



DEBATES OF THE SENATE

2nd SESSION

•

41st PARLIAMENT

•

VOLUME 149

•

NUMBER 6

OFFICIAL REPORT
(HANSARD)

Friday, October 25, 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

Friday, October 25, 2013

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

Prayers.

SENATORS' STATEMENTS

1993 FEDERAL ELECTION

TWENTIETH ANNIVERSARY

Hon. Terry M. Mercer: Honourable senators, it was 20 years ago today that Canadians chose a new direction for the country. They chose the Right Honourable Jean Chrétien and the Liberal vision for a better Canada.

Some Hon. Senators: Hear, hear.

Senator Mercer: After years of mismanagement and some brown envelopes by Prime Minister Brian Mulroney, Kim Campbell led her party as Prime Minister and Leader of the Progressive Conservatives into the election campaign. The campaign centered on the future of Canada, and the Liberal Party fought that campaign based on a new direction for Canada after years of old Tory policies and Tory rhetoric.

The election was one of the most interesting ones in Canadian history. All of Atlantic Canada, save one seat in New Brunswick, voted Liberal. All but one seat in Ontario voted Liberal. Senator Smith, you better answer for that. In Manitoba, all seats but two voted Liberal. We elected MPs in Quebec, Saskatchewan, British Columbia and even Alberta.

More than half of the electorate switched parties from the 1988 election. Prime Minister Chrétien and his team won 177 seats, forming a strong majority government, and what a difference this government was when we compare it to the government of the day.

Upon taking office, the Liberal government had to fix an economy that was on the verge of Third-World status, and fix it we did. We turned the tide on the deficits and produced surpluses for nine years.

What happened when Stephen Harper became Prime Minister? Deficits, mismanagement and return to the old Tory policies and rhetoric.

Prime Minister Chrétien did not take Canada to the war in Iraq, because he believed the evidence was not there to commit Canada's troops to that action. Boy, was he right.

Prime Minister Chrétien and the Liberal government had a seat on the UN Security Council. Prime Minister Chrétien led many Team Canada missions abroad to expand Canada's trade. Canada's reputation around the world was at an all-time high and our relations with our closest neighbour were very strong.

I look forward to the next election, when we will fight for the future of Canada again. I look forward to turning the tide and reversing the old Tory policies and Tory rhetoric once more. I look forward to a fair and just society where we will all take part in our future under the dynamic leadership of Justin Trudeau.

Hon. David P. Smith: Honourable senators, Senator Mercer looked over at me and said I had better answer for that one seat we lost in Ontario, so I'll tell you the story.

I was chairing the campaign, and we lost it by about 120 votes. It was buried. Mr. Chrétien would always razz me about it. The next year, President Clinton came up on a state visit. There was a state dinner, and he had me sitting at a table about 10 feet away from where President Clinton was. He brought over President Clinton and said, "Mr. President, this is my guy who runs Ontario, but in the last election, he lost his seat. We only won 98 out of 99." And Bill Clinton said, "Ninety-eight out of ninety-nine? I'd settle for that. Listen, do you want to come to Washington and work for me? Could you show up next Monday morning?" He carried on for about two minutes. He was so funny and witty. Chrétien was sitting there listening to all of this, and he never teased me about losing that seat again. It was quite a day, and it was a great legacy that he left.

The deficit was pretty high when we came in. But to his credit, he brought in Paul Martin and said, "Fix it," and they did. Those were the days, my friend. We thought they'd never end. In any event, you asked me to answer, so that's the answer.

TRAVERS DEBATES 2013

Hon. Jim Munson: Honourable senators, I rise briefly to remember my late friend, Jim Travers, a great journalist, a great guy, a great fellow on election campaigns, a good foreign correspondent, a very senior parliamentary correspondent and a superb columnist who took on all governments.

This week was quite a week. On Tuesday night we had the second annual Travers Debates, and it was a packed house in the Panorama Room of the National Arts Centre. We've raised so much money with the Travers Debates that we are very pleased.

In those debates the other night, we had former Speaker Milliken taking on Andrew Coyne on the issue of democracy: Is democracy dead or not in this country? It was a lively debate. We have to praise Mr. Coyne. He won the debate, but the former Speaker of the House did a good job himself.

• (0910)

It wasn't about winning or losing. We had an earlier debate of whether journalists should be politicians or whether politicians should be journalists — I mean, disallow the fact. That particular debate with Dominic LeBlanc, Hélène Buzzetti, Althia Raj and Megan Leslie was very lively. That was just part of the ambience

of the evening. The important part of it all is that we raised another \$60,000 for a working journalist to cover international events, and we were working with Carleton University.

The Travers family was there. There were a lot of memories. We had former minister John Manley there and others. It was a good night. I know there's serious business before us this week, but we have to pause and reflect every once in a while about good people who have done good things, and this morning I'd like to honour my friend Jim Travers.

OFFICIAL LANGUAGES

Hon. Nancy Greene Raine: Honourable senators, the last few days have been very enlightening for all of us and extremely important. I have been so impressed with the quality of the interpretation that we've had in our chamber and have been able to follow every speech with full understanding. There's no doubt that professional interpretation like we have here really does make a difference in a country like Canada, with two official languages. It makes me realize that we did make the right decision when we didn't insist on bilingual judges for the Supreme Court. Professional interpretation is outstanding.

[Translation]

1993 FEDERAL ELECTION

TWENTIETH ANNIVERSARY

Hon. Pierrette Ringuette: Honourable senators, I must admit that I felt a bit guilty earlier because I completely forgot that it was 20 years ago that I was elected in the riding of Madawaska—Victoria. That was when I first came to Parliament Hill.

I would like to share some thoughts that sprang to mind. It was certainly not an easy decision for me to give up my seat in the legislative assembly. Senator Mockler assured me that I made the right decision, as it allowed him to get his seat back. Giving up my seat in the legislative assembly and leaving New Brunswick to come to Ottawa, leaving an eight-year-old daughter at home, was not easy.

Two important aspects of that election night come to mind. First, the polls were so close that I did not know if I would win or lose.

[English]

It was not a landslide decision.

[Translation]

On election night, CBC/Radio-Canada invited me to the studio at about 9:30 p.m., so I went in. Then, on air, the CBC — with its so-called professional polls and experts — told me, “Ms. Ringuette-Maltais, you have lost.” I quickly told myself, “That's fine.”

I knew that I had strong support in certain regions and that it was likely that the polling station had not yet received the results. I said to CBC/Radio-Canada, “It's not over yet.”

Forty-five minutes later, CBC/Radio-Canada had to backtrack and declare that I had won the election.

All that time, my little girl, who was eight, was at home, crying, because she heard that I had lost. When they backtracked and the final results were in, she called me on my cell phone right away and said, “Mommy, Mommy! Don't worry. I have your victory speech ready.”

Those two stories will be on my mind throughout the day today, and you can understand why. Consequently, the remarks I will make today are a reflection of my 26 years in provincial and federal politics.

[English]

ROUTINE PROCEEDINGS

THE SENATE

MOTIONS TO SUSPEND THE HONOURABLE SENATOR
PATRICK BRAZEAU, HONOURABLE SENATOR
PAMELA WALLIN AND HONOURABLE
SENATOR MICHAEL DUFFY—
ALLOTMENT OF TIME—
NOTICE OF MOTION

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding any provision of the Rules or usual practice, motions No. 2, 3 and 4 under “Other Business” be disposed of as follows:

1. at 3 p.m. on the first sitting day following the adoption of this motion, the Speaker shall interrupt any proceedings then before the Senate and proceed to put forthwith and successively, without further debate, amendment, or adjournment, any and all questions necessary to dispose of the three motions;
2. any standing vote requested after the time in paragraph 1 in relation to any question necessary to dispose of the three motions shall not be deferred;
3. once the Speaker has interrupted proceedings pursuant to paragraph 1, the bells to call in the Senators shall ring only once and for fifteen minutes, without the further ringing of the bells in relation to any subsequent standing votes requested under this order;

4. if a standing vote relating to any of the three motions is requested and deferred after the adoption of this motion, but before the time indicated in paragraph 1, it shall be deferred to that time;
5. if a standing vote relating to any of the motions is requested and deferred before the adoption of this motion to a time after that indicated in paragraph 1, it shall be brought forward to the time indicated in paragraph 1; and
6. on the sitting day following the adoption of this motion, no motion to adjourn the Senate shall be received until all questions necessary to dispose of the three motions have been dealt with, and if the Senate completes its business before the time indicated in paragraph 1, the sitting shall be suspended until that time, with the bells to ring for fifteen minutes before the sitting resumes.

• (0920)

QUESTION PERIOD

OFFICIAL LANGUAGES

LINGUISTIC DUALITY

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. Recently a job vacancy notice was posted for the president and chief executive officer of VIA Rail. As we all know, the head office of VIA Rail is in Montreal. Under language requirements, the notice says: "Proficiency in both official languages would be preferred."

This government likes to say that it is in favour of the promotion of Canada's two official languages. For such an important position, why does it not say "Proficiency in both official languages is required"?

[Translation]

Hon. Claude Carignan (Leader of the Government): Listen, VIA Rail is an independent Crown corporation that makes its own operational decisions.

[English]

Senator Fraser: Given the atmosphere of total control from "power central" in this regime, I do happen to believe that it would be possible for VIA Rail to be given other instructions. The fact is that VIA Rail says that this person, the president and chief executive officer, should appreciate community issues and demographics, should have superior communication skills and the ability to act as a spokesperson in representing VIA Rail Canada with stakeholders, media, public institutions, governments and other organizations. And unless one has a very narrow corporate view of stakeholders. I would have thought

that the customers of VIA Rail would be included as people with whom the president and CEO should be able to communicate in their own language.

[Translation]

Senator Carignan: Listen, I cannot make assumptions from this job notice about who this individual is or will be communicating with. What I can tell you is that VIA Rail is an independent Crown corporation that makes its own operational decisions. It puts out its own job postings.

[English]

Senator Fraser: Independence exists where, for this government, it is convenient to have it exist.

Another job vacancy notice has appeared. This one is for the Canada Council for the Arts. This is for the director and chief executive officer. What do we find? Proficiency in both official languages would be preferred.

Senator Segal: Shame.

Senator Fraser: When we think about what the Canada Council for the Arts does, how can the government not justify requiring proficiency in both official languages?

[Translation]

Senator Carignan: The government is firmly committed to official languages. We are very proud of our Roadmap for Canada's Official Languages, for instance.

Canada's official languages have shaped our history and our identity. We recognize French and English communities. We are contributing to the cultural, social and economic vitality of our society. That was the reason for implementing the Roadmap for Canada's Official Languages, which represents an investment of \$1.1 billion, the largest investment in the history of our country. This roadmap supports francophone and anglophone communities in three priority sectors: education, immigration and communities.

With respect to the public service — which your question alludes to — we stand by our commitment to the employees and agencies of our government.

A 2011 survey of federal public servants revealed that 92 per cent believe that they can work in the official language of their choice. Language training will continue to be offered to those who need it in order to ensure that as many people as possible can avail themselves of government services in the language of their choice.

[English]

Senator Fraser: That's all very well. I don't think it will cost another billion dollars to have a bilingual director of the Canada Council for the Arts. The Canada Council says that its fundamental values include respecting Canada's official

[Senator Martin]

I languages and recognizing the need to support professional artistic activity by both French-speaking and English-speaking Canadians, as well as believing in the value of a national perspective of the arts and numerous other admirable, necessary values.

The job of the Canada Council for the Arts is to support the arts in both of Canada's official languages. Senator Carignan will know, as all of us who have struggled to learn the other official language know, how difficult it is to appreciate, above all, artistic expression in a language that is not our own.

How can we possibly expect the director of the Canada Council for the Arts to do the job properly if he or she cannot appreciate what is done in the other official language of this country? It seems to me a complete betrayal of what that organization is supposed to do.

[Translation]

Senator Carignan: I love music and the arts. I listen to a lot of music in English and I really enjoy it, even though my grasp of the English language is less than perfect.

Regarding your comment on the need to know and understand both official languages in order to appreciate the arts, I have to say, from my own personal experience, that I do not agree with you on that point.

As for our commitment, I wish to reiterate that ours is a very firm commitment, one that was even commended by arts organizations when we decided to extend the Roadmap for Canada's Official Languages. This means an investment of \$1.1 billion, which, I hope, will draw as many people as possible to the three pillars that are the focus of our Roadmap, that is, education, immigration and communities, in order to ensure that our communities are as bilingual as possible.

Hon. Marie-P. Charette-Poulin: Supplementary question. Honourable Senator Carignan, what Senator Fraser is showing us is the discrepancy between what you say are the government's intentions and what are actually warning signs, the facts.

• (0930)

This is very worrisome for minority communities, whether we are talking about anglophones in Quebec or francophones in the other provinces and territories.

For example, over the past year, the federal government has stopped purchasing advertising space in francophone weekly newspapers, such as *Le Voyageur* in northern Ontario. This is very serious because we are talking about information and communication for all of our francophone communities in northern Ontario in a weekly newspaper called *Le Voyageur*.

How do you reconcile the fact that the government has not taken out ads in a newspaper for a year, for a national agency as significant as the Council for the Arts, with your claim, which I admire, that the government will completely respect its commitment to linguistic minority communities?

Senator Carignan: You mentioned some specific cases, but it is difficult to give the justifications on a case-by-case basis for each of these particular cases.

We committed to supporting official languages through the Roadmap and through a considerable investment of \$1.1 billion that has been commended by francophone communities and community associations. They recognized the quality of the work being done and the government's willingness to ensure that the communities are served. This policy has three priority sectors: education, immigration and communities. I think that these three issues were raised by Senator Fraser or even you in your question about communities. Based on your questions, I think that we are targeting the right areas.

Senator Charette-Poulin: I have a supplementary question.

Could the Leader of the Government in the Senate approach the Minister of Canadian Heritage to ask for her commitment to ensure that candidates selected as chief executives — whether for VIA Rail, the Canada Council or the program to buy ad space in French-language weeklies such as *Le Voyageur* — speak both of Canada's official languages, and that the program for the French-language weeklies be brought back?

Senator Carignan: You know that Minister Glover is passionate about official languages. I can convey your concerns to the minister. I believe you share a common passion with her. I am not sure whether you know her personally, but I know you both, and I can tell you that the minister is strongly committed to official languages and that the investments made as part of the Roadmap will certainly be made with the same enthusiasm and the same priorities that you have and share with the minister.

Hon. Roméo Antonius Dallaire: It is all well and good to throw numbers around, as you usually do, without telling us how many years they are for or being more specific about the content. But if you have a business plan, a Roadmap as you say, worth \$1.1 billion, can you explain why CBC/Radio Canada, outside Quebec, is suffering massive cuts that are significantly reducing its ability to meet the needs of communities throughout the country? Are they not included in your Roadmap?

Senator Carignan: CBC/Radio-Canada programming is offered in English and French. This Crown corporation is expected to continue offering programming in both official languages across Canada, while paying special attention to the regions. That is the mandate of CBC/Radio-Canada. As for funding, the corporation receives considerable public funding and must do its part to fulfill its mandate to promote both official languages.

Senator Dallaire: I do not know who writes your notes but they are not worthy of you. You are quite capable of standing up and giving me a much more confident and relevant answer than the one you just gave me.

The question remains. If this Roadmap is so important and its purpose is to communicate with the communities and promote both official languages throughout the country — and I am not just talking about doing so through Radio-Canada in Quebec, which Bernard Landry described as the radio of his nation, but also through CBC/Radio-Canada across the country — then is

any of this \$1.1 billion allocated specifically to improving the capacity of CBC/Radio-Canada or even of private television and radio stations in the regions so that they can provide significant help in enhancing your capacity to meet the objective that you just mentioned?

Senator Carignan: CBC/Radio-Canada has its budget and mission. The \$1.1 billion Roadmap targets the communities, immigration and education.

[English]

TRANSPORTATION

RAIL SAFETY

Hon. Terry M. Mercer: Honourable senators, it appears that the federal government's pro-business and anti-regulation agenda may be catching up with them. The Canadian Centre for Policy Alternatives released a report that says several factors could have led to the disaster at Lac-Mégantic, including an inadequate number of federal rail inspectors, a large increase in oil shipments by rail and poor safety records of train companies.

In the *Toronto Star* the other day, author Bruce Campbell, the centre's executive director, states:

In my view, the evidence points to a fundamentally flawed regulatory system, cost-cutting corporate behaviour that jeopardized public safety and the environment, and responsibility extending to the highest levels of corporate management and government policy making.

Could the Leader of the Government tell us why a railway company like Montreal, Maine and Atlantic would be allowed an exemption to operate with only one engineer when two is the acceptable and regulated practice? Why was this railway allowed an exemption on such dangerous cargo?

[Translation]

Hon. Claude Carignan (Leader of the Government): The regulations regarding railway safety exist to ensure the safety and security of the public. We expect those regulations to be followed. Transport Canada immediately imposes the necessary sanctions when the regulations are not followed.

With regard to the government's commitment to safety, when asking your question, you mentioned that the number of inspectors has been reduced. I can tell you that inspectors are being hired on an ongoing basis.

The government has invested over \$100 million in railway safety. We are cracking down on offenders by imposing bigger fines and harsher judicial penalties. The government is requiring railway companies to submit environmental management plans and to provide protection to employees who raise safety concerns. Every railway company is required to designate a manager who is legally responsible for safety.

[Senator Dallaire]

• (0940)

Since her appointment, which more or less coincided with the terrible tragedy in Lac-Mégantic, the minister has taken action. Given that you raised this issue, I would like to take this opportunity to personally express once again my support for the people of Lac-Mégantic and especially for my former colleague, the mayor of Lac-Mégantic, whom I came to know quite well in another life.

I would like to point out the compassion and presence of Minister Christian Paradis, who spent the whole summer in the area listening to the people and being present and ready to take action. He did a great job. In the days after the Lac-Mégantic tragedy, the minister issued an emergency directive to ensure that two operators are present at all times on trains transporting dangerous goods; that no train carrying dangerous goods is left unattended; that all cabs are locked; that directional controls — commonly known as reversers — are removed from all locomotives; and that all brakes are properly set on all locomotives.

I believe that the government's actions speak to the importance it attaches to rail transportation.

[English]

Senator Mercer: I appreciate the leader's response. However, the regulations are made in Ottawa and enforced in Ottawa. The Montreal, Maine & Atlantic Railway was given special permission to operate with a single engineer instead of the two-persons standard. The federal government also failed to increase the number of inspectors, despite what the Leader of the Government says, as shipments increased, especially dangerous cargo shipments.

We now have another disaster, this time in Gainford, Alberta. I should also mention, so that people are aware, there is more going on here than these two major disasters. The small town of Sexsmith, Alberta, had to be evacuated when four railcars were derailed. Seven railcars were derailed 130 kilometres west of Saskatoon on September 25. A lot is going on. We hear about the big ones, but it's very important that train cars in Gainford, Alberta, were also carrying dangerous goods in the form of liquefied petroleum and crude oil. We are still waiting to see what the cause of that accident was.

In the wake of these train derailments, how can the federal government continue to avoid looking at its own practices? Why is the federal government not adhering to and strengthening its own regulations in order to keep Canadians safe? When will the federal government affirm its commitment to exclude exemptions and not allow companies to play with the safety of Canadians?

[Translation]

Senator Carignan: Concerning the train derailment in Gainford, Alberta, on October 19, we were relieved to learn that no one was injured. You will join me in thanking the first responders for reacting so quickly.

Transport Canada is monitoring the situation and is in close contact with local representatives. Once the appropriate authorities conduct their investigation and determine the cause of the accident, the Minister of Transport, as usual, will consider whether recommendations are required and take appropriate action.

[English]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

HONOURABLE SENATOR PATRICK BRAZEAU—
RESIDENCE REQUIREMENTS—
DOCUMENT TABLED

Hon. Pierre Claude Nolin: Yesterday, during Routine Proceedings, the Honourable Senator Brazeau tabled a document dated March 8, 2011, an email, confirming by Senate administration that he was indeed eligible to recover expenses for housing.

My question is directed to the chair of the Subcommittee on Audit and Verification of Internal Economy. Are you aware of the existence of that document?

The Hon. the Speaker: The honourable senator wishes to ask a question of the chair of the committee. The subcommittee I do not believe meets the test, but is it the will and consent of the house? The Honourable Senator Comeau, who is the chair of Internal Economy, is not here; the deputy chair is not here. Maybe you want to ask the Leader of the Government.

Senator Nolin: I may ask that of the Leader of the Government in the Senate. My intent is that I don't want any doubt to be suspended in the air while we are discussing as important an issue as the one raised by the three motions of the Leader of the Government.

[Translation]

Senator Carignan, you were here for yesterday's sitting. You heard and saw the Honourable Senator Brazeau table the document I just referred to.

To your knowledge, were the members of the Internal Economy Committee aware of the existence of that document when they prepared the report on which you based your motion?

[English]

An Hon. Senator: I was aware of it. I saw it.

Some Hon. Senators: Oh, oh.

An Hon. Senator: Whispering —

An Hon. Senator: Tell us what you said.

[Translation]

Hon. Claude Carignan (Leader of the Government): It must have been among the documents that were examined. Senator Brazeau was met with in the context of his presence at the hearings, when the reports were being prepared. I also read the document. By way of explanation, you will recall that, when I talked about Senator Brazeau's case, I began emphasizing the second year a little more, because that letter was sent at the beginning, before he rented an apartment. He can rent an apartment; that is allowed. That will be reimbursed, but the policies and rules have to be checked in order to ensure that the rules are being followed, which is the second condition; it has to be his secondary residence.

His presence there and his travel patterns show that he was already using his secondary residence quite a bit and that it had in fact become his primary residence after a year.

That is why I drew attention to the end of the declaration, where it states: "I declare that there have been no changes in my situation." Therefore, after a year of living in that residence, which may have been a secondary residence on April 1, 2011, when he began renting it, it was no longer his secondary residence as of March; he was living there full time. He therefore should have pointed out this change in the status of his residences to the effect that this residence had become his primary residence.

Hon. Patrick Brazeau: Senator Carignan, first, could you tell me exactly which of the policies that I was referred to by the Senate Administration that I violated? Second, could you tell me where it is written in any Senate policy that senators — no matter who they are — have to spend a certain percentage of their time at their primary residence in order not to violate any policies?

• (0950)

Senator Carignan: We are talking about rule 4.03(14) of the *Senate Administrative Rules*, which reads:

A Senator whose provincial residence in the province or territory the Senator represents is more than 100 kilometres from Parliament Hill...

In your case, Senator Brazeau, it is 133 km.

...and who is within 100 kilometres of Parliament Hill for the purpose of carrying out the Senator's parliamentary functions...

When you claim travel expenses to be in the National Capital Region, you must be in the region to carry out parliamentary functions.

There is also the *Senators' Resource Guide*, which states the following in section IV under "Living Expenses":

Senators who come to Ottawa to carry out their parliamentary functions and who are more than 100 km away from their primary residence...

Senators therefore have to meet two criteria. First, their residence that is located within 100 km must be a secondary residence, and second they must be in the region to carry out parliamentary functions.

Statistics in your file show that you spent a great deal more time in Ottawa and in Gatineau than you did in Maniwaki. That is a matter of daily life and the place where you spend your time. It does not say anywhere that a percentage over or under 10 constitutes a primary or secondary residence.

However, when a person spends 90 per cent of his time in a year in a certain place and his so-called primary residence is an hour and 10 minutes from his secondary residence, this is a strong indication that that person has made a change in residence. If the person's primary residence is only 133 km away, normally he would spend more than 10 per cent of his time there.

[English]

The Hon. the Speaker: Honourable senators, the time for Question Period has been exhausted and we now call for Delayed Answers. However, I want to remind honourable senators that the motion is on the Order Paper and I anticipate there will be debate and there will be an opportunity to further debate this particular point.

[Translation]

ORDERS OF THE DAY

PAYMENT CARD NETWORKS ACT

BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

Hon. Pierrette Ringuette moved that Bill S-202, An Act to amend the Payment Card Networks Act (credit card acceptance fees), be read the second time.

She said: Dear colleagues, I would like to say that I am honoured, but in reality, I am disappointed that this is the sixth time I have had to introduce a bill in this chamber to lower the excessive fees that are charged to merchants and, as a result, passed on to Canadian consumers, by card issuers and the entire credit card system.

On October 6, 2009, I introduced Bill S-241, which died on the Order Paper at second reading, as a result of prorogation in December 2009. Later, in 2010, I introduced Bill S-201. It was sent to committee in 2011, but it died in committee before the committee was able to start its study, because of the election.

Then, last December I introduced Bill S-215, which was sent to committee at the end of June. The committee did not have time to start its study before there was another prorogation. Dear

[Senator Carignan]

colleagues, this means that this is the sixth time I have introduced a bill to bring in what I would consider to be reasonable fees for the Canadian economy.

Many times in this chamber I have spoken about the burden facing Canadian merchants and the fact that they did not have any opportunity to negotiate with the giants. Here are some facts.

A total of 90 per cent of credit cards in Canada are either Visa or MasterCard. The first time I spoke to you about this issue, it was 82 per cent.

[English]

Since last December, when I tabled the fifth edition of this bill, a few major events have occurred. First, excessive fees collected from merchants in our economy exceed \$5.5 billion.

[Translation]

Do you realize that since December 15, 2012, these giants collected more than \$5.5 billion in excessive fees from merchants and consumers in the Canadian economy? Last April, Visa announced a 30 per cent increase in fees for merchants and MasterCard did the same on July 1.

