maltais:** Yes.

**Senator Campbell:** I have the honour of sitting on the committee with the honourable senator, and I appreciate all of the hard work he does. I remember the question, "Whom do you work for?" It appears that in the case of Mr. Justice Bastarache, it does not matter whom he works for, and yet it matters whom others work for. Is it not true that many of the witnesses we heard from work for no one as they are constitutional experts and academics who presented their views as constitutional experts?

[*Translation*]

**Senator Maltais:** As you said in your preamble, former Justice Bastarache's legal opinion was better than the others because he is a Canadian expert. I do not want to show any disrespect towards the others, far from it, but I believe that a former Supreme Court justice has greater merit, especially given that he had the support of the Right Honourable Jean Chrétien. Is there a Brutus here in

the chamber who would like to contradict the words of a former prime minister? Certainly not. I hope that Senator Campbell agrees with me.

[*English*]

**Senator Campbell:** Honourable senators, I can only assume that is Gallic humour I just heard because it makes no sense whatsoever. Whether a person worked for Prime Minister Chrétien or Prime Minister Harper or another prime minister certainly does not make them a great jurist. It means they worked for a prime minister.

In this case, does the honourable senator know who hired Mr. Bastarache to give this opinion?

[*Translation*]

**Senator Maltais:** I just now answered that, and I can add only one thing: former Justice Bastarache may not have been the best, but he was far from the worst.

[*English*]

**Senator Campbell:** Honourable senators, the opinion was obtained by the same company that represents Merit — end of the story.

Honourable senators, I have a supplementary question. Did the committee hear at any time from any disgruntled union members? Did anyone appear who seemed to be a disgruntled union member to say they never had the opportunity to see the documents?

[*Translation*]

**Senator Maltais:** It was not just one union member who appeared before the committee; you know this very well, since you were at that committee meeting. I will not fall into that trap. Thank you.

**Hon. Claude Carignan (Deputy Leader of the Government):** Will Senator Maltais take another question?

**Senator Maltais:** Yes.

**Senator Carignan:** In 1991, the Supreme Court issued a decision in *Lavigne v. Ontario Public Service Employees Union*. In this case, the Rand formula was being challenged. One of the arguments used to attack the Rand formula held that the union had supported the NDP during the election and in doing so had violated the freedom of expression of the complainant, Mr. Lavigne, who challenged the use of his union dues to fund a political party. The case was dismissed for various reasons, particularly on balance under section 1 of the Charter.

The Court of Appeal of Quebec issued another ruling in 2011, upholding the conviction of the FTQ, a union that in 2003 illegally funded campaign activities against the Action démocratique du Québec and broke the law by paying for advertising against the ADQ.

There have also been some decisions in Europe recognizing that money given to unions and used for political ends infringes on freedom of expression.

That brings me to my question: if I want to ensure that my freedom of expression as an employee is respected and is not trampled on by a union that might be funding activities, either by breaking the law or through union support, how do I do so without Bill C-377?

**Senator Maltais:** Honourable senators, that question has three parts. Let us start with what was brought before the courts. This case was brought before the courts because the union in question thought that it was losing its rights. I did not read the ruling, but I can tell you one thing; and you know this all too well as a senator from Quebec. All the senators from Quebec know this all too well and that is why they are voting against this bill today.

• (1050)

They know very well that, after every election, the Chief Electoral Officer of Quebec scrutinizes the expenditures of all unions and, every time, they are found guilty of making illegal contributions. Union dues are to be used to defend members' rights, not to engage in politics.

**Senator Nolin:** Would you mind if we asked for a little more time so we could continue to ask questions?

**Senator Maltais:** Go ahead.

**Senator Nolin:** You just answered a short question from Senator Carignan. He explained in a few words the contractual relationship between a union member and his or her union and the breach of this relationship, did he not?

**Senator Maltais:** Yes.

**Senator Nolin:** If I told you that the Constitution Act, 1867 gave jurisdiction over this contractual relationship to the Province of Quebec, rather than the federal Parliament, would that inform your opinion of Bill C-377?

**Senator Maltais:** It is definitely a constitutional prerogative. I completely agree with my learned colleague. However, the federal government can — I emphasize can — pass legislation concerning unions under federal jurisdiction. I am certain that my honourable colleague will not take this to the Supreme Court, because this right has been recognized since 1867.

**Senator Nolin:** Nevertheless, returning to my question, the contractual relationship between a union member and his or her union is a contract. In the event of breach of contract, who is responsible for resolving the problem? It is the Province of Quebec.

**Senator Maltais:** You are a lawyer; you know that when there is a breach of contract, it goes to court. When there is a breach of contract between two parties, such as a union and a union member, that is a court case, and in general, the bodies that deal with court cases in Canada are the courts.

**Hon. Pierrette Ringuette:** If I understood Senator Carignan's question correctly, Senator Maltais, he thinks that a union should not take away its members' freedom of expression and freedom of speech. Did I understand correctly?

Given the premise of Senator Carignan's question, do you think that a political party or the Prime Minister's Office should infringe on senators' freedom of expression in the Senate?

**Some Hon. Senators:** Out of order.

**Senator Maltais:** Honourable senators, I do not think that question is relevant to this institution because nobody is trampling on anybody's right to speak here. I have been answering your questions for almost an hour.

**Senator Ringuette:** Senator Maltais, you are a member of our committee, and you have to acknowledge that, during our last meeting, when we did a clause-by-clause study of the bill, your party restricted one of your colleagues' freedom of expression and freedom to vote. Is that not so?

**Senator Maltais:** Senator, I do not think you are in any position to be making those kinds of accusations. You yourself took up over 60 per cent of the floor time during the eight weeks we spent studying this bill. I do not think any senators were deprived of their right to speak, because those who wanted to speak just had to raise their hand and speak. Believe me; I was there. I urge anyone who felt that their right to speak was violated to stand up now.

[*English*]

**Hon. Art Eggleton:** Senator Maltais said in his remarks that transparency belongs to everyone. Yet, this particular bill just targets unions when it comes to the issue of tax deductibility. That is the rationale that seems to be used here — tax deductibility — but there are many other associations — legal, accounting, medical, et cetera — that are not covered. Would the honourable senator not think that, in fairness, those should be covered too? Would the honourable senator be proposing a bill that does bring transparency to all by including those who get tax deductions in those associations as well?

[*Translation*]

**Senator Maltais:** I think that is a very good question, except that charities are already subject to a tax law. Those that are not can register as a charity as long as they comply with Canada's tax laws. I think that, in the end, everyone will be satisfied with the transparency the honourable senator wants.

**Hon. Grant Mitchell:** Honourable senators, I have a few things to say and several other senators have very important things and are very frustrated.

[*English*]

I would like to mention a few things about this debate. I would like to begin by congratulating members for the level of this debate. Particularly, I would like to acknowledge Senator Segal and Senator Bellemare and others who have taken a position that is contrary to what would appear to be their caucus position. That is a difficult thing to do, and I think it is worth noting, for those who are cynical about the efforts of the Senate, that this is a clear demonstration of the Senate rising above this accusation of strong and definitive partisan lines.

I should also say that an interesting comment, in the context of this level of debate, was made by Jennifer Ditchburn yesterday, on CBC's *At Issue*. She said that Senate debates are a breath of fresh air compared to those of the House of Commons. However, they are not televised. Would that this debate had been televised! I congratulate Senator Cowan and Senator Ringuette, and others on our side as well, for an elevated level of debate, to which I aspire and to which I am sure I will fall short.

I want to say a number of things, by way of summary, in particular, and maybe a couple of other things that have not been mentioned. First of all, senators have very clearly laid out the weaknesses of this bill. Among many others, in some sense it is a continuation of efforts by a government to silence those whom they seem to be opposed to, those who are not ideologically consistent with them or who, as Senator Carignan's question suggested, might be opposed to them politically. That is not a reason for a government to attack or to use unfair measures, but it seems to be a reason for this government to do that. We have seen the government pulling funding from any group initiative that has women's equality in its mandate, on its website or in its efforts. We have seen a general attack on charities.

[*Translation*]

Particularly environmental groups.

[*English*]

The government is absolutely unjust in its attack on these groups; for some reason, the government's ideology drives them to be deeply opposed to what these groups do in a perfectly democratic manner. It certainly sustains our democracy in many ways. We have seen scientists muzzled. We could go on. Clearly, there is evidence that this government wants to suppress opposition. Where that comes from is probably an ideology, maybe the definition of a certain hubris.

It is also true that this bill is redundant. That is an odd hypocrisy for a government that wants less government already. In every province except Saskatchewan, I think, there is provision for this kind of reporting that reveals sufficient information to give the membership of a union comfort that they are being informed adequately with a good deal of transparency, but do not go over the line of "too much," because it becomes too expensive, unfair and can be very disruptive within an organization.

• (1100)

It is hypocrisy — and it was pointed out by others this morning — that the information that would be demanded of unions is, in fact, prohibited by law for governments to reveal. For the CRA, which is demanding this information, to reveal this kind of information would be against the law.

It is true that corporations write off investments in political activities and lobbying. They are not expected to reveal that in any kind of detail to their shareholders or to their employees.

It is true that corporations receive grants from government. If you think the reason would apply to unions, surely the government would be inclined to see a parallel. If unions need to reveal information simply because their membership dues are tax deductible, then corporations should. It even goes up one level. For corporations that receive information, one would think the demand for this kind of revelation — if the Conservative government wants it in this union case — would be every bit as powerful in the case of corporations that are receiving funding.

There is a litany of reasons why this bill is technically wrong. At the base of that is that it is probably constitutionally inapplicable, ultra vires; it does not work and will not work.

There are negative consequences for this bill. One is that it will probably create enhanced labour unrest in the private sector, to the extent that unions exist there. In the public sector, there is a good deal of union membership and union operation within the federal government.

It will create animosity within the workplace. When people begin to see what the person at the next desk is earning, it might come as a surprise. That makes the management of a union increasingly difficult, but it is also going to make management, potentially, of corporations and of government facilities within which union members work increasingly more difficult to manage.

Labour unrest is corrosive to economic development and growth. We have had periods of labour unrest in our history. It is not something that we should be pursuing, consciously or aggressively, in the way that this bill could very well cause.

The question that really plagues me is: Why is it that this government or any government feels a need to specifically attack unions? Yes, perhaps they disagree with the ideology, but it is not as though the private sector itself has built this government all by itself. Government has had a role in that and unions have had a very significant role in building this country. All unions are not perfect all the time. All corporations are not perfect all the time. All government institutions are not perfect all the time. However, unions have played a very powerful role in developing this country to where it is today. Where is it today? In some respects, what we are seeing on the employment front is an erosion of the quality of jobs in our economy. We have lost many jobs in our economy.

We have also seen an erosion of the quality of those jobs — the pay, the benefits, the security, the percentage that is full time. There was a time when 70 to 80 per cent of retail jobs in this country were full time. Today, 70 to 80 per cent of retail jobs in this country are part time.

Pay has not increased. The argument can be made that real wages have not increased in this country for as much as 25 years. If it were not for the fact that interest rates were 1 per cent, the increased standard of living that Canadians have enjoyed over the last number of years may well not have been achieved at all.

Unions have played a role in the history of this country, in this economy, in making for better jobs, in protecting workers' rights and ultimately in stimulating the economy. Unions deliver high-quality workers, the very engine of this economy. Many would argue, and I would too, that the oil sands have been built largely by unionized journeymen workers. They are known for their quality of work, for their efficiency of work, for the dependability of their work, for the safety with which they do their work, and for the safety inherent in the quality of the work that they have accomplished.

It begs this question: Why is it that there are these concerted attacks on unions? This is not isolated. Six back-to-work pieces of legislation have been introduced by this government. Inherent in that back-to-work legislation has been the —

Welcome to the chair, Senator Plett. Nice to see you smiling; my gosh!

**An Hon. Senator:** He is smiling!

**Senator Campbell:** Your worst nightmare.

**Senator Mitchell:** You finally figured out how to make him happy; beautiful!

**An Hon. Senator:** We have to stay here all summer, now!

**Senator Mitchell:** I move that he stay in the chair. Now back to the job at hand here.

Those six pieces of back-to-work legislation inherently contravene, impede and inhibit the collective bargaining process.

