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Tuesday, October 29, 2013

The Honourable NOËL A. KINSELLA
Speaker

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THE SENATE

Tuesday, October 29, 2013

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

SYMONS MEDAL AND LECTURE

Hon. Elizabeth Hubley: Honourable senators, I rise today to speak about the recent Symons Medal and Lecture series that I attended in Charlottetown.

For those who may not be familiar with this lecture series, on October 18, 2004, in Charlottetown, the Fathers of Confederation Buildings Trust named a lecture series in honour of Professor Thomas Symons, the founding President of Trent University and a leader in the field of Canadian studies. Since that time the Symons Lecture has taken place annually at the Confederation Centre of the Arts.

The lecture series provides a national platform for a distinguished Canadian to discuss current and future prospects of Confederation. The lecture is always held in the fall to mark the 1864 meetings of the Fathers of Confederation in Charlottetown.

The eleventh Symons Lecture was held on October 10 and the Honorable Paul Martin was the medal recipient and speaker. His lecture was entitled "Confederation Today and Aboriginal Canada."

Thomas Symons himself, who was present, was committed to indigenous education and he played an integral role in positioning Trent University as a leader in it. Mr. Martin leads the Martin Aboriginal Education Initiative, which concentrates on improving the elementary and secondary school education of Canada's indigenous peoples.

As we have discussed many issues related to Canada's Aboriginal peoples in this chamber, you would all know that Aboriginal people continue to struggle to achieve equal economic, social and cultural rights. During his speech, Mr. Martin stressed that Aboriginal education is key to a better life and that Aboriginal Canada needs to be given a seat at the national table.

I look forward to attending this lecture series in the coming years and continuing the discussion on Canadian Confederation.

[Translation]

THE ACADIAN FLAG

Hon. Rose-May Poirier: Honourable senators, in early October, I had the pleasure of attending a book launch for *Histoire du drapeau acadien*, a book about the history of the Acadian flag.

This initiative was undertaken by the municipality of Saint-Louis-de-Kent and successfully carried out thanks to the work of two Acadian historians, Maurice Basque and André Duguay. I would like to take this opportunity to congratulate everyone involved in producing this book.

The municipality of Saint-Louis-de-Kent calls itself the birthplace of the Acadian flag because it was conceived and created in that small town. In 1884, Monsignor Marcel-François Richard, son of a farmer in the Saint-Louis-de-Kent region, was getting ready to attend the second Acadian convention, which was being held in Miscouche on Prince Edward Island.

The convention was planning to adopt a flag to represent and unite Acadians around the world. Monsignor Richard thought about it for a long time and came up with a wonderful idea. He asked a young lady from Saint-Louis-de-Kent, the young schoolmistress, Marie Babineau, to make a prototype.

When he got to Miscouche, Monsignor Richard explained the flag this way: for Acadians, the flag simply reminds us that we are French and that France is our motherland, just as the Irish flag reminds the Irish of their origin and motherland. I would like Acadia to have a flag that reminds us that we are not only children of France, but that we are also Acadian. The tricolour flag will represent Acadia by adding a yellow star to the blue part, yellow to represent the papacy and a star to represent Mary.

The delegation adopted the flag and, that night in a meeting room, people expressed great pleasure and pride in the choice of the flag. That first Acadian flag is now on display at the Université de Moncton's Acadian museum.

From that day, our flag has been carried far and wide and, on two occasions, has travelled around the world: in 1996, aboard the space shuttle Endeavour, and in 1998, aboard the space shuttle Discovery. Today, the largest Acadian flag in the world is flown in Saint-Louis-de-Kent. It is 30 feet high by 60 feet wide and is flown on a 130-foot pole. This giant flag welcomes and guides all people in the region and visitors from around the world.

As it flutters in the wind, the Acadian flag is a symbol of the Acadian people's journey. Even today, it continues to gather Acadians from all over the world under one emblem. The flag is 130 years old and will be proudly displayed at the reunions to be held as part of the World Acadian Congress. This would never have happened without the courage and vision of our ancestors, such as Monsignor François Richard.

Should you ever be travelling through New Brunswick, I invite you, honourable senators, to enjoy the small Acadian treasure of the village of Saint-Louis-de-Kent.

[English]

DUKE OF EDINBURGH'S AWARDS

Hon. Joseph A. Day: Honourable senators, I have mentioned previously in this chamber my work with the Duke of Edinburgh

International Awards here in Canada, and I'm pleased to say that that work continues with this fine organization.

This past summer I was privileged to be invited to their Leadership, Experience, Adventure and Development Program, referred to as LEAD, at the LEAD event in Kenora, Ontario. The event required years of organization by the youths themselves and brought past and present award participants together for a week-long event. Participants could use this event to count towards their Gold Level Award and were also able to participate in a forum with past award winners where individuals spoke of how participating in the award affected them and their lives.

• (1410)

Colleagues, I must say that the testimony at this forum filled me with the conviction of what an important program this is for today's youth. This was a diverse group of over 100 individuals who truly represent the demographic makeup of our country. What struck me the most, however, was not just how different each story was but how all attributed much of their success in life to the skills they learn while participating in the award program.

The Duke of Edinburgh's Award has, for decades, inspired youth to take on the challenges that will enrich their lives. Whether or not they achieve an award, the awards program helps immensely in encouraging young Canadians to develop a well-rounded, active lifestyle.

Honourable senators, 2013 marks the fiftieth anniversary of the awards' presence here in Canada. The LEAD event in Kenora was but one event meant to mark this special year. Expedition 50 was held as well. Here the awards participants travelled to Jasper National Park in Alberta. Participants completed activities that included travelling by horseback through the Tonquin Valley, as well as hiking the Columbia Icefields and climbing Castleguard Mountain. I did not participate in any of those events, honourable senators.

To top off the award's fiftieth anniversary in Canada, the award will be holding its royal gala dinner in Toronto on November 1, this weekend. In attendance will be Prince Edward, the Earl of Wessex, and his wife Sophie, the Countess of Wessex. This promises to be a most memorable evening, with proceeds going to the awards, with special focus on how the awards can help at-risk youth in Canada.

It is tragically easy for youth to miss out on the many opportunities that are available and to spend their time before screens — be it televisions, computers or the like. Honourable senators, I encourage you to learn about this particular program in your area of Canada. They are all across Canada and there are bronze, silver and gold awards on a regular basis.

Please go out when you are invited to those functions and encourage these young people and congratulate them for their impressive achievements.

THE LATE REAR ADMIRAL THE HONOURABLE FRED J. MIFFLIN, P.C.

Hon. Hugh Segal: Honourable senators, I rise today to pay tribute to the honorary chair of the Navy League of Canada and a former distinguished Liberal cabinet minister, Rear Admiral Fred Mifflin, who died, sadly, on October 5, 2013.

Fred was born in Bonavista, Newfoundland, and left there at age 16 to join the Royal Canadian Navy. After graduation from Venture Naval College in 1956, he rose through the ranks over a 33-year career. He commanded both at sea and ashore.

In 1972, he attended the Naval War College in Newport, Rhode Island, and in 1981 he attended the National Defence College in Canada's first capital, Kingston, Ontario. He achieved the rank of rear admiral, and from 1985 to 1987 he was the Deputy Commander of the Royal Canadian Navy. He took early retirement from the navy to run for Parliament in 1988 and was elected the Liberal Member of Parliament for Bonavista—Trinity—Conception in his beloved Newfoundland.

He served at various times over the next five years as defence, energy and veteran affairs critic in opposition. In 1993, as a member of the government, he was appointed Parliamentary Secretary for National Defence and Veterans Affairs, in which capacity he assisted in the drafting of the famous 1994 white paper in defence, which, of course, people have quoted from extensively, as well as the overhaul of veterans' benefits legislation.

Many have known of his hard work and commitment to the navy for years. From 1996 to 1999, as Minister of Fisheries and Oceans, Minister of Veterans Affairs and Minister for Atlantic Canada Opportunities, he served his country and his region well.

In 1996, he served as Honorary National Chairman of the Navy League of Canada, an organization that, amongst other things, provides development and training opportunities and maritime opportunity programs for young people.

As an honorary captain in the navy and in my support for the Navy League, I spent time with Rear Admiral Mifflin. It was always a pleasure to be in his company. I found him to be warm, professional and deeply committed to the values and objectives of the Navy League, especially where the youngest cadets were concerned.

After retiring from politics, he was a member of the Canadian Association for Former Parliamentarians, where he served as director and treasurer. In 2011, he was awarded the Robert I. Hendy Award for his national and international contribution to maritime affairs. In 2012, he was invested into the Order of St. George as a Knight Commander.

I'm sure colleagues in the chamber will want to express our collective condolences to his wife Gwenneth, his daughters Cathy and Sarah, his son Mark and his many grandchildren. Thank you.

[Translation]

THE LATE PAUL DESMARAIS, O.C., O.Q.

Hon. Roméo Antonius Dallaire: Honourable senators, I rise today to pay tribute to a great Canadian of the business community, the cultural sector and the media, Paul Desmarais. We have already marked his passing, but there is still more to say.

Mr. Desmarais, an important financier from Montreal and CEO of Power Corporation of Canada, passed away on October 8. Mr. Desmarais was born in Sudbury in 1927. He began his career at an accounting firm in Montreal. He then worked for Sudbury Bus Lines, a transport company founded by his grandfather that he made more profitable. Mr. Desmarais quickly proved that he knew how to turn a desperate situation into a success. Although that company was crippled by debt and on the verge of bankruptcy, he bought it for one dollar. Shortly thereafter, he acquired other bus lines in Ottawa and Quebec City, and his businesses began to flourish.

After a series of smart business moves, he created a holding company that, in 1968, made a share-exchange offer with the Power Corporation of Canada. Mr. Desmarais became the CEO, a position he held for nearly 30 years.

[English]

The rest, as they say, is history. The Power Corporation grew to a \$33-billion conglomerate that spanned the globe and famously included Canadian newspaper *La Presse*. Mr. Desmarais rose to become one of the most powerful and respected figures in Canadian business and politics, still based out of Montreal. At the time of his passing, he had a personal net worth in the billions and in *Forbes Magazine* he was ranked as the fourth wealthiest person in Canada.

But accolades and profit margins are too simple to measure Mr. Desmarais's personal success. His life history is an inspiration to every entrepreneur, to every hard-working person, to every person who saw an opportunity, seized it and grew with it.

From a humble beginning as a young man from Sudbury running a small, nearly bankrupt bus company, Mr. Desmarais was an idol to Canadian business and of innovation.

[Translation]

He will be remembered fondly by his family, and no doubt, by many Canadians who had the chance to work with him or for him over the years. However, the best tribute we could possibly pay to his memory would be our shared conviction, as Canadians, that hard work, creativity and quick thinking can lead to an amazing success story. It is a lesson that we, as parliamentarians, should never forget.

His belief in a unified, bilingual country, in a country that welcomes and accommodates, in a country that allows people of different cultures and religions to find a peaceful and safe refuge,

was always a guiding light in his life and his political philosophy. He was a great Canadian and a great Montrealer.

PREVENTION OF VIOLENCE AGAINST WOMEN

Hon. Pierre-Hugues Boisvenu: Honourable senators, today I wish to talk to you about an issue that must remain a focus of our society, namely preventing violence against women. The International Day for the Elimination of Violence against Women is on November 25.

My mother was the first woman to win my complete admiration and respect. Although she let each of her 10 children express themselves in their own way — with everything that entails — it was always to be done with respect. It was very important to her to instil respect in us, her sons in particular. She knew that teaching her sons to respect women began by teaching them self-respect.

Violence against women became part of my social commitments very early in my career. In 1982, in Val d'Or, I co-founded *le Nid*, the first shelter for battered women, as we used to say.

Then, events in my own life, as you know, forced me to become even more aware of this issue.

• (1420)

I took on this mission, to which I now dedicate all of my time, energy and some of my financial resources.

In 2004, with three other fathers whose daughters disappeared or were killed, I founded the Association of Families of Persons Assassinated or Disappeared, or AFPAD. We wanted to offer a male perspective on the issue of violence against women and on speaking out against this issue.

[English]

Since 1989, in the province of Quebec alone, over 800 women and children have been murdered, the majority of them by a family member.

[Translation]

We all remember the tragedy at Montreal's École Polytechnique in 1989, when 16 innocent young women were killed by a crazed gunman. Did you know that every year, Quebec experiences the equivalent of a similar mass murder in silence, with no media attention?

[English]

Honourable senators, we should make sure to never forget.

[Translation]

I see 13- to 17-year olds who experience bullying and violence at school. It is sad to see that for many teens, standing by is a new form of violence and bullying. Bullying is the most insidious form of violence among young people. The latest studies show that nearly 40 per cent of young people, both boys and girls, will be victims of bullying.

Regaining control over your life is the educational and spiritual basis of my talks. Worrying about what others think is the biggest obstacle to happiness for our teens.

[English]

We must teach our teens to respect themselves and to have the strength and the courage to denounce all forms of intimidation. If we fail, we condemn them to become silent prisoners. For our teens, denouncing intimidation is perceived as an act of failure, but we all know that keeping silent is.

[Translation]

Our government realizes that this is a serious problem that is made worse by the use of social media. We will continue to take action to promote awareness among teens across Canada.

I will always wonder how many of those 800 women and children could have been saved.

Honourable senators, if our society would reject all forms of violence, if we would teach our young people never to stand idly by while others are being bullied, and if we would promote speaking out as an act of power and self-respect, I am convinced that we could save the lives of many women who are silent prisoners of fear.

Some Hon. Senators: Hear, hear.

[English]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, just before calling for Tabling of Documents, I wish to draw your attention to the presence in the gallery of a delegation of the Parliamentary Service Commission of the Republic of Kenya.

Honourable senators will know that the Republic of Kenya has reformed its parliament and is establishing a body similar to the Senate of Canada. So, *inter alia*, they are studying the operation and affairs of the Senate of Canada.

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

Hon. Senators: Hear, hear.

[Senator Boisvenu]

[Translation]

ROUTINE PROCEEDINGS

PRIVACY COMMISSIONER

PRIVACY ACT—2012-13 ANNUAL REPORT

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the annual report of the Office of the Privacy Commissioner of Canada, pursuant to section 38 of the Privacy Act, for the period from April 1, 2012 to March 31, 2013.

CANADA PERIODICAL FUND

NOTICE OF INQUIRY

Hon. Maria Chaput: Honourable senators, I give notice that, two days hence:

I will call the attention of the Senate to the Conservative government's unilateral decision not to review the standards and criteria of the Canada Periodical Fund and the disastrous consequences of this failure to act for francophone minority newspapers, such as *La Liberté*, Manitoba's only French-language weekly.

[English]

QUESTION PERIOD

THE SENATE

SUSPENSION OF SENATORS

Hon. James S. Cowan (Leader of the Opposition): Thank you, Mr. Speaker. I have given notice of this question to my friend, the Leader of the Government in the Senate.

I wanted to read to him and read into the record a letter to the editor from Ramsay Cook, of course a noted historian. All of us are interested in historical precedents and the like as we move through our business today. This is what Dr. Cook wrote to *The Globe and Mail* in today's edition, and I would ask for the leader's comments on this once I've read it into the record.

Senator Marjory LeBreton, in her defence of the Conservative attempt to punish without due process three accused colleagues accused of breaking Senate rules, repeatedly cites as a precedent a 1641 action by the Long Parliament in England. Does the former leader of the government in the senate mean the well-known case of Archbishop William Laud?

As a member of the House of Lords, Laud was first condemned for treason by the House of Commons in 1641 and sent to the Tower. Four years later, the House of Lords again tried him for treason on largely trumped-up charges and convicted him, 19 members present.

Even then, it still required an arbitrary Bill of Attainder, passed by the House of Commons, to send him to his beheading in 1645. Four years later, Charles I followed his loyal adviser to the same destination. Some precedent, one raising the question of who will be the Canadian king!

In truth, the learned Senator's best precedent is found in *Alice in Wonderland*: "Let the jury consider their verdict," the King said. "No! No!" said the Queen. "Sentence first—verdict afterwards."

Would the leader care to comment?

[Translation]

Hon. Claude Carignan (Leader of the Government): The Leader of the Opposition should also show an interest in the more recent proceedings of the House of Lords, particularly those of October 21, 2010, in which Lord Brabazon of Tara presented the report about three situations that are very similar to those before us today.

At that time, complaints were made that the Lords under investigation did not have the right to a lawyer or the right to cross-examine witnesses. There were also complaints about importing various aspects of the antagonistic method used by the courts into the rather informal procedure used in the British parliamentary system.

In response to that charge, the House of Lords, through the Lord in question, said:

[English]

... there is a tension between ensuring that noble Lords under investigation enjoy appropriate procedural safeguards and preserving the informal and parliamentary nature of such proceedings. I believe that the House would not wish to turn internal disciplinary hearings into full-blown, adversarial court proceedings, with prosecution and defence lawyers and the cross-examination of witnesses. In fact, the House has explicitly agreed, more than once, that proceedings should be kept relatively informal.

[Translation]

CANADIAN HERITAGE

CANADA PERIODICAL FUND

Hon. Maria Chaput: My question is for the Leader of the Government in the Senate, the Honourable Claude Carignan, and concerns the ultimate purpose of the Senate, which is protecting minorities.

Leader, I would like to talk about *La Liberté*, which is the only French-language weekly in Manitoba. I asked several questions about this in 2012.

• (1430)

There is still a problem, and the situation is now critical. The Canada Periodical Fund has a new formula, and funding to *La Liberté* has been substantially reduced.

Leader, French-speaking Manitobans are scattered throughout the province. Many live in rural or remote communities where Internet access is either limited or non-existent.

The only viable option to reach this remote audience is Canada Post. *La Liberté* is facing significant cuts from the Canada Periodical Fund, a gradual loss of federal advertising due to restricted departmental budgets and a steady increase in Canada Post rates.

My question is, why have no adjustments been made to this program, which surely is having a discriminatory impact? Could you inform the Minister of Canadian Heritage, the Honourable Shelley Glover, that this is a matter of equality of services to official-language minority communities and represents a positive step, ensuring compliance with Part VII of the Official Languages Act? Could you give her this message?

Hon. Claude Carignan (Leader of the Government): Certainly, Senator Chaput. You know that Minister Glover is passionate about official languages. I would also like to remind you of our government's record, for example in terms of the Roadmap for official languages, which you know well.

Canada's official languages have shaped our history and identity. We recognize that English- and French-language communities contribute to the cultural, social and economic vitality of our society. The government's Roadmap for official languages represents the most comprehensive investment in official languages in Canada's history, amounting to \$1.1 billion.

The Roadmap supports both francophone and anglophone communities and is based on three priorities: education, immigration and communities. We are proud to have upheld this unprecedented commitment to official languages.

With respect to your specific question about *La Liberté*, I will convey your concerns to Minister Glover.

Senator Chaput: I just want to point out, although I am sure you already know, that we have the Roadmap and we also have the periodical fund.

I realize that the Roadmap supports many initiatives, but *La Liberté* was funded through the periodical fund, not through the Roadmap. I know that the minister is passionate, and I hope that passion will spur her to take action and review the criteria. I hope you will pass my message on to the minister.

Senator Carignan: Yes, as I said, I will convey your concerns to the minister, and I also want to reiterate our government's commitment to official languages.

[English]

FISHERIES AND OCEANS

HAMILTON DECLARATION

Hon. Wilfred P. Moore: Honourable senators, my question is also for the Leader of the Government in the Senate.

Leader, I don't expect you'll have an answer for this today. You might recall that on June 4, during World Oceans Week, I made a statement respecting the Sargasso Sea and the proposed Hamilton Declaration aimed at protecting its unique and vulnerable ecosystem.

You should know that on November 23 and 24 next, a meeting of interested nations is scheduled in Tarrytown, New York, to finalize the text of the Hamilton Declaration and with the goal to have it signed at a follow-up meeting in Hamilton, Bermuda, in March 2014.

Could the leader determine the position of our Department of Fisheries and Oceans and whether Canada intends to participate in this matter, both the meeting and the scheduled signing of the documentation, the Hamilton Declaration? Could he let us know about the approaching November meeting and provide us with an answer in a timely way?

[Translation]

Hon. Claude Carignan (Leader of the Government): Yes, I have taken note of the question and will get back to you with a specific answer from the Minister of the Environment.