• (1000)

[English]

As you will recall, last year I informed you that the Competition Bureau was bringing Visa and MasterCard before the Competition Tribunal. In May and June of 2012, the tribunal held 23 days of hearings.

In July 2013, a year later — a year later, on this very important issue — the tribunal made public its decision, saying essentially that according to the mandate of the tribunal as per section 76 of the Competition Act and the Competition Tribunal Act, the resale of product was necessary in order for them to have jurisdiction.

However, they also said that because of the severity of the issue in the marketplace in regard to credit card fees, they decided to pursue their hearings and their analysis of the situation, which is phenomenal. They knew that, on the jurisdiction side of the issue, they had no mandate, but because of the severity of the issue, their conscience said, “We have to analyze this,” which is a lot more than we did here, so far.

They said that the currently operating credit card regime does not meet the product resale definition but, in their analysis and in their conclusion that they made public, they clearly said that this issue required — “required” is a very important word in the context here. A body that does not have jurisdiction says publicly that the issue requires regulation. I have been saying that.

[Translation]

That is what I am telling you. That is what I told Minister Flaherty in 2009. This is not a political issue for me. This is about improving the situation for our merchants and consumers. We need to look at the big picture.

[English]

Senators, with my bills, I have been demonstrating this to you since October 2009. Had this chamber, or the other place — we don't have the monopoly on thinking, especially not now — adopted my Bill S-241 in 2009, Canadian merchants and consumers would have saved over \$20 billion at a time when the former Governor of the Bank of Canada, Mark Carney, was saying to every Canadian that we have too much household debt. That was repeated by Minister Flaherty. We have too much debt in our households. Canadians are paying too much for the same goods in comparison to the U.S. This is an essential element, and I would even dare say that it is a central element, in regard to household debt and consumer pricing.

I have demonstrated to you in this chamber, time and time again, that other Commonwealth countries have realized this a lot sooner than we have. Australia moved over 10 years ago on this issue, and 16 European countries have been doing so since 2006.

I have researched this issue, not with tunnel vision. We cannot, as a trading country, look at this issue with tunnel vision. I have looked at what is going on out there in the world in regard to credit card fees and how it's being dealt with, fairly. That's the keyword here. The keyword is "fair." I understand that banks and credit card companies, in order to provide service, need to make a profit, but what is reasonable in regard to Canadian consumers and Canadian merchants?

Other countries have managed to regulate this issue in a fair way. For instance, in its legislation, Australia has a mandatory review of the maximum merchant fees for credit cards. They have, as of today, reviewed the caps on merchant fees twice. The first time, they reduced the fees because they decided that they were too high after three years. Their second review maintained the fees that had been put in place after the first review.

Another major event happened in July, which should also have your interest.

[Translation]

A major event took place on July 24, involving our new trade partner, the European Union. On that date, the European Commission signed a regulation requiring that the European Union's 28 countries limit merchant fees to 0.2 per cent for debit cards and 0.3 per cent for credit cards.

• (1010)

[English]

After many years of review and consultation with its 28 countries, last July the European Union introduced legislation and regulation at the EU commission, including maximum merchant fees on debit cards at 0.2 per cent and on credit cards at 0.3 per cent—even lower than what my bill is proposing.

Now, there's a law of averages here, which I will explain.

[Translation]

Basically, when our Prime Minister received high praise, or bought ads to seek praise, on, say, the agreement with the European Union, he created an obligation. There is also a business obligation in terms of what follows from that.

[English]

There is a level playing field in as many sectors as possible. The fees to consumers and merchants, either in Canada or in the 28 EU countries, must be on a level playing field. I honestly believe that we have to proceed, as soon as possible, to put the bill that I'm proposing to you in place.

To be fair, the EU has a 22-month window from last July 24 allowing all the 28 countries in their own legislative power to legislate the exact regulation. Therefore, we have a very small window here in order to attain that level playing field for our merchants and our consumers.

[Translation]

On average, in most EU countries, the maximum rate to date — and I pointed this out in December — was 0.9 per cent. The new EU regulation is very similar to the bill before you. Each of the 28 countries has 22 months to ratify this agreement. In addition, this rate is subject to review every four years.

[English]

Remember, honourable senators, I've told you that the Australian legislation has a regular, systemic review of the fees. Within the European Union regulation, there is also an automatic mechanism for review of the fees every four years.

My bill that is in front of you does not specify a time frame for reviews. It leaves it to the discretion of the Minister of Finance. From my perspective, that is a lot more flexible and can be adapted rapidly by the Minister of Finance in case of high fluctuation in relation to the Canadian dollar, the marketplace, inflation and so forth. This bill gives the Minister of Finance flexibility to review, on a need-be basis, the rates that would be adopted in Canada.

[Translation]

The EU estimates its merchants will realize savings of 6 billion per year.

[English]

It's about US\$8 billion per year. Taking into consideration that only 60 per cent of consumers and merchants in those 28 EU countries use credit cards, you will remember that in Canada we have, on average, 2.2 credit cards per Canadian consumer. In Canada the use of credit cards is a lot higher than the use in the EU. The European Commission has already identified that the measures of putting maximum merchant fees for credit card use will save their economy, with regard to consumers and merchants, \$8 billion a year.

Now, try to identify for me, since 2006, what government measures have been put in place in order to financially help small- and medium-sized businesses and Canadian households to the tune of \$5 billion a year in savings. What government legislation has been put in place?

Colleagues, let me remind you, this would not remove one penny from government revenues for government spending. This would save \$5 billion a year. I'm tempted to use the same words that the government leader has been using since we've started here on October 17, after the Speech from the Throne.

[Translation]

Listen. Think carefully.

[English]

This is a no-brainer to save, in our Canadian marketplace, for consumers, for households, \$5 billion a year without costing the government coffers anything; zero dollars.

[Translation]

Listen. Listen.

[English]

Honourable senators, with the Canada-EU proposed trade agreement, or MOU, you should understand how important it is to also level the playing field for Canadian merchants and Canadian consumers, as the EU Commission established for its merchants and consumers.

Dear colleagues, notwithstanding the importance of this issue and notwithstanding that there seems to be a lot more politics in here than I was anticipating when we closed this place in June, if the issue in regard to this bill and putting it on hold—like it has been put on hold since 2009—is that it is being introduced by a Liberal senator, I would be willing and very supportive, today or very early next week, to give the full intent and support for the same bill introduced by any Tory senator.

Some Hon. Senators: Oh, oh!

• (1020)

Senator Ringuette: This is not a political issue to me.

Senator Mercer: It's about Canadians.

Senator Ringuette: It's about household debts. It's about small merchants having a very tough time to survive, and it's about the fact that very few in this country benefit from this. It is not a political issue; it's an issue for the people.

So if the problem to move forward with this bill is a political one for you or your government, I will gladly give you this bill and remove my name from it. I have four or five bankers boxes of data in my office that you can use, but pass this bill. Move forward with it.

When I introduced this bill last December, the fact that you've been putting it on the shelf since 2009, Visa and MasterCard jumped at it and said, "They won't move this. They'll put it on a

shelf." They didn't mind at all that our Competition Bureau had sent part of this issue to the tribunal. They raised those fees by 30 per cent without any explanation whatsoever to justify it. There's a major abuse.

Other countries have moved ahead for many years now. With regard to the EU, individually, as I said earlier, 18 countries had already legislated about a maximum of 0.9, merchant fees. Now they're doing it as a bloc.

For your understanding, I have with me the full regulations tabled at the EU Commission. I will read the European Commission press release from Brussels, dated July 24, 2013. The headline is "New rules on Payment Services for the benefit of consumers and retailers." It reads:

In order to adapt EU payments market to the opportunities of the single market and to support the growth of the EU economy, the European Commission adopted today a package including:

- A new payment Services Directive ("PSD2")
- A proposal for regulation on interchange fees for card-based payment transactions

Internal Market and Services Commissioner Michel Barnier said: "Today, the payment market in the EU is fragmented and expensive with a cost of more than 1 per cent of EU GDP..."

A cost of more than 1 per cent of EU GDP.

"... or 130 billion a year. These are costs our economy cannot afford...."

If the EU economy cannot afford these costs, why should the Canadian economy afford them? Please.

It continues as follows:

"Our proposal will promote the digital single market by making internet payments cheaper and safer, both for retailers and consumers. And the proposed changes to interchange fees will remove an important barrier between national payment markets and finally put an end to the unjustified high level of these fees."

Vice President Joaquín Almunia added: "The interchange fees paid by retailers end up on consumers' bills. Not only are consumers generally unaware of this, they are even encouraged through reward systems to use the cards that provide their banks with the highest revenues. Complementing the enforcement of antitrust rules, the regulation capping interchange fees will prevent excessive levels of these fees across the board. A level playing field will be created for payment services providers, new players will be able to enter the market and offer innovative services, retailers will make big savings by paying lower fees to their banks, and consumers will benefit through lower retail prices."

[Senator Ringuette]

The revised Payment Services Directive brings a number of new important elements and improvements to the EU payment market:

- It facilitates and renders more secure the use of low cost internet payment services by including within its scope new so-called payment initiation services. These are services that operate between the merchant and the purchaser's bank, allowing for cheap and efficient electronic payments without the use of a credit card. These service providers will now be subject to the same high standards of regulation and supervision as all other payment institutions. At the same time, banks and all other payment service providers will need to step up the security of online transactions by including strong customer authentication for payments.
- Consumers will be better protected against fraud, possible abuses and payment incidents (e.g. in case of disputed and incorrectly executed payment transactions). Consumers may be required to face only very limited losses — up to a maximum of 50 EUR (vs 150 EUR currently) - in cases of unauthorised card payments.
- The proposal increases consumer rights when sending transfers and money remittances outside Europe or paying in non-EU currencies.
- It will promote the emergence of new players and the development of innovative mobile and internet payments in Europe for sake of EU competitiveness worldwide.

• (1030)

The Regulation on interchange fees, combined with the revised PSD, will introduce maximum levels of interchange fees for transactions based on consumer debit and credit cards and ban surcharges on these types of cards. Surcharges are the extra charge imposed by some merchants for the payment by card and are common notably for purchases of airline tickets. When interchange fees are capped for consumer cards, retailers' costs for card transactions will be substantially reduced and surcharging will no longer be justified.

It continues:

During a transition period of 22 months —

— that is, as of last July 24 —

— caps on interchange fees for debit and credit cards will apply to cross-border transactions, i.e. when a consumer uses his card in another country, or when a retailer uses a bank in another country. Thereafter these caps will also apply to domestic transactions.

Senator Gerstein, I see I have your attention. Thank you very much.

Senator Gerstein: You always do.

Senator Ringuette: It says:

Thereafter these caps will also apply to domestic transactions. The caps are set at 0.2 per cent of the value of the transaction for debit cards and 0.3 per cent for credit cards. These levels have already been accepted by competition authorities for a number of transactions with cards branded MasterCard, Visa and Cartes Bancaires.

To pause here, nine years ago, when Australia put a cap on interchange fees, Visa and MasterCard did not flee the country and are still providing the high quality secure service that they say they do in Australia. Visa, MasterCard and Carte Bancaire have already said to the EU commission that they have no problem abiding by these caps. Why should they have a problem with the caps that I'm introducing in Bill S-202 in Canada? Why should they?

To continue:

For the cards that are not subject to the caps (mainly commercial cards issued to businesses and three party schemes such as American Express or Diners), retailers will be able to surcharge for them or to refuse to accept them. In this way, the costs imposed by these expensive cards can be passed directly on to those who benefit from them rather than being borne by all consumers.

Interchange fees are included in the retailers' costs of receiving card payments and are ultimately paid by consumers through higher retail prices. They are unseen by consumers but cost retailers and ultimately consumers tens of billions of euros every year. The level of the interchange fees varies widely between the Member States, which suggests that they do not have a clear justification and create an important barrier between the national payment markets. Capping the interchange fees will reduce costs for retailers and consumers and help to create a EU-wide payments market. This should also encourage innovation and give more scope for payment providers to offer new services.

They give a background to their conclusion in capping interchange fees as a resumé, but, if you want, I can give you the entire study; I have no problem with that.

The background:

The review of the EU payments framework, especially the Payment Services Directive (PSD), and the responses to the Commission's Green Paper 'Towards an integrated European market for card, internet and mobile payments' in 2012...

— didn't take them that long to put in legislation —

led to the conclusion that further measures and regulatory updates, including adjustments to the PSD, are required. This would help the payments framework to better serve the needs of an effective European payments market, fully

contributing to a payments environment which nurtures competition, innovation and security. Modernisation of the legislative framework for retail payments was also defined as one of the key actions of the Commission Single Market Act II.

This package responds to major changes in the way Europeans shop and pay. Almost every account holder in the EU possesses a debit payment card and 40 per cent also own a credit card. 34 per cent of EU citizens already shop on the internet and more than 50 per cent possess a smartphone¹, which allows them to access the world of mobile payments. Some economy sectors — like the travel industry — even make most of their sales on the internet².

At the same time, the EU market for cards, internet and mobile payments remains fragmented and faces important challenges that hinder its further development and slow down the EU growth potential (such as divergent cost of payments for consumers and merchants, differences in technical infrastructures or the inability of payment providers to agree on the implementation of common technical standards).

Furthermore, while card payments are becoming more and more widespread, the still prevailing “interchange fees” (fees paid by banks to each other for each card payment) business model promotes high inter-bank fees and impacts costs for retailers and ultimately prices for consumers. It also prevents the emergence of new players.

This is the press release issued by the European Community, Brussels, July 24, 2013.

So, basically, dear colleagues, in regard to this issue, and in market terms, we're laggards, big-time laggards — big big-time laggards. Collectively, if we want to play and be seen as a serious player, a market economy country, why are we going to be — if not acting rapidly — the last one?

Senator D. Smith: He who hesitates is lost.

• (1040)

Senator Ringuette: Why are we not moving forward? There's been \$20 billion in excessive fees since 2009. Never mind reasonable fees. How many mortgage payments would that give to low- and medium-income families?

The Hon. the Speaker: Honourable senators, I regret to inform you that the 45 minutes allocated to —

Senator Ringuette: Could I have five more minutes, please?

Hon. Senators: Agreed.

Senator Ringuette: Gee whiz. I would renege my five minutes if you would agree to move it to committee. Can we have an agreement?

Some Hon. Senators: No.

[Senator Ringuette]

Senator Ringuette: I suspected that.

I honestly believe that since the last time that I spoke to you in this chamber about this issue two major events have happened. The first one was the decision of the tribunal clearly saying that this issue requires regulation.

The second, even more important thing in the last two weeks is the fact that the European Commission, 28 European countries, are capping merchant fees, are capping that abuse into the economy by a very select few.

In Canada, we have Visa and MasterCard, and at times they co-brand with Canadian Tire and other major retailers. In Canada they spend a billion dollars a year to market their cards, because the more you use the card, the more profits they make. They are not satisfied with that, because they've increased their fees by 30 per cent in the last year.

Senator D. Smith: They're greedy.

Senator Ringuette: Is Canada going to be a laggard on this issue? I believe we already are. But how far down the list do you want to be, in order to really take the action necessary to protect Canada's small and medium-sized businesses and to protect Canadian consumers against these abuses in the system?

Senator D. Smith: Even the middle class.

Senator Ringuette: So please, colleagues, please.

[Translation]

Listen, listen, listen...and then refer this bill as soon as possible to the Standing Senate Committee on Banking, Trade and Commerce so it can get the consideration it deserves, for the benefit of all Canadians. This bill should then proceed to third reading in the Senate, which, as the supposed chamber of sober second thought, should then send it the other place. If there is indeed a consumer-oriented approach in the other place, this bill should be given priority consideration.

[English]

Hon. Joan Fraser (Deputy Leader of the Opposition): Would Senator Ringuette take a question?

Senator Ringuette: Yes, I would.

Senator Fraser: Actually more of a comment than a question.

First of all, I really want to congratulate you. It seems to me your work on this topic is almost a model of what senators should do.

It's not the first time you've done this. You took a topic that was unknown and obscure to most of us, even when you brought it to our attention, and you kept at it. Elections, prorogations and debates come and go, and you keep at it. You have put this topic on the public agenda to the point where you're starting to have a political impact beyond the people you are trying to help. I hear other parties now talking about this issue, which is an important signal.

My question: We know the NDP is not in a position to do anything about this, although I've heard them talk about it, but the Government of Canada could, and as you have so eloquently pointed out, they don't. Have you ever had any indication why they don't?

Senator Ringuette: Thank you, senator, for your comments.

I have no merits in regard to bringing forth this issue. I consider that it's part of my job.

I will confess to having a strange meeting with Minister Flaherty on Parliament Hill a few years ago when I was again highlighting this issue. I said to the minister, "Please, oh, please. Never mind me. You have to do something in regard to this issue for our small and medium-sized businesses and our Canadian consumers." He looked me in the eye and said, "I hear you, senator." I said, "Well, thank you."

But to date, the only system that has been put in place is called a voluntary code of conduct that, in reality, is window dressing. It has not addressed the fundamental issue of these fees. Until we do so, all Canadians and small and medium-sized businesses will be penalized.

Hon. Hugh Segal: I wanted to see if Senator Ringuette would take a question.

The Hon. the Speaker: I'm sorry. We're on further debate.

Senator Ringuette: No, move it to committee.

(On motion of Senator Martin, debate adjourned).

• (1050)

THE SENATE

MOTION TO SUSPEND THE HONOURABLE SENATOR PATRICK BRAZEAU—MOTION IN AMENDMENT— DEFERRED VOTE

On the Order:

Resuming debate on the motion of the Honourable Senator Carignan, P.C., seconded by the Honourable Senator Fortin-Duplessis:

That, notwithstanding any usual practice or provision of the Rules, in order to protect the dignity and reputation of the Senate and public trust and confidence in Parliament, the Senate order a suspension for the Honourable Senator Brazeau for sufficient cause, considering his gross negligence in the management of his parliamentary resources, until such time as this order is rescinded pursuant to rule 5-5(i), and such suspension shall have the following conditions:

- (a) Senator Brazeau, while under suspension, shall not receive any remuneration or reimbursement of expenses from the Senate, including any sessional allowance or living allowance;

- (b) Senator Brazeau's right to the use of Senate resources, including funds, goods, services, premises, moving and transportation, travel and telecommunication expenses, shall be suspended for the duration of the suspension; and

- (c) Senator Brazeau shall not receive any other benefit from the Senate during the duration of the suspension;

That, notwithstanding the provisions of this suspension motion, the Senate confirm that the Standing Committee on Internal Economy, Budgets and Administration retains the authority, as it considers appropriate, to take any action pertaining to the management of Senator Brazeau's office and personnel for the duration of the suspension;

And on the motion of the Honourable Senator Cowan, seconded by the Honourable Senator Fraser:

That this motion be referred to our Standing Committee on Rules, Procedures and the Rights of Parliament, when and if the committee is formed, for consideration and report;

That Senator Brazeau be invited to appear; and in light of the public interest in this matter, pursuant to rule 14-7(2), proceedings be televised;

And on the motion in amendment of the Honourable Senator Fraser, seconded by the Honourable Senator Munson:

That the motion be amended by replacing the words "Rules, Procedures and the Rights of Parliament" with the words "Internal Economy, Budgets and Administration".

The Hon. the Speaker: Further debate?

Hon. Roméo Antonius Dallaire: Honourable senators, I would like to start by reading from my favourite little reference book called *The Wicked Wit of Winston Churchill*. I use it to set the scene because during the past few days, we seem to be arguing not necessarily on the content of the infractions that were committed, that seem to be reviewed, and that have brought about this motion on Senator Brazeau — by the by, when we're talking about Senator Brazeau, so often because we're caught up in what I think of as Shanghai-ing of the justice process, where we're dealing with three senators at the same time, to me, it's inappropriate methodology, so it has relevance to the others.

This relates to our inability to have this chamber maybe want to ensure that the jurisprudence we're establishing on this new ground will stand, not just during what we're doing, but post what we're doing. That is to say, that it will stand not only in the eyes of public opinion, of course, in regaining the public's confidence in the institution, which seems to be damaged, but also in the judicial realm, where justice has been properly done.

Because we don't seem to have a choice in how we're doing this — or we don't want to have a choice — I thought I'd bring this little ditty of the past to bear, if not for levity, at least to get us into the right frame of mind.

The Hon. the Speaker: Excuse me, honourable senators. We have a procedural issue here, and it's the following: It has been our practice dealing with bills where we use the phrase "stacking amendments." In this instance, we are not stacking. Therefore, at our last sitting, the Honourable Senator Dallaire spoke on the subamendment of the Honourable Senator Fraser, and I have just been advised by the table that he has exhausted his time on that.

Senator Mercer: It was just getting good.

The Hon. the Speaker: In explaining the procedural matter, when this subamendment is disposed of, we will then be on the amendment and then the main motion. Senator Dallaire, who has yet to speak on those, will have that opportunity. I think we better stick to this procedure so there is never confusion.

Having said that, are there other honourable senators who would like to rise and participate in the debate? The question before the house is the subamendment of Senator Fraser.

Hon. Hugh Segal: Honourable senators, while I very much appreciate the spirit behind the subamendment of my colleague Senator Fraser and the desire to go back to home base where the reports were done, I think that this will put the members of the standing committee on expenses and administration, the so-called *régis*, into a very difficult circumstance. They will end up, unwittingly, not only looking at the motion before us with respect to Senator Brazeau, but they will also have to look at issues of sanctions when, as was pointed out yesterday by one of our colleagues on this side — I think it was Senator Comeau — they don't have any particular authority with respect to sanctions. That would require the negotiation of a reference for that committee in this chamber between the leadership of both parties that address that problem in some substantive way.

I think that might produce difficulty, whereas a fresh set of eyes, as is anticipated in your seatmate Senator Cowan's main amendment, I would argue is a much better way to deal with the new issues around the depth of sanction and the term "gross negligence" that the Leader of the Government in his wisdom chose to include in the motions before us now. I respectfully submit, to someone who is much more learned in the affairs, rules and traditions of this place than I am, that that might end up being unconstructive and counterproductive.

My view would be that while the spirit of what was suggested was constructive, I think the impact would not be. It would be deleterious to the process, and I would urge her to consider, whatever the disposition on her amendment, standing strong in support of her leader's amendment. I think it actually achieves a far better outcome relative to due process in this place going forward with respect not only to Senator Brazeau, about whom the present motion is drafted, but also the other motions before us. I respectfully make that submission to colleagues here in the chamber.

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

Hon. Art Eggleton: Colleagues, I think, from what we've heard throughout these last few days, referral to committee is very appropriate in terms of dealing with due process and getting all the facts out on the table.

There is a lot of information, yes, that was dealt with by the Committee on Internal Economy in terms of the Deloitte report and their own judgment about the matter. Except for the Wallin report, the others have been submitted to this chamber.

But so much more needs to be explored. The three senators have said in passionate, strong terms that they feel there is a lot of information that they haven't had the opportunity to have explored at Internal Economy, or anywhere else here, relevant to this proceeding.

If we really do believe in due process and if we are intent upon taking this matter on at this point in time, even though the RCMP are still out doing all of their things, then we need a full airing of the issues and the opportunity for the three senators, with their counsel, to come and make their presentations, ask questions and fully explore the matter, as well as get our staff in to fully explore the matter because we've heard constant references to Senate Finance. Well, Senate Finance is a big player and a big part of all of this, and we need to explore how that is all operating in conjunction with what these senators have claimed.

At the end of the day, if people have violated the system, abused the system, there should be penalties. Using the Income Tax Act as an example, if you don't pay a tax that you owe and the CRA comes back and says you have to pay it, well, you have to pay it with interest and, yes, there could be a penalty as well.

I think a penalty in an administrative way in terms of our position as an employer is an appropriate thing to do. I'm absolutely astonished at the penalties being suggested. They're far in excess of anything I would have thought was reasonable. Notwithstanding that, we've heard nothing about how these penalties were arrived at. I asked Senator Carignan about why these particular penalty levels were put forward by him. The answer I heard was, "Well, the Senate can change it." Maybe we should, if we're going to go that route of applying the penalty. If, at the end of the day, you're determined—and some of you are—to adopt these motions, then consider that; consider that penalty. I intend to vote against the main motions, because I don't believe that they serve the proper interest of due process.

• (1100)

I'm also concerned about the issues that Senator Baker has raised here.

There are some lawyers here; I'm not one of them, Senator Nolin. I'm an accountant. Shakespeare said in one of his plays that first you kill all of the lawyers. I think he said the accountants were next.

In any event, there have been some legal arguments back and forth about this whole issue of—I forget the actual legal phrase, but the whole notion of if this body has a judicial status—and it seems from many court decisions and much jurisprudence that it does—then, in fact, it could be interfering in the further processing by the RCMP of their investigation. At the end of the day, they may not be able to bring a matter to prosecution, to a court, or even if they do, it could be thrown out in the court on a double-jeopardy kind of argument that says this matter has

substantially already been dealt with; it may not be identical. I know you try to separate administrative from criminal, but there is a lot of overlap in these issues.

It may be disputable as to whether or not that would happen at the end of the day, but I'll tell you this: I don't think we should take that chance. I don't think we should take that chance, because there is still a lot of information out there: the Prime Minister's role in this and his staff's role in this. We certainly know about Nigel Wright's role in a very general way. We don't know a lot of detail. We don't have that information. It is not before us. It's in front of the RCMP. Even the ethics investigators here have put that aside because of the fact that the RCMP have it.