Once again, the collective bargaining process has been a very powerful and successful mechanism in facilitating economic activity, growth, job security and job safety in this country. There seems to be a complete disregard of that tradition and those institutions by this government.

What I do not understand is the contrast between these scenarios. I believe that this government would never consider legislation that would favour one corporation or one set of corporations and diminish another. They believe in competition. I believe in competition. My party believes in competition. We believe in capital markets and competitive capital markets. The Conservatives say they do, too. In many respects, unions are simply another corporation. They are a corporate structure in an economy that is fueled by competition. Why is it that this government feels that it can pick those who should be allowed to compete fairly, and in many respects unimpeded —

Thank you; excellent job. Well done, Senator Plett.

Anything I said about Senator Plett in the chair, Your Honour, was not a reflection on you. I just want you to know. Clearly, he has learned at your knee.

The government, on the one hand, would never, ever pick one corporation over another by way of legislation to define how they can compete and diminish the corporations against which that

corporation would compete, but it somehow has lost the thread when it comes to unions. Unions are corporations. They are competitive entities in the economy. Why is it that this government would be afraid to allow unions to compete? They have that mechanism. The relationship between unions and business, and unions and other employers, have self-regulatory mechanisms. When it comes to Senator Carignan defining what unions should do and implying that somehow the government should have a role in that, unions should do what union members want them to do. It is a democratic process internally. It is not for us to define and redefine that for them. It is hubris and arrogance to do that, and it will ultimately hurt the economy and the jobs that this government so badly wants to create, as do we all want to create.

• (1110)

For me, honourable senators, the bottom line is that this is patently unfair; it diminishes competition in our economy; and it further inhibits unions being able to enhance safety, training and quality of work in our economy. In many respects, it is tantamount to class warfare. It establishes a priority of one group of corporations, one group of entities in our society, de facto and implicitly, by diminishing and impeding the work, and usually the great work, that unions have done to build this economy and this country.

I think it behooves us all to defeat this bill, in the interests of fairness and of better supporting Canada.

**Hon. Donald Neil Plett:** Honourable senators, I am sure Senator Mitchell would be happy to take a question. Rather than a question, I will just comment that I am so happy that, for the first time since Senator Mitchell came from Alberta to the Senate, I could be part of rendering him speechless.

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

**Hon. Pierrette Ringuette:** Thank God we still have a sense of humour in this place.

Would Senator Mitchell take a question?

**Senator Mitchell:** I would. I have to find some words.

**Senator Ringuette:** That comes easily to the honourable senator.

Yesterday, I and a few other people in this Parliament attended a presentation sponsored by TransCanada, the pipeline business in Canada. The presentation was supported by TransCanada, and it was from Bob Blakely, Director of Canadian Affairs of AFL-CIO. Essentially, they were talking about the partnership between TransCanada and the union, and about TransCanada being able to rely on the union to provide trained and skilled employees when and where TransCanada needed them. During a question period following the presentation, they indicated that Bill C-377 was disrupting this partnership.

This government is investing millions of dollars to promote the expansion of the oil sands. TransCanada is an integral and necessary part of that cycle and they need the union in terms of the human resources that are required in order to continue. How does the honourable senator suppose that the Government of Canada, the Harper government, can impose such a disruptive future between businesses and unions?

**Senator Mitchell:** I thank the honourable senator for her question. I should say that I know Bob Blakely very well. He is a lifelong union activist and lawyer. However, it will come as a surprise to many people that he was a senior commander in the Canadian Navy Militia. He commanded warships for extended periods of time. He is absolutely, fundamentally, a committed Canadian who has contributed in remarkable ways, through the union movement, through his law practice and also as a naval officer of a very senior rank. His commitment to this country cannot in any way, shape or form be questioned. He is a remarkable person.

The honourable senator has hit on exactly the question I have often asked in this place, somewhat rhetorically, namely: Why does anyone think that the Conservative government, or any Conservative government, can actually run an economy? All the evidence is to the contrary.

If you want to run an economy, you have to do a number of fundamental things, and one of them is to secure labour rest; you do not want to create labour unrest. It is particularly heightened and brought into stark relief in Alberta, because Alberta has an economy that voraciously demands workers, and skilled workers. Unions deliver skilled workers. They deliver trained workers. They deliver workers on time. They deliver workers on time sporadically.

People think that union members are making $27 to $30 an hour. Yes, they are, but they make it three weeks here, two weeks there and six months there. They do not make it every day of every year, all the time, generally speaking.

Unions have been the foundation of building, as I said, not only the oil sands but also many components of Alberta and of the country. Therefore, this is very disruptive. When a company like TransCanada — which is a first-class company, clearly with corporate interests at stake — is saying that, it would behoove this government to sit up and listen.

[*Translation*]

**Senator Carignan:** There is a law that requires me to pay my municipal taxes. In return, I am entitled to access the information and obtain a copy of almost any document from a municipality. The law requires me to pay school taxes. In return, I am entitled to access all the documents and information related to the schools. The law requires me to pay my dues to the Barreau and, in return, I am entitled to access all the public information about the Barreau.

When the law allows unions to force people who do not want to be members to pay dues against their will, then is it not only fair that, in return, those people have access to information about the union and how it spends those dues?

**Senator Ringuette:** They already do.

[*English*]

**Senator Mitchell:** They already do. However, given that the honourable senator is paying taxes to the federal government, does he know how much Nigel Wright was paid, or Ray Novak, or anyone in that office? Does he have any idea how much all the people in that government office were paid? We all know they were paid less than $444,661, because that is the limit put on it.

**Senator LeBreton:** You are turning out the lights.

**Senator Mitchell:** You had better check. Maybe someone has not been paying the lights.

**The Hon. the Speaker:** Further debate? Senator Mercer.

**Hon. Terry M. Mercer:** Honourable senators, before I get into my speech, I want to correct something that Senator Carignan may have inadvertently misled people on during his exchange with Senator Maltais, when he talked about unions giving money to political parties. Of course, that is illegal in this country on a federal basis. Let us get this off the table. You are not allowed to do that.

Honourable senators, this union-busting bill was introduced in 2011 by Conservative MP Russ Hiebert, who argued that disclosure of union expenses and salaries ought to be mandatory, as union fees are tax deductible. For a government that prides itself on openness and transparency, why did they not introduce this as a government bill? Why did they not take credit for such ideas? We know this bill actually does not have the full support of my colleagues across the aisle. Why does the government not have the strength to call this bill what it is?

Honourable senators, last Tuesday was Davis Day in Nova Scotia, also known as Miners' Memorial Day. It is the annual day of remembrance observed on June 11 in coal-mining communities across Nova Scotia. We recognize the sacrifice that the workers made for their communities and that their families continue to make. This was in response to the death of Bill Davis, who was shot and killed during a strike by miners in 1925 by the company police. The company had cut off the water and power to the miners' homes.

This was before the unions had worked so hard for their members to get the rights currently enjoyed across this great country of ours. I wonder what those coal miners would think of this government's veiled attempt to hide behind such a bad piece of legislation. I wonder what they would think of the Conservative attacks on their friends and fellow brothers and sisters in other unions.

• (1120)

Honourable senators, this bill is, I believe, unconstitutional. The cost is outrageous, and I question why we want CRA officials wasting their time hunting down union members to put them on a public website list. The phrase "witch hunt" comes to mind.

The argument is being made that more disclosure is a good thing and that transparency is a good thing for Canadian taxpayers. Well, fine, however, if you agree with that, then why are we not extending the same transparency to the hundreds of thousands of Canadians who are members of professional organizations that are not considered unions but who do deduct their fees from their income tax?

According to CRA, line 212, entitled "Annual union, professional or like dues," says:

> Annual dues can include the following amounts **related to your employment** that you paid (or that were paid for you and included in your income) in the year:

It goes on to itemize it:

- annual dues for membership in a trade union or an association of public servants;
- professional board dues required under provincial or territorial law;
- professional or malpractice liability insurance premiums or professional membership dues required to keep a professional status recognized by law;...

That is what it says.

The sponsor of this bill in the other place, Russ Hiebert, has a law agree from the University of British Columbia. As a practising lawyer before becoming an MP, he would of course had to have been a member of the Law Society of British Columbia, and he probably still is. The current practice fee in British Columbia is listed as $1,893.06. The liability insurance base assessment for a full-time member in full-time practice in British Columbia is $1,750. The total is $3,643.06. That is quite a large sum of money that can be used as a deduction on one's income tax. Does Mr. Hiebert get caught up in this bill? Of course not. Rich Conservatives taking care of themselves.

Let us take a look at some other examples, honourable senators. I will not use names, but you can figure out who these people are around this room. If you are a lawyer in Ontario, you pay about $1,851 in your basic fees. If you are a lawyer in Alberta, your fees are $1,848 plus your insurance, which is $3,124, for a total of $4,972 in Alberta. If you are a doctor in Ontario, those fees are $1,340 plus your insurance of $3,350 for a total of $4,972. If you are a lawyer in Nova Scotia, some of whom are here, those fees add up to $3,743.25. In Saskatchewan, those fees total $2,715. All of you who have paid these fees can deduct that from your income tax, but you are not covered by Bill C-377.

Honourable senators, let us listen to what other people are saying about this bill.

In a letter I received from Linda Silas, President of the Canadian Federation of Nurses Unions, she says:

> If the continued attacks on labour rights and collective bargaining succeed, it will be a major step backwards for working people in Canada.

She goes on to say:

> There are also Charter and Constitutional implications for Bill C-377 which are noted in our submission. The weight of concerns outlined by many organizations does not justify passage of this bill.

I agree.

In a letter I received from Mr. Ken Georgetti, President of the Canadian Labour Congress, he says:

> This bill is a solution in search a problem. It wrongly violates Canada's Constitution and the Charter of Rights and Freedoms. The Banking, Trade and Commerce Committee heard from eminent constitutional experts who testified that Bill C-377 falls outside of Parliament's jurisdiction.

Mr. Georgetti goes on to say:

> Five provinces have advised the Minister of Labour or the Committee that the bill is outside of Parliament's jurisdiction and intrudes on provincial jurisdiction. These are Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia.

Further, Mr. Georgetti says:

> It ignores the basic facts of democratic structures of trade unions and the legal frameworks within which trade unions already operate.

I could not have said it better myself.

Honourable senators, unions are already governed by their own rules. They already are accountable to their members. They are already acting in a responsible way. Again, ask yourself the question: Why are we debating this bill?

One of the things that concern me about this bill is the cost. This question was asked by Senator Dawson earlier of another senator. I happen to have some of the numbers to answer Senator Dawson's question. The federal government would have to spend almost $11 million to start this witch hunt and over $2 million a year to maintain the system. This is confirmed in a letter from the then Parliamentary Budget Officer, Kevin Page. We all know what our friends across the aisle thought of Mr. Page. However, in a letter from Mr. Page to our friend Mr. James Rajotte, MP and Chair of the House of Commons Standing Committee on Finance, he said:

> The Canada Revenue Agency estimates the incremental costs of implementing the proposed legislation at roughly $11 M for startup costs and just over $2 M per year ongoing to administer.

He goes on to say:

> ... the PBO views the cost estimate *per reporting entity* provided by the Canadian Revenue Agency as reasonable...

You can see what this will cost. Will those be the real costs? That estimate is based on "an estimated reporting population of fewer than one thousand entities, which assumes that reporting requirements are limited to the highest-level union entity." What happens if that number balloons? The costs will soar significantly. Be careful what you wish for.

I received a letter from Gary Corbett, President and CEO of the Professional Institute of the Public Service of Canada. I have had the opportunity to speak to Mr. Corbett on a number of occasions. He said in his letter to me:

> The Bill's passage would institute a regime of reporting and federal oversight costly to both unions and to the Canadian taxpayers.

Well, honourable senators, so much for protecting the Canadian taxpayer. Mr. Corbett goes on to say:

> Far from serving its declared purpose of more open accountability, if passed, C-377 provides a government already hostile to unions further opportunities to launch attacks on well-established rights and legal activities.

I wonder what the miners in 1925 in Nova Scotia would have thought of these dark, dark days.

Honourable senators, I have received thousands of e-mails from concerned Canadians. They know that this bill targets labour organizations and does not apply to any other dues-deducting professional associations, like those that some of you and many other Canadians belong to. They know that it will most likely cost a lot more than estimated to start and to run the system. They know that this is a federal government asserting its authority where it should not. They know it is a witch hunt.

