SENATE  SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 41st PARLIAMENT • VOLUME 148 • NUMBER 181

OFFICIAL REPORT
(HANSARD)

Wednesday, June 26, 2013

The Honourable NOËL A. KINSELLA
Speaker

CONTENTS

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

Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
Publications Centre: David Reeves, National Press Building, Room 926, Tel. 613-947-0609

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

THE SENATE

Wednesday, June 26, 2013

The Senate met at 10 a.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

THE HONOURABLE DONALD H. OLIVER

CONGRATULATIONS ON HONOURARY DOCTOR OF LAWS *HONORIS CAUSA*

Hon. Tom McInnis: Honourable senators, I rise today to draw your attention to a special recognition received by one of our honourable senators in this chamber. I refer to our deputy speaker, the Honourable Senator Donald Oliver, who last month received his fifth honorary degree from a Canadian university.

He had a Doctor of Laws *Honoris Causa* conferred upon him from St. Mary's University, in Halifax, in honour of his lifetime achievements in matters of diversity and equality.

The citation, read at the ceremony by Doctor Edna Keeble, said, among other things:

> Too many of us do not use our privileged positions to work to create change, but thankfully that has not been the case with Senator Donald Oliver. Clearly not born of privilege in terms of race and class, Senator Oliver's intelligence and hard work meant that he excelled not only in his undergraduate studies and law school, but also in his full-time legal career and part-time teaching.
>
> When he was then appointed to the Senate in 1990, Senator Oliver continued his commitment not only to public service, but also to ending discrimination on all fronts. He is a clear champion of the Black community.

At the same time, Senator Oliver has used his voice to support diversity and to advocate for all visible minorities. As he stated in his maiden speech in the Senate, in January 1991:

> I believe I can represent Black Nova Scotians, and visible minorities throughout the country.... I understand the need to combat racism whenever it appears and to provide equal opportunities to all regardless of the colour of their skin.

The citation by Dr. Keeble continues:

> An inclusive society free of discrimination also makes good economic sense. In 2005, Senator Oliver spearheaded a Conference Board of Canada study, which (as Senator Oliver states) made the "business case for Diversity," because it brought out not only the barriers that visible minorities face in the private and public sectors, but also how tapping into the talents of visible minorities is crucial to a state's prosperity.

This is how Dr. Keeble ended her remarks:

> Standing up for equality. Working to create change. Striving to make a difference. This has been Senator Oliver's life's work, and one that we should all admire and emulate.

Honourable senators, prior to St. Mary's University, Senator Oliver received honorary degrees from Dalhousie University in Halifax, Acadia University in Wolfville, the University of Guelph in Ontario, and York University in Toronto.

All of the degrees have been given for his epoch-making, innovative and widespread creative work in helping Canadians to understand the business case for diversity. Indeed, Senator Oliver is recognized across Canada as a champion for visible minorities and most deserving of this honour.

Please join me, honourable senators, in congratulating our colleague, Senator Donald Oliver, on receiving his fifth honorary degree.

THE HONOURABLE ROBERT KEITH "BOB" RAE, P.C., O.C., O. ONT.

Hon. Mobina S. B. Jaffer: Honourable senators, on Tuesday, October 23, 2012, Bob Rae, in his capacity as the Leader of the Liberal Party of Canada and Member of Parliament for Toronto Centre, wrote a letter to the Norwegian Nobel Committee:

> I write to nominate Malala Yusafzai for the Nobel Peace Prize for her courageous work in support of equal rights of women.

A few months later, on February 13 of this year, he stood in the foyer of the House of Commons to call for action on the issue of missing and murdered Aboriginal women in my province, British Columbia.

Bob Rae spent his career, which spans 35 years in the House of Commons, at Queen's Park in Toronto and in other public offices, in public life, advocating for the rights of the most vulnerable people in Canada and the world. He became a statesman in the truest sense of those words. He embraced the seriousness and urgency required in the face of human rights violations around the world, from Sri Lanka to the Middle East to Africa to here in Canada, but he never took himself too seriously. His quick wit is well-known.

Through his combination of commitment and good humour, Bob Rae earned the respect of Canadians from all walks of life. When the federal government appointed him to look into whether Ottawa should call a public inquiry over Air India, he recognized

the need to engage with the community, to speak directly with the families of the victims. I clearly remember him coming to my Senate office and asking how we could make changes. For the first time, I felt that we Canadian Indians were going to have a voice in our country. He said publicly:

> I want to listen to them. I want to hear them. I want to spend time with them. I want to work this through with them.

That was the approach that Mr. Rae took in working with his colleagues from all parties, with his constituents and with people in and around the world.

As the Canadian envoy to the Sudan, I asked him to help me in the Sudan. Everywhere I went in the Sudan, politicians said to me, "Give us Bob Rae, and we will find a way to get peace as he understands our challenges."

His approach will serve him well in his role as chief negotiator for Matawa First Nations in talks with the Ontario government about the opening of their land to the Ring of Fire mineral development.

Bob, we are grateful for your dedication, leadership and example. You represent the best of Canadian politics. Your commitment to serving others has inspired us.

Honourable senators, please join me in congratulating Bob Rae on the legacy of compassion, caring and commitment to public service that he leaves here on Parliament Hill.

• (1010)

FLOODING IN ALBERTA

Hon. Grant Mitchell: Honourable senators, I would like to join others in the Senate chamber today in recognizing the shock and tragedy of the floods in southern Alberta that have so grievously affected the city of Calgary and many other communities, including High River. In that context, I know all honourable senators are thinking of Senator Scott Tannas, whose family was evacuated from High River. I have not heard reports, but I know that the thoughts and prayers of all honourable senators go to him, his family and his community, and to all southern Albertans.

I would like to congratulate, as so many honourable senators have done, the tireless workers who have supported these communities and the people in them: the military, the firefighters, the police, the EMS and so many public servants, who have worked tirelessly around the clock to restore services and infrastructure.

I would like to applaud and admire, in particular, the amazing pulling together of friends, families and complete strangers to work with one another to clean up the mess left by these shocking and powerful floods.

I am very close to a family that lives just a block from the Elbow River. Their house was literally filled to the first floor. I talked to them over the several days that they were evacuated to find that they were not feeling hopeless at all but had profound resolve. It is interesting that in the press we do not hear stories of despair. What filters out is a sense of resolve that Albertans and the people in High River and other communities will fight back and win.

My friends returned to their home not quite knowing what they would do. They found that the neighbours had already secured a contractor, who offered to help pump out their house as well. The next step was to clean out the basement and tear down the walls. Before they could even start, they saw strangers walking down the street knocking on each door and asking what they could do to help. Just one day later, there was a pile of rubble at the front of their house waiting to be picked up by the services provided by the city. That is a profound example of the experience of one family working together with the community, supported by people they do not even know, to solve that problem.

Two things really stick with me. One is the power of nature. I should acknowledge the tremendous leadership of Mayor Nenshi and Premier Redford; that Prime Minister Stephen Harper was there and committed federal support; and that MPs, MLAs and city councilors all came together to provide leadership.

Mayor Nenshi said that the Bow River has been his heartbeat for as long as he has been a Calgarian, which is all his life. Nobody ever had imagined it could be so powerful, so fast, and so destructive. He captured the sense, though, that it remains the heartbeat of that city.

The second is the power of the people and communities to work together — friends, family, neighbours and complete strangers — to fight and to win; and fight and win they will.

BLINDNESS AND VISION LOSS

Hon. David P. Smith: Honourable senators, I rise today to speak in support of Senator Asha Seth's inquiry on the increasing rates of blindness and vision loss in Canada.

This is a growing problem in Canada. More than 817,000 Canadians are living with vision loss. In addition, there are close to 3.4 million other Canadians living with some form of age-related macular degeneration, diabetic retinopathy, glaucoma or cataracts. As our population continues to age, these numbers will grow and with it, the cost to Canada.

Currently the financial cost of vision loss in Canada is estimated to be about $15.8 billion, or nearly 2 per cent of Canada's GDP; and all of us pay the cost of vision loss. The largest health cost, 40 per cent of the total, falls under vision care, which covers optometrists, ophthalmologists, opticians and corrective lenses. The majority of this cost is publicly funded, usually by provincial or territorial governments. While in the last few decades expenditure in health care in Canada has been growing rapidly, considerably faster than the GDP, expenditure on vision care has risen even faster, growing from 1.8 per cent of total health expenditures in 1975 to 2.2 per cent in 2007.

As well, there are quality of life issues for people who suffer from vision loss. Routine daily life is harder. They are three times more likely to experience clinical depression compared to people

with sight; they experience a greater number of medication errors; and they have twice the risk of falls and premature death, and four times the risk of serious hip fractures, to name just a few of the challenges.

What can be done? As Parliamentarians, we must start to tackle this issue by developing a national vision plan. In 2003, the Canadian government made a commitment to the World Health Organization to do just that by 2005 and to begin implementing it in 2007. However, it has not happened. Many other nations made the same commitment and have begun to develop vision plans. Countries such as the U.K. and Australia are well on their way to implementing those plans.

Every year we wait, it costs us $15.8 billion. Every year we wait, another 43,800 Canadians lose their vision. The time has come to move forward with our commitments to our citizens and to provide adequate and prevention research and treatment of vision loss.

Speaking personally, just for a minute, I remember my first visit at the age of six to an optometrist on the Danforth in Toronto, above some stores. He put glasses on my face and, for the first time in my life, I could read the signs on the stores. I had not realized people could read them.

I commend Senator Seth for taking the initiative to bring this important issue forward and for championing this worthy cause.

[*Translation*]

ROUTINE PROCEEDINGS

CANADIAN HUMAN RIGHTS ACT

BILL TO AMEND—FOURTEENTH REPORT OF HUMAN RIGHTS COMMITTEE PRESENTED

Hon. Mobina S. B. Jaffer, Chair of the Standing Senate Committee on Human Rights, presented the following report:

Wednesday, June 26, 2013

The Standing Senate Committee on Human Rights has the honour to present its

FOURTEENTH REPORT

Your committee, to which was referred Bill C-304, An Act to amend the Canadian Human Rights Act (protecting freedom), has, in obedience to its order of reference of Thursday, June 20, 2013, examined the said bill and now reports the same without amendment.

Respectfully submitted,

MOBINA S. B. JAFFER
Chair

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

(On motion of Senator Carignan, bill placed on the Orders of the Day for third reading later this day.)

[*English*]

QUESTION PERIOD

FISHERIES AND OCEANS

GABARUS SEAWALL

Hon. Terry M. Mercer: Honourable senators, with the wild weather patterns and the most recent devastation in Calgary, I was reminded of a little seawall in Cape Breton. The people in the village of Gabarus are waiting to see if their seawall will be fixed. Earlier this month, the Mayor of the Cape Breton Regional Municipality officially requested funding from both the federal and provincial governments to fix part of the Gabarus seawall by September. It sounds like a good idea.

Could the Leader of the Government in the Senate please tell honourable senators and the people of Gabarus that the federal government will participate in the cost-sharing request to fix at least part of the seawall?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, if my memory serves me correctly, Senator Mercer, this seawall does not fall within the jurisdiction of the federal government.

If memory serves me correctly, this is owned provincially and by the municipality, so this is not something with which the federal government would be involved.

• (1020)

Senator Mercer: I appreciate the minister's answer, but quibbling over jurisdiction of the seawall only delays repairs further. The federal government has consistently said the province owns the seawall. The province says the federal government owns the seawall, and the municipality is trying to act as an arbitrator. Who is stuck in the middle? The people of Gabarus.

It is time that the federal government took some responsibility and helped the people of Gabarus. The seawall was originally built with federal funds. Will the leader commit to working with the other stakeholders to get the seawall fixed?

Senator LeBreton: My answer of a few moments ago stands. I do not believe this seawall falls within the jurisdiction of the federal government. I will check once again, but I believe that this is not something in which the federal government would be involved.

Senator Mercer: Honourable senators, 1983 was the last time there was a breach of the seawall. That caused widespread flooding in Gabarus. If the wall fails in the upcoming hurricane

season or even as a result of a large summer storm, it could threaten the local fishery and even the village itself.

We have seen the devastation that flooding caused in Calgary. If the seawall is not fixed and it fails, how much money will it cost to repair all of the damage as compared to simply fixing the seawall now? Would the leader not agree that an ounce of prevention is worth a pound of cure?

Senator LeBreton: Again, I will seek the proper information. As I have said, I do not believe that this is the responsibility of the federal government. I believe it is the responsibility of the provincial government and the municipality, but I will check.

FOREIGN AFFAIRS

NATIONAL ACTION PLAN ANNUAL REPORT

Hon. Mobina S. B. Jaffer: Honourable senators, my question is also for the Leader of the Government in the Senate. This is not a question I expect her to have an answer to at the moment, but I humbly urge her to get me an answer as soon as possible in order to assist me.

United Nations Security Council Resolution 1325 was adopted unanimously by the United Nations Security Council on August 31, 2000. Canada played an instrumental role in the success of this resolution. As all senators know, this resolution was developed to protect and empower women in conflict zones.

In 2004, the Security Council urged all member states to develop national action plans in order to identify clear priorities, coordinate interdepartmental cooperation and allocate resources to implement Resolution 1325 at the national level.

In October 2010, our government launched Canada's National Action Plan. A national action plan means little without concrete and effective implementation. In Canada's National Action Plan, the Department of Foreign Affairs and International Trade committed to publishing an annual report on Canada's progress in implementing Security Council resolutions with respect to women, peace and security, and to make this report publicly available.

The Senate Human Rights Committee, of which I am chair, has held many hearings on the issue of women, peace and security. We have been waiting for this progress report on Canada's National Action Plan since 2011. Canada has not tabled a national action plan since then.

Our committee has regularly asked Foreign Affairs when the national action plan will be tabled. We again asked officials to appear before us, and on May 6, 2013, the Human Rights Committee heard from Marie Gervais-Vidricaire, Director General, Stabilization and Reconstruction Task Force at Foreign Affairs and International Trade Canada. Ms. Gervais-Vidricaire said to us:

> The government will table in Parliament, before the House rises this spring, the Canadian National Action Plan's annual report for the fiscal year 2011-12.... We believe that this will be of interest to Canadians and to the international community. The report is in its final stages, and we would be happy to provide the committee with a copy once it has been tabled.

Honourable senators, I have checked everywhere and, despite the assurance given to the committee, it is my understanding that this report has not been tabled. What is happening to this report? When can we expect to see a copy of it?

This has put me in a very difficult situation. Had Ms. Gervais-Vidricaire not said that, I would have had questions of her. I have worked with Ms. Gervais-Vidricaire and I take her at her word. I am sure she was not misleading the committee. That is not my tact.

When can we expect this report to be tabled? As I said, I do not expect the leader to have an answer today.

Canada has been a leader on this issue in the past, and we should hold ourselves accountable. As a supplementary question, how will we ensure that this report is produced annually in the future?

This summer, I will be travelling with many women around the world learning how they are implementing national action plans. I will be going without a national action plan from Canada. This is an embarrassing situation. Since 2011, we have not filed a national action plan.

May I have the leader's assurance that she will let me know when we have one?

Hon. Marjory LeBreton (Leader of the Government): I thank Senator Jaffer for the question, but I am not sure under what auspices she will be travelling around the world this summer.

Senator Jaffer: I am paying for it myself.

Senator LeBreton: Although she had that responsibility under the previous government, she has no responsibility to represent this government's position.

Canada is a world leader in the protection and promotion of the rights of women and girls. We will continue to focus on concrete measures aimed at improving the lives of women and girls around the world.

With regard to the specific report that Senator Jaffer has requested, I will have to take that question as notice and will provide a delayed answer.

Senator Jaffer: Honourable senators, I wish to put on the record that I am travelling at my own expense, as I have done every summer, to work with women in conflict zones. I also wish to put on the record that I would never want to represent a government of which I am not part, but I am a senator of Canada. As such, people expect me to know when the national action plan for 2011 will be tabled.

Senator LeBreton: Senator Jaffer indicated in her preamble that her country, Canada, did not have a position. That is her view. I was simply pointing out that while people are free to travel the

world, they are not part of an official Canadian delegation. I would leave it up to the officials of Canada to represent Canada's position at these international organizations.

Senator Jaffer: Will the leader find out when this report will be tabled so that I can share that information?

Senator LeBreton: I have already said that I will take the honourable senator's question as notice.

HUMAN RIGHTS

COMMITTEE DELIBERATIONS ON BILL C-304

Hon. Pierre Claude Nolin: Honourable senators, I have a question for Senator Jaffer in her capacity as Chair of the Human Rights Committee.

A few minutes ago she tabled the report of the committee on Bill C-304, without amendments. I understand that the Canadian Bar Association made a presentation to that committee yesterday and basically made the same argument as I made at second reading stage.

Why did the committee not accept the argument to keep section 13? As Senator Jaffer knows, section 13 is not meant to replace the Criminal Code but rather to complement it and to prevent people from infringing on the rights of individuals through the use of telecommunications.

Why was such a good argument not accepted by the committee?

Hon. Mobina S. B. Jaffer: I thank Senator Nolin for asking why the committee did not recommend the retention of section 13 of the act. In response I can only say that this bill was passed on division. I will leave it at that.

• (1030)

However, I will tell you that what the Canadian Bar Association said really reinforced my idea. They said we need a framework — a framework where there are two sets for hate: There is the framework of reconciliation, and then there is the criminal legislation. They said we need a framework of reconciliation; we need a way to resolve issues.

Mr. Mark Toews, an executive member of the National Constitutional and Human Rights Law Section of the Canadian Bar Association, told the Standing Senate Committee on Human Rights:

> A culture of prejudice and discrimination is created when the dissemination of hateful and intolerant views is allowed unchecked. It starts with isolated comments, usually against vulnerable groups. Eventually, listeners and bystanders, after hearing the views often enough, begin to accept the comments and start to become fearful of the targeted group, leading to prejudice, discrimination and greater tragic results.

I do not have further quotes here from him, but what Senator Nolin and Senator Kinsella brought up in second reading is what they were saying: We need a process of reconciliation. Not everything is about going to the criminal court. We need to keep section 13 in place because we need that framework.

It was exactly your argument at second reading that was what the bar also said — namely, that we do not need the penalty sections. Section 13 is not about penalties. I think every member in the committee agreed that we do not need the penalties sections. However, we need a framework in a multicultural Canada where people can feel they can air their disputes and go away without penalties in order to keep harmony in society.

Senator Nolin: Since we are talking about a preventive action, when a complaint is tabled in front of the commission, the degree of evidence is not the same as the degree of evidence used or needed when you are using the Criminal Code. Was such an argument also presented to you?

Senator Jaffer: Basically, as you know, with criminal cases, the bar is so high; we are under "beyond a reasonable doubt." Senator Baker brought up the issue of a terrible case where the Jewish community had been really badly defamed. Yet, the person who defamed them was not sent to jail, even though it was criminal, because the standard was too high.

Basically, this is a civil standard that would resolve issues in the community. If we repeal it, we will lose a very important tool.

Another thing that came up is the issue of cyberbullying. There was a lot of discussion that this clause could have been used for cyberbullying. This was a tool we could have used to deal with young people and cyberbullying, and that is why it is important to keep this. This is something we will be discussing today.

Hon. A. Raynell Andreychuk: Since we are debating something that I thought we would be debating when we arrived at the item for Bill C-304, I want to ask you what the Canadian Civil Liberties Association and their counsel stated.

Senator Jaffer: Senator Andreychuk, you were there and you know that they want to repeal this clause.

[*Translation*]

ORDERS OF THE DAY

STUDY ON USER FEE PROPOSAL

AGRICULTURE AND AGRI-FOOD—TENTH REPORT OF AGRICULTURE AND FORESTRY COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator Fortin-Duplessis, for the adoption of the tenth report of the Standing Senate Committee on Agriculture and Forestry (*Canadian Food Inspection Agency's User Fee Proposal for*

Importer Licensing for Non-federally Registered Sector Products, without amendment), tabled in the Senate on March 21, 2013.

Hon. Fernand Robichaud: Honourable senators, before preparing this report, the Standing Senate Committee on Agriculture and Forestry listened to a witness speak for about 45 minutes. When it came time to write the report, some senators asked for a little more time to examine the issue because they were questioning the consultations that were held. We simply wanted one more day to examine the evidence that was presented to us.

Many senators on both sides of the chamber agreed to grant the committee a little more time, but one senator moved that the committee should present its report as soon as possible, and that motion was adopted by a majority vote.

I would like to draw the chamber's attention to this situation to point out that when senators ask for a little more time, they do not do so in order to delay or interfere with the work being done. They do so simply to ensure that they are properly informed about the issue. I am convinced, honourable senators, that if more time had been granted, the report would no longer be on the Order Paper, but would have been adopted by now. That is what I wanted to say. Thank you.

(On motion of Senator Mercer, debate adjourned.)

THE SENATE

MOTION TO EXTEND WEDNESDAY SITTING AND AUTHORIZE COMMITTEES TO MEET DURING SITTING OF THE SENATE ADOPTED

Hon. Claude Carignan (Deputy Leader of the Government), pursuant to notice of June 25, 2013, moved:

That, notwithstanding the order adopted by the Senate on October 18, 2011, when the Senate sits on Wednesday, June 26, 2013, it continue its proceedings beyond 4 p.m. and follow the normal adjournment procedure according to rule 3-4;

That committees of the Senate scheduled to meet on Wednesday, June 26, 2013, be authorized to sit even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto; and

That rule 3-3(1) be suspended for the sitting of Wednesday, June 26, 2013.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

INCOME TAX ACT

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

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. Anne C. Cools: Honourable senators, I rise to speak to this private member's bill, of Russ Hiebert, Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations).

I have grave concerns about this bill. Taxation and the power to raise taxes from citizens are carefully authorized, structured and circumscribed under the British North America Act, 1867. Taxation and its regulation are among the highest powers and privileges of any government and are strictly confined to the actions of a minister of the Crown.

The British North America Act, in Part IV, titled "Legislative Power," establishes the total of legislative powers, both federal and provincial, in Canada. Its section 91 enumerates the matters within the classes of subjects over which the Parliament of Canada has legislative authority and on which it may legislate.

• (1040)

The federal powers of taxation are contained in subsection 91.3. It says, "The raising of Money by any Mode or System of Taxation." This section deals with the constitutional phenomenon of taxation, something which is not in the purview of private members, as we know.

Honourable senators, the limits and powers of government in taxation and spending are strictly defined in the British North America Act, 1867. These powers have not been left to chance, whim or desire. The constitutional phenomenon of raising of taxes and spending them — the public revenue, the public finance — are the very foundation and fundamental role of Parliament itself. They have a long and bloody history. They were even named "taxation and representation."

Sections 53 and 54 of the British North America Act, 1867 command that tax measures must begin in the House of Commons and further, that such measures must proceed with a royal consent, in this instance called the Royal Recommendation. In short, only a minister the Crown and one who is a member of the House of Commons may move a bill to raise taxes or appropriate tax dollars. The goal of sections 53 and 54 is to incapacitate, to disallow, private members of the House of Commons from moving bills on taxation and public expenditure. Section 53, headed "Appropriation and Tax Bills," reads:

> Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Section 54, headed "Recommendation of Money Votes," states:

> It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Honourable senators, this immediately raises the questions as to why a private member is a sponsor of this bill, and what was the opinion of the responsible ministers on the matter, and where they expressed those opinions, and how.

Some days ago on June 18, in a question to Senator Cowan, I said that the Income Tax Act had always been regarded as the exclusive purview of ministers of the Crown. As a matter of fact, honourable senator, in respect of what I just said, I believe that all amendments to the Income Tax Act require a royal consent.

In that exchange with Senator Cowan, I had said that I had always understood that in the House of Commons, the actions of moving bills regarding the Income Tax Act — as is Bill C-377 — is the exclusive purview and domain of the ministers the Crown. The singular — and total — purpose of the Income Tax Act is the regulation and direction of the government's raising of taxes, particularly taxes on income, the income tax, from the Canadian population.

Honourable senators, private members have no say or business in the Income Tax Act. Now, I know there have been two exceptions to this, one amendment in 1924 and one in 2007.

March 31, 1927, marked the creation of the then new Department of National Revenue. The new Department of National Revenue Act repealed the old Department of Customs and Excise Act. Honourable senators may not know this, but every department is usually established by a department act. The powers of the ministers are quite often laid out in those acts, the Department of Justice Act, and the Minister of Justice, for example, and so on.

Section 3(1) of this 1927 act informs of the duties of the Minister of National Revenue. It states:

> The duties, powers and functions of the Minister shall extend and apply to the subjects and services enumerated in the Schedule to this Act, over which the Minister shall have the control, regulation, management and supervision, subject always to the provisions of the Acts relating to the said subjects and matters connected therewith.

The aforementioned enumerated schedule to this section 3(1) read:

> a) The control and management of the collection of the duties and Customs and of matters incident thereto.
>
> b) The collection of all duties of Excise...
>
> d) Internal taxes, unless otherwise provided, including income taxes.
>
> e) Such other duties as may be assigned to the Minister by the Governor in Council.

Honourable senators, I am trying to show the alien nature between the Income Tax Act and the private member's bill, because unless the obviously forbidden is not spelled out in some mundane way in some statute or act, that members believe they can do it. That seems to be the case here, but I am spelling out the tradition that governs the Income Tax Act.

The abiding serious questions before us are twofold: First, what is the nature of the constitutional relationship between the Income Tax Act and the trade unions of Canada; and second, what is the parliamentary relationship between a private member and the Income Tax Act? These questions have not been addressed.

Honourable senators, in the *House of Commons Procedure and Practice, Second Edition, 2009*, in chapter 21, entitled "Private Member's Business," O'Brien and Bosc write about financial bills limits. At page 1114 they state:

> With respect to the raising of revenue, a private Member cannot introduce bills which impose taxes. The power to initiate taxation rests solely with the government and any legislation which seeks an increase in taxation must be preceded by a ways and means motion. Only a Minister can bring in a ways and means motion. However, private Members' bills which reduce taxes, reduce the incidence of a tax, or impose or increase an exemption from taxation are acceptable.

The law of Parliament is clear about the relationship between private members and the taxation initiative. It is equally clear that a similar relationship must pertain between private members and Income Tax Act itself, because the sole purpose the Income Tax Act is to execute the process of taxation.

Honourable senators, in a June 13, 2013 article by Jordan Press in the *National Post*, titled 'Everyone is feeling the pressure': Senate could sacrifice summer break until July in face of legislative backlog, Mr. Press quotes Senate Government Leader, Senator Marjory LeBreton, that:

> Obviously, Bill C-377 is one that's a little more controversial, but we'll see what we can do. We're hoping to get it passed.

Pray, tell us, someone, what this controversy is about? No one has said anything on the floor here, that is, no one who is related to the government.

There is something irregular about the prosecution of Bill C-377 here. This bill seems to be less about defining the raising of income tax and more about regulating the trade unions and collective bargaining. That is a matter for debate all on its own, and a substantive and large debate.

This bill was introduced by its sponsor, a conservative private member, Russ Hiebert, on December 5, 2011 in the House of Commons. It is most unusual. On December 12, at third reading, the bill was adopted on the strength of the Conservative majority, so it galloped. Among those who voted for its adoption were the

Minister of Finance, the Minister of National Revenue, the Treasury Board president and the Prime Minister. One could say that these are the four heavyweights in government in respect of taxation and the public finance.

Honourable senators, the journey of this bill in the Senate has been rather odd and it is the journey of an orphan bill. Remember the development of the child welfare system in the UK, the orphan children? This bill seems to be an orphan lacking adequate parental care and guidance.

Conservative senators here, interestingly, seem to be disinterested, disinclined and even unwilling to speak to the bill or to explain or defend the bill. In fact, only two Conservative senators have spoken, one being the sponsor, the most gracious Senator Nicole Eaton and Senator Hugh Segal who roundly condemned it. This is a strange animal here. Usually the signal that a house is ready to vote is a sponsor's speech which closes the debate. That speech does not seem to be forthcoming.