Well, if we're going to damage the RCMP's ability to deal with this matter, and that's quite possible—maybe not definite, but quite possible—then, in effect, we're contributing to a cover-up. We're contributing to a cover-up of this issue.

We need to get all of the facts out so that we can understand where the responsibilities lie. I don't believe that the responsibility all lies with those three senators. I don't believe that. I'm sorry. I think there is responsibility in other places. I think there is responsibility certainly in the Prime Minister's Office. I don't know about the man himself, but I think that all needs to be explored. There may be some responsibility also in terms of the Senate leadership here, in the Committee of Internal Economy.

I think we need to know all of that. We need to have all of these pieces of information put together before we can determine what the right penalty is. Doesn't any court take all these matters into consideration, all of the issues and the mitigating circumstances or the other players in all of this, and whether there was some encouragement to these senators, some words to these senators that made them believe they were doing the right thing, even though it was subsequently found they weren't doing the right thing?

We haven't got all of that information here. We could be risking damaging the RCMP investigation in this that could lead to further hearings on the matter, a further court case, but that may get stopped. That may at some point down the line get stopped if we rush to judgment here and proceed with these three motions.

If sober second thought was ever a vital necessity, it's now. Now is the time for sober second thought. I think either the subamendment or the amendment would work to do that. I tend to agree with Senator Cowan that the Rules Committee, perhaps a fresh examination of it, would be the best, but let's not bypass due process. Let's not contribute to a possible cover-up of this issue.

Canadians want answers to all of this. They want to know the whole story. They just don't want it cut off, punishing these people, and then everything else will fall by the wayside. You can't do that. Canadians will not allow it, and we should not allow it.

The penalties are very severe and there has not been a justification given for the extent of those particular penalties, and above all the cover-up possibility and the lack of due process are important to make sure that we carry it out.

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

Senator Eggleton, will you take a question?

Senator Eggleton: Of course.

Hon. Pierre Claude Nolin: Senator Eggleton, I was mentioning yesterday in my remarks that the Speaker yesterday ruled on the appropriateness of us deciding that. Of course, Senator Carignan yesterday mentioned that probably our process is not perfect. It's a process that has been in place for many centuries, but is it perfectible? Probably, like any process.

Don't you think we should explore, to the full extent, the process we already have had in place here in Canada for almost 150 years and see what can be brought out of that process?

As the Speaker said yesterday, if at the end of that process we come to the conclusion that we should explore more, then we could explore going back into committee. Don't you think that would be the appropriate way to go?

Senator Eggleton: Well, honourable senators, I'm not sure. If you're saying further exploration here in the Senate chamber itself, I have no problem with continuing on this discussion to find out more and more, but I think ultimately, if we're going to give an opportunity to get facts out, I think through a Senate committee we could have the opportunity for almost a public inquiry kind of set-up. A public inquiry would be a good idea, actually. We could do it in that kind of format so that we have people who would appear with their solicitors and there could be questions and perhaps cross-examination or whatever to bring out all the facts. There may be people we should summon to appear before the committee. I see that as a more thorough kind of process.

Ultimately, the decision would be made here, because the committee would have to report back here. The Senate would be after the committee, but the committee would be, I think, an opportunity to better explore and get to the bottom of all of this information.

Senator Nolin: Let's say I follow your recommendation. Can you tell us what are the specific needs in terms of evidence that we need to explore through a sub-process, and we should be informed of? Is there anything that you are informed of that you think should be brought to our attention to influence the decision that Senator Carignan is asking us to take? More than maybe, is there something real that you know about that we should know and that could influence our decision?

Senator Eggleton: Yes. I think we should know the role of the Prime Minister's Office. We know that the Prime Minister's Office has had an involvement in this. Nigel Wright wrote a \$90,000-cheque, but we have few details about all of the discussions that went on and all of the influence that the Prime Minister's Office had in this whole matter.

Particularly if there was any misleading of these three senators by the Prime Minister's Office or by the Senate leadership, I think that bears in all of this and we need to get to the bottom of all that

and understand that situation. We know there was a \$90,000-cheque, but we don't know much of anything else about it. Mr. Wright should appear before the committee.

• (1110)

Senator Nolin: I don't want to read the motion of Senator Carignan, but it's quite specific what conclusion Internal Economy came to. Of course I'm hearing about the involvement of the PMO, and the Prime Minister and PMO's former Chief of Staff, but how does it affect the conclusion that Senator Carignan is trying to convince us of? I don't see that. I don't get it.

Senator Eggleton: I did say in my remarks that any court adjudicating on a matter takes all factors into consideration, looks at all of the evidence and, as Senator Dallaire said yesterday, they look at the evidence also on an individual basis, rather than all three getting the same punishment level. I think that's a procedure we should follow. We should be looking at each case individually because maybe the punishment level should not be the same for each one.

We should also be looking at all of the circumstances. We keep hearing about these memos that Senator Duffy — and Senator Brazeau presented one of them yesterday. We need to see all of that because it seemed to have influenced their behaviour in the way they went about this. We need to know that before we decide on a penalty.

Senator Nolin: Senator Eggleton, if there's a court proceeding, which is not the case here. We have a specific motion, and every element of that motion was explored in evidence by Senator Carignan.

Senators who are involved in that motion are totally entitled to bring new evidence to this chamber, like the Honourable Senator Brazeau did yesterday. That's why I asked the question earlier: Does Internal Economy, who was informed of that document — does it influence them? The answer is: We knew of that document and here's how this document can be interpreted in the big story related to Senator Brazeau. That satisfies me. We don't need to explore more.

In court, a judge will not accept any evidence, any question on anything. You have to stick to what is requested from the court, A, B to Z. "Do you have something to say on this?" "No, I want to talk about ZZ."

No, we're here for A to Z, not more. We cannot fish, explore, whatever we want. We have to stick to what is asked of us and concentrate on the evidence, on what's asked of us. That's exactly what we're doing here, don't you agree?

The Hon. the Speaker *pro tempore*: Senator Eggleton, before you respond, I have to report that your time has expired. Are you prepared to ask for more time so you can respond?

Senator Eggleton: Yes.

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

Hon. Senators: Agreed.

Senator Eggleton: Look, I'm not looking for extraneous information; I'm looking for information that's relevant to the way these people operated, and I think there is a lot of information that can come out in a committee that can't come out here easily because we operate under different rules. Are you suggesting they can bring lawyers in here and, if we can have an examination of officials, we could do all of that in here. I think it would be far better to do it at the committee level. Operating the way we normally operate here is not the way to get to the bottom of this; it is not the way to find out all the information we need.

I know you're trying to separate this from the criminal aspect and say this is an administrative thing, but I'm concerned about the overlap, the kind of thing that Senator Baker talked about. He cited a great deal of evidence that says this is a judicial proceeding. This is a qualified body, the Senate of Canada. So that's pretty serious. If it's going to end up contributing to a cover-up of the information we need to have for this issue, I think that's a bad thing for Canadians.

Senator Nolin: Don't you agree the Supreme Court of Canada already dealt with who we are as a Parliament and the extent of our authority? We're not a judicial body, definitely not. Any court in Canada would agree with that. We have the Supreme Court of Canada saying that's what we are. That's the extent of our power.

We have to be rigid and precise on the type of debate we're having because we can debate all sorts of things. We have to focus on what's asked of us by the motion and that's it, not more than that. No intent.

What about the motivation? No, no, no. The over-collection of public money is what is being asked of us, period.

Don't you agree that we have in place here the proper process? Like the Speaker told us yesterday, if we need to do more at the end of our exercise, then we may decide to go to a committee. But don't you think it's too early to say that?

Senator Eggleton: No, I don't. I don't think we can do due process here, or are we doing due process? We've also got a closure motion today that's going to try to bring this all to a very quick end. I don't think we're doing this justice at all. A committee can help to explore the ins and outs of this issue. There can be parameters so that it doesn't go all over the map, but a lot of issues out there still have not been answered and I think they need to be answered.

The Leader of the Government and the Deputy Leader of the Government are prepared to move closure. They think there has been enough, and I think that's unfortunate — there hasn't been.

Next week, it will become the law of the Senate.

Hon. Patrick Brazeau: Senator Eggleton, would you take a question?

If I hear Senator Nolin correctly — and he can correct me if I'm wrong — he's dealing strictly with the motions that have been brought to this chamber for discussion and debate and later

decision. You brought the potential solution to have a fair hearing, a fair process, so that the three individual cases in question can be looked at thoroughly. But don't you believe that perhaps one very simple solution would be for the government leader to rescind these motions so that we can decide upon the process that should be undertaken so that we do have indeed a fair process, which all Canadians want us to have and have been demanding us to have, certainly in the last week or so?

Senator Eggleton: Well, I think we might have done things differently. Yes, I would have preferred to see things handled differently in this regard. But we are where we are with these motions on the floor. I think under those circumstances the amendment of Senator Cowan, and also the amendment of Senator Fraser to a great extent, would help to move us in that direction.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: It has been moved by Honourable Senator Carignan, P.C., seconded by Honourable Senator Poirier, that notwithstanding any usual —

Shall I read the entire motion and get to the amendment and the subamendment?

Some Hon. Senators: Yes.

Senator Fraser: This vote is on?

The Hon. the Speaker pro tempore: It's on the subamendment, so the question to be put is on the subamendment of Honourable Senator Fraser.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker pro tempore: Those in favour of the motion, please signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those contrary, please signify by saying "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: Honourable senators, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: I see two senators standing. Could the whips make a determination of the length of the bell?

Senator Marshall: Thirty minutes?

Senator Munson: Obviously, at this particular point, I wish to defer the vote.

The Hon. the Speaker pro tempore: This vote is being deferred to the next sitting of the Senate, honourable senators.

Senator Munson: Yes, sir.

• (1120)

MOTION TO SUSPEND THE HONOURABLE SENATOR PAMELA WALLIN—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Carignan, P.C., seconded by the Honourable Senator Poirier:

That, notwithstanding any usual practice or provision of the Rules, in order to protect the dignity and reputation of the Senate and public trust and confidence in Parliament, the Senate order a suspension for the Honourable Senator Wallin for sufficient cause, considering her gross negligence in the management of her parliamentary resources, until such time as this order is rescinded pursuant to rule 5-5(i), and such suspension shall have the following conditions:

- (a) Senator Wallin, while under suspension, shall not receive any remuneration or reimbursement of expenses from the Senate, including any sessional allowance or living allowance;
- (b) Senator Wallin's right to the use of Senate resources, including funds, goods, services, premises, moving and transportation, travel and telecommunication expenses, shall be suspended for the duration of the suspension; and
- (c) Senator Wallin shall not receive any other benefit from the Senate during the duration of the suspension;

That, notwithstanding the provisions of this suspension motion, the Senate confirm that the Standing Committee on Internal Economy, Budgets and Administration retains the authority, as it considers appropriate, to take any action pertaining to the management of Senator Wallin's office and personnel for the duration of the suspension.

Hon. James S. Cowan (Leader of the Opposition): Honourable colleagues, I've listened with great care to the debates of the past few days, in particular to the detailed presentations of Senator Carignan in support of his motions. We've heard impassioned pleas from Senators Brazeau, Duffy and Wallin, the three senators most directly affected by these proceedings. We've also heard thoughtful interventions from a number of other senators, including Senators Segal and Baker.

I confess to being even more troubled today than I was when I spoke in this chamber on Tuesday.

This debate has been ongoing since the session began. This chamber has quite literally done no work other than consider these motions. The government has not even moved its own Speech from the Throne — the much heralded new vision of the Harper government for Canadians, the reason the Prime Minister said he had to prorogue Parliament. That speech, that plan has not even been moved by the government. And what has consumed our time, compelling us to sit until midnight last night? Three motions to suspend, without pay, three of the government's own appointees.

Colleagues, as I've said, I have no particular sympathy for these three colleagues. I called for sanctions back on May 9, when the reports of the Internal Economy Committee were first tabled in this chamber with respect to Senators Brazeau and Duffy. The government was not interested in further sanctions at that time. They tried to jam us, to push the reports through without our even having an opportunity to read them, let alone study and seriously consider them. Colleagues will remember that day. We on our side had to fight just to receive copies of the reports. When they finally did materialize, the government was not interested in giving us an opportunity to actually read them, at least not any of us on this side of the chamber. The government then accused us of delay, of filibustering, because we refused to pass the reports without, imagine, even reading what we were being asked to pass.

I issued a statement on May 9. I expressed my disappointment that Internal Economy had not addressed the issue and the question of further disciplinary action or investigation. To me, it was unfathomable that someone could break the rules and be told, "Oh, well, now that you've been caught, pay it back and everything will be fine." But that was the government's position then.

Then, of course, things began to unravel. Canadians learned about the secret cheque for \$90,000 from Nigel Wright to Senator Duffy. The government, contrary to what is now being claimed, staunchly defended both Mr. Wright and Senator Duffy. On May 14, when CTV news reported the secret payment, the Prime Minister's Office and Senator Duffy released identical statements, saying, "Mr. Duffy had paid back the expenses in question and no taxpayer resources were used." Nigel Wright was praised for being honourable, for helping a friend, but of course it later emerged that he and Senator Duffy were not particularly close friends at all.

The Prime Minister has been telling Canadians that as soon as he learned of the payment from Mr. Wright to Senator Duffy, Mr. Wright resigned, but that's not quite true either, colleagues. It was actually several days before Mr. Wright resigned. The reports were that Mr. Wright offered his resignation but that the Prime Minister refused the resignation.

The Prime Minister told Canadians — in Parliament, colleagues — that Mr. Wright acted alone, that no one knew of the Wright-Duffy deal in his office except for Mr. Wright and Senator Duffy. Well, that too has changed. Now, months after the media first reported that in fact a number of very senior Conservatives were aware and were involved, including several close advisers to the Prime Minister working in the Prime Minister's Office itself, now, finally, the Prime Minister has admitted to Canadians that in fact there were other people involved. At last count, we have more than a baker's dozen.

Colleagues, what is going on here? It's been alleged in this chamber that there's been a cover-up, and I must tell you I'm beginning to think that may be the case. We've been presented with these motions, but, just as in May, we're told we must pass them — no time to send them to committee for study and no time to provide due process to the three senators who stand accused.

That is not how we conduct serious business in this chamber. Colleagues, what is this government afraid we will learn?

Senator D. Smith: The truth.

Senator Cowan: Colleagues, what is this government afraid we will learn if we follow our usual procedure, if we refer these motions to committee and take the time to call witnesses and listen to the three senators and hear their side of the story? We know what happened when we resisted the pressure in May. Canadians learned that Senator Duffy's "honourable" repayment of \$90,000 in fact came from the Prime Minister's chief of staff. What is the government afraid we will learn now?

Very serious allegations have been made in the course of this debate, allegations that simply cannot be ignored by this chamber: allegations about threats by the Prime Minister's Office to expel a member of this chamber from the Senate unless the senator agreed to do what the PMO wanted.

Allegations that an undertaking was made by the PMO, with the agreement of Senate leadership, to stop or manipulate forensic audits to give a senator "a pass." The allegation continued that "if this phony scheme ever became public, Senator LeBreton, the Leader of the Government of the day, would whip the Conservative caucus to prevent my expulsion from the chamber." Those are the words of Senator Duffy.

Allegations that the then Leader of the Government in the Senate told a senator that if he didn't quit the government caucus immediately, he would be sent to the ethics committee, with orders from the leadership to "throw me out of the Senate." Again, Senator Duffy.

Colleagues, surely members of the government would agree that these allegations cannot stand without further investigation. Surely they are as anxious as we are to get to the bottom of these very serious allegations. These are allegations that go to the integrity of the Senate, arguably even more so than the expense claims. Why is the government so determined that we not look into these allegations? Why is there time for days of debate on these motions, for seven or more hours of Senator Carignan speaking, yet no time for committee study?

But let's be very clear: The circumstances of these three cases are, of course, different, and as I've said many times, I have no particular sympathy or carry no particular brief for any of these named senators who I believe did abuse our rules and did make improper expense claims; nevertheless, the underlying principles of fairness, due process and the rule of law are and must always be applicable to each of them.

Colleagues, that is the Canadian way. These are the fundamental principles that underlie our system of justice — indeed, the parliamentary system, whose integrity we are being

told these motions are intended to uphold. If we are prepared to short-circuit justice, if we're prepared to deny due process and ignore basic principles of fairness, then what are we? And colleagues, who are we if we vote for this?

Serious legal issues have been raised about the potential legal implications of these motions. All of us are aware that, in addition to our debates, the debates in this chamber, the RCMP, at our request, and in all likelihood on their own initiative, are investigating the actions of these three senators and, by extension, the involvement of many others, including those holding high office in this country. I am sure all of us would agree that we must do nothing that would impede or prejudice those investigations.

• (1130)

The Canadian public, which is so rightly angered at this whole sordid affair, must be assured that the independent police investigations will be allowed to run their course. We have heard from Senator Baker and other commentators that precipitous action by the Senate might imperil that course of action. I do not pretend to know how serious that risk is.

Senator Carignan was asked by several of my colleagues, and then again by me last night, whether he had sought and obtained any expert legal advice before proposing his motions. He indicated that he was relying on his own legal research. Without casting any disrespect on Senator Carignan's ability as a legal and constitutional expert, that's not good enough for me; and I suggest, colleagues, it should not be good enough for any of you.

There are very serious legal and constitutional issues here. Let's be clear: The actions we are considering are unprecedented in the history of the Senate. Are we prepared to proceed without expert advice confirming Senator Carignan's belief that we have the power to proceed as he proposes and that these actions will not jeopardize the ongoing police investigations?

In three very lengthy speeches, Senator Carignan reviewed in great detail the chronology of events in these three cases and the opinions reached by Deloitte and the Internal Economy Committee. However, he did not address, as I said last night, what to me are the fundamental issues.

Should the Senate impose sanctions in addition to the repayment of monies found to be improperly claimed? If so, why is he proposing that these sanctions be imposed now as opposed to last May when I first raised the issue of sanctions, or as opposed to waiting until the outcome of the police investigations? Is the same sanction appropriate for all three senators, as the government proposes? Should this really be a one-size-fits-all sanction? Are these now to be our new mandatory minimum penalties for alleged malfeasance?

Colleagues, for all of these reasons, I believe more than ever before that the best course for us to take is to refer these three motions to a special committee where our accused colleagues will have the opportunity to defend themselves and answer our questions, and where we'll be able to seek guidance from constitutional and parliamentary authorities to ensure that we

have embarked on the proper path and from legal experts to ensure that we do nothing that could prejudice the ongoing police investigations.

This also of course would follow, as closely as possible, those precedents that have been established for difficult cases such as these, both in the House of Lords and in our chamber, which are the very cases relied upon by Senator Carignan.

A reference to a special committee for all three motions, as I believe is the preferable course, can be done at any time during this debate, with leave, but if colleagues do not wish to create a special committee and would prefer to utilize a regular standing committee that is acceptable to me.

As you will recall, the amendment I proposed with respect to the motion regarding Senator Brazeau was to refer the motion to our Standing Committee on Rules, Procedures and the Rights of Parliament when and if that committee is formed. I've listened to my colleague and deputy leader, Senator Fraser, and her alternate proposal makes good sense to me as well. However, I say, as she did, that the Senate should have the choice of more than one option. Consequently, I will be proposing the same motion that I did with respect to Senator Brazeau with the expectation that it, too, will be amended to provide for possible reference to our Internal Economy Committee.

SUBSIDIARY MOTION

Hon. James S. Cowan (Leader of the Opposition): Therefore, honourable senators, I move, as a subsidiary motion under rule 5-7(b) and rule 6-8(b):

That this motion be referred to our Standing Committee on Rules, Procedures and the Rights of Parliament for consideration and report;

That Senator Wallin be invited to appear; and in light of the public interest in this matter, pursuant to rule 14-7(2), proceedings be televised.

The Hon. the Speaker *pro tempore*: Honourable senators, it has been moved by the Honourable Senator Cowan, seconded by the Honourable Senator Fraser, as a subsidiary motion under rule 5-7(b) and rule 6-8(b):

That this motion be referred to our Standing Committee on Rules, Procedures and the Rights of Parliament for consideration and report;

That Senator Wallin be invited to appear; and in light of the public interest in this matter, pursuant to rule 14-7(2), proceedings be televised.

On debate.

Hon. Pierre Claude Nolin: May we ask questions?

The Hon. the Speaker *pro tempore*: Questions of Senator Cowan. Honourable Senator Nolin.

Senator Nolin: Senator Cowan, will you accept a few questions?

Senator Cowan: Of course.

Senator Nolin: It's not clear in my mind at least, although I'm sure it's clear for you, but are you suggesting that the work of Internal Economy referring to Senator Wallin is — how should I put it properly — not properly done?

Senator Cowan: No. I thank Senator Nolin for his question. I've said publicly and privately that I think the Internal Economy Committee did superb work. I think they handled all three issues entirely properly. As soon as these matters were brought to their attention they called in the external auditors. It only came off the rails on the night of May 8 when, for whatever reasons, with respect to the Senator Duffy situation, the report was altered. That's another issue.

However, the work that was done by Internal Economy, the way they handled the matter, I think was entirely appropriate, and I, as I think Senator Nolin did, voted in favour of those reports when they came here.

Senator Nolin: That's exactly what I thought you meant to express. Now I'm trying to convince myself of what you want to do. Do you want to go into an appeal of that decision? Do you want to explore the facts that they have already examined and ruled on, or do you want to ask them to do the job that we are recognized by the Supreme Court to be able to do — disciplinary matters? I want you to give me more explanation on what you want us to achieve by your motion.

Senator Cowan: I thank Senator Nolin for the opportunity. Absolutely, I think the Committee on Internal Economy did exactly the right thing. My amendment spoke about the Rules Committee rather than Internal Economy Committee. My intention here is to provide a proper process by which the motions of Senator Carignan can be dealt with. I think we all agree that ultimately the decision as to whether to impose additional sanctions, when to impose those sanctions and what the sanctions ought to be is a decision of this chamber. It's not something that we can fob off on a court or put down to a subcommittee.

The committee, as I see it, is simply the best mechanism that can properly deal with Senator Carignan's motions. I think that we have the very good work that was done by Internal Economy, we have the very thorough work that was done by Deloitte and we have the considered opinions of Internal Economy on the work of Deloitte.

• (1140)

The only thing that's absent, as far as commenting — and we had debate on the reports of Senator Brazeau and Senator Duffy. Because of the timing involved, as we understand, and the point that Senator Segal has made to us repeatedly, we have not had an opportunity to debate the report on Senator Wallin in this chamber, as we did with respect to the other two, nor has Senator Wallin had an opportunity in this chamber to speak on the report with respect to her.

My point is that we need to have a proper process to deal with Senator Carignan's motions. I think that to deal with this in this chamber, without some preliminary work being done by a committee — and I suggest a special committee would be the best approach, but without leave we can't do that, so then we need to rely on one of the existing committees. My choice was the Rules Committee. Let them meet. They could meet immediately. They could meet quickly. Obviously, it's not going to get out of control because the government would have more members than the opposition on that committee. Obviously, they will have. They already do have because we selected the members of that committee yesterday.

As I see it, without trying to tell the committee how to do its work, the first thing they would do is call in experts and say, "All right. Now, what can we do? What is appropriate for us to do as a committee, for ultimate report to the Senate, which will not impede those ongoing police investigations or affect the outcome of any charges that might be laid as a result of those police investigations? What are the parameters within which we should operate? Are there places we should not go for risk of running afoul of that process?" All of us agree we would not want to do that.

Once we know that, then the committee would say, "All right. Is now the right time to impose sanctions?" We felt in May that it was not the right time. Is this the right time, or should we advise the Senate to wait until the police investigations have run their course? That's the next question. Supposing they say, "We've considered this, and we think now is the time to act," as Senator Carignan is suggesting. Then you would say — and this is the point that has been made repeatedly by Senator Dallaire and Senator Eggleton — what is the appropriate penalty?

If you look at the cases that Senator Carignan referred to in the House of Lords, the precedence he wants us to follow — and I think that's good — what did they do? They had a committee look at that, and they looked at those cases one by one. It wasn't a one-size-fits-all sanction.

As I see it, the committee, whatever committee it is that we would choose, would look at that and say, "We think that here is the sanction that's appropriate in this case. Here's the sanction that's appropriate in that case. Here's the sanction that's appropriate in the third case."

It might well be that they would agree with Senator Carignan that, first of all, everybody ought to be treated the same way and that the sanction proposed by Senator Carignan is the correct one. That report would then come to us in the Senate and, obviously, each of the three senators would have an opportunity to meet the charges that have been laid against them. I don't mean to use that in a technical sense, but the allegations that have been raised and the evidence that has been accumulated against them, they would have the opportunity to meet that. They would have the opportunity to be represented by lawyers, others.

We can speak. Those of us who are in the Senate can participate in this debate. We can ask questions, we can offer our opinions, but there are, obviously, other players involved in this saga against whom allegations have been made, who are not members of the Senate and cannot have their say. There have been

allegations made by some of these senators against other senators, and those senators can stand up, as Senator Tkachuk did and as Senator LeBreton did, and defend themselves and say, “That’s wrong.” There are people against whom allegations have been made by these three senators, who are not members of this place and cannot defend themselves as Senator Tkachuk and Senator LeBreton did. That’s due process.