[English]

PUBLIC SAFETY

ROYAL CANADIAN MOUNTED POLICE— INDEPENDENT OVERSIGHT

Hon. Grant Mitchell: Colleagues, there's been much back and forth in the last several Question Periods about the lack of accountability over CSEC and generally over the intelligence community. The ongoing cultural problems in the RCMP, which are evident in many ways but particularly, and perhaps more perniciously, in the evidence of sexual harassment within the RCMP, suggests strongly that there's an accountability problem in that organization as well. In fact, it is accountable only to a single person in the political sphere, and that would be the minister.

Every single modern, major police force in the country except the RCMP is supervised by an arm's-length, public, independent commission. Why is it that this government refuses to consider establishing a public, arm's-length police commission — which in

this case would appropriately have 50 per cent women membership — to supervise the activities of the RCMP and to perhaps correct this deep cultural problem?

[Translation]

Hon. Claude Carignan (Leader of the Government): As you know, our government takes the RCMP harassment issue that you referred to very seriously. That is why we worked with Commissioner Paulson to draft Bill C-42, which will restore people's pride in Canada's national police force. All members of the RCMP must be able to take on the normal, everyday challenges of their work day without worrying about harassment or ill treatment by colleagues or superiors.

[English]

Senator Mitchell: Colleagues, it's obvious that the government has been convinced by an inappropriate analysis that somehow Bill C-42 solves the cultural problem. Every major element, initiative involved in Bill C-42 establishes some process or invokes some power, like more power to the commissioner to fire, that only deals with problems after they occur.

The difficulty with a cultural problem is you've got to get to it so that the problems don't occur in the first place. Bill C-42 will not do that. In fact, it will probably compound the cultural problem in that organization.

Why is it that the government can't see that this is a deep cultural problem that won't be solved by the relatively superficial solutions proposed in Bill C-42?

[Translation]

Senator Carignan: Senator Mitchell, as I said, it is Commissioner Paulson's responsibility, and in the interest of public safety, to ensure that all members of the RCMP can deal with the challenges they face every day. This must be managed by the organization with the enforcement of Bill C-42.

[English]

Senator Mitchell: While the government's side seems quite happy to establish this institution as judge, jury, police force, prosecutor and final implementer of penalties — hangman, hang-person — surely at some level there should be an understanding amongst this government, amongst the members on the other side, that having a police force report, if at all, only to the political level, strictly to a minister, must be understood to be a problem in a modern, Western society.

• (1440)

Could the leader not at least pledge here to take up with the new Minister of Public Safety that it's completely and utterly inappropriate to have that kind of political relationship with the national police force and that, instead, serious consideration should be given to establishing an independent, arm's-length police commission, which in this case would be very appropriately staffed or have a membership of at least 50 per cent women?

[Translation]

Senator Carignan: I will convey your suggestion to the minister, but we are working with Commissioner Paulson. We worked with him on fine-tuning Bill C-42, and we believe that, in order to restore pride in Canada's national police force, all members of the RCMP must be able to deal with the challenges they face daily and work together without fear of harassment or mistreatment. That work must be done by the organization.

FINANCE

ECONOMIC OUTLOOK

Hon. Céline Hervieux-Payette: Honourable senators, I would like to remind this chamber about a budget speech given by the Honourable Stephen Harper when he was the Leader of the Opposition.

In 2005, in his speech on the Liberal government's budget, he said:

[English]

Since 1997, the government had understated its surpluses by a whopping \$63 billion, and there is absolutely no end in sight to this practice. Now in this budget the government tells us the surplus for the coming year...will be only \$4 billion...

Can I just remind you that under the pretense that there is a strong economic background— and I'm not sure if it's the Minister of Finance who has lost track — we know that the Stephen Harper government has managed to turn ten consecutive federal budget surpluses from the Martin-Chrétien era into seven straight consecutive deficits. Stephen Harper has the worst record of economic growth of any prime minister since R. B. Bennett and the Great Depression. I wasn't there to see it, but I believe what they are saying.

If, during the Liberal era, \$81.4 billion was paid against the national debt, and since then the Conservatives have added \$176.4 billion to the national debt, can the honourable senator tell me under which rules the Minister of Finance and Prime Minister are governing the finances of this country?

[Translation]

Hon. Claude Carignan (Leader of the Government): As you know, we are focusing on what is important: economic growth and job creation.

Need I remind you that Canada's job creation record, since the height of the global recession in July 2009, is the best of all the G7 countries: more than one million net new jobs have been created; almost 90 per cent are full-time jobs; and almost 85 per cent are in the private sector.

Canada is not immune to challenges originating beyond our borders, especially from our two main trading partners, the United States and Europe. For that reason, we are working hard to implement the tangible job creation measures contained in economic action plan 2013, such as tax breaks to help small

businesses create jobs, the Canada job grant to get more people trained and into skilled jobs; the largest-ever federal investment in job-creating infrastructure, new tax relief to foster growth of the manufacturing sector, and much more. We have focused on job creation.

Senator Hervieux-Payette: With an \$83 billion surplus at the start of their mandate, chances are it was easy enough to weather the crisis, as you said. We need to remember that Canada's unemployment rate is not 5 per cent, but it is — in certain provinces, particularly in western Canada — currently at a rate that is still quite unacceptable.

The minister responsible for the budget in the House of Commons has made comments on that subject. When the numbers came in for the last budget, three billion dollars was missing and we still do not know where that money went. Now deficits are being projected, but deficits do not materialize according to a projected timeline. Perhaps we should be pleased about that. Instead, we are simply wondering about the cost, about how many more public servants will lose their job, how many more Crown Corporations will be sold off and how many services will be cut in this country before we have a budget surplus one day.

Senator Carignan: Senator, I am pleased that you mentioned the Parliamentary Budget Officer and economic and financial outlooks. As you know, he produced a report. The Parliamentary Budget Officer confirmed what we have been saying for a long time: the budget will be balanced in 2015. The report clearly indicates our commitment to ensuring that federal public spending is as efficient as possible. Taxpayers deserve that.

[English]

Hon. Joseph A. Day: I have a supplementary question.

Last week, the minister announced that the deficit was coming in at less than he had predicted. The deficit prediction when the budget came out in March 2012 was \$21.1 billion, and then looking at the experience during the year, in November the minister announced that the deficit would be \$26 billion and not \$21.1 billion. We now understand that the deficit came in at \$19 billion. The minister was very pleased with himself for having a deficit of \$19 billion to add to the accumulated deficit, which now brings the debt up to about \$150 billion since the minister took the position.

The question I have for the Leader of the Government in the Senate is this: Because of the recent announcement in the downturn in the economy and the reduction in the value of the Canadian dollar, can we rely on the minister to predict what deficit we will be having for next year?

An Hon. Senator: No.

[Translation]

Senator Carignan: As I said earlier, on the topic of economic outlooks, the Parliamentary Budget Officer said in his report, confirming what we have been saying for a long time, that we will balance the budget in 2015. The report clearly confirms our

commitment to ensuring that federal public spending is as efficient as possible. I must tell you that I am very comfortable having Prime Minister Harper and Finance Minister Flaherty in charge of government finances because they, at least, have an economic policy.

[English]

Senator Day: Honourable senators, I believe it's important that we in this chamber keep an eye on the finances of the country and make comments where we can. I also believe that it's important for the Minister of Finance to allow us to do that job. I would hope that you would convey to the Minister of Finance his comment of two days ago that the Senate should be done away with because it is just wasting money is something that is not helpful in our doing the work that we are intended to do on behalf of the people of Canada.

In fact, look at that 2012 prediction of \$21 billion, then it went up to \$26 billion, and three months later it's down to \$19 billion. What's going on here? Are there a number of major announcements being made with the government taking the credit for the announcements and then not paying the money on the infrastructure? Is that what's happening? How, in three months, did the government and the Minister of Finance make a mistake of \$7 billion?

[Translation]

Senator Carignan: You are right to say that we can comment on finances in this chamber, particularly since we are extremely proud of our economic performance. I would like to remind honourable senators that our economic performance is better than that of all the G-7 countries, with the creation of over a million net new jobs. Thank you for pointing out the government's economic track record in this chamber.

• (1450)

[English]

HUMAN RESOURCES AND SKILLS DEVELOPMENT

JOB CREATION

Hon. Grant Mitchell: It's interesting, the leader mentioned in an earlier answer on the government's economic performance — and I use that concept very lightly. All the evidence is to the contrary. I don't know why anybody believes that this government can actually run an economy.

But he keeps saying, as his government does, that this government has created one million jobs since, he said, 2009. Normally, they use 2008. It doesn't matter. The fact is, they don't use 2006, when they began.

Why is it that the government does not use 2006 as the starting point for measuring how many net new jobs they have created? Is it because they lost 450,000 to 500,000 jobs in the first two years of their government and they don't want to measure that into the

[Senator Carignan]

one million net that they say they've created? They haven't created net one million jobs; they've created net 500,000 jobs in eight years, which is almost 65,000 a year.

[Translation]

Hon. Claude Carignan (Leader of the Government): I hear you saying that the government has created only 500,000 jobs, which is still quite significant. However, I must point out that July 2009 was the peak of the global recession and that we have the best record in the G7. If we use this year as a point of reference, we can look at how Canada is doing in comparison to other years and in comparison to the other six major world economies, and in that case we are the best. From time to time, could the honourable senators on the other side of the chamber recognize that we are the best?

[English]

FINANCE

AUDITOR GENERAL'S REPORT

Hon. Jane Cordy: I have a supplementary question.

This government turned a surplus into a deficit. Having said that, did the Minister of Finance ever find the missing \$3 billion that vanished last spring?

[Translation]

Hon. Claude Carignan (Leader of the Government): There is no statement to say that the \$3 billion identified by the Auditor General was not spent appropriately.

[English]

Senator Cordy: But there's no statement that says it was spent appropriately, either.

[Translation]

Senator Carignan: The Auditor General did an exemplary job. As honourable senators know, the Auditor General does his job very carefully. We have seen evidence of that, particularly over the past few weeks, given how thoroughly he oversees the public finances. I have full confidence in the Auditor General's report and in the fact that action will be taken to comply with his recommendations and ensure that everything is done in accordance with the law.

[English]

Senator Cordy: I agree with you that the Auditor General did a great job, but the Auditor General said that \$3 billion is unaccounted for. What happened to the \$3 billion?

[Translation]

Senator Carignan: As I just explained, there has been no indication that the \$3 billion was spent inappropriately and I have full confidence in the Auditor General's report in that regard.

[English]

Senator Cordy: But we just don't know. We just don't know where the money was spent. Surely, a government that claims to be so mindful of taxpayers' money has some idea of where \$3 billion has gone.

[Translation]

Senator Carignan: I would like to quote something from the Auditor General's April 30 report. He said: "We didn't find anything that gave us cause for concern that the money was used in any way that it should not have been."

The Auditor General also stated before a House of Commons committee on May 2:

The spending within the departments would have undergone normal control procedures in those departments. There are internal controls in departments about spending, and the department would go through all of those normal processes. We didn't identify anything that would cause us to say that we felt anything was going on outside of those processes.

The Auditor General confirmed before a committee that the opposition's allegations to the effect that this money was lost were false.

NATIONAL DEFENCE

COST OF OPERATIONS

Hon. Roméo Antonius Dallaire: My question is for the Leader of the Government in the Senate.

I certainly have no intention of dragging out your day any further, but can you tell us the total cost for personnel, equipment and all materials that the government has spent on all Canadian Forces overseas operations since the 1991 Gulf War, to enable our soldiers to successfully carry out their missions, including Bosnia, Haiti, Afghanistan, and so on?

Hon. Claude Carignan (Leader of the Government): Your question is rather broad, Senator Dallaire. I would invite you to discuss it further over the next couple of days or perhaps reformulate your question so that we may take note of it and come back to you with a response to satisfy your expectations.

Senator Dallaire: I will get back to you.

CRIMINAL CODE

BILL TO AMEND—FIRST READING

Leave having been given to revert to Routine Proceedings—Introduction and First Reading of Senate Public Bills:

Hon. Céline Hervieux-Payette introduced Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence).

(Bill read first time.)

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

(On motion of Senator Hervieux-Payette, bill placed on the Orders of the Day for second reading two days hence.)

ORDERS OF THE DAY

THE SENATE

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

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of October 25, 2013, moved:

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.

[English]

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

POINT OF ORDER—SPEAKER'S RULING RESERVED

Hon. Joan Fraser (Deputy Leader of the Opposition): I have a point of order.

The Hon. the Speaker: On a point of order on this motion, Senator Fraser.

Senator Fraser: Thank you, Your Honour.

Senator Martin has moved this motion, which I suggest and hope to argue quite strongly is totally out of order.

This motion is trying to apply a system designed to apply to government business to other business. Motions 2, 3 and 4, which deal with the manner in which the Senate should proceed in the matters of Senators Brazeau, Wallin and Duffy, are ordinary motions. They are not government motions.

• (1500)

When Senator Carignan gave notice of them, they went on to the Order Paper under the heading Other Business, not under the heading Government Business. Let me suggest that the distinction between government business and other business is one of the most important and arguably the most fundamental distinctions made in our Rules.

Appendix 1 of our Rules says that a motion is:

A proposal made for the purpose of eliciting a decision of the Senate or a committee.... It may be either a Government motion or a non-Government motion, and these appear at different places on the *Order Paper and Notice Paper*.

As we know, our Rules set out very different processes for the treatment of government business and other business. They are distinct; they cannot be muddled up for the sake of convenience. They can't be transmogrified from one to the other and back again just because that might be more convenient.

For example, government business has a whole series of rules that apply to the way in which it may be handled, and most of these are designed to give government business priority and to allow the government to expedite its agenda, while respecting the rights of the Senate. The order in which we treat government business can be varied by the leadership of the government side. Government business, as I said, takes priority over all other business before the Senate.

[Senator Martin]

In contrast, the order in which other business is called cannot be varied by the government. It can only be varied by a decision of the Senate itself. Government business is government business. Other business is the business where the whole Senate becomes involved. It goes to the heart of what we do.

In a way, I must say that I admired Senator Carignan for presenting these motions as other business because that was a call to the entire Senate. We're not dividing this into government and other. We're submitting these questions to the whole Senate for judgment, and, ultimately, as I believe both sides declared, for free votes according to conscience. I thought that was appropriate.

What do we have now? Well, it has turned out not to be convenient for these items to be treated as other business. So what we have now moved by Senator Martin as a government motion applying to other business is, in all but name, time allocation for the consideration of three items of non-government, of other business.

Chapter Seven of our Rules is all about time allocation, and it is very clear from the outset that time allocation is all about the handling of government business. It is very clear: Only the government can propose time allocation and only for its own business — only for government business.

The fact that the motion that Senator Martin is moving doesn't actually come right out and say, "Pursuant to Chapter Seven of our Rules, this is what we're doing," is a fig leaf. That's what she's doing. She's moving time allocation.

I want to make it very clear: Had her motion been presented otherwise, it could have been in order. A precedent that Your Honour, I'm sure, will recall is that in 2004, when the Senate was debating a private member's bill to amend the Criminal Code in relation to hate propaganda, our former colleague Senator Murray gave notice of a motion to set a deadline for consideration of that private member's bill. He eventually moved it the next day, on April 22, 2004, and nobody objected to that procedure because the whole thing was confined within the category of other business. The private member's bill was other business, and Senator Murray's motion was other business.

Had Senator Martin decided to move her motion as an item of other business, that would have been procedurally correct.

But what she's doing is trying to have a hybrid suddenly created here, whereby the government gets to do government motions, affecting the way in which we handle other business. That, I suggest to you, is entirely inappropriate.

Business before the Senate cannot be part government business and part other business. To move a government motion directed at non-government motions is, I suggest, unprecedented — certainly, I could not find any precedents — and, quite simply, an outrageous piece of procedural trickery.

Your Honour may recall that in November 2002, the then deputy leader of the opposition raised some question about whether an item should be placed under Government Business on the Order Paper, and the Speaker ruled that it is within the sole discretion of the government to determine what is government business.

I agree, up to a point.

It doesn't mean that the government can change its mind halfway through and declare that something on the Order Paper under one heading, Other Business, can suddenly become an item of government business because that would be more convenient. You can't magically transform a private member's bill into a government bill, although sometimes I have sensed that in the current Parliament there are some who rather wished that could happen, but the government can't do that.

I would suggest, Your Honour, that what the government is trying to do now is to do indirectly what it cannot do directly, which goes against a fundamental principle of our law. Why is it trying to do that? I fearlessly predict that the reason Senator Martin's motion to control — set limits — on debate on the motions on Senators Brazeau, Duffy and Wallin has been presented as a government motion goes back to what I was saying about Chapter Seven of our Rules. If we accept Senator Martin's motion as a government motion, then the government can impose time allocation on Senator Martin's motion. It can impose closure on closure.

If Your Honour is aware of a precedent for that, I would love to hear about it. I'm absolutely unaware of any such proceeding anywhere in our Parliament or, indeed, in any other, and I suggest to you that it is an absolutely outrageous way to proceed.

It is improper, out of order, in this case, and I suggest to you, colleagues on all sides of this chamber, that if we accept this, we will be setting a truly dangerous and abominable precedent.

If the government can declare these motions to be constrained by government motions, it can do so with any item of private member's business on the Order Paper. What's to stop it? All it has to do is bring in a motion like Senator Martin's motion under Government Business.

• (1510)

Many of us have been here long enough to know that dynamics change in this chamber. Sometimes a private member on one side or the other brings forward a private member's bill that is not popular with the government of the day, but that senator has the right to do so and this Senate has the right to consider that private member's bill or motion in the way the chamber sees fit. How simple for a determined government to say, "Oh, but we're just going to pass a government motion on this to determine how it shall be handled."

I think just about all of us now here have had at least some experience with the situation where the government of the day does not have a majority in the chamber, and that's part of the way the Senate works. There's a time lag between the evolution of the House of Commons and the evolution of the Senate, and that can act as a wonderful instrument of sober second thought, which we're all supposed to engage in. But imagine if the government of the day can say, "Oops, no, here we go. We're going to transform things, and whatever you guys want to do, we're going to fix it, control it."

These are bad, bad precedents, colleagues. Senator Martin is trying to turn a sow's ear into a silk purse. It cannot be done, and the mere attempt is out of order.

Hon. Elaine McCoy: Thank you, Senator Fraser, for that very elegant argument.

I am not a maven of the rules, as is she, nor yourself, Your Honour, but it occurred to me as I was reading this motion that there might be several things wrong with it. I would invite you to give us your guidance on the matter because I do think it is an important point.

For one thing, there are too many things in it. I don't think that's the elegant way of presenting that argument, but as I was taught, many years ago now, the elements of Rules 101 for the Senate, each motion was to deal with one matter. This one deals at least with three other motions, which is probably wrong. It also has multiple actions stacked in it. I would ask for your assistance in interpreting my point. I think it is a valid point, although I'm not putting it in technical language.

Another more fundamental objection, in my view, is that we are being asked to stop discussing three motions that are of significance not only to this institution but to our entire country, and notwithstanding any Rules of the Senate. So on the very occasion that we're being asked to suspend the rule of law with respect to three senators and allegations of wrongdoing, we are also being asked to suspend our own rules.

It has been my contention, and I'll speak again on these motions when they come back on the floor, that what is at stake is how we, as senators, conduct ourselves, faced with allegations and a great deal of evidence — but not all — of wrongdoing by three of our colleagues. Now we are being asked to suspend our own rules so we can somehow foreshorten that conversation.

Canada is a country that's been built on conversation. We didn't go to war to form our country. We didn't go out to British Columbia and defeat somebody, British Columbia being Senator Martin's home province. We talked ourselves into a country.

In case anyone has forgotten, the dealmaker for Confederation was the Senate. Of course we wanted an elected body led by a Prime Minister, representation by population, but we also wanted a counterweight, and Senator Andreychuk referred to this yesterday. We wanted a counterweight for our regions, for our minorities, and also, although it wasn't perhaps put in these terms, against the tyranny of the majority, whether it be a majority in the House of Commons or a majority in the Senate.

You yourself, Your Honour, have been conducting and shepherding these debates over the past several sitting days, over a week now, with finesse and a superb feel for the essence of our job, which is to talk to one another and debate until we come to a consensus. I congratulate you on how you have been conducting yourself. Several times you have come back to us — on points of order, even, in these proceedings — on these motions, and said, "No, that's a matter for debate. Debate is what we must continue." I would urge that debate is what we must continue in this chamber, especially on matters of this importance.

If — and it is always true — one can argue that the Senate can do anything it wants if it acts unanimously, I agree with that. But if this chamber asks for unanimous consent, which would include my consent, to truncate debate artificially on these matters, to put closure or time allocation on non-government business, you can imagine by the tone of my comments what my course of action will be.