There have been very few to no complaints from members of their unions when it comes to how they operate and how they are accountable to their members. Again, let us ask ourselves this question: Why the need for this bill?

This bill is a travesty, honourable senators. At a time when this place is facing intense scrutiny, I implore us all to act independently, to act honourably and to defeat this piece of legislation, because that is what it deserves.

[*Translation*]

**Senator Carignan:** Would the honourable senator accept a question?

The senator began his presentation by suggesting that perhaps this bill should have been introduced as a government bill, rather than a private member's bill.

• (1130)

I have heard this argument from your side a few times, and I have a bit of a problem with it, especially considering that, in the House of Commons, during the session that just ended, 340 private members' bills were introduced, 223 of which came from the NPD, 57 from the Liberals and about 80 from Conservative members.

Could your comments not be interpreted as a violation of the basic right of an MP or senator to introduce a bill?

[*English*]

**Senator Mercer:** Not at all, and I encourage all members, both in the other place and here, to table private members' bills.

The question is: Is this government policy? Is what is underlying this bill the policy of the Conservative government of Stephen Harper? I would suggest that honourable senators on the other side know better than we do over here the pressures exerted by the centre of this government to pass this bill.

Honourable senators on the other side know better than I do that this is indeed government policy. They know this is a piece of legislation that the people across the street in the Langevin Block want passed. If it is government policy, then have the guts to put the government's label on it.

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

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

## CRIMINAL CODE

### BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator White, seconded by the Honourable Senator McIntyre, for the third reading of Bill C-299, An Act to amend the Criminal Code (kidnapping of young person).

**Hon. Mobina S. B. Jaffer:** Honourable senators, before speaking on Bill C-299, I want to take this opportunity as we are finishing this session to thank Senator Runciman, the Chair of Standing Senate Committee on Legal and Constitutional Affairs and Senator Fraser, the deputy chair, for the support they have given to committee members, and to Shaila Anwar and all the staff of the Senate who do such good work for us. I want to thank them and wish them a good summer. They have been truly supportive of what I wanted to do.

Honourable senators, I rise today to speak on Bill C-299. This bill would amend the Criminal Code to prescribe a minimum punishment of five years when a kidnap victim is under 16 years of age, unless the person who commits the offence is a parent, guardian or person having the lawful care or charge of a victim.

In my second reading speech on Bill C-299, I asked, "How can the federal government best protect children against violence and exploitation?" I argued that there is no honour in passing a bill that is supposed to deal with child abduction but does not. Doing so would mean failing in our duty to respect children's rights.

Today, I will debate the mechanism that this proposed legislation would employ in a failed attempt to protect children against violence and exploitation, and that is mandatory minimum sentences. To impose mandatory minimum sentences is just not necessary in this bill. Offenders in serious kidnappings usually receive sentences of 10 to 15 years.

Honourable senators, we are putting in a minimum sentence of five years when judges are already imposing, in the majority of cases, 10 to 15 years of imprisonment.

The existing punishment in 279(1.1)(*b*) of the Criminal Code already provides for the maximum sentence of life imprisonment in stranger kidnapping cases, but Bill C-299 removes the judge's discretion in determining the minimum sentence. To remove discretion in such cases, honourable senators, is wrong and it is to interfere with the role of judges.

In a recent article published in the Criminal Lawyers' Association newsletter, Justice Melvyn Green of the Ontario Superior Court speaks out against a series of recent Criminal Code amendments that institute mandatory minimum sentences.

As honourable senators know, it is very rare for judges to speak out.

Justice Green argues that these amendments do not "correspond with Canadian sentencing jurisprudence or a century of social-science research."

Justice Green begins his article by emphasizing that sentencing guidelines in the Criminal Code are based on the principles of proportionality and restraint. Section 718.2(*d*) of the Criminal Code states:

> an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances;

The main premise of Justice Green's article is that proportionality and restraint in sentencing are being undermined by amendments that focus on punishment, incapacitation and stigmatization. Proportionality and restraint are out the door, honourable senators, when we look at this bill. The focus is on punishment, incapacitation and stigmatization.

Further, according to Justice Green, mandatory minimum sentences undermine the flexibility and discretion that are important to crafting an individualized sentence that balances deterrence and denunciation with rehabilitation. Justice Green views recent sentencing amendments as "a regressive step that will neither enhance justice nor reduce the incidence of criminal conduct." These amendments are "an almost incomprehensible departure from the theory of penal justice that has prevailed in Canada for the past 40 years."

Honourable senators, today I will present three principal criticisms of mandatory minimum sentences: First, there is no evidence to support the effectiveness of mandatory minimum sentences in preventing crime; second, mandatory minimum sentences harmfully erode judicial discretion; and, third, mandatory minimum sentences contravene the principle of proportionate sentencing and violate the legal rights constitutionally enshrined in the Canadian Charter of Rights and Freedoms. I will begin with the lack of any evidentiary basis of mandatory minimum sentences.

In his article, Justice Green asks, "what exactly is it about the principle of restraint that is not working?" He points out that the crime rate in Canada has been declining for the last 25 years. He points out that the United States has begun to realize that incarceration as a primary response to crime "enhances neither public safety or individual security."

Honourable senators, he goes to say that absent any evidence-based justification for recent amendments, the amendments are driven by "an ideology of unabashed Puritanism, marketed through fear-mongering and the invidious exploitation of communal differences."

Drawing from recent social science research, testimony from our Legal and Constitutional Affairs Committee's hearings on Bill C-299 and the commentary on the United States' experience with mandatory minimum sentences, I want to further explore these points.

• (1140)

In a 2009 article entitled *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, Dr. Michael Tonry states:

> One claim often made for mandatory minimum sentence laws is that their enactment and enforcement deter would-be offenders and thereby reduce crime rates and spare victims' suffering. This claim, if true, makes a powerful case. Unfortunately, the accumulated evidence shows that this is not true.

The Canadian Sentencing Commission reached the same conclusions when it reported in 1987:

> Evidence does not support the notion that variations in sanctions affect the deterrent value of sentences.

The report also said:

> In other words, deterrence cannot be used with empirical justification to guide the imposition of sentences.

Michael Spratt, a criminal lawyer who practices in Ottawa, appeared before the Standing Senate Committee on Legal and Constitutional Affairs as a representative of the Criminal Lawyers' Association. He also rejected the claim that mandatory minimum sentences deter crime. He said:

> Quite simply, the evidence demonstrates that minimum sentences do not deter one from committing a crime,

He also said that it is the Criminal Lawyers' Association's position that:

> ... when the government wishes to change the Criminal Code, those changes should not be done lightly. They should be supported by the evidence. One should foster evidence-based policy when making the changes.

In an article published by the CBC on March 24, 2013, Justice Minister Rob Nicholson, when asked if circumstances surrounding a crime should factor into the sentencing, said:

> The government's role is to set the guidelines. Mandatory minimums send the "right message" that certain offences carry serious consequences.

Social scientists have proven that mandatory minimums do not succeed in sending that "right message" to which Minister Nicholson referred. Dr. Michael Tonry, the McKnight Presidential Professor in Criminal Law and Policy at the University of Michigan, stated:

> Evaluated in terms of their stated substantive objectives, mandatory penalties do not work. The record is clear... that mandatory penalty laws shift power from the judges to prosecutors, meet with widespread circumvention, produce dislocations in case processing, and too often result in imposition of penalties that everyone involved believes to be unduly harsh.

Michael Spratt similarly referred to the harmful side effects of mandatory minimums in his appearance before the Standing Senate Committee on Legal and Constitutional Affairs. He said of mandatory minimums:

> They are a simple way of looking at a complex problem. In my submission they are a myopic way of looking at that problem..

He went on to say:

> If the intent of the bill is to decrease the kidnapping of young people, to protect young people, the evidence shows that mandatory minimum sentences will not accomplish that goal. They will accomplish those deleterious side effects that I would be happy to speak about in more detail: the increase in court time; the potential for re-victimization; the shift in discretion from judges to Crowns and police; and the elimination of judicial discretion, which is a pillar of our justice system. Of course, one must always remember that as sentences increase — and if they are applied in an unfair manner — prospects for rehabilitation and reintegration can decrease, which can lead to recidivism and a situation that is more unsafe for the public at large.

Honourable senators, Michael Spratt's point of view is reinforced by Tim Lynch of the libertarian-leading CATO Institute in the United States. He said:

> What Canada needs to do is take a look at the American experience. We are turning away from mandatory minimums and Canada would make a big mistake in following in our footsteps.

The American Civil Liberties Union recently reported that there are 2.3 million people behind bars in the United States, which is near triple the number of prisoners in 1987. Further, taxpayers spend almost $70 billion per year on corrections and incarcerations in the United States.

Spending too much money on prisons skews provincial and federal budgetary priorities. It takes funds away from things that are proven to drive crime even lower, such as increasing police presence in high-violence areas and providing drug-treatment services to addicts. More than a decade of minimum sentencing in the United States has packed prisons to the point where every open space is filled with bunks; and in Arizona, outdoor tent camps are beginning to replace prison cells.

Chief Justice William Rehnquist at the National Symposium on Drugs and Violence in America stated:

> Mandatory minimums... are frequently the result of floor amendments to demonstrate emphatically that legislators want to "get tough on crime." Indeed, it seems to me that one of the best arguments against any more mandatory minimums, and perhaps against some of those that we already have, is that they frustrate the careful calibration of sentences, from one end of the spectrum to the other....

Honourable senators, the imposition of criminal sentences must never be taken lightly. Although deterrence and retribution are important principles that must be taken into consideration when sentencing, it is also important to remember that prison sentences remove offenders from society. They deprive the prisoner of the freedom to pursue his livelihood and to interact with his family and friends; and the conditions in prison can be harsh. For these reasons, the men and women who serve in Canada and the United States judiciary imprison offenders with no sense of joy.

I want to share with honourable senators something that I was told many times by my boss and then law partner, the Honourable Thomas Dohm, former Justice of the B.C. Supreme Court. He used to say to me that he travelled all around British Columbia and Yukon. Often he would see some of the worst and saddest cases before him. Often he would think, "What is the best way to deal with this person who has committed an offence and to protect society?" One of the most important lessons he taught me, and he taught me many, was that in the majority of cases you do not throw the key away when you send someone to jail. Sooner or later that person is released. He said that paramount on his mind when he sent someone to jail was to try to ensure that when the person was released, he would not reoffend or was rehabilitated. He also said that as a judge, he spent many sleepless nights worrying about what should happen to the offender before him.

Honourable senators, I have had the privilege of speaking to many judges. The majority, if not all, of the judges in our country are honourable, hard working and full of integrity. Judges take their jobs seriously. I do not say that simply because I am a lawyer; I say that because I have seen many of them at work. I believe that when we take away judges' discretion, we are doing great harm to society.

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

**Senator Jaffer:** Honourable senators, I have quoted many Americans in this discourse, which is not something I tend to do. I do this today because they have had the experience with mandatory minimums and are telling us that it is wrong. They are telling us that they made mistakes and that we should learn from their mistakes. Sadly, that is falling on deaf ears.

A well-known senior judge, Vincent L. Broderick, from the Southern District of New York State, said:

> I firmly believe that any reasonable person who exposes himself or herself to this [mandatory minimum] system of sentencing, whether judge or politician, would come to the conclusion that such sentencing must be abandoned in favor of a system based on principles of fairness and proportionality.

• (1150)

To put the effects of mandatory minimum sentences into perspective, I would like to quote Judge J. Spencer Letts, from the Central District of California, after he imposed a mandatory 10-year sentence on a person:

> Under the statutory minimum, it can make no difference whether [someone] is a lifetime criminal or a first-time offender.

He went on to say:

> Indeed, under this sledgehammer approach, it makes no difference if the day before making this one slip in an otherwise unblemished life, the offender had rescued 15 children from a burning building, or won the Congressional Medal of Honor while defending his country.

Honourable senators, mandatory minimum sentencing applies a one-size fits all to sentencing offenders, even though the punishments might have been designed for more serious criminals.

Barbara S. Vincent from the Federal Judicial Center wrote, in the *The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings*:

> There is substantial evidence that the mandatory minimums result every year in the lengthy incarceration of thousands of low-level offenders who could be effectively sentenced to shorter periods of time at an annual saving of several hundred million dollars.