The committee would then report back to this house and say, “We have looked at this. We’re satisfied that what we’re proposing will not in any way jeopardize the ongoing police investigation and what might result from that. We’re satisfied that now is the time that we should impose sanctions, and here are the recommendations that we would make with respect to each of those senators.”

Now, that takes nothing away from us. It simply informs us, and then we can rely on the good work of that committee, as we did on the good work of the Internal Economy Committee, and say, “Well, that’s fine.” We agree with the recommendations of this committee or we don’t. It takes nothing away from our ability, individually or collectively, to discharge our duty and responsibility to discipline our own members, but we would be far better informed, in my view, Senator Nolin, and we would be able to say to Canadians that due process was followed and the chips will fall where they may.

I’m very uncomfortable being asked to vote yes or no on a motion without the kind of assurances that I think we would get if we were to have a committee charged with the responsibility of doing this work and reporting back to us. We are not delegating to them. We are not shuffling off our responsibility. We’re simply going through due process so we can properly discharge our responsibilities when we have to.

Senator Nolin: Senator Cowan, can we agree on the scope of what we are dealing with? I think it’s *grave*, as we say in French, but it’s still quite precise. On, let’s say, improper request of reimbursement of public funds, that is the problem, not more than that.

Senator Segal: Gross negligence.

Senator Nolin: Senator Segal, we’ve heard the Leader of the Government in the Senate explaining why this inappropriate way to ask for reimbursement leads to gross negligence. That’s his argument. We’re going to be asked to vote on that, but it’s not more than that. I think the house, us, can hear the colleagues who may have — and they’ve already started to introduce documentation in the chamber — arguments that could —

Senator Mercer: Unrepresented by counsel.

Senator Nolin: — render unstable the arguments, the motion, and the *réquisitoire* of our esteemed colleague, the Leader of the Government in the Senate, but we can do all that here. What do we miss? What’s so magical about having a lawyer ask questions instead of us asking questions?

Look, for centuries, not only here — we only have a century and a half of history doing that. What about the rest of the British Empire? For more than 700 years they’ve been doing that. Constantly the tribunals have said, “You are totally within your privilege to do that.”

Why should we invite a lawyer to do our job? I think we have enough lawyers here to probably question the evidence we have in front of us. That’s why I asked this question at Question Period this morning: Was the document introduced by the Honourable Senator Brazeau taken care of by Internal Economy? The answer is yes. I got the answer to make sure that I understood where that document — it could be that if you isolate that document, he will state, “Well, there is a cloud over the report of Internal Economy.” So did they know that that document existed? If so, did it influence the report? I got the answer.

I think we have all the authority, all the power, all the possibility to ask questions and to convince ourselves whether the recommendation through the motion of Senator Carignan is the proper way. At the end of that process, we can come to the conclusion that on the sanctions we may have problems on, should we have a sanction A to problem A, and B to B? Probably, like in court, but we’re not there yet. We have to look at all the facts and then decide is there, yes or no, gross negligence? Then we’ll move into sanctions. I think we have the proper process.

Senator Cowan: I suppose you and I would agree that we can never have too many lawyers involved in any organization.

Senator Ringette: There is some objection.

Senator Cowan: I wouldn’t want to put that to a vote here. We’ll keep that to ourselves, Senator Nolin.

The first thing I would say is we’re a lot closer to having to vote up or down than we were a few hours before the government brought down the guillotine on this. What was a private motion has now become a government motion. We have closure, and we’re going to be jammed again next week on this, so we don’t have as much time as many of us would like to see to get to the bottom of this.

• (1150)

I think where you and I are apart on this, and I don’t think we’re apart on the principle of it, but what I’m suggesting, Senator Nolin, is a method, a means that would enable us to get to the point that you want and, I think, that Senator Carignan wants, which is fair and open and transparent. This is no reflection on the work that was done by Internal Economy. I wasn’t there for the meetings of Internal Economy. I don’t know what questions were asked, what questions were not asked. You asked this morning about whether Internal Economy had seen a document. There was some conflagration going on across the way, and people looking around and asking. I don’t know. All I know is I’ve never seen the document, and I don’t know whether the document Senator Brazeau tabled yesterday is relevant or not. I don’t know who saw it, who didn’t see it; I don’t know what questions were asked about it. How can we deal with that? To have it as Senator Carignan said yesterday — “You’re free to ask any questions you want, and if you need more than 15 minutes, we’ll give you a little more time” — that’s not the way this operates. Surely, this is not all about giving Senators Brazeau, Duffy and Wallin an opportunity to ask questions and to table a document from time to time. That’s not the way in which something like this ought to be going.

Whether we like it or not, this really is a trial, and at the end of the day, we’re handing down a sentence. That’s what we’re being asked to do. If this motion passes, as I said at the beginning, we

are stripping these three senators of everything except the title of senator. Now, that may be appropriate, but Senator Carignan, despite being on his feet — and, again, I give credit for his stamina — he never answered that question. Why that? In his view, this is very serious and this is a terrible situation, terrible misdeeds, and he talked about — we throw out the concept of gross negligence. Well, there's been a lot of discussion about gross negligence and what that means. Yesterday, it was "contempt of Parliament." Well, where did all that come from?

It's not just what we do and it's not just, in my view, Senator Nolin, whether we have the right to do it. I agree with you. We have the right to do this, but is it the right thing to do? Have we gotten to that point through the proper process? It isn't enough to say: "Well, we have the right to do it; we have the power to do it; it doesn't matter how you exercise that power." It does matter. I don't base my opinions on the email traffic, but I say to you, Senator Nolin, that I have seen a very great difference in the tone of the emails and other telephone calls that I have received over the last week. In this country, people really do care about due process, and I know you do. I know you do, and I know you're troubled by this. And I'm troubled by it.

So I'm not trying to frustrate this; I'm not trying to filibuster it; I'm not trying to delay anything, but I am absolutely determined to do everything I can to make sure that we do what we do, and we do it properly. I don't think that this is the proper way to proceed.

Hon. Anne C. Cools: I wonder if Senator Cowan would take a question.

Senator Cowan: Of course.

Senator Cools: Honourable senators, I'm very sympathetic to Senator Cowan's motions, and I view his efforts to be in the direction of finding a just solution to a very difficult situation.

I wonder if Senator Cowan could answer a few questions and queries that I have because I have taken a good look at this motion, and most of this motion is about its penalties and punishment rather than its reasons for its proceeding and for the "alleged wrongdoings."

We must remember, and maybe you should comment on this, that the onus is on Senator Carignan to prove his allegations in his motion. The onus for defending is on the afflicted senators against whom these allegations are being made.

Honourable senators, just so the record will be very clear, this is a most unique, unprecedented and unusual motion. I wonder if Senator Cowan could comment directly on some of these points. The motion begins with the words "notwithstanding any usual practice or provision of the Rules, in order to protect the dignity and reputation of the Senate," and it continues. The first thing this motion does is to suspend all of the practices of the Senate and all the rules of the Senate. No one seems to have noticed this. Why is it that all of our Rules — and God knows we have a host of them — and all of the law of Parliament is not applied to deal with this situation? Why do we suspend every other rule, all the other rules, for this motion?

[Senator Cowan]

Honourable senators, I will put it again on the record: "That, notwithstanding any usual practice or provision of the Rules." This sentence continues until it stages the charge, "his gross negligence in the management of his parliamentary resources."

Senator Cowan is in a very important place in the Senate. He is the leader of the official opposition; he is also a trained lawyer. I wonder if he would comment on that.

I have some other questions. Maybe we could go one at a time. I have a few, but they are serious questions.

Honourable senators, I would like to say to Senator Cowan and senators, in case there are doubts about these proceedings today, let us make no mistake: In these proceedings today this house is in judicial mode. There are different pockets of power for the houses of Parliament — such as the inquisitorial powers, and the judicial powers. There are many powers, but make no mistake about it: This Senate is a court, a part of the high court of Parliament. By this motion, it is in judicial mode. I am pleased and honoured to see that so many of the journalists seem to understand that something is unusual. They have all come here, and I note that many of the lawyers, who are senators have also identified that there is something very unusual going on in this place, and it should be treated thus. That's my second point, if you could address it.

Honourable senators, I see this as an opportunity for us to debate. We must be mindful that this particular proceeding before us is a debate. When we say that we have heard from Senator Duffy and Senator Brazeau and Senator Wallin, we have heard from them in debate. But we have not heard from them as witnesses, or from their counsel in their own defence. A debate is a different process. We owe it to these three senators, regardless of whether some like them or dislike them. Regardless of what anyone thinks, we owe it to these three senators, that they be heard in their own defence or, in the alternative, that they be heard through lawyers. Let us understand that Internal Economy never once recommended such harsh measures. I wonder if you could respond to that as well.

Senator Kenny has made a brilliant suggestion — one at a time. I have been listening to you and I laud you. These are the questions that your remarks have invoked and raised in my mind. This is a huge issue.

• (1200)

Most of Senator Carignan's motion is about the penalties. The charge itself is the very few words which say "... for sufficient cause, considering his gross negligence in the management of his parliamentary resources..." As I said, very few words.

Honourable senators, there's nothing in his charge that touches the issues that Senator Carignan keeps raising. The onus of proof is on Senator Carignan. A person is innocent until proven guilty. He has to prove his accusations against these three senators.

(Debate suspended.)

VISITORS IN THE GALLERY

The Hon. the Speaker: Prior to proceeding, I call the attention of honourable senators to the presence in the gallery of His Excellency Frank Horch, Minister for Economy, Transport and Innovation of the City of Hamburg, Germany, and a member of the Bundesrat, who is accompanied by His Excellency Werner Wnendt, Ambassador of Germany to Canada, and a delegation.

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

Hon. Senators: Hear, hear!

THE SENATE

MOTION TO SUSPEND THE HONOURABLE SENATOR PAMELA WALLIN—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Carignan, P.C., seconded by the Honourable Senator Poirier:

That, notwithstanding any usual practice or provision of the Rules, in order to protect the dignity and reputation of the Senate and public trust and confidence in Parliament, the Senate order a suspension for the Honourable Senator Wallin for sufficient cause, considering her gross negligence in the management of her parliamentary resources, until such time as this order is rescinded pursuant to rule 5-5(i), and such suspension shall have the following conditions:

- (a) Senator Wallin, while under suspension, shall not receive any remuneration or reimbursement of expenses from the Senate, including any sessional allowance or living allowance;
- (b) Senator Wallin's right to the use of Senate resources, including funds, goods, services, premises, moving and transportation, travel and telecommunication expenses, shall be suspended for the duration of the suspension; and
- (c) Senator Wallin shall not receive any other benefit from the Senate during the duration of the suspension;

That, notwithstanding the provisions of this suspension motion, the Senate confirm that the Standing Committee on Internal Economy, Budgets and Administration retains the authority, as it considers appropriate, to take any action pertaining to the management of Senator Wallin's office and personnel for the duration of the suspension.

And on the motion of the Honourable Senator Cowan, seconded by the Honourable Senator Fraser:

That this motion be referred to our Standing Committee on Rules, Procedures and the Rights of Parliament for consideration and report;

That Senator Wallin be invited to appear; and in light of the public interest in this matter, pursuant to rule 14-7(2), proceedings be televised.

Hon. James S. Cowan (Leader of the Opposition): Thank you, Senator Cools, for your comments and questions. I think I'll cover them, but I'm sure that if I miss one, you'll remind me.

I'll deal with the last one first, and that was your comment that Internal Economy did not deal with the question of additional sanctions, other than repayment, when they made the reports. As I said, I noticed that when the reports on Senators Brazeau and Duffy came to us in May, and I said that I was disappointed that the committee had not dealt with that at that time or made any reference to it. I wasn't suggesting that sanctions should be imposed, but simply that that was an issue which ought to be considered.

Senator Comeau has said that it's outside the mandate of the committee to do that. I accept his word. If the committee had said, "Look, questions have arisen about whether repayment is enough, whether there should be some further sanctions, and this is outside our purview or mandate, but it should be looked at by some other committee," but as I said, that was not done. I drew my colleagues' attention to that at that time.

As I've said, why now? Apart from Senator Carignan saying, "Well, with respect to Senator Wallin, we only got the report in midsummer," I appreciate that, and therefore they bring it at the first instance.

But with respect to Senators Duffy and Brazeau, we've had these reports since May. If the government felt there was a need to ask for further sanctions, they had from May until the end of June to do so.

Again, we've asked for that. I don't think we've got an answer to it, but you may wish to query Senator Carignan on that again, but I think you make a good point.

Secondly, with respect to this being a court or a judicial proceeding, we've heard Senator Baker speak at considerable length on that, and he quoted considerable authority. As I understand it, the proceedings here are judicial proceedings. You can be in contempt of Parliament in the same way that you can be in contempt of a court for refusing to obey an order of Parliament or a direction of Parliament.

That's why we need to be very careful about what we do. Whether the impact of our acting precipitously would be as severe as Senator Baker suggests it might be, I don't know, but we don't have any legal opinion, and I think we should on that very serious preliminary point before we go to the next points that are at issue.

The point you made — and I think it was your first question with respect to the introductory part of the motions by Senator Carignan, where it says, "That, notwithstanding any usual practice or provision of the Rules..." — we always pride

ourselves that we live in a country where we abide by the rule of law, that we're governed by rules, that the rules aren't imposed after the fact. You're deemed to know the law, but the law is there. We go to great lengths to make sure that the provisions of our laws and our regulations are as widely known as possible so that people can be guided in accordance with known principles. They know what they do, and if they run afoul, as we say, "Well, you should have known what the law was." It's no excuse to say, "Well, I didn't know."

I'm troubled any time I see, "Notwithstanding the rules." Notwithstanding the practice, here we go. As you point out, we do have provisions in our Rules dealing with sanctions against our members. These have been very carefully developed over a considerable period of time. They evolved because circumstances evolved.

We might well want to change our Rules, once we get through this situation. We might say, "Well, there's something here that wasn't quite covered," so we'll go back and revise our Rules. That's what we did before my time. As I understand it, rules were developed as a result of the difficulties with Senator Cogger or Senator Berntson. Then we had the situation with Senator Lavigne; we had the situation before that with respect to Senator Thompson.

People say we didn't have any rules. That's right. We see something that doesn't work, we develop the rules.

But, here's the critical thing: We don't make up the rules in the middle of proceedings, and we don't change the rules in the middle of the game. That's not fair to the people who are directly impacted by it. It's also not fair to the rest of us. We need to know what the rules are. That's the basis upon which we operate in our society.

If you want to change the rules, and say that from here on in, these are the rules that govern your behaviour, that's fine. We can have a discussion about that. But we shouldn't say, "Well, there seems to be a problem here. Let's change the rules and let's apply the rules retroactively to behaviour that took place before those rules were changed." That is a very dangerous thing.

I agree with you, Senator Cools. Any time that I see a motion that says, well, all right, we know what the rules say, but notwithstanding the rules, notwithstanding the practices, notwithstanding the hundreds of years of precedent and practice in the Westminster system that you often speak about, and that Senator Nolin has reminded us about today, we're going to do something, I think that's very dangerous, and we should proceed with very careful consideration.

Hon. Anne C. Cools: Honourable senators, I have some other concerns I keep coming back to this nagging thing that we have not heard from these three senators in their own defence. We have heard their speeches.

Senator Cowan, I have read much on the question of the removal of judges and motions, and the dispossession of officeholders of privileges.

[Senator Cowan]

This is something I shall speak about in some detail in the next day or two. The research is pretty formidable. I have always understood that this Senate preserves its independence to form its own judgments. This house's judgments and decisions are distinct and separate from those of its committees.

• (1210)

But I have always understood, and I have some authority to support this, that evidence taken in committees in respect of officeholders' misconducts, that such committee evidence has always been viewed as the basis for further inquiry by the house itself. In short, committee study does not replace the house's study. The house must receive its own evidence and must call the desired witnesses to appear below the bar.

Honourable senators, in instances of affected officeholders, such as judges, they appear with their counsel at the bar. House proceedings move by motions. That is why impeachment, which we will have the power to do, has been largely abandoned because it is a clumsy process.

This house has a duty to take its own evidence. This Senate should bring the lawyers of the affected senators here before us, over and above anything that may happen in a committee.

Honourable senators, I wonder if Senator Cowan has given that any thought. These principles are important. It is thought that if any motion of an accusation is made on the floor about a member, that the member their counsel should receive timely information and notice on everything the house does about that member.

For example, some days ago, when Senator Carignan gave his notices of motion, the afflicted senators were not informed of his action. They heard it on the news at the same time that the rest of the public did.

Copies of articles of complaint, orders of the house, everything that concerns the accusation ought to be given to the members concerned in a timely way. They shouldn't have to read newspapers to find out that they are affected. Thank you.

Hon. Roméo Antonius Dallaire: Honourable senators, I have a point of privilege. I really don't like this procedure; I've stated that before. I take nine pills a day and I must eat every time I take these pills.

We are now in a process in which I have absolutely no intention of missing any of the debate. However, in so doing, either I'm allowed to bring my lunch in here, or you create a scenario that permits us to break for lunch. If we were in committee—although it's insulting when we do bring food in before witnesses, which happens rarely—we stop to eat and sustain ourselves for the rest of the afternoon. So I consider it essential that we get a decision on this matter.

The Hon. the Speaker: I thank the honourable senator for his intervention, which we will accept as a declaration.

The chair might encourage the honourable senator to have a discussion with his whip and maybe all honourable senators, if they have concerns of that nature, would discuss it with their respective whip. Senator Cowan.

Senator Cowan: I'm not sure whether that was an admonishment to me or to Senator Cools.

As I suggested in my discussion with Senator Nolin, I was absolutely not suggesting that work of the committee would be a substitute for the work of the Senate. The Senate has the ultimate responsibility to make these decisions, and you're perfectly correct: a committee report has no meaning until it's accepted by the Senate.

So any committee would do its work and present its report to the Senate. Your experience is far longer than mine, but in most cases, because of the quality of the work that our colleagues do in committee—and we all brag about the good work our committees do on so many issues—most committee reports are accepted by the Senate, and the senators who did the work on that committee are congratulated for the work they have done.

But, as we know, sometimes in debate on those committee reports, changes are proposed. We can't change the committee report, but we can say, "We don't agree with that," and send it back for further review.

A good example is the report on Senator Duffy. The committee reported on May 9, I think, and gave us a report on Senator Duffy. There was a debate. That report was not accepted. It was sent back to committee for reconsideration and we received another report, which was debated in the Senate and adopted by the Senate. That's the way these things should proceed.

What I was suggesting and what I tried to explain in my discussion with Senator Nolin was that I'm talking about the process by which we make the decision that we have to make. That's what the committee could do for us in a way that I think cannot be done if we continue the debate in this chamber. As you point out, what we're having here is a debate. It's not a hearing; it's a debate. And you're perfectly right; if at some point we said, "Well, the committee has done its work, they've produced a report for us, but there are a couple of things that we're not clear about," we can certainly summon anyone to the bar of this house to provide further explanation or documentation.

Nothing that I'm suggesting would take away, in any way, from the ultimate authority of this chamber to do what it has to do and what it cannot fob off on anyone else, whether it's a court or a committee. I'm simply suggesting that this is a much fairer process to everybody, including to us, than what is being proposed by Senator Carignan.

Senator Cools: Honourable senators, I thank you very much for that, Senator Cowan. I think that in this process, we should bring the senators' counsel to the bar. I think it is the fair and due thing to do.

I did a CBC interview this morning. This whole question of the police investigations of the affected senators was raised. I have always understood that a tribunal should be cautious in its

proceedings when the same facts and evidence are before another tribunal in another proceeding.

Honourable senators, I sincerely believe that our Senate proceedings on these three motions will prejudice the police investigation. That is just how life is. People are listening and forming opinions. I do not accept the assertion frequently made that our proceeding here and the RCMP investigation are two different things. This is the highest court of all. We should take care not to prejudice those affected person's right to due process.

I would also like to thank Senator Baker and I want you to comment on this if you can, Senator Cowan. Section 118 of the Criminal Code does not create the power of this Senate in respect of its judicial proceedings. Section 118 is declaratory of an ancient and pre-existing power. Those powers are available to this house as the high court of Parliament and section 24 of the Constitution Act, 1867 confirms that.

• (1220)

The Constitution Act, 1982, states:

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

That this section 24 includes the high court of Parliament as a court of competent jurisdiction in terms of its power to grant remedies.

Honourable senators, as my last point, could you comment a little bit more on the nature of the motion? I believe that Senator Carignan's motion, in terms of the substantive decision it asks of the Senate, is insufficient and inadequate to do the task that the Leader of the Government in the Senate is attempting. The actual charge, as I said before, "sufficient cause considering gross negligence in the management of parliamentary resources," does not justify the harsh penalties prescribed in the motions.

I'm saying to you that the accusations do not justify the harshness of the penalties. I wonder if you could address that. I promise you I will support any movement right now to let us have something to eat.

Senator Cowan: It's always dangerous to be the last speaker before lunch.

The only thing I could add, Senator Cools, is just to repeat what I've said, that I think that Senator Carignan is seeking to address a very serious issue. We all know that there's a lot of discussion in the public; there's a lot of discussion amongst all about it. Is this right? Is it appropriate? Is it right that three senators, who have been ordered by the Senate to repay monies which they've been found to have improperly claimed, should continue to sit as senators?

I'm sure we've all received emails saying they should be thrown out, and others would say, "No, no, they should be suspended." They support the position of Senator Carignan. But a lot of people have said, "No, no, we haven't gotten to that point yet. A due process needs to be followed." Others have said, "Look, forget due process. That's the wrong thing to do," or "You should wait until the proceedings are over."

All I'm saying is, I absolutely agree, as I suggested in May, that the issue of sanctions needs to be addressed. I suggested in May that it needed to be addressed. Senator Carignan says now is the time. He might be right. Others might say, "Wait until the police proceedings are over."

I'm saying that we need to look very carefully at that, and the process by which we arrive at the decision as to when we look at it, if sanctions are appropriate, what are the appropriate sanctions. We have to get to that point by a proper process, and the process that I'm suggesting, first, is my preference for a special committee; failing that, either Rules or Internal Economy, as Senator Fraser said. It is a process that would help us to do what we will ultimately have to do, and that is to make that ultimate decision. We can't rely on anybody else to do that. We have to do it.

That's all I can say about that, Senator Cools.

Hon. Elaine McCoy: Thank you, Senator Cowan, for elucidating your position further. I think it is giving some suggestion as to some pathways forward that would be honourable and fair to all.

I, myself, have been having the sense for several days that had this motion come forward simply to suspend the three senators until we had heard from the RCMP, perhaps even without a time limit, it would have passed in a nanosecond. We might not even have looked up from our BlackBerrys.

The difficulty that is in our way is imposing sanctions, and the question is: How do we do that in an honourable way? How do we conduct ourselves honourably in a way that is fair to the three senators?

I have a series of questions to open up more possibilities and maybe we can all mull them over during the weekend and perhaps come to a consensus early next week without the need for any particular pushing and shoving, but in a collegial way.

One of the thoughts that occurs to me as I'm sitting here is this, and we had some discussion of this last night. Typically, in disciplinary hearings—this is the analogy to the law society that was being drawn last night—if there's a possibility of a criminal charge, we do defer to that process and wait for it to proceed before we take on any civil proceedings, and that would be civil for damages in the courts and also disciplinary in professional terms.

I suppose that convention has arisen because usually the consequences of a criminal action are much more severe and they alter a great number of factors that may have an implication for other proceedings. But it seems to me that this is a possibility we might consider, and I would invite your comment on that.

Then I have another question or two to explore with you.

Senator Cowan: As I've suggested, I think the appropriate thing to do, if it's decided—and there are a couple of preliminary matters before we get to that point—what we need to know, or at least what I need to know and I will want to know, is how far we can go without bumping into the problems that we all are concerned about.

I agree with you. We have a case in Nova Scotia now, that my friend Senator Oliver will certainly know about, where there are lawyers involved, there's the securities commission, there are civil suits and ongoing police investigations, and everybody is trying to be careful to make sure they don't get in each other's way in the process of that. I think it's probably fair to say that people are deferring to the police investigations because they don't want to interfere with those. I think that's what you're saying, that that would happen.

I'm saying that I would like to know where those boundaries are and where we can go and within what area it's appropriate for us to operate. Once we know that, then the next question is: Do we want to impose sanctions? I think it's right that we would have the right to impose some sanctions now. Then, if we come to that point and say, "We do recommend that the Senate impose some sanctions now," then you would examine a whole range of sanctions. You might well say, "Ultimately, this might lead to suspension or even expulsion," but, for the moment, we would circumscribe the use of some Senate resources.

I'm not sure in the case of Senator Wallin, but I believe that her travel outside of Saskatchewan and Ottawa must be approved by Internal Economy. There's a restriction which is over and above the restrictions that apply to the rest of us. Something like that could be done, or we could say, "Well, let's suspend with pay," as we did in the case of Senator Brazeau. Let's do that. He's suspended from his legislative duties, but he still carries on as a senator. I forget what the restrictions are, but there are certain restrictions on his ability to travel and access Senate resources.

Those are the kinds of things that we could do. I think the committee would consider those and would then recommend to the Senate, here is the area in which you are entitled to operate; this is the time that we think you should be imposing sanctions. We've considered a whole range of sanctions for each of these three senators and here are the sanctions that we impose. You've identified some of them; I'm sure there are others.

• (1230)

I don't think we should, at this point, give direction to the committee as to what to do or what options they should consider. That's why I think the committee should be empowered to do that sort of thing.