Your Honour, I do ask you to take some time to consider this motion and the points of order being raised and to give us your ever-wise counsel.

Hon. Yonah Martin (Deputy Leader of the Government): Thank you, Senator McCoy, and —

Senator Cools: Is this her first speech or is she closing? To the motion or to the point of order?

Senator Martin: I am rising on the point of order.

I want to first acknowledge that Senator Joan Fraser and I communicate on various matters every morning when we meet to discuss the scroll and the Orders of the Day. On what you have expressed today, senator, I agree and respectfully disagree.

I agree that, yes, the main motions that we have been debating this entire week are rightfully in the other category, because it is the purview of the entire Senate, all of us together, to debate and deliberate on these very important matters. These are unprecedented times, as many of my colleagues have expressed over the week.

I recall the words of Senator Nolin, who insisted that if we focus on what we're being asked with the motions, the very place to look at them is in this chamber, not referring them to a committee. But, again, I digress.

Yesterday, I was speaking to one of the reporters who, as I was leaving the chamber, wanted to know where we were on the Order Paper. I thought of a metaphor as I was explaining. You know the Spirograph where you put your pencil in a hole and it just spins. You are always moving forward. It moves in a circular rotation, but it continues forward. In essence, in listening to the debates on the three main motions, with amendments to each motion and then the subamendment to that amendment to the main motion, senators rose at different times to speak about sometimes the senator that was named in that motion and sometimes others, and it really felt like that Spirograph moving forward and going on.

Today, in moving the motion notwithstanding any provision of the rules or usual practice, et cetera, I see it as a very important mechanism or tool. Therefore I want to acknowledge all honourable colleagues who have spoken.

• (1520)

As a new Deputy Leader of the Government in the Senate, I must say that through the manuals provided for me by the Clerk's office, the *Rules of the Senate*, which committees and many others before us have crafted so carefully and so thoughtfully, I have come to respect the rules and procedures of this chamber. I have

come to respect our very institution all the more, and so I will respectfully disagree on this point of order of the Honourable Senator Fraser.

In the last week we have debated these three important motions, their amendments and subamendments. I thank all honourable senators for contributing, as each person rising to speak has helped us to get to where we are today, at this moment, as we are speaking to this point of order. We have been debating these motions and subamendments for five days in this chamber. This disposition motion would still allow for further debate while permitting a vote to occur at 3 p.m. on the first sitting day following the adoption of the motion, once we deal with the point of order and move forward.

The rules and procedures of the Senate exist to enable honourable senators to consider the provisions and provide sober second thought. Canadians expect the Senate to be a place for debate and consideration of matters that are important to Canadians. The rules and procedures of the Senate also allow for time limits on the debate to ensure that a timely conclusion is reached.

The Senate has the authority and discretion to allow time allocation through the adoption of such a motion if it feels there has been a sufficient amount of time for debate and there is a need to reach a conclusion.

Currently, we have agreed that all other business in the Senate is being delayed. Some senators have risen to speak to private bills and have tabled notice of inquiries and whatnot, but, for the most part, we have focused solely on these important debates. Unlimited debate is not desirable. Indeed, some restraint must be exercised or some accommodation reached in order for the Senate business to be dispatched.

Honourable senators, please remember that we have, within our purview, the ability to bring closure to debates, in order to facilitate the daily management of Senate time and business. Through the adoption of the disposition motion, we could bring closure to these debates and ultimately conclude this process. We owe it to Canadians, our constituents, whom we serve, to do just that.

With the time that has been spent, I respectfully rise on this point of order to say that this is one of the mechanisms that we have, and we must carefully consider in order to bring to a conclusion what we must in order to be responsible to Canadians, who expect nothing less of us. Thank you.

Hon. James S. Cowan (Leader of the Opposition): Mr. Speaker, I had not intended to speak, and have only come in halfway through Senator Fraser's remarks, but obviously I had consulted with her in advance about what she was going to say, and fully support her analysis of the situation and I support the remarks that she's made today.

We've done a lot of talking, a good deal of it mine, in the last couple of weeks about due process, fairness, justice and the rule of law. I meant every word that I said then and I stand by those

words now. These are important principles. These are not principles that we should cast aside lightly. They are the very foundation of Canadian society.

I have said before and I say again today that I believe that thinking Canadians who have followed carefully what we've said and have looked at this — quite apart from what they might think about the individual senators concerned, and quite apart from what we might think about what these senators did or did not do or are alleged to have done or not to have done — there is a fundamental belief in the rule of law, in due process and fairness, and Canadians are watching. They may not be watching on television, but they are watching commentary on what we're doing and they are hearing the audio of what we're saying.

People in the media and in other places are telling me that very seldom in the recent past have as many people paid attention to what is going on in the Senate. Therefore we have to be very careful not only about what we do but how we do it because process does matter. Process is important. We should not underestimate the importance that ordinary Canadians attach to process.

Our society is founded on the rule of law. Colleagues, we all have lives outside of this chamber. We live lives, we live in communities, and those communities exist and they function because there are rules. We may not like all the rules. One of the things we do is work to change and to improve those rules, but there are rules. All of us would agree that absent rules there would be chaos, and none of us would want that. So we have rules.

We have rules in the Senate. Those rules can be improved. We have a Rules Committee that looks at our Rules. We have the Internal Economy Committee, which follows the rules as well as our practices and procedures. We talk about audits; we talk about accountability. We have all these things that can constantly be improved. We shouldn't just say, "Those are the rules and we don't have to touch them." We've done a major revision to our Rules and we can continue to improve them. However, the basic point, colleagues, is that we have our Rules. We should be very careful when the majority comes to this place and says, "Notwithstanding any rules, notwithstanding any practices, notwithstanding any historical precedents, this is what we want to do." That is a very dangerous precedent.

The only point I would make about that is there is, for very good reason, a difference between "government business" and "non-government business," and our Rules make that distinction very clearly.

Our Rules legitimately provide to the government a means to facilitate the management of the government's agenda. Our Rules give to the government a priority for their business. Government business comes first and it must be dealt with appropriately, even though sometimes we don't like it. The government is given the tools, including time allocation, closure, the "guillotine" and cutting off debate. They have that power and they can use it. They should use it, in my judgment, more judiciously than they have, but nonetheless that is a power they possess. That's a power that is in the rules. It isn't a power that comes from the sky

somewhere. It is a power that this chamber, in its wisdom, has given the government for the purpose of facilitating the management of the government's business.

Anything that isn't government business is non-government business. To say that that power should be able to be used on a whim by the government, to impose its will on something that it itself has determined is non-government business, is wrong. Perhaps the government could have brought in these motions as government business. However, they didn't do that. They brought them in as non-government business, and that's why they are at the end of the Order Paper.

My friend Senator Martin refers to the circles and how difficult it is sometimes to follow where we are.

The fact is that that's where they are placed. They are not at the beginning of our Order Paper. The government could have put them at the front and said, "All right, until we've dealt with this we're not getting to any of the rest of our business." They didn't do that. In their wisdom, they chose to bring them not as government measures but as non-government measures, and they are now in their proper place at the end of our Order Paper.

• (1530)

How does it make any sense, to us or to anybody who would care about due process, to say, "Well, those are only the rules. Forget the rules; forget the practice. We are going to change it because we don't like what we see going on here." How can we allow that to happen? That makes no sense to me.

But the basic point is that the Leader of the Government has said, "We don't need to send this to any kind of a committee to be studied. This is the place for the debate. This is the place for the discussion to take place." But then he says, "Well, all right; I've heard enough. We want to cut all that off," and down comes the hammer.

That's not right. So I respectfully submit for your consideration, Your Honour, that the point of order that my deputy leader has made is well-founded and that you should so find.

[Translation]

Hon. Claude Carignan (Leader of the Government): Honourable senators, the three motions before us are not standard run-of-the-mill motions. Can we deal with these motions as private matters? They were moved by me, the Leader of the Government in the Senate, and the other side keeps saying that the government is behind this. So, when it suits them, this is a government initiative and when it does not, it is a private initiative. Make up your mind. I have read all over the newspapers, and in the media, and I have heard hundreds of times from the other side, that this was a government motion.

These are special motions. What makes them special? They ask the members of this chamber to judge whether three senators are fit to sit in the chamber and debate the government's business for the next few months.

At this time, we cannot move forward with the government's agenda. Why? Because we cannot allow, in the interest of transparency for all Canadians, that bills involving the public interest be debated and voted on by people whose right to sit is suspended. This is unprecedented. To my knowledge, this has never happened here.

The problem is simple. If we deal with issues of public interest or public bills with the three senators whose right to serve we are now debating, their votes could well be called into question. How? If there is a vote on a public bill and those three senators vote in favour, what message would we be sending to Canadians in terms of perception? Did they vote that way in order to obtain leniency or a lighter punishment? Or, alternatively, if they voted against, was it because they are upset and were responding to the request for suspension, rather than studying the bill at fair value?

We talked about the issue involving Justice Nadon and addressed the matter in question period. Justice Nadon is currently waiting for his right to sit on the Supreme Court to be validated so that he may do so with peace of mind and full transparency. Our current situation makes it impossible for the government to move its agenda forward efficiently.

I would like to revisit a passage from a Supreme Court ruling that I quoted last week, which indicates just how long this debate has been going on. In the *Harvey* ruling, Justice McLachlin stated:

If democracies are to survive, they must insist upon the integrity of those who seek and hold public office. They cannot tolerate corrupt practices within the legislature. Nor can they tolerate electoral fraud. If they do, two consequences are apt to result. First, the functioning of the legislature may be impaired. Second, public confidence in the legislature and the government may be undermined. No democracy can afford either.

When faced with behaviour that undermines their fundamental integrity, legislatures are required to act. That action may range from discipline for minor irregularities to expulsion and disqualification for more serious violations. Expulsion and disqualification assure the public that those who have corruptly taken or abused office are removed.

Lastly, she also states:

The legislative process is purged and the legislature, now restored, may discharge its duties as it should.

Your Honour, this notion of disciplinary suspension must be dealt with as conscientiously as possible and within a timeframe that will allow us to proceed to the Orders of the Day. To reiterate what Justice McLachlin said, "The legislative process is purged and the legislature, now restored, may discharge its duties as it should."

At present, it is unable to discharge its duties "as it should."

In order to continue with the government's agenda as we should, we must move a motion to limit debate and to hold a vote at a certain point. This is important. We are aware of the

importance to be given to this debate. We even gave notice of this motion on Friday morning. We had the right, under our Rules, to move it yesterday. We deliberately decided to grant more time for debate in order to shed light on this matter before moving the motion.

Your Honour, the right to sit or not to sit, is not a private concern. The right to take disciplinary action or not to do so with respect to a senator is not a private concern; it concerns the best interests of the Senate. This right must be established. When the motion is moved under "Government Business", the chamber is being asked to finish this study in order to move on to government business.

Senator Fraser spoke of the time allocation motion. This is not time allocation, but a disposition motion.

• (1540)

We have the Rules, which cover time allocation, and we have the privileges common to British-style parliaments, the practices, customs and privileges.

These rights remain even when provisions respecting time allocation are in effect. Just because our Rules have specific provisions for time allocation for government business does not mean that disposition motions no longer apply.

Mr. Speaker, I know that you are very familiar with the Rules of course, but section 1-1(2) of the Rules states that:

In any case not provided for in these Rules, the practices of the Senate, its committees and the House of Commons shall be followed, with such modifications as the circumstances require. The practices of other equivalent bodies may also be followed as necessary.

1-2 These Rules shall not limit the Senate in the exercise and preservation of its powers, privileges and immunities.

Therefore, Mr. Speaker, one cannot interpret the fact that the Rules allow for time allocation as the total exclusion of all other privileges and tools provided for in the practices and customs of British-style parliaments.

I believe that the disposition motion exists notwithstanding the presence of a motion. It is worth noting that it is very clearly related to the public interest and government affairs.

We cannot, as I said, study other bills of private or public interest when there are motions being debated in this chamber on the right to sit in this place.

We have had exemplary debates here, exchanges of points of view, and I think that we are on our way around the block again, if I can put it that way. I believe that all points of view have been expressed since the motions were moved. Even if we adopt these motions, we will still have time to keep debating them before the vote. I strongly believe, Mr. Speaker, that it is time to move on to other things.

I understand that the other side wants to drag out the debate. We have witnessed attempts to extend the debate. However, Mr. Speaker, we need to ensure that Parliament is operating.

Canadians are watching us and saying that for a week and a half now we have been deciding whether the senators in question have the right to sit, and what their punishments should be. In the meantime, we are not making progress on bills.

[English]

Senator Cowan: That's your fault.

[Translation]

Senator Carignan: Is it a problem of due process? How do we explain to Canadians that after a week and a half of debate on a punishment, there is no due process after a week and a half of debate on the three punishments?

Honourable senators, I think that the chamber has debated enough. It will be able to continue to debate, and I urge you, Mr. Speaker, to reject the point of order or to put it all to a vote in the chamber at the very least.

[English]

Hon. Anne C. Cools: Honourable senators, I rise to speak to this point of order. I have been listening to the debate very carefully. Just now I was listening to Senator Carignan and I was thinking that Senator Carignan should try his hand at writing fiction, perhaps fairy tales, because he seems to have a fantastic imagination, so amazing that he may convince some, but he won't convince me, thank you.

Your Honour, let me begin by saying that the Senate is now putting this matter into your ken. It's a very serious decision. I have tried to scramble together, in the short period of time I had, some useful precedents and some useful statements that I hope you will find helpful.

The first thing, colleagues, that we should notice is that this motion is undoubtedly — undoubtedly — a closure motion, a time allocation motion, whatever you want to call it. The intention of closure, guillotine, all of those motions — it doesn't really matter which — is to terminate debate.

Honourable senators, let us understand what we are dealing with here. There are no ifs, ands or buts; this is a closure motion.

The important point, colleagues, that I will begin on, is that we have a whole section, Chapter 7, in our rule book that covers the business of closure and time allocation; but it would appear that, for some unknown reason, this collection of rules is inadequate to what Senator Martin, the mover of the motion, wants. I do not understand that and perhaps somebody could explain it, and even then I may still not understand it.

My point is that Chapter 7 gives this Senate virtually every power it needs in respect of closure motions and time allocation motions, but it has been abandoned, so that the normal rules and practices that should be followed for time allocation have been totally declined and totally abandoned.

I would suspect, honourable senators, abandoned because something is irregular in this motion, it is out of order, that is number one. Two, that this motion wants to do something else that the closure rules of Chapter 7 do not authorize or permit.

I would submit to honourable colleagues that this particular practice, in this place, has been recurring again and again in these few days. Senator Carignan says debate for a week and a half is long. Well, in my count, a week and a half in Senate sittings, if we count regular sitting days, a week and a half would be four-and-a-half days. By my simple arithmetic, that comes out to be one-and-a-fraction days per affected senator. I don't think that's much time, for three different motions, for three different senators.

Honourable senators, I hope that Senator Carignan will accept my humble statement that this debate has been going for a very short period of time and perhaps Senator Carignan has never really taken part in a lengthy debate that lasts for months at a time, perhaps 24 hours a day. That is neither here nor there.

The most interesting thing about Senator Martin's motion, Your Honour, is that you must look at it closely. The fact that this motion abandons all other chapter 7 rules for closure and time allocation, by the statement "That, notwithstanding any provision of the Rules or usual practice," et cetera, "at 3 p.m.," and it continues to lay out the intentions and the wishes of the motion.

I would agree with Senator Fraser and the other senators who have spoken that this motion is grossly out of order. I shall now proceed to say why.

• (1550)

At page 159 of *Beauchesne's Parliamentary Rules and Forms*, sixth edition, tells us, closure, time limits on speeches, in Chapter 12, that:

The closure rule in Standing Order 57 permits a Minister to move a motion intended to bring debate on any question to an end with the House deciding that question under consideration.

That's page 159. The next sentence says:

The "previous question" may be moved by any Member, pursuant to Standing Order 61(1)...

This is the House of Commons:

... to attempt to preclude the moving of amendments to the question then before the House.

Here Beauchesne's is saying that any member may move a previous question, but only a minister of the Crown may move the other time allocation motions. I can support this. I have always understood that these closure motions can only be moved by ministers of the Crown. I think there is some confusion here in this place about the difference between the government as an abstract concept and a minister of the Crown.

There is not a minister of the Crown who is a member of this chamber. In fact, no member of this chamber is a member of the government. So I do not understand how any right can be claimed

to move a motion for closure, because I can see it was not moved by a minister or a member of the government. So let us make that clear. The senators across the way, at best, are supporters of the government, but not members of the government.

Now, I shall read from Beauchesne's, from the same page, 159:

When considering bills, a Minister, pursuant to Standing Order 78, may bring forward a motion to allocate specified amounts of time to the various stages of a bill.

That was paragraph 518 in Beauchesne's at page 159. Then paragraph 519 says:

Closure is a method of procedure which brings debate to a conclusion and enables the House to secure a decision upon the subject under discussion. Closure was introduced as a rule to the Standing Orders...

This is in the House of Commons, "... in 1913."

Honourable senators, I have always understood that there are peculiar conditions that govern the use of this procedure, and I have some authority for that.

I shall cite Josef Redlich, his 1903 book, *The Procedure of the House of Commons*. It is volume 1, under the heading "The Urgency Procedure and the Introduction of Closure 1881-1888." That is the name of the book. Volume 1 of the book, at page 164 states — and I will give a quick summary of what he's saying.

Redlich reiterates, restates and recites the creation of the closure phenomenon, which, as we know, was begun by Mr. William Gladstone, at the time facing enormous obstruction in the house upon the Coercion Bill. This was an enormous thing; the Irish obstruction was huge. Mr. Redlich says the following:

The resolution brought in by Mr. Gladstone with the object of preventing further Irish obstruction upon the Coercion Bill...

The point I'm making, colleagues, is that it was a bill. The books of authorities keep referring to bills.

... is one of the most remarkable documents in English parliamentary history. Its contents may be characterised in one word. It proclaimed a parliamentary state of siege and introduced a *dictatorship* into the House of Commons. The new rule, called for shortness the urgency rule, reads as follows...

Here comes the minister of the Crown:

That, if upon notice given a motion be made by a minister of the Crown that the state of public business is urgent, upon which motion such minister shall declare in his place that any bill, motion, or other question then before the House is urgent, and that it is of importance to the public interest that the same should be proceeded with without delay...

I have always understood that there are three prerequisites to closure motions and that they have been bills, moved by a minister of urgent need, where the urgency can be defined and expressed, other than something in a person's head, and finally the public interest. Colleagues, I do not think that this motion fulfills those major conditions: moved by a minister, urgency and necessary for the public interest.

Redlich continues, and this is very interesting to His Honour; Redlich continues to talk about the "yeas" and the "nays" and that sort of thing, but he says here, "... in a House of not less than 300 members..."

This is in England.

... the powers of the House for the regulation of its business upon the several stages of bills, and upon motions and all other matters, shall be and remain with the Speaker, for the purpose of proceeding with such bill, motion, or other question, until the Speaker shall declare that the state of public business is no longer urgent...

This is very interesting. I thought senators would find this very interesting and may want to look it up in Redlich, page 164, as I said before.

... or until the House shall so determine, upon a motion which, after notice given, may be made by any member, put without amendment or debate, and decided by a majority.

Honourable senators, interestingly, my reading and research gives me another little jewel. Gilbert Campion, who, as we know, was a one-time Clerk of the House of Commons in the U.K., in his 1958 work, *An Introduction to the Procedure of the House of Commons*, third edition, page 186, makes this observation:

It lies in the discretion of the Chair to "refuse the closure if in his opinion the motion is an abuse of the rules of the House or an infringement of the rights of the minority". He is not obliged to assign any reason for his refusal.

So I say, Your Honour, that this motion as moved by Senator Martin is especially out of order and irregular.

Now if I'm saying something that may be straying into argument, I will withdraw it, but *Black's Law Dictionary*, fourth edition, 1968, defines the word "suspend." Everyone is calling these items suspension motions. "Suspend," at page 1615, is defined:

To interrupt; to cease for a time; to stay, delay, or hinder; to discontinue temporarily, but with an expectation or purpose of resumption. To forbid a public officer, attorney, employee, or ecclesiastical person from performing his duties or exercising his functions for a more or less definite interval of time.

Remember yesterday, colleagues, I raised that question that a suspension motion should have a defined period, a definite period of time with an end date.