Honourable sentences, not only is there a lack of any evidentiary basis for mandatory minimum sentences in Canada, there are also enormous financial and social ramifications. The second point I would like to make is that mandatory minimum sentences harmfully erode judicial discretion, which is an important pillar of our criminal justice system. Judges, I believe, are in the best place to determine sentences. That is why, in our great country, we have some of the best lawyers, who we nominate as judges. We have some of the best judges in the world in our system.

When Michael Spratt appeared before our Standing Senate Committee on Legal and Constitutional Affairs as a representative of the Criminal Lawyers' Association, he said:

> Judges are in the best place to impose just sentences. They are most familiar with the facts of the offender and of the offence, and they are situated in the community. Judges are well trained and if a judge is wrong —

— and that happens from time to time —

> — we have a good appeal mechanism to correct any errors.

In a meeting on May 15, 2012, the House of Commons Standing Committee on Justice and Human Rights, a very respected former Supreme Court Justice, the Honourable John Major said:

> The trouble in the minds of the legislators and the public at large is, "Can we trust the judges?"

He went on to say:

> That's a question that comes up from time to time on a number of things. If the judge is law-and-order, he'll perhaps lean to a tougher sentence. If he's more rehabilitative-minded, he'll go the other way.
>
> But we do and should have great confidence in our judges.
>
> As a citizen, I feel more comfortable with them having some jurisdiction on the severity or leniency of sentence.

Honourable senators, when we were holding these hearings, we had Indira Stewart, a representative of the Canadian Council of Criminal Defence Lawyers, appear. On the topic of a five-year mandatory minimum sentence in kidnapping cases, she said:

> When these cases do occur, they are very serious, but there is no evidence to suggest that when they do occur, judges are showing leniency....
>
> In the rare cases where a sentence under five years is imposed, there are, in every case, mitigating circumstances to explain it. It is exactly for this reason that trial judges, who have the opportunity to hear all of the aggravating and mitigating circumstances, are in the best position to determine a sentence. If there is any concern about a trial judge getting it wrong, Crowns can and do appeal sentences that they believe are unfit.

Further affirming this point, the Honourable John Major testified before our committee. He said that there is a philosophy that says that a criminal does not believe he will be caught, and therefore experience shows that the severity of the penalty for the crime seldom acts as a deterrent.

He further said:

> It's interesting to look at the range of sentences for kidnapping in our judicial history where there's no minimum. The sentences, nonetheless, have been severe. By severe, I mean lengthy.

He went on to say that the sentences, honourable senators, are between 10 to 15 years. The minimum sentence that we are asking for here is five years. Will we say to judges that they can look a five-year sentence? I do not think so. The judges are already sentencing offenders for this offence for 10 to 15 years. Why are we meddling with this?

Justice Major went to say:

> The courts, to my knowledge, have always treated commercial kidnapping as a very serious offence, and in my experience the sentences have been 10 years and 15 years, so that the five year minimum is not extreme. I think you'd have to look hard to find a case where a serious kidnapper was sentenced to less than that.

Honourable senators, as the Honourable Justice Major testified before the house committee, the range of sentences for these kinds of cases is approximately 10 to 15 years, which is well above the minimum sentence of five years being proposed. Judges, of course, have the option of a life sentence in these cases, and that is a reflection of the gravity of this offence.

In appearing before the Senate Legal Committee, the Honourable John Major explained the nature of the cases in which he was involved. He stated that offenders were young men who each received 15 years for kidnapping a child, although it was their first offence. He said:

> Judges respond as the public do to the horrific nature of that kind of crime.... However, when you ask about a judge's discretion, you are putting a case before a person who presumably has heard other cases. He has perhaps been a trial lawyer. He understands the system and the circumstances that make almost every case different in some respect.

When we take away judicial discretion, it results in a lack of transparency and the circumvention of justice.

On May 15, 2012, Mr. Irwin Cotler, justice critic for the Liberals, spoke out about the shift in judicial discretion created by mandatory minimums before the House of Commons Standing Committee on Justice and Human Rights. He said:

> Leaving aside the constitutional issues for the moment, there is a policy concern. In the matter of mandatory minimums, you remove discretion from the judges and transfer it to the police or the crown. When you transfer it from judicial discretion in open court with the possibility of appeal to a more private type of plea bargaining and the like, you can have one of two outcomes.

> You can have an outcome whereby the accused pleads to a lesser charge, so the objective of denunciation, which was held to be the principal purpose of the bill, gets diminished or lost. Or there's the alternative, where the accused goes to trial and thereby the courts become clogged up because of these mandatory minimums.

Honourable senators, I suggest that judges' discretion should not be removed. It simply shifts into a form that is not transparent or accountable and not visible to members of the community. Moreover, mandatory minimum sentences overburden the justice system.

As honourable senators know, I come from British Columbia and I still work with many of my colleagues, whether they are advocating for things or I see them in court. One of the things I have observed is that we pass these laws, but the cost of operating is to be borne by the provincial courts.

Honourable senators, believe me when I say that our courts are bursting. Prosecutors look at me and say, "I have not even read the file. I do not even know what the case is about. What do you want to do?" They are bursting at the seams. We are passing these laws, but we are not providing the resources to implement these laws.

Honourable senators, I do not think that you should go away this summer and think that we are doing a good job of protecting Canadians. If we truly want to protect Canadians, then we should pass this law and then provide resources, because otherwise we are doing half a job.

• (1200)

David Daubney, former General Counsel, Criminal Law Policy and Coordinator of Sentencing Reform at Justice Canada, said this in his blog on Sunday, March 11, 2012 of this increase in mandatory minimum sentencing:

> The proliferation of mandatory minimum sentencing will lead to fewer guilty pleas, significant processing delays, big increases in the number of accused persons awaiting trial in already overcrowded provincial remand facilities and just plain injustice as discretion is moved from judges to prosecutors.

Honourable senators, I see this all the time. When I go into the court systems, I see the discretion is moving from the judges to the prosecutors. They are not trained to be judges. Their job is to present the case on behalf of us. We are making them lawyers and judges. This is just wrong.

I know that there will be many charter challenges and acquittals. Will that make Canadians safer? I put it to you that it will not.

Honourable senators, I will say to you that minimum sentences lead to more matters going to trial and fewer matters resolving in the appropriate way. Mandatory minimum sentences do not only produce financial costs, but also practical costs to the participants in the justice system and the victims of crime, themselves. That is why I say to you all that sentencing discretion should be with the judges and not the prosecutors.

According to Erik Luna in "Mandatory Minimum Sentencing Provisions Under Federal Law," mandatory minimum sentences "act as grants of power to federal prosecutors to apply the laws they see fit, even to minor participants in non-violent offenses."

I have seen, honourable senators, that prosecutors may set pre-punishment through creative investigative and charging practices, which could produce troubling punishment differentials among offenders with similar culpability.

Honourable Federal Judge John Martin could not have described the effects of mandatory minimum sentences on judicial discretion better. He said:

> Mandatory minimums are over-inclusive, they're unfair, and they can even be draconian.
>
> They transfer sentencing power from the neutral judges to partisans in the criminal process.
>
> They make for poor criminal justice policy and raise all sorts of constitutional problems.
>
> Other than that, they're a great idea.

The third and final point that I would like to make is that mandatory minimum sentences are contrary to the principle of proportionality.

Referring to the constitutional issues surrounding mandatory minimum sentences and exceptional cases, in an article entitled "A More Lasting Comfort? The Politics of Minimum Sentences, the Rule of Law and R v. Ferguson," Professor Berger of Osgoode Hall Law School stated that mandatory minimum sentences:

> ... represent an a priori political judgment about what constitutes just punishment in all circumstances.
>
> Such judgments are intrinsically dangerous.
>
> Parliament has declared that the fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
>
> The essence of a minimum sentence is that it purports to know in advance the floor of proportionality for a given offence, irrespective of the specifics of the case.
>
> But life serves up circumstances far more complex and difficult than even the most prescient Parliamentary committee can anticipate.
>
> Cases can find their way before courts... in which exceptional circumstances make a minimum sentence so unfit as to unjustifiably offend the section 12 protection against cruel and unusual treatment or punishment.
>
> Given the combined effects of time and the extraordinary vicissitudes of life, cases will arise that put pressure on any substantial minimum sentence tested against our

> constitutional commitments and fidelity to the morality of proportionality in sentencing.

Honourable senators, Bill C-29 is overly broad and it risks capturing people not intended. This is a case that really bothers me. That is why I have spent hours and hours researching this issue: To bring it to you to say, "Look, honourable senators, this is just wrong."

This is the *Batisse* case. It involves a young, mentally ill Aboriginal woman. She pled guilty to abducting a newborn baby. The Court of Appeal reduced her sentence from five years to two and a half. The Court of Appeal said of her, after careful assessment of the various mitigating factors in her case, that she had been abused by virtually every person she had ever known, and, as a result of years of abuse, she had developed a mental illness.

Her story is horrific. The court found that the defendant's mental illness played a central role in the commission of her offence and that, in such circumstances, deterrence and punishment assumed a less important role. These are not one-off cases.

Honourable senators, I cannot believe that one senator in this room thinks that she should have gone to jail for five years. I would ask: Would you pass legislation of mandatory minimum if you knew that Ms. Batisse would have to be sent for five years to jail when she had had such a horrific life?

Honourable senators, this is our responsibility. That is why we are in this august place: to make decisions for all Canadians.

**An Hon. Senator:** Hear, hear.

**Senator Jaffer:** Mandatory minimums often result in sharp variations in sentences, based on what are often only minimal differences in criminal conduct or prior record.

This is demonstrated in a statement made in 2004 by United States District Judge Paul Cassell, when he proclaimed that he "saw no rational basis for the law to require him to sentence a 25-year-old first-time drug offender to 55 years in prison on the same day that he meted out a 22-year term to a man who had clubbed an elderly woman to death."

Honourable senators, studies and evidence have shown that when the public is informed about what happens in our criminal justice system, the confidence of the public is enhanced in terms of procedure and ultimate results. However, public polls should not be used solely as a way to justify legislation. Rather, there should be concentration on the informational component to ensure that the public knows what the participants in the justice system know.

The Honourable Justice John Major stated:

> The public does not understand what you describe as and what appears to be a light sentence, and so they feel better when there is a mandatory sentence imposed.
>
> However... when the principle of mandatory sentencing and the principle of, let me call it, discretionary sentencing is explained, that makes a big difference in people's outlook.

In a study done by the Pew Center of the United States, recent opinion polling suggests that rolling back mandatory minimum sentencing provisions is being well received by the public. Furthermore, a national January 2012 poll of 1,200 likely voters revealed that the public is broadly supportive of reductions in time served for non-violent offenders, as long as the twin goals of holding offenders accountable and protecting public safety can be achieved.

Honourable senators, in conclusion, I want to acknowledge the hard work of organizations like the Canadian Council of Criminal Defence Lawyers, the Criminal Lawyers' Association and the Canadian Bar Association. These organizations play an invaluable role in promoting fairness and integrity in our criminal justice system, a fundamental pillar of our democratic society. They work tirelessly and voluntarily for us to get a balanced view of our justice system.

Honourable senators, they work every day in the trenches, and then they come back and report to us what they see happening to the legislation that we pass.

Therefore, I tell you, honourable senators, a new mandatory minimum sentence will not help to protect our precious children against violence or exploitation. What will protect our precious children from violence and exploitation? We must provide the resources so they can have a better education and a home in which to live. Canada is a very rich country. We should not be looking at sending people to jail and using mandatory minimum sentences.

• (1210)

**An Hon. Senator:** Hear, hear.

**Senator Jaffer:** Honourable senators, there is no evidence to support the effectiveness of mandatory minimum sentences in preventing crime. Mandatory minimum sentences harmfully erode judicial discretion. Finally, mandatory minimum sentences contravene the principle of proportionate sentencing and violate the legal rights and constitutional rights enshrined in the Canadian Charter of Rights and Freedoms.

Honourable senators, I want to end on what was said by Justice Major, a distinguished Canadian and a former justice of the Supreme Court of Canada:

> In your wisdom, when you look at the bill, ask yourselves or ask anyone if they can give you an example of where a mandatory sentence in any jurisdiction has reduced the crime — anywhere.