Senator McCoy: Honourable senators, I would like to explore a couple of other possibilities here. I don't get a sense at all that you have any desire to rush to judgment. I'm hearing that, so I'll take that as a given.

I take it as a given also—it's very clear to me—that Senator Carignan is very concerned about the dignity and reputation of our institution, as are those of us who are participating in this debate.

Here's another possibility. I'm intrigued, as you keep referring to a special committee, but what about, at least as a first step, asking you Senator Carignan, and perhaps the Speaker, and perhaps an independent senator—just to keep the flow of information going—to monitor the situation and come back with some suggestions as to procedures. I say that because it's possibly one of those situations in which events may move faster or slower, but I do know it's a sensitive issue and I do know I would be quite trustful of that process. Would you be open to something of that nature?

Senator Cowan: Thank you, Senator McCoy. Perhaps I could address your first comment about being “not in any rush to judgment,” I think was your term. I hope colleagues will understand that what I've said and done over the last week is not an attempt to delay or filibuster or unduly drag out these proceedings, which are unpleasant for all of us. What I'm suggesting is that not only are —

Senator McCoy: I'd like to interrupt you; I know that's bad form. I did not mean to imply that. I was in fact trying to compliment you in that you indeed are not showing any desire to rush to judgment. Please, if I left any other impression, I withdraw the words and put it in a little different form. It was a compliment, sir.

Senator Cowan: I didn't take it in any other way, Senator McCoy, but thank you.

I think it's important to make clear that we're not trying to delay or drag this out. We're trying to provide a proper process by which we make the decision that we have to make. We've done nothing for two weeks but this. If we had sent this to a special committee to do the kind of things that I've suggested, there's no reason why that couldn't have been reported back and we could then deal with it instead of going through the agony that we're going through now and the agony to come with arguments about whether or not it's appropriate to now turn this into a government motion and impose closure and the rest of it. That's not what we should be talking about.

To emphasize, it's important what we do, certainly, but I think when we're talking about the reputation and the integrity of this institution, it's important how we do it as well. That's my basic bottom line.

With respect to getting together with Senator Carignan, or the Speaker, or others, I am always happy to meet with them. Senator Carignan and I have had several meetings on this. When I go to his office, I get a selection of teas. In my own, I get only one brand. I'm sure that, if for no other reason, will give me an excuse to go see him from time to time.

Senator Carignan, for his own reasons, is adamant that this is the way to proceed and this is how he wants to proceed. Now he's going to make it a government motion and bring in closure to bring it to a vote next week sometime, I suppose.

But if there was an interest in exploring other ways of proceeding, whether it's my suggestion or Senator Fraser's suggestion, or others, I'm of course open to those kinds of discussions and my number's in the phone book.

The Hon. the Speaker: Order.

We are continuing with comments and questions, and I recognize the Honourable Senator Wallin.

Hon. Pamela Wallin: Thank you very much, Mr. Speaker. I do want to make some remarks and I may even have a question for the senator a bit later on.

I want to start, though, by saying that I'm very grateful for all of the senators who have intervened last night and again this morning on this issue. Sometimes you feel like a bit of a lone voice as we've been going through this process, asking for the right to a fair hearing and asking for due process.

I was very concerned, and I still am, about Senator Cools' remarks and Senator Baker's remarks that this constitutes a judicial hearing here, because it goes to the very heart of what we've been talking about: the right to counsel and the right to representation here.

Senator Nolin suggested that we've got enough lawyers in here. Maybe that's true from those asking the questions and directing the debate, but it is not true for those of us who are still attempting to have our cases and the particulars of our own situations not only heard but understood, because the process that we've been through has been extremely limited and extremely contracted.

I sat here last night, as most of us did, for four hours, listening to the leader opposite read all of my alleged sins into the record. I guess it reinforced for me the very point that so many in this chamber have been eloquently and passionately stating, that due process is being denied.

Just as it was clear that the Leader of the Government was unfamiliar with the facts and couldn't always provide the context or the answers, imagine how we feel; or imagine how many of the members of this chamber feel, being asked to pass judgment with even less time to study and no direct access to the facts at hand or even the material that you had to look at and study.

You stated that the offence here is contempt of Parliament and I guess I agree. This bizarre process that we are being subjected to does feel to me like a contempt of the place that is both a product of the Constitution and a body that should live by both the spirit and the letter of that most fundamental law.

I really have to take exception with your contention that we have had a fair process and that we have had time and that we have had opportunities to make our case on repeated occasions. It's simply not the case.

I attended a session with the committee where Deloitte auditors were the witnesses. When recognized by the chair I could ask a question or make a brief comment, which I did on a couple of occasions—on, I think, maybe half a dozen—but I could not challenge them, or cross-examine them, or present evidence to the committee members of how I saw the situation. My counsel could not speak, and he certainly could not cross-examine my so-called accusers.

I believe the report itself, that eventually came out, had all been written in fact by the time that I arrived that evening, because it was complete and translated by the next morning.

• (1240)

Those of us in the room that night know that many of the tough questions that were asked of the auditors and many of their statements in answer to those very pointed questions were not reflected at all in the Internal Economy report. Any of you who were there know exactly what I'm talking about, but I know the rest of you don't. What they did say, in part, was that there was no evidence of misappropriation or fraud or fiddling with the books, but those comments were left out.

I do want to join with Senator Segal, and I'm not sure of the procedure, but I waive my privilege and join with him in asking that the transcripts be tabled in the Senate so that senators here can be informed about what was said by all parties there.

There was a debate in that closed-door committee that night about many of the activities, and I think a pretty lively discussion about what constituted Senate business. There was almost, Senator Carignan, a consensus that Deloitte did not have a very good handle on what senators think or believe Senate business to be. Deloitte had disallowed many trips or events that many senators in the room felt should have qualified, but none of that was reflected in the report.

Internal audits of 2009 and 2010 talk pointedly about the lack of clarity in rules and definitions used by the Senate. Deloitte said the very same thing in the cases of Duffy and Brazeau, and Senator Wallace raised those concerns again last night.

These are the definitions that were being used: Parliamentary function was defined as duties and activities related to the position of a senator, wherever performed, and included public and official business. Concerning duties and activities related to the position of a senator, Deloitte said they did not note a formal definition or description of the concept. Public interest is not, to our knowledge, defined anywhere, and Deloitte does not discuss this phrase, which is found at Appendix A, item 10, the current new travel policy. What is public business? What is official business? Public business is defined as business carried out by a senator for public purposes, whether or not authorized by the Senate or the Government of Canada. It's very, very vague.

I agree with some of Senator Mercer's comments last night that there are no job descriptions in this place and that, on balance, is a good thing. Each senator finds his or her priorities and allots an appropriate amount of time to work in the nation's capital or work in one's home area or in other parts of this country on Senate business.

Last night, unfortunately, it was reduced to a percentage game. How much time did we spend where? What percentage of our time did that account for? Well, my percentages were 50-50 last year, up higher this year. What difference does it make? That's not the point. The whole point of what a senator can and should do and might be asked to do is what we have to decide.

In my case, having been in Afghanistan on several occasions, I was asked to speak on this issue literally from coast to coast to coast. I spoke in Halifax and I spoke in Saskatoon and I spoke in Ottawa. I spoke across the country on this. It's an issue of great public interest, according to the definition. I was a member of the Defence Committee, and I was asked to go to these places and speak about this because I was a senator, because I had made a very public commitment to this issue and made that known, and because, I think most importantly, I had first-hand knowledge of the reality on the ground in Afghanistan and the political debate here at home. Did doing my job then make me guilty of not fulfilling some unspecified percentage of time to be spent in Ottawa or Saskatchewan?

I implore you: Make the rules clear. Define what is or isn't parliamentary business, if you want to go that way, but then we have to be consistent. When the consequences are as dire as the ones you propose, then the rules and the standards must be much, much clearer — for us and for Senate administration and Finance officials. A fellow senator I spoke to did exactly the same thing with reference to a trip to Toronto. Mine was disallowed; his was allowed. The leader told us last night to check with the powers that be before our trips. I did. That's exactly what I did. What I found was arbitrary, subjective and inconsistent rules. No one's picking on me. I'm not saying that I was focused on. It just that what information you get depends on whom you ask and on what day. My claims, I would like to remind my colleagues, were all allowed and approved at the time.

I myself first raised the issue of stops in Toronto with Senate administration and some of my colleagues on the committee because when our travel began to be published, all of my trips home that included a stop in Toronto or some other city, Halifax or Calgary, whatever it might be, where I was giving a speech or doing something else, were reported as "other." So then journalists reporting on these things, now printed on the Internet, reported that I never went home, which simply wasn't true.

What is the sense of a supposedly egalitarian point system, which is supposed to be designed for fairness? If I have to travel further than you, or it's more expensive than someone who flies to Toronto or Montreal, then I should not be punished for living further from the centre, but we still publish the dollar amounts. Those who are busy or who have greater distances to travel are then doubly punished because they're seen as big spenders in the news reports. In fact, my expenses were not out of line with other parliamentarians with busy calendars.

I don't know if I have the option to do this here, as we're kind of in uncharted territories, but I would like to seek leave now or at some later point to table some documents throughout some of my remarks.

I have with me a letter that my lawyer sent to Senator Comeau on July 26 regarding this ongoing investigation to talk and raise our concerns, as we had with Deloitte on repeated occasions, but to raise them directly with the committee on the retroactivity issue, the fact that the new rules were being applied retroactively to old travel. I'd like to table that, and also, along with this, the record of decisions by Internal Economy, Budgets and Administration, which also declares that the rules of 2012 were new and different, particularly Appendix A.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Wallin: I want to go over a little ground that I know I covered two days ago when I spoke, but I want to remind people that I actually worked for months, and I mean 18-hour days, preparing hundreds of pages of documentation for Deloitte. We prepared spreadsheets and provided them with specific air schedules for specific dates, and we looked at flight costs and car rentals. We did comparisons. We provided examples of where we had charged expenses to the Senate and on many occasions where we had not charged those expenses when they were due us. We put all of that information in front of them. We delivered to the Deloitte auditors literally hundreds of pages of supporting documentation for all manner of events and speeches and travel across this country. But here's one of the problems: When speeches in small towns don't make the national news or the pages of the newspapers, or even the Internet, then I had a problem. If they couldn't find a reference, then the event was often disallowed.

It became clear very early on that we fundamentally disagreed with Deloitte's interpretation on many fronts — retroactivity, as I have said, and the documents there. They even themselves admitted that the rules adopted in June of 2012 were new, but they then proceeded to apply them retroactively, going so far as to use Appendix A, clearly a brand new document, as their Bible for interpreting, assessing and judging all claims back to 2009. By their own admission, they were unfamiliar with common Senate practice. They had no standard by which they judged me that they could articulate, and they actually admitted, and this was in the committee as well, that they spoke to no other senators to try to get a sense of common practice or working definitions of Senate business from those who have been around this place for a long time.

• (1250)

We challenged Deloitte all the way through on the standards for their judgments and on this issue, on not knowing what constituted Senate or parliamentary business, for having no reference points. We came at it every which way we could. We offered to have them call third parties to verify events. They declined to do so.

When they made accusations of changing the calendar, something I do every single day on my BlackBerry and in the office, we offered a sworn affidavit to explain. They never responded to this offer or even acknowledged it, but made much of those charges in their report as, of course, Senator Carignan did again last night.

Again, with leave, honourable senators, I would like to table the letter sent by my lawyer on this very issue to Deloitte so that members of this chamber might have an opportunity to take a look at it.

The Hon. the Speaker: Is it agreed?

Hon. Senators: Agreed.

Senator Wallin: I would also have liked to table the hundreds of pages of backup documentation that we provided to Deloitte but I can't. Despite repeated phone calls, they have not yet returned them to me. We have actually sent lawyers' letters, again, asking for that.

Again to Senator Nolin's point, we do not have all of the information available to us here. I don't know if the committee members saw the actual documentation or just read Deloitte's summary or views on that, but there is information there that I think is very important.

On the issue of fairness, I will ask to table documents — letters from my lawyers on the issue of the process. We were, throughout this whole time, being tried in the media, in the court of public opinion, after a steady barrage of leaks from highly placed Senate and committee sources. These leaks divulged personal information, even confidential emails to the Senate administration.

On May 24 we wrote to the committee asking for an investigation into the repeated leaks by senior Senate and committee sources. There was no reply and, of course, there was no investigation. We later provided a document citing some 14 specific examples, although there were dozens more, and phone calls from reporters citing highly placed leaks. Therefore, I would also like to table a copy of the original letter and the documentation that we forwarded to the committee, which I again remind you received not even a reply.

May I have leave to do so?

Hon. Senators: Agreed.

Senator Wallin: Perhaps while I'm at it I could ask, because it's sort of an orphan but I feel it's important to put it on the record, to table the email sent by my lawyer to Ray Novak and Marjory LeBreton regarding the fact that we felt they broke our agreement on wording regarding my recusal from the Conservative caucus. I have two documents there.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Wallin: Colleagues, I want to say here again that I have made mistakes; none were on purpose or wilful, and none were designed to benefit me personally. I take full responsibility. I took full responsibility on national television and said that I was sorry for any embarrassment or concern caused to this chamber or taxpayers or, more particularly, the people of my home province.

There was always a mix of private and senatorial business. I was doing dozens of events every month and it was hard for anyone to keep up. In these mixed trips we would often split the cost, billing one part to the Senate, another to a third party, and I'm the first one to admit this: We found these mistakes ourselves, we uncovered them, we responded immediately, we repaid the Receiver General and we did so voluntarily.

Even when it came to the charges, the costs that we were asked to repay by the committee, even on claims that we fundamentally disputed, we again voluntarily, well before the deadline, with interest and from my own funds, repaid those as well.

On this issue of fairness that I raised, I cannot say enough that we are looking for our chances and our opportunities to make our case — in front of Internal Economy, in front of either of the committees that the two senators propose, in front of a different committee — because we have not had that opportunity.

Just as the situation was last night, it was an exchange of ideas, but really it was about you speaking and then taking questions. That is not the best way or the fairest way to make your case, so I renew my call today for due process.

As I said two days ago here in this chamber, I was uncertain about Senator Cowan's motion. Even though I have long asked for an open, fair and transparent hearing of the evidence against me before this Senate votes on any motion to expel me, I would want to be sure that I have all the rights and protections that would be afforded me if this same proceeding were before a court, and particularly, as some senators agree, this constitutes a legal setting.

I would like the right to counsel who would be permitted to speak on my behalf, if necessary; the right to have my case put and be questioned by my own lawyer too, not just others; the right to call and subpoena witnesses and the right to cross-examine; and, most fundamentally, the right to an open-minded jury.

Even in the proposition put forward — well, there have been so many now by other senators — we have to look at whether or not committees and which committees would constitute, depending of course on their majorities and membership, an open-minded jury. But I must ask you to consider the rule of law, due process and the right of appeal.

Due process is not possible in this chamber, where it seems a majority wants to put my head on a platter. On the motion for closure, why would we be doing this at the same time that we are being told that we can have all the time we need to make our case, to gather evidence, to bring it here, to have other voices raised? You can't do that in the face of a procedural hammer.

Leader, you dismissed last night, with troubling great ease, the impact of this process on the RCMP investigations. You were asked for your legal advice and for advice you sought on this issue before potentially compromising our rights in this situation. You said you had no obligation to offer that. This, what I felt was a cavalier attitude in a situation where we face some very dire consequences for ourselves and our families, was most troubling.

Please, the rule of law would have to be ignored by each and every one of you who decides to vote for this motion. Please, do not try and convict us here and now. Why, as many others have suggested, would we not await the outcome of the RCMP process that you initiated in the first place? Why is the Senate acting as accuser, judge, jury and executioner before all of that? This whole process is flawed. What you're doing here could seriously interfere with an RCMP investigation by conducting your own trial.

[Senator Wallin]

Just as many of my colleagues have attempted to do in the last several days, I seek clarity on what basis did he, the leader, come up with this punishment to be meted out. We still haven't seen the argument. It really constitutes expulsion, not suspension, to be thrown out for the duration of this session.

• (1300)

Let's just fast-forward for a moment to 2015, which is what you were proposing. Let's say Prime Minister Harper is re-elected. It's not likely that he'll be keen to reinstate me or invite me back.

What if Mr. Trudeau is elected? Well, I doubt he'd want to bring former Conservative senators back in to use three of his appointment slots. But let's imagine for reasons we can't fathom that he does decide to do that and brings us back into the Senate. The majority could still, in this place, and with the precedent that you would put on the books, throw us out again, or anyone else, for that matter.

There are no good arguments for this precedent that I've heard yet. You cite, leader, the Thompson case, the senator from Mexico, the House of Lords. Senator Plett took that one on yesterday and, I think, explained why this situation is totally different.

Senator Dallaire talked about how punishment is determined in the military and other places, and Senator Baker talked about how the law society judges its own, and everywhere, everywhere but here, there is the right to counsel, the right to make your case, the right to cross-examine your accusers and the right to have a fair hearing before your peers. But those peers need to be informed and apprised of all the facts of this matter.

I hope that despite the government's intention to push through these motions in such a short time frame through this disposition or closure motion that you do not do this, fellow senators. Please, do not rush to judgment.

[Translation]

Hon. Claude Carignan (Leader of the Government): Senator Wallin, the main thing I took from your speech was that you apologized to this chamber. I think that is important and appreciated.

You also asked that the transcripts be tabled. Were you talking about the transcripts of the hearing of August 12 and 13? Yes, I was looking for it yesterday. I have a note from the clerk, who told me that it is being transcribed and will all be available on Monday afternoon.

Would senators consent to obtaining a copy of this transcript so it can be tabled? I think it would be appreciated so that we could clarify what you mentioned.

[English]

Senator Wallin: Yes.

[Translation]

Senator Carignan: In both languages, yes. That is what...

[English]

The Hon. the Speaker: Honourable senators, the request is that when ready in both official languages, consent is granted that these transcripts be tabled. Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Just for clarity, honourable senators, we continue to be on the time of the Leader of the Opposition, Senator Cowan. It's the period for comments and questions.

Hon. Joan Fraser: Point of order.

The Hon. the Speaker: A point of order.

Senator Fraser: It is a very small item, I think, and I hope it will not take time, but the fact is that many documents have been tabled and are going to be tabled, and I wonder if, as part of our agreement, we could request that, without being asked, the table provide copies of these documents to all honourable senators.

The Hon. the Speaker: Agreed, honourable senators?

Hon. Senators: Agreed.

Hon. David Tkachuk: Mr. Speaker, I'm sorry, but I thought Senator Wallin just spoke. Would it not be on Senator Wallin's time? Are we on to another debate?

The Hon. the Speaker: Order. Honourable senators, we are on the time of the Leader of the Opposition, the Honourable Senator Cowan. After an honourable senator speaks, then his or her time allotment — as honourable senators know, the time allotted to the Honourable Leader of the Government is unlimited, and the time allotted to the Honourable Leader of the Opposition is unlimited. We are in the period of comments and questions of Senator Cowan, and I recognize the Honourable Senator Wallin again.

Senator Wallin: I had a point of clarification. I'm sorry. I was putting my translation on. I'm not sure what you said at the beginning of your comments to me before you got to the question, and I just don't want to leave anything on the record that isn't accurate. Just before you commented about the documents.

[Translation]

Senator Carignan: I want to clarify what you said — I am not sure I understood either because of the translation — that you apologized to all of the members of this chamber for the inconvenience and damages they experienced as a result of your behaviour. Is that what I heard?

[English]

Senator Wallin: I did it, sir, on national television.

Senator Massicotte: Would Senator Wallin accept a question?

The Hon. the Speaker: You can ask a question of the Honourable Senator Cowan.

Senator Massicotte: No, thank you.

[Translation]

Senator Carignan: I think this is an important moment. I understand what the Speaker is doing. He wants to give the senator unlimited time to share her point of view, which means that she was not stopped since she used Senator Cowan's unlimited time. That is what I believe is happening right now. The Speaker wants to give Senator Wallin as much time as possible to speak.

I am not sure if Senator Cowan would agree, but with the consent of my colleagues, we would like to give Senator Wallin unlimited time so that we can continue to talk with her respectfully, if she would like. I truly do mean respectfully, because I know that this is a sensitive matter. This may be broadcast live. I think that would be appropriate so that we could clarify some things.

[English]

The Hon. the Speaker: Honourable senators, I'll clarify the rules and procedures of the house again. We are on the time of the Honourable Leader of the Opposition, and after he has spoken, we have moved into comments and questions, and we remain on that time. If any honourable senator has a comment to make or a question to ask, as all honourable senators know, it is not a requisite of the honourable senator who has spoken to answer a question or to reflect on the comment that someone has made.

Senator Cowan, it's your time, if you wish to make a comment.

Senator Cowan: I'm not sure who is commenting on what here. I've certainly said all that I wanted to say at this time on this matter.

I agree with Senator Carignan that Senator Wallin should have all the opportunity to do that. Perhaps, if it's agreeable, if once I'm through she has not already spoken on this issue, then perhaps she could speak and then respond to questions, if that's what she'd like to do. I'm not sure that she has more to say, but if she were to say a few brief words, then that would give others an opportunity to speak.

• (1310)

I guess Senator Carignan may have a question for her.

[Translation]

Senator Carignan: I think Senator Massicotte wants the floor, as well. There are a few of us, but out of respect, given the circumstances...

[English]

The Hon. the Speaker: Honourable senators, we're going to follow the *Rules of the Senate* in this debate, and the rules are those that I have just explicated. There is sufficient flexibility in

this, and any honourable senator, after Senator Cowan has completed his time, can take the floor when recognized by the chair.

We are on questions and comments, and I recognize Senator Wallin.

Senator Wallin: I really have completed my comments in response to your motion, and for all that I've said today here, I must be very careful, without the right of counsel, to answer any questions in detail. That's precisely the point I've been making here. It's very difficult for me to get into in-depth examination of questions. That's why we have been concerned about this whole process, but I can certainly listen and try my best.

Senator Cowan: Your Honour, I'm waiting for comments and questions on my speech.

Senator Dallaire: I'm starting to feel like a yo-yo here. I don't know how many times, Your Honour, I've been able and waiting to be able to ask the question and all these other interventions on whether Senator Wallin is to answer questions.

Let's just follow the rules, and so it's just questions, and that's a question to the Leader of the Opposition. I believe that's where I'm at and that's where I wish to stand.

However, all that we've just done is proof of how amateurish this whole exercise is when we attempt—

Some Hon. Senators: Oh, oh.

Senator Dallaire: Am I speaking? Then listen.

[Translation]

If the Leader of the Government in the Senate tells you to "listen", then listen. There is no doubt in my mind...

[English]

The Hon. the Speaker: The honourable senator is making comments or asking a question of Senator Cowan. You have the floor.

Senator Dallaire: Sorry for my preambles.

The question is the following: Looking at what happened last spring and working through the summer, and the responses of the population to what we were going to do post the members paying back their amounts of money due—and deemed due by the Internal Economy Committee—many of us were wondering: What now?

So my question to you is: Did, at any time, the Leader of the Government—as we see, we want to be judging by peers, so it should be non-partisan; all of us are in this together—did at any time the Leader of the Government come to you and say: What are we going to do? How are we going to do this? How are we going to meet that seemingly important requirement?

Was there any consultation on methodology before we got these three motions dropped on us?

Senator Cowan: Honourable senators, the Leader of the Government in the Senate did ask me to meet with him the morning that he gave notice of his intention to introduce these motions. He told me generally what he was intending to do, and then he gave notice of that motion that afternoon. I forget exactly which day it was last week.

Senator Ringuette: The seventeenth.

Senator Cowan: The seventeenth. I did not see the text of the motions until he gave notice that afternoon in the Senate, but he did tell me that morning that he intended to take this action that afternoon.

Senator Dallaire: Supplementary question: Is it the prerogative of the Leader of the Government, when we are in full session, all members are engaged, non-partisan, into this very special scenario, that he can introduce a methodology in regard to a process without at least having that methodology debated, discussed or introduced before we actually bring forward—which essentially the three motions are—charges?

Senator Cowan: I think any senator is at liberty at any time to give notice of a motion that he or she proposes to raise. I think Senator Carignan was perfectly within his rights to have provided that notice of motion.

I don't think there's anything in the Rules that provides that he must consult with me in advance of doing that, but he did. He gave me notice of that and told me about it in the morning.

I don't want to put words in his mouth, but I don't think he was looking for my advice at that point. He had made up his mind what he was going to do, and he was doing me the courtesy of telling me that morning what he was going to do that afternoon.

Hon. Colin Kenny: Point of privilege, Mr. Speaker. My seatmate raised the question of lunch a while ago. I've just been told now that lunch will come outside, and we're to go out a few at a time while the debate continues.

We need to be here for the debate. We need to have a pause for lunch. It doesn't have to be long, but to suggest that we wander out and miss what's going on doesn't make any sense.

Hon. Paul J. Massicotte: I'll make a comment further to Senator Cowan and make it generic. I want to acknowledge that what Senator Wallin did with additional documents, for me, anyway, is very important, because, for me, there have been a lot of good speeches, a lot of very interesting stuff, but the bottom line to me is the facts as contained in the Deloitte report, and I know everybody hopes that I'll support Senator Cowan's suggestion of a special committee, but there's a high risk it will not occur.

I urge all three of you, to the extent you have corrections to be made to the report—detailed corrections—now is the time to make them, and do them in a very specific sense. That would certainly influence me a lot, because what I read there is pretty conclusive. It's pretty damaging and influences me a lot, so I encourage all of you, and I thank you very much for doing so. I encourage other senators to do so. Forget the generic stuff. Concentrate on the facts and the details.