This is a very difficult situation, Your Honour. My opinion is that this particular motion for time limits is especially out of order because it is a creature that is unknown to us. It is foreign to our Rules and foreign to the processes that are proposed by our Rules in Chapter 7. It does unusual things that are really unknown to us. Colleagues, I have also been taking a look at the whole phenomenon of suspension.

I want to be crystal clear, because I have heard a lot of talk about these three motions being necessary to discipline the senators in question.

• (1600)

Honourable senators, the house has claimed the power to discipline from a particular judgment in 1884 in the case of *Bradlaugh v. Gossett*. If we will recall, Joseph Maingot, and others, tells us that the House of Commons claims its authority to discipline, its power to discipline over its members. I want to read why this is especially important. In the judgment in *Bradlaugh v. Gossett*, Lord Coleridge said:

What is said or done within the walls of Parliament cannot be inquired into in a Court of law. On this point all the Judges in the two great cases which exhaust the learning on the subject — *Burdett v. Abbott* and *Stockdale v. Hansard* — are agreed, and are emphatic. The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, “they would sink into utter contempt and inefficiency without it.”

It's very interesting, colleagues. What I'm trying to say is that it is extremely important to determine whether this particular motion to discontinue, to terminate, to end the debate, is in order.

I think this point of order deserves your full consideration. At issue here is whether or not the three motions are truly suspension motions in the meaning of the word “suspension” as was intended in *Bradlaugh v. Gossett* and all those other judgments, because in those cases, suspension is always something that was given by discipline to members who were disturbing the proceedings, either by outbursts or other disturbances. This has not come into the debate yet. I wanted to say so, to put it out there. I say it is one more reason why this closure motion is out of order, because this is a hurry-up motion, a closure motion to bring on other motions which themselves may be out of order.

Having said that, Your Honour, I hope I have been helpful.

[Translation]

Hon. Pierre Claude Nolin: Mr. Speaker, once again, you will have to make a ruling, this time on whether Senator Martin's motion is in order.

This disposition motion applies to three motions. Those three motions, for the reasons set out by Senator Carignan, underscore the dignity and reputation of our institution. That is why these three motions have dominated our debates for more than 10 days. Sixteen bills are suspended or close to being suspended. We are focusing exclusively on these three very important motions, and Senator Carignan has explained why they are important.

I believe that Senator Martin's motion is in order. It is subject to debate and respects our Rules in that it is necessary for two reasons: to maintain the authority of our institution and to ensure the seamless operation of the Senate. Our Rules already provide that we can take action to meet those two objectives. I would refer you, Mr. Speaker, to rule 5-8(1)(q). We have before us three motions that have monopolized all of our debates for nearly two weeks. It is possible that this debate will continue into next week, even if this motion is adopted. I feel it is appropriate, Mr. Speaker, in the interest of this chamber, in the name of Senate authority, that you reject Senator Fraser's point of order and find Senator Martin's motion to be in order.

Hon. Claudette Tardif: Mr. Speaker, I would like to briefly speak to this point of order. I must say that I am very disappointed to have to speak to a time allocation or disposition motion, both of which have the same intent. The intent is to end debate on very important motions that are unprecedented in this chamber.

The government wants to deal with three motions that appear on the Order Paper under “Other Business”, not under “Other Government Business”, as though they are now government motions. However, Senator Carignan has mentioned countless times that these motions were his and not the government's. As he often says, “a senator proposes and the Senate disposes.” Why then, all of a sudden, does the government seem to be proposing that these same motions should become government motions that are subject to a time allocation motion? Transforming a senator's motion into a government motion is unprecedented.

What is more, Senator Carignan stated that this chamber is the master of its own decisions and that each of us would have the opportunity to propose a different path to take with regard to the matters before us. He argued, in a long speech, that the three motions were the result of this institution's power to discipline its members. Why then, all of a sudden, is the government asking us to vote on motions that it considers its own? If this is truly a matter of the Senate's power to discipline its members, what right does the government have to interfere?

I am struck by the irony of the decision to move a time allocation motion on a historic matter such as this. Senators disagree as to the best path to take to arrive at the same goal, which is to preserve the dignity of the Senate and ensure that our society's fundamental principles are respected. When faced with this disagreement, the government's knee-jerk reaction is to turn to one of the least dignified procedures, one that has a serious impact on sober second thought, which is the whole reason for this chamber.

Time allocation is something that the government should use only for extremely urgent matters. It may be necessary to resort to time allocation in cases of obstruction, or in other words when a deliberate effort is being made to unduly delay an important matter. In this case, the senators who are speaking are not trying to obstruct the process.

[English]

The Leader of the Opposition states that the business of the Senate has not been dealt with, that we have spent more than a week and a half in dealing with these motions — a week and a

half, honourable senators. Is a week and a half too extensive to make sure that due process is being followed, that everyone is being heard, that there are questions of transparency and fair treatment? A week and a half.

Let me remind you, honourable colleagues, if we're dealing with these motions, it is because the leadership on the government side has put these three motions on the Order Paper under "Other Business" and not "Government Business." That is why we're dealing with it. That was your choice and your decision.

• (1610)

Your Honour, I find it difficult to believe that members of this government, who proudly boast about defending freedom of expression, would do everything possible to limit the right of senators to express themselves, especially when no reasonable explanation as to why a time allocation is necessary.

Canadians want to know. Canadians want to have the assurance that there is due process, that the rule of law is being respected and that there is a presumption of innocence.

Honourable colleagues, as you well know, the Fathers of Confederation conceived of this chamber as one of sober second thought. As such, it is our duty to study bills and motions conscientiously and in depth. I do not believe that seven days or four sitting days or three and a half sitting days is too lengthy. The Senate must take the time necessary to comprehensively examine the issues and to listen. We must seriously, thoughtfully and thoroughly debate and consider all information that is before us.

Yet a disturbing pattern has emerged, and we have seen in this chamber and in the other place time and time again how the government will invoke procedural tactics to stymie legislation. The use of a government motion to deal with a non-government matter is procedural trickery, as my honourable colleague Senator Fraser has coined it.

Your Honour, I believe that this new practice or this new way of doing things does disservice to our institution, and therefore, Your Honour, I would ask that you not rule in favour of this motion.

Hon. Daniel Lang: Honourable senators, I won't be long in my remarks. I would like to point out a number of things. First of all, the principle that I believe you, Mr. Speaker, will have to determine in your own mind is whether or not there has been enough time for public debate on the issue at hand.

I want to bring members back to the debate at hand and the point that has been raised by senators opposite over and over again, that being the question of the lack of due process.

I want to remind all senators, before the Speaker takes into consideration all the remarks here, that the issue before the house, the conduct of three of our colleagues, has not just been discussed in this chamber, but it has been discussed in a committee of this chamber for many days at a time over the course of the past year.

In fact, for the record, one of the reasons we're taking the reports before us as seriously as we are is that they have all been unanimous. Fifteen senators have been assigned to those committees, and these reports have been dealt with in depth. Every member of those committees, on both sides of the house, have spent many hours and have come to the conclusion that this report is serious to the point that, in the case of two reports, they have been passed on to the RCMP.

So I would say to all senators that there have been lengthy debates in respect to the issue at hand not only in this house but in a subsidiary committee of this house.

The other point I would make, which hasn't been brought up, is that although the government leader indicated on Friday that he asked that the motion in question be tabled, it wasn't brought forward for debate. I would surmise — I have not gotten an answer, and perhaps the leaders could tell us this — that the side opposite would probably not agree to come to a conclusion at a given time for the purpose of making a decision on the issue at hand and has put the government, this side of the house, in a situation where they have to bring forward the motion that we're discussing.

So I would say to senators opposite, everybody is part of the play here. I'm getting tired of the side opposite absolving themselves of any responsibility and talking on one side of an issue one day and on the other side of the issue the next day.

Some Hon. Senators: Oh, oh!

Senator Lang: Now, I would like to say to the opposition leader — I have the floor. I have listened to you day after day without interrupting you, so I would ask for the same courtesy, please.

I want to say this: As has been expressed by other senators over the past number of days, I think the Senate should be commended for the serious way it has taken to this issue, the tenor of the debate and how everybody has presented their case. I haven't necessarily agreed with every speaker, but at the same time, I think every speaker has brought forward what they honestly believe and perhaps how they feel the final decision should be made and how they view the chamber.

I want to make one other point, Mr. Speaker, and I think this is very important because the issue at hand is whether or not enough debate is going to be taken on the issue before us. With the motion being discussed today, in my calculation, at least another four days of debate will take place before a final conclusion will be made by the members of the house.

I would submit, in respect to the arguments put by the other side, that there is more than ample time for debate. Quite frankly, I have heard over and over again about the fact that there's a lack of public transparency. I don't know how much more public we could be. If somebody could tell me that, please express your view because this is the upper chamber of Canada; we do have responsibilities to Canada. We do have business on behalf of Canadians, and eventually a decision has to be made.

I want to conclude by saying this, Mr. Speaker. I trust everybody has thoroughly read the reports that have been brought forward into this house, not once, but twice and three

times. I would challenge the media that they take their time to read them, and then they can see why we're discussing this particular issue in this chamber at this time. This is very important to this institution, and it is going to set the bar for us in future years as we move ahead.

I can tell you, as a senator here, as I said the other day, I am not enjoying being part of this debate. I'm very sad that I have to be a part of this debate, but, at the same time, I know that we're all charged with the responsibility of making a decision, and that decision has to be made. Quite frankly, I think by the end of the week there will be plenty of time for everybody to put their position forward so that a decision can be taken.

Hon. Jane Cordy: Honourable senators, I had not planned on speaking, but this is an extremely important subject for debate, which is why I'm rising today. Your decision will set precedence for years to come.

Senator Fraser has done an excellent job of explaining in great detail why Senator Martin's motion is out of order, according to the *Rules of the Senate*. The point is that you can only use time allocation or closure for government business. Senator Carignan's motions are not government business.

Now, we have heard some speakers this afternoon saying, "Well, the discussion in these motions is taking too long, and other government business is not getting done." Surely Senator Carignan realized when he was going to introduce these three motions that there would be a tremendous amount of discussion, as there should be, on these motions. Surely when Parliament was prorogued and Senator Carignan was thinking about introducing these motions, he had enough time to realize what kinds of discussions should be taking place in the chamber. Like Senator Tardif, I don't believe that a week and a half is an extensive amount of time to have a discussion such as the one that we are having on the right of three senators and the right of Canadians to due process and the rule of law.

• (1620)

Senator Martin's motion would basically change a non-government motion to a government motion. That is wrong, in my opinion. Whether or not the motions are unique, as Senator Carignan stated, is beside the point. They are still not government motions.

I agree with Senator Cowan that choosing to bring in a closure motion for a non-government motion is a very dangerous precedent.

I think, Mr. Speaker, despite all we heard on this today, the issue is whether or not time allocation can be used for non-government business.

An Hon. Senator: A wolf in sheep's clothing.

The Hon. the Speaker: Honourable senators, I thank the honourable Senator Fraser for raising the point of order. Let me thank all honourable senators for their contribution to the point of order that has been raised.

I will, with great care, examine this question and will obviously be respectful of the quality of debate that has occurred up to this point. I will be as assiduous as I can in returning with a decision, a ruling. In the meantime, I take the matter under advisement.

**MOTION TO SUSPEND THE HONOURABLE SENATOR
PATRICK BRAZEAU—SUBSIDIARY MOTION—
VOTE DEFERRED**

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.

Hon. Jane Cordy: Honourable senators, I have listened to the speeches in the Senate over the past week from Senators Duffy, Brazeau and Wallin and other senators who have spoken. I have

read countless emails on the subject sent to me by many Canadians.

Honourable senators, I'm sure that when many of you were home over the summer, everywhere you went, people were talking about senators' misuse of taxpayers' money. When I spent my summer in beautiful Nova Scotia, I heard over and over again from Canadians who are very angry about what has been referred to as "the Senate scandal." I heard about the expenses of senators while I attended meetings in my church, in my neighbourhood, even at family gatherings.

People are justifiably angry. I am angry at the thought that taxpayers' money may have been spent irresponsibly.

In the last Parliamentary session when evidence surfaced that there were some irregularities with some senators' expenses, the Internal Economy Committee did what I believe was due diligence and concluded that the appropriate action was to call in private auditors to investigate the allegations against Senators Brazeau, Duffy and Wallin.

Upon hearing the findings of the private auditors, it was deemed necessary to refer the cases over to the RCMP for them to determine if any criminal activity was involved. That is what should have happened, and it did happen.

Now I have to ask why these three motions were introduced at a time when the RCMP has yet to complete their investigation. Why does there seem to be an attempt to interfere with an ongoing investigation?

As a member of the Internal Economy Committee, I believe that sending those files to the RCMP was the right thing to do. The RCMP are best equipped to determine who knew what, when they knew it, and what they did when they found out.

I am sure the RCMP investigation can follow the trail of emails that have been referred to in the chamber by Senator Duffy. An RCMP investigation is the right course of action here to address the allegations of PMO cover-ups and who, if anyone, orchestrated these cover-ups.

Passing these motions at this time before the RCMP have a chance to complete their findings could potentially interfere with the RCMP's work.

The premature introduction of these three motions to expel Senators Brazeau, Duffy and Wallin also sets a dangerous precedent, as they ignore a senator's right to due process. These motions essentially predetermine judgment and hand down punishment before the evidence has been weighed.

This should be of concern to every senator in this chamber and indeed to every Canadian, and has compelled me to speak today.

I believe that we, as senators, have a responsibility to ensure not only that Senators Brazeau, Duffy and Wallin but all senators in this chamber and all Canadians, for that matter, receive due process.

Many uncertainties remain in the cases of Senators Brazeau, Duffy and Wallin that require answers before we, as senators, can make a well-informed and just decision. We should have these answers before considering a motion to expel our colleagues.

Indeed, the speeches we have heard have left us with even more questions about what happened behind closed doors, why the rush to judgment, why the possible interference in the RCMP investigation, which is under way.

We know in Senator Wallin's case that the Prime Minister stated in the other place that he had looked at her expenses and that they were fine. Now the same Prime Minister has removed her from the Conservative caucus and is pushing to have Senator Wallin expelled from the Senate entirely.

We also have a lot of questions surrounding the payment of \$90,000 to Senator Duffy. I guess I should say that we also have questions about the two payments made to Senator Duffy.

Prime Minister Harper stated in the spring that Nigel Wright acted alone. Now the Prime Minister says a few people knew about the cheque. It now appears that others in the Prime Minister's Office, as many as 13, were aware of what was happening and the questions remain about what Prime Minister Harper knew.

He must have known that Senator Duffy's expenses were repaid. Did he not ask anyone? Or was it a case of wilful blindness? Don't ask, don't tell.

First, Nigel Wright resigned and the Prime Minister accepted his resignation. Now the Prime Minister tells us that he fired Mr. Wright. Senator Duffy did say in this chamber that he met with Nigel Wright and the Prime Minister on February 13 to discuss his expenses. He also stated that he received a cheque for his legal expenses.

• (1630)

I believe that passing these motions at this time will only hamper the RCMP's investigation. The accused senators—in fact, all senators in this chamber and all Canadians—deserve answers to all the questions and allegations raised over the past few months. These motions only appear designed to interfere with the efforts of the RCMP to provide Canadians with answers to these serious questions of irresponsible spending and possible PMO involvement. Canadians deserve answers.

I would like to quote from some emails that I have received. I've received lots of emails from concerned Canadians and only a very few agree with Senator Carignan's motion. The rest of the emails speak of the lack of due process and the dangerous precedent this sets. What is interesting about these emails is that usually, when we get hundreds of emails from Canadians, they are mass emails that are exactly the same, but these emails that I have received are all individual. They are all written by individual Canadians and, while they have the same message, they are all different. I received them from people who rarely, if ever, have written to a senator before.

This is an email that I received yesterday.

Dear senator,

I've been paying close attention to the "scandal" that has seized the upper chamber and must confess that I am dismayed at the current proposal to suspend Senators Brazeau, Duffy and Wallin without due process. Although I do not condone their alleged improprieties for one second, I have even more serious concerns about finding them guilty solely on the basis of reasonable cause and at the behest of the Prime Minister.

Surely you have a moral obligation, if not a legal requirement, to remain independent from blatant political interference and to demonstrate a sense of wisdom borne from sober second reflection in the manner in which you proceed.

Another email that I received stated:

Let me state upfront that I have no opinion on the guilt or innocence of Senators Brazeau, Duffy or Wallin. What I do know is that the current process has all the trappings of a kangaroo court rather than an appropriate, thoughtful and fair determination of whether indeed these individuals broke any rules.

Let me further point out that, according to my reading of the Canadian Constitution, these individuals can only be disqualified from the Senate for very specific reasons, including most relevantly being convicted of a crime. I'm not a lawyer, but it seems to me that even if these senators are guilty of mispending taxpayers' dollars, it is not clear to me that they would be charged with a crime, let alone convicted. So we have a situation where the Senate is considering essentially pre-empting Canada's criminal justice system.

As a proud Canadian, I am disgusted by this spectacle that one might expect to see from a tinpot dictatorship, not from the country I was born and raised in.

Another email said:

Here is a note from an old retired person in rural Nova Scotia. I do not belong to any party. I feel very strongly that the presumption of innocence until proven guilty by due process is the cornerstone of all our rights and freedoms.

Another email says:

Innocent until proven guilty is one of the most fundamental of our individual rights. The motion to suspend several senators without due process contravenes that principle.

Another email from a Canadian states:

I ask you to vote "no" to the motion to suspend without pay and benefits Senators Wallin, Duffy and Brazeau. You can't punish someone who hasn't been convicted of

anything in Canada. The verdict still comes before the sentence.

Everyone knows, even those who hate the Senate and want to beat up on senators just because, that Pamela Wallin, Mike Duffy and Patrick Brazeau are convenient scapegoats for a government that wants to rid itself of the air of corruption caused by the election fraud scandals, the robo-calls affair and, yes, by the allegations of abuse of Senate funds.

Our country was founded on the principles of peace, order and good government. A "yes" vote would deepen the sense many of us have that political expediency and a preference for hardball politics have made those principles obsolete.

Another Canadian wrote:

I am saddened by the damage to our democratic institution by the poisonous partisanship being practised by our current Prime Minister and his minions. Please don't let partisanship dictate your vote. Do not suspend the three senators. Let the judicial system handle any wrongdoing.

Another email written by a Nova Scotian to all Nova Scotia senators states:

After hearing the events of today in the Senate, I hope the Senate will truly be a chamber of sober second and independent thought. While the expense scandal needs to be addressed in an accountable manner, the current motion before the Senate is not getting at the core issues and needs to be reflected upon and re-thought.

As a Nova Scotian, I will be watching to see what you as my senators will do over the next few days to insert some sensibility as well as accountability into the actions to be taken, and that we as citizens finally get some honest answers and explanations as to what is happening. I am disturbed at how our Canadian democracy is being hijacked and look to the Senate to steer it back to some honesty and integrity.

Another Canadian wrote:

I want to hear all of the story of Duffy, Wallin, Brazeau, et cetera. If you vote against hearing the whole story, you are voting yourselves out of relevance and deserve to go.

Another Canadian wrote:

To any senator currently sitting,

After watching the revelations exposed today, I sincerely hope you vote not to expel any senator without a public hearing, and please do not vote because of loyalty to a particular party or a leader. Vote for facts and do the honest and honourable thing.

Another email addressed to senators of Nova Scotia states:

As a resident of the province you've all been appointed to represent, I am sending this note to register my views on the current situation involving Senators Duffy, Wallin and

Brazeau. I have no real sympathy for those particular senators, because they all should have known better. Under no circumstances, however, should it be possible for any member of Parliament to be suspended from Parliament in the manner being pursued by the Conservative Party of Canada. These actions are being taken not in the best interest of Canadians, but to provide political cover to the sitting government and the Prime Minister.

Honourable senators, I'm now going to read to you from an article written by Tom Flanagan. Now, I never thought I would be standing in the Senate Chamber reading an article by Tom Flanagan.

Senator Mercer: You're going to the dark side, Jane.

Senator Cordy: Honourable senators, I certainly didn't think that I would be agreeing with the words of Tom Flanagan.

An Hon. Senator: Calgary Tom, eh?

Senator Cordy: I will read to you from this article:

... for this resolution is troubling.

First, it violates due process and natural justice, because it would impose severe penalties—loss of income and devastating harm to reputation—before conclusion of the RCMP and Deloitte investigations that the Senate itself has asked for. “Sentence first, verdict afterwards,” said the Red Queen in the trial of the allegedly tart-stealing Knave of Hearts. It would indeed take the genius of Lewis Carroll to do justice to what's now happening in the Senate.