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

**The Hon. the Speaker:** Are honourable senators ready for question?

**An Hon. Senator:** Question.

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

**Some Hon. Senators:** No.

**Some Hon. Senators:** Agreed.

**The Hon. the Speaker:** Carried, on division.

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

## NATIONAL STRATEGY FOR CHRONIC CEREBROSPINAL VENOUS INSUFFICIENCY (CCSVI) BILL

### FIFTEENTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Ogilvie, seconded by the Honourable Senator Wallace, for the adoption of the fifteenth report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill S-204, An Act to establish a national strategy for chronic cerebrospinal venous insufficiency (CCSVI), with a recommendation), presented in the Senate on November 22, 2012.

**Hon. Terry M. Mercer:** Honourable senators, I stand today in support of Bill S-204, an Act to establish a national strategy for chronic cerebrospinal venous insufficiency, or CCSVI, for the thousands of Canadians living with multiple sclerosis who are looking for relief from their symptoms and trying to regain a better quality of life.

As stated in the Social Affairs, Science, and Technology Committee's Report on Bill S-204, there are up to 75,000 Canadians living with MS today. What is more alarming is that we also know that the suicide rates of those with MS are seven times that of the national average — seven times, honourable senators. MS is truly a debilitating and devastating disease.

We heard from the Liberal members of the Social Affairs, Science, and Technology Committee on how the Conservative members killed Bill S-204 at committee.

**An Hon. Senator:** Shame.

**Senator Mercer:** They refused to even allow the bill to move forward to clause-by-clause. It used to be unusual for a senator's private bill to be killed before even going to that stage. However, that has, unfortunately, become more commonplace under Prime Minister Harper's growing-old government for opposition bills to be defeated before even listening to proper evidence.

Honourable senators, the Conservative members of the committee and the Conservative senators here in this very chamber also saw fit to exclude Canadians with MS from appearing as witnesses before the committee when it was studying Bill S-204.

My colleague and sponsor of the bill, the Honourable Senator Cordy, was forced to take the unusual step of bringing forward a motion in the Senate on behalf of those Canadians with MS who wanted a chance to present their testimony in person before the committee. Unfortunately, the pleas of those who requested to testify were ignored by the Conservative senators in this chamber and they were denied the right to appear.

**Senator Moore:** Shame.

**Senator Mercer:** Honourable senators, that is unheard of and shameful for this house of sober second thought.

Every Conservative senator in the chamber that day voted against the motion to allow MS patients to appear as witnesses before the committee. Every Conservative senator voted to silence the voices of those with MS.

Honourable senators, our committees are sacrosanct, or at least they used to be. Senate committees have heard from victims of crime; they have heard from those living in poverty and from those with poor mental health; they have heard from blood donors and charitable organizations that do such good work on behalf of their communities. That is only to name a few. However, Canadians with MS have not been shown the same respect from Conservative senators.

Senator Merchant told this chamber that the premier and the Minister of Health from her province of Saskatchewan met personally with MS patients. Yet here, in the Senate of Canada, the Conservative majority voted not to allow those voices to be heard.

Honourable senators, I would like to comment on paragraph 3 of the committee's report on Bill S-204, which states:

> Your Committee also shares the concern expressed by proponents of the bill that, in the early stages, some patients were refused medical treatment after having experienced complications resulting from venoplasty performed in other countries. However, it should be noted that provincial health authorities and the colleges of medicine took quick action to ensure that no Canadians would be denied medical treatment.

What I fail to see, in looking at the evidence from the committee, is evidence that the committee used to come to this conclusion. We heard from both Senator Eggleton and Senator Cordy, both members of the committee, that no evidence was presented to support this claim.

We continue to hear stories in the media from Canadians with MS about the difficulties those who have undergone the treatment are having receiving proper follow-up care here in Canada. It is heartbreaking to hear these stories about patients who have undergone CCSVI treatment at their own expense outside of Canada and who are denied follow-up care here in Canada by their own healthcare system.

**Senator Moore:** Unbelievable.

**Senator Mercer:** Senator Jaffer spoke in this chamber about Roxane Garland, who died after she was refused follow-up care in Canada. She died! Come on, folks.

**Senator Moore:** Hippocratic oath.

**Senator Mercer:** Senator Cordy spoke about the teenage girl who was refused follow-up care in New Brunswick after having the procedure done.

In Quebec, a woman was told to go back to Poland for follow-up care.

**Senator Moore:** Nice.

**Senator Mercer:** In March of this year, a Nova Scotia woman, who had the procedure done a year and a half ago, simply wanted a referral to a vascular surgeon for a routine check-up. This follow-up care was refused.

**Senator Moore:** Awful.

**Senator Mercer:** These stories of MS patients being refused follow-up care go on and on. Yet, the Conservatives on the committee stated that "quick action" was taken to ensure Canadians received follow-up care. Clearly, the Conservatives on the committee are not listening to MS patients and never have. They seem only to be taking orders from the boys in the short pants in the PMO.

Honourable senators, what is required in Canada is a national strategy for CCSVI treatment for MS patients. The federal government should be bringing the provinces and territories together to produce a national strategy to ensure national guidelines and practices are established and that patients receive proper follow-up care.

Canadians should not be marginalized by their own healthcare system; they should not be marginalized by their own government for wanting to improve their quality of life.

Honourable senators, I am reminded of the Ralph Klein school of politics. He often said: "I'm sorry; we screwed up, so let's fix it and move on."

I implore you, honourable senators, let us just do that. In the face of the most intense scrutiny in decades in this place, why are we not showing Canadians that we are here to listen, to deliberate and to help those Canadians who are in need of our support? Why are senators opposite playing petty partisan politics with, I daresay, the most important issue of all in people's lives, their health?

The Senate is under a microscope and has been for months now. People keep questioning our purpose and they keep questioning things that have been done here. This is an obvious miscarriage of justice in the mistreatment of 75,000 Canadians who are suffering from MS.

Honourable senators, we should fix this and we should fix it now. We should tell the MS community we are sorry we screwed up, but let us fix it.

• (1220)

**Hon. Jane Cordy:** Would Senator Mercer accept a couple of questions?

**Senator Mercer:** Yes.

**Senator Cordy:** I thank Senator Mercer for that excellent speech. He certainly has a good understanding of the issue of MS. It is clear that he read the report, which was misleading with regard to the information that the committee heard. On behalf of the 75,000 Canadians who have MS, I thank Senator Mercer for his interest and for the support that he has extended to them.

First, does Senator Mercer believe that the voices of MS patients should have been heard by the committee? Does he believe that it would have been helpful to committee members to hear from people who have had the MS venous angioplasty procedure done?

Senator Mercer mentioned a number of Senate committees that have heard from witnesses who were directly involved in whatever study or whatever bill we were considering. Can Senator Mercer think of any reason why every Conservative senator in this chamber would have voted to silence the voices of MS patients in Canada — Canadians who have MS? Can he think of any reason why they would want to silence those voices?

**Senator Mercer:** I thank Senator Cordy for her kind comments. My education was helped along by spending time with a school teacher from Nova Scotia.

The opposition to testimony of MS patients makes absolutely no sense. It makes as much sense as the Agriculture Committee not talking to farmers when we studied the Wheat Board bill. It makes as much sense as not hearing from energy producers and consumers and industry regulators when studying an energy bill. It makes absolutely no sense.

When Senator LeBreton was in opposition, she used to say in committee, "No minister, no bill." That is a very good policy. She taught us well, and we have been following in her footsteps.

That applies in this case. When you are dealing with an issue that touches a very specific group of Canadians, in this case victims of MS, the committee should not be allowed to complete its study without talking to those people. They are the ones affected. They are the ones who can tell you what is really happening, what happened to them in the past and what they fear will happen to them in the future. It is our responsibility to hear from them.

As to the second question, I have no idea why anyone in their right mind in this chamber would vote against hearing from people with MS in committee.

**Senator Cordy:** I thank Senator Mercer for that response. I concur with his observations on why we would want to hear the voices of Canadians who are directly involved in the study that we are doing.

I have also heard from many MS patients. I am in touch with over 2,000 MS patients across the country. Dr. Kirsty Duncan and I have done much work on this and we have been helped tremendously by people from across the country. One of the most frustrating and sad things for me has been hearing from Canadians who received the procedure outside the country and were refused treatment when they came back to Canada. Senator Mercer spoke about Roxane Garland. She did not go to the hospital because of her MS; she went to the hospital because of a problem with an infection, and still she was refused treatment because she had had the procedure done outside the country. Finally, when her health got so bad that it was too late, they brought her to the hospital, where she died. We heard that story from Senator Jaffer when she spoke about MS in this chamber.

I heard of a young man who had the procedure done and went back to his neurologist, and his neurologist said, "Sorry, I can no longer treat you."

I spoke to a young woman at a conference in Alberta last year who spoke to her neurologist about having the procedure done, and her neurologist said, "If you have the procedure done, don't come back to me."

Senator Mercer mentioned the woman in Nova Scotia who had the procedure and was feeling fine. She simply wanted to have a vascular specialist look to see whether her veins were still open. She was referred by her family doctor instead to a neurologist because she had MS. Why would you have an electrician look at a plumbing problem? It makes no sense to me.

This is Canada. Should Canadians be denied follow-up care here in Canada?

**Senator Mercer:** Members of the medical community should be ashamed of themselves. The Hippocratic oath is very clear; denying services to a person in need is unconscionable. I think there should be some action taken on that side. The Canadian Medical Association should be disciplining members who are not offering services to patients with MS.

I have attended some of the sessions that Kirsty Duncan and the honourable senator have put together. At one, a doctor from the United States spoke about the procedure. He was diametrically opposed to this procedure; he said it was awful and he wanted nothing to do with it, until someone in his family got MS. That person pushed and pushed to get the procedure. They finally relented and had the procedure done, and that doctor is now one of the biggest advocates of this procedure, because he has seen the results.

This is an education process, not only for colleagues opposite who denied MS patients the opportunity to speak, but also for people in the medical community. I do not think there is a need to educate the Canadian public, because I think the Canadian public understands perfectly well that MS patients should have been heard by the Senate committee.

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

## GOVERNOR GENERAL

### COMMISSION APPOINTING DEPUTY OF THE GOVERNOR GENERAL— DOCUMENT TABLED

Leave having been given to revert to Tabling of Documents:

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, the certificate confirming the appointment of Patricia Jaton as Deputy of the Governor General.

## HUMAN RIGHTS

### COMMITTEE AUTHORIZED TO MEET DURING SITTINGS OF THE SENATE

Leave having been given to revert to Notices of Motions:

**Hon. Mobina S. B. Jaffer:** Honourable senators, with leave of the Senate and notwithstanding rule 5-5(a), I move:

> That the Standing Senate Committee on Human Rights have the power to sit on Tuesday, June 25, 2013 and Wednesday, June 26, 2013, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

**The Hon. the Speaker:** Is 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.)

• (1230)

## FINANCIAL ADMINISTRATION ACT

### BILL TO AMEND—TWENTY-FOURTH REPORT OF NATIONAL FINANCE COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the twenty-fourth report of the Standing Senate Committee on National Finance (Bill S-217, An Act to amend the Financial Administration Act (borrowing of money), with a recommendation), presented in the Senate on June 20, 2013.

**Hon. Joseph A. Day** moved the adoption of the report.

He said: Honourable senators, I am mindful of the fact it is a Friday sitting and we have to adjourn by four o'clock, so I will try to keep my comments brief.

Honourable senators will see that Item No. 2 is moving the adoption of a report back from our Finance Committee with respect to Bill S-217, An Act to amend the Financial Administration Act (borrowing of money).

What I would like to do is refer honourable senators to the words that follow that, which are "with a recommendation" in brackets. It is the recommendation that I expect will be debated here, honourable senators.

I am now reporting this back and moving this as chair of the committee. I will ask the permission of honourable senators to change hats and speak on the matter as a member of the committee in due course.

First, however, as chair of the committee, I want honourable senators to know what the report is. This procedure is little different from what we normally see. This bill was referred to our committee. Normally we can find consensus in the committee and we report back. If there are amendments, we explain them. If there are not, the bill automatically goes to third reading.

However, rule 12 requires that if there is a recommendation from the committee that we not proceed further — "we" being the Senate as a whole — then there is a requirement for an explanation of that.