Honourable senators, the Senate government leader has said that the government wants the bill, but she will not tell us why. Clearly, the bill in and of itself has no urgency, because if bills have an urgency, the urgency is usually laid bare and made clear in the bill at the get-go.

• (1050)

Moreover, no government supporter here will tell us why, or what the government's interest is in the bill, and no senator here is prepared to receive and answer questions about the bill. It is a strange creature, this one. This is a parliamentary conundrum, an oddity, and I would even say an irregularity. This bill is irregular.

I have always understood that no bill should move forward under these conditions, which, on their face, are a disavowal of the bill itself, and also of the majority who secured its passage in the other place. These actions mean disavowal.

Here, in this chamber, the voices that have been most numerous are the ones who have raised opposition or grievous concerns about the bill.

Honourable senators, I come now to the philosophy, principles and practices of responsible government. Within this body of thought, there is much opinion on private member's bills, and their support of, or lack thereof, by responsible ministers and the consequences thereof. It is well known that ministers of the Crown are responsible for all and everything that is within their responsible portfolio. They never lose that responsibility; it is embodied in their being and in their commissions as ministers.

The great Alpheus Todd, a remarkable student of parliament, wrote about this. He wrote about the relationship between responsible ministers and the adoption of private member's bills. In his 1892 *Parliamentary Government in England: Its Origin, Development, and Practical Operation, Volume 2*, at page 123, he said:

> Bills of a constitutional character have been introduced by private members, and carried through one House, notwithstanding the opposition of ministers. But we find no example of any bill being permitted to pass through both Houses to which ministers were persistently opposed. Where the opinion of parliament has been unequivocally expressed in favour of a particular bill, regardless of objections thereto expressed by ministers, it has been the invariable practice for ministers either to relinquish their opposition, in deference to that opinion, and to lend their aid to carry the measure, with such amendments as might be necessary to conform it to their own ideas of public policy, or else to resign.

Let us understand. There is a practice these days that if you ignore a practice or a principle long enough, it will cease to exist. The notion is that every minister has an interest in any and every private member's bill that touches his portfolio. He has a duty, if he is opposed to it, to say so, and if he is for it, to put the weight of the department behind the bill; but this kind of secret thing, where the bill is winding its way through the houses in secrecy and silence, is undesirable, improper and irregular.

I will continue with Mr. Todd at page 123:

> Every successive administration, under parliamentary government, has thus been enabled to maintain — with more or less adherence to their party principles, or to their political programme — the constitutional control over the proceedings of parliament in matters of legislation which appertain to their office: a control which the majority ordinarily possessed by ministers of the crown in the legislative chambers enables them to exercise without infringing upon the independence of parliament.

The Hon. the Speaker *pro tempore*: Honourable Senator Cools, I regret to inform you that your speaking time has expired. Are you prepared to ask the chamber for more time?

Senator Cools: Yes, just to finish, please.

Some Hon. Senators: Agreed.

Senator Cools: I invite senators to explore the depths and the origins of these important principles. I also implore senators to observe them.

Honourable senators, Mr. Todd continues at page 119:

> As it is essential that the ministers of the crown should possess the confidence of the popular chamber, so the loss of that confidence will necessitate their retirement from office. The withdrawal of the confidence of the House of Commons from a ministry may be shown either (1) by a direct vote of want of confidence, or of censure for certain specified acts or omissions; or (2) by the rejection of some legislative measure proposed by ministers, the acceptance of which by parliament they have declared to be of vital importance; or, on the other hand, by the determination of parliament to enact a particular law contrary to the advice and consent of the administration.

I have not had time enough to review the literature. There is a thing in this place: rush, rush, rush, rush. There is no time to study, to read, to digest and analyze the bills.

Mr. Todd concludes at p. 122:

> An expressed opinion of either House of Parliament, and especially of the House of Commons, upon any matter — whether it be a legislative question or one that comes within the sphere of prerogative or administrative functions — even if it has been adopted by the House in opposition to the advice of ministers, is always entitled to respectful consideration. But the degree of weight to be attributed to any such resolution will be governed by the circumstances of the case... The persistence of either House in a declaration of opinion, upon any important question, in which ministers do not concur, must ultimately assume the shape of confidence or non-confidence in the administration.

Honourable senators, very clearly, this bill is strange. It appears that this orphan is no orphan. Apparently, it is not an orphan; apparently, it is a bastard child of the government.

Remember, I grew up in a very old community. The old term "bastard" meant more than just an illegitimate child. It meant an illegitimate child that was conceived not only outside of a conjugal bed; but was conceived in a barn or a shed somewhere.

Language is a most fascinating thing. For years, such language was used to hurt so many people so very deeply.

In this house, this bill is passing without due regard and attention to the notion of ministerial responsibility, which should apply because the relevant ministers supported it by their votes. The ministers supported it. They had a duty to take responsibility for it. Bill C-377 is clearly a well-supported government bill pretending to be a private member's bill.

It is clear that the goal of Bill C-377 is not about the regulation of income taxes or the Income Tax Act. It is clear that its goal is the regulation and inhibition of trade unions. If the government is desirous of regulating the trade unions, it should so proceed, by government measures, under ministerial responsibility so indicated on the floor of the houses and so conducted with proper study and consultation of all the interests in the country.

Honourable senators, I have to conclude by saying that this furtive bill, C-377, is neither good policy nor good parliamentary and constitutional practice.

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

Hon. Pierrette Ringuette: Honourable senators, I want to speak on the fourth amendment that was tabled by Senator Chaput. I would also like to reiterate Senator Kinsella's ruling, that I and each and every one of us can speak on each amendment before the Senate on Bill C-377.

I have to admit that in the last five months I have heard about this bill quite a lot, but Senator Cools has a particular twist to it in regard to the fact that now it can be called not Bill C-377 but the triple B bill, the barn beep-beep bill. I want to thank her for her comments.

• (1100)

With regard to Senator Chaput's amendment, it is certainly important and unfortunate that the House of Commons — whether it was with the first version of this bill or the current version, and whether it was from the legal unit of the House of Commons or the committee, et cetera — did not identify this major linguistic flaw in the bill.

I want to reiterate my thanks to Senator Chaput for having put forward an amendment to rectify the incorrect language and translation of this bill.

Yesterday I indicated that the committee had received five letters from provincial premiers or provinces, from various Ministers of Labour, indicating that labour relations are a provincial responsibility. This bill is a labour relations/management issue. Therefore, from step one, it is unconstitutional.

I mentioned last night that each and every one of us represents the population of a province, and those five provinces that do not want this bill passed are represented by 74 senators in this place.

Senator Mercer: Can they count on them?

Senator Ringuette: They are the senators from Ontario, Quebec, New Brunswick, Nova Scotia and Manitoba.

Essentially, the main issue of this bill is its constitutionality. When we had constitutional experts before the committee, I asked each and every one of them, along with all of the union representation, whether there was a way that we could amend Bill C-377 so that it would be constitutional in its scope. Each and every one of them said it is impossible to amend Bill C-377 and remove the constitutional aspect of not representing provincial jurisdiction.

Honourable senators might ask, "Senator Ringuette, why did you put forth an amendment?" The amendment I put forth was to indicate to the Tory senators in this place, notwithstanding all the issues and the problems with Bill C-377, that there is a major lack of policy and balance with regard to the way forward for them.

On the one hand, one cannot ask 9 million to 11 million Canadian workers from an organized labour union, who earn $5,000 and over, to post that figure on a public website, which also goes against the Federal Privacy Act; and on the other hand, having the Access to Information Act of Bill C-461 in the other place, as presented by one of the party's ex-caucus members, amended by the government to disclose only those paid $440,000 and over, of which deputy minister-level income is totally funded by taxpayers.

One cannot justify either extreme we see in Bill C-377 or in the amended bill of Bill C-461 in the other place. One cannot ask low- and middle-income workers of Canada to publicly disclose $5,000 or more on a government website on the one hand and on the other say that 100 per cent of deputy ministers' salaries will not be accessible through the Access to Information Act, only if they receive an annual income of $440,000 or more.

That is how ridiculous this bill is. I hope that each and every one of us will reflect seriously on the effect it is going to have on Canadian workers and their families, whether they are getting braces for their kids or they are receive a small pension.

Notwithstanding the fact that, at its base, this bill is not constitutional, it is absolutely unworthy of legislation from the Parliament of Canada.

Some Hon. Senators: Hear, hear.

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

Hon. A. Raynell Andreychuk: Honourable senators, I am not going to speak to the policy issues within Bill C-377. What I want to talk about is the constitutionality, the privacy issues and the Charter issues that exist.

When this bill first originated, I looked at it and it seemed very much like something taken from American law and put into Canadian law. I had concerns from day one about its constitutionality.

I watched it go through the House of Commons. I saw where the house tried to amend the bill and, in fact, did amend it to a certain extent. My concerns were still about the constitutionality, the privacy issues and the Charter issues. It would appear these priority issues were not dealt with at the beginning of this process or at the House of Commons.

The concerns were unanimously raised in committee here, as I understand it. I accept that we delegate to committees the work of this chamber. I do not expect to be — nor should I be — an expert in every area. We choose what committees we can sit on, and we do the best we can. I accept that the committee, as a whole, indicated there were constitutional issues of such an extent that they could not be corrected easily. The bill came here with those observations.

Now we have amendments. I am not going to vote for any of the amendments. I will abstain. If we put amendments in here, we are doing exactly what the house did and exactly what the introducer of the bill did, which is not pay sufficient attention to the Constitution and its applicability and whether in fact Bill C-377 passes the test of being constitutional, within the Charter of Rights and within our privacy provisions.

We cannot say they were wrong in producing a bill with constitutional difficulties and that they did not adequately study it, that there was not an adequate process followed. However, we have a responsibility not to do the same thing. If we put in amendments, we are saying that they are then constitutionally valid. Who has studied them? Who has looked at them in depth? I strongly suspect that many of the amendments go to the policy issues and not to the constitutionality.

• (1110)

I would ask honourable senators to think about our role in the constitutional issue and to ensure that the bills that come here — whatever side we take on the policy issues — are sound according to the rule of law.

That is the difference in our Parliament. I will not give honourable senators a history lesson. I note that Senator Cools has talked about ministerial responsibility. I would like to take that up some day with private members' bills, but what bothers me is my constitutional responsibility.

I will not be voting for any of the amendments. I think they are inappropriate if we are making the strong point that it is not constitutional. I will abstain from all amendments.

The Hon. the Speaker *pro tempore*: Senator Andreychuk, will you accept a question?

Senator Andreychuk: Yes.

Hon. Céline Hervieux-Payette: I wonder if the honourable senator took the time to read the report of the committee where there were serious reservations by the members of the opposite side. Of course we have not voted in favour because this report was submitted to us just at the beginning of the meeting.

I tend to agree with Senator Andreychuk, but just to say that there were already many reservations about the validity of the bill.

Senator Andreychuk: I can answer that. I think that is what I was paying attention to: what was happening and how we were amending this process.

The underlying issue is still the constitutional question. I heard a lot about whether it is appropriate policy and whether one agrees or disagrees with what was intended.

My concern is whether it passes the constitutional test. Does it comply with the Charter of Rights and Freedoms? I think that is my responsibility as an individual member. I am saying all of us should think about it now.

What happened in the committee happened in the committee. The observations were unanimous, and I did pay attention to that.

I fully understand that individual members may vote for or against or on division or whatever we want to do in the committee. However, to have had singular observations of all members, I respect my colleagues and I do not believe the amendments respect the observations that were made, in my humble opinion. Therefore I will not be voting for the amendments.

Senator Hervieux-Payette: Just to correct the honourable senator, there was no agreement, even on the observations, on the part of Liberal members. Like Senator Andreychuk, we had more than reservations: We thought it was a very flawed bill. As our colleague Senator Ringuette said, constitutionally it does not pass the test — not the smell test on the privacy side and certainly not the constitutional test with regard to provincial jurisdiction.

Senator Andreychuk: I understood it had been passed, that the observations were acceptable to all of the members, because they have been referred to as unanimous observations in this chamber. I stand to be corrected on that.

Senator Cools: Honourable senators, I am very taken and fascinated with Senator Andreychuk's position and description of the events.

Honourable senators, once a bill is in this house, where and how and by whom can a bill be arrested in its prosecution when there is compelling evidence placed before the house that it is very flawed in respect of constitutionality? Where does that responsibility rest to pull the bill? A good minister would have pulled the bill a long time ago.

Senator Andreychuk: Honourable senators, as I indicated, I will not go into the ministerial responsibility issue. Senator Cools has addressed that issue; I choose not to at this point. I am trying to

clarify that I cannot enter into any discussion about amending the bill here. I am not entering into the policy issues or the question of ministerial responsibility.

I would think that this chamber should, at some point, look at the issues that Senator Cools has raised as lessons learned from this process.

Hon. Terry M. Mercer: I appreciate Senator Andreychuk's opinion. I have always respected her opinion.

Does the honourable senator think it would have been a good idea — based on her arguments and also on some of the arguments of Senator Cools — that maybe we should have had the minister or ministers appear before the committee to answer some of these fundamental questions? These are questions about whether they had the constitutionality checked out and what the minister's responsibility might be, et cetera.

Senator Andreychuk: I do not have an opinion on whether the minister should have been brought forward on a private member's bill. I have witnessed many private members' bills, initiated here and elsewhere, and ministers were not called. I do not have an opinion on how it was handled. I am not entering into the policy issues of whether it is appropriate in intent and principle. I am not entering into ministerial responsibility.

I am trying to address the fact that I have heard that it is unconstitutional. I accept that it is flawed constitutionally. I do not believe that we, as a chamber, should be putting in amendments when we have not done due diligence on them.

That is where I come down on it. There has not been due diligence on those amendments. We cannot fault the house, we cannot fault the minister and we cannot fault the proponent of the bill if we ourselves do not do the appropriate thing with the amendments.

Senator Ringuette: Honourable senators, I truly appreciate and recognize Senator Andreychuk's expertise as a former provincial court judge.

Many times, during the course of the hearings at committee, I stated that probably one of the best options — because a majority of people on the committee had certain restrictions, to put it mildly — was for the committee, or this chamber as a whole, to ask the government to refer this question of constitutionality in regard to the Charter of Rights and the Privacy Act to the Supreme Court of Canada and then await an answer.

I think that would also be the responsible thing to do in regard to this bill. I would like to hear Senator Andreychuk's comments on that idea.

Senator Andreychuk: I do not want to enter into what happened in the committee or previously. Many bills come through here. There are constitutional issues raised, but there are always counter-arguments put forward. Therefore, it is a question for the committee to determine whether there is sufficient weight to the constitutional question or whether it is a disputed issue that should go to the courts.

I simply say we should not be compounding it here in the chamber. I do not want to add to the honourable senator saying it should go to the Supreme Court. It is our parliamentary duty to take a stand when appropriate. I feel I cannot vote for the amendments after watching what has happened. I respect what has happened, I respect those who bring the bill, I respect the House of Commons and I respect our committee.

I simply do not want to be now, as an active party, adding to a bill amendments that may or may not be constitutional, because I have not done due diligence. It has not been done in this chamber.

I do not believe the exercise of our responsibility is adequate if we simply say, when we come to an impasse, "Let the courts decide." That is why I am taking a stand on the amendments here, because that is our responsibility.

Hon. Elaine McCoy: My curiosity is this, honourable senators: If Senator Andreychuk is convinced that the bill is constitutionally flawed and cannot be corrected without a great deal more sober second thought, does this also bring her to contemplate her duty on how she will vote on the bill, let alone the amendments? I would be curious to know what your position is in that regard.

• (1120)

Senator Andreychuk: Honourable senators, I am going to exercise my Parliamentary privileges. In the fullness of time, I will determine what I do with Bill C-377.

I want to deal with the amendments, because I think it does affect how we handle the bill.

I want to see what this chamber does. I respect our members here. I want to see how they are going to handle the amendments before I make my final decision on the bill. That has always been what I have been taught in this chamber, namely, to respect each other's opinions and to watch the whole process before we make a final determination.

We pride ourselves on being somewhat independent. I must say that often we have our minds made up before we enter this chamber, and I am trying to resist that, Senator McCoy.

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

An Hon. Senator: Question.

The Hon. the Speaker *pro tempore*: It was moved by 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".

Some Hon. Senators: No, one at a time.

Senator Ringuette: No, no, no.

The Hon. the Speaker *pro tempore*: Is it the wish of the house that we do it amendment by amendment?

Some Hon. Senators: Yes.

Senator Cools: It is the only way.

The Hon. the Speaker: Honourable senators, the question before the house is the motion in amendment of the Honourable Senator Ringuette, seconded by the Honourable Senator Jaffer. All those in favour of the motion will signify —

Senator McCoy: Point of order. I am sorry; I am just confused as to process. If Your Honour could help me, I would appreciate it.

The Hon. the Speaker: I would be happy to.

Senator McCoy: I am used to voting on amendments from the last to the first, and this seems to be the reverse.

The Hon. the Speaker: We have a house order, honourable senators, that the votes on Bill C-377 will proceed as follows: Senator Ringuette's amendment will be put first; then the subamendment of the Honourable Senator Cowan, which is the subamendment to the amendment proposed by the Honourable Senator Segal, will be put; then the amendment of Senator Segal will be put with the other amendment, including Senator Chaput's amendment.

Honourable senators, the first question is with regard to the amendment moved by the Honourable Senator Ringuette, seconded by the Honourable Senator Jaffer. I am asking that those in favour of the motion will please signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will please signify by saying "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: A standing vote is being called. Do the whips have advice? A 30-minute bell?

Senator Marshall: One hour.

Senator Munson: Thirty minutes. I am saying 30 minutes.

The Hon. the Speaker: There is not an agreement between —

Senator Marshall: Okay, 30.

The Hon. the Speaker: There is agreement between the Government Whip and the Opposition Whip that there will be a 30-minute bell. The vote will take place, therefore, at five minutes to 12:00. Is it agreed?

Hon. Senators: Agreed.

The Hon. the Speaker: Does the Speaker have permission to leave the chair?

Hon. Senators: Agreed.

The Hon. the Speaker: Call in the senators.

• (1150)

Motion in amendment by Senator Ringuette negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker
Callbeck
Campbell
Charette-Poulin
Cools
Cordy
Joyal
Kenny
Lovelace Nicholas
Mercer
Merchant
Mitchell
Cowan
Dallaire
Dawson
Day
De Bané
Downe
Dyck
Eggleton
Fraser
Hubley
Jaffer
Moore
Munson
Nancy Ruth
Ringuette
Rivest
Robichaud
Segal
Smith (*Cobourg*)
Tardif
Watt
Zimmer—34

NAYS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Beyak
Black
Boisvenu
Braley
Buth
Carignan
Champagne
Comeau
Dagenais
Demers
Doyle
Eaton
Enverga
Fortin-Duplessis
Frum
Gerstein
Greene
Housakos
Johnson
Lang
LeBreton
MacDonald
Maltais
Manning
Marshall
Martin
McInnis
McIntyre
Meredith
Mockler
Neufeld
Ngo
Nolin
Ogilvie
Oh
Oliver
Patterson
Poirier
Raine
Rivard
Seidman
Seth
Smith (*Saurel*)
Stewart Olsen
Unger
Verner
Wallace
Wells
White—51

ABSTENTIONS
THE HONOURABLE SENATORS

Andreychuk
Bellemare
Hervieux-Payette—3

• (1200)

The Hon. the Speaker: Honourable senators, the question that is now before the chamber is the subamendment moved by the Honourable Senator Cowan, seconded by the Honourable Senator Tardif. All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

Two honourable senators having risen:

The Hon. the Speaker: Do honourable senators wish the vote now? Is it agreed, honourable senators, that we will have the standing vote now?

Hon. Senators: Agreed.

Motion in subamendment by Senator Cowan negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker
Callbeck
Campbell
Charette-Poulin
Cools
Cordy
Cowan
Dallaire
Dawson
Day
De Bané
Downe
Dyck
Eggleton
Fraser
Hubley
Jaffer
Joyal
Kenny
Lovelace Nicholas
McCoy
Mercer
Merchant
Mitchell
Moore
Munson
Nancy Ruth
Ringuette
Rivest
Robichaud
Segal
Smith (*Cobourg*)
Tardif
Watt
Zimmer—35

NAYS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Beyak
Black
Boisvenu
Braley
Buth
Carignan
Champagne
Comeau
Dagenais
Demers
Doyle
Eaton
Enverga
Fortin-Duplessis
Frum
Gerstein
Greene
Housakos
Johnson
Lang
Marshall
Martin
McInnis
McIntyre
Meredith
Mockler
Neufeld
Ngo
Nolin
Ogilvie
Oh
Oliver
Patterson
Poirier
Raine
Rivard
Seidman
Seth
Smith (*Saurel*)
Stewart Olsen
Unger
Verner
LeBreton
MacDonald
Maltais
Manning
Wallace
Wells
White—51

ABSTENTIONS
THE HONOURABLE SENATORS:

Andreychuk
Bellemare
Hervieux-Payette—3

• (1210)

Motion in amendment by Senator Segal agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Baker
Braley
Buth
Callbeck
Campbell
Charette-Poulin
Comeau
Cools
Cordy
Cowan
Dallaire
Dawson
Day
De Bané
Demers
Downe
Doyle
Dyck
Eggleton
Fraser
Greene
Hubley
Jaffer
Joyal
Kenny
Lang
Lovelace Nicholas
McCoy
McIntyre
Mercer
Merchant
Meredith
Mitchell
Moore
Munson
Nancy Ruth
Neufeld
Ringuette
Rivest
Robichaud
Segal
Seidman
Smith (*Cobourg*)
Smith (*Saurel*)
Tardif
Unger
Verner
Watt
Zimmer—49

NAYS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Beyak
Black
Boisvenu
Carignan
Dagenais
Eaton
Enverga
Marshall
Martin
McInnis
Mockler
Ngo
Nolin
Ogilvie
Oh
Patterson

Fortin-Duplessis
Frum
Gerstein
Housakos
LeBreton
MacDonald
Maltais
Manning
Poirier
Raine
Rivard
Seth
Stewart Olsen
Wallace
Wells—33

ABSTENTIONS
THE HONOURABLE SENATORS

Andreychuk
Bellemare
Champagne
Hervieux-Payette
Johnson
Oliver
White—7

• (1220)

Motion in amendment by Senator Chaput negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker
Bellemare
Callbeck
Campbell
Charette-Poulin
Cools
Cordy
Cowan
Dallaire
Dawson
Day
De Bané
Downe
Dyck
Eggleton
Fraser
Jaffer
Joyal
Kenny
Lovelace Nicholas
McCoy
Mercer
Merchant
Mitchell
Moore
Munson
Nancy Ruth
Ringuette
Rivest
Robichaud
Segal
Smith (*Cobourg*)
Tardif
Watt
Zimmer—36

NAYS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Beyak
Black
Boisvenu
Braley
Buth
Carignan
Champagne
Comeau
Manning
Marshall
Martin
McInnis
McIntyre
Meredith
Mockler
Neufeld
Ngo
Nolin
Dagenais
Demers
Doyle
Duffy
Eaton
Enverga
Fortin-Duplessis
Frum
Gerstein
Greene
Housakos
Johnson
Lang
LeBreton
MacDonald
Maltais
Ogilvie
Oh
Oliver
Patterson
Poirier
Raine
Rivard
Seidman
Seth
Smith (*Saurel*)
Stewart Olsen
Unger
Verner
Wallace
Wells
White—52

ABSTENTIONS
THE HONOURABLE SENATORS

Andreychuk
Hervieux-Payette—2

The Hon. the Speaker: Honourable senators, the question before the house is the main motion, as amended, moved by the Honourable Senator Carignan, seconded by the Honourable Senator Marshall.

[*Translation*]

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, a number of you had the opportunity to speak before me and have raised concerns about the potential impact of Bill C-377. Others are concerned about its constitutionality. Some suggest that it might be unconstitutional based on the division of powers under sections 91 and 92 of the Constitution Act, 1867.

This is the type of entirely legitimate and appropriate questioning that epitomizes the role of this chamber of sober second thought. Each one of us is trying to form our own opinion based on our experience and expertise, the various testimonies presented in committee, and the opinions shared by experts and colleagues.

Many of you are aware of my passion for public law and constitutional law. My past experience practicing law and teaching labour relations has informed my analysis. Like Senator Andreychuk, I am also of the opinion that the proposed amendments do not influence the constitutionality of Bill C-377.

I was lucky and privileged enough to study and practice labour law and to teach it at the faculty of law. In the 2000s, up until 2009, I also had the opportunity to be involved in negotiating and signing a number of collective agreements as the employer and manager of a public agency. I emphasize the public nature of my municipal experience given that a city is an employer, but also an entity that is required to publicly disclose an extremely broad

range of information. Except for a few very specific instances, every piece of information or document from a city is public and therefore available to the unions.

I am impressed by the quality of and the passion behind the discussions so far and I am delighted to be taking part in this debate, not only as a participant, but also as the person who introduced Bill C-377 at third reading.

I will begin my presentation with an analysis of the constitutionality of Bill C-377. Since such analysis requires studying the purpose of the bill, this will allow me to deal with the bill itself and its impact from a constitutional and practical perspective.

• (1230)

[*English*]

As honourable senators already know, our constitution splits the powers between the federal government and the provinces, and each jurisdiction must respect its own fields of competence. This does not mean, however, that a valid act passed by the federal government or by a province cannot have an effect in an area of authority belonging to the other level of government while retaining its constitutional validity.

[*Translation*]

For decades now, the Supreme Court has recognized that a piece of legislation does not exist in isolation and that it may affect another level of government. There are a myriad of legal examples, such as the federal regulations that govern releases into the Great Lakes. These regulations do impact the operation and construction of upstream water treatment plants that are managed by municipalities and are under provincial jurisdiction.

Another example is section 148 of Canada's Income Tax Act, which provides tax exemptions for colleges, universities and municipalities, which are all under provincial jurisdiction.

The Supreme Court of Canada has had to hand down hundreds of rulings in cases of shared jurisdiction. The applicable principles are well known and are summarized in the decision *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494. I would draw your attention in particular to the following paragraph, which summarizes the analytical framework used by the courts to ascertain the constitutional validity of a law. I will quote Justice Iacobucci, on page 499:

> 1 This appeal deals with the issue of whether a provincial securities commission may legally gather information for securities regulators in other jurisdictions. Specifically, the respondent Global Securities Corporation, a British Columbia brokerage firm, challenges the authority of the British Columbia Securities Commission ("Commission") to require Global to produce documents to be handed over to the United States Securities and Exchange Commission ("SEC").

A little later he has this to say about the respondent's claim:

> The respondent claims that this provision does not fall within the powers granted to the provinces by the *Constitution Act, 1867*.

It has an extraterritorial effect, which means it can apply outside of the province. Justice Iacobucci says the following:

> The fundamental error in the respondent's position is that it fails to recognize that the dominant purpose, or "pith and substance", of the provision in question is the enforcement of British Columbia's securities law.

In his analysis on page 505, Justice Iacobucci speaks of the principles that apply in similar situations, that is to say, in determining a bill's true purpose. He says:

> 19 Federalism cases, like many other areas of legal interpretation, greatly involve the proper characterization of the law under attack. In *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641 (hereinafter "*GM Canada*"), at pp. 666-69, Dickson C.J. offered a useful three-step structure for analyzing a claim that a law is *ultra vires*.

This is what Dickson said on pages 666 and 667:

> The first step should be to consider whether and to what extent the impugned provision can be characterized as intruding into provincial powers. If it cannot be characterized as intruding at all, i.e., if in its pith and substance the provision is federal law, and if the act to which it is attached is constitutionally valid...

Justice Iacobucci ends his quotation of the justice, and on page 506 he says:

> If, on the other hand, the legislation is not in pith and substance within the constitutional powers of the enacting legislature, then the court must ask if the impugned provision is nonetheless a part of a valid legislative scheme. If it is, at the third stage the impugned provision should be upheld if it is sufficiently integrated into the valid legislative scheme.