But it's not just unfair, it's dangerous to start suspending Members of Parliament, whether they're elected or appointed. The usual penalty for being politically inconvenient is removal from caucus, which makes sense because no one has a right to belong to a party grouping. But long-term suspension—expulsion, in effect—from the legislative body is something we expect to see in an authoritarian system, not a democracy. Pay attention, elected MPs. If it can happen to senators, it can happen to you.

• (1640)

Honourable senators, while I understand and identify with the anger and frustration of Canadians, I believe that a decision to expel Senators Brazeau, Duffy and Wallin should not be taken lightly. It should not be made for political reasons to distract the public, and we should certainly not trample on the rights of Canadians because Mr. Harper wants a problem to go away. If we in the Senate of Canada don't stand up for the rights of others, who will be left to stand up for the rights of Canadians?

The Internal Economy Committee determined that the senators must pay back money to the taxpayers. The committee also brought in the RCMP. If charges are laid, and if any or all of the three senators named in the motions are found guilty of breaking the law, they will face legal consequences, which may include

expulsion from the Senate. However, until that time comes, why are we delivering sentences before we have the results of the RCMP investigation and before the verdict is in? I believe the Senate has the responsibility to be fair and just. We owe all Canadians —

Senator Munson: Mr. Speaker, I'm having a difficult time listening to the present speaker. I would like to have a little order for those of us who wish to listen.

The Hon. the Speaker *pro tempore*: Honourable Senator Cordy, I would like to remind you that your 15-minute speaking time is up. Are you prepared to ask the chamber for some more time?

Senator Cordy: I just need one more minute.

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

Hon. Senators: Agreed.

Senator Cordy: Honourable senators, I believe that the Senate has the responsibility to be fair and just. We owe all Canadians, and that includes Senators Wallin, Duffy and Brazeau, due process, presumption of innocence and the rule of law. Thank you.

The Hon. the Speaker *pro tempore*: Honourable Senator Jaffer, on debate?

Hon. Mobina S. B. Jaffer: Will Senator Cordy take a question?

Senator Cordy: Yes, I will.

The Hon. the Speaker *pro tempore*: Senator Jaffer.

Senator Jaffer: Senator Cordy has for a very long time been a member of the Internal Economy Committee and was certainly involved in discussions on these three senators. Can she tell us why she took the steps she took, first, in asking them to pay back the money that they owed, and then to refer this to the RCMP? Did she think that that was enough punishment?

Senator Cordy: I thank the honourable senator for that question. We've certainly heard discussion in the chamber over the past week that perhaps Internal Economy didn't act properly. I happen to think that Internal Economy followed a process. I didn't always agree. I didn't agree when I believed that Senator Duffy's report was being whitewashed. However, I did agree with the process that took place at Internal Economy. I do believe that it was proper that when there were allegations of abuse of misspending by senators that the independent auditors were brought in. When we heard the reports of the independent auditors, I thought it was the right thing to do to bring in the RCMP.

I'm not a lawyer; I'm not a judge; I'm not a member of the RCMP. I think that once it reaches the point where you wonder whether or not the law has been broken, it is important that the RCMP be brought in to investigate to see whether or not the law has been broken. So, yes, I think that the committee has done the right thing.

[Senator Cordy]

I certainly don't agree with the motions brought forward by Senator Carignan that bring in a sentence before the RCMP investigation has been completed. We are finding people guilty before we have all the evidence of the RCMP to determine whether or not the law has been broken.

That's an excellent question. Thank you.

Senator Jaffer: May I ask another question?

Senator Cordy: Yes.

Senator Jaffer: Senator Cordy has been very involved; in fact she and members of Internal Economy have spent a lot of their summer working on these reports. Do I understand correctly that two reports were adopted by the Senate and one report on Senator Wallin remains to be adopted?

Senator Cordy: That is absolutely correct. Two reports, Senator Duffy's and Senator Brazeau's have been brought in to the Senate. They certainly were brought forward for discussion and placed on the Order Paper. Senator Wallin's report by the independent auditing company was brought to the committee in September. Parliament was prorogued at that time, so while it was presented to the Senate and deemed to be presented. In fact it was not brought forward for discussion at the Senate. It has never appeared on the Order Paper of the Senate.

Hon. Pierre Claude Nolin: The honourable senator was referring to Internal Economy Committee. One of the questions that Senator Segal keeps asking is this question of retroactivity. At the meeting of August 12, which Senator Cordy attended, that question was raised by Senator Segal. I will read from the transcript that was given to us yesterday. The question from Senator Segal was:

My question is: Do you not think there is, perhaps unwittingly, a core unfairness to a retroactive assessment of activities which existed under one regime based on the rules that were just brought into effect at the end of 2012 or the beginning of 2013?

The answer from Mr. Stewart, a representative from Deloitte, is quite revealing:

It is our understanding that the underlying principles of the expense policy have not changed and that Appendix A provided guidance, some specific examples of the application of that policy.

We have used that, to some extent, in our analysis going backwards because, as I say, it is our understanding, with information from Senate staff, that the underlying policies have not changed, that policy principles have not changed.

I would point out also, if you go through Schedule 2, there are a number of expense claims that do not rely on the retroactive application of Appendix A, so it is not solely because of Appendix A that we have come to the conclusions that we have.

Senator Cordy was there. Does she recall that the discussion and the question about retroactivity that was raised by Senator Segal and, by the way, raised also by Senator White at the end of the meeting got nowhere? All the senators accepted the answer from Mr. Stewart and his colleague and it went through perfectly. Why?

Senator Cordy: I thank Senator Nolin. That is actually an excellent question.

There was no changing of the rules. It was a clarification of the rules, with specific examples laid out as to what would fall under the rules. The only rules that changed were brought in as a result of expense claims that we looked at. The number of what we would call "other trips" that a senator can make would be limited; that is, trips other than trips between Ottawa and your primary residence. That was new, because before that there was no limit on "other trips."

There was also a change in how many days a senator could spend in Ottawa if the Senate wasn't sitting, if there was no caucus meeting taking place, or if no committee meeting was taking place. I believe that a senator can now spend no more than 20 days in Ottawa unless one of those three things is happening.

Other than that, I believe, as a member of the Internal Economy Committee, that changes were simply a clarification of existing rules.

Senator Nolin: Thank you.

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

Senator Segal: Question.

The Hon. the Speaker *pro tempore*: The time for questions of Senator Cordy has expired.

Further debate, honourable senators?

An Hon. Senator: Question!

Senator Day: I move the adjournment of the debate.

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore*: It has been moved by Honourable Senator Day, seconded by Honourable Senator Mercer, that further debate in this matter be adjourned until the next sitting of the Senate.

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

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore*: I will put the question again.

Honourable senators, just to make sure the chair is clear, all those in favour of the adjournment motion would indicate by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: All those against the motion would please say “nay.”

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore*: The nays have it.

And two honourable senators having risen:

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

Senator Munson: One-hour bell, sir.

Senator Marshall: One hour.

The Hon. the Speaker *pro tempore*: One-hour bell; honourable senators, the vote will take place at 10 minutes to 6 p.m.

• (1750)

Motion negated on the following division:

YEAS THE HONOURABLE SENATORS

Baker	Jaffer
Brazeau	Joyal
Callbeck	Kenny
Campbell	Lovelace Nicholas
Chaput	Mercer
Cools	Merchant
Cordy	Mitchell
Cowan	Moore
Dawson	Munson
Day	Ringuette
Downe	Rivest
Dyck	Robichaud
Eggleton	Segal
Fraser	Smith (<i>Cobourg</i>)
Furey	Tardif
Hervieux-Payette	Watt—33
Hubley	

NAYS THE HONOURABLE SENATORS

Andreychuk	Martin
Ataullahjan	McIntyre
Batters	Meredith
Bellemare	Mockler
Beyak	Neufeld
Black	Ngo
Boisvenu	Nolin

Braley
Buth
Carignan
Champagne
Dagenais
Demers
Doyle
Eaton
Enverga
Fortin-Duplessis
Frum
Gerstein
Greene
Housakos
Johnson
Lang
LeBreton
MacDonald
Maltais
Manning
Marshall

Ogilvie
Oh
Oliver
Patterson
Plett
Poirier
Raine
Rivard
Runciman
Seidman
Seth
Smith (*Saurel*)
Stewart Olsen
Tannas
Tkachuk
Unger
Verner
Wallace
Wells
White—55

ABSTENTIONS THE HONOURABLE SENATORS

Nil

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

Hon. Joan Fraser (Deputy Leader of the Opposition): On a point of order, Your Honour. I just wish to register the real disappointment on our side that the other side has refused an adjournment on debate on a matter of this importance. We truly are disappointed. This debate has, despite its fraught nature, been proceeding with remarkable civility and, as you noted today, Your Honour, with a very serious attitude on the part of all senators. So it is with a heavy heart that I note the decision that has just been made.

That said, on our side, we don't really think it would be in the public interest to get into another round of bell ringing unless that turned out to be absolutely necessary, which we earnestly hope it will not. Therefore, I am indeed prepared to have you call the question, Your Honour.

The Hon. the Speaker: Honourable senators, the question is the motion by the Honourable Senator Cowan, seconded by the Honourable Senator Fraser, that the main 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.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do we have advice from the whips as to when we call in the senators?

Senator Munson: We wish to defer the vote.

The Hon. the Speaker: The Chief Opposition Whip has exercised his right under the rules to defer the vote, which will be held tomorrow at 5:30 p.m.

The Hon. the Speaker: Honourable senators, it being six o'clock, I am about to leave the chair, as required in the rules, unless there is unanimous consent we not see the clock. Is there unanimous consent that we not see the clock?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: I heard a no. Therefore, honourable senators, we will return at 8 p.m.

(The sitting of the Senate was suspended.)

• (2000)

(The sitting of the Senate was resumed.)

MOTION TO SUSPEND THE HONOURABLE SENATOR
PAMELA WALLIN—MOTION IN AMENDMENT—VOTE
DEFERRED

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;

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”.

Hon. George Baker: Mr. Speaker, I'm going to — and I mean it — be very brief on what I'm about to say.

Now, Senator Nolin is trying to coach me on what to say. I will reference something that Senator Nolin has said to this chamber concerning this debate, and that concerns the Charter of Rights and Freedoms as it applies to parliamentary privilege.

Senator Nolin: Good. Now ask your question.

Senator Baker: Before I do that, which I intend to do, let me make two observations that I think are pertinent to our proceedings.

I was hoping that I would know what the suggested penalties would be from the Leader of the Government in the Senate. He suggested publicly that there may be a difference in the suggested penalties applying to each one of the three senators.

Senators, I know it's something of great importance, and I'll tell you why. I don't have the case law to prove it, but I know what's in the case law. I will produce the case law when I know what the penalties are.

It is important from this point of view. When you look at judicial proceedings — or when you look at disciplinary proceedings; that's an even better case — you find that a determination is made as to whether or not the disciplinary proceeding is civil or criminal in nature, as it applies to double jeopardy, section 11(h) of the Charter.

There are several cases, but two or three from the Supreme Court of Canada say that the matter is decided if — because under section 11 of the Charter, it concerns criminal proceedings.

I know the original case is called *Wigglesworth*, Supreme Court of Canada, in which McLachlin J. delivered the judgment. The judgment said that a criminal proceeding covered under 11(h), the double jeopardy section — which we codified in section 610 of the Criminal Code — that that section applied to cases, yes, of criminal prosecution, but that it also applied in the case of not just imprisonment but to cases where the magnitude of the fine or monetary penalty in a judgment was such as to reflect society's disdain, using my words, of the offence.

It is not just penal consequences of imprisonment that applied but the definition of "true penal consequences." Those were the words that were used in *Wigglesworth*. "True penal consequences" as it applies to 11(h) of the Charter, double jeopardy, means imprisonment or a very hefty financial penalty.

When I look at the penalty in this disciplinary proceeding — because *Wigglesworth* was about a disciplinary proceeding, and so were the cases that came after it — the judgment was made: Did it involve imprisonment, or did it involve a very high fine or financial penalty for those involved?

Why is that important? Well, that's important because it goes back to the original argument that I made in this chamber in the beginning. The constitutional experts don't understand, quite frankly, that if we proceed with a penalty in this chamber that is covered by 11(h), a penalty that would raise it into the area of criminal law as it is a fine or financial penalty so high and of such magnitude as to reflect society's concern, you cannot then prosecute that person in any future proceedings if reasonable grounds are found to bring any criminal charges.

That is a very important consideration as it relates to the nature of the fine or financial penalty that we are considering in this proceeding. I will produce the case law tomorrow when I know the position of the government on the fine.

The other concern that I have is that this proceeding, novel in nature — and you know what happens to novel proceedings when they get to the courts. They're appealed immediately before a judgment is entered, before the trial takes place, and then it goes up to the Court of Appeal. If it's truly novel and of national importance, then the Supreme Court of Canada will hear it many years down the road. The Prime Minister will be gone, the members of his staff will be gone and perhaps the Senate will be gone — I don't know — but it will be way down the road.

The example that I'd like to use is that of a disciplinary proceeding in a law society proceeding that would involve some matter dealing with the Senate. I know that there is a case, which I can use tomorrow, to illustrate the point, and that is you have a parallel criminal investigation going on when there is a disciplinary proceeding going on at the same time. The test is: How far over the line is the disciplinary proceeding to suggest that it's perhaps a preliminary inquiry?

That's what all of the case law shows. Go back to the Patricia Starr inquiry. Remember that case in Ontario? That was struck down as an inquiry because it crossed the line into being something that could be pursued in criminal proceedings.

• (2010)

And then you have several judgments made by the courts pertaining to law societies and disciplinary proceedings in which it was shown that again the principle applied that if there is any communication with the police in an ongoing criminal investigation, then that has crossed the line into a matter that should be addressed by the police.

Now, granted — I know what Senator Nolin is thinking right now, and I will head him off and I will admit it — in each one of those cases the reason why it was shut down was twofold: one, it was ultra vires the province, ultra vires the law society, in that the matter was considered to be in the exclusive jurisdiction of the Parliament of Canada and the exclusive responsibility of the police to investigate.

But why was it justified as ultra vires? Well, the courts said that the people being investigated in the disciplinary proceedings were not afforded the normal protections of the Criminal Code during the disciplinary proceeding. In other words, all of the protections that are afforded us under the Criminal Code of Canada — information that is personal, that some privileges are attached to it — are automatically available during the disciplinary hearing but would not be available to the police in the ongoing police investigation.

Why? Because we all know you can't get the telephone numbers of people you've called unless you have a warrant. It's called a "number recorder" warrant, section 492.2 of the Criminal Code — reasonable grounds to believe that a criminal offence has taken place. You can't search the records of an individual and probably cross over into the area of third-party privilege without the protections in the Criminal Code that we know of as it relates to warrants.

So those are my two major concerns in that, in this proceeding, we have brought in the investigators, the investigative forensic accountants who produced a report which we then decided should be sent to the police for investigation, as to whether or not they would figure that there was any criminality involved. There is that coordination between both the disciplinary proceeding, if we are to call it that, as the Leader of the Government claims it is, and that of an ongoing police investigation.

Now let me get to Senator Nolin. Senator Nolin has claimed that these senators, that the Charter does not apply to proceedings in the Parliament of Canada because of Parliamentary privilege.

Senator Nolin: Inherent privilege.

Senator Baker: Inherent privilege.

Senator Nolin: There's a distinction.

Senator Baker: Yes, there is. An inherent privilege is a privilege you have, that you don't have to be assigned in words, in law, but you have it. It's just like a superior court judge has inherent jurisdiction, whereas a provincial court judge does not, because the law says he doesn't have inherent jurisdiction.

Let me address that for a second, and I drew out just one case law, and it is *R. v. Basi*, 2009, Carswell B.C. 1503. This one addressed the question of whether or not the presumption of innocence applied. Paragraph 49:

I note that the parliamentary privilege is indeed constitutionally based. The arguments before me by the defence were in essence *Charter* based. The law is clear that the *Charter* does not trump another constitutionally entrenched principle. However, it is also important to note that innocence at stake is not a creation of the *Charter*. The presumption of innocence is of long standing.

Paragraph 59:

I am fortified in this conclusion by the decision of *Reference re Legislative Privilege*...

Ontario Court of Appeal. Paragraph 60:

Therefore, I conclude that the documentation that “is necessary to demonstrate the innocence” is not **within** the **scope** of **parliamentary** privilege.

A long-standing principle of the presumption of innocence in this particular context of this particular case.

So the question arises as to what is meant by that. And some of these at common law — and I will conclude very quickly if I could have just two more minutes. At common law we have the rules of natural justice and we have the doctrine of procedural fairness. We have it common law, every single right that is protected in our legal rights: fundamental justice, 7; 8, search and seizure; 9, arbitrary detention; 10, upon detention the right to be told why; 10(b), rights to counsel immediately; 11, if you are charged with a criminal offence; and 12, cruel and unusual punishment.

Senator Nolin: All criminal proceedings.

Senator Baker: Mr. Speaker, I looked at the case law, and I found them to refer back to a case that involved Parliament as to whether or not the Human Rights Act — which you know inside out and upside down, Mr. Speaker; you were the commissioner, you were the chair of such a commission for many years — applied within the gamut of parliamentary privilege.

I looked at the case. Here’s the lead case, it is called *Canada v. Vaid*, and look at the heading of the case. It says:

House of Commons and the Honourable Gilbert Parent Appellants v. Satnam Vaid and Canadian Human Rights Commission Respondents - and - Attorney General of Canada, the Honourable Senator Serge Joyal...

Well, I said to myself, Mr. Speaker, we’ve got that very senator, who is an expert in this, who is quoted in this judgment that goes into so much detail on whether or not a person’s human rights are protected here on Parliament Hill, and I think we should demand that he stand up and give us a recitation of people’s rights before this assembly.

The Hon. the Speaker: The Honourable Senator Joyal.

Hon. Serge Joyal: Thank you, Mr. Speaker. I’m always reluctant when the Senate sits in the evening, because we all have all kinds of commitments and obligations of a personal or public nature, but I never had an introduction like the one that Senator Baker made of me. It will remain in my memory for long.

Honourable senators, I would like to make three proposals to you. The first is the disciplinary power of the Senate or House of Commons, which is a privilege that we enjoy as a house of Parliament, confirmed by section 18 of the Constitution, which recognizes that the Senate and the House of Commons enjoy the same privileges. Okay? We are two legislative houses at par, insofar as privilege is concerned.

• (2020)

In 2003, I was made aware, as were any other senators on the other side — and I want to remind my colleague on the other side that the party of which I am a member was the government at that time. The Speaker of the House of Commons, who happened to be Mr. Gilbert Parent, was a Liberal, and the government was under the leadership of the Right Honourable Jean Chrétien.

The Speaker of the House of Commons dismissed his chauffeur on the basis that his job was superfluous, that he had somebody else. The name of the chauffeur was Satnam Vaid. He was of Pakistani origin. He claimed he was discriminated against. He went to the Canadian Human Rights Commission and filed a complaint, and the commission received the complaint and investigated it. Then he appealed to the human rights tribunal, a first level of appeal. He was happy with the decision because the tribunal upheld his complaint.

The Speaker appealed to the Federal Court of Appeal and court maintained the complaint of Mr. Vaid.

I remind you that there were five steps. The Speaker then went to the Supreme Court of Canada to contest that Mr. Vaid was validly exercising his human rights, because in the words of the Speaker of the House of Commons, the management of personnel was a privilege. In other words, the members of the House of Commons and the Speaker, like you, Mr. Speaker, in exercising what we call the management capacity of the personnel of the House of Commons, that responsibility was privileged. In other words, it was outside the control of the court.

Just to remind you of something, there are 5,000 employees on Parliament Hill; approximately 600 in the Senate, 2,000 in the House of Commons, plus the employees of the MPs. On the whole it amounts to about 5,000 employees.

The Speaker of the House of Commons was contending that the cook in the parliamentary restaurant was as much under the privilege of the Speaker as an MP — in other words, protected from the control of the court — and his human rights were no more protected by the court system than what we are doing today, trying to exercise discipline with three senators.

I personally thought, as a member of the Senate, that this was outrageous. I decided to go to the court and take sides against the Speaker of the House of Commons and convince the court that in exercising the privileges, it can't be at the expense of the respect of the human rights of a person.