In fact, honourable senators, that is what transpired in this particular matter. Consensus could not be reached on the matter, and therefore a vote was taken, and the majority of those voting at the committee recommended that the bill not be proceeded with further in the Senate, and then various reasons were given as to why.

Honourable senators, that is a somewhat different procedure than we would normally see. I confess that it would have been, from my point of view, desirable if we could have proceeded to third reading and had a full debate on this, particularly because of the subject matter of this bill.

Before I change hats, I will tell honourable senators what is in the report. The report was circulated yesterday, but basically, the committee is recommending we not proceed further because of various bits of information that we acquired and heard at the committee.

The first and second paragraphs talk about information received from officials in the Department of Finance, and the third paragraph was information from the Department of Finance as well as the Bank of Canada. There was a fourth paragraph that the majority were convinced was a serious flaw in the bill, but the matter was never discussed. It was not a matter that we had any evidence on at the committee, yet it formed the basis for a decision by the majority to make this recommendation. That is what comprises this particular matter. In the concluding paragraph, the report says:

> It is the opinion of the majority of the Committee that the present borrowing authority process strikes an appropriate balance between parliamentary oversight and the requirement for efficiency and flexibility.

Honourable senators can see that this is about a borrowing authority of the government, and I would like to compliment Senator Moore for bringing this issue forward. I would like to have seen more debate on it, and I am changing my hat now and indicating to honourable senators the reasons why I did not and do not support the majority position on this particular matter.

My arguments are twofold. First, we should always try to have continuing debate. We should have debate in this chamber whenever we can, and for a committee to suggest that we should not have debate at third reading is contrary to the fundamentals —

**Senator Mitchell:** Yes, it should be on T.V.

**Senator Day:** — of what we stand for here, honourable senators. We had a short debate at second reading, and we had one day of hearing witnesses. There were two other witnesses who are not referred to in the reasons for recommending we not proceed, and those two witnesses were outside witnesses. One is a professor from Dalhousie University, Dr. Turnbull; and the other is Mr. Devries, a former civil servant and now consultant. Their evidence was completely contrary to what we heard from the Department of Finance.

My first point is that we should continue debate whenever we can. I refer honourable senators to the comments with respect to Bill C-377 when it came back from committee. The committee was very concerned, based on the evidence they heard, about what was transpiring and whether this bill should go forward, but they said the committee did not offer any amendments because the substantial issues they heard are best debated by the Senate as a whole.

That is my first point. I agree wholeheartedly with that committee, and I think it was a very wise suggestion. We could make all kinds of recommendations not to proceed, or we could make amendments, but we think these are fundamental issues that should be debated by the chamber as a whole.

What was the fundamental issue here? It goes fundamentally to the role we have to play as senators. It relates to the borrowing of money by the government to run the government. Up until 2007, that authority came from Parliament. That is what our ancestors fought for at Runnymede, to acquire the right to control expenditures by the government, by the Crown at that time. The government is the representative of the Crown. The authority is given to them to spend money, and that is why we look at the budget implementation bills and the supply bills; we are giving authority to the government to spend.

The corollary to that is to borrow the money. If we do not have control over the money that is borrowed, we are giving up half of the fundamental right of Parliament. That is what Senator Moore is saying in his bill, Bill S-217, that that was taken out in 2007, without debate. It was taken out because it was hidden away, not seen, in an omnibus bill, so it was not debated. Now we have been trying to get it back in so that one of those fundamental rights of Parliament is back in there.

• (1240)

That is what is in the bill. Are we now saying we do not want any debate on this? Do we not think that this chamber should debate that fundamental issue, honourable senators?

I am suggesting that this report not be accepted for a second reason. The process would be that if the report from the committee is not accepted, it will proceed as a bill. If it is accepted, then that is the end of it; the bill is over and gone; it is no longer on the Order Paper. We are right at the cliff on this one, and we are debating whether the bill should continue. We can discuss the manner in which it should continue later, but we must first defeat the motion in order to allow it to continue. On the merits of this, my submission is, again, that this is a fundamental matter that requires debate. It is fundamental to our role as parliamentarians.

Think about this: If the executive has authority to go out and borrow whenever they want, and they now do, they could bankrupt this country. They could borrow and keep borrowing without any parliamentary approval. They could do that without Parliament, which will be responsible if the country is bankrupt and responsible if too much is borrowed. We are the ones, especially the House of Commons, who will take all of the blame for this, but we have none of the rights to control the borrowing.

From a fundamental point of view, this is deserving of consideration. In fact, the bill should be passed; it should be accepted and reintroduced.

Of course, we would hear from officials from the Department of Finance; we would hear from the Bank of Canada. These are government officials; they find democracy inconvenient. We have seen it, and we see it time after time in budget implementation bills where they do not want the checks that we have put in to control their activities. The most recent one was the fees that they are charging for services, and they do not want that act to apply because they do not want to be bound by the constraints that Parliament felt should be there.

Here we have another one: They do not want to have to go to Parliament to ask to borrow. They do not want to have to prepare the documents to explain that beforehand. They say, "Well, you can find that all after the fact. You can look in the debt management report that comes out after the fact. Six months after the money has been borrowed, you can take a look and see how much we borrowed."

That is not what we are here to do, just review and comment on something that has already happened. We should be at the front end with estimates. We should also be dealing with the issue of borrowing, as we did up until 2007.

Those, honourable senators, are the reasons I believe that Bill S-217, introduced by Senator Moore, should be accepted, but more important, at this stage, that this report from the Finance Committee be rejected, so that the bill can continue to live and be debated in this chamber until we can come to a proper resolution of it and not have it cut off at the pass by this particular procedure.

**Hon. Pierrette Ringuette:** Would the honourable senator take a question?

**Senator Day:** Yes, thank you.

**Senator Ringuette:** I was part of the Finance Committee when we had Bill C-2, the transparency and accountability bill in early 2006. I was also part of the Finance Committee when we started to get 800 and 900 pages of omnibus finance bills.

I am now part of the Banking Committee, where we are arguing about Bill C-377, and some of the Tory senators are saying it is for the sake of transparency and accountability. I find it pretty odd and pretty offensive for a majority report of the members of that committee to say that Parliament and the current government should not be accountable and transparent in regard to borrowing power.

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

**The Hon. the Speaker** *pro tempore*: Senator Day, before you begin your answer, I regret to inform you that your time is up. Are you prepared to ask for more time to respond?

**Senator Day:** I wonder if honourable senators could allow me enough time to answer that question. I do not see other questions.

**The Hon. the Speaker** *pro tempore*: Is five minutes granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Day:** I thank Senator Ringuette for her comments. We remember with fondness the role she played on the Finance Committee, and we are hoping that in due course we will see her back in that committee. We sent her off to the farm team on Banking to pick up some new ideas, and we will have her back.

What was the question?

All of what the honourable senator said is absolutely right.

**Hon. Joan Fraser (Acting Deputy Leader of the Opposition):** I have a question. Senator Day will recall better than most of us, although the speeches were memorable, how our former colleague Senator Lowell Murray used to talk about how Parliament had lost control of the purse. What do you think he would say about this report?

**Senator Day:** I thank the honourable senator very much for that. I know Senator Lowell Murray is well aware of this bill. He was involved in the National Finance Committee for many years and was chair for a good number of years.

Senator Murray became aware of this removal of the requirement to go to Parliament for borrowing at the very last second as well, when it was too late to do anything. It was a done deal. He was astounded, first, that that kind of thing would happen at all, and second, that it would happen the way it did.

Senator Tommy Banks was very involved in this as well. In complimenting and thanking Senator Moore for bringing this forward, we are thanking those two other senators for the work they have done in keeping this issue alive and reminding us about this.

I will talk about the other two witnesses because they are also reflective of what Senator Lowell Murray's point was and continues to be. One of the witnesses, Dr. Turnbull from Dalhousie University, made the point that every time one of these changes is made, it is being made out of the argument of efficiency and expediency within the civil service. That is exactly the argument that we had here, and she said that argument goes against the fundamental role of Parliament. She said we are always looking for balancing and efficiency, but oversight is also critically important. She said that balancing is there, and, as in many of the things that have happened in the last while — this being one of them — taking away the role of Parliament to approve borrowing is moving this balance too much in favour of the civil service and the executive and away from Parliament. I think that also answers Senator Ringuette's question.

• (1250)

**Hon. Maria Chaput:** Honourable senators, I want to congratulate the Honourable Senator Moore for tabling Bill S-217. Senator Moore led this bill with the commitment and attention it deserved. Thank you very much, senator.

[*Translation*]

I strongly believe that Bill S-217 is not like the other bills we see in the Senate. The subject of the bill, parliamentary oversight of the government's power to borrow money, is fundamental to parliamentary democracy.

I would like to remind everyone what the issue is here. As of the first omnibus bill of 2007, Parliament lost its responsibility — a major responsibility — for authorizing the federal government to borrow money. That change was part of the 2007 omnibus bill. That was not an insignificant change to government practices. It was actually a fundamental change that went unnoticed in 2007 by all but Senators Murray and Moore, who both tried but failed to correct the problem.

[*English*]

This is what Lori Turnbull, Assistant Professor at Dalhousie University, had to say when she appeared as a witness at the Standing Senate Committee on National Finance:

> The bill is about restoring Parliament's ability to approve expenditure... this is sort of the primary reason why Parliament exists, especially from an historical context. We have Parliament because first and foremost we want Parliament to approve the expenditure of money and the raising of money... Expenditure without parliamentary approval seems to be at odds with responsible government — "responsible government" meaning the government needs the support of the house in order to be able to do what it wants to do. Anything failing that means the government cannot act legitimately.

To put it mildly, the stakes were high with this bill. This was a question that deserved serious study, and not a report that was drafted to fit a pre-made decision.

[*Translation*]

We must not fool ourselves. The National Finance Committee's report was based not on what it heard from the witnesses, but on a decision made in advance to reject the bill.

[*English*]

This is, I believe, an affront to our duties as senators. Such a serious legislative effort requires and deserves equally serious study. This is a big deal — a very big deal. In 2007, Parliament unfortunately abdicated its traditional role of overseeing government borrowing. Today, it is also abdicating its role to even study the question seriously.

The committee report does not adequately reflect the testimony that was heard. It bases itself on the testimony that fits its predefined conclusion.

The report does not state that certain witnesses came forth and explained that, while the economic crisis in Canada was just as extreme in the mid-1990s as the one we just faced, Canada was able to put a Borrowing Authority Act in Parliament, with full transparency and everything else associated with it. Neither does it reflect the testimony we heard, part of which I cited earlier, about the absolute importance of parliamentary oversight of government spending.

Honourable senators, let us put it bluntly. Bill S-217 was designed to restore accountability and transparency to a level that already existed in Canada prior to 2007, and it was decided by the government that this was not needed.

Not a single person can say with a straight face that Canada was worse off before 2007 because government borrowing was subject to oversight. No serious study of the bill, I think, would have led to a similar conclusion.

[*Translation*]

Unfortunately, no such study took place. The witnesses we heard deserve our gratitude. They also deserve for the report to reflect what they told us.

I cannot in good conscience support that approach. I do not support the report. I do not support the decision not to study Bill S-217. Canadians deserve a Parliament that can, at the very least, undertake a meaningful study of legislative texts even if it cannot oversee government spending.

[*English*]

I applaud Honourable Senator Moore once again for bringing this topic to the forefront. I know it is not the last we will hear of it, and Canadians, I am convinced, will be eternally thankful for his contribution.

**The Hon. the Speaker** *pro tempore***:** Honourable Senator Dallaire has a question. Senator Chaput, will you take a question?

**Senator Chaput:** Yes.

[*Translation*]

**Hon. Roméo Antonius Dallaire:** Honourable senators, we still have a bit of time, and I wanted to bring to your attention a quote from a great man. This quote supports the arguments of Senators Day and Chaput regarding Parliament's responsibility in making these types of decisions.

[*English*]

The extract is from a book called *Eugene Forsey, Canada's Maverick Sage*. I will not be too long, but we have a bit of time. It states:

> Eugene Forsey's project was, at heart, a conservative one. Like most of us, his early political outlook remained, largely, a lifelong orientation.