Honourable senators, we must therefore verify the pith and substance of the legislation in order to ascertain whether or not it falls within federal jurisdiction.

Justice Iacobucci also cites paragraph 23 of the decision in *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213, which states:

> The law in question must first be characterized in relation to its "pith and substance", that is, its dominant or most important characteristic. One must then see if the law, seen in this light, can be successfully assigned to one of the government's heads of legislative power.

And in studying the pith and substance of the law, we must also consider the effects of the provision. I will quote paragraphs 23 and 24, on page 507 of the Supreme Court ruling, which will conclude my quotation on the test to be used to determine the constitutional validity of a bill on a matter with shared jurisdiction. It states:

> 23 The effects of the legislation may also be relevant to the validity of the legislation in so far as they reveal its pith and substance. For example, in *Saumur v. City of Quebec*, 2 S.C.R. 299, the Court struck down a municipal by-law that prohibited leafleting because it had been applied so as to suppress the religious views of Jehovah's Witnesses. Similarly, in *Attorney-General for Alberta v. Attorney-General for Canada*, [1939] A.C. 117, the Privy Council struck down a law imposing a tax on banks because the effects of the tax were so severe that the true purpose of the law could only be in relation to banking, not taxation. However...

I want to emphasize this point:

> However, merely incidental effects will not disturb the constitutionality of an otherwise intra vires law.
>
> 24 McIntyre J. aptly summarized the correct approach in *Reference re Upper Churchill Water Rights Reversion Act*, [1984] 1 S.C.R. 297, at p. 332:
>
> > Where the pith and substance of the provincial enactment is in relation to matters which fall within the field of provincial legislative competence, incidental or consequential effects on extra-provincial rights will not render the enactment ultra vires. Where, however, the pith and substance of the provincial enactment is the derogation from or elimination of extra-provincial rights then, even if it is cloaked in the proper constitutional form, it will be ultra vires.

Honourable senators, this is the test for determining the constitutional validity of legislation from the point of view of the division of powers.

Bill C-377 is before our chamber as a federal statute under section 91(3) of the Constitution Act, 1867, namely "The raising of Money by any Mode or System of Taxation." In the exercise of its jurisdiction, Parliament adopted the Income Tax Act in order to identify sources of taxable income, deductible expenses and the people or entities that will be subject to the Act.

• (1240)

In principle, all individuals and companies must pay income tax. The only things certain in life are death and taxes.

Division H of the Income Tax Act provides for exemptions for a series of individuals and entities, such as public servants working abroad, wholly owned corporations, registered charities, labour organizations, colleges, universities, pension corporations and even municipalities.

In order to benefit from the exemption, the entity must fulfil conditions that vary based on the nature of the entity. I want to point out that the entities listed in section 149 all have different conditions to fulfil in order to benefit from the exemption set out in division H of the act.

What is the real objective of Bill C-377?

[*English*]

According to the objective stated by the bill's sponsor and further discussed during the study of Bill C-377's clauses, it appears that the bill aims to ensure transparency and public communication of information relating to tax advantages enjoyed by labour organizations.

[*Translation*]

The Canadian public — the taxpayers — must ensure that entities that are fully exempt from paying taxes are truly the type of entity they claim to be, such as a labour organization. Few legal entities or individuals are fully exempt from paying taxes.

If we want to ensure that Canadians remain confident in our tax system, all entities that are entitled to exemptions must prove that their activities comply with the conditions required for their tax exemption.

Whether we are talking about registered charities, colleges, universities or labour organizations, the legislator must ensure that the entity's activities comply with the conditions required for the exemption. If not, the entity could lose its tax exempt status.

Honourable senators, the fact that the bill sets conditions only on labour associations does not change the fact that this bill is constitutional or that this is a tax bill.

[*English*]

Some honourable senators have spoken about the unfairness of this different treatment for worker associations, but different treatment does not mean illicit or illegal distinction. To the contrary, each entity subject to the exemption has its own particular conditions according to its nature and legal constitution.

[*Translation*]

Municipal governments, for example, have a comprehensive system of public disclosure that would make it totally unnecessary to adopt standards similar to those outlined in the bill.

All charities have a much stricter certification and public disclosure process than that provided for in Bill C-377. Furthermore, their financial information has been available online for a few years now. These more stringent reporting requirements are needed to ensure that the tax authority can closely examine a charity's activities and analyze the risks of tax evasion through this type of foundation.

These organizations must have a process in place to ensure that they can get their tax exemptions, and this process must be in line with each entity's legal situation and mission. Moreover, treating all tax-exempt organizations in the same manner would lead to completely nonsensical and unacceptable situations.

Some senators talked about a kind of injustice and imbalance because the bill does not require the same disclosure from employers. I would respectfully point out that this argument must

be rejected. This argument is based on a complete misunderstanding of the bill's purpose. Bill C-377 is not a labour relations bill—it is a tax bill.

Reframing the debate in terms of collective labour relations and the necessary balance of power between the parties in the collective bargaining process completely disregards the bill before us and the structure of the legislative framework for taxation.

Some may argue that this is the hidden objective. This argument may well be used in political and partisan rhetoric, but not in the factual analysis required to determine the constitutional purpose of the bill.

In conducting this type of analysis, we need to stick to the facts and to the actual impact the bill will have, be it direct or indirect, on other areas of jurisdiction as set out in the Constitution.

Taking the argument about employer transparency to ridiculous levels would make sense if the bill were seeking to exempt employers from paying taxes under subdivision H of the Income Tax Act, but that is clearly not the case.

To wrap up my remarks on this part of the bill, the analysis shows that the main characteristic, the most important characteristic, of Bill C-377 is that it requires labour organizations to demonstrate public transparency in order to benefit from the tax exemption.

In that way, the legislator leaves it up to the public to make a decision and leaves it up to the labour organization to regulate itself in order to ensure that public pressure will cause the organization to lose this exemption if its activities stray too far from the goal of defending workers.

This type of oversight can be justified and is much less intrusive than the Income Tax Act. For example, the regulations set out in the bill do not require registered charities to disclose their expenses.

Some people have pointed out that the nature of the information is so important that forcing labour organizations to disclose that information constitutes interference in provincial jurisdictions, namely property and civil rights jurisdictions, which is where labour relations fall.

In many rulings, including *Gold Seal Ltd. v. Dominion Express (1921) 62 S.C.R. 424*, p. 460, and *Reference Re Canada Assistance Plan, (1991) 2 S.C.R. 525*, p. 567, the Supreme Court has established that merely speculative impacts on areas of jurisdiction of another level of government is not enough to invalidate a law.

In order for a law to be invalid, it must have a significant impact on labour relations or secondary effects that would be tantamount to interference in labour relations.

After examining Bill C-377, I cannot imagine how knowledge of the information required could significantly impact labour relations.

How would knowledge of this information about labour organizations affect how collective agreements are negotiated and signed, how employees are represented or, more generally, how their members' economic and social interests are defended?

• (1250)

I was the mayor of a municipality, a public agency required to disclose a significant amount of public information and public documents. The amount of information accessible to the public in a municipality cannot be compared to what is required under Bill C-377. I am not aware of any impact this has had with regard to labour relations and the unions. The things that influence labour relations are the collective bargaining context, the balance of power, the right to strike and to lock out, previous collective agreements, rulings by grievance arbitrators or interest arbitrators, the work environment and respect between the parties.

[*English*]

I firmly believe not only that the required information does not affect labour relations in a meaningful way, but also that the bill will have no effect on labour relations.

Senator Mercer: I do not know what world you are living in.

[*Translation*]

Bill C-377 does not in any way dictate how an association must run its organization or make representations. As far as declaring lobbying activities is concerned, the Lobbying Act already makes it mandatory to declare such activities. The information required under Bill C-377 will serve to determine whether the amount invested with regard to organization and representation corresponds to the information from non-profit labour organizations, colleges and universities, or charitable organizations. These requirements are also in place to ensure that this tax exemption is legitimate.

I would add that even if the legislation indirectly affects labour relations, it would still be valid because of the theory of ancillary powers. As the Supreme Court found in *Attorney General (Que.) v. Kellogg's Co. of Canada et al., [1978] 2 S.C.R. 211*, provincial legislation, namely the Consumer Protection Act, could indirectly affect television, a federal jurisdiction, in regulating fraudulent advertising.

Finally, the provisions set out in Bill C-377 have a functional and rational connection to the existing tax system. That is consistent with what the Supreme Court upheld in *Kirkbi AG v. Ritvik Holdings Inc., [2005] 3 S.C.R 302* when the court had to determine whether creating a civil remedy for protecting trademarks fell under federal jurisdiction as a trademark issue or under provincial jurisdiction as a property and civil rights issue. The court acknowledged that there would be minimal encroachment upon property and civil rights, but that it was restricted by the provision in the legislation.

The court concluded that the remedy was sufficiently integrated into the Trade-marks Act and that its functional connection to the legislation was enough to prove that the provision was constitutional.

[*English*]

In a society where the Canadian population attaches a very high importance to the transparency of public decisions, in a society where fiscal solidarity and fighting tax evasion are essential to

maintain public trust in the current system, it is essential that the entities and individuals benefiting from a privilege like a total tax exemption be subject to minimal controls.

[*Translation*]

Parliament's decision to require public disclosure of information about the percentage of activities carried out by these organizations — and a minimal amount of information in order to evaluate the accuracy — is not unreasonable and is in line with the tax exemption given to these organizations.

The legislation's framework is designed to ensure that the association benefitting from the exemption is transparent, so that the public can be assured that the association's activities are in keeping with the definition of a labour organization. The oversight process is aimed at preventing groups from hiding behind smokescreens in order to obtain a special privilege.

As for the potential breach of the right of association, the law does not dictate what action must be taken or the percentage of activities that the association must maintain. It does not dictate what the association must do or how to go about it. It sets out transparency requirements for tax-exempt entities. Charities, like labour organizations, have the option of not benefitting from tax-exempt status and not disclosing the required information by instead filing claims with the Canada Revenue Agency, which, incidentally, would be far more intrusive into the association's operations. Consequently, if it were established that the right of association was being breached — which I would find hard to believe — it is quite likely that the breach would be acceptable because of the rationality test set out in section 1 of the Charter and because it meets an important objective and does little harm.

To conclude, honourable senators, I firmly believe that Bill C-377 is a valid and legitimate use of the federal Parliament's jurisdiction in fiscal matters.

Canadians are demanding that every public institution, public agency or entity that receives tax benefits from the public treasury be transparent and able to justify to the public why they deserve those privileges.

That is why, honourable senators, I am asking you to vote in support of Bill C-377.

[*English*]

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

[*Translation*]

Senator Carignan: Yes.

[*English*]

Senator Campbell: Thank you. I hate to take the risk of losing the loving feeling we seem to have going on in here after the last vote, but I would be remiss if I did not at least have some questions with regard to the honourable senator's speech.

I believe the senator is very brave to be defending the indefensible. I really think that is admirable.

He says that this will not affect collective bargaining. The difficulty here is that a large number of organizations are outside of the union movement — LabourWatch, Merit Canada, which is associated with the world-famous U.S. Merit — and I would suggest that when one is looking to do contracts with unions and when non-unions are applying, the information that is released here is very germane to what will happen and who will get the contract, because Merit and LabourWatch and these others do not find themselves in a position where they are transparent, where they answer to anyone.

In fact, if the honourable senator has a problem with the transparency in the unions, he must have a terrible problem with the transparency in Merit.

I would ask the honourable senator to consider how this would equal the playing field. How do we equal the playing field in this position?

One suggestion was that we actually bring in Merit and LabourWatch. Another suggestion was that we bring in all organizations from all of the spectrum that are in this kind of a — I do not want to say that they are enablers so much as that they are in a position of reinforcing misconceptions: i.e., unions are good; unions are bad.

If the honourable senator sat on the committee and listened to the 44 witnesses who testified, he would know that it is virtually impossible to defend the constitutionality of this bill.

Senators here have made statements bringing that out, and it is important that we understand that. We had one who said it was constitutional. I respect that jurist very much, but, if one compares his decision and writings to what he would normally write, it is something less than desired.

• (1300)

The honourable senator has used all kinds of different court decisions to back up his argument that this is a federal matter and that the courts support him on this. However, there is nothing that really goes to the tax act and unions that has been part of a decision by the Supreme Court of Canada.

Therefore, my question to the honourable senator is this: How does he come to this conclusion, by taking a dog from every kennel, putting them all into one spot and determining that shows this is a constitutionally valid bill?

[*Translation*]

Senator Carignan: Honourable senators, first of all, we have to be careful in calling this bill balanced or imbalanced, as indicated by Senator Campbell. We have to define the nature of the bill before us. It is a tax bill that sets conditions for entities that wish to receive tax exemptions. At first glance, this is a tax bill.

As for the imbalance mentioned, Senator Campbell is claiming that the bill is a labour relations bill to standardize collective labour relations. That is not the objective of the bill. We must look at it in terms of its effects.

If I look at the effects of this bill, does it have an effect on labour relations? Senator Campbell was the mayor of Vancouver. I was also the mayor of a municipality, and under the Access to Information Act, all of the decisions made by a municipality are public. All of the contracts that are awarded, all of the people who are hired — it is all public information.

I negotiated dozens of collective agreements and I never once felt that public information about the municipality gave the unions any kind of advantage. What affects labour relations or the negotiation of collective agreements is the balance of power, the history of collective agreements and the right to strike or lockout. Quebec has anti-scab legislation, which can cause some imbalance among the parties involved, but it is along those lines.

Here we have a bill that requires labour organizations to disclose certain information in order to be eligible for the tax exemption, so that the public can judge and ensure that the labour organization is truly non-profit and that it is not using its status as a labour organization to receive a tax exemption. That is what this bill is about.

Even in terms of effects, I do not see any impact on collective bargaining or the representation of interests. To compare with employer associations, a parallel could be drawn if these organizations applied for tax exemptions under division H of the Income Tax Act, however, that is not the case.

Hon. Pierre Claude Nolin: Honourable senators, if I correctly understand Senator Carignan's reasoning, which follows quite closely that of Mr. Bastarache, pursuant to its taxation authority under subsection 91(3), the federal government and Parliament can expand their jurisdiction to cover plenty of things. Consider the following example, which will lead to my question: the education system in Quebec — my and Senator Carignan's home province — is primarily run by public education organizations, the school boards; however, there is also a whole system of private institutions involved that pay federal and provincial taxes.

If I am following your reasoning, the federal Parliament could use its power to tax educational institutions in Quebec — and no one would dispute that education falls under provincial jurisdiction — and when granting, say, a tax exemption, it could become involved in the management of private schools and, still under the pretext of regulating the tax exemption, then interfere with education, which is unquestionably a provincial power.

Senator Carignan: Honourable senators, I deliberately refrained from quoting Mr. Bastarache's opinion because, as a lawyer, I never quote another lawyer to support my position. I would rather quote Justice Bastarache. Moreover, with respect to the ruling from Justice Iacobucci that I did quote, I should perhaps have indicated that Justice Bastarache agreed with Justice Iacobucci.

Senator Nolin spoke about interfering in the administration of a university or college. The bill does not interfere in the administration of labour organizations. It does not permit interference; it asks the association to report on its activities. It does not tell the unions how to manage their affairs, for instance by telling them where to put their money, or by telling them to do more recruiting, more lobbying, or more economic studies and research. It does not dictate any of this; it only asks the unions to report on these activities.

The example you gave concerning education is an excellent one because universities and colleges, and municipalities as well, are exempt under *h*.

In order to allow colleges and universities to avail themselves of the exemption, could the government require them to submit their ministry of education certificates and to report on their activities in order to ascertain that they actually are colleges and universities, and that they are not just masquerading as these institutions? Could it do so under the Constitution? Yes, and it already does so under paragraph (*h*) as it does for non-profit organizations and foundations.

Senator Nolin: Honourable senators, we are beating around the bush. The main argument in Senator Carignan's speech is that we must focus on the very nature of the bill. I see that as the issue. Taxation is secondary because the very nature of the bill puts it in the realm of private law. Yes, it does. The Constitution is very clear: private law is a provincial jurisdiction. The senator will say that there is an exception — a very big exception: banks are a federal jurisdiction. However, in accordance with our constitutional law, private law is a provincial jurisdiction. Through its power of taxation, the federal parliament is consequently insinuating itself in this law, and that has been recognized by the courts. That is why I drew a parallel between the unions and educational institutions.

This reasoning can be taken a bit further. At this time there is considerable concern about how history is taught. A minister with money to spend who wanted to promote the teaching of history in Canada could very possibly persuade the finance minister to grant a tax exemption to a school if this institution agreed to include a certain number of hours of history in its secondary curriculum. This could well happen.

Senator Segal: That would be appalling.

Senator Nolin: That would be really appalling, because that would be following the exact logic of Senator Carignan's argument in his speech. That would be appalling and unacceptable.

• (1310)

Using taxation in a roundabout way to interfere in educational content would be unacceptable. That is exactly what the government is doing with Bill C-377. It is trying to regulate private law, which is a provincial jurisdiction, by going through the back door and using tax law. We cannot accept that, not even with good amendments.

Senator Carignan: Senator Nolin's comparison falls flat and I will explain why. He would be right if the exemption were given to labour associations in relation to the recruitment part only, the lobbying part only or the collective bargaining part only because that has more to do with operations. That is currently not the

case. He is asking interesting hypothetical questions that should be considered in the context of a bill, but that is not the case with this bill.

Honourable senators, another example has to do with charitable organizations that give receipts for charitable donations. They have to file a series of statements in order to benefit from the tax exemption. There is a series of reports that are made public on the Internet. Does the fact that they have to report on their activities to get the exemption mean that the government is interfering in their administration? No. This is not interference in property or civil rights. The same goes for hospital foundations, which have similar corporate management, but no one makes that argument. It is exactly the same thing for labour associations.

Hon. Serge Joyal: Would the honourable senator take another question?

Senator Carignan: Yes, with pleasure.

The Hon. the Speaker: Senator Carignan has had 45 minutes. Is he seeking leave to continue for five additional minutes?

Senator Carignan: May I have five more minutes?

Hon. Senators: Agreed.

The Hon. the Speaker: There is unanimous consent.

Senator Joyal: The honourable senator cited a number of examples of case law that dealt with determining division of powers. However, in his explanation, I felt that he neglected a fundamental aspect of the analysis typically carried out by learned judges regarding bills, and that fundamental aspect comes into play when there is doubt concerning whether or not the overlap is acceptable, as was explained by our colleague, Senator Nolin. I am referring to the *Ward* case, which was before the Supreme Court in the year 2000. I will use the words of the Supreme Court: "We will also determine if it is a disguised system." The Supreme Court clearly uses the adjective "disguised".

[*English*]

In English, "disguised." In other words, we have to determine if the exercise has the objective of camouflaging the initiative in order to achieve another objective.

[*Translation*]

The Supreme Court clearly concluded that the *Ward* case, in particular, dealt with regulations in the fisheries sector. As we all know, fisheries in Canada fall under both federal and provincial jurisdiction. It is an area of concurrent jurisdiction. It is even more difficult to determine the dividing line because both levels of government can pass legislation to protect species at risk. That was the issue: determining how to legislate in order to regulate licensing.

In that court decision, the learned judges clearly explained that under the guise of a supposed federal government power — the power to regulate fisheries and species at risk — the federal government was starting to encroach on an area of provincial jurisdiction where the province had the power to legislate.

I listened to the honourable senator when he explained that the objective of the bill is for labour organizations to disclose information in order to benefit from a tax exemption. Personally, I have no quarrel with that because it is only natural. We know that, every year, charities — I myself run some charitable organizations — have to report on the percentage of funds they devote to the reason for which they were set up. No one would question that.

However, if by imposing the obligation to disclose this information, the legislator interferes in the internal management of the organization in order to achieve objectives that exceed its jurisdiction, it is camouflaging or disguising the bill to hide the legislator's real intention. In my opinion, that is where the honourable senator's explanation falls short. He did not very clearly demonstrate that we are not dealing with a disguised system, as described by the Supreme Court.

Senator Carignan: If we analyze the true nature of the objective, this is clear. I cited leading cases on the real objective. Clearly, when we talk about the real objective, we can also wonder if the opposite is true: did some people try to disguise things to make the real objective look different? These are some of the questions that we must ask when analyzing the real objective.

However, if that were the government's intention, it probably would have been easier to amend the Canada Labour Code or to amend other acts and to be much stricter in adopting standards to control unions.

I would like to make a comparison with charities because that is an area that the senator is familiar with. What would happen if a labour organization reported that it used 70 per cent of its funding for lobbying, 10 per cent for collective bargaining and 20 per cent for real estate investments? There are no consequences set out anywhere. What would be the consequence if a charity did not meet the given criteria? The charity would lose its exemption and its charity number. If the government intended to interfere, then the bill could have gone much further in allowing the government to be involved in managing labour organizations and controlling their activities. That is not the case, because the purpose of the bill is to let unions regulate themselves and allow the public determine whether the exemption applies or not, without getting any more involved, as is the case with charities.

[*English*]

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

Some Hon. Senators: Question!

The Hon. the Speaker: The question before the house is the motion of the Honourable Senator Carignan, seconded by the Honourable Senator Marshall, for third reading of Bill C-377, as amended.

Those in favour of the motion will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will signify by saying "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Is there agreement on the length of the bell?

It will be a 30-minute bell. Honourable senators, the vote will take place at 15 minutes before 2:00.

Do I have permission to leave the chair?

Hon. Senators: Agreed.

• (1340)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Beyak
Black
Boisvenu
Braley
Buth
Carignan
Comeau
Dagenais
Demers
Eaton
Enverga
Fortin-Duplessis
Frum
Gerstein
Greene
Housakos
Kinsella
Lang
LeBreton
MacDonald
Maltais
Marshall
Martin
McInnis
McIntyre
Meredith
Mockler
Neufeld
Ngo
Ogilvie
Oh
Oliver
Patterson
Poirier
Raine
Rivard
Segal
Seidman
Seth
Smith (Saurel)
Stewart Olsen
Unger
Verner
Wallace
Wells
White—48

NAYS
THE HONOURABLE SENATORS

Baker
Bellemare
Callbeck
Campbell
Charette-Poulin
Cools
Cordy
Cowan
Dallaire
Dawson
Day
De Bané
Downe
Dyck
Eggleton
Fraser
Hervieux-Payette
Hubley
Jaffer
Joyal
Kenny
Lovelace Nicholas
Mercer
Merchant
Mitchell
Moore
Munson
Nancy Ruth
Nolin
Rivest
Robichaud
Smith (Cobourg)
Tardif
Watt
Zimmer—35

ABSTENTIONS
THE HONOURABLE SENATORS

Andreychuk
Champagne
Johnson—3

• (1350)

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Leave having been given to revert to Delayed Answers:

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table the answer to the oral question asked by the Honourable Senator Nancy Ruth on February 14, 2013, concerning freedom of religion.

PUBLIC SAFETY

ROYAL CANADIAN MOUNTED POLICE—FREEDOM OF RELIGION

(Response to question raised by Hon. Nancy Ruth on February 14, 2013)

The RCMP's bias-free policing policy is based on the principle of equality found in the *Canadian Charter of Human Rights and Freedoms*, the *Canadian Human Rights Act*, the *RCMP Act*, *RCMP Regulations* and already existing guidelines in the RCMP's mission, vision and values.

The RCMP does not collect race data for purposes outside the legitimate police mandate. This was formalized in the RCMP's Bias-Free Policing policy that was established in 2006.

The Bias-Free Policing policy highlights the legal duty of RCMP members under S. 37 of the *RCMP Act* and S. 48 of the *RCMP Regulations* (1988) to provide equitable treatment of all persons without discrimination.

Should a member of the public have concerns with respect to the conduct of an RCMP officer, they can be brought to the attention of the RCMP's oversight body, the Commission for Public Complaints against the RCMP (CPC). The CPC is an independent agency created by

Parliament and provides independent civilian oversight of RCMP members' conduct in performing their duties. The CPC provides findings and makes recommendations to the RCMP Commissioner and the Minister of Public Safety aimed at correcting policing problems and preventing their reoccurrence. Formal complaints can be filed with the CPC at:

Commission for Public Complaints Against the RCMP
National Intake Office
P.O. Box 88689
Surrey, British Columbia V3W 0X1

LANGUAGE SKILLS BILL

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Carignan, seconded by the Honourable Senator Poirier, for the third reading of Bill C-419, An Act respecting language skills.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I would like to reiterate my support for Bill C-419, An Act respecting language skills, which would make it mandatory for 10 officers of Parliament to be bilingual.

Proficiency in both official languages has become an essential skill for those in leadership roles within the federal public service. Unfortunately, the facts show that the bilingualism requirement is not always taken into consideration when appointing people to those positions. Bill C-419 rectifies that situation for 10 officers of Parliament.

The bill states that persons appointed to certain offices must be able to speak and understand clearly both official languages at the time of their appointment.

Honourable senators, I want to reiterate that English and French have equality of status and equal rights and privileges as to their use in Parliament.

I would like to thank Senator Joyal for his initiative in contacting the Commissioner of Official Languages to get a legal interpretation of paragraph 24(3)(*c*) of the Official Languages Act. The issue was whether, from a legal perspective, the "Office of the Auditor General" or the auditor general himself or herself had the obligation to speak both official languages. In his response, the Commissioner of Official Languages clearly stated:

> ...communications and services to the public are provided not only by the offices of the Officers of Parliament, but some of them can only be provided by the Officers of Parliament themselves...This interpretation is also consistent with the objective of Part IV and the principle of substantive equality, because it enables parliamentarians and the public to receive all services from offices of Officers of Parliament in the official language of their choice, including services provided by the Officers of Parliament themselves.

This is a clear interpretation based on a fundamental principle that supports the rationale behind Bill C-419.

As I stated in this chamber on June 11, 2013, the bill we are about to pass has a diminished scope and less flexibility than the initial bill, which was stripped of its preamble and two clauses. That said, the essence of the bill remains, so I am pleased to support this bill that will help protect our country's linguistic duality.

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

Hon. Senators: Question!

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

Hon. Senators: Agreed.

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

[*English*]

CANADIAN HUMAN RIGHTS ACT

BILL TO AMEND—THIRD READING

Hon. Mobina S. B. Jaffer moved third reading of Bill C-304, An Act to amend the Canadian Human Rights Act (protecting freedom).

Hon. James S. Cowan (Leader of the Opposition: Honourable senators, we are here today to debate third reading of Bill C-304. This bill has been presented to us as a defence of the right of freedom of speech. But let us not deceive ourselves. This is not a bill in defence of free speech. This is a bill in defence of hate speech. This is a freedom of hate speech bill.

• (1400)

The bill is entitled "An Act to amend the Canadian Human Rights Act (protecting freedom)." The more accurate title would be "Protecting Hatred."

Freedom of speech is, without question, a pillar of a free and democratic nation. But freedom of speech has never meant unbridled freedom to say anything, anywhere. Our freedom of speech is bounded by laws that, just like the freedom of speech, are essential to civil society. We have laws that protect against defamatory speech. You cannot yell "Fire!" in a crowded room, knowing that there is, in fact, no fire.

Even here in the chambers of Parliament, where freedom of speech is recognized as sacrosanct, so critical that it is protected by that fundamental parliamentary concept of parliamentary privilege, we accept that there are limits on our freedom of speech. There is language that is called, perhaps rather quaintly, "unparliamentary," that we all know we may not use. Under

these rules, for example, we cannot use threatening speech or derogatory language. Our rule 6-13(1), one of our oldest rules, is very clear:

> All personal, sharp or taxing speeches are unparliamentary and are out of order.

There is rule 5-4, which states:

> The Speaker shall not allow a notice that contains an unparliamentary expression...

Even our free speech here, under the full protection of parliamentary privilege, has limits, and that is as it should be.