The Chief Justice at that time framed the question that we had to debate in the court. When I thought that it would be advisable to go to the court, I said to myself, I am a member of a minority. I'm French speaking, and I should go to the court with another representative of a minority, because I thought it was very important for the Senate to affirm its preoccupation of protecting minority rights. I asked Senator Jaffer to join me in that procedure. I petitioned the court to be heard, and the court gave me permission. We prepared a factum of 25 pages that we tabled with the court. The court framed the question very clearly. I'm going to read it to you, honourable senators, because it addresses essentially the point that we are debating in relation to our three colleagues, Senators Wallin, Duffy and Brazeau. The question is the following:

Q. Is the *Canadian Human Rights Act*... constitutionally inapplicable as a consequence of parliamentary privilege to the House of Commons and its members with respect to parliamentary employment matters?

In other words, we could frame exactly the same question: Is the Canadian Human Rights Act constitutionally inapplicable as a consequence of parliamentary privilege to the Senate with respect to parliamentary discipline? It would be exactly the same framework.

Senator Nolin: It's not exactly the same.

Senator Joyal: We contended that the management of employees was not a privilege, and the court accepted, finally, that conclusion. I won't go into the details of it.

In course of the discussion around the privileges and the applicability of human rights, the court also came to consider the application of the Human Rights Act or the Charter in relation to the exercise of privileges. I want to quote the section of the court, *soit dit en passant*. I'm answering to Senator Nolin. The court made no distinction in its decision between inherent versus legislated privilege. I know Senator Nolin wanted to make a distinction. At paragraph 33 of the decision, it was quite clear that the court rebutted the decision of Justice Lamar in the former case. In other words, whatever is the source of privilege, inherent or legislated, the criteria are the same.

Senator Nolin: The justice was in the minority.

Senator Joyal: What did the court say in relation to the Charter and the Human Rights Act? The court said very clearly that Parliament has the privilege to discipline its members. It is an inherent privilege dating back from the beginning of Parliament.

You remember when I stood up here and said there are very important principles at the root of the existence of Parliament. One is to pick up the head of state and, remember, we discussed

that last spring; and a second important principle is that it is Parliament that will discipline its members and not the king and not the court, for obvious reasons. Each time a member would feel aggrieved because the honourable Speaker would not have recognized the person, the MP or the senator could go to court and take an injunction against a Speaker because the person was not recognized, and then we wouldn't be on endless debate.

The principle that the court doesn't intervene in our disciplinary responsibility is as tight as we as senators or members of Parliament don't intervene in the disciplinary functions of the courts, because the Chief Justice would discipline his or her judges as much as we would discipline our fellow colleagues.

That is a very important fundamental principle, and it is protected by section 18 of the Constitution. It has existed since 1867. As my friend said, it was in the original deal of the Constitution.

We have added a Charter to it, which is also part of the Constitution. When there is a section of the Constitution that seems to be at odds with the Charter, for instance, freedom of speech, what is the prevailing decision? Is it the Charter or is it the privilege?

That is a very important issue, because it is at stake in the situation of the condition of our three colleagues. In other words, when we exercise our disciplinary function, can they claim that we're not respecting the Canadian Human Rights Act or the Charter? In other words, how can we reconcile the Charter or the Canadian Human Rights Act in our disciplinary function?

In the *Vaid* case, the Supreme Court came to a conclusion on that, and I want to read it to you because I think it is of paramount importance for the future decisions of this chamber. I read it at paragraph 30: "One part of the Constitution cannot abrogate another part of the Constitution...." In other words, the privilege cannot abrogate the Charter, and the Charter cannot abrogate the privilege.

• (2030)

The court continues:

In matters of privilege, it would lie within the exclusive competence of the legislative assembly itself to consider compliance with human rights and civil liberties.

I will repeat that in French because I think there are little nuances between the two translations.

[...] une partie de la Constitution ne peut en abroger une autre [...] Sur des questions relevant de son privilège, l'assemblée législative aurait compétence exclusive pour déterminer si les droits de la personne et les libertés publiques ont été respectés.

In other words, the court states that we have to respect the Canadian Human Rights Act and the Charter, but the court will never intervene to tell us how to respect human rights or the Charter.

I would like to quote Justice McLachlin because I think she puts very clearly the challenge we have in relation to applying discipline. I quote:

Where apparent conflicts between different constitutional principles arise, the proper approach is not to resolve the conflict by subordinating one principle to the other, but rather to attempt to reconcile them.

In other words, honourable senators, when we apply discipline to any of our colleagues, we have to be mindful that they are still protected by the Canadian Human Rights Act and by the Charter, but it is up to us to define how we implement the values, the principles and the protection that all of us enjoy under the Canadian Human Rights Act or the Charter. This is very important.

Justice Lamer clearly established the importance of the principles of fundamental justice, because that is what this is all about. We have heard from Senator Segal, Senator Plett, Senator Nolin and, of course, from our three colleagues. Let me remind you what Chief Justice Lamer, as he then was, stated about the principles of fundamental justice. I quote:

The principles of fundamental justice are to be found in the basic tenets and principles not only of our judicial process but also of the other components of our legal system.

In other words, we are part of the legal system as much as any other body, and we have to respect those principles of fundamental justice, but no court can compel us to respect them. They are there. It's up to us to decide how we want to respect them.

The decision in the *Vaid* case was important because it concluded that privileges exist, but they exist not in negating the protection of the Canadian Human Rights Act or the Charter.

I was one of those from among you, with Senator Andreychuk, who participated in the drafting of the Conflict Of Interest Code for Senators. The Conflict of Interest Code is essentially under the same heading of disciplinary function. It's up to us to adopt a conflict of interest code and to determine a procedure to implement it, but, in so doing, we have to be mindful that we respect the principle of fundamental justice if there is an investigation or if there is an allegation that one of us is or was in conflict of interest and that triggers an investigation.

If you look at the Code, sections 44 and 45, you will notice there is a six-step procedure. When there is an allegation, the Senate Ethics Officer will look into it. Once he has looked into it, he will recommend whether there is to be an investigation. Once the

investigation is done, he tables his report here and, on the basis of that report, the Conflict of Interest Committee looks into it and may decide to take various steps.

I want to mention them to you to illustrate that — may I have five more minutes, honourable senators?

Hon. Senators: Agreed.

Senator Joyal: If you look at the Conflict of Interest Code, once the committee receives the report, then it can decide from among different courses of action. The committee can conduct another investigation on the basis of the report it received, if the committee finds or is of the conclusion that there are additional facts that should be taken into consideration. Then the committee can direct the Senate Ethics Officer to continue and refer the report back to the Senate.

In other words, we can ask the SEO to look further into the matter and come back with additional observations, and then on that basis the committee would recommend a course of action to the Senate.

I quote from paragraph 46(6) of the Code:

The Committee may recommend that the Senator be ordered to take specific action or be sanctioned.

In other words, as you can see, we have a procedure that is very refined, and not only is it refined, but the Honourable Senator Andreychuk, myself and the members of the committee are looking to improve that procedure. Among the elements that we want to improve are the sanctions. We want to have — I should not talk about that. Okay, I won't talk about it. I apologize, honourable senators.

I will just say that we want to improve it, which is an important preoccupation to make sure that the principles of fundamental justice are well respected.

The approach that we have put into our Conflict of Interest Code and that we are following, literally and in spirit, is not a procedure that we find with the Internal Economy Committee.

Once the decision of *Vaid* was made public in 2005, Senator Andreychuk and I came to the house, and Senator Andreychuk put a motion, which I'm going to read to you. I informed her that I would be reading the motion that she tabled in November 2006. Here is the issue:

That the Senate refer to the Standing Committee on Rules, Procedures and the Rights of Parliament the issue of developing a systematic process for the application of the Charter of Rights and Freedoms as it applies to the Senate of Canada.

Honourable senators, Senator Andreychuk tabled that motion three times because, at that time, we were in a short-lived parliament. I, myself, introduced a bill three times to improve the

system of disciplinary protection for the employees of Parliament. Three times, of course, the bill or the motion died on the Order Paper, but once we got a hearing after second reading by the Rules Committee and both of us, Senator Andreychuk and I, appeared at the committee. We testified at length as to why we thought there should be a formal process, a refined, step-by-step approach, with a bar of protection to be sure that the principles of fundamental justice be very well respected and protected when one of us or an employee of ours — for instance, at the table, they are also privileged positions, the clerks who sit at the table — and, as soon as there is a problem, we have a procedure.

Today we find ourselves in a difficult situation because we want to convince ourselves that the rule of law and those common law principles that have developed throughout the centuries in our system of Parliament would be respected in the context of our three colleagues and further colleagues, honourable senators. I don't want to scare anybody, but we are under an audit, and any one of us can find ourselves in a situation whereby he or she will have to explain their position and take proper steps.

• (2040)

We have to satisfy ourselves that we have the proper procedures so that nobody would feel, at least, that he is not protected by a process and a procedure that is fair, complete and comprehensive in respect of the rights that we have as individuals and as parliamentarians.

Honourable senators, I leave you with this. I know maybe our colleague and friend Senator Andreychuk will want to speak on this, but the matter was left unfinished, and I urge you, honourable senators, to learn from what we're living now. I hope that on both sides we will come to an agreement to move forward and to better protect the interests of the public, because at the end of it, this is what it is, and, of course, the interests of the institution per se. I know it's a complex issue, but I think that it is up to us to wrestle with it. I think there are solutions, and I think that with the goodwill that exists on both sides of the house on these matters, we could come forward and make sure that the interests of Canadians and the interests of this institution are well served.

Senator Andreychuk: Would Senator Joyal be asking to extend his time so that he would take some questions?

The Hon. the Speaker: I think he —

Senator Andreychuk: Agreed?

The Hon. the Speaker: — has already had time. I'm afraid, senator, that Senator Joyal has completed his extra five minutes.

Senator Andreychuk: Can we ask for another five?

Senator Cowan: Why don't you speak?

The Hon. the Speaker: Senator Segal, on debate.

Hon. Hugh Segal: I want to speak against the subamendment of Senator Fraser with respect to sending this matter back to the Internal Economy Committee, and in talking about why I think the Internal Economy Committee would be the wrong place to send this matter, I want to talk about some of the transcript items you have before you, which I think will make my case.

Let me thank Senator Joyal for reminding us that the applicability of the principles of natural justice and the Charter has not been completed with respect to the operations of our own disciplinary and other propositions. Our Government Leader in the Senate has dismissed what we're doing as nothing more than a disciplinary action, but we have heard from Senator Joyal that even a disciplinary action requires a basic due process and protection of principles of natural justice, which I argue do not exist in the motion with respect to Senator Wallin or with respect to the motions relative to Senator Duffy or Senator Brazeau.

I have no difficulty in any way, shape or form with our colleagues who served on that committee in the matters relating to Senator Wallin. I think they are upstanding colleagues; they did their best; they worked hard, but they were put in a very, very difficult situation. While I don't think that any member of that committee was guilty in any way of bias or unfairness, I think the net result of their activities and how they in fact ended up making various decisions produced the kind of result that would say to me the worst place to send this motion for consideration would be the Internal Economy Committee.

I want, first of all, to talk about the principle of peer review. I will be brief on this because I talked about it before. We all know how it works in the academic world. We all know how it works in other circumstances, but the notion that peer review is a way for one group of senators to judge the acuity in terms of expenditures of another group of senators strikes me as fundamentally flawed because we don't know what the relationship is between the senators on the committee and the senator being judged. We have no idea whether those relationships have been strong and cooperative and friendly, or whether there have been the kinds of normative animosities which will build up between people when they work together in institutions as intimate as this. And there is no requirement for any declaration of those matters such as when someone might recuse themselves or someone might say: "I'm too close with this senator; we've been friends for too long. I'm the wrong person to sit in judgment of that individual."

The other problem I think we have, and I think it emerges from the dynamic in the committee, relates to the relationship between Senate staff and the committee, and the relationship between the steering committee and the committee as a whole. This is not about people who are not doing their job. This is not about any element of bad faith at all. Quite the contrary: It's about a structural relationship that can end up, in many circumstances, being deeply and fundamentally flawed.

Let me go to the bottom of page 1 of the transcript for the meeting of the committee in Ottawa, Tuesday, August 13, 2013. Colleagues, you'll recall that the CBC, no doubt in good faith, ran with the story the night before, after the auditors had met with the committee — and I was present for that — alleging that members of Senator Wallin's staff had left the impression that there was fiddling of expenses. The CBC has since retracted the fiddling part of that story.

The next morning when the committee met, the chair was very decent in allowing me to put a question directly to the auditors upon the initiation of those discussions. I asked the question: Did you in fact come to that conclusion?

Let me quote Gary Timm, Partner, Financial Advisory, Deloitte:

First of all, I would just like to address the question that came. Two parts: One is that we also heard the “fiddling” comment, if you will. We also heard about falsifying expense reports. We want to deal with both of those, actually. One in terms of fiddling, as Alan —

— referring to his partner —

— said yesterday, none of the executive assistants ever indicated any of that to us in terms of fiddling with expense reports or anything like that. We spoke to you in our report and yesterday with respect to the Outlook calendars...

And colleagues will recall the allegations that ran in the newspapers about alleged implication around falsifying of documents.

As well, in terms of the comment that we heard, at least, of falsifying expense reports, the expense reports that we looked at were all maintained by Finance and we got copies of that from Finance and worked from that, so we have never commented on falsifying expense reports, either. Hopefully, that clarifies both those items.

That was the auditors responding to my question at the committee.

Senator Doyle said:

Will that be clarified with the press? Will that be done in a public way, because it is kind of serious allegations.

Senator Furey, who then took up the questioning, said:

There was some kind of periphery comment about the discussions with the assistants, so just to clarify the record, when you spoke to the assistants involved, did either of those ever indicate that any improper claims were being filed?

“No, not to my recollection,” said Alan Stewart, one of the partners working on the case.

And then the discussion continued with back and forth questions, and the auditors, who know nothing about how the Senate operates, I hasten to add, and have no experience in that — and why should they? They’re auditors. They have a life. They do not have to be aware of all the arcane practices in this place. But having said that, later on in the discussions I asked about what the final report would say, issued by the committee. I asked:

I just want to be clear with respect to page 3. I did not in any way suggest that we dilute, diminish, reduce or change the first paragraph on that page. I merely asked that, as the

allegation had been made that there had been fiddling of expenses, that we had on the record asked that to the auditors and they made it perfectly clear that they had no evidence of that from any source, nor was that anywhere in any place in their report, that we in fact put that line in —

— into the report of this committee.

There were various lines in the report that were not complementary, but there was this fact to which the auditors had attested in front of everybody on the record. I asked if that might be included in the report for all of us, for the media, for the country, to see.

• (2050)

The response from the committee was attenuated when a senior member of the Senate staff — she is named in the transcript, but I won’t mention her here; she was just trying to do her job — said:

... I want to say that I agree that the media reports about fiddling with the expense claims should be corrected. I think they should be corrected for a couple of reasons. It is important to Deloitte, and it is extremely important to the employees who are said to have talked about fiddling with expense claims, when they never did. I was in touch with all of these employees before they were interviewed to let them know that Deloitte was going to be contacting them.

Now, on page 14, Senator Furey said to that senior staff member:

You are not suggesting, Jill Anne, that we do anything with this report, are you?

God forbid a committee would change a draft report. If it’s a draft report, it’s so a committee can look at it, review it, and any senator around the table can ask about whether one line might be improved or changed or updated in some fashion.

Senator Tkachuk: Thank you, Senator Segal.

Senator Segal: I’m sorry, am I not allowed to speak?

Senator Tkachuk: No, I just said, “Thank you.” I liked what you said.

Senator Segal:

The Chair: Are you suggesting that it be done within the report?

The senior employee says:

Within the report.

Now listen to the citation of the chair:

The Chair: I do not think we should go there. I am sensing from the mood that we are not going to start responding to media comments on an ongoing basis. We would be doing it until tomorrow.

Senator Segal, hopelessly naïve:

Senator Segal: Just a point of order.

The Chair: I hear what you are saying. I take no issue whatsoever if George or I were to be asked a question, or if any of you were to be asked the question: Was there in fact fiddling? No. The auditors did in fact say we heard it and we can say that.

Senator Segal: My point of order is about the process we are involved with today. As this report by definition before us had to be written before night's meeting —

— with the auditors, i.e., before the committee had all the facts —

— to be fair we wouldn't have expected our staff and committee to be up all night, but are you saying that there is absolutely no amendment possible?

The Chair: No; I never said that. Please. Please don't go there.

Senator Segal: Fine. So when our senior staff advisor on the matter is trying to make a recommendation about what might be added and you cut her off —

— which is exactly what happened —

— am I not to conclude that there's been a decision made —

— somewhere else about the content of this report?

The Chair said, "No, I never said that. Please don't go there.

Colleagues, this indicates the problem with the Internal Economy Committee — good people trying to do an honourable job, caught up in trying to dispense justice when there is no due process. The lawyer could not ask questions the night before. He could not cross-examine the auditors in any way, shape or form. There was a rotation around a committee and every once in a while Senator Wallin got a minute-and-a-half, or two, or three to speak, on rotation. That is not any definition of due process.

So, the notion that my good friend Senator Fraser would suggest to us that we should be sending this motion back to the Internal Economy Committee strikes me as one that is not terribly constructive.

Let me say one final word, if I may. I think I still have a few minutes.

Colleagues, I don't think anybody on either side of this chamber is trying to be purposefully unfair, insensitive or ride roughshod over anybody's legitimate rights. It just happens to be the result of the motion that stands before us this evening with respect to Senator Wallin. Whatever the sanction ends up being, who knows, any sanction administered without due process, without Senator Cowan's special committee — and I'll talk to

that amendment when the time comes — will by definition deny those colleagues who are being alleged to have been guilty of spending infractions the opportunity to make their case, with counsel, to be cross-examined, and to have other people involved in the process cross-examined. That's what a responsive, due process circumstance means, particularly when the sanctions are so high. You have to have a due process that meets the test of the high sanctions that this motion would impose on our colleagues.

I therefore urge colleagues not to vote for Senator Fraser's subamendment, but to preserve the will to a better day and vote for Senator Cowan's main amendment when we come to that process. Thank you, colleagues.

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

An Hon. Senator: Question.

Hon. Terry M. Mercer: Honourable senators, I rise to speak in support of this motion by my colleague Senator Fraser, but in so doing I also wanted to make a comment or two on the closure motion that was put before us.

One of the best opportunities for debate in this chamber took place in June past when we all very vigorously debated on both sides on Bill C-377, the famous anti-labour bill that came as a private member's bill from a member of the House of Commons.

Senator Mitchell: The "screw-the-union" bill.

Senator Mercer: It's the anti-union bill, that's right.

At that time, we had a terrific debate back and forth. We had a lot of concerns on both sides about that bill. Some people were in favour of it; some people were not. We alleged that it was a government bill in disguise.

In the end, cooler heads prevailed. I think it was Senator Segal who proposed an amendment that basically neutered the bill — or Senator Ringuette, I can't remember who it was — and the proposal was passed, and we sent it back to the House of Commons with this amendment, which basically gutted the bill. Of course, in the interim, prorogation happened and guess what? It's back here.

I am concerned about the closure motion that was brought in here earlier because in fact the closure motion is on an item that Senator Carignan introduced as a private member, a private motion. It is not a government motion. They keep telling us that, but now he's bringing in closure. My concern is that when Bill C-377 comes up again and we have the debate all over again, or we try to have the debate all over again, that Senator Carignan or someone else can introduce a similar motion as to what we saw today and, bang, debate could be cut off and the arguments would not be made, and maybe this time we would not be able to gut the bill and send it back to the House of Commons as we did in June.

Senator Mitchell: Why wouldn't they do it?

Senator Mercer: That's a good question.

The other issue that came up in debate earlier, that I find very interesting, is that Senator Lang had a very interesting intervention when he talked about the fact that we were not debating the other items on the agenda. Well, Senator Lang, get them to call the other pieces of legislation and we will debate them.

For example, here we are, two weeks after the Speech from the Throne and nobody has moved the Speech from the Throne. I happen to have the speech sitting on my desk that I want to give on the Speech from the Throne, but I can't do it because it hasn't been moved. I'm certainly not moving it. It's not my Speech from the Throne.

Senator Lang and others, if you want to talk about other things, let's talk about other things. As we go through the Order Paper, just call the orders and move the motions or move the bills or whatever it is you want, and we'll be happy to talk about it, but don't go blaming us because it's not happening. Get some mirrors over there and you will find out where the problem is.

Honourable senators, I did want to read into the record a couple of emails that I received from people not just from Nova Scotia but from across the country.