That is even though he sat as an independent senator. This is what I am getting at with this point:

> The structures, practices, and restraints that grow up around political power reflect the goals and values that make that power not only tolerable but necessary in the modern age of liberty. Decisions of convenience and efficiency often drive us backwards into the dark and dangerous state. Canada's political society is organic and comes from specific needs and context which reflect our basic core values. When we seek to solve challenges or promote political advantage through the detachment of constitutional rules, we risk losing the state's essential and fundamental connection to legitimacy and history.

Honourable senator, do you or do you not agree that this is certainly a strong argument that goes against the groove of this bill?

[*Translation*]

**Senator Chaput:** Honourable senators, I completely agree with what the senator just read; they are very wise words. I do not have as much experience as many of you, but what strikes me is that we are facing polar opposites. On the one hand, we have democracy; on the other hand, efficiency. Unfortunately, I feel that we are choosing efficiency, to the detriment of democracy. That scares me.

Thank you for your question.

[*English*]

**Hon. Catherine S. Callbeck:** Honourable senators, I want to join with my Liberal colleagues on this side in speaking against the report that has been tabled.

First, I want to thank Senator Moore for bringing forth this important legislation, as well as former Senators Lowell Murray and Tommy Banks for their work in this area.

It is really sad when this chamber cannot get to discuss at third reading a bill that is so important, that would return or restore to Parliament the oversight of borrowing.

This report is a one-sided report that does not even come close to what the witnesses had to say. I understand the point that this report is simply the reasons given for not proceeding with the clause-by-clause consideration and is not intended to be a direct summary of what we heard.

The National Finance Committee heard two panels. The second panel of witnesses was completely ignored. One would not even know by this report that we heard them. They were extremely critical of the decision to remove the Parliamentary oversight of borrowing and were strong supporters of Senator Moore's bill.

• (1300)

Now, this legislation reverses a change that was made in 2007, which was hidden in a 770-page budget implementation act.

With one line, 140 years of tradition disappeared. The finance minister no longer required Parliamentary authority to borrow money. In a Parliamentary system like ours, that is just fundamentally unacceptable.

Senator Moore put it so elegantly while testifying. He said:

> For 140 years, from 1867 to 2007, governments and ministers of the Crown understood and observed the important conventions attendant to the borrowing and spending of large sums of money. This is the very essence, the sole point, of what went on at Runnymede in 1215 when the concept of responsible government first poked its head up. In our Canadian democracy, which is based upon that single important convention based upon the concept of responsible government, it is astonishing to hear that the government would claim that greater transparency and accountability results from the Parliament of Canada being cut out.

I agree wholeheartedly with those comments.

There is nothing more basic or transparent than to come before Parliament, on behalf of Canadians, and ask to borrow money.

Dr. Lori Turnbull, professor and parliamentary expert from Dalhousie University, agrees. This is what she had to say about Bill S-217:

> The bill is about restoring Parliament's ability to approve expenditure. For a lot of people who study Parliament and for people who do this kind of stuff like I do, this is sort of

> the primary reason why Parliament exists, especially from an historical context. We have Parliament because first and foremost we want Parliament to approve the expenditure of money and the raising of money. That is why historically Parliament exists. Expenditure without parliamentary approval seems to be at odds with responsible government — "responsible government" meaning the government needs the support of the house in order to be able to do what it wants to do. Anything failing that means the government cannot act legitimately. If you see a government doing something without legislative approval, especially when it comes to money, it sort of seems to be at odds with what we expect in a parliamentary system.

However, this staunch defence that was offered by the people on the second panel is not even considered in the report that is in front of us.

One of the core reasons the government lays out in this report for not returning to the status quo is because it allowed for a quick response to the financial crisis in 2008. That is something that would not have happened under the old rules. I do not buy that logic, and neither did our witness, Peter Devries, who worked with the Department of Finance. I want to quote what he had to say, speaking about the early 1990s:

> Here was a situation which I say was just as extreme as the one we just faced; yet we got through it with the borrowing authority act. We were able to put a borrowing authority act in Parliament. We were able to manage our affairs during a most tense period of time.
>
> There were a lot of people in Wayne Foster's old shop who were up all night long monitoring and trying to make sure that they had some money lined up so we could pay our bills on time and would not go into default.
>
> We were able to get through that issue with full transparency and everything else associated with it.
>
> We are now in a situation where we still could have put a budget or a borrowing authority bill with the 2009 Budget. There is no reason why we could not.

Honourable senators, we have made it through 140 years, two world wars, and a number of other financial problems under the old rules. To suggest that they would not have worked in 2008 is a significant stretch.

This government seems to see Parliament as nothing more than an obstacle that they must work around in order to accomplish what they want. This change made in 2007 is just another example in the name of greater efficiency to do just that.

However, Dr. Turnbull told the committee:

> ... I think a case can be made that we are becoming perhaps too efficient at the expense of democracy, and we are losing the healthy tension that is supposed be there all the time, and we all benefit if it is there all the time.

Honourable senators, the report that we have in front of us tells only half the story. The other half paints a very different picture. Our democratic process seems to be slowly crumbling away under the weight of 700-page omnibus bills, closure on debate and prorogation. Bill S-217 helps rebuild one of those crumbling pillars, and I think that is of the utmost importance.

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

(On motion of Senator Buth, debate adjourned.)

[*Translation*]

## STUDY ON SOCIAL INCLUSION AND COHESION

### TWENTY-SIXTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Eggleton, P.C., seconded by the Honourable Senator Robichaud, P.C., that the twenty-sixth report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled: *In From the Margins, Part II: Reducing Barriers to Social Inclusion and Social Cohesion*, tabled in the Senate on June 18, 2013, 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 Human Resources and Skills Development Canada being identified as minister responsible for responding to the report.

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, this matter stands adjourned in the name of Senator Segal, who has informed me that he does not wish to speak to this issue. If no other senators wish to speak to this matter, we can proceed with the vote.

[*English*]

**The Hon. the Speaker** *pro tempore***:** Are honourable senators ready for the question?

**Some Hon. Senators:** Question.

**The Hon. the Speaker** *pro tempore*: It was moved by the Honourable Senator Eggleton, P.C., seconded by the Honourable Senator Robichaud, P.C., that the twenty-sixth report of the Standing Committee on Social Affairs, Science and Technology entitled: *In From the Margins, Part II: Reducing Barriers to Social Inclusion* —

Shall I dispense?

**Some Hon. Senators:** Dispense.

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

(Motion agreed to and report adopted.)

• (1310)

## RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

### EIGHTH REPORT OF COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the eighth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (Report on a case of privilege respecting the appearance of a witness before a committee), presented in the Senate on June 20, 2013.

**Hon. David Braley** moved the adoption of the report.

He said: Honourable senators, this report relates to the committee's deliberations on a case of privilege referred to it by the Senate on May 8, 2013, following a ruling by His Honour.

I want to begin by noting how the committee conducted its inquiry into this case of privilege in a way that was thorough, expeditious and, more important, always in the spirit of collaboration. The report before honourable senators is the product of a consensus among the members of the committee. It reflects a careful consideration of several complex issues. Through its examination and collaboration effort, we came to a conclusion that is fair and appropriate, addresses the circumstances of the case and preserves the rights of Parliament.

The issue before us arose in the following manner: Following a report in the media that a member of the RCMP, Corporal Beaulieu, had withdrawn from giving evidence on behalf of the Mounted Police Professional Association of Canada before the Standing Senate Committee on National Security and Defence, the Honourable Senator Cowan raised a question of privilege. I should mention that this association assists in the representation of RCMP officers but is not a certified bargaining agent, nor a union, for members of the RCMP.

His Honour made a ruling that a prima facie case of privilege had been established. Your committee proceeded to gather additional facts to clarify what had actually occurred, based on the evidence. Your committee determined that it needed to hear from several witnesses representing the RCMP in the Pacific Division, as well as from the witness, Corporal Beaulieu.

The committee heard from Corporal Beaulieu; his immediate supervisor, Staff Sergeant Reid; Chief Superintendent deBruyckere; Dr. Isabelle Fieschi; and Assistant Commissioner Gilles Moreau.

Your committee requested from the RCMP all written communications concerning the matter and other documentary evidence. I note that the RCMP was highly cooperative in this regard. In addition, the RCMP facilitated the witness's appearance before your committee.

As our report makes clear, the issue concerned whether the Royal Canadian Mounted Police impeded Parliament in fulfilling its constitutionally mandated role; whether the Committee on National Security and Defence was impeded in its work in examining a particular bill.

The report stresses the importance of the historic rights of Parliament to conduct its business without any interference. These rights are part of a long history of struggle between the Parliament of England and the Crown. The successful outcome established the supremacy of Parliament protected by certain privileges and rights. The rights that were achieved through history now belong to our Parliament and were entrenched in the Constitution of 1867 through the preamble and section 18.

These rights are necessary for Parliament to discharge its democratic responsibilities. These rights are also shared with our fellow citizens, and most people do not know that. Their participation as witnesses in a parliamentary proceeding is an important means for Canadians to be connected to the democratic process and to assist in the important work of the Senate and the House of Commons.

This committee carefully considered the testimony provided by all the witnesses who appeared before it, as well as the documentary evidence that was provided. Your committee established the following:

First, Corporal Beaulieu testified that he felt intimidated by the actions of his immediate supervisor, Sergeant Reid, and did not attend the meeting of the Standing Senate Committee on National Security and Defence.

Second, the evidence of Sergeant Reid was that he was acting in accordance with RCMP policies on travel while an employee was "off-duty sick."

The result was that Parliament's right to hear from a Canadian citizen was encroached. A committee was deprived of its right to hear from a witness of its choosing, and a Canadian was denied his right to participate in a proceeding of Parliament.

While acknowledging Parliament's important functions and the need to be vigilant in preserving its rights, the committee also took into account the facts and evidence of this particular case. The committee found that despite the encroachment upon Parliament's rights, the work of the Standing Senate Committee on National Security and Defence was not unduly impeded, as a colleague of Corporal Beaulieu, the president of the Mounted Police Association, was available as a witness to appear before the committee.

In addition, the Rules Committee considers it noteworthy that the RCMP facilitated Corporal Beaulieu's appearance before this committee during its examination of the case of privilege.

Finally, of considerable importance in the minds of the members of this committee is the fact that the RCMP has indicated that it has addressed the concerns raised by this committee and has taken steps to facilitate future requests from Parliament.

In conclusion, this committee considers it unnecessary to pursue the case of privilege further.

**The Hon. the Speaker** *pro tempore***:** Honourable senators, are there any questions or is there debate?

**Hon. Roméo Antonius Dallaire:** I have a question, if the senator will accept it.

**Senator Braley:** I will try.

**Senator Dallaire:** Our side called Corporal Beaulieu as a witness. I was informed through the media that he could not attend. There was no way for us to rectify that situation because the information got to us too late to be able to intervene to assist the RCMP in making it realize the faux pas they had done and which the committee agreed they did.

The honourable senator is quite right; the study was not put in jeopardy by the fact that Corporal Beaulieu was not there, since his boss from the association did attend. I do not mind taking from the committee that it is satisfied that the RCMP is going to clean up its act; it will put new procedures in place in order that something like this never happens again, particularly with its injured personnel, who are not necessarily always available.

I am worried with regard to the following: What is the follow-up in terms of the leadership of the RCMP, who have shown to the rest of the RCMP that they could be so heavy-handed, even going as far as usurping the right of individuals to come before the committee? What has the leadership of the RCMP articulated throughout the RCMP — because they all know about it — to alleviate this concern of individuals, which puts them at the extraordinary disadvantage of wanting to risk it again?

Can the honourable senator give us a feel for how the leadership responded in terms of its responsibilities versus purely the technical answer?

**Senator Braley:** To respond to the honourable senator's question, the assistant commissioner was present and statements were made to us that they would pay particular attention to what had occurred and that they were proceeding to make sure that changes were made so that the state of privilege or testifying before the committee would be paramount.

**Senator Dallaire:** The honourable senator is a leader in industry; he understands managing a problem and also resolving a problem — managing a problem through management and resolving a problem through leadership.

It is one thing to say that we are going to put all the procedures in place and apply them; it is another thing for the leader of that outfit, who has created that scenario, to come forward and recognize that the decision was made under his command, that he is responsible for it and that, for the good of the force and for the morale of the troops, he recognizes that he should not have done it or that it should not have happened, and that he personally, as the leader, the commissioner, will take action so that it does not happen again and that it is not simply an administrative process that they are rectifying.