In fact, limits on speech have been accepted from the beginning of time. Perhaps reflecting that civil society is best served by both freedom of speech and limits on that freedom, they have evolved in tandem.

When I spoke on May 4, 2010, on Senator Finley's inquiry on freedom of speech, I began by suggesting that the concept comes to us from the very earliest times. I remarked that, in the Bible, Moses had the temerity to argue with God, and far from being struck down for such conduct, he is revered by adherents of different faiths as one of the great leaders in history.

Moses is probably best known as the man who, according to the Old Testament, carried the Ten Commandments down from Mount Sinai. Two of those Ten Commandments are limits on free speech: thou shalt not take the name of the Lord in vain, and thou shalt not bear false witness. The first is a matter of religious respect, but the second is a matter of limits on speech within a community.

Throughout the ages, humanity has recognized that civil society is not a society of unbridled freedom. That is true for action and also true for words.

Words are powerful instruments, honourable senators. We here on Parliament Hill know that very well, perhaps better than most. We know that words can explain, they can persuade, and they can dissuade. They do not merely crystallize thought and understanding; they are the very stuff of thought and understanding.

If I may return to the Bible once more, "In the beginning was the Word." Why? Because that is the source of our understanding. Quite simply, we cannot comprehend without language.

However, words have a dangerous side as well. Ask any student of human atrocity, and they will tell you that it began with words. My eminent colleague in the other place, Irwin Cotler, often reminds us that the Holocaust did not begin in the gas chambers, it began with words. Our equally eminent colleague here, Senator Dallaire, saw far too clearly the terrible impact of words in Rwanda. That genocide, too, began with words.

One of the most horrifying aspects of these atrocities is that in general they were committed by apparently ordinary people, indeed often by neighbour against neighbour. How do ordinary people, educated people, raised in some of the most civilized nations of the world, become capable of committing these unspeakable acts? Part of the answer lies in the words that always precede the acts, the words that persuade that certain people are not like you and me, that they do not have the same rights and values that we have, that they are not deserving of respect or equal treatment, that they are, in fact, inferior, so inferior that they need not even be seen as human.

Honourable senators, the prohibition set out in section 13 of the Canadian Human Rights Act was passed by Parliament because Canadians understood the dangers inherent in the dissemination of hate propaganda. As a nation, we were determined to stop hate speech early and, indeed, at a stage when it might still be possible to educate the speaker and the potential audience away from hatred to the values we share and cherish as Canadians.

Section 13 makes it:

> ...a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly... any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

The Supreme Court of Canada has had occasion to consider these words several times. It is important to note that the court has repeatedly upheld the constitutionality of these words under the Charter of Rights and Freedoms. Most recently, just a few months ago, the court issued a decision dealing with a Saskatchewan law, the wording of which was very close to that of section 13. The court took the opportunity to revisit its earlier decision on section 13. It explicitly upheld the constitutionality of the words found in section 13.

This was not a split decision, honourable senators. It was unanimous. Just to be clear, the decision was rendered by Justice Rothstein, who was, in case it is relevant to anyone, appointed by the current government.

When he spoke at second reading on Bill C-304, Senator Finley said, "Freedom of speech has been jeopardized by section 13."He suggested that the section allows "censorship of politically incorrect statements." He said:

> If you find an idea stupid, it is your right to ignore it. If you find a joke offensive, it is your right to disregard it. Even statements one might find intolerable or heinously out of line with reality deserve the opportunity to be heard and ignored.

Honourable senators, with the greatest respect to Senator Finley, I believe he misunderstood what is at issue here. Let me read a passage from the recent Supreme Court of Canada decision. Hate speech:

> ...impacts on that group's ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy. Indeed, a particularly insidious aspect of hate speech is that it acts to cut off any path of reply by the group under attack. It does this not only by attempting to marginalize the group so that

> their reply will be ignored: it also forces the group to argue for their basic humanity or social standing, as a precondition to participating in the deliberative aspects of our democracy....
>
> In this way, the expression inhibits the protected group from interacting and participating in free expression and public debate.

Honourable senators, the nature of hate speech undermines the ability of the group under attack to respond. It takes away their right to freedom of speech. The marketplace of ideas in which Senator Finley trusted assumes a basic equality of the parties, and that is precisely what is lost by reason of the hate speech itself. Hate speech is not free and open debate. It is a pernicious undermining of one group's freedom to engage in that debate.

The nature of the speech that is caught by the language in section 13 goes far beyond politically incorrect statements or speech that results in "hurt feelings," to quote Senator Finley.

Let me read again from the Supreme Court of Canada decision:

> In my view, "detestation" and "vilification" aptly describe the harmful effect that the Code seeks to eliminate. Representations that expose a target group to detestation tend to inspire enmity and extreme ill-will against them, which goes beyond mere disdain or dislike. Representations vilifying a person or group will seek to abuse, denigrate or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating or offending the victims.

• (1410)

As I pointed out, honourable senators, these comments refer to the language in the Saskatchewan Human Rights Code; but the language upheld by the court was virtually identical to that which is found in section 13.

Earlier in this speech, I referred to my colleague in the other place, Irwin Cotler. Mr. Cotler, former Minister of Justice Canada, is internationally renowned and respected as a defender of human rights and freedoms, and the rule of law around the world. He strenuously opposed the passage of Bill C-304. While I know it is not customary to quote from Hansard of the other place here, given Mr. Cotler's unchallenged reputation on these issues, I hope honourable senators will permit me to quote what he said:

> ... this initiative, while well-intentioned, is nonetheless ill-considered, uninformed and a prejudicial move in the wrong direction. Simply put, without effective recourse against hate and group-vilifying speech, we are both ignoring and betraying the lessons of history regarding the dangers of assaultive speech. The arguments of some in this place in support of a repeal, frankly, have made a mockery of our constitutional law, arguments regarding free speech and, indeed, the related jurisprudence, in particular Supreme Court jurisprudence.

Honourable senators, I understand that section 13 may have been abused in certain cases. However, in the end, the parties wrongly accused were vindicated, but the process is difficult and costly. We should be amending the act to correct for these abuses. That, in my opinion, is the proper response. What is proposed here is very different. The proposal in Bill C-304 is to throw out the entire section and leave groups that have been vilified, abused or denigrated with essentially no recourse.

Senator Finley believed that the provisions of the Criminal Code are sufficient to address hate speech. I disagree. Let me read to you, honourable senators, from the brief prepared by the Canadian Bar Association on this point:

> By repealing section 13 of the CHRA, Canada's ability to prevent the proliferation of hate speech in society will be severely hampered. For the state to intervene, hate speech, messages or communications will have to meet the threshold of a *Criminal Code* offence. Under subsection 319(1) of the *Criminal Code*, for example, the Crown must prove "beyond a reasonable doubt" that public statements by the accused incite hatred against an identifiable group to such an extent that they will likely lead to a breach of the peace. This imposes a very high burden of proof compared with the lower standard of proof that must be met under section 13 of the CHRA, i.e., the civil standard of "on a balance of probabilities." In the absence of section 13, individuals will be free to engage in hate speech without fear of state intervention as long as the speech does not rise to the level of a *Criminal Code* offence. Canadians can expect to be subjected to a plethora of hateful messages and communications, and a corresponding loss of civility, tolerance and respect in Canadian society.

Mark Sandler is a prominent criminal defence lawyer in Toronto, and former chair and legal counsel for the B'nai Brith League for Human Rights. He has pointed out the rigid parameters that must be met before a prosecution may be launched under these provisions of the Criminal Code. In his words, "What a hill the prosecution has to climb before speech can be the subject of criminal prosecution."

Senator Nancy Ruth pointed out that, while anyone can use the Canadian Human Rights Act, the consent of the Attorney General must be obtained before a prosecution may be launched under several of the Criminal Code provisions. She also has pointed out — and tried to fix in part, through another bill — that groups protected under the Criminal Code are not the same as those protected under the Canadian Human Rights Act. For example, the Criminal Code does not identify sex as a prohibited ground of discrimination under these provisions; and it does not identify national origin, as distinct from ethnic origin, as a prohibited ground.

Honourable senators, the purposes of these two remedies under the CHRA and Criminal Code, are separate and distinct. The Criminal Code, of course, represents the highest form of sanction in the country. Accordingly, the punishments are the most severe. In this case, conviction carries a possible term of imprisonment. The Canadian Human Rights Act, by contrast, was specifically drafted to be very different.

The Speaker of the Senate is a respected human rights expert. He took the unusual step of speaking about this bill and told honorable senators on February 6:

> Our human rights laws were never intended to be punitive. They were meant to be educative. They were meant to be providing fora. It was meant to be conciliatory, because it was based on old labour law which operated on the basis of not seeking punishment, but being corrective and allowing us, as a matter of public policy, to grow our country where equality rights are protected by statutory law.

Honourable senators, these are good, valid objectives. Sadly, Canada is not free from the threat of hate speech. We cannot say that section 13 is no longer needed. Bernie Farber, former head of Canadian Jewish Congress, wrote an article for the Huffington Post after the other place voted to repeal section 13. He wrote:

> As a result of... Bill to repeal S13, consequences and remedies we once had under a civil rule of procedure to deal appropriately with the promulgation of hatred is no longer. Where a complaint under S13 could result in cease and desist orders or at most a fine, today the only tool left to guard against hate promotion targeting Jews, LGBTQ, First Nations, Muslims and other faith and ethnic groups are the hate laws, sections 318 and 319 of the criminal code. Convictions will mean a criminal record and perhaps even jail.

Of the few hate-related section 13 cases that went to tribunal, all were of the vilest hate where calls for the mass murder of Jews, Gays, Muslims, First Nations and others were posted. All the other complaints were solved either through negotiation or simply dismissed.

On June 6 the vote in the House of Commons was close. The Conservatives using their majority passed the repeal of section 13 by 153 to 136. With only the Criminal Code left for protection, I hope that Parliament did not bite off its nose to spite its face.

Honourable senators, we often refer to the fact that the Senate was intended to represent the regions and to represent minorities against the majority. Section 13 was designed to protect minorities from hate speech and, further, to do so in a way that educates and hopefully reduces the likelihood of future hate speech. How are we fulfilling our role of protecting minorities, if we simply wipe out this protection?

Are there problems with the way that hate speech has been handled under our human rights law? Yes, I believe there are. Can they be fixed? Absolutely, I believe they can.

A number of very concrete solutions have already been put forward by various knowledgeable individuals, including by Mr. Cotler. Unfortunately, instead of sitting down and looking seriously at the problems that have arisen and considering amendments to address them, we are simply presented with a bill that repeals the section in its entirety, thereby exposing some of the most vulnerable groups in Canadian society to hate speech. In the words of the Supreme Court of Canada, it is speech that exposes them to "detestation" and "vilification."

Is that what we want to do, honourable senators? I spoke recently in another context about the dangers of turning language on its head — in that case, Bill C-377. The good and valid goal of transparency was being used as a ploy for other, less noble purposes. Here, the fundamental and critical freedom of speech is being used to allow hate speech against minority groups.

Just as transparency is denied by the Harper government where it is most needed - with respect to the actions of the Harper government itself — Bill C-377 attempts to foist it where it does not belong, on private citizens and groups. We see freedom of speech routinely suppressed for those who should speak out - muzzled scientists, environmentalists, women's groups, international development NGOs - and yet, in the name of free speech, extolled here to allow hate speech.

When I spoke on Bill C-377, I called this the Harper government's version of George Orwell's "doublethink" from *1984*.

• (1420)

In the book *1984*, "war is peace, freedom is slavery, and ignorance is strength." With this bill we are being asked to say, hate speech is free speech.

Honourable senators, this is wrong. Section 13 of the Canadian Human Rights Act fulfills an important role in ensuring that all Canadians can safely express their full diversity as citizens of our great country.

If there are problems with how section 13 is being used, let us fix them, but let us not abandon our principles against hatred and vilification of our most vulnerable. That is not protecting freedom. That is the abandonment of our principles and values. Free speech is absolutely critical, but it should never be confused with hate speech.

Make no mistake, honourable senators: Bill C-304 is not about protecting free speech. It is about protecting hate speech. That is what we are being asked to protect today.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, Senator Jaffer is our critic on this bill, and I want to ensure that she will retain her 45-minute speaking time.

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

Hon. Senators: Agreed.

Hon. George Baker: I can assure honourable senators that I will not speak for 45 minutes. I do not want to hold up this matter. We are all hoping to conclude very soon.

Yesterday I had the privilege of attending the Senate committee dealing with this bill. I must say that the committee did an excellent job. It held hearings all day long and heard all sides of the argument.

As honourable senators know, I have a penchant for reading case law. For the last 40 years I have done this every day. It is a remarkable and interesting exercise. I have always been impressed by the decisions of the Supreme Court of Canada on matters such as the one before us today. The bill before us deals only with the Internet. This deals with federal jurisdiction over telecommunications; it does not deal with oral or written communication. It does not deal with what is said from the pulpit or with what is normally dealt with by provincial human rights legislation.

The bill is very short, and clause 2 says:

> Section 13 of the Act is repealed.

Section 13 of the Canadian Human Rights Act deals only with communications on the Internet and other telecommunications.

Under the heading "Hate messages," section 13(1) of the Canadian Human Rights Act says:

> It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly —

"Repeatedly" is a key word.

> — in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament...

It goes on in section 13(2) to say:

> For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication...

This is another private member's bill, although the private member who gave his evidence yesterday before the Senate committee said that this is not a Conservative bill. He said that a Liberal member of Parliament introduced the bill and he was simply taking it over.

The intent of the amendment is to remove from federal jurisdiction any regulation of what are called "hate messages." The mover of the motion has pointed out that the Criminal Code shall apply. That is what sparked my interest. In other words, it will no longer be illegal for hate messages to be communicated on the Internet as long as it does not meet the requirements of the Criminal Code — as long as it does not meet that standard.

I thought of the case that every Canadian heard about on television in 2002, the case of *R. v. Ahenakew*. The headnote to the case says he spoke at a conference and made derogatory comments about various races, made specific comments about people of Jewish faith, and then at the end of the speech gave an interview to a reporter.

Ahenakew was charged under what will now become the saving provision of the Criminal Code, section 319(2). He was charged; it was plain for everyone to see. The decision was eventually made in 2009. The case wandered its way through the Court of Appeal, back to the provincial court, and on February 23, 2009, the accused was acquitted. The reason for that is found in the headnote, which said that although the statements made were revolting, disgusting and untrue, the accused did not make them with the necessary intent for a finding of guilt on the charge against him.

Are we now to leave it to this section of the Criminal Code to deal with hate messages? Let us not confuse this with the provincial jurisdiction of every human rights tribunal and commission in the provinces. It has nothing to do with that issue. Many people have made speeches, including in this chamber, and some were cited yesterday at committee. We heard some of what the Speaker of this chamber said and what Senator Nolin said on why we should have a provision in the Human Rights Act as well as a Criminal Code provision.

I quoted approximately the same words from the Supreme Court of Canada, and I would like to put them on the record here. At that time the Chief Justice of the Supreme Court of Canada was Justice Dickson. Justices Wilson, La Forest, L'Heureux-Dubé, Sopinka, Gonthier and McLachlin were also on the bench. This is the unanimous decision of the court on the section we are dealing with.

In saying that this section is entirely constitutional and entirely justified, the Supreme Court of Canada unanimously said this at paragraph 37:

> It is essential, however, to recognize that, as an instrument especially designed to prevent the spread of prejudice and to foster tolerance and equality in the community, the *Canadian Human Rights Act* is very different from the *Criminal Code*. The aim of human rights legislation, and of s. 13(1), is not to bring the full force of the state's power against a blameworthy individual for the purpose of imposing punishment. Instead, provisions found in human rights statutes generally operate in a less confrontational manner, allowing for a conciliatory settlement if possible and, where discrimination exists, gearing remedial responses more towards compensating the victim.

• (1430)

That, honourable senators, is the difference.

It is unfortunate that in today's society children are committing suicide because of what is on the Internet. A lot of it is hate; it involves hate messages and various matters that we all know about. Now with this private members bill, whether it started with a Liberal member as the sponsor claims, or a PC member, we are removing that provision from the law.

To buttress the argument, as pointed out by Senator Cowan — he quoted from the Supreme Court of Canada. What he did not mention was that this was a decision of the Supreme Court of Canada just a couple of months ago; it is not an old decision. It is not *Canada (Human rights commission) v. Taylor*, which set the ground in 1990 and which every court has followed since then as being the law. This was the Supreme Court of Canada that ventured a judgment on February 27, 2013, in a unanimous decision of the court.

When former justice Senator Andreychuk spoke up a few moments ago in this chamber and said, "Well, what about the Canadian Civil Liberties Association and their opinion of this legislation?" I felt like saying, "What is the Supreme Court of Canada's decision on this particular legislation?"

Here we have this year the Supreme Court of Canada citing with approval the decision of our Supreme Court of Canada in 1990 in *Canada (Human rights commission) v. Taylor* that this section of the Canadian Human Rights Act is absolutely necessary and is separate from the provision of the Criminal Code.

Halfway down in paragraph 105 of *Whatcott*:

> ... *Criminal Code* provisions regulate only the most extreme forms of hate speech, advocating genocide or inciting a "breach of the peace". In contrast, human rights legislation "provides accessible and inexpensive access to justice" for disadvantaged victims to assert their right to dignity and equality...

Honourable senators, that is why I rise today: simply to point these things out. Although the mover of the motion said it was a Liberal bill, I did not find his arguments particularly persuasive. I always search for that, because there are always two sides to a story.

The honourable senator said this bill would pass and it would not come into force until a year from now, giving the federal government time to make changes to the Criminal Code to take this matter under the umbrella of the Criminal Code. That is what he said.

An Hon. Senator: When?

Senator Baker: Exactly. That is what the present Speaker, famous professor of law, pointed out. He said, "Where is it in the bill?" No provisions.

In trying to defend the Conservative government, I pointed out, "Well, there was something in C-30." I wanted to be fair; I said, "Look, there was something in C-30." It was clause 7 of Bill C-30. I read it very carefully. It does not meet the requirement of this, but there was a provision there to try to make up for taking this out of the Canadian Human Rights Act.

However, what happened to Bill C-30? Honourable senators will recall that it was withdrawn only a few months ago by the government, which said it included the right of the police to tap the Internet without a warrant that stipulated they have reasonable grounds to believe that an offence had been committed. In other words, on a mere suspicion they could tape communications that were ongoing on the Internet.

There was a great uprising across Canada, and the government said, "We will withdraw the bill." People did not realize, of course, that tucked away in that bill was a provision to amend subsection 319(2) of the Criminal Code, but not to the extent that is required here.

The mover of the motion said four times to the Senate committee — and he was correct; I am not denying that he is not correct — that section 13 of the Canadian Human Rights Act violates the Canadian Charter of Rights and Freedoms — subsection 2(*b*) of the Charter. He is absolutely right. Subsection 2(*b*) states that everyone has the following fundamental freedoms:

> (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

What he did not say was that it is saved by section 1 of the Charter, which says:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In other words, there is freedom of speech, but there is a limit to that freedom of speech.

May I have another three minutes?

Senator Tardif: Yes, absolutely.

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

Hon. Senators: Yes.

Senator Baker: Something that violates the Charter are the provisions on drunk driving. A police officer pulls over a car on a suspicion. That has been judged to be a violation of section 9 of the Charter — arbitrary detention. The roadside test is a violation of the Charter, but it is saved by section 1. He did not seem to understand that a provision that was a violation of the Charter is saved by section 1, if it is still on the books and if it is adjudicated by the courts.

The second thing he said was that these decisions are made by bureaucrats, quasi-judicial people who are not judges, and that we want our decisions to be made by real judges and real lawyers.

We have boards across Canada that are quasi-judicial in nature — citizens who are experts in that area. They serve this country well. Real judges are not needed. Look at searches of homes in the Criminal Code, as Your Honour knows. Under the Controlled Drugs and Substances Act, Senator Nolin — section 11 — a "justice," which means a justice of the peace, can issue a warrant to search a home. That person is not a judge; that person is not a lawyer. In fact, in most provinces, it is not even somebody who has to have grade 11 or 12; it can be Aunt Suzy down at the end of Main Street or Uncle George out in Meadow Crescent.

He did not seem to understand that.

His final point was that the government has an opportunity to bring this provision under the Criminal Code a year after this bill is passed. This is so important. That argument sort of reminds me of somebody who is in a hospital on life support and waiting for a heart transplant or something, and somebody says, "Well, we will

take you off life support while we wait for the organ to arrive." It is just so obnoxious a statement to make that a person would wait and allow the government time to bring in other provisions.

Honourable senators, those are my observations. If I do not get an opportunity afterward, I wish all honourable senators a good summer. Thank you.

Hon. A. Raynell Andreychuk: Will the honourable senator take a question?

Senator Baker: Yes.

• (1440)

Senator Andreychuk: Honourable senators, very early on in our lives here in the Senate, Senator Baker quoted a Supreme Court case or perhaps Court of Appeal case. He certainly had me going. I backed off on my argument only to go home and find out it was a dissenting opinion and not a majority opinion.

Would the honourable not say that he was a bit unfair to say that I pointed out the Canadian Civil Liberties Association because, in fact, the Canadian Bar Association had been mentioned and they were brought together on a panel to balance both the freedom of speech and the right not to suffer any discrimination or hate? It was that balance that I thought was important, not the Supreme Court.

Senator Baker: Absolutely, honourable senator, I agree. You are balancing things out, but let me remind you, justice, that case law in this country is quite often based on dissenting opinions of Supreme Court judges.

Hon. Serge Joyal: Honourable senators, when the committee heard the various experts yesterday, did anyone raise the problem of cyber intimidation? With this bill, what are we going to say to teens who are vilified on the Internet and driven to psychological collapse, or to those teens that happen to be gay and are led to suicide, as we read about in Canadian newspapers recently?

What effect will this bill have on the fight against cyber intimidation? That seems to be espoused by the government.

I remember that Prime Minister Stephen Harper met with the parents of a child in Nova Scotia who found herself in that situation. What effect will this bill have on the approach that provincial and federal authorities have to fight cyber intimidation?

Senator Baker: Honourable senators, the Canadian Bar Association did not just make up their brief or their conclusions on their own. They consulted with all Crown prosecutors in Canada. They consulted with all civil lawyers who were on their list, and all criminal lawyers who were on their list.

They, as a group, approved their submission which said that they believe the result of this will be a substantial increase in the number of sites on the Internet and hate messages on the Internet. They painted a very grim picture once this bill is passed.

I would have to agree with them, if there is no other legislation that bars it, because that is all we are talking about here. We are talking only about the Internet, only about telecommunications. This is not to be confused with what is happening in provincial human rights commissions and tribunal decisions. Some people get this mixed up. Some of the witnesses had entirely mixed up the two and said, "Well, there are problems with these quasi-judicial bodies so, therefore, we are in favour of the bill."

To answer the honourable senator's question, I think the Canadian Bar Association was absolutely correct. We are looking forward to a very disastrous future on this one.

Hon. Terry M. Mercer: First, honourable senators, on behalf of all of us, we want to thank Uncle George for his comments.

Honourable senators, I want to get a few comments on the record as it pertains to this bill.

Bill C-304, the bill that is repealing part of Canada's hate speech laws, passed through the House of Commons rather quickly and quietly. Conservatives who stand behind this bill cheered and see it as a victory for freedom of speech in Canada. Conservatives have long had disdain for the Human Rights Commission and have often hid behind freedom of speech as the reason for repealing parts of the Canadian Human Rights Act.

We all need to remind ourselves that this is not an easy issue to navigate. This is an issue that walks a very fine line between what my rights are as it pertains to freedom of speech, and what my rights are when it comes to not being targeted by hate speech.

Honourable senators, the bill will not make hate speech legal through the Internet or by phone; it will remain illegal under the Criminal Code. However, by removing section 13 of the Canadian Human Rights Act, we are removing the ability of the Human Rights Commission to, for example, compel websites that are violating hate speech laws to remove the content.

Does the government have the right, through its mechanisms like the Human Rights Commission, to do this? I would argue yes, but I am not a lawyer — and that is a good thing. I believe anything we can do to prevent hate in this country is a good thing. Everyone has the right to due process.

The Human Rights Commission is there for a reason — to investigate alleged abuses of people's rights. That is where due process takes place. Removing section 13 weakens the ability to do this.

Human rights commissions have long stood by the elimination of discrimination based on race, gender, religion, disability, sexual orientation and so forth. They have put so much effort into advancing equality and protecting the rights of Canadians that I fail to see how this bill helps them do that. It only seems to me to bring us backward.

Honourable senators, I have one last comment. As with another bill that was before us earlier, I question why this bill was introduced as a private member's bill rather than as a government bill. It is what the government wants. In fact, it is what they campaigned on. Why is it not a government bill? They do not seem to have the guts to stand behind what they say their stated policy is.

Hon. Lillian Eva Dyck: Honourable senators, I would like to say a few words about this bill. I made a longer speech at second reading. I still object to the bill and will not vote for it, but I want to put it into context with respect to vulnerable groups. The first group that comes to mind, of course, is Aboriginal people.

There was a survey done in 2010 called the Urban Aboriginal Peoples Study which indicated that three in four Aboriginal people believe that they are targets of racism. That is a very high percentage. These days, as we heard from previous speeches, a lot of that messaging will come to people through the Internet, through social media.

Coming from Saskatchewan, I am concerned and I hate to say this, but Saskatchewan is a province where the rates of racism are higher than they are in other parts of the country, such as in Ontario.

It is very important to give vulnerable groups the protection that they are entitled to under the Charter of Rights and Freedoms in section 15(1). Some people have said to me, "Well, if you have that protection under the charter, why do you need clause 13 under the Canadian Human Rights Act?"

To me, that makes no sense, because section 13 is negating the right to protection. We need both to make for a strong case. Vulnerable people need the protection. As other senators have said, we know that Canada is made up of a variety of different racial groupings. In 2006, something like 16 per cent of our country was immigrants and it is higher now.

In order for people to integrate, flourish and reach their full potential, they must not be subjected to any kind of discrimination. As I said before, the Internet and social media are predominant ways of messaging these days.

In particular, it affects young people. That is how young people now communicate. They communicate through the various social media. They do not communicate by letters, reading books and that kind of thing. It is all through social media.

As we all know, within the Aboriginal population, more than 50 per cent is under the age of 25. We know that Aboriginal youth are subjected to more racism and they are more vulnerable.

I cannot see where passing this bill will do any good at all, and it will really harm Aboriginal youth. We already know that the rates of suicide are high. We have already seen where the use of social media for cyberbullying has taken lives. I definitely will vote not to pass this bill.

[*Translation*]

Hon. Roméo Antonius Dallaire: Honourable senators, this bill is extremely dangerous. I do not think it reflects in any way what I consider to be our country's values or our country's evolution as a democracy that respects each individual and not only the majority.

• (1450)

[*English*]

It is true that we spoke about this bill affecting the Internet, as an example, and what is happening on that point.

My daughter, who lives in Vancouver, owns no phone. She owns no TV. She owns no radio. Everything she gets is off the Internet — everything.

We are speaking about traditional means of communications that have shifted now to the Internet. It includes radio stations and all other means.

This brings me to a very personal experience. I have been trying to extract, and have been unsuccessful, I am afraid — and my international legal counsel has been helping me in the international tribunals — to get the actual judgment that the international tribunal in Arusha used to prosecute the 16 members of Radio Télévision Milles Collines, which is more widely recognized as the genocide radio station in Rwanda. Radio is the means of communications in the country. In fact, some consider it to be the voice of God.

All 16 were found guilty of inciting genocide and the words of hate came out. All 16 are in probably one of the most terrible prisons that Africa has to offer. They have all received anywhere from 10 years to life imprisonment.

Why do I raise this? The radio station they created, funded by private money, was the best radio station on the air in Rwanda. In fact, it was the best radio station in that whole region. It had outstanding music. It had incredible commentary. It was a voice to youth, and youth were on the net and on the radio station speaking. It enticed the whole population by the fact that it was an extraordinary radio station that we wanted to listen to.