• (2100)

Here's an email I received from an Albertan.

I am contacting you as a very concerned Albertan about the vote to take place in the Senate regarding Senators Duffy, Wallin and Brazeau. It is important for you to defend the laws of Canada and vote against the motion to suspend the above senators without pay or benefits, as the senators in question are not charged criminally, nor are they convicted of any crime. I am extremely appalled and disgusted at the lack of due process as proposed under the current motion before the Senate.

As an independent chamber of so-called sober second-thought, I respectfully request that notwithstanding the Prime Minister Harper's simplistic comments about his wishes regarding the punishment due Senators Duffy, Wallin and Brazeau, that you respect the spirit of Canadian laws and the Charter of Rights.

Your conscious needs to guide your decision. Please stand up for the Senate as an independent legislating body. Thank you for considering my comments.

I don't know where this woman lives in Alberta. Perhaps she lives in Prime Minister Harper's riding. It could very well be.

Senator Mitchell: A common sense Albertan.

Senator Mercer: There are lots of them.

Here is another one from somebody in Winnipeg, Mr. Speaker. It says:

I implore you to not blindly follow Prime Minister Harper down this politically expedient but slippery slope, and accord the trio of Senators Wallin/ Duffy/Brazeau their right to due process. Please have the courage to follow what is right, not what is dictated by the PMO.

Here is one from somebody in St. Catharines, Ontario.

Wallin, Duffy and Brazeau are not the only ones entitled to "Due Process" in this Senate spending scandal. We the taxpayers are entitled to witness this "Due Process" as well. That is the only way the average Canadian will learn not only the guilt or innocence of the 3 Senators, but also who else is involved in the whole mess, and what role they played.

Here is one from a gentleman from Burlington, Ontario.

I am sending this letter to all senators.... I believe that you, as Senators, may be the only people who can bring fairness and decency back into Canadian politics and am pleading with each of you to use your honoured position to do what is right in the upcoming vote later this week and in your continued duties as a Senator.

I do not support the three senators or any others who may have taken advantage of their possession for personal gain but I do believe strongly that everyone deserves a hearing before sentence is carried out. Any Canadian who isn't blindly partisan, and has half a brain, knows that this fiasco has resulted from pressure applied from the PMO and that this sudden concern about the subject expenses expressed by the PM arose only because they became public and embarrassing for him.

Here is a guy from Ottawa, Ontario:

The motion to suspend Senators Duffy, Wallin, and Brazeau without pay must be defeated. The motion is shockingly contemptuous of democracy and no Prime Minister should have the power to have irritants removed from the Senate for clearly political reasons. The transgressions of these three Senators should be dealt with in a clear and open manner. What we are witnessing now is a quiet a purge of political enemies.

This is from a woman from Montreal:

At a time when the political process is in such disarray, I am deeply impressed by the attempts of some Senators who recognize their role in the Senate as one of sober second thought, a crucial part of our parliamentary process. With an increasing number of Senators calling for due process I am heartened that there is still hope that Senators can go beyond partisan loyalties. I call on you and the Senators you speak to, to continue to search for a just and fair examination of the charges against any Senator who is accused.

This issue touches Canadians deeply and it's outcome is crucial to our considerations of a democratic Canada.

Here is somebody from Nova Scotia. They actually know what riding they live in. They live in Mr. Peter MacKay's riding because they say that they're from Central Nova.

As a citizen of Nova Scotia I am asking you to uphold the values of Nova Scotians and vote in favour of due process. To do otherwise is to set a very dangerous precedent for the future of the Senate, Senators and all who work as representatives of Canadians in our Government. Surely you realize that this time Stephen Harper has gone too far. Every Canadian at the work place has a right to be heard through the Courts or Labour Arbitration.

Here is someone from my hometown in Halifax.

I am writing you as a concerned Nova Scotia resident. I know your role is to represent Nova Scotian interests in the Senate and you have taken this responsibility seriously.

I thank them for that.

I am sure that the recent events of these past few weeks have not been easy for you and while I am disappointed in the behaviour of Mike Duffy, Pamela Wallin and Patrick Brazeau and feel they should be made to be accountable, I do not support the motion to suspend these Senators without due process. I urge you to take your responsibility as an arms length sober second thought chamber to make the right decision on behalf of Canadians and the integrity of the democratic process. It is time to stand up for the Canadian democratic process and have faith that in the end justice will prevail.

Honourable senators, the final one is from a gentleman who lives in British Columbia. When I read his email, I noticed he has a very unusual last name. I won't read it into the record. He has an unusual first name and an unusual last name. My wife and I were talking about it and realized that we probably went to high school with this guy. When I wrote him back I asked him if he was the one, and it turned out, as luck would have it, that he went to high school with my wife and I. He writes:

I have never written a Senator (nor do I pay much attention to the Senate's work).

However, I'm raging mad at the fiasco in the Senate, and more importantly that Senators would put partisan politics before your Oath of Office:

By the way, he then quotes our oath of office:

I, [name], 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.

[Senator Mercer]

He goes on:

There is no mention of serving any political party. There is nothing "Honorable" in jumping to take action on this situation, except that it serves the Prime Minister's personal agenda.

There are so many unanswered questions surrounding the PMO involvement that any action without fully knowing the facts would be an affront to democracy. A Kangaroo Court, A Lynch Mob.

Canadians want answers; not a rush to a vote.

This is not about party politics... it's about your personal integrity. It's about your ethics and morals.

He's addressing it to all of us, honourable senators.

Canadians are now paying attention and will know how you vote.

He thanks me again. That was a gentleman originally from Halifax but now lives in British Columbia.

Honourable senators, Canadians are watching, and are watching us very closely. Our friends in the media are making sure they know what's going on in here for the first time. We'd like to welcome them back after the debate is over, any day they can drop by. Debates are as much fun when we're not talking about — actually they're more fun when we're not talking about matters like this, but it's important that Canadians are watching us. They want to know that we are going to do our job, that we're going to stand up for due process and to give these three senators under the microscope the rights that should be afforded to every Canadian, and the rights that are guaranteed for us by the Constitution and by the Charter of Rights.

Honourable senators, I urge you to support Senator Fraser's motion and, as well, if we get to Senator Cowan's motion that we support that, and God help us if we get to the final motion that we vote against that.

The Hon. the Speaker *pro tempore*: On debate, Honourable Senator Nolin.

Hon. Pierre Claude Nolin: Honourable senators, I'll make brief comments. I oppose the subamendment of Senator Fraser. In doing so I want to address a few comments of my colleague Senator Baker. Senator Baker, you referred to *Wigglesworth*, and I think, to be fair for all my colleagues, that's an important issue because it refers to an RCMP officer who committed an assault and who could have been tried under the disciplinary code of the force, which took place, but who also was charged with assault in front of the criminal court. They pleaded double jeopardy. Guess what. It was ruled that.

• (2110)

The court said, and I'm quoting from the 2010 *Martin's Annual Criminal Code* — I think we both agree that it's a valid document:

An offence comes within the purview of s. 11(h) —

— double jeopardy —

— if either the proceedings are, by their very nature, criminal proceedings —

— which is not the case in this house now —

— or if the punishment invoked involved the imposition of true penal consequences.

That is, I think, the thrust of the decision. That's why Mr. Wigglesworth's argument of double jeopardy was not recognized.

[Translation]

I would now like to return to the *Vaid* decision. I agree with Senator Joyal on the fact that the *Vaid* decision has enhanced our understanding of parliamentary privilege. Senator Joyal will agree with me that the court allow me to first repeat what you said, that the Mr. Vaid in question was the chauffeur for the Speaker of the House of Commons arrived at the conclusion that not all employees of the House of Commons or a parliamentary assembly, to which Senator Joyal referred, must benefit from the protection, but that it certainly does apply to those not required for the exercise of privilege.

That is why officers at our table, and we ourselves, are not covered by the *Vaid* decision at all. The *Vaid* decision covers the driver, of course, of the Speaker of the House of Commons, the dishwashers, maintenance people and the vast majority of our employees; but not the employees who have a function connected to the necessity of the parliamentary function of the chamber.

Senator Joyal, I wanted to make this small nuance, which I believe to be extremely important because the Court recognized the notion of necessity; which is what was missing in the legal framework. It was introduced in 2005. However, there is agreement: the members of a chamber are not protected by the Supreme Court's decision in *Vaid*. I assume that my colleague may have something more to say, unless you have questions.

[English]

Senator Baker: He's absolutely correct on the judgment.

Senator Nolin: Good.

Senator Baker: And let me also say in defence of Senator Nolin, when he stood yesterday and he gave the example of *New Brunswick Broadcasting Co.* as illustration where section 2 of the Charter was ruled not to apply, he was absolutely correct. But that involved somebody in the gallery trying to take pictures of what was going on in the New Brunswick legislature at the time.

I say "in his defence," because I think all we sort of destroyed the argument, but he was absolutely correct, in his defence.

Now, he's quoted *Wigglesworth* correctly, Mr. Speaker, and I know you know this case, because you taught this in law school.

I would give you the paragraph, the significance of that case, is not the decision that was taken in *Wigglesworth*, but the following — and I'm quoting Supreme Court of Canada *R. v. Shubley*, 1990 Carswell Ontario 75, paragraph 39. Here it is, Mr. Speaker, and you know what's coming:

I turn then to the second situation in which the application of s. 11(h) of the Charter may apply. Does the punishment involved in... disciplinary proceedings involve the imposition of **true penal consequences**?

As Senator Nolin mentioned. I continue:

One must first examine what constitutes a true penal consequence. Wilson J. provides the answer in *Wigglesworth*. After stating that persons charged with private or domestic matters may nevertheless possess s. 11 rights because the proceedings involve the imposition of "**true penal consequences**", she explains what she means by that term, at p. 561:

In my opinion, a true penal consequence which would attract the application of s. 11 is imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline ...

That's the point, Mr. Speaker. It is the definition of that, and I'm just asking Senator Nolin, whom I have agreed with right throughout this entire proceeding, whether he would agree with Madam Justice Wilson in that determination.

Senator Nolin: Well, Senator Baker, let's be honest and fair for justice.

Senator Baker: Yes.

Senator Nolin: Okay? Here is what Martin's, edition 2010, is saying about that. This is *Shubley*:

... it was held that there was no violation of s. 11(h) where the accused was charged with assault although he had previously been subject to prison disciplinary proceeding for the same act. The prison disciplinary proceedings to which the accused was subjected were neither by their very nature criminal proceedings or proceedings involving the imposition of true penal consequences and therefore the accused had not been previously found guilty or punished for an offence within the meaning of s. 11(h).

Senator Baker, let's come back to what we have in front of us. We have three motions based on the disciplinary role of a Parliamentary institution, which is the Senate — nothing to do with criminal consequences or based on any criminal act. It's for someone else to decide that, not us.

That's not what we're asked and that's not what Senator Carignan is asking us. That's why double jeopardy here does not apply.

Senator Baker: Would the honourable senator, though, not agree that, yes, in fact, 11(h) would not apply to this present proceeding, but the fine of this magnitude would trigger 11(h) in a future criminal proceeding if, in fact, it took place?

In other words, if this is lifted because of the definition of "true penal consequences" so that 11(h) applied, then it would foreclose a future double jeopardy proceeding if, in fact, the police found reasonable grounds to prosecute. Would he not agree?

Senator Nolin: No, I do not agree.

Well, I will use the same decision, Senator Baker: Mr. — because I presume it's a gentleman — Shubley was in prison twice for the same act. They decided it was not double jeopardy — in prison, not fined. The court is saying that the prison disciplinary proceedings to which the accused was subjected were neither by their very nature criminal proceedings nor proceedings involving the imposition of true penal consequences. There's the answer.

So of course my comment to yours is no.

• (2120)

Senator Baker: One final question, if I could. At paragraph 40 of that case, it says as follows: "In this case" — speaking of the *Shubley* case — "the internal disciplinary proceeding involved neither fines nor imprisonment."

Paragraph 40. I have the case. You have the citations. This is the Supreme Court of Canada.

Senator Nolin: Okay.

Senator Baker: Anyway, I rest my case. I'm not saying he's wrong, Mr. Speaker, as you know. I'm just saying we have a difference of opinion on the matter.

Senator Nolin: On the fine print.

Senator Baker: On the fine print.

[Translation]

Senator Joyal: The honorable senator raised a point I entirely agree with: employees of Parliament or employees of the Senate who are not subject to privilege, for example the clerks at the table, are directly protected by the system established under the Canadian Human Rights Act and the Charter. That was the purpose of my intervention at the Supreme Court, and the Supreme Court stated this in a unanimous decision; I would also remind you, honorable senators, of *New Brunswick Broadcasting Co. v. New Brunswick (Attorney General)*; those were split decisions. Also, in *Vaid*, the Supreme Court clearly established, in my opinion, the parameters specifically distinguishing people who are not protected by parliamentary privilege from those who are.

[Senator Nolin]

What the Court said, I think — and I mentioned this before the Committee on Rules, Procedures and the Rights of Parliament on May 13, 2008.

[English]

I quote what I said at that time on the *Vaid* decision and what the court stated in relation to the privilege position. I insist on the privilege position.

... the Supreme Court clearly stated that it is up to Parliament to decide upon the regime it wants to protect employees of Parliaments who are privileged, that is, employees directly connected with the legislative and deliberative functions of Parliament.

The court never stated that those employees don't have human rights. They never said that they don't have the capacity to defend themselves. What the court stated is that there is no specific procedure that exists, that should exist. Senator Andreychuk, in her wisdom, at that time joined with me to make the other members aware that we should take the initiative to establish that procedure, to make sure that the human rights protection exists. It doesn't mean that you lose your human rights when you are a senator or you are an employee or an officer of Parliament, an officer at the table, for instance. That's essentially the gist, in my opinion, of what is useful in that decision for the future of our attitudes and decisions in relation to employees that are privileged.

[Translation]

Senator Nolin: Senator Joyal, I have no problem with your conclusion, your argument of jurisprudence, or your legal opinion. My goal was to establish a clear distinction between employees who are not essential to the effective discharge of parliamentary duties — as the Court said — and the employees who are.

I would push this reasoning one step further: this is why we need to have the Committee on Rules, Procedures and the Rights of Parliament address this issue. Are senators employees of the Senate? In my opinion, no, they are not. Our employees — you have three here, we have our pages — are employees of the Senate. However, that is not the issue right now. I think the question is, rather, whether this chamber, in exercising its privileges, is subject to judicial review. The answer is no, absolutely not. A judicial review would mean that the Court would interfere in our decisions. All that the Court could do — as I told you in previous interventions — is consider whether the Senate has this privilege, and if the answer is yes, is it essential to the Senate's ability to discharge its duties; if so, the Court should then stop concerning itself with how we manage that privilege. Senator Joyal, I agree with you.

[English]

The Hon. the Speaker pro tempore: Honourable Senator Nolin, your time has expired, but Honourable Senator Moore wished to pose a question to you. Are you prepared to ask for more time?

[Translation]

Senator Nolin: With pleasure.

[English]

Hon. Wilfred P. Moore: Thank you, Speaker; and thank you, Senator Nolin.

I was listening earlier to Senator Joyal when he was speaking about the ethics committee, and I think he said they had six steps when a matter is being brought to their attention, being investigated. I think they said the fourth step would be investigation by the committee.

Do you think that the person being investigated should be permitted to be at that committee with her or his counsel?

Senator Nolin: Senator, I'm not privy to the operation of that committee, which operates in a fashion that we have accepted from day one without us being part of that. So I would probably take your question and I will need to reflect on it before giving you a proper answer. I don't know.

Senator Moore: Maybe I can help you get a little more focused.

If you, Senator Nolin, were the person being investigated, would you not like to be able to go before that committee and have your legal counsel with you?

[Translation]

Senator Nolin: I would ask to be heard, of course, and I believe the committee would agree to listen. Would I ask to have a lawyer present? I would ask permission and it would be up to the committee to decide. I would defer to the parliamentary committee's decision.

[English]

Senator Moore: I think you said that you would prefer to have legal counsel with you, all of which, to me, points out your unstated agreement to due process.

[Translation]

Senator Nolin: Senator Moore, I nearly caught you in my trap, and here is why: when Senator Wallin went before the Internal Economy Committee on August 12, she was accompanied by her lawyer.

Senator Segal: Who was not allowed to speak.

Senator Nolin: She was accompanied by her lawyer.

Senator Segal: Who was not allowed to speak.

Senator Nolin: That is because our procedures do not allow...

Senator Segal: Oh!

Senator Nolin:...for anyone other than a senator to speak.

Senator Segal: That is the problem.

Senator Nolin: It is not a problem, it is our privilege in action.

[English]

So, Senator Moore, to be assisted and advised by counsel, that's one thing; to have a lawyer to be part of the proceeding, that's something else.

Senator Moore: Are you suggesting that it is due process for a person being investigated to appear before a committee, have her or his counsel on side, but that person, that counsel, not be permitted to do his or her usual job and look after the interests and to advocate on behalf of the client? I don't think you meant that. Did you, senator?

[Translation]

Senator Nolin: It is a question of parliamentary procedure. To my knowledge, the last time I checked, parliamentary procedure sets out that only parliamentarians may speak, or witnesses, if they are invited to speak. I do not see why a lawyer would participate in a parliamentary activity and use the adversarial approach found in a court, given that it is not a court. It is a parliamentary committee. I see a clear distinction between parliamentary and legal activities.

We can use the term "investigated", but I do not think that renders it well. The Internal Economy Committee examined how three senators used their budgets and how they claimed expenses. I think that is a very important nuance compared to a criminal legal approach that involves questioning the actions of an individual.

• (2130)

[English]

Hon. Don Meredith: Mr. Speaker, I wanted to add my comments to this debate. However, I also wanted to direct a question to Senator Nolin, if I could.

I know his time has expired, however he spoke about peer review. Senator Joyal spoke about the absence of a fair, complete and comprehensive process.

The thing that disturbs me here is that we have not answered the fundamental question. We understand that our colleagues have broken the rules. We understand that we have to make a decision here. One of the things that always comes to mind is how do we do this in a fair manner? The Bible talks about judge not, lest ye be judged. How do we look at ourselves and say that we are going to administer some consequences? Clearly, without all the facts — and things keep coming in on a daily basis, which disturb me, frankly — we cannot. Every hour, on the hour, things keep shifting, and that's quite troubling.

One of the things in terms of this process that I'm trying to understand is, in light of all the jurists, as my good friend Senator Baker states, you've deliberated, you've seen similar cases. My own personal opinion is that we not rush to judgment. However, there is a condition that is placed on us as senators in this

chamber to make a decision. I have a problem with how we come to that decision. I have a problem about the processes and the steps that we will take to arrive at the decisions that will again uplift the reputation of this chamber, as well as the Canadians that we're here to serve.

My contemplation and consistent approach to this is how do we gain consensus here on the right thing to do? We've got sub-motions before us, we've got motions and counter-motions, but we hear from Senator Fraser that we should support her motion to send the matter back to the steering committee. Then we have the others on this side that say, no, we should not support such a motion. I am somewhat conflicted as to how we proceed.

The fundamental question to me is how do we do this in an equitable and fair manner to ensure that justice is done? My esteemed colleague, Senator Nolin, speaks to us of double jeopardy and not rushing to judgment or, if we do rush to judgment and we pass judgment here, what happens in an RCMP investigation? What happens down the road? What happens to the emotional and economic state of my colleagues who sat on this side, who stood here, defended the interests of government, yet they find themselves on the other side? There go I but for the grace of God. How do we then justify that? How do we then ensure that we are ensuring that the respectability of all of us does not come into question when we face the general public after we make our decisions here and the votes that will come on behalf of our colleagues? I don't know.

Senator Joyal, I was moved by the fact that you talked about the absence of a fair, complete and comprehensive set of guidelines that we must adhere to.

Honourable senators, tonight I've sat here and listened carefully and I've tried to understand the processes that we have to go through. It is not an easy situation that we find ourselves in, but we have to do the right thing. We have to do the most righteous thing in the sight of not only the public but in the sight of almighty God.

Some Hon. Senators: Hear, hear.

Senator Meredith: Tonight I still, as I said, just wanted to lend my voice in terms of a question, and my question to Senator Joyal or Senator Nolin would have been: How do we do this? How do we administer justice with mercy? How do we do this to ensure that we impact positively on these, our colleagues? How do we do this righteously? Thank you.

Hon. A. Raynell Andreychuk: I want to thank Senator Joyal for putting the *Vaid* case on the record, but I wanted to just fill in a few of the gaps.