Does the honourable senator not believe that that should also have been a requirement called by the report from the commissioner himself?

**Senator Braley:** All I can say is that we did not have the commissioner present; we had the assistant commissioner, and we took his word on what he said they would do.

**The Hon. the Speaker** *pro tempore***:** Are there further questions before debate?

**Hon. Joseph A. Day:** I thank the honourable senator for the report. I am wondering on what basis he came to the conclusion that our Defence and Security Committee was not interfered with and that we could still come to the conclusions we would have come to if that witness had been there. I heard you say that another witness, a friend of his or his boss, came, but surely each witness brings that witness' personal experiences. We never did have the opportunity to hear from that witness, so how could you have come to the conclusion that our report and our work was not interfered with?

• (1320)

**Senator Braley:** I am going by my notes now. I will give you the best answer I can from what I remember.

It was stated a moment ago by Senator Dallaire, in the preamble to the question that he asked, that it was not. As well, Mr. Beaulieu did not indicate at any point that the testimony would have affected the committee, because the president had been there.

**Senator Day:** The witness does not know what questions would have been asked of him and how he would have reacted to those questions because he never had the opportunity to come and talk to us.

**Senator Braley:** You are quite right. In my personal opinion, and this is strictly a personal opinion from listening, he is close to the president of the association and he had spoken to him many times in the week or so that was between the committee meetings.

**Hon. Joan Fraser (Acting Deputy Leader of the Opposition):** Honourable senators, I want to say just a couple of things before adjourning the debate in the name of the chair of the committee, Senator Smith, who is not in the chamber at this moment.

First, I would like to pay homage to Senator Braley, Senator Fury and Senator Smith for managing to negotiate a report that every member of the committee was able to concur in. This is a unanimous report from the Rules Committee. We all thought it was important to reach unanimity if we could. Senator Comeau was also part of the discussions, as were Senator White and others in the chamber.

As most honourable senators know all too well, there are few things more complex that we ever have to deal with than matters of privilege and contempt. These are extremely complex questions. You start out thinking it is simple and, with every minute that passes, you realize that it is not simple. There is 800 years of development of these matters and, so far as I can see, there are really never any easy answers to them.

We worked quite hard on this issue, and I would respond to a couple of the questions that were asked to reinforce the point made by Senator Braley. Corporal Beaulieu had been invited to the Defence Committee as a representative along with the president of the MPPAC, the Mounted Police Professional

Association of Canada. He was denied permission to travel, but the president of the association did come. His name is Rae Banwarie.

**Senator Day:** Yes.

**Senator Fraser:** No one on any side of the case seemed to think that Mr. Banwarie had not been able to represent the MPPCA's case fully. Corporal Beaulieu had not been invited as an individual. He was to have been there as part of the delegation of the MPPAC.

That does not affect the fact that, as an individual, he was denied the right to travel, and that was what concerned us. We are not the Defence Committee. We were concerned only, essentially, with the question of his denial of the right to travel — Senator Joyal will correct me if I stray here — and that permission was denied. A Senate committee was impeded and Parliament's rights were encroached upon in the matter of hearing from witnesses that the Senate or one of its committees wished to hear from.

That said, the second question was, have they learned their lesson and will they change their procedures? I think the most telling practical evidence of that is that, to appear before our committee, Corporal Beaulieu also had to tell the RCMP that he wanted to travel and nobody impeded him in any way, and yet, arguably, what he was coming before us to talk about was more bothersome for the RCMP than what he would have been going to the Defence Committee to talk about. Combine that with the fact that the witnesses from the RCMP made it pretty plain that they had learned an important lesson from this, and I think we have at least some assurance that there is likely to be a significantly greater sensitivity to the rights of Parliament within the ranks of the RCMP than in the past.

I do not think any of our members would have written the report as it stands. This is a group effort. Any one of us could have said some things more strongly, perhaps left out others, perhaps included yet others. However, this is a report that we all agreed to, word by word. It was negotiated, word by word, over many hours and days. I would ask the chamber to bear that in mind when considering it.

**Hon. Grant Mitchell:** I have a question.

**Senator Fraser:** I think I have time for questions, Senator Mitchell.

**Senator Mitchell:** Thank you very much. I have spoken to Corporal Beaulieu, and clearly the concern that remains is the vulnerability of a person who blows the whistle in this way to retaliation in an organization within which there appears to be some tendency to do that from time to time. Is there any parliamentary privilege protection around him for having appeared at this committee as a witness now, in the privilege case, or is he pretty much on his own in that regard?

**Senator Fraser:** I am far being an expert on privilege, but my instinctive reaction would be that he would be covered by the same protection for intimidation of witnesses *ex post facto* as before. I hope that would be the case. I must tell you, though, that he actually said in committee that he believes his career with the RCMP is over. He said it very explicitly.

**Senator Dallaire:** Honourable senators, the report is good, and there is no negating that fact, but it missed one significant dimension to this exercise, and that dimension is the responsibility of command. We are not talking about a Boy Scouts troop here. We are talking about a paramilitary organization that wants to stay paramilitary, although some of us would really love to push that angle and simply make it a proper police force and get out of that historic dimension. It considers itself paramilitary, and it functions under the paramilitary context in its whole chain of command.

We have a significant breach of their ability to respond to Parliament. I cannot see how we cannot hold the commissioner accountable, who has the ultimate authority for such an action to have happened, nor for whatever disciplinary action, hopefully, may have been taken subsequently that has been either identified to you, or simply at least made known that some disciplinary action has been taken to the doctor or those authorities who prevented him from coming in the first place.

My ultimate question is that, in this scenario, we are not talking about managing a problem. We are talking about the fundamental essence, the ethos, of an institution, and that ethos is subordinated to a chain of command that is rigorous and very powerful. In fact, we made it more powerful with Bill C-42. We have worries about it having that much power as its culture may not be able to handle it.

• (1330)

Did the honourable senator not think it was an indication that maybe the main man should have been there to take whatever wrath or assessment was made and to be asked how he would rectify the issue within his organization? He, in his responsibility of command, would never have let something like that happen.

**Senator Fraser:** It was not our job, in my view, honourable senators, to examine or to make judgments upon RCMP disciplinary practices. I would like the records of those directly responsible to show that they made, at the very least, a significant mistake. However, RCMP disciplinary practices were not part of the question of privilege that we were examining. It may seem like a fine distinction, but it is an important one.

As far as Commissioner Paulson is concerned, honourable senators will notice in the report that we do not name anyone except for some witnesses. We do not name anyone in terms of blame. Rather, we talk about "the RCMP," and that includes him. Commissioner Paulson has spent a fair amount of time before parliamentary committees in recent weeks and has had to live with some of the resulting criticism. I expect he is extremely aware of what our committee found. It did not seem essential, for the reasons I advanced — to me, at any rate, but I am not on the steering committee — to hear from him if we could get information we needed from the people who had been directly involved in this incident.

**Senator Dallaire:** Senator Fraser is quite right: She did not have the responsibility to seek or even to be informed on the disciplinary process of the RCMP. However, I believe the committee had a responsibility to look at how the organization is led, what brought about such a decision in the field and how the most senior authority within the organization will rectify the matter and hold that person accountable. I have too much experience in telling staff that we are going to clean things up and change the forms. However, it is a different scenario when the commander is there and you tell him directly that he is accountable for this and you ask him what he is going to pass on to his troops so that such a thing will not happen again as it is contrary to the fundamental ethos of the institution. Did the honourable senator not feel that was required also?

**Senator Fraser:** No, I would suggest that this individual may be appearing before Senator Dallaire's committee before he appears before the Rules Committee; and I urge the honourable senator to put the question to him.

**Hon. Joseph A. Day:** Honourable senators, it is important for the record to show the comment I would like to make. It flows from the honourable senator's comment that the president of the members' association and Mr. Beaulieu were both there representing the association. Therefore, the committee had everything it wanted from the president. Sometimes a committee or steering committee would ask for two different people because they are looking for two different points of view. The fact that Mr. Beaulieu was not able to appear had the potential to interfere with the information that might have been gained by his presence. Had it been the intent of the committee to hear only a representative, one or the other would have been fine. However, the request was for two different individuals to appear. The fact that they both might happen to be members of and representatives of the members' association is secondary to the fact that it was hoped there would be evidence from someone who had been through some pretty serious personal problems.

**Senator Fraser:** Honourable senators, I do not think I said that the Defence Committee got all the information it needed or wanted. I said that no one told us otherwise. We had no evidence to the contrary. The point of our report is that a Senate committee's work was interfered with and the rights of Parliament were encroached upon because the committee could not hear from a witness it had invited.

**Senator Day:** Honourable senators, let me not leave the wrong impression. The work done by the committee and reported by Senator Braley is very good. This is extremely important work that has been done based on a prima facie case found by His Honour. To work toward and achieve a consensus was fundamental; and I congratulate honourable senators for that.

**Hon. Gerald J. Comeau:** I would like to ask Senator Fraser if she recalls that there was some discussion on this subject at committee. One of the items that we wanted to bring to the attention of all committee chairs and members is to be extremely vigilant and not to rely completely on the Rules Committee to come in afterwards.

If they sense any kind of encroachment by any institution, they should make the institution aware that witnesses must be accommodated when asked by a standing committee of either house to appear and allowed that right, without interference. I believe we had a discussion on that and part of it is in our report.

**The Hon. the Speaker** *pro tempore*: The honourable senator's time has expired. Honourable senators, is leave granted for additional time?

**Some Hon. Senators:** Agreed.

**Senator Fraser:** Senator Comeau makes an excellent point, and I entirely agree. It is important for all honourable senators, starting with committee chairs, to be vigilant about these matters.

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

• (1340)

[*Translation*]

## LITERACY

### INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Callbeck, calling the attention of the Senate to the importance of literacy, given that more than ever Canada requires increased knowledge and skills in order to maintain its global competitiveness and to increase its ability to respond to changing labour markets.

**Hon. Diane Bellemare:** Honourable senators, I have not yet completed my research on this matter. I move the adjournment of the debate for the remainder of my time.

(On motion of Senator Bellemare, debate adjourned.)

[*English*]

## POINT OF ORDER

**Hon Joan Fraser (Acting Deputy Leader of the Opposition):** On a point of order. A few moments ago, when I was speaking to the report of the Rules Committee, I had not expected to do so, so I did not have papers with me. I did not have the list of committee members with me. I was frantically looking around the chamber, naming people, and there were members of the committee whom I did not name. Of these, the one I particularly wish to apologize to is Senator McCoy, whose input in this work was absolutely invaluable. I think all members of the committee would agree with that. She is a great asset to this chamber, and I want that to be on the record.

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

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

COMMITTEE AUTHORIZED TO MEET DURING ADJOURNMENT OF THE SENATE

**Hon. Gerald J. Comeau**, pursuant to notice of June 20, 2013, moved:

> That, pursuant to rule 12-18(2)(b)(i), the Standing Committee on Internal Economy, Budgets and Administration have power to sit at any time the Senate is adjourned for a period exceeding one week between the adoption of this motion and the end of September 2013.

**Hon. Terry M. Mercer:** I have a question of Senator Comeau. The motion says the end of September 2013. We do not have the information, but we all listen to the news and rumours around town that we might not be back at the end of September. The question is: Is that enough time? Should it be the end of October 2013, instead of September?

**Senator Comeau:** We had better have enough time because, with the commitments we have made so far publicly, we will not have this out before the end of September, so trust me on that one.

**The Hon. the Speaker** *pro tempore*: Further questions?

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

(Motion agreed to.)

[*Translation*]

## ADJOURNMENT

MOTION ADOPTED

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

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 5-5(g), and the order of the Senate adopted October 18, 2011, I move:

> That when the Senate adjourns today, it do stand adjourned until Tuesday, June 25, 2013, at 6 p.m. and that rule 3-3(1) be suspended in relation thereto; and
>
> That, when the Senate sits on Wednesday June 26, 2013, it shall meet at 10 a.m.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

(The Senate adjourned until Tuesday, June 25, 2013, at 6 p.m.)

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**Published by the Senate**

**Available on the Internet: http://www.parl.gc.ca**