However, very subtly, during off-hours, a derogatory comment about the other ethnic group would be thrown out. It was just a comment, sort of like Fox News. MSNBC is not much better, but it is on the other side of the spectrum.

It was a very mild Fox News, and it continued this way. It sucked in a whole bunch, including the UN staff who had been monitoring the radio stations, as it was our mandate to do. The staff enjoyed it.

Slowly, tensions and frictions continued to mount, as can happen with any diaspora in this country or with any particular group. I was deployed during the Oka crisis, an insurrection in our own country by our Aboriginal people. They had a very valid issue, and the only way they could resolve it was conducting that crisis, to which we deployed 3,500 troops.

We have a lot of youth in this country that can be considered disenfranchised, particularly Aboriginal youth, who are the fastest growing group. They are all over the country. They are

often disenfranchised. They have access to the Internet, and so they can be incited and influenced.

For months this radio station kept sneaking in these little comments, not enough for us to go forward and say, "Hey, this is inciting and it is against the Arusha peace agreement." It just was not enough.

Within about a month of the start of the genocide, the tone changed. It started to get really nasty, and then it permitted us to react. However, it was too late. They had already incited all the youth they needed. They had already sucked in all those they needed to implement their exercise.

The bulk of the killing was done by youth who were, in fact, listening assiduously to that radio situation. Where they found the batteries, I still do not know, but they continuously, at every checkpoint, had that radio station on and it was giving them direct instructions on who to kill, how to kill and where to kill.

If I read correctly the comments of the sponsor of this bill, he asserts that the Canadian Human Rights Commission and the Canadian Human Rights Tribunal are deeply flawed. Okay; what are you doing about that? If you do not like how they are operating, then take actions to sort that out. Influence that. Put people there who you think will respond in a fashion that you consider to be more even-handed than what is being presented now.

However, do not destroy the act. Do not make us vulnerable, in this very modern and complex time, to very sophisticated technology and communications that could potentially incite, even inside this country, people who could get sucked in. Ultimately, people could get away with providing that information and could in fact be the source of insurrections in our own country.

There is enough jurisprudence out there to prove that this is absolutely horrible, and it is inconceivable that it got through that other house. What are they doing over there? What kind of ineptness is looking into the depth of this private member's bill, which the government is hiding behind and bringing here, expecting us to acquiesce to it because, by-the-by, it is apparently our last sitting day? This is not democracy. This bill is a flagrant insult to the evolution of human rights in this country. It is a tool that will be used by subversive elements in this country to incite. We will have a lot more than a few Canadians ending up working for al Qaeda, I can guarantee you, if this thing is passed.

Vote against it. Vote against it because it is a security problem. This is not a social problem, this is a security problem.

Hon. Mobina S. B. Jaffer: Honourable senators, before I start speaking on Bill C-304, I want to take this opportunity to thank the members of the Human Rights Committee — the deputy chair of the committee, Senator Salma Ataullahjan, as well as Senator Andreychuk, Senator Munson, Senator White, Senator Hubley, Senator Zimmer, Senator Ngo and Senator Oh — for all the support they have given in the work we do. We certainly faced some big challenges. We work very much in a consensus way, and I want to thank each of the members.

For these hearings, I want to thank Senators Fraser, Eggleton and Baker for the support they gave us yesterday when we were studying this very serious issue.

I also want to take the opportunity to thank the clerk of the committee, Daniel Charbonneau, and his assistant, Debbie Larocque. Senators, all weekend they worked hard to schedule witnesses. Throughout the year they worked very hard on behalf of the committee, and I want to thank them.

Senators, when we look at Bill C-304, I humbly ask you to think about what our role is here. Members in the other place are elected by a majority. They look at things through a different lens than we do. Time and again, we are told that we are here to protect the rights of minorities. If ever there was an issue of protecting rights for minorities, honourable senators, I humbly ask you to think very carefully before you vote for this bill, because it truly is an issue of protecting rights for minorities.

• (1500)

Some Hon. Senators: Hear, hear.

Senator Jaffer: Honourable senators, Bill C-304 would repeal section 13 of the Canadian Human Rights Act. As you know, section 13 identifies hate messages as a discriminatory practice. It is based on the understanding that hateful expression does not constitute an acceptable exercise of freedom in our peaceful democratic society.

Honourable senators, I voted against the principle of Bill C-304 at second reading because I argued then that hate messages are an assault on human dignity. More than cause offence, they affect the basic social standing of individuals within society.

Section 13 is not about assuaging hurt feelings; it is designed to remedy a situation where members of vulnerable groups have been robbed of their dignity. It is intended to promote the restoration and preservation of justice through reconciliation and education.

For over a year, honourable senators, our Human Rights Committee conducted a study on cyberbullying. I will not forget for as long as I live the young boy with red hair who appeared in camera before our committee. He told us of how a Facebook group had been created to promote hate for people with red hair. I have to tell you that I never knew people with red hair could be persecuted. For me, I always wanted red hair, so I was shocked when this young man said that having red hair is not such a good thing at school.

Honourable senators, he told us it is called "Kick a Ginger Day." Kids with orange hair would get kicked on that day. "I never went to school on that day. I do not think this is right." When this young man spoke to us in camera, we were shocked that a young man in a Canadian school could suffer from hate messages through the Internet.

Hateful messages have a real effect on the dignity of the person whom they target. As Mark Toews, an executive member of the constitutional and human rights law section at the Canadian Bar Association told our Standing Senate Committee on Human Rights yesterday:

> A culture of prejudice and discrimination is created when the dissemination of hateful and intolerant views is allowed unchecked. It starts with isolated comments, usually against vulnerable groups. Eventually, listeners and bystanders, after hearing the views often enough, begin to accept the comments and start to become fearful of the targeted group, leading to prejudice, discrimination and greater tragic results.

Honourable senators, as you know, our Human Rights Committee held several hours of hearings on Bill C-304 yesterday. We heard reasonable concerns about how Canadian human rights law addresses hate messages and hateful expression more generally. For example, section 54 of the Canadian Human Rights Act includes two penalty provisions, which, as the Canadian Human Rights Commission pointed out in its submission to our committee, "are not consistent with the act's core remedial and conciliatory function."

I agree with the Canadian Human Rights Commission and the Canadian Bar Association: We should not have penalties in this legislation.

We know that our colleagues Senator Kinsella and Senator Nolin also highlighted this inconsistency in their second reading speeches. Bill C-304 would amend section 54, and I agree with that amendment insofar as it strikes punitive measures from the Canadian Human Rights Act.

Our laws should promote reconciliation, restoration and education above all, honourable senators. They are essential tools to prevent discrimination and to confront hate. That same premise leads me to disagree that the best way to improve freedom and protection against hate is to repeal section 13.

At the committee hearing, Senator Eggleton asked witnesses to take a forward-thinking approach and to identify ways that Canadian human rights legislation could be strengthened to deal with hate messages. Professor Mahoney from the University of Calgary responded:

> Human rights legislation puts the onus on individuals to take a claim. In other words, it does not recognize that people are members of groups. When a person is attacked individually, their group is attacked as well. In order to achieve a human rights remedy, every individual must go before a Human Rights Commission and say: This is what happened to me, because I was Jewish, because I was a woman, because I was gay or because I was a fill-in-the-blank.
>
> It seems to me it would improve our human rights legislation if the legislation recognized group harms in addition to individual harms. I think that would be a major, valuable change to the present state of affairs in human rights legislation.

Senator Eggleton through his questions raised an important point. We are at a juncture, honourable senators. Reviewing Bill C-304 should prompt us to improve our human rights laws, perhaps in the way that Professor Mahoney discussed and perhaps in other ways, too.

My opposition to Bill C-304, and more specifically to the repeal of section 13, does not mean I believe that Canadian human rights legislation cannot be improved. There is plenty of room for improvement, but we all know as legislators that laws are fluid and we have to improve them from time to time. However, that does not mean we should repeal a law without improving it. Nothing would be served by that. Repealing sections of fundamental importance such as section 13 means leaving vulnerable groups unprotected. It is a method of reform that we cannot risk to undertake.

Senator Baker initiated an exchange with Mr. Toews of the Canadian Bar Association on the constitutionality of Bill C-304. Senator Baker asked:

> ... I would like for you to verify that although the mover of the motion mentioned four times that it violated the Canadian Charter, we have had every court of final decision that I know of — namely, the Supreme Court of Canada — say that this section is perfectly constitutional. First, am I correct in saying that?

Mr. Toews responded:

> That is absolutely correct. It is constitutional. The courts could not be any clearer on that point. These issues have been raised a number of times, and the Supreme Court has repeatedly and unequivocally said this is constitutional; it does not violate the Charter. It violates freedom of expression, but it is protected by section 1, which is an important tool in our Charter that says that it is perfectly justifiable, in a free and democratic society, to have these provisions. No, it does not violate the Charter.

As the Canadian Bar Association pointed out in its written submission, repealing section 13 of the Canadian Human Rights Act means that hate messages would have to meet the higher threshold of a Criminal Code offence. All acts, though offensive, do not meet the test.

• (1510)

As honourable senators know, the Criminal Code requires proof beyond a reasonable doubt that public statements by the accused incite hatred against an identifiable group to such an extent they will likely lead to a breach of the peace. This is a much higher burden of proof compared to section 13 of the Canadian Human Rights Act where it must only be proven by a balance of probabilities that public statements will lead to a breach of the peace.

As a result, according to the Canadian Bar Association, "Canadians can expect to be subjected to a plethora of hateful messages and communications, and a corresponding loss of civility, tolerance and respect in Canadian society."

Honourable senators, there is a need for both civil and criminal prohibitions on hate speech in Canada. Section 13 of the Canadian Human Rights Act and section 319 of the Criminal Code serve very different purposes. Section 13 applies to conduct that falls short of criminal behaviour but that, nevertheless, poses harm to vulnerable target groups.

Senator Baker set that out very clearly earlier on in the case in Saskatchewan, so I will not repeat that.

Section 13, and again I quote the Canadian Bar Association:

> ... protects minorities from psychological harm caused by the dissemination of racial views which inevitably result in prejudice, discrimination and the potential of physical violence.

They set out prejudice, discrimination and the potential of physical violence.

Honourable senators, we are not debating hurt feelings or subjective interpretations of hate. Bill C-304 proposes to repeal a section of the Canadian Human Rights Act that prohibits messages that result in prejudice, discrimination and the potential for physical violence.

Honourable senators, I have spent a lot of time thinking about this. I also have spent a lot of time thinking about how I should convey to my colleagues, who are very nurturing of me, and I have a very warm place in the Senate. I have all my staff sitting there. We have discussed whether I should talk about what it is like to be who I am in Canada.

Honourable senators, I will not talk about my experiences under the British Raj. I will not talk about what happened to us under Idi Amin. I will not talk about what happened when we came here, because I will have many opportunities to talk about that another day.

Honourable senators, all of us here have issues. All of us here have health issues, financial issues; there is not one senator here who is not dealing with issues of family and the challenges of a family.

My family has the issue of colour. My family has had to deal with that on a daily basis. I have to tell honourable senators that my father, who was a member of Parliament in Uganda, had opportunities to go to many places when we became refugees. He chose Canada because he felt that we — and his great-grandchildren — would never have to leave Canada. Sadly, that does not mean that we have not had to deal with issues of what it is like to be hated.

I am very blessed: I have two children. I have a biological son, whom I love dearly, and I have an adopted daughter who is my life. I was only able to have one child, and God blessed me with a daughter I could adopt. My daughter is from Port Hardy, British Columbia. My daughter is of mixed race. One could call her African, one could call her dark. When she was six years old, I caught my daughter in the bathroom bleaching herself. She wanted to be White because she hated her friends hating her. This is Canada we are talking about. My daughter was in the best school in my city, a private school. My daughter was not invited to birthday parties, and that can happen to many of us so that is not unusual, but the principal called me after she had been in the school for six years. It is not often that a private school will ask that one's child be taken away, because they like the fees. We were very involved parents, but the principal said he could not handle the hate our daughter was facing in the school.

Honourable senators, I stand today to really open myself up because I want my colleagues to know what it is like to be hated out there. The worst part is not when one is hated, because one can deal with it, but when one's child faces hatred. I cannot tell honourable senators what it is like for my husband and my son when my daughter comes home. The only time I have seen my husband cry is when he sees my daughter's pain.

I am being very open with honourable senators because I want my colleagues to understand that there are Canadians who suffer hate. It may not be the criminal standard, but my daughter had girlfriends talk about her on the computer, phone each other, and on the Internet they talked about how much they hated her, how they hated her colour. She was Black.

Honourable senators, on a lighter note, I changed her school. She went to St. Thomas Aquinas, where she was very happy, and she was in the religion program. She was always getting the best marks and she was in an advanced placement in religious studies. My mother used to say she is going to become a nun because she is in a Catholic school. I would ask my daughter and she would say, "Mom, Catholic rituals are the same as ours. I know this; I have grown up with this. I know what they are doing; there is no magic to it." Many of her friends became nuns; my daughter did not.

I am just saying there is always a good story when one makes a change. I also want honourable senators to know that I am a colleague, and I am not the only one here, who goes home. My daughter became a model, and she is drop-dead beautiful — I am not biased, of course. I always tell her, "God's revenge is how beautiful you are."

However, I can tell honourable senators that if she goes out with her White boyfriend, the hatred she gets — I will not say more. It is not a good thing to be Black in Canada.

Honourable senators, I have shared something very close to my heart, after many chats with my staff as to whether I should open myself up. I do this, I cry out to do this. Do not be deaf. I am not saying that this legislation should not be changed. I am not saying that we should not study it further. We should. However, let us take the time. What is the rush? Even the sponsor said the minister will take a year to fix things before this bill comes into place. Let us take the time to bring really good legislation that protects all Canadians. That is all I am asking.

Honourable senators, when I was young my mother wanted me to play the piano and my father wanted me to be a politician. Honourable senators can see what I became. My mother always told me to practise the piano and I would always annoy her. Sometimes I would play only the black keys to get really terrible harmonies, and sometimes only the white keys. My mother would say to me — God bless her, she has left us now — "To have

harmony you have to play the black keys and the white keys." Only now, as a politician, after my mother has left me, have I realized what she meant.

I stand before honourable senators to say that if we really want harmony in our society, every single person should feel that they are part of our society and not hated because of their colour, their religion or the way they look.

The Criminal Code deals with convictions for hate propaganda containing a high evidentiary threshold because a conviction for hate speech, like any other criminal offence, carries social stigma and a criminal record. Section 13 ensures an alternative mechanism for responding to hate messages. With section 13, the Canadian Bar Association made it very clear that we heal societies and that we find a framework for people to reconcile the mechanisms intended to promote restorative justice, reconciliation and education. We should work to improve the ability of our laws to restore justice, facilitate reconciliation and promote human rights education.

• (1520)

Instead, Bill C-304 would eliminate the civil recourse for addressing hate messages. It disregards the important role that human rights tribunals play in Canada. According to the Canadian Bar Association, human rights tribunals provide "a forum where valid complaints from individuals and target groups who have suffered discrimination can be heard and justice dispensed in a fair and sensitive manner. They also play a significant role in public education and addressing discriminatory behaviour, such as hate speech, before it rises to the criminal level."

As senators, we need to tackle issues of hate before they come to fruition. Human rights tribunals will help us to achieve that goal and so we will be retaining section 13 of the Canadian Human Rights Act.

Honourable senators, at second reading, Senator Kinsella said:

> It seems to me that we would want to look at the current section 13, to which Bill C-304 seeks to provide an amendment, in terms of what motivated us when we dealt with the cyberbullying issue. Do we really want to have a statutory provision to deal with discrimination on the Internet?

Honourable senators, I have given a lot of thought to what Senator Kinsella said in his speech in February. I know that Senator Kinsella's question prompted reflection of several other Human Rights Committee members who worked hard on our cyberbullying study.

At our hearing on Bill C-304, Senator Hubley said:

> This committee has studied cyberbullying and we know the dire consequences, in many cases, for Canadian children and youth. Are we sending the wrong message if we repeal section 13?

The response she received was, "Yes, absolutely."

Honourable senators, if we adopt Bill C-304, we will take away a useful tool to solve one of the greatest dangers facing young people today, and that is cyberbullying. At our Standing Senate Committee on Legal and Constitutional Affairs, government sponsors consistently tout the need for more tools to deal with various criminal justice issues.

Honourable senators will remember that I asked Senator White why we needed a certain piece of legislation, because we already had that in the code. He is a highly respected person with regard to such issues, and he said that it does not hurt to have another tool.

Honourable senators, I do not know what is going on. In the Legal Committee we are saying we need all kinds of tools, and in the Human Rights Committee we are taking away the tools. I am confused by this.

One of the things we know is that cyberbullying is not a criminal justice issue, honourable senators; it is a human rights issue. However, why should we take away tools to address cyberbullying?

During our committee hearings, one child told us:

> The biggest difference between being bullied while in the classroom or playground and being cyberbullied is that we can be targets of cyberbullying 24/7, and that makes you feel as if there is no safe place.... That puts a huge dent in your life, because you are always pretty shaken up by this and kind of scared.

What this child described is not hurt feelings; she described an assault on dignity. Where that kind of hatred is based on a prohibited ground of discrimination, section 13 could be a valuable tool in addressing this human rights violation in a way that restores and promotes justice.

Another young person told our committee about how quickly cyberbullying can spiral out of control. She said:

> It was by birthday... and one of my best friends — well I thought she was my best friend — posted on Facebook and tagged me in it, so she knew everyone I knew and everyone she knew could see it. She posted [a lie about something shocking that she said I did.] Then hundreds of people started commenting and liking it and saying really mean things that about me, and she was deleting all the things that were supporting me or trying to tell her to take it down. People that I worked for saw it; my whole family saw it, all my aunties and uncles. Everyone saw it and everyone in town knew too.
>
> I [have] been on both ends of spectrum. I have said things. I have been the bully on the Internet and have had things said to me and sent to me. I see it happen on an everyday basis. It makes me sad because the Internet is a tool meant to connect people and it is meant to expand what is outside our immediate community. It is easy to pick up the phone or write something on the keyboard or say something rude or mean. A lot of us have become so

> desensitized to it, but it makes an impact and people do remember. It really has quite an effect on how I interact with people and how I live my day-to-day life.... I have come to terms with it now and am ok with it but it still hurts and it hurt a lot worse then.

Honourable senators, one of the things we learned at the Human Rights Committee is that one person, on the same day, can be a bully, be bullied and be a bystander. The young people do not want their friends to be sent to jail; they want reconciliation. This does not mean that section 13 could not be improved to address instances of cyberbullying where hate is a factor. We could take the time to find out. We could take the time to come up with a better solution. Repealing the section is a lost opportunity. None of the children who appeared before our committee — not one, and there were many — said that we should punish people who engage in cyberbullying. No one said we should send a child to jail, yet debate goes on about introducing laws in the Criminal Code to deal with cyberbullying.

As I said before, honourable senators, cyberbullying is not a criminal justice issue; it is a human rights issue. We should view human rights law as a vehicle to educate, to restore justice and to protect vulnerable groups. Adopting Bill C-304 embraces a punitive approach on the messages going forward. Rather than considering ways to build communities and engage disparate parties in dialogue, we would resort exclusively to penal sections of the Criminal Code.

How many jails are we going to open? How many 16-year-olds will we send to jail? We have other ways of dealing with cyberbullying.

I will say this for the children who appeared before our committee to talk about cyberbullying, because they could not vote in the last election and they will not vote in the next election, and I believe that their voices should be heard in our Parliament. We are a chamber that looks after the rights of minorities. I heard them say: Do not punish us; teach us. Do not exclude us; involve us. Do not separate us; bring us together to resolve our differences. Do not ignore hate; confront ignorance and foster acceptance. Do not belittle the harm that hate causes. Recognize the profound effect that it has on our lives. Do not disregard our right to health and to happiness. No measure of freedom is gained by hurting someone else.

Honourable senators, supporters of Bill C-304 have said that the Criminal Code can protect Canadians against hate propaganda even after the hate messages section of the Canadian Human Rights Act is repealed. However, the hate propaganda sections of the Criminal Code do not protect any section of the public distinguished by age, sex or disability. In the Criminal Code of Canada, there is nothing to protect people by virtue of age, sex or disability.

• (1530)

Senator Fraser asked during the committee hearings:

> If we abolish section 13, which does protect against discrimination against women, before we get around to clearing up the Criminal Code, then are we not in a breach of our obligations under, notably, the Convention for the Elimination of All Forms of Discrimination against Women?

As Senator Munson stated at our committee hearings:

> By repealing section 13, Parliament will have failed both Canadians and the international community.

The Internet knows no borders. Professor Jane Bailey, from the University of Ottawa, shared with our committee examples of hate messages directed toward women on the Internet:

> This includes things like reminder — insert the person's name — deserves to be raped; fake postings suggesting that these women provided sexual services in exchange for grades; women who were labeled Jew bitches clearly deserving of being raped; and women being listed in threads labeled "which female Yale law school students would you sodomize?"

These are fundamental affronts to human dignity, honourable senators. They are not simply offensive messages. They cause real damages. They are hateful. They destroy the people against whom it is directed; they destroy the families against whom it is directed; and they destroy our communities against whom it is directed.

At present, the Criminal Code does not protect women against hate propaganda, nor does it protect persons discriminated against on the basis of age or disability.

As Professor Bailey pointed out:

> Without section 13, equality-seeking groups such as women, persons with disabilities and those targeted on the basis of intersections between these and other axes of discrimination, would be left unprotected because the Criminal Code provisions do not include them.

Let me be clear: If we pass Bill C-304, women will no longer be afforded protection from hate propaganda under Canadian law. If we pass Bill C-304, our elders and our children will no longer be afforded protection from hate propaganda under Canadian law. If we pass Bill C-304, persons with disabilities will no longer be afforded protection from hate propaganda under the Canadian law.

Honourable senators, even the sponsor of the bill said that this bill will not come into force until the minister has one year to fix it. What kind of thing is that? You pass a bill and then you give the minister a year to fix it? Why would you do that?

Honourable senators, I urge you: Let us work on this. Let us fix some things. Let us support our government, so that we can come up with a good proposal when we come back. What is the hurry? Even if this bill is passed, for one year nothing will happen.

MOTION IN AMENDMENT

Hon. Mobina S. B. Jaffer: Accordingly, honourable senators, if you do decide to pass this bill, I move:

That Bill C-304 be not now read a third time, but that it be amended,

(*a*) in clause 1, on page 1, by deleting lines 4 to 11;

(*b*) in clause 2, on page 1, by replacing line 12 with the following:

"1. Subsection 13(1) of the *Canadian Human Rights Act* is replaced by the following:

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of any of the following prohibited grounds of discrimination, namely, age, sex and disability.";

(*c*) in clause 3, on page 1, by deleting lines 13 to 19;

(*d*) in clause 4,

(i) on page 1, by deleting lines 20 to 26, and

(ii) on page 2, by deleting lines 1 to 4;

(*e*) in clause 5, on page 2, by deleting lines 5 to 12; and

(*f*) in clause 6, on page 2, by replacing line 13 with the following:

"**2. This Act comes into force on the day**".

Honourable senators, I have made myself very vulnerable today on this bill, because I honestly believe that we are starting to have another kind of society. I came to this country knowing that we were all equal. Please do not change the equation.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: On debate.

Hon. Jane Cordy: Before we get to debate, would the honourable senator take a question?

Senator Jaffer: Yes.

Senator Cordy: Thank you very much. That was certainly an excellent speech. I think I would like your mother when she said to play the black keys and white keys to get perfect harmony. I am a Paul McCartney fan, so for me it was:

Ebony and ivory live together in perfect harmony
Side by side on my piano keyboard, oh, Lord, why don't we?

An Hon. Senator: Are you singing it?

Senator Cordy: Honourable senators, I will spare you my singing it. I will just read the lyrics; thank you. I did sing in the Holy Angels Choir, though, Senator White.

The honourable senator's Human Rights Committee did an excellent report on cyberbullying. I sent it to schools in Nova Scotia. I thought it was excellent. In Nova Scotia, we know the Rehtaeh Parsons case has been very much in the news because she was bullied online

I am wondering if the honourable senator believes that this bill goes against all the work that her committee did on cyberbullying.

Senator Jaffer: I thank the honourable senator very much for that question.

I would be remiss if I did not give credit to Senator Ataullahjan for suggesting this very timely study. She worked very hard on this study. In fact, all of our committee members worked very hard on this study.

When we hear all the discourse around us about what should be done about cyberbullying and at the same time we are debating this motion, I sometimes feel that I do not know who has read our report. That is all I can say.

Hon. Art Eggleton: Honourable senators who have spoken previously on this matter have outlined the case quite well, in a very passionate and compelling way. I want to recognize Senator Jaffer, who was both our critic of the bill as well as the Chair of the Human Rights Committee and obviously has a personal context of which she has spoken today.

Honourable senators, I had opportunity to be at the committee yesterday and to hear the testimony that was provided. I will be briefer on this than my colleague Senator Baker usually is. Without being too repetitive, I wanted to reiterate a couple of points.

We heard clearly yesterday that the Criminal Code is not sufficient to counter hate speech or messaging. The argument that was given by the sponsor from the House of Commons, who appeared by video conference yesterday, was that we really do not need both. We have the Criminal Code and we do not really need this.

• (1540)

Then we heard very substantial, compelling evidence after that from a good many people who are quite knowledgeable, quite expert in this whole area, saying "Oh, yes, we do." In fact, that

has not only been verified by them but also by the Supreme Court of Canada and by many other comments that have been made that show the value of keeping a civil context for human rights issues in addition to the Criminal Code.

These are both tools in the tool box, and they are both very much needed.

The Canadian Bar Association laid it out quite well. They said:

> By repealing section 13 of the CHRA, Canada's ability to prevent the proliferation of hate speech in society will be severely hampered.

They went on to say:

> Section 13 applies to conduct that falls short of criminal behaviour but that nevertheless poses harm to vulnerable target groups.

As Senator Dallaire pointed out a little earlier in his comments, a lot of this starts in a very subtle form. A lot of the hate remarks build up gradually and then have an insidious impact on individuals or on groups in the population. They can, in fact, lead to hatred and violence against target groups in our society.

This measure, section 13 in the Canadian Human Rights Act, gives an opportunity for earlier intervention and more preventive kinds of action and doing so at the civil standard of balance of probabilities. If you just rely on the Criminal Code, then you are moving it only into the area of extreme hate speech because it seems that it has to be extreme to get a conviction. It has to be beyond a reasonable doubt.

Senator Baker pointed out the *Ahenakew* case, where this man said that Jews were a disease. He said that Jews caused World War II, and he had praise for Adolf Hitler. He was acquitted because it did not meet the test in section 319 of the Criminal Code with respect to intent.

These are the kind of things that, caught perhaps at an earlier stage and at a stage below that high burden of proof that is required, could be dealt with very adequately by human rights commissions. That is what they are there for. They are there to play a valuable role in promoting tolerance and respect for Canadian society. They are there to prevent hate speech effects that tears apart the fabric of our society. They are there to prevent discrimination and violence before it happens.

Not everything is perfect with the way the act operates or the way section 13 operates. Let us correct it if that is the case. Senator Jaffer pointed out section 54 with respect to penalties. It does not seem to be appropriate in the human rights context of the workings of the act. Fine. Those kinds of changes can be made. Other kinds of changes can be made. In fact, I would argue that we need to strengthen the human rights legislation in many respects.

Let us not throw the baby out with the bathwater. Let us not remove this and say, "Well, the Criminal Code is good enough, and somewhere down the line we can make other changes." No. Let us leave it in, and let us look at it in a more thorough fashion before we take that kind of a step.

In addition to that, there is the matter — and Senator Jaffer has just raised it — that some provisions in the Human Rights Act, for example, age, sex and disability, are not covered in the hate provisions of the Criminal Code, which can subject many people — women, gays and other vulnerable and marginalized groups in our society — to being the targets of hate messaging.