Thank you, Senator Cowan, for your great speech.

Hon. Terry M. Mercer: I am going to ask Senator Cowan a question.

In Senator Nolin's intervention after your speech, he used the words "look at all the facts." That's a very logical, sensible thing, and I would expect it from a very logical, sensible senator like Senator Nolin. But isn't that what your motion is really all about—looking at all the facts, getting the facts out so that people can see them?

The problem I see here is that if we make the decision that Senator Carignan would like us to make in the next few days, then our three colleagues' reputations will be tarnished and perhaps even ruined. But so will our reputations be tarnished and perhaps ruined. We've done that in a closed shop. We haven't exposed all of the facts to the public.

In the court of public opinion, up until five days ago, they all agreed with Senator Carignan. But in the last five days, I would suggest that public opinion has changed because of the explanation of the fact that due process has been absent and that those three people, in their opinions and in the opinions of many others, have not had the opportunity to be heard in a public and open forum, with counsel present, with advice and with the opportunity for them to question witnesses and cross-examine witnesses.

Senator Cowan, is that not what your motion is intended to do?

Senator Cowan: Thank you, Senator Mercer. The purpose of my motion, as I've tried to explain to colleagues, is to suggest to all of us in this chamber the proper process, or a proper process, that we should follow to enable us to discharge the responsibility which we all agree that we have.

I suggest to you, with the greatest respect to Senator Carignan, that the road he's asking us to travel is the wrong road. It will enable us to make a decision, and a decision will be made and the hammer is about to come down as far as the timing is concerned.

• (1320)

So whether that decision is the right decision or the wrong decision is not my point. The point is that I have deep concerns with the process that he's following. If we follow that process and we make the decision, whether it's the right or the wrong decision, we will have established the wrong precedent. Senator Carignan has relied upon the Thompson case; he's relied upon the House of Lords cases. As I pointed out earlier, in every one of those cases, it didn't take away from the Senate's responsibility or the responsibility of the House of Lords to make the ultimate decision. But there was a committee that did the work and led them. A process was followed, and it's the process here which is wrong.

I'm not suggesting that the sanction is right or wrong. I don't know. There are a lot of documents floating around here today. Some of them Senator Wallin tabled today. I haven't seen them; others may have. Whether they change my view of Senator Wallin or not, or they change my opinion as to whether now we should oppose the sanction, or what the sanction is, I don't know.

I'm absolutely convinced now more than I was when we began this that this is the wrong process, and we're going down a very dangerous road. I think we should all have a reality check and think very carefully before we go down that road.

Senator Kenny: Honourable senators, in light of the fact that we're sitting here as judge and jury, I believe it's important that we be present for all of the discussion and all of the testimony.

For that reason, I move that we suspend for 15 minutes to have lunch and then come back and continue with our business.

The Hon. the Speaker: Honourable senators, is leave granted that we accept the motion by the Honourable Senator Kenny, seconded by the Honourable Senator Dallaire, that we suspend for 15 minutes?

Hon. Senators: Yes.

The Hon. the Speaker: We would suspend until 20 to 2:00. That requires leave. The Speaker has the authority under the Rules to suspend if there's grave disorder, but on the contrary, the debate has been conducted in a very orderly fashion, and in a fashion, in my judgment, that is to the credit of this institution.

Is there leave?

Hon. Senators: Agreed.

(The sitting of the Senate was suspended.)

• (1340)

(The sitting of the Senate was resumed.)

The Hon. the Speaker: Honourable senators, are we ready to continue debate or are there further questions of Senator Cowan?

Hon. Catherine S. Callbeck: Honourable senators, I would like to speak very briefly.

The Hon. the Speaker: We are on questions and comments of Senator Cowan.

Senator Callbeck: Yes. I've been listening intently to all the speeches in the Senate. This is an incredibly difficult issue. In fact, it's one of the most difficult issues I have ever faced in my life. I do not take the decisions lightly.

From the outset, I want to say that I'm not defending the actions of these senators. I'm only defending their right to due process. We consider people innocent until proven guilty in this country, but we are being asked to pass sentence on charges of "gross negligence," which was never even mentioned in the Internal Economy Committee's reports on these three senators without having all the facts and the information.

It's true that the reports found that some of the expenses claimed were inappropriate and must be paid back. These reports were then referred to the RCMP. Now we are reopening the issue, levelling a finding of "gross negligence" before the RCMP has

completed its investigation. It has been pointed out by others in this chamber that this could jeopardize any possible criminal proceedings or even the investigation itself.

We have heard a lot of allegations in the Senate. We have heard different versions of the same meetings and phone calls. I think it's really important to get to the bottom of these allegations and find the true facts before we pass judgment.

To my way of thinking, the only way to get all the facts and information is for a committee to look at the whole situation so that people have a chance to be heard under oath and in the public eye. Canadians deserve to know all the facts.

There are also many questions as to whether the three senators should get the same sentence. Many feel we should deal with the facts of each individual case, as they did in the House of Lords.

There are even legitimate questions about what these senators may have been told by Senate officials and their leadership about their eligibility to claim expenses. Senator Plett noted in his speech yesterday what he was told about what constitutes Senate business. He said they told him, "Senator, whatever you deem to be Senate business is Senate business."

I'm also concerned with the impact of this situation on the Senate and the institution. There is no question that the Senate has been severely hurt by these events, and rushing to judgment before we have all the facts and information could damage it even further.

The Senate has great powers, and with that comes great responsibility. We need to be cautious about how we use this power. I, for one, feel very uncomfortable being asked to vote unless we have the facts and the information needed. That's why I support sending this to a committee or considering another honourable way to get the facts and the information. Canadians are fair people and they want this resolved in a fair way.

Senator Cowan, I would ask you, how can we be fair if we don't have all the facts and the information?

Senator Cowan: Thank you, Senator Callbeck, for your thoughtful comments. I agree with you. That's what I'm trying to do, and trying to persuade my colleagues that we should do, to establish a process that will get to the bottom of these basic issues. You have identified a number of them. Others have spoken to them. I hope that others on the other side who haven't participated in the debate but I'm sure have the same concerns that we do will rise to give us the benefit of their views. If they are considering supporting the motions of Senator Carignan, who appears to be temporarily indisposed, they might give us the reasons why they're doing so.

The comments you have made are in support of my motion, which would provide us with a way out of a very difficult situation for us all, and would be and would be seen to be by Canadians — who, I agree with you, are fair-minded — the right way forward. Thank you for those comments.

Senator Kenny: Senator Cowan, we've talked a lot about due process. I wonder if you could give us some answers in relation to the consequences of not having due process. For example, if we

were a court, we wouldn't be sitting into the night last night and then on very short notice learn that we were going to be sitting again this morning. Why is that important to a court and we are not doing it here?

Senator Cowan: I think due process has many facets underlying it, one being a question of fairness. I think if you asked, "Is this fair, is this reasonable?" of the schedule of hearings, if we were talking about a court proceeding, that it would be just willy-nilly at the whim of the prosecutor or the whim of the judge, no. People know when they're going to go to court; they know how long those court proceedings will be; they see in advance the documents that are going to be subjected to analysis, that are going to be discussed. Legal proceedings provide for discoveries so that there are no surprises or minimal surprises. Documents are provided in advance. People have an opportunity to review those documents before they're asked to comment.

For all of those elements, in terms of the timing, I think the basic test is fairness. It seems to me that to say that here, in this case, that it's fair if we give to these three senators only the right to speak for a brief period of time with some unspecified extensions if they ask for them, that their ability to ask questions or to answer questions is prescribed by our rules of debate — because, as Senator Cools pointed out, what we have here is a debate, it's not a trial. It's a debate in the Senate chamber. And I think, as Senator Wallin made clear a short while ago, if people were to ask her questions, she does not have the benefit of counsel. In a proceeding that would lead to a consequence as severe as suspension without pay, it seems fair to me that one would have the benefit of counsel to know that one was not going where one should not go.

• (1350)

I agree with you, but I think the basic test is one of fairness, and I don't think these proceedings — this way that we're going, this road we're going down — meets that basic test of fairness.

Senator Kenny: You raise the question of counsel, and it was next on my list. What is the circumstance here where we're trying people and they don't have counsel? What are the consequences of their not having counsel?

Senator Cowan: Well, this may seem a little perhaps self-pleading on behalf of the legal profession, but —

Senator Moore: Don't do it, Jim.

Senator Cowan: — you'll forgive me if I think that lawyers sometimes bring value to situations.

Senator Mercer: When?

Senator Cowan: I'm not putting this to a vote, Senator Mercer. This is my own opinion, and you have and you will express your own opinion in due course.

I think that what lawyers are trained to do is to try to bring an objective view to a situation and try to drill down to the essential ingredients in the issue at hand. What are the issues? What are the legal consequences of a particular course of action? What are the rules that apply with respect to, in this case, the conduct of any

particular person? So I think lawyers can assist in making sure that you get through proceedings in a reasonable and efficient way, so there is a minimum of time wasting.

I've certainly been involved in proceedings and in some arbitration proceedings or administrative proceedings where people say, "For the benefit of the non-lawyers here, let's kind of do away with all the rules of procedure and it will make it easier," and the result is chaos. So there are rules of procedure; there are rules of practice. There are, in our case, *Rules of the Senate*. There are rules and procedures of the Senate itself, administrative rules, and I think that a trained lawyer or trained lawyers bring an ability to analyze that, to focus the discussion and to lead the discussion in a fair way through to a conclusion.

Also, of course, because the consequences are so severe in the cases we are dealing with, the lawyer is there to protect the interests of her or his client. I think that lawyers in proceedings such as this do bring real value, and we don't have the benefit of that in the proceedings and in the procedure which has been set forth and suggested by Senator Carignan in his motions.

Were we to adopt my amendment or, alternatively, Senator Fraser's amendment, then I think those issues could be addressed, again, not with a view to prolonging the proceedings, but to getting through what needs to be got through to get to a result and a recommendation.

Senator Kenny: Thank you, Senator Cowan. You notice that over the course of today people have been wandering in and out, or they're kibitzing back and forth, having side conversations. We also don't have many people in the room. I wasn't aware of this meeting of the Senate or that the Senate was going to be sitting today until nine o'clock last night, and I'm presuming that some people went home in the expectation that they weren't to be here.

In a court, could you visualize a judge having a chat with somebody, or going out to use the washroom for a while, or the jury having a chat while evidence is being presented? Is this how it should work in a trial?

Senator Cowan: Well actually not. On a point of clarification, you didn't know last evening until around nine o'clock that we were sitting today. We on this side heard about it from the media. That's how we heard that we would be sitting today. Normally, as you know, the Senate does not sit on a Friday, which gives us an opportunity to do the other kinds of things that we need to do as senators. We have a fixed schedule, a predictable schedule of hearings. Occasionally, we depart from that. As an example, the government has asked us if we will come back and sit on Monday evening. We agreed to that because they want to go to their convention next week. We agreed to that, but they didn't consult us about whether we were going to sit today. So many of our colleagues left — and some colleagues on the other side — to go about their pre-arranged business today. And some, like my good friend Senator Moore, came all the way back here to be with us today, but were not able to be here, obviously, at the beginning of our meetings this morning. That kind of thing would never take place in a court or in any sort of regular disciplinary or other proceeding like you are speaking of.

Senator Kenny: If I may, on that particular point, you said we're sitting at six o'clock on Monday, but I just got an email suggesting that it's two o'clock. What's the deal?

Senator Fraser: Two o'clock.

Senator Cowan: I believe we're sitting at — Perhaps I could seek clarification from —

Senator Martin, Senator Eaton, is that all right?

Senator Eaton: Sorry.

Senator Martin: Sorry; I apologize.

Senator Cowan: Is it two o'clock on Monday?

Senator Carignan: Yes.

Senator Cowan: Two o'clock on Monday afternoon.

Senator Moore: Stay tuned.

Senator Kenny: Senator Cowan, when you have a trial, does the prosecutor ever say, "We'd like this all to be wrapped up by a certain date?" Or is there a discussion and agreement between counsel and judge as to how long the trial should go, and in fact trials essentially go however long they need to go?

Senator Cowan: It's some time since I've done much trial work, Senator Kenny, but certainly I believe the practice to be that, while there's consultation between the parties and the judge or trial management system to try to get some sense about how long a trial would take, there's no limit on how long a trial would take. A trial takes as long as it takes.

I think in appellate courts often there is a particular time, and I think in the Supreme Court of Canada you have 20 minutes to make your case. Our colleague Senator Joyal could probably tell us about that.

Certainly in my experience, while there is an attempt, obviously, for time management reasons to try to get a sense of how long a trial might take, trials take as long as they need to take to get to a just result.

Senator Kenny: I wonder if you could sum up — I've just given a few examples — what are the consequences for people who are on trial, given the differences that we're going through here? And what are the usually accepted norms of a trial?

Senator Cowan: Well, I think if those basic elements of knowing when the hearings are going to take place; being entitled to be present when witnesses give their evidence —

The Hon. the Speaker: Order!

Senator Cowan: — having other people not talking when you're trying to make your point; having the ability to see well in advance the documentation and the evidence which is going to be presented against you; having an opportunity to examine and cross-examine the witnesses, to confront that evidence and then to put your own case forward — if those basic elements are not there, or if the judge wasn't paying attention, those are grounds upon which a mistrial would be ordered. We see that, quite often in our court system, unfortunately.

Hon. Patrick Brazeau: Honourable senators, I rise in support of Senator Cowan's motion, even though I did give notice earlier this week in a similar motion to have the matter referred to the Standing Committee on Internal Economy, Budgets and Administration.

• (1400)

I do support this motion, but I will keep it on the Order Paper and reserve the right to speak to it in case this amendment gets defeated.

I won't go through all the details that I spoke about earlier this week, but obviously we need a fair process and a due process with respect to these matters, in particular in my case. As I mentioned, I did take part in meetings of the subcommittee, which I called a kangaroo court, and I think it was called the skippy court because they did hop over a lot of questions. I've never seen that report. I mentioned that earlier this week as well.

Repeatedly, I asked for a public meeting to appear before Internal Economy. As a matter of fact, on May 16, I wrote to the then chair, Senator Tkachuk, asking a wide array of questions with respect to how Internal Economy came to its decision, what facts were used, what determination, what interpretation of the rules they made behind closed doors, and no response.

On June 17, I sent an email to all senators, again basically repeating and summarizing what I had been asking of Internal Economy, and I received very little response. In one particular case, one senator mentioned that I would not be receiving a response at all.

I have done everything that has been asked of me. I've provided all the information that's been asked of me.

The Deloitte report itself, again, came to the conclusion that, in my case, they found no improprieties, no misuse of funds and no intent to skirt the rules in any way on my part. Internal Economy and its members — and let's put the facts on the table, the Conservatives do have the majority on those committees — came to a different conclusion, a completely different conclusion. This is why we need an open and fair hearing.

I'm very disturbed. I hate to do this. I haven't been in this place for a very long time, but I've always been very proud of my record talking about transparency and accountability, which is probably the reason why I got named to this place. I've always practised what I preached, and I was always taught some very fundamental principles and morals by my parents.

At approximately 10:20 a.m. this morning, I was outside this chamber in the back. The Leader of the Government in the Senate took me aside. I'll be very careful about my words here, but I was essentially offered a backroom deal. The backroom deal was that if I stood in this chamber, apologized to Canadians and took responsibility for my actions, that my punishment would be lesser than what is being proposed in the Leader of the Government in the Senate's motion.

Some Hon. Senators: Oh, oh!

Senator Brazeau: I'm going to try to use parliamentary language. I'm very disturbed at this. I'm saddened. You know what? I am taking responsibility. I'm here defending my name. I'm here asking for an open and public meeting, which you guys are denying. Everybody — the entire process I underwent — has said that I have done nothing wrong, and I have done nothing wrong. As a matter of fact, it is you who had to take the measures to garnish my wages, because until I get a fair process, a fair hearing, I'm not going to admit that I did anything wrong because the truth of the matter is that I didn't. You guys can stay here and you can debate and interpret the rules as you want. That's what lawyers do. But the fact remains there should be a set of rules for everybody in this place.

To that end, I guess my question is for Senator Cowan: Does that respect the dignity of the Senate?

An Hon. Senator: Wow.

Senator Cowan: Thank you, Senator Brazeau. I obviously can't comment on discussions that might have taken place between you and Senator Carignan. Senator Carignan may wish to do so.

This is the very kind of thing that reinforces what I've been saying all along. What we do is important, obviously, critically important, particularly to those folks who will bear the immediate impact, but what we do and how we do it are equally important. They are of equal importance. Frankly, Mr. Speaker, I don't know what to say, other than to say this is not the way we should be doing our business.

[Translation]

QUESTION OF PRIVILEGE

Hon. Claude Carignan (Leader of the Government): Honourable senators, this is a difficult time for all of us. I have the advantage of being a lawyer. As Senator Fraser said yesterday, what are the mitigating or aggravating factors in determining a sanction?

Senator Brazeau, who seems to have left, is a man I really like, and I valued him as a colleague. He is in a difficult situation, and I spoke to him to ask, "How can we help you? Give us something." In your speech — a bit like what Senator Massicotte told Senator Wallin earlier — "tell us where we can find any corrections that will help me judge."

I spoke with Senator Brazeau out of friendship and told him: "Senator Brazeau, suggest something; apologies, and then a lighter sentence to try to find a just balance."

I did this in good faith to help him. I regret that he perceived this as an attack. I understand — I do not know how I would have reacted in his shoes. Perhaps I was too eager to help. It may have been a mistake to talk to him.

[English]

The Hon. the Speaker: Honourable senators, I try to follow the debate in both of our languages. Senator Carignan rose and said, in French, "question of privilege." The interpretation in English,

as I was listening to it at the same time, said, “point of order.” I take it what the honourable senator said is a question of privilege, and I think that the declaration by the honourable senator is a declaration that he can make as a question of privilege.

Continuing debate.

Hon. Daniel Lang: We’re on the motion?

The Hon. the Speaker: We are still on questions and answers.

Senator Cowan: I’m happy to continue on and answer Senator Lang’s questions, if that’s the way he wants to proceed. I’m not sure what he wants.

Senator Lang: I’m prepared, in this type of procedure, to go with a question to the Leader of the Opposition. I haven’t entered this debate. Like quite a number of us in the house, I’ve been listening very carefully to everything that’s being said. What we’re doing is very serious. We’re really talking about this institution and what the future of this institution will hold.

• (1410)

I want to say to all senators that I appreciate the tenor of the debate thus far. We’ve seen very little acrimony. I have to say that the Leader of the Government, and I think the Leader of the Opposition would agree, has presented his case well. In fact, the other night was probably one of the most impressive demonstrations of a politician in a political forum that we have seen by the government leader, Senator Carignan.

Honourable senators, I want to say this: I’m rising in part because of what was said by Senator Brazeau. As difficult and as emotionally overwrought this process is for all of us, we are trying to find a common ground in respect to the misconduct that has been done by three of our colleagues. Three of our colleagues have gone through due process, have been audited and, as we know, we all have had those three audits. We can say that one wasn’t tabled in the house. They were sent to all of us three months ago and, quite frankly, I was quite horrified by some of the information in some of those documents. I think the public should read them so they know for themselves.

I want to say in respect to the government leader, in trying to find common ground, he is trying to find a common ground. Obviously, there are three separate motions before the house in respect of the conduct of these members. I can tell you, as a member on this side, having listened for a number of days here, I was one of those members talking to the government leader to say that I honestly believe that Senator Brazeau’s motion, and what we’re asking in that motion, must be reviewed and looked at very seriously because of what I’ve heard thus far in the debate.

I say to the Leader of the Opposition, in respect of what he said earlier, that as difficult as this particular procedure is, it is working. I would submit to you and I would ask you, in view of those words by Senator Brazeau, the reality is that there is an open mind here and we are trying to find a common ground that preserves the dignity of this institution.

For all of us, I want to say this: We’re all wearing this. Nobody’s coming out of here unblemished. Quite frankly, I resent it. I didn’t call for this. I didn’t sign up so that five years later I would have to judge a number of our colleagues in this manner. No one asked for this. Quite frankly, if it had been me and I had had an audit like that, I would have resigned. I would have resigned out of respect for this institution and respect for my colleagues.

Some Hon. Senators: Hear, hear.

Senator Lang: However, that hasn’t happened.

Colleagues, I want to go back to the process. We have three audits here to the Leader of the Opposition, which his members were involved in and, with all the information that they’ve asked to be tabled, they will find that that side was more than happy to call in the RCMP. In fact, they wanted the RCMP to be called and they had every reason for that. There is an inference from the other side that it was just this side and the members of Internal Economy. I’m not part of Internal Economy. I’m like you, just sitting here listening carefully, spending hour after hour in here.

I want to say to the Leader of the Opposition in respect to what Senator Brazeau stated in this house, in view of the fact that he had a preliminary conversation with the Leader of the Government, does that not exhibit the fact that at least some members, including the Leader of the Government here, is prepared to listen to what’s being said and is prepared to speak to members if information is being provided to us over and above what’s been provided to us in the past?

Senator Cowan: I thank Senator Lang for that. I don’t know where he heard or thought he heard that those of us on this side were opposed to what the Internal Economy Committee had done. I think it was Senator Nolin who raised it earlier in our discussion this morning, and I said then, and I’ll be happy to repeat now for Senator Lang’s benefit, that from the very beginning I felt that the Internal Economy Committee did its work very well. They did it very thoughtfully. The bringing in of the external auditors to conduct the audit, receiving that report and commenting on that report, bringing the reports forward, all of that was very good. If he looks back he’ll find that in this house and outside the chamber I congratulated the members of the Internal Economy Committee for the work they were doing, and I repeated that again this morning. Perhaps the honourable senator wasn’t in the chamber at that time.

The only difficulty I had then and I continue to have was what happened with respect to the initial report on Senator Duffy. That was the only point on which I ever criticized the work of some members of the Internal Economy Committee.

With respect to your other point about the open-mindedness of the government to look at other options and the conversation which Senator Brazeau says took place between him and Senator Carignan earlier in the day, I said I had no comment on that. I wasn’t part of that discussion. The fact of the matter is that we have a single proposal before us now, and that is to remove everything but the name of these senators, to suspend them without pay. It isn’t: The time has come to impose further

sanctions on these senators. What is the appropriate sanction to impose on these senators? That's not the proposition before us today.

The proposition before us today is a single, one-size-fits-all sanction to take away everything but their name, to suspend them from their duties, remove access to their pay, their benefits and the resources of their offices. There's not a range of options. Then, to suggest as evidence of the willingness of the government to examine and be open to other options, what do we get? We get the government hammer coming down this morning.

What I understood to be a motion by the government leader that each and every one of us in this chamber was going to be free to vote on according to our own conscience has now, by virtue of the notice of motion given by the Deputy Leader of the Government today, become a government measure, and the government stands behind this. This is not Senator Carignan's view; this is the government's view.

For those of you on your side, whether that makes any difference or it doesn't make any difference is something you'll have to struggle with in your own minds. However, to suggest that kind of behaviour is an indication of openness and a willingness to consider other options, then I've obviously not been listening very carefully, and I think I have.

[Translation]

Senator Carignan: Honourable senators, as I have said several times, a senator proposes and the Senate disposes. There are opportunities to amend procedures. When a colleague does not know the rules as well as we do, we can make suggestions. Any senator can propose amendments. Amendments have been proposed to send this matter to a committee. It could have been a proposal to amend the sanction.

Under our rules, is it not the fruit of these deliberations that allows the Senate to make decisions, rather than saying that just because we have a proposal before us, that it is written in stone, that it is irrevocable? Someone tables a proposal, we discuss it and then vote on it.

• (1420)

[English]

Senator Cowan: Let me try this again. The reason I have proposed the amendment that I have, I'm asking us, collectively, to take your motions and send them to a committee. The committee would, as I see it, first of all look at what to me is a very important issue, and that is: Is there any danger that anything we might do would jeopardize ongoing police investigations and anything that might result from those police investigations? You're satisfied, and I accept that. You're satisfied there's no danger of that.

Frankly, and with no disrespect, I'm not satisfied. I've heard from Senator Baker and a lot of other folks, including leading defence counsel in this country who say there is a real risk that what we do would jeopardize the investigation and anything that

might flow from that investigation, involving not only these three senators but a lot of other folks who are being investigated as a result of this matter.

I have not talked to the police. I have no idea who it is they're looking at, what issues they're looking at. We agreed to send it to them because they're trained to do this and we're not. That's the first thing. That's what we need to do first. That's what the committee would do.

Secondly, the committee would say, "We ordered these people to pay the money back in May and in August. Is there anything further that we need to do now, or do we wait until the outcome of those investigations?"

If the answer is we need to do something now — and this gets to Senator Lang's point — what is the appropriate mechanism, or what's the appropriate sanction? Let's look at each case individually, because they are all different. They're all very serious, I grant you that, but they're all different. It's not one size fits all. So let the committee canvass the range of options, the range of sanctions that would be available and make a recommendation to us. It takes nothing away from our ultimate responsibility to make that decision. We could reject the recommendation of the committee, but we would have the benefit, at least, of the committee having examined a range of recommendations. As it is now, we're presented with a single recommendation, which may be right, Senator Carignan, but we don't know.

I would feel much more comfortable if I was voting on the considered recommendation of a committee which had gone through those processes. We've skipped right to the third point without having looked at the first two points.