There is a need for section 13 to continue to fight against discrimination and slander.

In closing, I would like to move a further amendment. This is actually almost the identical wording to Senator Jaffer's motion except it now adds in the basis of gender identity because that is also an area of discrimination.

MOTION IN AMENDMENT

Hon. Art Eggleton: Therefore, honourable senators, I move:

> That Bill C-304 be not now read a third time, but that it be amended,
>
> (*a*) in clause 1, on page 1, by deleting lines 4 to 11;
>
> (*b*) in clause 2, on page 1, by replacing line 12 with the following:
>
> **"1. Subsection 13(1) of the *Canadian Human Rights Act* is replaced by the following:**
>
> **13.** (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of gender identity.";
>
> (*c*) in clause 3, on page 1, by deleting lines 13 to 19;
>
> (*d*) in clause 4,
>
> (i) on page 1, by deleting lines 20 to 26, and
>
> (ii) on page 2, by deleting lines 1 to 4;
>
> (*e*) in clause 5, on page 2, by deleting lines 5 to 12; and
>
> (*f*) in clause 6, on page 2, by replacing line 13 with the following:
>
> "**2. This Act comes into force on the day**".

The Hon. the Speaker: On debate.

• (1550)

Hon. Raynell Andreychuk: Honourable senators, unlike Senator Baker, I would like to have 45 minutes to speak, but I think I am restricted to 15 minutes, so I will move efficiently through my comments.

I want to put to rest the idea that we are going to throw the baby out with the bathwater. The baby is in the ocean and the bathtub is no longer important. The problem is that we are outdated and section 13 needs to be addressed and has not been for a long time. Every time anyone talks about repealing section 13, we say, no, we have to hang on to it. We then say we will look at the broader picture, but we never do it. We go away and rest on our laurels that we saved section 13. Section 13 is not modern or effective and is not really the place where hate can be addressed by the Canadian population.

We talk about human rights legislation being important. The work of the Human Rights Commission is extremely valuable in Canada. It has set us apart from others. However, it, too, needs to be addressed these days and updated. That has not been done in part because, as Ms. Jennifer Lynch said when she was before the committee some time ago, so much air time is taken up by section 13 that nobody seems to want to address the rest of the Human Rights Commission and the tribunal.

We have had piecemeal changes, such as taking out penalties, but it is the courts that have done that, not us. We have not addressed fully the Criminal Code sections on hate because we say we have some counterparts in section 13.

Honourable senators, I have looked at section 13 and supported section 13 because it was the last stop before the Criminal Code. At least four governments have said they would look at and update the legislation, but they did not. I have come to the conclusion that, unless we shake up Canada and shake up this section, we will never get the kind of legislation that we need.

Let us go back to how section 13 got into the Canadian Human Rights Act. First, I would like to say on the record that hate speech and the debate we have had with free speech are misplaced in my opinion.

When there was an awful lot of activity around the human rights legislation, it took some time to get to the point of the bill as initially proposed. Prior to that, in 1966, the Report of the Special Committee on Hate Propaganda in Canada made the case most succinctly when it stated:

> Canadians who are members of any identifiable group in Canada are entitled to carry on their lives as Canadians without being victimized by the deliberate, vicious promotion of hatred against them. In a democratic society, freedom of speech does not mean the right to vilify.

It is that statement that I underscore and accept.

It has been pointed out that the Speaker of the Senate, the Honourable Senator Kinsella, has taken the time to speak to this proposed legislation. He noted not only the comments that have been made on the floor in this place, but also that the Human Rights Commissions and tribunals were set up to handle cases of discrimination in employment and accommodation practices.

The Canadian Human Rights Tribunal describes its work on its website. It states:

> The purpose of the *Canadian Human Rights Act* is to protect individuals from discrimination. It states that all Canadians have the right to equality, equal opportunity, fair treatment, and an environment free of discrimination. The Canadian Human Rights Tribunal (CHRT) applies these principles to cases that are referred to it by the Canadian Human Rights Commission (CHRC). The Tribunal is similar to a court of law, but is less formal and only hears cases relating to discrimination.

The purpose of the intended institution is to provide civil remedies where one person has been injured by another. In my experience, these institutions deliver on their mandate according to the highest standards. However, section 13 is an anachronism within that mandate. I go back to when the commission was being set up. It is instructive to note that it was contemplated for some time for the purposes that I just enumerated. However, at the time of enactment, it would appear from parliamentary records that section 13 was included in the legislation to address activities of individuals and groups who were using the telephone system to disseminate hate messages.

In submissions before the House of Commons Standing Committee on Justice and Legal Affairs in 1977, prior to the enactment of the Canadian Human Rights Commission, the then-Minister of Justice, the Honourable Ronald Basford, made the following remarks on proposed section 13:

> Clause 13 is the hate message section, which is here as a result largely of actions in Toronto... where some of the extreme groups have adopted the practice of having recorded hate messages on the telephone and this is an attempt, I think a balanced attempt, to endeavour to deal with that situation. I think the key words in terms of a hate message is that it has to be communicated telephonically repeatedly. I underline the word "repeatedly," that it has to be part of a pattern, part of a behaviour.

Former Minister Basford added:

> ... what is sought is some method of preventing these messages which, I would say, surely serve no social purpose.

Honourable senators, it is evident that this section was not part of the human rights development and process. However, at the time of its implementation, there was an issue in Toronto and, as parliamentarians are, they wanted an answer, found an answer, and put section 13 into the bill in 1977. I commend then-Minister Basford for being open and forthright about that.

Nothing has changed. No one has assessed that section. A further amendment was made when a package of amendments came forward on October 15, 2001, in response to 9/11, with

intrusive measures that the government was introducing at the time.

Much debate took place as to whether the subject of this activity might unnecessarily discriminate against one community group or faith. A government release at the time stated:

> These necessary measures target people and activities that pose a threat to the security and well being of Canadians. This is a struggle against terrorism, and not against any one community group or faith. Diversity is one of Canada's greatest strengths, and the Government of Canada is taking steps to protect it.

A further amendment was put in place to talk about not only telecommunications and antiterrorism, but also the Internet and other like mechanisms.

Honourable senators, we have not approached the issue of hate short of the Criminal Code in any systematic, appropriate or modern way.

• (1600)

I thank Senator Jaffer for pointing out the comments that have been made about the cyberbullying report. We made six recommendations, all about cyberbullying, but we did not think there was much that we could do. We asked whether cyberbullying could be dealt with through a change to the Criminal Code or other means, and we were told that the emphasis should be on education, on strengthening communities and working with the provincial and territorial governments. All six recommendations were accepted unanimously by the committee.

I thought that over a number of decades we would address hate issues in Canada through modern techniques and instruments. We have not done that. We have attempted to protect section 13, which deals only with the narrow band of electronic messaging. It does not address all the other methods of spreading hate that exist in modern society.

It is interesting that not many people spoke about section 13 when we studied cyberbullying and the use of the Internet. It is a worldwide phenomenon and is difficult to police. As Senator Baker pointed out, the government had a proposal but did not proceed with it. At least it was an attempt.

Honourable senators, we can continue to protect section 13 and say that we have done our job and are attacking the issue of hate in Canada. However, I do not believe that would be true. I believe it is time to look at this entire issue. The Criminal Code needs revision.

Senator Nancy Ruth has made some excellent points. There are pieces missing in the Criminal Code. Maybe they are missing because we keep saying that section 13 is good enough. It is not.

The Western provinces and territories met recently. They are putting their emphasis on education. They are training teachers to identify bullying at a very early age to deal with this issue before it becomes one that must be dealt with through legislation and the Criminal Code.

Honourable senators, we could talk about why Bill C-304 is here now and what will happen if section 13 is repealed. Well, we have a year. Our challenge is to look closely at hate speech and at what we should be doing for children in today's modern society. We are talking about something that was put into the Canadian Human Rights Act in 1977 that has detracted from the good work of the Human Rights Commission and, I am sorry to say, has not been of the greatest benefit in addressing issues of hate and hate speech.

In fact, I believe that we have had some cases before the Human Rights Commission that should rightfully have been dealt with by the Criminal Code. Yesterday the Canadian Civil Liberties Association said some very compelling things. They said that many cases that the Human Rights Commission has dealt with probably should have been dealt with in criminal court. These are not cases that can be conciliated. In these cases, people will not listen to each other and reach a compromise. These are not people who react to civil interventions. These are people whose minds are made up in an arbitrary fashion and, despite what we do and perhaps even despite being dealt with under the Criminal Code, will maintain their beliefs. In the *Whatcott* case, intervention was not a preventive tool.

Honourable senators, it is important that we not concentrate on holding onto section 13. I am afraid that we will all go home and say that we have done our job, we have helped Canadian society and we are better parliamentarians. We are not. This has gone on for years. Maybe this will provoke the government, Parliament and us to really do something about hate and hate speech in a preventive mode. It could be through the Human Rights Commission or the Criminal Code, but I think it should be something stand-alone with its own procedures.

Honourable senators, I intend to support this bill, not for the reasons that some of my colleagues have given, but because we will be under the gun of a one-year deadline to do something about this. If the government does not respond in very short order, our Human Rights Committee or Legal and Constitutional Affairs Committee or perhaps a special committee should take on the task of putting together a coherent system that makes sense, one that will help young people. We do not have this now and section 13 is not the answer in today's modern society.

Hon. Art Eggleton: Will honourable senators grant a five-minute extension?

Hon. Senators: Agreed.

Senator Eggleton: The senator says that there is a one-year deadline. She seems to be distancing herself from the government, but she sits on the government benches and is in the government caucus. What does the government intend to do within this one year?

Senator Andreychuk: The government has tried to do what other governments around the world have been doing and what our Human Rights Committee has been struggling to do. Hate was something said or printed, but suddenly the Internet provided the capability of perpetrating hate worldwide.

I am not sure anyone has the answer. If you will notice, we went from telecommunications to the Internet, and now we know it is much more pervasive on media such as Twitter and Facebook.

We also know that social conditioning has changed. Young people are putting things on the Internet that are repeated again and again. It is no longer controllable in the same way.

I am not distancing myself from the government. I want my government to listen to me, because I think our committee did a good job. Some of us have been wrestling with this issue. Senator Kinsella, Senator Oliver and I have been talking about human rights issues and hatred in here for, I am sorry to say, two decades already. It is about time that we took ownership, put the government's feet to the fire and give them some recommendations.

There is legislation to control electronic systems. That is not my expertise. The government struggled with that, and I think they need to struggle further with it. In the interim, I think we can put together a more cohesive approach than just saying section 13 is gone and we will deal with this through the Criminal Code. It is too late for that. The next generation deserves more.

I appreciated the questions that Senator Eggleton asked in the Human Rights Committee. How can we do better? I am saying: Let us do better than section 13.

Senator Eggleton: Maybe we can do better than section 13, but should we not retain section 13 until we have a replacement for it? Senator Andreychuk is saying that we need to deal with hate speech, that we have talked about it for years but have not been successful. Normally you do not repeal a law before you have a replacement if you think the issue is very important and needs to be addressed.

Senator Andreychuk: We were told that the process in the Human Rights Commission is very expensive and puts the onus on the individual, and that it takes at least eight months to start a case. I think that without section 13 we can move faster against hate speech than the Human Rights Commission can.

Second, section 13 deals with a very narrow band of cases. If there were a crisis, I guess we would have to pass legislation, as other parliaments have, however flawed it was. I have no confidence because I have repeatedly asked for changes to section 13. Everyone says that it will be improved, but nothing has ever happened.

What I am asking for now is —

• (1610)

An Hon. Senator: It was your government.

Senator Andreychuk: It was not just my government; it was the previous government. Anne McLellan in 1999 looked at changes to the Human Rights Commission. It did not proceed.

We could just rest on that section, which is a very narrow band that has not been used appropriately, and we can go home. I am suggesting that we have a strategy in place by the time we come back. I know there are people in this room who want to work on it.

Senator Jaffer: Will the honourable senator accept another question?

Senator Andreychuk: Yes, if I have time.

Senator Jaffer: I thank the honourable senator for her overview of the evolution of section 13. I appreciate her argument that the piecemeal evolution of section 13 has resulted in a framework that could be more effective than it is.

Rather than repeal this section, should this bill not prompt a broader conversation about how section 13 should be strengthened and expanded to, as she says, "address the ocean of hate that exists in our society"? Would not the fact that we have section 13 to study in the next year give us the impetus that the honourable senator is asking of us to make changes?

Senator Andreychuk: I do not think so, with respect. We studied cyberbullying, and that is one of the issues. However, we also have to look it from the Internet and anti-terrorism legislation. The honourable senator knows what is going on with data now; it is a much greater issue than section 13. I think we have to address this whole area rather than the little pieces we have inside.

The Hon. the Speaker: Continuing debate?

Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: Honourable senators, the first question is the motion in amendment. It is moved by the Honourable Senator Eggleton, seconded by the Honourable Senator Robichaud:

> That Bill C-304 be not now read a third time, but that it be amended —

Shall I dispense?

Some Hon. Senators: Dispense.

The Hon. the Speaker: I shall note that the key phrase is adding "gender identity" to the prohibited grounds for discrimination in the Canadian Human Rights Act. Is the motion clear, honourable senators?

Those in favour of the motion in amendment will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion in amendment will signify by saying "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The whips have advised that there will be a 30-minute bell. Therefore, the vote will take place at 20 minutes to 5:00.

Call in the senators.

• (1640)

Motion in amendment by the Honourable Senator Eggleton negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker
Callbeck
Campbell
Cordy
Cowan
Dallaire
Dawson
Day
De Bané
Downe
Dyck
Eggleton
Fraser
Hervieux-Payette
Hubley
Jaffer
Joyal
Lovelace Nicholas
Mercer
Merchant
Mitchell
Moore
Munson
Nancy Ruth
Rivest
Robichaud
Segal
Smith (Cobourg)
Tardif
Watt
Zimmer—31

NAYS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Bellemare
Beyak
Black
Boisvenu
Braley
Buth
Carignan
Champagne
Comeau
Dagenais
Demers
Doyle
Eaton
Enverga
Fortin-Duplessis
Frum
Gerstein
Greene
Housakos
Lang
Manning
Marshall
Martin
McInnis
McIntyre
Meredith
Mockler
Neufeld
Ngo
Ogilvie
Oh
Oliver
Patterson
Plett
Poirier
Raine
Rivard
Seidman
Seth
Smith (*Saurel*)
Stewart Olsen
Unger
Verner
LeBreton
MacDonald
Maltais
Wallace
Wells
White—52

ABSTENTIONS
THE HONOURABLE SENATORS

Nolin—1

• (1650)

The Hon. the Speaker: The motion on the floor was moved by the honourable Senator Jaffer, seconded by Senator Munson, that Bill C-304 be not now read a third time but that it be amended by —

Shall I dispense?

Some Hon. Senators: Yes.

The Hon. the Speaker: All those in favour of the motion will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will signify by saying "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the nays have it.

And two honourable senators having risen:

The Hon. the Speaker: Do the whips have advice?

Senator Munson: Now.

Senator Marshall: Now.

Senator Munson: You think? Okay. Now, yes.

The Hon. the Speaker: It is agreed, honourable senators, that I will now put the question for the standing recorded vote. The question is on the motion moved by the honourable Senator Jaffer, seconded by the honourable Senator Munson, that Bill C-304 be not now read a third time but it be amended —

Motion in amendment by the Honourable Senator Jaffer negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker
Callbeck
Campbell
Cordy
Cowan
Dallaire
Joyal
Lovelace Nicholas
Mercer
Merchant
Mitchell
Moore

Dawson
Day
De Bané
Downe
Dyck
Eggleton
Fraser
Hervieux-Payette
Hubley
Jaffer
Munson
Nancy Ruth
Rivest
Robichaud
Segal
Smith (*Cobourg*)
Tardif
Watt
Zimmer—31

NAY
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Bellemare
Beyak
Black
Boisvenu
Braley
Buth
Carignan
Champagne
Comeau
Dagenais
Demers
Doyle
Eaton
Enverga
Fortin-Duplessis
Frum
Gerstein
Greene
Housakos
Lang
LeBreton
MacDonald
Maltais
Manning
Marshall
Martin
McInnis
McIntyre
Mockler
Neufeld
Ngo
Ogilvie
Oh
Oliver
Patterson
Plett
Poirier
Raine
Rivard
Seidman
Seth
Smith (*Saurel*)
Stewart Olsen
Unger
Verner
Wallace
Wells
White—51

ABSTENTIONS
THE HONOURABLE SENATORS

Meredith
Nolin—2

The Hon. the Speaker: The question on the floor is the motion by the Honourable Senator Carignan, seconded by the Honourable Senator Poirier, that Bill C-304 be read a third time. Those in favour of the motion will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will signify by saying "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my view, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: When do you think?

Senator Marshall: Now.

Senator Munson: One more time. Say it now. It is now or never.

The Hon. the Speaker: Having heard from the Government Whip and the Opposition Whip, the vote will be taken now. To remind honourable senators, it is the motion moved by the Honourable Senator Carignan, seconded by Honourable Senator Poirier, that Bill C-304 be read a third time.

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

YEAS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Beyak
Black
Boisvenu
Braley
Buth
Carignan
Champagne
Comeau
Dagenais
Demers
Doyle
Eaton
Enverga
Fortin-Duplessis
Frum
Gerstein
Greene
Housakos
Lang
LeBreton
MacDonald
Maltais
Manning
Marshall
Martin
McInnis
McIntyre
Mockler
Neufeld
Ngo
Ogilvie
Oh
Patterson
Plett
Poirier
Raine
Rivard
Seidman
Seth
Smith (*Saurel*)
Stewart Olsen
Unger
Verner
Wallace
Wells
White—49

NAYS
THE HONOURABLE SENATORS

Baker
Callbeck
Campbell
Cordy
Cowan
Dallaire
Dawson
Day
De Bané
Downe
Joyal
Lovelace Nicholas
Mercer
Merchant
Mitchell
Moore
Munson
Nancy Ruth
Nolin
Rivest

Dyck	Robichaud
Eggleton	Segal
Fraser	Smith (Cobourg)
Hervieux-Payette	Tardif
Hubley	Watt
Jaffer	Zimmer—32

ABSTENTIONS
THE HONOURABLE SENATORS

Bellemare	Oliver—3
Meredith	

(1700)

Hon. Marjory LeBreton (Leader of the Government): Before we move on to the next order, I would like to register for the record that I cast my vote, as did many of my colleagues, in honour of Senator Doug Finley, our departed colleague.

Some Hon. Senators: Hear, hear.

FINANCIAL ADMINISTRATION ACT

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

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Mercer, for the adoption 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. Wilfred P. Moore: Honourable senators, I rise today to express my disagreement with the report of the Standing Senate Committee on National Finance regarding Bill S-217, an Act to amend the Financial Administration Act (borrowing of money.)

Initially, I would like to thank Senators Day, Callbeck, Chaput and Dallaire for their thoughtful speeches in support of moving Bill S-217 forward.

While I appreciate the work of the committee and its members, I find the report's arguments regarding Bill S-217 to ring hollow, to say the least.

The committee report purports to explain what the committee heard in its study as reason to stop the consideration of the bill. It does not.

The report documents the evidence we heard from government witnesses, the very same people who slipped this change into the 2007 Budget Implementation Act in the first place. There were actually other witnesses, witnesses who did not agree with the government's opinion. It feels like the pendulum has swung a bit too far here in ways that are detrimental to the process that Bill S-217 attempts to correct, but also to the very process by which we study legislation.

Let me address the points made in this report.

First, your committee was told that in comparison to the previous framework, which Bill S-217 seeks to restore, the present borrowing authority regime has provided for a more efficient, flexible, responsive and prudent financial management and greater transparency and accountability. Witnesses who appeared before the committee emphasized the important part the current borrowing authority process played in facilitating Canada's actions in the fall of 2008 in the global financial crisis.

The government witnesses said this — as I said earlier, the same people who made the change in the first place. What the other witnesses said was that in fact Parliament is more than capable of responding to a crisis as the ability to recall Parliament exists in the standing orders of both houses.

Witnesses also stated that there can be no greater transparency than Parliament. Legislation in the form of a borrowing authority bill for members to debate is the ultimate accountability.

Witnesses also stated that Parliament would have dealt with the emergency of 2008 in appropriate time. Government witnesses discussed a two-week period for the actions to be taken. Thus, Parliament would be more than capable of meeting this time frame. We know this is so because we have done it before.

Mr. Peter Devries, when speaking in committee about events in the 1990s, said:

> 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 intense period of time.

The second item in the report says the committee heard that the current regime introduced enhanced disclosure requirements on anticipated borrowing and planned uses of funds. In part, this is achieved through the debt management strategy, which is included in the budget and is debated and voted on by members of the House of Commons each year. The committee was told that the debt management strategy contains information regarding anticipated financial requirements, borrowing requirements, refunding requirements as well as detailed information outlining planned sources and uses of funds. The committee was told that this information forms the basis for the submission the Minister of Finance makes to the Governor-in-Council on borrowing authority.

The debt management strategy existed prior to 2007, so this is basically a red herring.

The report states that the "debt management strategy forms the basis for the submission the Minister of Finance makes to the Governor-in-Council on borrowing authority." It should state that this document "forms the basis for the submission that the Minister of Finance makes to Parliament on borrowing authority," which is the process that we properly followed for 140 years, until 2007.

Quite simply, honourable senators, the enhanced disclosure requirements could be maintained while still bringing a bill to Parliament, which to some witnesses who testified was an even greater example of transparency.

The third point of the report states that the committee was also informed that, in addition to the debt management strategy, the government is required to publish a debt management report. This report provides a reconciliation of the projections in the debt management strategy and what was actually required by the government. This information, like the debt management strategy, is available to Canadians and parliamentarians. It was also noted to the committee that under the current system, the debt management report is required to be published within 30 days of the release of that year's public accounts, 15 days less than under the previous process.

The debt management report, like the debt management strategy, existed prior to 2007, but will still be tabled in Parliament *after* the borrowing is done. The government witnesses provided no reason as to why this report could not be tabled while at the same time coming to Parliament with the borrowing authority bill, as was done prior to 2007.

This again is another red herring.

Furthermore, Bill S-217 could be amended to allow for even prompter publishing to 15 days after the release of public accounts, if speed is the final goal.

The fourth point is that the committee also noted that Bill S-217 as presently drafted does not have a coming-into-force provision. This omission constitutes a significant structural concern for members of the committee. If this bill were to receive Royal Assent, the proposed changes to the Financial Administration Act would be immediate. My comment to that is restoring changes to the status quo immediately would be the correct thing to do. As witnesses testified, the status quo functioned for 140 years without a problem.

• (1710)

On the fifth point, it is also important to note that the process related to borrowing authority has changed a number of times in the last half century. Various governments have attempted to find a borrowing authority process that balances the need for parliamentary oversight with the requirement for efficiency and flexibility. It is the committee's opinion that the present borrowing authority process strikes an appropriate balance between these two often competing objectives.

Honourable senators, the last time changes were made to the process of the borrowing authority prior to 2007 was in 1975, when the standing orders were changed to allow for an independent debate in the form of a borrowing authority bill separate from the estimates. The change made then was not to remove parliamentary oversight; indeed, it was to strengthen it in order to add to transparency.

Honourable senators, we heard what balance means between the government and Parliament from Dr. Lori Turnbull. It bears repeating because it is the exact opposite of what we heard from the government. I quote her:

> If you go too far towards the efficiency model then democracy gets in the way, Parliament gets in the way, and you don't want that. You do not want to be in the situation where there is not the proper value given to parliamentary scrutiny and approval.

This quote not only deals with the manner in which parliamentary scrutiny is now reduced for borrowing authority, but it also goes to the point of this debate here today; that is, we are not giving proper scrutiny to Bill S-217 if we accept the recommendation of this majority report.

As parliamentarians, I do not believe we should get into the practice of shutting a study down because of one side of the argument. We do not make decisions in a court of law based on the Crown's argument alone; we include the argument of the defence as well. That is balance.

As one witness stated, borrowing authority is a money bill; money bills need to be debated by Parliament. This is a basic tenet of our parliamentary system. It is why Parliament was created. As our former colleague Senator Tommy Banks put it:

> For 140 years, from 1867 until 2007, governments — 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.

Honourable senators, this is not a simple change in administration; it is not an adjustment to the manner in which a program is delivered. The oversight by Parliament of the borrowing and spending of money is the reason why we are sitting here today.

Honourable senators, I do not believe the government has made the case to justify the conclusion reached in the majority report before us. I do not believe the government witnesses could justify changes made in 2007.

Honourable senators, as I was preparing for today, a thought occurred to me: What if the government had come to Parliament in 2007 with a separate bill and asked for the powers over borrowing authority contained in Bill C-52? What would have happened? What would have been the reaction of Parliament when told that the government proposed removing its authority over borrowing? Based on the reasons that the government provided us today, I am confident that the house and the Senate would have said a resounding "no" because the reasons given to us would have held no water in 2007, and they still hold no water in 2013.

Just think about this approach: You want to remove Parliament from approving borrowing by the government on behalf of the people of Canada because you say it will provide greater transparency, because you say we need it in case of emergencies, because you say other people are doing it. We would have said "no." We probably would have screamed "no" from the rooftops, and honourable senators, we would have been right and we would still be right today with Parliament having that oversight in place. Our country would be doing just fine.

That is why the government did not bring it in, because they knew that that would not happen, that it would not get by the

people. The representatives in the House of Commons would not have accepted that, and that is why this was done by stealth.

I do believe that parliamentary oversight in the form of a borrowing authority not only provides more transparency and accountability to the system but can exist in harmony with the government's original goal of flexibility and efficiency. In short, honourable senators, we can have it both ways while maintaining the supremacy of Parliament in its power to approve borrowing by the government.

I hope honourable senators will agree with me and reject this report. It does not represent what we heard at committee and does a disservice to the process to just shut down debate on Bill S-217 based on the opinion of the government alone. As parliamentarians, we should be providing the proper checks and balances on government and not abandon our duties, whether it be approving the government's ability to borrow or allowing the proper debate to occur here. After all, what better place to talk about Parliament than in Parliament itself?

If the government wishes to confirm its respect for the role of Parliament, at the very least, it should let Bill S-217 proceed to full debate in Parliament. The foundation of parliamentary authority is the principle of responsible government, which in 1867 to the Fathers of Confederation meant a cabinet responsible to the House of Commons and the House of Commons answerable to the people. If the Senate decides to prevent Bill S-217 from proceeding, it will be an accomplice in the removal of that responsibility of the cabinet to the House of Commons, thus preventing the House of Commons from being answerable to the people.

We are here to strengthen our democratic institutions, not to weaken them. We are the caretakers of our parliamentary institutions, and we are charged with maintaining them in at least the same strength as they were when handed down to us. By refusing to let Bill S-217 proceed forward, we are removing a cornerstone of our responsible government. Thus, I urge all honourable senators to reflect deeply on this matter and vote against the recommendation of this report.

Hon. Céline Hervieux-Payette: Honourable senators, I would like to ask a question, but before I do that, I congratulate my colleague for having done the research and for bringing back one of the essential ingredients of our democratic system, which is having Parliament vote for the amount of money we pay on behalf of Canadians.

Does the honourable senator remember if other democracies have a system whereby the government — the cabinet, the executive — gives itself permission to spend money that has not been voted by Parliament?

Senator Moore: I am not aware of any such arrangement. When I think about what happened here and the bogus reasons given for it, it is absolutely upsetting. It undermines everything we learned as kids going to school, everything we learned in civics classes about the history and the formation of our country.

Whether or not others are doing it, the important thing is what do we do for the Canadian people? Where is the responsible government? I am looking at people here from Nova Scotia; 1848 is when this responsible government idea took root in Canada, in my province, and we cannot let our people down. We cannot let down Sir John. A. Macdonald, Sir George-Étienne Cartier or Joseph Howe.

Senator Hervieux-Payette: I thank the honourable senator for that answer. If we can resume the question, we can say it is a totally flawed process in examining the expenditures of government.

I would like Senator Moore to remind our colleagues of the process whereby not only parliamentarians but Canadians alike were aware of projects, the borrowing authority and the report on the budget. We had an expert from the Department of Finance explain it to us at committee, but I would like the honourable senator to emphasize the way things should happen. It seems it is not only the borrowing authority that is flawed but the whole process.

Senator Moore: May I please have more time, honourable senators?

Hon. Senators: Agreed.

Senator Moore: In the past, the government put together a program that came to the House of Commons. It set out the process in detail, how much money it wanted to borrow, the interest rate it was trying to get and the markets where it would seek that. All of that was set before the House of Commons so that the representatives of the people in the house could know those things, have input on them and debate them. It is up to the people in the House of Commons to give approval. It then goes back out to the Crown and they can do what the people have authorized them to do, not the reverse. We should not be doing it this way; it should be returned to the system we had.

• (1720)

The witness from the Department of Finance made it quite clear that we could have handled the past economic turn down in 2008-09. One justification was that this enabled us to get funding for the Crown corporations. I put questions to him; it could have been done then. He said, "We would have had to raise more money." I said, "Yes, but you could have gotten approval." He said, "Yes; we could have." All of the reasoning behind this just does not make sense and really does not stack up to what we were giving up.

What price do you put on giving up such a big piece of our whole democratic system? The bureaucrats drove it, but I think it is wrong and it should be restored.

(On motion of Senator Mercer, debate adjourned.)

CONFLICT OF INTEREST ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Moore, for the second reading of Bill S-222, An Act to amend the Conflict of Interest Act (gifts).

Hon. Wilfred P. Moore: Honourable senators, I would like to say a few words in support of Bill S-222, An Act to amend the Conflict of Interest Act (gifts).

Senator Day has taken on a worthy cause in Bill S-222. I believe we should be more than open to what this bill attempts to do, which is to close a loophole in the Conflict of Interest Act, which is a positive move indeed.

Honourable senators, this is the third time this bill has been introduced, and I commend Senator Day for his efforts in getting this done. As he explained, at the moment there exists a gap in the code whereby a friend, as it is currently termed, can give gifts to a member of the house, or to cabinet ministers, or to senators, without it being reported. Leaving the word "friend" in the legislation puts all parliamentarians in a tricky situation. While we feel we may be following the rules, these rules may not seem as transparent to your average Canadian. For example, as Senator Day put it, even if it "might reasonably be seen to have been given to influence the public officer-holder in the exercise of an official power, duty or function, that was okay if it was a gift from a friend." Beware of friends bearing gifts, I guess, to be sure, but we need to deal with the perception that this term "friend" leaves.

These days perception is everything on Parliament Hill and in other countries as well. We have heard stories of congressmen and senators in the United States being flown about in private jets owned by those who would influence them with their gifts. We are not there yet, obviously, but we should not allow ourselves to be perceived to be in that same boat — or jet, as it were. We find ourselves in a murky world. We are invited to receptions; we have people phoning to discuss legislation; tickets to sporting events are offered; and there is travel. With today's atmosphere, and with Canadians expecting so little from us at times, would it not be better for us to start being more proactive in managing the ethics code?

We also know that the $200-level of reporting is causing problems for the Ethics Commissioner, who stated in her annual report in 2012 that the threshold should be $30 in order to get parliamentarians to take the code more seriously as there is a perception that anything under $200 is acceptable. As Senator Day mentioned, a gift of $200 or more must be reported in a timely way to the Ethics Commissioner. Numerous gifts totalling $200 from one donor over a year also must be reported.

In England, honourable senators, I think the standard there is anything £30 or more must be reported. Maybe the $30-item, somewhere in there, is the standard that we should be striving for. I think we are putting the Ethics Commissioner in a bit of a bad spot. Canadians probably have a different idea of what a contribution from a friend might mean. There is a misunderstanding by Canadians regarding the role of the Ethics Commissioner when it comes to enforcing a code that has a loophole like this.

It is interesting that a gift of any amount that could be perceived as influence on the public officer-holder — that is, one of us — the recipient, it is that person who is the determiner of whether or not the gift was meant to influence opinion. The only thing one can do, basically, is not accept any gifts at all. I think that needs to be fixed. Leaving the word "friend" in there is the exception to that determination of whether or not it is meant to influence. This exception is clearly open to abuse and negative perception. Hence, the obvious and much-needed repair is to delete the word "friend" from the Conflict of Interest Act.

Canadians cannot put the blame on the Ethics Commissioner. It is a loophole that is there, and she cannot close it. It is up to us. I urge all honourable senators to do so and to support this initiative by Senator Day.

Hon. Terry M. Mercer: Honourable senators, I have my notes prepared for this, but I think that I need to have another look at them. I would be prepared to speak tomorrow. Therefore, I move the adjournment of the debate.

(On motion of Senator Mercer, debate adjourned.)

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Leave having been given to revert to Delayed Answers:

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table an answer to the oral questions raised by the Honourable Senator Moore on May 1 and May 29, 2013, concerning public safety — cyber security.

PUBLIC SAFETY

CYBER SECURITY

(Response to questions raised by Hon. Wilfred P. Moore on May 1 and May 29, 2013)

> In the face of continuously evolving and increasingly sophisticated cyber threats, the Government of Canada is doing its part to protect our digital networks and protect Canada's economic prosperity, national security and quality of life. Our communities and all of our critical infrastructure sectors depend on secure cyber systems. Keeping our cyber networks secure is a shared responsibility where every owner and operator of a computer system must take the appropriate measures to protect themselves.
>
> The Government has been in the business of information and communications security for decades. Information security is part of the responsibilities of every department

and agency. Canada's Cyber Security Strategy is our plan to address evolving cyber threats in a coordinated way across government. We have resourced that plan with specific funds and initiatives that build on our considerable expertise in this area.

Canada's Cyber Security Strategy was announced in October 2010 with initial funding of $90 million over five fiscal years (2010-11 to 2014-15). An additional $155 million, also over five fiscal years (2011-12 to 2015-16), was announced in October 2012. These funds were specifically allocated for the implementation of the Strategy. This total of $245 million represents new funding and builds on significant existing and longstanding government investment in information technology security.

The $90 million announced in 2010 is allocated to all three pillars of the Strategy, with the majority of funds going to Pillar 1 (securing government systems). Funding was allocated across nine departments and agencies:

- Communications Security Establishment Canada;
- Public Safety Canada (PS);
- Royal Canadian Mounted Police;
- Treasury Board Secretariat;
- Public Works and Government Services Canada / Shared Services Canada;
- Department of Justice;
- Department of Foreign Affairs and International Trade;
- Canadian Security Intelligence Service; and
- Defence Research and Development Canada.

The $155 million announced in 2012 focused on pillars 1 and 2 of the Strategy (securing government systems and securing vital cyber systems outside the federal government). Funding was allocated to four departments and agencies:

- Communications Security Establishment Canada;
- PS;
- Treasury Board Secretariat; and
- Shared Services Canada.

A key aspect of the implementation of the Strategy is the Canadian Cyber Incident Response Centre (CCIRC) housed in PS. CCIRC provides authoritative advice and support to owners and operators of non-federal systems, and coordinates information sharing and incident response. CCIRC has personnel onsite 15 hours a day, seven days a week, 365 days a year. This covers core business hours in all time zones across Canada. Through the implementation of a new telephone system, CCIRC personnel remain directly accessible 24 hours a day, seven days a week to provide timely and responsive service to its public and private sector partners.

Regarding interactions between Canada and other countries on cyber security matters, Canada engages with many nations through a number of international and multilateral fora. We do not comment on alleged threats from specific countries or organizations, as there is nothing to gain from singling out any specific incident or country. Our focus is on building the strongest defence possible to keep our vital systems secure, while engaging internationally to promote a culture of cyber security in the context of a free and open internet.

Any country that engages in economic espionage or attacks Canadian systems is a concern. We are certainly aware of where threats come from and we are constantly exchanging information with our international partners on developments in that respect. The Government takes all of the information it receives into consideration in the ongoing implementation of *Canada's Cyber Security Strategy*.

[*English*]

STUDY ON PRESCRIPTION PHARMACEUTICALS

TWENTIETH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE—GOVERNMENT RESPONSE 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 government response to the twentieth report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled: *Prescription Pharmaceuticals in Canada: Post-Approval Monitoring of Safety and Effectiveness*.

• (1730)

[*Translation*]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

EIGHTH REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Braley, seconded by the Honourable Senator Martin, for the adoption 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. Roméo Antonius Dallaire: Honourable senators, my speech is not very long. I would just like to say a few words about this report on a topic that was debated thoroughly in committee. It was about Corporal Roland Beaulieu, who was

supposed to testify before the Standing Senate Committee on National Security and Defence, but was prevented from coming here on the orders of the RCMP.

Through its work, the committee achieved a rather commendable objective with regard to the prerogatives of Parliament and the importance of insisting that the witnesses be available to testify.

[*English*]

I think it makes sense for the committee to say that it sees no reason to pursue the matter further and certainly no reason to give consideration to a sanction or censure. The committee then goes on to say that it is convinced by the testimony and actions before the committee that this matter has been rectified for future requests by Parliament regarding the RCMP.

Honourable senators will know that we have been involved quite significantly over the last while in terms of discussing the leadership of the RCMP. The Minister of Public Safety sponsored Bill C-42, which had a lengthy, viable and energetic debate, in which more authority was given to the chain of command of the RCMP to accomplish its internal requirements of maintaining good order and discipline and, in fact, also having the tools for a certain level of oversight and transparency.

It was interesting, however, during that time that a fair amount of concern was raised by RCMP members and interested parties that maybe the leadership structure was not able to handle this extra power, that maybe it did not have the skill set or the depth of professionalism, and that maybe they did not have the development required of a chain of command in a paramilitary organization to handle that much power and that the fear of abuse of power was still there, because much of the debate at the time started from abuse of power at the lower levels, mostly under the harassment scenario.

That was followed by our study on harassment in the Defence Committee and the tabling of what I consider to be a first-class report, which I hope the RCMP leadership will see positively as an instrument to help them. I believe the minister is satisfied with the recommendations, in their depth and breadth, to provide the RCMP with that guidance.

However, it is interesting that the committee, in its specific study of this case, felt confident that the RCMP will have sorted out or will sort out the problems it had with regard to maintaining good order and discipline in its chain of command, that the proper rules and regulations are being applied, and that individuals are being so protected.

I rise here today because I have a few more doubts than perhaps other honourable senators do, and I thought it important to qualify that as we ebb on this subject. Hopefully the Defence Committee, as is indicated, will receive from the minister, within a year, a report on how both Bill C-42 and the recommendations have progressed.

The reason I have doubts is because I have seen and lived this before. Although there are many promises by a chain of command, it does not necessarily mean that they are being implemented. It took political oversight and leadership, in the presence of a minister like Doug Young, to actually line up the generals and give them some pretty serious marching orders with regard to essential reforms required by the chain of command to bring the organization back to a level of credibility internally, for the subordinates toward the leadership, and externally, so that the Canadian people would feel that the leadership within the forces actually had their act together in the post-Somalia situation.

What I saw happening in the Defence Committee is not necessarily what I see evolving in the RCMP. I brought a couple of examples of material that was produced in order to meet this extraordinary challenge of trying to change a culture, influence ethos, and advance the professional development of the leadership cadre in an organization that calls itself paramilitary but that is really one of the Conservative bastions of our society.

I feel that I should raise these concerns because, in testimony, the RCMP was insistent in saying that it is a paramilitary organization. It is historically military-based. It has a chain of command. Its leadership ethos is supposed to be evolving from one that you see in the military structure. Therefore, one would say, "Right, this is not a unionized police force; this is a paramilitary organization." As such, it has to take from the top down, in a structured way, how it will develop its leaders, what they will get in terms of information, how it will adjust to what civil society wants of it these days, and, in fact, how to get ahead of the game and become the value-added asset to our nation with regard to its continued security and advancement.

In the late 1990s and into the turn of the century, as an example, another Conservative bastion, the Armed Forces, took some quite draconian measures. It required the firing of three chiefs of the defence staff to do it, but it was ultimately implemented.

The Armed Forces created a number of organizations. It published extensively on how to help that chain of command evolve. I brought a couple of copies of *The Military Leadership Handbook*, which never existed before; and *The Human in Command: Exploring the Modern Military Experience*. I have here a book on command at the operational level, *The Operational Art: Canadian Perspectives - Leadership and Command*. I have another one in French, *L'idéologie professionnelle et la profession des armes au Canada*. These are a few of the extensive pieces of work that were published to give that guidance and implement that reform.

I would like to put on record a perspective of how it happened, which may be used as a reference to complement the first-class report done by this committee. I think this is worthy and might be of use because of certain concerns I have, from my own experience as well as from what we have seen recently from the leadership of the RCMP.

I will read material that I have written before and that I hope might be of interest and of use.

[*Translation*]

> Between 1997 and 2004, the Canadian Forces executed a program of reform and transformation to considerable effect.
>
> The Canadian Defence Academy, with its subordinate units, the Royal Military College, the Canadian Forces College and the Non-Commissioned Member Professional

> Development Centre, is moving ahead decisively with a renewed and effective professional development system for both officers and NCOs throughout the Canadian Forces. *Duty With Honour* has been followed with the publication of *CF Leadership: Conceptual Foundations*.

• (1740)

This is the first thorough review and reaffirmation of leadership theory and doctrine since the early 1970s. It was necessary because nearly 50 years has passed since the last reform.

In the 1970s, the foundation was built on the experience of veterans from the Second World War. It was based more on experience than on intellectual rigour or structured development. However, it became clear that the methodology was flawed when it came time to move from one thing to the next without a well-developed structure.

I will continue my quotation:

> The new leadership manual maps professional attributes directly to key leadership concepts. Responsibility is linked to mission focus, expertise with leadership competence, identity to the leadership functions of cohesion and teamwork and military ethos shaping leader conduct values.

Leadership is a recurring theme. Continuing my quotation:

> Thus, ethos informs mission success, the process of internal integration and external adaptation, and especially, leader responsibility for member well-being.
>
> ...at senior rank levels, the responsibility and authority to oversee system performance, develop system capabilities and make major policy, system and organizational changes, is assumed.

Again, the accent is on higher ranks bringing forward these reforms and applying them. Continuing my quotation:

> Nonetheless, the threats to professionalism, both from within and without, remain potent. Countering these threats requires not only vigilance and effort but also a thorough understanding of professional ideology, within the context of a professional development construct capable of not only sustaining but also constantly renewing the profession of arms.

We must remain up to date. Once again, I will continue with my quotation:

> This construct begins with an understanding of institutional effectiveness defined as a combination of organizational effectiveness, that is, the outcome values representing what needs to be accomplished and professional effectiveness, or the conduct values representing how it gets done.

That is at the heart of how an organization should operate. It also says:

> Professional ideology itself occupies a privileged position in the proposed professional development construct. Initially, practitioners need to internalize the appropriate ideology and conduct themselves in accordance with its dictates and claims. Progression in the profession then involves the responsibility for developing professional ideology in subordinates. The gravest responsibilities are those associated with the overall stewardship of the profession. Ensuring that members recognize and understand the nature of military professional knowledge and shaping and nurturing the ethos that governs both its application and the conduct of each military professional is at the apex of professional responsibilities. Stewardship includes infusing all of the other elements of the developmental construct with the content and meaning of professional military ideology, in ways that are systematic, normative and programmatic.

Honourable senators, I think it is absolutely fundamental that we evolve with something more than hope.

[*English*]

May I have a few more minutes?

Hon. Senators: Agreed.

Senator Dallaire: Honourable senators, by what I presented, I wish only to indicate that an institution for which we have enormous respect, but that is showing some weaknesses from the inside, requires reform.

In 1997-98, the mandate that I was given was not to change the officer corps. It was not to adjust the officer corps. It was not simply to fiddle with the contents of how we develop our officer corps. It was to reform the officer corps.

That is of enormous significance. That is an incredible action verb. In so doing, it gave us the impetus to actually re-launch that conservative bastion from being something that is holding back the nation in its ability to meet its outside responsibilities — for example, not being able to accomplish those missions properly, as in Somalia — and move this asset to being a value-added asset for the future of the country and its position in the world.

I am totally supportive of the report. However, I do indicate my concern at the depth of what is needed to bring back that chain of command — which likes to be called a paramilitary one — to the ethos of its past, to modernize it and to bring it progressively into the future to ensure that every member in the RCMP feels confident in their leadership structure; that every member is achieving the levels of authority as they progress in rank because they merit it; that the process of merit is sacrosanct; that, ultimately, the one who is in charge of the organization feels the full responsibility and weight of ensuring this reform is accomplished; and that the country can feel proud when we see that red serge on whatever occasion and that we are not hearing boos, but continuing to hear more and more applause.

Hon. David P. Smith: Honourable senators, I am speaking on this motion both as a member of the Rules Committee and as Chair of the Rules Committee. I might point out that the full name of our committee is the Standing Senate Committee on Rules, Procedures and the Rights of Parliament. It is important to keep that in mind, because that is what we are talking about tonight.

At the outset, I want to say that I am supporting the adoption of the report, which was moved by our Deputy Chair, Senator Braley. I was out of the country on Friday under circumstances beyond my control. However, I certainly read Senator Braley's speech and I support his approach. I support the adoption, and I hope we will do it today. We have to do it today.

I want to emphasize that our report was adopted unanimously by both sides and by Senator McCoy, who is not here at the moment but who is an independent senator on our committee. She spoke yesterday, and I thought her comments were very helpful in outlining the history and the development of parliamentary rights. She even went back to William of Orange in the 1600s. She wrote several paragraphs, which we had before us, that were very thorough in terms of the history of the rights of Parliament. I want to thank Senator McCoy for her input on that.

Most of us had a few more ideas that did not necessarily get into the report, but I want to take a couple of minutes and just talk a bit about the culture of our committee, because it is very important. For a number of years, we have not recommended rule changes unless we have the support of both sides. Sometimes we will have independent members, and they are usually cooperative as well.

• (1750)

In our committee, we do not really have teams. We do not try to be partisan. We try to avoid being partisan because, when changing the rules, if you do not have the support of both sides, you will have a problem. That is why we try to come up with unanimous reports, which we have been able to do, and which we did it this time.

Unanimous reports are important to me. I am frustrated beyond belief that our fourth report, fifth report, sixth report and seventh report are being held up by Senator Carignan and Senator Cools. He is escaping now because perhaps he does not want to hear what I have to say. It has been frustrating because we put in countless hours to develop unanimous reports. Unfortunately, I think they are being torpedoed by those two senators who will never speak to them and will never go on the record as to why they are holding them up; but I have my views on this. We will have to resolve that.

I want to pay tribute to the hard work — and it may seem odd because I am on this side — done by Senator Braley, who is our deputy chair. He had great input into developing these reports. Senator Comeau is the third member of the steering committee and an outstanding member.

In terms of the four reports being held up that will probably be torpedoed tonight, Senator Stratton was an outstanding member of the committee. He put a lot of work into these reports. I hope we will figure out how we can resolve this issue and continue because, otherwise, we will be paralyzed.

Senator Day: Bring back Stratton.

Senator Smith: Honourable senators, I will get back to the eighth report, which is before us today. Senator Braley spoke to it, and I will refer to a few of the highlights.

Before I do that, I want to make a couple of points. In this report, we were never going after the government. This was not a government issue. It was not that orders were coming down from somebody in the government. This was a Mountie thing. It dealt with the fact there is a Mountie culture that is out of date. Some of the stories heard about women members of the RCMP and the harassment they have gone through are nothing short of blood-curdling and have to be dealt with. The committee wanted to deal with it in a fair way.

I have a copy of the report, from which I will read the odd highlight and comment:

> The rights of Parliament to perform its constitutionally-mandated role are well-entrenched in our Westminster parliamentary system. ...
>
> In Canada, these rights attained constitutional status when they were entrenched in the preamble and in section 18 of the *Constitution Act, 1867*....
>
> ... Parliament must be vigilant in preserving its ability to conduct its business and to have access to the views of its fellow citizens.

We then highlighted a couple of points in bullet form. I will read the two points that we focused on:

> The right to call any witness on any matter of business that the Parliament considers relevant; and
>
> The right to determine for itself whether its rights have been encroached upon.

The word "encroached" is a good word that we chose to use. Some might have used stronger words, without necessarily articulating them, but we all had agreement. Sometimes there has to be a little bit of give and take. On something like this, if a report is to be taken seriously and not be divisive, we wanted unanimity and we got it. We should be recognized for that, and I hope soon we will be on these other ones.

In summary, the basic fact is that a member of the Royal Canadian Mounted Police, Corporal Beaulieu, was invited to appear before the Standing Senate Committee on National Security and Defence as a representative of the Mounted Police Professional Association of Canada. The report states:

> In the end, Cpl. Beaulieu did not appear as his immediate supervisor, acting in accordance with long-standing RCMP policy, declined to give him permission to travel while off-duty sick.

In the case of the Rules Committee, he did attend. What tipped the scales was that Senator Cowan raised a question of privilege in the Senate and the RCMP got the message when His Honour

ruled that a prima facie case of privilege was established and the matter was referred to the Rules Committee. Not only did Corporal Beaulieu attend the committee, but four other members of the RCMP did so as well.

In attendance were Staff Sergeant George Reid, Protective Services Section, "E" Division, his immediate boss; Chief Superintendent Kevin deBruyckere, Deputy Criminal Operations, Federal Policing, "E" Division; Dr. Isabelle Fieschi, Chief, Health Services, who had some views on this —ironically, Corporal Beaulieu and she had never met; but that is another story and I will not go down that road — and Assistant Commissioner Gilles Moreau, Director General, HR Transformation. As well, we had received copies of the relevant email communications.

When the matter was referred to the Rules Committee based on the prima facie finding of the Speaker of the Senate, they got the message; and they actually cooperated.

At page 4, the report states:

> Cpl. Beaulieu testified that he felt intimidated by the actions of his supervisor and did not attend the SECD meeting. The evidence of S/Sgt. Reid was that Cpl. Beaulieu was not given permission to attend. As a result, Parliament's right to hear from a Canadian citizen was encroached upon when he was refused permission to attend.
>
> Parliament has the absolute and unfettered right to call witnesses to appear before it and before its committees. This right has been encroached upon with the result that the SECD lost its right to hear a witness of its choosing.

In actual fact, the Defence Committee got the evidence they needed from another person who appeared as a witness before them. However, because of that and the cooperation that was quite clear, once they had it, our committee wrote:

> ... no impediment was placed on Cpl. Beaulieu that prevented him from testifying before this Committee as it examined this case of privilege.
>
> The Committee sees no reason to pursue the matter further and certainly no reason to give consideration to a sanction or a censure.

I think they got the message. Now, in coming to this conclusion for an appropriate response to the encroachment on the rights of Parliament, the committee notes:

> ... the RCMP have shown in both their testimony and by their actions before our Committee that this matter has been rectified for future requests from Parliament.

The evidence is in the fact that Corporal Beaulieu flew to Ottawa, appeared before the committee and said what he had to say.

• (1800)

The RCMP are not perfect. The culture is changing and they have received the message. I think that the next time they hear from a committee of Parliament they will not do what they did this time. I give credit to Senator Cowan for bringing the matter up. The ruling was very helpful on that as well.

I propose that we now adopt the report.

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

Some Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

STUDY ON ISSUES RELATED TO INTERNATIONAL AND NATIONAL HUMAN RIGHTS OBLIGATIONS

THIRTEENTH REPORT OF HUMAN RIGHTS COMMITTEE ADOPTED

The Senate proceeded to consideration of the thirteenth report of the Standing Senate Committee on Human Rights (Canada's international and national human rights obligations), tabled in the Senate on June 25, 2013.

Hon. Mobina S. B. Jaffer moved the adoption of the report.

Some Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

MENTAL HEALTH CARE TREATMENT FOR INMATES IN FEDERAL CORRECTIONAL INSTITUTIONS

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Callbeck, calling the attention of the Senate to the need for improved mental health care treatment for inmates in federal correctional institutions, and the benefits of providing such treatment through alternative service delivery options.

Hon. Jane Cordy: Honourable senators, I rise today to speak to the inquiry of the Honourable Senator Callbeck calling the attention of the Senate to the need for improved mental health care treatment for inmates in federal correctional institutions and the benefits of providing such treatment through alternative service delivery options.

I want to thank Senator Callbeck and also Senator Runciman for raising this issue in the Senate. Prison population trends and prison expenditures have shifted considerably over the past six

years. Since 2010, the federal prison population has increased by 6.8 per cent while expenditures on federal corrections has seen a 43.9 per cent increase since 2005-06.

The 2011-12 Annual Report of the Office of the Correctional Investigator attributes the trend of increased prison population and expanding expenditures to several factors: first, the expansion of a range of mandatory minimum penalties for certain offences; second, the abolition or tightening of parole review criteria; third, the reduction of credit for time served in pretrial custody; and fourth, the restricted use of conditional sentences.

This all comes at a time of increased budgetary constraints resulting in facilities shutting down and reductions in staffing levels. We are finding that as the prison population grows at a rate that our current infrastructure is struggling to maintain, there are considerable concerns with overcrowding. The practice of double-bunking is now commonplace. This is where two inmates are housed in cells designed for one. Double-bunking is certainly not the best situation for those with poor mental health.

I mention the fact that our federal prison facilities are under increasing capacity strain as this is a major contributing factor to the gaps in mental health care delivery within our federal prison system. The Correctional Investigator identified several priorities to meet inmates' mental health needs, and at the top was the need for more mental health professionals and the need to take steps to retain these professionals, as turnover of health care staff in the prison system is extremely high. Some have referred to the turnover rate of health care staff, particularly those dealing with mental health, as a revolving door.

There is a growing need for proper mental health treatment of inmates in our federal prisons, as the Correctional Investigator highlights in his 2011-12 report. He states that 45 per cent of the total male inmate population and 69 per cent of the female inmate population have received some form of mental health treatment while in prison, including for substance abuse problems. The Correctional Service of Canada has reported that between 1997 and 2008 the proportion of inmates identified at admission with mental health issues doubled. Thirteen per cent of male inmates and 29 per cent of female inmates were identified as having poor mental health.

Prison is not always the best environment for the well-being of an inmate with a mental illness. The prison environment often triggers mental health issues that manifest in violent outbursts, aggressive behaviour, suicidal tendencies, or, honourable senators, the inability to follow prison orders and rules. Other options have to be explored as the current prison system does not have the financial or staffing resources to treat the growing prevalence of inmates with mental health issues.

The Correctional Service of Canada has made progress in many aspects of mental health care within the federal prison system, but many gaps still exist. The Correctional Investigator has made several recommendations to fill these gaps, including the need to recruit more mental health professionals and the need to prohibit long-term segregation. Twenty-four-hour-a-day, seven-day-a-week health care coverage should be provided at all maximum, medium and multi-level institutions. The range of alternative mental health service delivery partnerships should also be expanded.

We have heard of one example of an alternative treatment option administered through the St. Lawrence Valley Correctional and Treatment Centre in Brockville. The institution is run by the Royal Ottawa Health Care Group and provides treatment for male offenders in a hospital environment while providing maximum prison-level security.

I applaud Senator Runciman for his pioneering work in helping to establish the St. Lawrence Valley Treatment Centre, and I support his continuing efforts to establish a similar facility for female inmates. It does not make sense to me why more of these types of partnerships are not more common across Canada. It does not make sense to me why there is so much resistance to an idea that is shown to work. Inmate recidivism rates dropped by 40 per cent for those who received treatment at the St. Lawrence facility. No one has committed suicide while undergoing treatment at the facility, and no one has ever escaped.