Now, you may have your own view on those first two points, and you may be right, but that may not be good enough for all of us. I'm not saying we shouldn't consider your proposal, and I'm not saying we should change your proposal and send that to the committee, but I'm saying why don't we take your proposals, send them to a committee and say to this committee: Within a very strict guideline, within a very strict time frame, do this, come back with a recommendation.

If the committee were to come back to us and give us a recommendation that we support this, I would be content with that. I would be able to say we did the right thing in the right way. Then I would vote yes or no to the recommendation of the committee. I'm not saying that whatever the committee recommends I would accept. None of us would do that. We had that discussion this morning about committee reports and about the importance of hearing reports — I'm sorry?

Senator Tkachuk: You might change the report.

Senator Cowan: No, we didn't change the report. We sent it back to you so you could change the report.

The point is that we might well end up in the same place, but we would have the satisfaction and the confidence to know that we had gotten to that place through a reasonable process.

[Senator Cowan]

There may be another process that would be reasonable, and there's some suggestion that we shouldn't send it to a committee in the Senate. Frankly, I have faith in my colleagues on both sides. I think they're fair and objective, fair-minded people, and given a task to do, they will do the job well, as Internal Economy did, with one exception.

So let's do that. Let's get where we want to get, but let's do it properly.

Hon. A. Raynell Andreychuk: I want to ask a procedural question of Senator Cowan, because I'm getting a bit confused. The committee did its work, because that's where the work should have been done on the assessment of expenses. They have the conduct of that. I think Senator Nolin asked you the question this morning: Do you have confidence in what they did? Did they discharge their duties appropriately? You unequivocally said yes, yes, yes, and that gave me some comfort, because I've heard that from both sides now.

What troubles me, however, is that the senators who are the subject matter of these notices do not accept that. They have used rather flamboyant and strong language to say that that process wasn't what you're saying it is. We also have senators on this side who have said the same thing. I heard, yesterday, senators on your side say it was flawed; it wasn't due process; it wasn't all of the things that you seem to say that committee gave. Why would we turn it back to that committee that those people don't seem to have the confidence in?

Senator Cowan: My amendment was to send it to Rules.

Senator Andreychuk: I have the same faith in Internal Economy as I do Rules and any other committee. They are our committees, and we're responsible to ensure that they — what makes you think the other committee would be less fair or more fair than the Internal Economy Committee?

Senator Cowan: Because I think the difference is that Internal Economy — and they made it very clear. I think Senator Comeau made the comment yesterday in debate that Internal Economy had no power to impose sanctions. I think that was, in essence, what he was saying, and that's the reason they didn't do it. I accept that. I didn't know that, but I accept that.

We're not talking about an analysis of who did what, where, and whether these claims were supported by expenses. Were these claims made in accordance with internal Rules and Regulations of the Senate? I'm satisfied that the Internal Economy Committee, aided by the external auditors, did that job well.

Now, that's my opinion. It may be that Senator Wallin, Senator Brazeau and Senator Duffy feel otherwise, and they're entitled to that view. I wasn't at the committee, but I have confidence in colleagues on both sides who were on the committee. They did a very thorough job in very difficult circumstances. This is what I said all along. I'm not saying anything today that I haven't said publicly and in this chamber before. I think they did that all very well.

They would say their task was not to impose sanctions; their job was to do the accounting and to determine whether or not there had been any claims that were made that were not in accordance

with our Rules and procedures, and they made a report to the Senate. At least with respect to Senators Brazeau and Duffy, those reports were tabled in the Senate and debated in the Senate and adopted by the Senate, leaving aside the Senator Wallin case, because we know we have it now, but we've never debated it.

The point that Senator Carignan has brought us to is whether we should impose sanctions in addition to repayment plus interest of the improperly claimed funds. Should we do that, and is what he has proposed now by way of sanctions the appropriate one? What I'm saying is let's back up a moment. Let's go back and look at these steps that I've talked about. That's what I think the committee would do that we don't get in this process where we are right now.

Senator Andreychuk: To follow up on that, committees are the masters of their own fate. We have said that over and over again. We refer three motions to that committee, and we then should not tell them how they conduct their business.

• (1430)

Senator Cowan: Absolutely.

Senator Andreychuk: My fear is this: Are we going to reopen the cases? In essence, it could be an appeal, because you can't guarantee that and I can't guarantee that. The responsibility is on each and every one of the senators here on the issue of any further disciplinary measures.

I'm unsure how we can ensure that that's the issue that will be dealt with in a committee, once it's seized with an issue, when they can interpret their mandate in any way they feel appropriate.

Senator Cowan: Well, I guess I would start with the assumption that the members of the committee — and, parenthetically, I would note that there would be twice as many government members on that committee as there would be opposition members, so to speak, so it's not likely that if there were partisan interests at work they would carry the day.

I would start from the assumption that our committees take their work very seriously and they do their work very well. If we referred these motions to our Rules Committee, by way of example, we could say, "We want you to take these motions. This is not a witch hunt; it's not a fishing expedition. Your mandate is to review these motions and then come back and report to us your opinion on them."

What I hope they would do, and I would not wish to interfere with their work — what I think I would say if I was on that committee — and I'm not — is: "Well, all right, what can we do here with respect to sanctions that will not impede or interfere with those police investigations?" I'm sure you would agree it would be undesirable if we blundered into that. I'm sure you would agree with me on that.

Then the committee would say: All right, Senator Carignan is suggesting that this is the time for us to impose sanctions. Do we think that's correct? They may well think that is the right thing to do.

We've heard a whole range of suggestions. Senator McCoy made some suggestions earlier; others have floated suggestions around. Senator Brazeau indicated that there had been a

suggestion made to him by the Leader of the Government in the Senate. They could come back and say that for this senator, this is the appropriate sanction; for that senator that's the appropriate sanction; and a third might have something different.

Then we would be able to say and they would be able to say that there has been due process. This is not due process. Any way you cut it, it is not due process, in my view.

Senator Andreychuk: My worry is that we are mandated to make those decisions, each one of the senators here. If it goes to a committee, I also have to give due regard to that committee that they can conduct their business and interpret their business as they deem appropriate and in the best interests of the Senate and the issues at hand.

If they come back with a decision — and I dispute that it's a partisan issue; I think individual members on this kind of issue would be very careful to be guided by their own principles.

Senator Cowan: I hope so. I wasn't suggesting otherwise.

Senator Andreychuk: Thank you for that, but when they come back with a recommendation, what if individual senators in here do not accept that? You will then say that we are not supporting due process, et cetera. In other words, I think it is our mandate to deliberate here and to come to a decision and to use whatever tools we have and need to come to that decision.

Senator Carignan can make up his own mind. I want to make up my own mind. I'll do my own research, and I want to hear from other senators. I do not want to have to respond to a committee report. I want to respond to my peer evaluation here, because that is what the fair process is here. I will be judged by my peers, and I have that responsibility to judge here. I cannot have it off somewhere else. That's what's keeping me awake at night.

Senator Cowan: Well, I can only repeat what I've said before, Senator Andreychuk. Nothing that I'm suggesting in my amendment or in any of the comments that I've made here would take away in any way from your ability to make whatever decision you think is right when it comes to the judgment day. That's your decision. You can disregard committee reports; you can support committee reports; you can stay away; you can do whatever you want. That's your responsibility and your duty.

You say — these aren't your words — that you don't want to be constrained by committee reports. What are we relying on here? We are relying on reports that were done by our colleagues on the Internal Economy Committee, and we have that. I am not quarrelling with the results of those reports. What I'm saying is we're not asked to support or not support the recommendation on sanctions from the Internal Economy Committee, because they have made no such recommendations. What we are asking to do is say, "Take this, take the suggestions, the motions of Senator Carignan, and go through this process and come to us."

Now, I might support the report of the committee and you might not. That's fine. We would then be each exercising the judgment which we have to make. I'm saying that I'm not

satisfied, as we sit here today, that I have seen that due process, which I think is absolutely essential, before we get to that point of judgment. That's all I'm saying, Senator Andreychuk.

Senator Andreychuk: I think we disagree on this point. The Internal Economy Committee is structured. It's within our act. It has obligations, and I think if we do not accept their report, we'd better have some good reasons for not accepting it because they have that delegated mandate. You are now asking me in the middle of a process to delegate something that clearly should be our decision within this chamber. That's, I think, our difference of perspective, and I appreciate yours.

Senator Cowan: Let me try again. I'm not disagreeing or not accepting the reports of the Internal Economy Committee. I think the record will show that I voted in favour of those reports. I don't remember whether it was unanimous or not, but it certainly passed with very few dissenting voices. So, as I say, leaving aside the events of the night of May 8 and the morning of May 9 and the hiccup between Duffy Report 1 and Duffy Report 2 — leaving that aside — I think the committee did good work, and I've said that, and I support and I voted in favour of Duffy Report 2, and I voted in favour of the report on Senator Brazeau. I've never had a chance to vote on the one on Senator Wallin.

I'm not asking Internal Economy or any other committee to go back and redo what they did. That's done, but that's not the issue before us today. It's not a question of numbers and whether this particular trip was parliamentary business or it wasn't business or was this appropriate. That's not what we're talking about; that's done.

My point is: Why now? What is it?

Let's take Senator Brazeau for a moment. We received that report on May 9. We passed it. There was no mention at that time of additional sanctions, and then we got to Senator Duffy. The then Leader of the Government in the Senate said he's paid the money back; case closed. That's what she said. The government said: That's showing leadership, paying the money back. No question of additional sanctions.

• (1440)

What is it that took place between May of this year and now that says that now, but not then and not at some time in the future, and we've got to suspend them without pay? What additional evidence do we have that would support that? That's the issue.

It's a question of the sanctions. It's not a question of the repayment of monies. It's the question of the sanctions. That's the point, Senator Andreychuk.

Senator Andreychuk: It's the procedure I'm talking about, not the content, and it's the disciplinary measures that have to be taken in this chamber.

Senator McCoy: I appreciate your question, Senator Andreychuk. I got the impression, Senator Cowan, that you were talking about procedure and which steps we take and in

what order to get, at some appropriate time, to the point at which this chamber makes a decision collectively. And that that's when the sanctions would be applied.

I've suggested a path that would be similar — but it's a question of timing and some other considerations, but most importantly a question of timing — that would preserve the dignity and reputation of this institution and allow due process to occur, probably, in my estimation, giving some deference to what could be the most severe sanctions of all, and that is the criminal process.

Senator Cowan: I agree.

Senator Cools: Again, to Senator Cowan, Senator McCoy just reminded me, and I think reminded us, and I'd like to say to Senator Carignan that in the way that I've always understood that settlement discussions are privileged in the instances of any legal conflict or dispute, settlement discussions are privileged. What I have gleaned from Senator Carignan's very personal and private remarks is that he is open to some negotiation.

Earlier, Senator McCoy suggested that the Leader of the Opposition and the Leader of the Government and at least one independent, with the Speaker playing a mediator role, could meet and see if they could come to some kind of agreement.

I think, from what I'm hearing all around, there is a huge consensus growing nationally outside of this place that the penalties imposed here are extremely harsh.

I have received several phone calls today, and I've been getting emails and so on, and that is the message that I am hearing.

And we should be disturbed, because, not to condone any wrongdoing, Senator Duffy is a sick man, and it's a very serious matter to deprive a sick man of his health benefits, medical benefits, and all of that. That is extremely harsh.

As I said before, earlier, the finding that you are looking for in Senator Carignan's motion is that there's sufficient cause considering — I mean, which is a condition — considering his gross negligence in the management of his parliamentary resources.

So the sentence here is not fitting to the charge. That is a very serious matter. We are long past the day when a person steals a loaf of bread and may face capital punishment. That's one of my concerns. I find these measures extremely punitive and extremely harsh.

We all hear — well, I didn't vote on it. I found the whole thing very disturbing at the time, but Senator Brazeau, previous to now, was on a leave of absence. It was a forced leave of absence, but a leave of absence, and suddenly that is to be converted to a suspension by this motion.

I want to say to colleagues here that many people are absolutely confident that this house, this place, has the power to impose suspensions. I just hasten to add that this is named a suspension, but it is larger than a suspension — much larger and much greater.

It's quite different, and usually you can predict an end to suspensions. The end point is nowhere in sight. It says "... until the order is rescinded." Well, that's a minimum of years.

I did sense a searching yearning to find a solution. I did sense that large numbers of senators here want to be fair and want to do justice.

Senator McCoy made the suggestion that maybe the leaders and others could begin to have some discussion, which seemed to make perfect sense to me, because if I were to move to amend some of these motions, I would be moving, during these proceedings that we're having, to bringing to the bar their counsel to make representations on their behalf so that we keep a continuity with what is going in the chamber. This is what happens in the old processes, and what happens in the instance of removal of judges.

There is a host of problems and a host of other things wrong with these motions, and I do believe that there was a mood earlier to find the solution and to seek some compromise.

I was just wondering, Senator Cowan, did you see and sense what I saw and sensed? Would you be willing to engage in a friendly, off-the-record discussion with the government and others?

Senator Cowan: Of course. I'm always willing to engage in friendly discussions with anyone, senator. Not that the conversations I've had to date haven't been friendly, but Senator Carignan, as I say, told me what he was going to do, and he's done what he said he was going to do. Then there's a bit of piling on today with respect to closure motions; so I think that while Senator Lang sees some glimmer of hope and negotiation and openness in that, I don't see that. I'm open to any discussions at any time with anyone.

Senator Cools: Senator Cowan, you are a man of fantastic and enormous persuasive qualities. I'm sure that, in the right circumstances, one could find one's way to resolve differences. I am sure that any Notice of Motion that was put down could be easily not moved. If a motion was actually before the house, it could be withdrawn.

There are infinite possibilities once the will to find a solution is there. That is what has to be tested. The only way you can test that is to sit down with the individuals face to face to see if there is a will. If there isn't a will, then we know that we're dealing with posturing.

Today I sense a real interest in finding a solution. We're all troubled by this very deeply, and I saw that for a split second, when Senator Carignan said that he approached Senator Brazeau, whom he liked, as a token of friendship. I saw in that moment an opportunity, and maybe I'm wrong — maybe I'm just a sensitive do-gooder, which I have been all my life — but I would miss no opportunity to find a resolution to this problem because these people have been under this ordeal for a year. Their health is cracking, some of them, and as we saw, Senator Brazeau just walked out of here hurt and angry again. They have been affected by this horrible experience. We are talking about it, but they have been living it in a very difficult and terrible way. It's going to take

some extraordinary humanity, and some of us are going to have to take some extraordinary steps to find some resolution, because I can tell you, as this stands, I can't vote for it.

• (1450)

The Hon. the Speaker: Continuing debate?

Senator Cools: I was hoping Senator Cowan would respond.

Senator Cowan: Senator Cools, I'm not sure what the question was.

Senator Cools: Peace, brother, peace.

Senator Cowan: I'm in favour of peace. I made it perfectly clear at the beginning that when I speak, I am speaking from my own conscience, my own heart. I was not expressing the views of my colleagues, and many of my colleagues have spoken and have made very helpful interventions. They have not always agreed with what I've said. I've found that's my life. I'm glad it is that way; I value my colleagues' opinions.

I stated my own case. I don't purport to speak for anyone on this side. I have encouraged colleagues on the other side who are as troubled about this as you are. Let them speak. It may be that there is some way in which this can proceed that would be satisfactory to us all. All I have done is put forward my best effort, my best suggestion as to a way forward. I hope that it will fall on willing and accepting ears.

If you have a suggestion, we should consider it. I'm not trying to impose my view on others.

Senator Cools: Senator Wallin demonstrated today that she would have been more prepared to answer questions if her counsel was close by, which could easily be arranged, you know. All we have to do is to offer him a seat right there at the bar, or just stand, whichever.

She obviously said to us today — this is what I heard — that she is willing to answer questions and to share information, but she just wants that protection of knowing that every word she utters is protected, and not only protected, but well advised. I saw that today.

Senator Cowan: Mr. Speaker, I'm happy to continue answering questions and responding to comments, but I really do think that I have said all I can say. Some things I've probably said more than once. If there are questions that colleagues would like to ask me to clarify what I've said, I'm pleased to do that. I'm sure there will be other opportunities between now and judgment day for me to intervene in this debate, but if I may, perhaps I could respectfully decline any further questions and comments. Otherwise, I'll be soon at the Carignan stage of interventions.

The Hon. the Speaker: Continuing debate.

Hon. Wilfred P. Moore: Honourable senators, I want to enter the debate with regard to Senator Cowan's amendment.

Before doing so, on a point of order, last evening, when we were dealing with the reception of the report from the Committee of Selection and you asked the question, I said "on division." And maybe the Speaker didn't hear me, but it's not in the record, so I ask for leave to have the record adjusted to show that, Mr. Speaker.

The Hon. the Speaker: Is it agreed, honourable senators, that the Hansard will indicate that the vote was taken and adopted on division? Agreed?

Hon. Senators: Agreed.

Senator Moore: Thank you, Mr. Speaker and colleagues.

I wish to speak in support of the motion of Senator Cowan. In doing so, let me make it very clear that I do not carry a brief for the subject three senators. However, I do carry a brief for this institution, for the good people on both sides, past and present, and the good work they do on behalf of Canadians.

As was mentioned earlier today, some senators on both sides of the aisle are members of a bar society, and they are officers of the court in their respective provinces, and they fully understand the rule of law, our adversary system, and that we are sworn to uphold that system, which embodies the fundamental provision of due process.

Colleagues, let me begin by quoting the Leader of the Conservative Party, Stephen Harper, in his speech in 2008 at the national convention of his party when he said, "the Conservative Party stands for peace, order and law."

We know that he did not observe that law when it came to a fixed election date. We also know that that the Harper government did not observe the law when it came to the Canadian Wheat Board statute that it introduced. You will recall that the existing statute provided for a plebiscite to be given to the farmers. That did not happen. That due process was denied to those people. Despite that law and despite the promise from the Minister of Agriculture, the government did not observe the law and the bill was passed. I thought that was a shameful day.

When I look at the voting record of that day, the subject three senators all voted in support of that bill. So the irony is not lost on me that they are now relying on the rule of law and due process to help them respectively in the situation in which they find themselves. I applaud their now acceptance of that principle.

That travesty was undertaken despite the oath that we all took when we were sworn in to this place. I just want to read that to you. It says, very simply and very powerfully:

I,....., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors. So help me God.

Now, the Queen is the embodiment of the rule of law. When we are sworn in to this place, we are taking on the responsibility of making sure that that rule of law is upheld, that fairness and due process are upheld. We don't get to pick and choose and say, "Oh, today I'm going to observe the rule of law. Well, I don't like that

one; I'm not going to observe that." We don't get to do that, not here. This place is the epicentre of the trust that is bestowed upon all public office-holders, and that includes senators. Colleagues, to do otherwise is to begin down the slippery slope of lawless behaviour, and that, of course, leads to tyranny.

In Canada, the fundamental basis of the rule of law is due process and fairness, which is clearly set out in our common law cases over the ages. The subject motion does not observe that fundamental principle. Therefore, I cannot and I will not support that motion, Mr. Speaker.

I will support the amendment made by Senator Cowan in order to provide the due process that this chamber stands for and that we must defend, and I would urge colleagues on the other side to reflect on that very simple message. This is who we are, and this is what we are supposed to be doing. To do otherwise is a travesty. We can't do that, and we cannot let Canadians down. Thank you.

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

Hon. Joan Fraser (Deputy Leader of the Opposition): Thank you, Your Honour.

Let me add my voice to those who have spoken, with appreciation of the serious way in which all colleagues have been approaching this debate. It is a very serious matter.

• (1500)

Before moving on to where I'm going to end up, I would like to respond, in particular, to the suggestion by Senator Lang that, in the Internal Economy Committee — and, by inference, in the Senate — the people on our side did not support the work that the Internal Economy Committee had done.

Let me say for the third time this week that I was at that time a member of the committee. I supported, without reservation, the reports that were done on Senator Brazeau, Senator Wallin and, indeed, Senator Harb. If I and colleagues on my side did not support the first report on Senator Duffy, it is not because we were trying to go easy; it's because we thought the report, in its initial form, was going too easy on Senator Duffy. That is why that report was adopted on division in the committee. We were pleased to support the second version of the report, which restored critical language comparable to the language used in the case of the other senators that the committee addressed.

I would also like to suggest that I think there is still, in many of our minds, some confusion about this whole process. Colleagues, it seems to me, quite clearly, that we have now embarked upon the second phase of a two-phase process. The first phase concluded with the reports from the Internal Economy Committee and the adoption by this Senate of three of those reports, and the tabling with the Clerk of the fourth.

Let me use an analogy. It's not a perfect analogy, but it's the best I could come up with on not too many hours of sleep this week.

Suppose that out there in the foyer of the Senate there was a stunningly beautiful and valuable Grecian urn, a thing of great beauty that belonged to the Senate. Suppose I broke it, shattered

beyond repair, and I admitted that I had broken it. Well, I would conclude that the Senate was within its rights to demand restitution, payment. I might have to cash in an RRSP or two, but I would be liable to pay for the damage I had caused, and that would be phase one, the establishment of the fact that I had deprived the Senate of valuable property and I should make restitution. That's phase one.

Phase two arrives when the Senate then turns its attention to whether there should be further sanctions, if there should be sanctions at all, penalties other than simple restitution; and there the Senate would have to take into account the actual circumstances of the case. What happened? How did it happen? Was it a rainy day and the floor was wet and I just slipped and happened to crash into the urn? That would be an accident. Clearly, I would not consider I was liable to penalties for that, especially because the floor was wet and that wasn't my fault.

But suppose that I was carrying around, as I so often do, a very heavy briefcase and I wanted to stash it someplace and I just leaned it up against the urn, which toppled over and shattered. You could argue that that was negligence, maybe even gross negligence. We'd have to establish the facts of the case.

Or suppose I was really angry with a ruling that you had made, Your Honour, and I went outside and I picked up that vase and I threw it on the floor. That would be the most serious circumstance of all, because that would be wilful. The Senate presumably would be taking which of these circumstances, or whatever other circumstances would apply, into the decision about whether or not there should be penalties.

Suppose further, since we're talking about a very valuable object here, that the police were inquiring into the matter. Should the Senate levy its penalties before the police have finished their work? All of that would have been phase two of the mysterious case of Senator Fraser and the Grecian urn.

We are now in phase two of the case of Senators Brazeau, Duffy and Wallin. The first phase is complete. We have established, to my way of thinking beyond any reasonable doubt, that, for whatever reason, expenses were claimed that should not have been claimed and repayment was due; and most of the money has been repaid, with interest, and the rest is on its way, little by little.

We're now into phase two, which is considering whether, and when, further penalties need to be imposed, and it's a very different matter from the mere ascertaining of whether expenses should or should not have been claimed.

Here I would like to address the very pertinent questions that Senator Nolin has raised. I know how much Senator Nolin cares about, among many other things, two things: justice and this Senate, this institution. I've worked with him for years and I know how deep his convictions run on both of those fronts.

He has asked repeatedly: What could be done in committee that cannot be done in the Senate? I will try to explain what, in my mind, would be involved here.

I think that before we were to reach a decision on whether or not to proceed with Senator Carignan's motions, we should hear first from lawyers to address the issues that have been raised by

Senator Baker, Senator Furey, Senator McCoy and Senator Cowan. I know you don't agree with them, Senator Nolin, but they are serious questions, and I think we should hear from top-flight legal experts who are not members of the Senate to give us some solid opinions upon which to base our understanding.

We should hear from the Senate administration — this is very unusual, but I think it would be necessary in this case — about the way in which senators are informed about what they may or may not claim, how the communication is done, when the communication is done. Senator LeBreton was suggesting that it would have been highly unusual for Senator Duffy to seek clarification about the rules only three weeks after his appointment had been announced, but I'm pretty sure I was seeking clarification of the rules then, if not sooner, after my appointment was announced.

So I think we need to clarify some of the misunderstandings here. I would like to know more about this alleged two-page memo. I would certainly like to see it. The fact that Senator LeBreton could not find it in her files doesn't mean it doesn't exist. It could be in the files of someone else who was then in her office. I would like to see it, and if it exists, and if necessary, I would like to hear from the author of that memorandum to ascertain the circumstances. Has there been any misunderstanding about what it meant?

I would like to hear, first probably from the senators involved but possibly from other people, whether anybody else in the PMO, or anywhere else, gave them advice about what was legitimate and what was not legitimate in the way of expenses that could be claimed.

Senator Carignan, in discussing the matter of precedents, cited the case of the scandals in the House of Lords and the way the House of Lords handled them. I would like to hear from senior members of the House of Lords who did that, who were on those committees, who made the decisions to go to the committee that examined those cases, and the grounds upon which the House of Lords reached the conclusions that it reached in each of those cases. This does not have to be done, unfortunately, by visiting London. It can be done by video conference, and I think it would be a very valuable contribution to our deliberations. I would like to hear from experts on sanctions — professional sanctions, other sanctions; experts on disciplinary matters in general. The Senate is unique, but we can learn from the experience and the professional expertise of others.

• (1510)

Since Senator Carignan has raised this matter more than once, it might also be appropriate to hear from experts on the matter of contempt of Parliament.

That's just a very short list of what I think a committee should look at. It can and should be done relatively expeditiously, but it will take time. The committee, to do this work, would need to sit long hours.

Could we do it in the chamber? Well, the Senate is master of its own destiny and there's just about nothing that we cannot do in this chamber. We could resolve ourselves into Committee of the Whole for days on end to hear from all these people and I suppose

we could set up video conference screens in front of your throne, Your Honour — you could maybe sit somewhere else — but I think that would be an extremely cumbersome way to do it. Committee of the Whole, at best, is an awkward beast, because there are a hundred of us, and the more important the matter we are looking at, the more likely all 100 of us are to show up. To conduct a serious study with a hundred people asking questions is very difficult.

Also, of course, as has been pointed out, in a committee, the senators affected could have with them their own counsel, and that, I think, not only would be perceived to be but would be an appropriate safeguard of the public interest — not just of their interest, but of the public interest. For all these reasons, I strongly believe that these motions should go to committee.

You will have noticed that in the case of the motion concerning Senator Brazeau, my leader and I have put forward different options, and we did this in consultation. I'm not standing here in rebellion against my leader. On the contrary; I find him an extraordinarily competent and admirable leader, and I'm very pleased to serve under his guidance.

We decided that it would be appropriate to give the Senate options. The principal reason I will offer to you is that, as I suggested yesterday, the Rules Committee would be starting from scratch on this matter. It is true that phase one is done. The facts have been established and endorsed by the Senate as a whole when it adopted three out of the four reports. Still, in order to look at phase two, the Rules Committee would have to go back and familiarize itself in rather more detail with phase one. That would take time. These are not simple matters. However, the Rules Committee is more comfortable dealing with matters of rules, and so there's an argument to be made to send the motions to the Rules Committee.

The Internal Economy Committee, which is also one of our senior committees, has fantastic talent on it and has already done, as I said yesterday, half the work. It is familiar with phase one, with the facts, which is no small thing. I'm fully confident that it could, probably in less time than the Rules Committee would need, reach useful, considered and informed recommendations to the Senate.

In response to Senator Andreychuk and Senator Nolin, let me say that this would not in any way impinge upon the Senate's right and duty to reach its own decision. It would simply mean that we were doing so on the basis of better information than in all practicality we can achieve in the normal process of debate in the Senate.

The debates this week have been extraordinary, but one of the things that I have found most extraordinary about them is that they have raised many more very serious questions.

May I have just a few more minutes, colleagues?

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

Hon. Senators: Agreed.

Senator Fraser: Thank you.

The debates have raised many more deeply serious questions than they have been able to answer, but we are all troubled by many of these questions. Not all of us are troubled by all of the questions, but I think that all of us are troubled by at least some of them. This Senate, before it reaches precedent-setting decisions on such an important matter as this, I think deserves the very best information that it can.

MOTION IN AMENDMENT

Hon. Joan Fraser (Deputy Leader of the Opposition): In order to give all colleagues as wide a range of options as possible, I now move, in amendment:

That the motion be amended by replacing the words “Rules, Procedures and the Rights of Parliament” with the words “Internal Economy, Budgets and Administration”.

I warn you that I shall, for the sake of consistency, put the same amendment for the third motion, when we get there.

The Hon. the Speaker *pro tempore*: It has been moved by Honourable Senator Fraser, seconded by Honourable Senator Munson:

That the motion be amended by replacing the words “Rules, Procedures and the Rights of Parliament” with the words “Internal Economy, Budgets and Administration”. We are open for debate on the amendment.

Hon. Terry M. Mercer: Honourable senators, I want to say a couple of words on not just this motion but on Senator Cowan’s original motion.

These have been very difficult times for all of us. The debates have been very difficult, and we all have to call upon our inner selves to determine where we’re going with this and how we make a decision. I go back to where I think I received my moral compass from, my mother, and what she would say, if she were here today, about the situation in which our three colleagues find themselves. I also go back to the neighbourhood I grew up in, the north end Halifax, a pretty rough part of town when I was a young fellow. One of the things that was common, though, was that we were fair to each other. It was a rough-and-tumble sort of place, but in the end we were always fair to each other. My mother taught me to be fair to everyone, as fair as I possibly could. So that’s what I want to talk about.

I want to talk about the fact that while the committees did a good job, the three senators involved at the time were not faced with the consequences that are part of Senator Carignan’s motions and were not given due process where they would have the right to counsel and a fair hearing. It’s that fairness that bothers me the most. That’s missing, and I think that’s what we need to talk about it.

I’m very uncomfortable with this whole thing this past week. I may not have seemed it, but it’s bothered me. I don’t lose sleep over many things, but this has bothered me a lot and it continues to bother me.

I find this is a difficult situation that we’ve been put in by Mr. Harper and his friends, that there are so many questions out there about due process that these three senators have, and I think it’s

time that they had an opportunity to appear before a public hearing of some group. I think the suggestions of either Senator Fraser or Senator Cowan may be the proper place so that we can determine what’s happened here.

We’ve had accusations made here in the last couple of days by Senator Duffy about very serious matters. Senator Duffy talked about the Prime Minister’s involvement. The most powerful man in the land has been named, here in this place, as having been involved in an alleged cover-up, and also Senator Duffy’s involvement in this process. That’s very serious. I don’t know if it’s true or not, but we should find out. As you all know, I’m not a big fan of Stephen Harper, but I am a big fan of the fact that the Office of the Prime Minister of this country needs to be as good and clean as possible.

• (1520)

Also, I keep hearing about — and Senator Duffy mentioned this, but then it came out in the media later on — how many people actually knew about the \$90,000 payment in the PMO and in other parts. It went from 3 to 14 now, I think it is, people who knew. The question is: Who knew what and when? Not only do we need to know that before we make a decision on how we deal with, in this case, Senator Duffy, but the public has a right to know, and it’s our job to help them find out. I think that we need to act on that as quickly as possible.

My final point is that I find it rather ironic that we’re standing here today talking about three colleagues and suspending them from this place, without pay, without benefits, and they’ve been charged with nothing, while down the hall the Member of Parliament for Peterborough sits in his seat and is paid his salary and gets all the benefits of a member of Parliament, and he has been charged. I think it’s hypocritical of our friends opposite to try to expel three of our colleagues here. Maybe that’s the right way to go. I want to hear all the evidence. But what’s good for the goose is good for the gander. If you put the motion here to expel these three, there should be a motion on the floor of the House of Commons to kick Mr. Del Mastro out too, and to kick him out right now because he has already been charged.

[Translation]

Hon. Pierrette Ringuette: Honourable senators, first of all, I would like to thank you for participating in this debate. I especially appreciate the quality of the debate, in what is one of our best and our worst moments.

Serious questions have gone unanswered. For once, I agree with Senator LeBreton: the two-page memo should be tabled in this chamber so that we can read it. I am also pleased with Senator Carignan’s commitment to provide, on Monday, the transcripts of the debates and procedures at the in camera meeting of the Internal Economy Committee. I hope that we will have the time to carefully read this document in order to understand the thrust of the discussions. Four reports have been presented. However, we have not received or debated the report on the document discussed at the meetings held on August 12 and 13.

Honourable senators, we enjoy privileges and have responsibilities in this chamber. It is our responsibility to vote on motions giving rise to certain questions that have gone

unanswered. That is one of the most frustrating aspects. On the one hand we are told to assume our responsibilities; on the other hand, we do not have the answers to all our questions.

In my opinion, the emails that we have received over the past two weeks reflect what the general public is telling us. Since last February, different rumours have been circulating. We have not been given any of the facts that could confirm the truth. Without all the facts are our privileges and the responsibility to make well-founded and responsible decisions infringed?

During debate on these three motions, Senator Wallace spoke about the Ernst & Young report and the difficulties that firm's experts had in interpreting the Senate rules. Suddenly, another so-called firm of experts shared its interpretation of the Senate rules with the Internal Economy Committee.

I have some concerns, and I feel compelled to share an experience I had with the Subcommittee on Internal Economy. It happened about 13 months ago. You remember that I was involved in the case with New Brunswick potato farmer, Mr. Tepper. I will not deny the fact that it nearly cost me my hide, and I am still scarred.

As part of my duties, I had the opportunity to go to Beirut to meet with the justice, foreign affairs and tourism ministers, the latter being willing to lend a sympathetic ear to us Canadians. In order to go — and I do not want to name names — I had to ask the Subcommittee on Internal Economy for \$1,200 to buy an economy-class ticket and stay at a two-star hotel in Beirut. That \$1,200 would be used to try and bring my constituent back to Canada. However, I never received a written response from the subcommittee; I received a verbal response. I was told that it was not part of my responsibilities as a parliamentarian.

I beg to differ. No one from New Brunswick will ask for my help and not receive it. It is part of my duties as a parliamentarian. If this institution, through the work of its committees, is not able to support parliamentarians in the work we do for our constituents, what is the use? Why are we here?

In the past three days, Senator Wallin has told the chamber that she did work as part of her parliamentary duties that the accounting firm did not acknowledge in the analysis it provided to the Internal Economy Committee.

• (1530)

I told you my story so you can understand that this is a real possibility. It is a real possibility.

I will point out that Senator Wallin and Senator Duffy have never been my friends from the time they arrived at the Senate. They have never even said hello. However, that is not the issue. The issue is the role we play, our responsibilities and how this institution supports us, whether morally or financially. In the situation I have just described, I was denied \$1,200. What is done is done, but I can tell you that I will never forget the kind of support I received from the Standing Committee on Internal Economy, Budgets and Administration to do a job that I consider important to Canadians.

[Senator Ringuette]

[English]

How can we say that we are relevant to Canadians if we are not able to do that? How can we say that?

In a month, it will have been 11 years that I have been in Senate. In those 11 years I've missed three sitting days. I can tell you that I'm in my office in the Victoria Building at 7:30 in the morning. Last night we left here at midnight. It's not always like that, but on any issues that I raise in this house or in committee I do my research. I work. This is not a three-day job, at least in my perspective.

Because of my experience in this place, I have too many questions right now to be able to vote on the motions in front of us. I find that we've made progress in our exchanges. I was hoping that at the end of June when we closed the chamber, and from talking to many people, there would have been a more non-partisan attitude when we came back.

[Translation]

As my mother would have said, maybe that was wishful thinking. It remains to be seen. It remains to be seen, but if we ourselves do not work to bring down partisanship here and work with energy, interest, enthusiasm and dedication for the benefit of our constituents, who will?

Based on my experience, when it comes to getting support from the Internal Economy Committee and this institution in carrying out my parliamentary duties to stand up for my constituents, we are not there yet.

That is why I am here: I want to listen, I want to learn, I want answers. I think it is our right to have answers before being forced to vote in haste. This situation is making us all look like a bunch of school children. Thank you.

Hon. Roméo Antonius Dallaire: Honourable senators, we are currently debating the amendment to Motion No. 3 regarding senator Wallin.

[English]

This exercise was started with the introduction of disciplinary action against three of our colleagues, which was initiated by the government without first determining the disciplinary procedure. If you have an organization that has existed for nearly 150 years, and you have a group of professionals from significant backgrounds in the professional world who have been subject to disciplinary and legal and at times even criminal processes, one would think that the first thing you want to do is figure out how you're going to handle this.

Now, I raise this because, as the Leader of the Government has told us from the start, this is a situation that has got to be resolved by peers. As peers, we are all equal here. He took off the mantra of political squabbling and said that we're all peers and we have got to all be engaged in this exercise.

Over the months since the reports have been submitted, the first thing that one would look at what efforts have been done to articulate, to formulate, to discuss, to move into a committee and

create an ad hoc group in order to say, “How are we going to handle the disciplinary side of the *méfais* of these senators as were brought to us by the reports of Internal Economy?”

We’re on wholly new ground. We’re actually creating jurisprudence for the institution. It has never been handled in this way before. Instead of introducing a means by which we will establish the disciplinary processes to make sure that they are fair, equitable and meet the challenges that we individually have from our backgrounds regarding the Charter of Rights, justice and whatever other convention that we would think essential to bring to this institution, the leader brings in three motions, bang, bang, bang, and three sentences, bang, bang, bang, exactly the same.

• (1540)

Now, you’ve got to wonder what motivated that sort of means or methodology. Was this the result of extensive study? The Leader of the Government says he did a lot of study. Was this the result of seeking advice? He says he did. Was this his own initiative of coming to this conclusion with his own staff? Was this influenced from the caucus? Did he consult with his caucus colleagues on the way ahead? If it is to be looked at by peers, how much of the other side did he consult with in order to make sure that we’re all going to be playing from the same song sheet in regard to meeting this significant challenge?

Well, a lot of those answers are not available to us. All we know is we’ve been thrust into a very aggressive, limited instrument by which we are to apply a process of discipline, or we are to articulate a disciplinary methodology as we go along to bring sentence to our colleagues, a sentence that has already been predetermined.

I don’t know how it is possible that we come up with a method of that nature. This place wasn’t invented last week. How is it possible, recognizing, as he did, that he’s been harassed all summer by people saying this and that about the Senate? Well, he’s been harassed. I’ve been harassed. We’ve all been harassed by it. We all know the impacts of it. We’re all in this boat together. Why not reach out and formulate how we’re going to handle it, gain that consensus and then implement it so that we can do it, not under duress, which I consider I am now all the more by the fact that we are not even going to let the full breadth of the debate go on. We are actually going to bring closure to it.

Oh, and by the by, I do believe we said Senator Wallin can use all the time she needs — that was offered this afternoon — except don’t forget that we’re going to close this place down on this subject in a couple of days. That’s not exactly what I think to be fully logical, nor do I find it just, nor do I find the implementation that we’ve adopted to even resemble the decorum, the respect, the depth of concern that we should be attributing to this serious matter and our three colleagues.

It’s one thing to say that we’re going to have a debate on the future of these individuals. It’s quite another thing to say that we are going to sit in judgment and pass sentence on these three individuals. I will not hide the fact that when this court martial, this summary trial, this thing that doesn’t even have a name yet, whatever it is, when it started, I considered it my sworn duty to be here every minute of it and listen to every person who is bringing

information or seeking information either from the three accused or from those who are accusing them. Look at this place. Our peers, where in the heck are they? I’m not even shy of saying where are they here, and where are they there?

It is unimaginable, from all the 36 years of the institution I come from, that you would create a system that would permit this sort of bantering, this sort of frivolous walking around and talking about other subjects, this incorporating a significant process within the normal routine of the institution. Remember how we start this every day? Same way: statements, then go through the litany of things we don’t want to do, and then the Question Period, and then we go through all the Order Paper and then we come to these motions. That makes no sense.

Because these motions are being used that way, that to me makes absolutely no sense when we consider the gravity and the nature of the exercise we are committed to and the fact that we have three of our colleagues there watching the rest of us bouncing around and talking and doing different things and going in and out or not even appearing and so on. Are they saying, “I’m going to get a fair shake. These are my peers. They are really concerned about what’s going to happen to me. They have really studied the problem. They have listened to all the possible evidence. They have given me every opportunity to respond and, yes, in the end that was a pretty fair exercise”?

Well, if any of you think that that is a fair exercise, you would be smoking dope. So I don’t even consider this to be in respect of our colleagues and to what is being brought upon them.

Now, none of what I have said here has to do with guilt or no guilt. It has nothing to do with how much money or whatever they’ve been held to account. This is purely what is the institution doing, what are the peers doing to achieve the aim? Fair, just and, thank you very much, legal. Remember, we did have that debate yesterday, for those who were here, where we said things could be legal but not necessarily right, not necessarily moral.

There were options. Yes, of course, the option that was thrown on the table a couple of days ago was that we have three motions, and we’re going to try all three at the same time, and you have to really follow which one we’re on because things do swing around, but, anyway, we will do all three at the same time. That’s one method. Another method could have been a report from a group of us, a multidisciplinary group that could have said, “First of all, this is how we believe the disciplinary process should be, and this is what we want to propose to you.” We agree to it, and then we implement it.

It could have been sent. We could have said, “Listen, there is a need for disciplinary action. We have different committees. Let’s have a committee look at what the process should be and come back to us with a suggestion.” There are a couple. I even considered Justice as a possible committee to look at this problem. That was an option.

Of course, the other option was to do nothing. As we were working through the summer, I thought that we were going to do nothing, because there’s been no sort of preamble to what is happening. There has just been this Notice of Motion and motion dropped on us.

We were told yesterday by the Chair of Internal Economy, Senator Comeau, that Internal Economy does not have the mandate to look beyond the pure technical dimensions of the rules and the application thereof, so they're well within their mandate to do administrative law, administrative justice, administrative application. So when they came up and said, "These people owe this money according what we've said. You've got to pay it. If you don't pay it, we'll garnish it and that's fair."

It was also said they have absolutely no responsibility, however, for subsequent disciplinary action or legal action. Except it was interesting that the committee recommended that, "We think there might be a criminal problem here, and so we are going to recommend it go through the proper authorities. We make a recommendation, and we are saying we might have to call in the RCMP, so let's put in that request." That's not an administrative point. That recommendation is, I believe, beyond their mandate. So why not recommend to us also, at that point, in the report and say, "We believe a committee should be struck to look at the disciplinary side of this situation"? Nothing. Left open, and in leaving it open, of course, left us all in abeyance. Is the whole story finished? Throughout the same summer that our Leader of the Government was saying as he was being harassed by everybody, well, I was being harassed by saying, "Is that it? They paid it plus interest. Is that all you guys are going to do? What's your plan? Is that the end of the situation?" I did not have any information, not even a recommendation. Except the fact that we might have the RCMP come in, we had no response until Tuesday when this thing came on to us.

• (1550)

May I ask for a few more minutes?

Hon. Senators: Agreed.

Senator Dallaire: Thank you.

We are now caught within a process. I find it interesting that Senator Nolin, as a colleague, was saying it might be early to introduce amendments because we haven't even gone through all the material yet. Going through the material, if I'm sitting in judgment, means I want to go through all those 121 claims that were in the debate. I want to know what Senator Wallin wrote, what Deloitte wrote and what Internal Economy wrote on every one of them and to be able to question the individual, except that I'm limited to 15 minutes plus whatever I can scrounge from you guys subsequent to that. That's not giving me the opportunity to go into the depth of that, as I should, and as we should, because then it gives the opportunity to respond.

That exercise ain't happening. I'm just taking a shotgun analysis and I'm to absorb that, read the report and say "yea" or "nay," and that's it.

I believe that fundamentally we are not in the process. We are just doing routine work with a problem, although we are taking the time under our work schedule to look at a problem with not a new procedure, but try to make it work within our normal procedures.

I'll end with the following, which is sentencing. Any of us who think it's anything else is also in the wrong room. We are bringing a sentence. I go to all my background, and garnisheeing two years

of salary and all benefits to family and individuals is one heck of a sentence, and preventing a person from doing their duty, even if he or she wanted to do it voluntarily. Even if Senator Wallin decides she wanted to come to work anyway and not be paid, she is not allowed to do that.

This is a sentence at the criminal level, and I am to pass judgment at that level without even having a scale of assessment of what punishments could be established, when there are mistakes or actions taken against the rules, as we've seen.

I would say that not only is the process unfair to the individuals who will not get as much as they need to be able to provide their defence, I think it's unfair and there is a lack of decorum in how we are doing it. It's ultimately unfair to be working with no rules at all, because the first words of those motions say "notwithstanding any usual practice or provision of the Rules." We are absolutely rudderless, going down. Hopefully we won't hit anything, but I would think that's not necessarily how the most senior of institutions of our system of governance should be conducting its business.

I think that the reasonable options have been bantered around the fact of maybe, at still this early stage, if I use Senator Nolin's analysis, setting up a committee in order to then, within the decorum and discipline of a committee, go through it instead of sometimes a bit of the very open-ended and not necessarily fully committed full house that we should be, but are not at this time.

I'm really mad. I come from a place where the first thing we do is resign, so that puts a question to it. If there is no resignation, it means that the person has been treated properly, and then the person is allowed a due process that knows what it is and knows what to do, and we don't have any of that.

Ladies and gentlemen, I argue that there is no way we should vote for this, and we should go to the amendment of Senator Cowan.

The Hon. the Speaker: Continuing debate.

Hon. Jim Munson: Your Honour, it is late in the day, almost four o'clock. I was going to speak on Monday, maybe Tuesday, maybe Wednesday, maybe the following week, because that's how important this debate is.

Honourable senators, I am standing here and I would rather be talking about autism. I would rather be talking about the Special Olympics. I would rather be talking about children with disabilities. I would rather be talking and promoting our National Child Day that we have here in the Senate in November, which you preside over, Your Honour. I'm sure that many other senators who have been involved in many causes in parts of the country would rather be talking about the things that they do in their particular fields of expertise.

I think I would rather be talking about, believe or not, the Speech from the Throne. It seems like a decade ago that we had the Governor General here in that very seat of yours, Your Honour, outlining the government's agenda for the next couple of years. I don't think that happened because the government has not even talked about it itself, no one on your side. It hasn't been introduced. We haven't spoken about any of these things.

[Senator Dallaire]

We haven't spoken about any vision. We haven't talked about any legislation. This place has come to a stop because we are being held hostage, in a way, by having these three motions of suspension, motions that I disagree with because I have said it this week, and I say it in very simple terms: This is Canada, for Pete's sake, a democratic country where rights should be protected, where due process and due diligence should be handled in a delicate and proper way, but we are getting in the way of investigations that are going on right now. RCMP investigations are taking place, and we find ourselves in a position where we're pre-judging. We are pre-judging what may or may not happen in the very near future.

The amendments by my leader and deputy leader seem to make common sense. As has been said, we are a chamber of sober second thought, and why can't we sit back here for a moment, get together and have our leaders negotiate something which makes sense? Let's have the three senators appear before the Rules Committee, to have their lawyers in that same room.

• (1600)

We've had so many documents produced in the last three or four days which I haven't read, haven't even looked at. So at this particular point, I'd just like to say, Mr. Speaker, as we approach 4:00, that I support the motion by my leader for the amendment.

(Debate suspended.)

ADJOURNMENT

The Hon. the Speaker: Honourable senators, it being 4 p.m., pursuant to rule 6-2, I declare a motion to adjourn the Senate has been deemed to have been moved and adopted, and I declare the Senate continued until Monday, October 28, 2013, at 2 p.m., the Senate so decreeing.

(The Senate adjourned until Monday, October 28, 2013, at 2 p.m.)

CONTENTS

Friday, October 25, 2013

	PAGE		PAGE
SENATORS' STATEMENTS		Hon. Joan Fraser	166
1993 Federal Election		Hon. Hugh Segal	167
Twentieth Anniversary.		The Senate	
Hon. Terry M. Mercer	156	Motion to Suspend the Honourable Senator Patrick Brazeau—	
Hon. David P. Smith	156	Motion in Amendment—Deferred Vote.	
Travers Debates 2013		Hon. Roméo Antonius Dallaire	167
Hon. Jim Munson	156	Hon. Hugh Segal	168
Official Languages		Hon. Art Eggleton	168
Hon. Nancy Greene Raine	157	Hon. Pierre Claude Nolin	169
1993 Federal Election		Hon. Patrick Brazeau	170
Twentieth Anniversary.		Motion to Suspend the Honourable Senator Pamela Wallin—	
Hon. Pierrette Ringuette	157	Debate Suspended.	
		Hon. James S. Cowan	171
		Subsidiary Motion.	
		Hon. James S. Cowan	173
		Hon. Pierre Claude Nolin	173
		Hon. Anne C. Cools	176
ROUTINE PROCEEDINGS		Visitors in the Gallery	
The Senate		The Hon. the Speaker	177
Motions to Suspend the Honourable Senator Patrick Brazeau,		The Senate	
Honourable Senator Pamela Wallin and Honourable Senator		Motion to Suspend the Honourable Senator Pamela Wallin—	
Michael Duffy—Allotment of Time—Notice of Motion.		Debate Suspended.	
Hon. Yonah Martin	157	Hon. James S. Cowan	177
		Hon. Anne C. Cools	178
		Hon. Roméo Antonius Dallaire	178
		Hon. Elaine McCoy	180
		Hon. Pamela Wallin	181
		Hon. Claude Carignan	184
		Hon. Joan Fraser	185
		Hon. David Tkachuk	185
		Hon. Colin Kenny	186
		Hon. Paul J. Massicotte	186
		Hon. Terry M. Mercer	187
		Hon. Catherine S. Callbeck	187
		Hon. Patrick Brazeau	190
		Question of Privilege.	
		Hon. Claude Carignan	190
		Hon. Daniel Lang	191
		Hon. A. Raynell Andreychuk	193
		Hon. Wilfred P. Moore	196
		Hon. Joan Fraser	197
		Motion in Amendment.	
		Hon. Joan Fraser	199
		Hon. Terry M. Mercer	199
		Hon. Pierrette Ringuette	199
		Hon. Roméo Antonius Dallaire	200
		Hon. Jim Munson	202
		Adjournment	
		The Hon. the Speaker	203
QUESTION PERIOD			
Official Languages			
Linguistic Duality.			
Hon. Joan Fraser	158		
Hon. Claude Carignan	158		
Hon. Marie-P. Charette-Poulin	159		
Hon. Roméo Antonius Dallaire	159		
Transportation			
Rail Safety.			
Hon. Terry M. Mercer	160		
Hon. Claude Carignan	160		
Internal Economy, Budgets and Administration			
Honourable Senator Patrick Brazeau—Residence Requirements—			
Document Tabled.			
Hon. Pierre Claude Nolin	161		
Hon. Claude Carignan	161		
Hon. Patrick Brazeau	161		
ORDERS OF THE DAY			
Payment Card Networks Act (Bill S-202)			
Bill to Amend—Second Reading—Debate Adjourned.			
Hon. Pierrette Ringuette	162		

Published by the Senate

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