As stated in the Correctional Investigator's 2011-12 annual report:

> Even today while CSC is legally required to ensure the essential health needs of federal offenders are met, it is not legally required to be the provider of those services. It is common practice for inmates with acute physical health care needs — for example, chemotherapy, dialysis, medical emergency — to be treated in outside community hospitals. However, for some reason, there is much more internal resistance in analogous cases of offenders requiring acute, specialized or complex mental health care services or treatment.

There continues to be a stigma and prejudice to mental health illness in society. The Correctional Service of Canada is not immune to these same prejudices and stigmas. Inmates exhibiting symptoms of mental illness are all too often reacted to with force or punishment, mostly in the form of solitary confinement or segregation. One does not need to be an expert to know that these tactics are not treatment. We all continue to read about the very sad situation of Ashley Smith; the system failed her and her family.

As the prison population grows at a rate that our current infrastructure is struggling to maintain, there are considerable concerns with overcrowding and the effect it has on inmates with mental health issues. The practice of double-bunking is now commonplace and, as I mentioned earlier, double-bunking can be a very negative situation for those who are mentally ill. Overcrowding and segregation can be triggers for inmates with mental health problems to lash out and become harmful to themselves or front-line staff who work with them. The safety of inmates, staff, correctional officers and ultimately the public is jeopardized as prisons become overcrowded and resources for mental health treatment are diminished. This can result in many of those who are released from prison leaving in worse condition than when they went in.

• (1810)

Prison was meant to be a last resort. However, that does not seem to be the case anymore; prison is increasingly used as an only resort. More and more people identified with mental health problems are finding themselves in the federal correction system.

Honourable senators, it is in the public's best interests to provide those inmates with a level of care that ensures proper treatment. As I said earlier, the increased prevalence of poor mental health among inmates in a prison system under increasing financial pressures leaves many inmates in worse shape when they are released than when they were admitted to prison.

At a time when prison population is growing, mental illness prevalence among inmates is growing, facilities are closing down, facilities are becoming overcrowded, and budgets are being cut, we need to look at alternative solutions to mental health care in our inmate populations. Partnerships like the one at the St. Lawrence facility with the Royal Ottawa Health Care Group are necessary and should be encouraged.

Due to budgetary and personnel strains, the Correctional Service of Canada is unable to provide the proper treatment to all those inmates who require it. The safety of inmates, our front-line correctional services staff and the public is at stake when inmates go untreated or are left in situations that trigger reactions from the inmate.

Honourable senators, if those inmates who are mentally ill do not receive the professional help and care that they need while in prison, what will become of them when they are released? It is more likely that they will come to harm themselves or will be returning once again to the prison system.

We can do better.

The Hon. the Speaker *pro tempore*: Will the Honourable Senator Cordy accept a question?

Senator Cordy: Yes.

Hon. Catherine S. Callbeck: I thank Senator Cordy for speaking on this inquiry. She was on the Standing Senate Committee on Social Affairs, Science and Technology, as I was, when we did the report on mental health. Our major recommendation was to set up a mental health commission, which the previous government announced and this government carried through on.

I think the honourable senator will agree with me that the commission has been doing tremendous work. However, I just became aware the other day that the commission was given a 10-year life, and it is halfway through its mandate now. I know that caused me a lot of concern. I wonder how the honourable senator feels about that commission only having five more years.

Senator Cordy: Senator Callbeck is absolutely right in that we both served on the Standing Senate Committee on Social Affairs, Science and Technology that brought forward that report on mental illness. It was a Liberal government that said it would implement the recommendation to set up a mental health commission, but an election took place. The Conservative government brought forward the recommendation. We know Senator Kirby became the first Chair of the Mental Health Commission. As the honourable senator says, they have been doing great work.

Like the honourable senator, I am troubled to hear rumours that this is a 10-year plan and that, after 10 years, the commission will be gone. That would truly be unfortunate for all Canadians, because we know the numbers of people — one in five Canadians who will at some point in their lives suffer from poor mental health. We know children and youth with mental health issues are falling through the cracks.

We know that services being provided to inmates who have poor mental health are just not what they should be, and we know that some prisoners who are going into jails and correctional services are leaving without having received any help at all.

When I had been doing work on this very issue of prisoners with poor mental health who would be hurt by an omnibus bill, I learned that there is a shortage of staff dealing with mental health issues in the correctional services. The numbers of mental health professionals are far lower than they should be, and when people get in working within the system, they find that the resources are not there and they are leaving. That is a Catch-22 situation, because we are unable to keep staff in the correctional services who are dealing with mental health and mental illness. It is a revolving door and that is unfortunate.

The idea that the Mental Health Commission could be gone within 10 years is truly troubling, Senator Callbeck.

(On motion of Senator Tardif, debate adjourned.)

CHARTER OF RIGHTS AND FREEDOMS

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Cowan calling the attention of the Senate to the 30th Anniversary of the *Canadian Charter of Rights and Freedoms*, which has done so much to build pride in our country and our national identity.

Hon. Joan Fraser: Honourable senators, this item stands in the name of Senator Andreychuk, but she has very kindly agreed that I should speak and that it would then remain standing in her name.

Honourable senators, I know it is late. It is the end of a long and stressful day at the end of a long and stressful spring, so I shall try to be brief. However, there is something I really believe needs to be brought to the attention of the Senate.

Senator Cowan launched this inquiry last year, which was the actual thirtieth anniversary year of the Charter. Then or today, the Charter should be an occasion for celebration by all Canadians.

There are still many of us here who recall our former colleague Senator Gérald Beaudoin, a great constitutional expert and thinker. We can remember how his face would light up when he spoke about what he called "our beautiful Charter." It is a beautiful Charter; it is admired around the world, including, incidentally, in the United States of America. It has had a great and welcome impact on this country, reinforcing the rights of minorities — minorities from Aboriginal people, to language groups, to almost everybody one can think of. This is a country of minorities, and of individuals reinforcing those rights against the power of the state and of majorities.

The protection that the Charter gives to those rights and freedoms can, however, never be taken for granted in part because the very fact that those rights and freedoms exist can constitute an inconvenience for the state and/or for the majority. Today, while I do rejoice in the Charter, I also want to bring to honourable senators' attention a recent and potentially quite troubling development.

Last week, on Monday June 17, the *Law Times* carried a report on a discussion paper. This discussion paper was circulated to a body called the Steering Committee on Justice Efficiencies and Access to the Justice System. It sounds very good. This is a body that has been around for about 10 years; it works on justice efficiencies and access to the justice system, which are laudable goals; and it consists of representatives of the federal, provincial and territorial governments, plus judges, lawyers and the police.

The discussion paper that the *Law Times* was reporting on had to do with what is called proportionality, which is one of the fundamental principles of sentencing. It is the idea that a sentence should be proportional in gravity, weighted to the gravity, of the offence committed.

Another excellent concept — it is nice to hear that we have people thinking about these things. It is kind of odd, given that the present government has been so interested in mandatory minimums which, as the Legal Committee has heard many times, erode proportionality in many cases, but never mind. It is a great principle and we want to look at it. However, the report in the *Law Times* carried the headline saying that this discussion "Paper touts 'no jail' option in exchange for reduced Charter protection." Those are three words that should send nervous jolts through all of us: "reduced Charter protection."

• (1820)

This discussion paper went out to members of the steering committee last year with an introductory letter from Lori Sterling, an associate deputy minister for the Justice Department and a member of the steering committee.

That letter said in part:

> The full protection of the Charter is necessary and strict rules of evidence are appropriate to ensure fairness to a person charged with a serious criminal offence.

Note the adjective: a serious criminal offence. The letter went on to say:

> However, we feel it is necessary to ponder the following question: Is this protection necessary and appropriate with respect to every offence? In the post-Charter world, moving towards greater proportionality is challenging, but, the committee believes, essential.

Several questions arise here. Ms. Sterling refers to "we" in the phrase "we feel." I do not know who "we" is, but as she is in the federal Justice Department, maybe that is who "we" means in this context.

Next, what on earth does she mean by talking about the post-Charter world? We live in the world of the Charter. It is part of the Constitution of this land. It is not something in the past. It is not something that can be lightly set aside. It is part of our world, part of the air we breathe, and we are blessed that this should be the case. I find the phrase "post-Charter world" potentially troubling.

The discussion paper notes that for most offences in the criminal courts, the courts do not impose custodial sentences. It states:

> Yet, the trial of these offences can involve frequent and lengthy Charter applications. Strict rules of evidence also apply in such cases. Is this necessary?

Is it necessary to provide Charter protection?

Honourable senators, the discussion paper apparently goes into considerable detail with the notion that it would be helpful to have a criminal arbitration process that would include the "no jail" option and that would avoid going to court. Arbitration is often, in many cases, a very desirable alternative to going to court, although it is used more I believe in civil cases than in criminal cases, but who knows? It could be an interesting innovation. However, I find it again troubling that the paper says:

> For any kind of criminal arbitration to work effectively, the accused would need to waive his/her Charter rights, particularly the right against self-incrimination.

The notion of waiving Charter rights is truly troubling to me, honourable senators.

In support of this concept, the discussion paper apparently cited, with approval, changes made to British Columbia's Motor Vehicle Act in 2010, which imposed immediate administrative penalties on people who were accused of impaired driving. This was seen as a way to increase justice efficiency. The discussion paper did not note that the British Columbia Supreme Court, with fair rapidity, threw out some of those changes because they did not provide for sufficient appeal rights. I think the B.C. Supreme Court was right. You do not throw out Charter rights, honourable senators, no more than we live in a post-Charter world.

Those listening at the end of this long day will have noticed that I referred to the paper in terms such as "the paper apparently says," and "the *Law Times* report says." Obviously, it would have been preferable if I had had access before speaking today to the discussion paper itself. However, a funny thing happened. It was posted on the Department of Justice website, then perhaps by pure coincidence, two days after the *Law Times* report appeared, it disappeared from the Department of Justice website. If you try to go into the site, you can find at least three places where it used to be but where now, if you go in and call it up on two of these sites, you get long Latin text, which I am sure the Speaker would be able to interpret simultaneously for us. It begins, "*Lorem ipsum dolor sit amet, risus ad id sed dolor*..."

In the last one, it just appears to go into some gobbledygook that I cannot interpret.

Why did it disappear? Maybe it was because someone realized it should not have been up on the site in the first place. Since it was a discussion paper and not a formal report for the steering committee, one could organizationally understand why such a decision would have been made. However, it was on the website. It was circulated to the steering committee. It does talk about a post-Charter world, about waiving Charter rights, about diminishing Charter rights all in the name of efficiency.

Honourable senators, remember what I said at the beginning. The rights and freedoms provided by the Charter are precious to every one of us on the day we need them, and we never know when that day will come, but they do frequently present inconvenience to the state or the majority or whoever it is that is dealing with this — inconvenience that the state, the police or the majority would probably see as inefficiencies needing to be corrected.

I do not know what lies behind this or what the reception to the discussion paper was. There is a great deal I do not know. I do know this is a subject to which we all need to pay attention. Senator Andreychuk spoke earlier today about our constitutional responsibilities, and she was right. I did not agree with her particular interpretation on that item, but the profound elementary principle that every single one of us has to be vigilant of our constitutional responsibility goes to the heart of what we in the Senate are supposed to do. I urge all honourable senators to attempt to find out whatever they can about this matter and to be vigilant.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: Is it agreed, honourable senators, that this remain standing in the name of Senator Andreychuk?

Hon. Senators: Agreed.

(On motion of Senator Andreychuk, debate adjourned.)

• (1830)

[*Translation*]

ROYAL ASSENT

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

RIDEAU HALL

June 26, 2013

Mr. Speaker:

I have the honour to inform you that the Right Honourable David Johnston, Governor General of Canada, signified Royal Assent by written declaration to the bills listed in the Schedule to this letter on the 26th day of June, 2013 at 5:59 p.m.

Yours sincerely,

Stephen Wallace
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bills assented to Wednesday, June 26, 2013:

An Act to amend the Witness Protection Program Act and to make a consequential amendment to another Act (*Bill C-51, Chapter 29, 2013*)

An Act to amend the Civil Marriage Act. (*Bill C-32, Chapter 30, 2013*)

An Act to amend the Canada Transportation Act (administration, air and railway transportation and arbitration (*Bill C-52, Chapter 31, 2013*)

An Act to amend the Criminal Code (kidnapping of young person) (*Bill C-299, Chapter 32, 2013*)

An Act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures (*Bill C-60, Chapter 33, 2013*)

An Act to amend the Income Tax Act, the Excise Tax Act, the Federal-Provincial Fiscal Arrangements Act, the First Nations Goods and Services Tax Act and related legislation (*Bill C-48, Chapter 34, 2013*)

An Act to amend the Employment Insurance Act (incarceration) (Bill C-316, Chapter 35, 2013)

An Act respecting language skills (*Bill C-419, Chapter 36, 2013*)

An Act to amend the Canadian Human Rights Act (protecting freedom) (*Bill C-304, Chapter 37, 2013*)

[*English*]

OLD AGE SECURITY

INQUIRY—DEBATE CONCLUDED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Callbeck, calling the attention of the Senate to the inequities of the Old Age Security Allowance for unattached, low-income seniors aged 60-64 years.

The Hon. the Speaker: Honourable senators, if the Honourable Senator Callbeck speaks now, that will have the effect of closing the debate.

Hon. Catherine S. Callbeck: Honourable senators, I would like to take a few minutes to close out this inquiry that I have had on the Order Paper for some time. It deals with the eligibility criteria of the Old Age Security Allowance. It is a very simple issue, but it is an important one.

As it stands now, certain low-income seniors are being denied the OAS Allowance under the Old Age Security Program, simply due to marital status.

Under the Old Age Security Program, as it is right now, there are two benefits called "Allowances" available to low-income seniors aged 60 to 64.

For the OAS Allowance, in order to be eligible, a senior must be aged 60 to 64 and his or her spouse must receive the basic OAS pension and the Guaranteed Income Supplement. Together they are considered low-income.

The second one is the Allowance for the Survivor. It is designed for widows and widowers aged 60 to 64 who have a low income.

I am happy that we have these two benefits because they have helped many seniors. In total, almost 88,000 seniors benefit from these allowances right now.

However, we have some low-income seniors aged 60 to 64 who cannot even apply for this allowance. If that person has never married or is divorced, he or she is not eligible to apply for the allowance. It creates a very unfair situation. It means that we are treating some seniors differently from others.

We could easily fix this problem by expanding the OAS Allowance for all low-income unattached seniors between the ages of 60 to 64.

CARP, which is a national advocacy group for seniors, once again called for the expansion of this program in its pre-budget submission in 2013. The submission notes that almost 20 per cent of single older women live in poverty, and that unattached older women as a group have one of the highest rates of poverty in Canada.

It is unacceptable that the federal government is excluding one group of low-income people who really need assistance. They are excluded just because they have never been married or they are divorced.

I would urge the federal government to fix the criteria so that everyone in that age group will be treated fairly.

(Debate concluded.)

THE SENATE

MOTION TO RECOGNIZE JUNE AS DEAF-BLIND AWARENESS MONTH—DEBATE ADJOURNED

Hon. Yonah Martin, pursuant to notice of June 12, 2013, moved:

That the Senate take notice of the month of June as the birth month of Helen Keller, who is renowned around the world for her perseverance and achievements and who, as a person who was deaf-blind, is an inspiration to us all and, in particular, to members of the deaf-blind community; and

That the Senate recognize the month of June as "Deaf-Blind Awareness Month", to promote public awareness of deaf-blind issues and to recognize the contributions of Canadians who are deaf-blind.

She said: Honourable senators, I would like to speak for five minutes on this motion to recognize June as Deaf-Blind Awareness Month.

June is the birth month of Helen Keller, the most well-known deaf-blind person. She was a gracious and heroic person whose determination and leadership made a difference in the world, and inspired others to follow in her footsteps. June 27 is known as Helen Keller Day in the United States and is celebrated every year.

Helen Keller Day was enacted by President Jimmy Carter in 1980. Since then, much progress has been made, and in 2000, the Province of Ontario recognized deaf-blind awareness in an act of the Ontario legislature.

Honourable senators, I hope you agree that it is time that we recognize deaf-blind awareness at the federal level in Canada.

It is with honour that I stand today to speak to the motion to have June recognized as Deaf-Blind Awareness Month in Canada from coast to coast to coast. I quote former Ontario

MPP David Young, whose private member's bill created Deaf-Blind Awareness Month in Ontario, to explain why a month like this is so important.

> ... I believe this legislation is a step in the right direction to further improve the lives of deaf-blind Ontarians. With June declared Deaf-Blind Awareness Month, it will appear on every politician's calendar and many will make that extra effort to promote this cause in their communities. Why? Because it is the right thing to do.

Honourable senators, it is the right thing to do. By passing this motion, we are taking an important step in raising awareness among Canadians. In passing this motion, we also recognize the strength, courage and dedication that deaf-blind people show every day in living their lives and facing their daily challenges. A month to honour them will mean so much to them, to their families and to those who work closely with them.

A recent Statistics Canada report says that there are approximately 69,700 Canadians over the age of 12 living with the dual disability of deaf-blindness or a combination of both vision and hearing losses that limit their everyday activities. Only 3,000 of these have been identified by the organizations providing intervenor services.

There are three important terms that I would like to define at this time to better understand the deaf-blind community, which this motion supports.

The first is a person with deaf-blindness. A person living with this disability is an individual with a substantial degree of loss of both sight and hearing, the combination of which results in significant difficulties in assessing information and in pursuing educational, vocational, recreational and social goals. Deaf-blindness is a unique and separate disability from deafness or blindness. An individual with the combined losses of hearing and vision requires specialized services including adapted communication methods.

The second term is "intervenor." An intervenor provides a professional service, paid or voluntary, to facilitate the interaction of a person who is deaf-blind with other people and the environment. The intervenor's job can include providing access to information — auditory, visual, tactile — by means of a variety of communication methods acting as a sighted guide. These services are provided in the deaf-blind person's preferred method of communication, which can include tactile signing systems, Braille, large print, communication boards, or any other method required.

The third term is "intervenor service," the provision of a professional service, paid or voluntary, that facilitates interaction of persons who are deaf-blind with other people, places and the environment.

• (1840)

For example, the Canadian Helen Keller Centre and Rotary Cheshire Homes, co-founded by our former colleague Vim Kochhar, are two examples of excellent facilities. Rotary Cheshire Homes is the only facility in the world where those who are deaf-blind can live independently.

I also wish to recognize the tireless work of Senator Asha Seth who is a champion of the blind and partially sighted community. She and Senator Jim Munson are graciously co-sponsoring this motion.

Last, honourable senators, I am inspired by people living with deaf-blindness and all those people who have dedicated their time and hard work to helping them. It is my hope that we can unanimously pass this motion to endorse June as deaf-blind awareness month, and I urge all honourable senators to support this motion.

(On motion of Senator Hubley, debate adjourned.)

[*Translation*]

ADJOURNMENT

MOTION ADOPTED

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

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

> That when the Senate adjourns today, it do stand adjourned until Tuesday, September 17, 2013, at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

BUSINESS OF THE SENATE

EXPRESSION OF THANKS AND GOOD WISHES

Hon. Marjory LeBreton (Leader of the Government): I assure you, honourable senators, I will be very brief.

Honourable senators, as we adjourn for the summer, I would like to thank all senators on both sides for their very hard work. It has been a very exhausting and trying few months here in the Senate. We have had to deal with some very serious issues, which I do believe we are dealing with properly. Eventually, it will all be behind us. Enough said about that. I think there has been enough ink spilled, words said, and views expressed back and forth, the opinions — some accurate and some not — of many people, so there is no point in expanding on that.

I simply want to say, on behalf of the government, on behalf of this side, that I want to extend a warm thank you to my Senate colleagues on this side, the other side and to our staffs, who have to suffer through these long hours, working through very stressful times.

I want to thank all Senate staff, the table officers, the Senate Protective Service staff and all of the people who work so very hard to keep this place operating properly. I would like to particularly thank the pages and wish those moving on to bigger and better things great success in life and in the future.

I want to pay special tribute to the stenographers who have to sit here. Being a stenographer myself years ago, I watch and, of course, there is much more modern equipment than when I was in the profession some 50 years ago, but it is an amazing feat that they are actually able to transcribe and report on all of the words that are said, not only in this chamber but also in committees.

In closing, I would like to wish everyone a very nice summer. It is going to be very short for all of us; it is only a few months, which will fly by quickly. I hope everyone gets an opportunity to have a good rest, reflect on what we have had to face, and work on a path forward. Then, when we come back in the fall refreshed, we can get on with the very good work of the Senate, which, of course, we are all committed to.

Your Honour, I wish you and all of my colleagues in this place a wonderful summer. I hope everyone gets a great rest and comes back healthy, happy and ready to go in the fall. Thank you very much.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I would like to join with Senator LeBreton in wishing all of you a healthy, happy and restful summer, filled with lots of quality time with your family and friends.

As Senator LeBreton said, this has been a difficult and controversial year for the Senate. We often think that nobody pays any attention to what we do here or to this institution. This year was certainly an exception. It is sometimes said that any publicity is good publicity, but I am not sure that applies in our case. I hope we do learn some lessons from the controversy that swirled around us.

I think that controversy affects us all, even those of us who are not under the microscope — yet. It affects us all and it affects the institution that we are here to serve.

In my view, I agree with Senator LeBreton. For the most part, I think the Senate has dealt well with these issues and done so in an appropriate manner. The proper authorities have been engaged and in due course and after due process — I think that is important — we will find out who did what and when.

I have said it many times and I want to say it again today: I do not think the problem is with the rules; I think the problem is with those who choose to skirt the rules or the spirit of the rules. We can constantly improve our system and our rules, and we will continue to do so.

While we, as individual senators, can do a certain amount to explain to interested Canadians what we do individually and collectively, I think, as an institution, we can and must do a far better job to explain to Canadians the importance of this institution and the importance of the work that is done here.

I hope, as we are spending time with our friends and family over the summer away from this place, that we think seriously about that issue and come back prepared to address it in the fall.

Finally, I want to thank all of those who work for us in our own offices and those who work for the Senate generally. We do not express our appreciation often enough to those people and we need to recognize them. We need to recognize that for them, this period of time has been every bit as difficult, perhaps in many ways more difficult than it has been for us. We may be the names that are mentioned, but these folks are the people who work for the Senate. When bad things happen and are said about the Senate, it does not reflect on them, but I am sure they feel it as much as we do.

On behalf of everyone here, I want to thank all of you folks who work for the Senate, in our offices and for the Senate itself, for all you do to make this place operate as smoothly and as safely as it does.

Enjoy the summer. We look forward to the fall. Thank you.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, just before calling on Senator Carignan to deal with the adjournment motion, on a procedural matter, Senator Fraser gave us a long Latin phrase and I will be happy to look at the Hansard for that. However, Senator Robichaud and Senator Wallace want you to know that the people of central New Brunswick hardly speak of anything else.

Hon. Senators: Oh, oh.

(The Senate adjourned until Tuesday, September 17, 2013, at 2 p.m.)

CONTENTS

Wednesday, June 26, 2013

PAGE

SENATORS' STATEMENTS

The Honourable Donald H. Oliver
Congratulations on Honourary Doctor of Laws *Honoris Causa*.
Hon. Tom McInnis 4498

The Honourable Robert Keith "Bob" Rae, P.C., O.C., O. Ont.
Hon. Mobina S. B. Jaffer 4498

Flooding in Alberta
Hon. Grant Mitchell. 4499

Blindness and Vision Loss
Hon. David P. Smith 4499

ROUTINE PROCEEDINGS

Canadian Human Rights Act (Bill C-304)
Bill to Amend—Fourteenth Report of Human Rights Committee Presented.
Hon. Mobina S. B. Jaffer 4500

QUESTION PERIOD

Fisheries and Oceans
Gabarus Seawall.
Hon. Terry M. Mercer 4500
Hon. Marjory LeBreton 4500

Foreign Affairs
National Action Plan Annual Report.
Hon. Mobina S. B. Jaffer 4501
Hon. Marjory LeBreton 4501

Human Rights
Committee Deliberations on Bill C-304.
Hon. Pierre Claude Nolin 4502
Hon Mobina S. B. Jaffer. 4502
Hon. A. Raynell Andreychuk 4502

ORDERS OF THE DAY

Study on User Fee Proposal
Agriculture and Agri-food—Tenth Report of Agriculture and Forestry Committee—Debate Continued.
Hon. Fernand Robichaud 4503

The Senate
Motion to Extend Wednesday Sitting and Authorize Committees to Meet During Sitting of the Senate Adopted.
Hon. Claude Carignan 4503

Income Tax Act (Bill C-377)
Bill to Amend—Third Reading—Motions in Amendment and Sub-amendment.
Hon. Anne C. Cools. 4504
Hon. Pierrette Ringuette 4507
Hon. A. Raynell Andreychuk 4508
Hon. Céline Hervieux-Payette 4508
Hon. Terry M. Mercer 4509
Hon. Elaine McCoy 4509
Hon. Claude Carignan 4513
Hon. Larry W. Campbell 4517
Hon. Pierre Claude Nolin 4518
Hon. Serge Joyal 4519

Delayed Answer to Oral Question
Hon. Claude Carignan 4520

Public Safety
Royal Canadian Mounted Police—Freedom of Religion. Question by Senator Nancy Ruth.
Hon. Claude Carignan (Delayed Answer). 4520

Language Skills Bill (Bill C-419)
Third Reading.
Hon. Claudette Tardif 4521

Canadian Human Rights Act (Bill C-304)
Bill to Amend—Third Reading.
Hon. Mobina S. B. Jaffer 4521
Hon. James S. Cowan. 4521
Hon. Claudette Tardif 4524
Hon. George Baker 4524
Hon. A. Raynell Andreychuk 4527
Hon. Serge Joyal 4527
Hon. Terry M. Mercer 4527
Hon. Lillian Eva Dyck 4528
Hon. Roméo Antonius Dallaire. 4528
Motion in Amendment.
Hon. Mobina S. B. Jaffer 4534
Hon. Jane Cordy 4534
Hon. Art Eggleton 4534
Motion in Amendment.
Hon. Art Eggleton 4535
Hon. Raynell Andreychuk. 4536
Hon. Marjory LeBreton 4541

Financial Administration Act (Bill S-217)
Bill to Amend—Twenty-fourth Report of National Finance Committee—Debate Continued.
Hon. Wilfred P. Moore. 4541
Hon. Céline Hervieux-Payette 4543

Conflict of Interest Act (Bill S-222)
Bill to Amend—Second Reading—Debate Continued.
Hon. Wilfred P. Moore. 4544
Hon. Terry M. Mercer 4544

Delayed Answer to Oral Question
Hon. Claude Carignan 4544

Public Safety
Cyber Security.
Question by Senator Moore.
Hon. Claude Carignan (Delayed Answer). 4544

Study on Prescription Pharmaceuticals
Twentieth Report of Social Affairs, Science and Technology Committee—Government Response Tabled.
Hon. Claude Carignan 4545

Rules, Procedures and the Rights of Parliament
Eighth Report of Committee Adopted.
Hon. Roméo Antonius Dallaire. 4545
Hon. David P. Smith 4548

Study on Issues Related to International and National Human Rights Obligations
Thirteenth Report of Human Rights Committee Adopted.
Hon. Mobina S. B. Jaffer 4549

PAGE

Mental Health Care Treatment for Inmates in Federal Correctional Institutions
Inquiry—Debate Continued.
Hon. Jane Cordy 4549
Hon. Catherine S. Callbeck 4551

Charter of Rights and Freedoms
Inquiry—Debate Continued.
Hon. Joan Fraser 4551

Royal Assent 4553

Old Age Security
Inquiry—Debate Concluded.
Hon. Catherine S. Callbeck 4554

PAGE

The Senate
Motion to Recognize June as Deaf-Blind Awareness Month—Debate Adjourned.
Hon. Yonah Martin 4554

Adjournment
Motion Adopted.
Hon. Claude Carignan 4555

Business of the Senate
Expression of Thanks and Good Wishes.
Hon. Marjory LeBreton 4555
Hon. James S. Cowan. 4556

Published by the Senate

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