Our decision around *Vaid* was how far does parliamentary privilege go? Is it every employee on the Hill, the some 5,000? In the *Vaid* case, which you supported very strongly, and we appreciate that, we defined parliamentary privilege as that which is the essence of why we're here and why we've had the privilege in the first place, and I'm not going to go over that. Honourable senators know that.

What our concern was is that there were employees here that probably were not covered by parliamentary privilege, like the table officers, et cetera. These others work here, and it's a grey area. The concern was that we have a responsibility to these employees to ensure that they are dealt with fairly because you couldn't reach the Charter or the Human Rights Code directly, it was through a process we put here. That is why I had the motions to ensure that we as senators, we as parliamentarians, take our responsibilities to the employees here seriously and fairly, and the word was "fairly." We knew that it doesn't apply directly. How do we put in some system equivalent to what they may get in court, may get in other tribunals, which they couldn't reach for here? I still think there's still some grey area that we can work on and should work on.

That's why two motions went to the Rules Committee, they did not pick up the hearings, we testified once. And the third time that motion died here. I think it's timely that we resurrect and think about those employees.

The concern at that time was that parliamentarians are really in a position of authority over these employees and that they weren't getting a fair process. It was not a discussion about parliamentarians to parliamentarians. It was parliamentarians and their staff. Speaker Parent had a particular position of authority with respect to the chauffeur. Could he invoke parliamentary privilege or could he not? That really was the essence of the case.

Honourable senators, when I came here I knew I would be judged by my peers and I hoped I would be judged fairly. My difficulty is that we didn't work in a Committee of the Whole. We have an Internal Economy Committee that actually set a process in place, whether we agree it was the best process or the most appropriate process, it was a process which they deemed fair. I heard in this chamber "we deemed fair."

It is another question that two senators have put in amendments to talk about the disciplinary measures, but not to revisit whether disciplinary measures should be invoked. I thought we had allowed that committee to set a process, and I heard from Senator Cowan and others that they did their job. They did their job, and it is not a due process model; it is a fairness model within Parliament.

If we were to allow lawyers to speak on behalf of their clients here, it isn't peer evaluation then. Lawyers are to instruct and help. The average citizen does not get the protections that we can govern inside this chamber. It is one of great caution that we should exercise, and we should not be cavalier about it. We should be very thoughtful about it, and that's what I've heard that our committee that we delegated to did.

• (2140)

Some people are questioning whether that committee did its job appropriately, whether it was a fair process. That, to me, seems to be appealing the committee, not talking about disciplinary measures. I think we should judge whether we should send something to a committee or whether we do it here on the floor of

the Senate, but to reopen the entire inquiry is a totally different matter, and it would undermine the confidence of the committee, which I personally do not want to do at this time.

The Hon. the Speaker: Questions and comments.

Senator Segal: I just want to be clear, because I think she spoke, as she always does, eloquently and forthrightly, that in her view peer review is, in fact, a far better way of determining either the facts or whether an infraction has taken place than a review that is based on due process. I accept her judgment — there are different models — but I would like her distinguished opinion on whether peer review is the way to proceed as opposed to due process, involving lawyers who are allowed to talk and not be potted plants.

Senator Andreychuk: I didn't think a peer examination of our expenses was a court process, an investigative process in the sense that you might think of in a criminal court. I took it that, under our Rules, we're responsible for each other's behaviour and that we delegate down to Internal Economy to examine all of our reports, all of our expenses, all of our conduct and, if we have something that we think is lacking in that process, we should address it generically. I've been judged by the same group. You're being judged by the same group. We are all judged by that group, and by the process we put in place.

I just want to correct something about the Conflict of Interest. We put in a process after many years of not having a Conflict of Interest. It was a compromise process. While I think we shouldn't talk about what goes on in the committee at the moment, we publicly stated in the Conflict of Interest Committee that we are constantly reviewing the procedures to ensure that they are up to date, timely, and what the public can expect from us in our self-scrutiny.

I would expect the same thing to happen in Internal Economy and, unless you tell me that for some reason they didn't do their job, I have difficulty not accepting that they were delegated by us to sit on that committee to speak for us and, unless I find that they didn't do their job — and I'm putting that "doing their job" generically out there — I have trouble trying to overrule them or appeal them here. I want to concentrate on the disciplinary measures, whether they're appropriate and fair, and what process we should use.

Senator Segal: I have a supplementary question for my colleague Senator Andreychuk.

Accepting her premise that even a peer review process can be improved and we should always be looking at ways to improve it, we are faced with sentencing motions based on that process, which impose the largest sanctions in the history of this institution, and we're going to say to the people on whose lives we are imposing those sanctions, "Sorry, we'll make this process better in the future. Unfortunately, your reputation and your livelihood cannot be affected by those improvements." Is that where you're taking us, senator?

Senator Andreychuk: Senator Segal, you are putting words in my mouth that don't belong there. What I said was I'm presuming it was a fair process, and you'll have to convince me that it wasn't,

because the committee came back and made certain findings to us. But I'm not going to sit there and say it's there forever. I don't know what the world will be like tomorrow and what we should be doing, so we should be self-evaluating all the time like the courts do. No process in court has been etched in stone. It constantly evolves. That doesn't mean the judgments the court made are inappropriate. They make them according to the rules of the time, according to the practices, and that's what we did.

I also dispute that it is a sentencing we're in here. We are looking at disciplinary measures. If any senator is found wanting, we should make sure that there is some on behalf of the public interest.

The words that drive me are "public interest," the public we're here to serve. I think we should be concerned about the senators and we should be concerned about the institution, but we should also be concerned about the public and the trust that they have put in us. I want to be sure that I weigh all of those competing interests in some cases, complementary interests in others.

It is a very difficult, emotional thing to have to stand here and judge peers, but I have done it in a university setting; I have done it in a judicial setting; and I've done it in a legal setting; and I'm being asked to do the same thing here. Not an easy task; a difficult task, a very onerous task, and one I wish I didn't have to do, but it is my responsibility on behalf of the people to do it to the best of my ability. That's all I can do.

Senator Segal: I have a supplementary question, Mr. Speaker. Could I do that?

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

Senator Andreychuk: Yes.

Senator Segal: I just want to draw my colleague's attention to something which she has probably read many times and knows better than myself, but the famous Ontario report by Mr. Justice McRuer in the 1960s which said that every administrative and disciplinary activity must be open to appeal.

You made reference to appeal in your thoughtful answer to my last question. There is no appeal from this motion imposing the sanctions. Does that cause my colleague any pangs of conscience at all?

Senator Andreychuk: I don't think it's a question of pangs of conscience. I think you should not say that I don't have a conscience.

Senator Segal: I did not suggest that.

Senator Andreychuk: I am trying to say to you that a committee took an external audit and took a lot of time. What are we to question about the unfairness of what they did when, in fact, they have brought the report to us? If you feel that it was unjust and you want an appeal, then I guess that's an amendment, but I don't

hear that here. I hear that there were some conclusions drawn by the Internal Economy Committee which then leads you to disciplinary measures and that's what I'm trying to debate now. I don't do it easily. I'm not sure that I'm going to sleep well. I haven't for months on end, and I don't think I will again.

It is not just the three motions and the subject matter. We are all being judged. It is with a very heavy heart when any one of us has to come through this scrutiny. It's not easy, but I don't think any one of us is sleeping well now, not just the three involved. I think each one of us goes home wondering, "How? Why? What do we do next?" I think it's a struggle. It's not so easy.

Hon. Mobina S. B. Jaffer: Senator Andreychuk, you have spoken very eloquently, and everyone in this chamber certainly respects the experience you've brought.

I am with you completely when you say the committee did a very good job. I said that yesterday. I believe the committee did the best job with everything that was available to them, and we commend them for their work.

Where I have challenges — and you are a very fair person — the committee made the decision that they have to pay back the money, which they have or are in the process of paying back, and this would be referred to the RCMP.

You used to be a judge. Once you made that decision, you wouldn't revisit and give another penalty. That's where we are having the challenge, in that the decision had been made by a committee that all of us here respect, and what we are saying is let that process finish, and then there is a triggering event. In case there are charges laid, this will come back to us and then we can deal with it.

You are a very fair person. You really commended the work of the committee. Why are we not respecting the decision of the committee?

Senator Andreychuk: We are absolutely, if we go through the process we're going through now, respecting the committee. The committee could have put a lot more forward. They brought to us the fact that they recommended a RCMP investigation, but they did not say, "Do not move in any other direction."

• (2150)

We have a responsibility on disciplinary measures. The committee turned over a perhaps criminal matter to clear the air. I have no idea whether any one of my colleagues should be subject to a criminal prosecution; that's not for us to decide.

What I think the committee did — and they can speak for themselves — they referred the matter to the RCMP. They did not say, "No disciplinary measures." That is our responsibility in this chamber as a whole. I do not see a contradiction. I see in many other processes that you can have two ongoing actions.

I am not going to second-guess why the committee did what it did to the extent it did. I'm saying that I don't think they precluded our responsibility to look at disciplinary measures, and

so I think the debate should not be revisiting and reopening the issue but looking at the appropriateness of the measure.

Senator Jaffer: I have a supplementary question.

The Hon. the Speaker *pro tempore*: Honourable Senator Jaffer, before you put your question, Honourable Senator Andreychuk, your time has expired. There are a number of honourable senators who wish to pose questions. Are you prepared to ask for an extension of time?

Senator Andreychuk: Yes.

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

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: Honourable Senator Cowan has been rising. Senator Cowan, did you wish to pose a question?

Senator Jaffer: I have a supplementary question, if I may.

Senator Andreychuk, when the Senator Duffy and Senator Brazeau reports came to us in May, or whatever date it was, and if we had issues, that was the time we should have looked at this. We accepted those reports.

In August — I understand we weren't here — but we accepted Senator Wallin's report. Especially for Duffy and Brazeau, we accepted those reports, which gave them the indication that that is the penalty and they proceeded. They cooperated with Internal Economy and with the RCMP, and now, suddenly, out of the blue, we as a chamber say, "No, now we are going to look at further penalties." As a judge would you have ever done that?

Senator Andreychuk: I never had that decision to make. It's unfair to say to me, "as a judge." You know exactly what happens in a courtroom, Senator Jaffer. It is not equivalent, so please do not do that.

In here, we file a report. If we acted immediately, we might have said that we were being precipitous. Now we have taken longer to really think about it, to spend a difficult summer thinking about it, and now you're saying it's too late. I guess we have to decide what's fair collectively.

Senator Meredith appealed to all of us to think very carefully; I'm responding to that. Let's think very carefully: What is in the best interests of the institution, of the individuals, of the collective senators and particularly of the people who put us in this very important position of trust?

Hon. John D. Wallace: Senator Andreychuk, would you accept a question?

Senator Andreychuk: Yes.

[Senator Andreychuk]

Senator Wallace: Colleagues, we have heard from Senator Carignan and others that this chamber and our committees, in particular the Internal Economy Committee, have the authority to establish their own process, and they're not necessarily bound by something that would replicate due process.

An Hon. Senator: Oh, oh!

Senator Wallace: Do you want the floor?

I raise that because, despite that, I think all of us have a sense that the process must be fair in this chamber and that it must be fair — however we might define that; it might mean different things to different people — in committee.

I would like to go back for a moment to remind all of us of the comments that were made by Senator Segal when he raised the issue of what role counsel can play and how counsel can represent the position of any one of our colleagues who find themselves facing disciplinary matters, such as those we are now involved with. I think that's an extremely important point.

I heard some reference as to limits on what counsel could do and what involvement they could have in a hearing of Internal Economy, and I'm wondering, Senator Andreychuk, by comparison, we do have — and this has been alluded to before — section 44(11) in our Conflict of Interest Code, under the heading of Inquiries and Investigations. I know this is a section you are familiar with, but I will read it briefly:

The Senate Ethics Officer shall conduct a confidential inquiry as promptly as the circumstances permit, provided that at all appropriate stages throughout the inquiry the Senate Ethics Officer shall give the Senator a reasonable opportunity to be present and to make representations to the Senate Ethics Officer in writing or in person, by counsel or by any other representative.

My question to you, Senator Andreychuk, is: What limits, if any, are there in the involvement of counsel when a matter is before the Ethics Officer? I would be interested to hear that so as to compare it to what we've heard with proceedings in our Committee of Internal Economy.

Senator Andreychuk: I don't think that has been tested, senator. I think the Conflict of Interest Code is a very specific code with instructions, but there are still discretions. I don't think that has been tested, so I can't answer your question.

What I can say is that the members of Internal Economy are the people who should ask, "Did they put in and institute a process that's fair for the review of expenses?" which, in essence, this was. It led to findings and now the disciplinary measures.

The Conflict of Interest Code is a different code, a different process, and if you want to say they should be the same, with respect, I disagree. I think if you look, there are different measures for internal assessments.

I've been part of the Public Service Commission, as some of you have. I've been in a provincial system and the federal system. I've been in the judicial system. Each one has a different process, and each one has to withstand the test of fairness.

I go back to saying that I am not going to second-guess the Internal Economy Committee when it set its process. If I were there, would it have been different? Probably. With the way that I'm rather aggressive on these issues, it might have been. Does it make it any better? I don't know. I cannot second-guess my colleagues. They were put in that position by us, and I have to stand by what they did, unless this chamber says they didn't do their job.

In the code of conduct, we will see when we have a case tested what the limits of counsel are and what the limits of fairness are. That's why I say that Senator Joyal and I and the other members of the committee are constantly thinking ahead and looking at other codes to see if we have similar, fair processes.

Ultimately, I think you will have to make the decision as to whether you think that Internal Economy created a fair enough process upon which we can move. I think it's an individual decision that each one of us has to make, and I don't think there is an easy way out. I don't think there is a formula. I do not think it is a judgment call that we are obligated to make.

Hon. James S. Cowan (Leader of the Opposition): I listened with care, as I always do, to what Senator Andreychuk had to say. She was implying, I think, that some of us, at least, were being critical and lacked some confidence in the work done by the Internal Economy Committee. I don't think that's the case. Some people may feel that way, but certainly, as I think I've made it clear many times, that's not my problem.

My comment is that both the previous Chair of Internal Economy and the present Chair of Internal Economy have made it clear in this chamber and beyond that it would be outside their mandate to have imposed the kinds of penalties that we are talking about imposing here today.

• (2200)

My question is: Do you agree with them, or do you stand by your position?

Senator Andreychuk: Senator Cowan, first of all, I would like to thank you. You clarified last week for me that you had confidence in the committee. That's very reassuring to receive, as I respect your position as a leader, but also in your own personal capacity. That was very helpful.

I think the Internal Economy Committee could have recommended disciplinary measures to us, or not. That is their choice. The issue of who imposes any disciplinary measure is in this chamber, so whether they did or did not, it might have been helpful if they had given us recommendations. They felt, as I understand your phraseology, that they did not. Perhaps they thought they could not, but nonetheless, that doesn't relieve us of the responsibility of determining whether we, as a chamber, want to take any type of action.

Senator Cowan: I absolutely agree with you. My point is that both Senator Tkachuk and Senator Comeau have made it clear that in their view, and I assume they're speaking on behalf of the committee, the committee went as far as they felt they could within their mandate. I commend them for the work that they did

and I think that most of us in this chamber do. It was very difficult for them, and I think they handled a very difficult situation entirely appropriately.

The point of all of this discussion, Senator Andreychuk, is not to revisit or appeal the work that they did but to say having that work and accepting, as we did, at least, with respect to Senators Brazeau and Duffy, where we were. Senator Wallin is a different case, and I accept Senator Segal's points on this.

But, accepting that, we build on that, and the issue before the house — nobody is saying some other committee should be doing it. The buck stops here. At the end of the day, we have to make the decision. The only argument that those of us on this side have is as to the process that gets us to the point where we have to deal with that final point. That's the issue.

The issue is not whether Internal Economy did or did not do its duty. I think that most of us believe they did. The issue is: Can we leap from there to where Senator Carignan would take us now? I would submit that we would not, and I would ask for your comment on that.

Senator Andreychuk: I have yet to hear from everybody before I finally make up my mind about the appropriate action that I, in this chamber, should take.

Senator Carignan has put in some measures and has invited us to determine some disciplinary measures, and he's described which ones. It is for our debate to determine whether we take measures or not.

The only thing on which I would disagree with you is that there have been many comments made in the last number of days in this chamber questioning what the committee did, and I'm pleased to see that we will debate whether or not disciplinary measures should be taken.

Senator Cowan: Most of my colleagues have spoken on this issue and expressed their views. As I said, on this side, this is a free vote. Everybody will have to search their own consciences in order to make their decision. I hope you will encourage your colleagues, most of whom have not spoken, to share their views with us in the course of this debate.

Senator Andreychuk: I think we can encourage them, but they have the right to determine their decision in their own way. There's no obligation to stand up and speak here. You can invite them; I can invite them. There have been many debates, I'm sure, many reflections, and the fact that some have not spoken here should not be used against them.

Senator Cowan: I, for one, would encourage them to do it because I would like to hear what they have to say.

Senator Andreychuk: Fair enough.

The Hon. the Speaker: Continuing debate. The question is the motion in amendment. Are honourable senators ready for the question?

[Senator Cowan]

Hon. David P. Smith: I had intended to ask Senator Andreychuk a question, but seeing as that time is up, what concerns me is that you said that you felt it was a fair process. To be fair, members of that committee from both sides felt it was.

But given the dramatic severity of the penalties that have been proposed coming from that, I think, boy, if that's what they're really talking about, I would have liked to have seen the situation where at least those three persons were able to have counsel beside them and ask questions of those providing evidence that they had broken rules when they felt they hadn't.

It is not too late. I'm not saying anybody isn't acting in good faith, but with the consequences of these dramatic, severe penalties, I would like to see due process whereby we send Senator Cowan's motion to a committee so that that can happen. As to what happens as a result of that, time will tell.

I like to have — I have used this phrase before — an ethical compass as to how we go about dealing with people and making sure that at least they have the benefit of provisions in the Charter of Rights. I hope that's what happens, but time will tell.

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

Senator Nolin: As you know, and it was referred to by Senator Carignan in his remarks, the House of Lords a few years ago was confronted with a similar situation. In one of the reports dealing with one of their colleagues, the lords said this, and I will want you to comment on whether we should guide ourselves by that:

As we say in our report on the noble Baroness, Lady Uddin, there is a tension between ensuring that noble Lords under investigation enjoy appropriate procedural safeguards and preserving the informal and parliamentary nature of such proceedings. I believe that the House would not wish to turn internal disciplinary hearings into full-blown, adversarial court proceedings, with prosecution and defence lawyers and... proceedings should be kept relatively informal. On the other hand, we need to ensure, in accordance with the principles of natural justice and fairness, that all evidence is properly tested and that no noble Lord is found guilty on the basis of hearsay.

Do you think we could be guided by that?

Senator D. Smith: I'm not necessarily quarreling with that, but what I want to see happen is that justice is done. You don't have to have a year-long thing like Gomery. I just think where they at least have the benefit of asking questions to those providing the evidence that they think is not fair, that should happen.

I'm not talking about much more than that. I would at least like to see them have that basic right, and I would feel that I would have more of a comfort level that justice can result in that, whereas if they are denied that, I'm not comfortable.

Senator Nolin: That's why I'm quoting the lords when they're saying what they're looking for is natural justice and fairness in the process. I'm asking if you think we should be guided by that.

Senator D. Smith: Yes.

Senator Moore: I have a question for Senator Smith.

Senator D. Smith: Yes?

Senator Moore: In his remarks, Senator Nolin talked about the situation in the House of Lords. One key phrase was that the “evidence is properly tested.” Do you think that means due process, whereby counsel can be there to defend his or her client? How else would you test the truthfulness of the evidence that is adduced?

Senator D. Smith: As I understand it, from what I have heard when they have spoken, they don’t agree with the conclusions that the officials came to as to whether or not they were appropriate expenditures. I think they should at least have the right to question those officials who came to that conclusion as to how they got there and to make whatever point they want. You know, it’s not that they have to drag it out for months on end, but I think they should at least have the right to ask those questions. It is fairly simple.

• (2210)

Hon. Lillian Eva Dyck: Would you accept another question?

Senator D. Smith: Sure.

Senator Dyck: In Senator Brazeau’s case, we voted in February to order a leave of absence for Senator Brazeau, this whole chamber. Now we have before us a motion not to order a leave of absence but to order a suspension without pay, without benefits, and so on. In your mind, is that a fair process? We have changed our position, and I personally don’t see what has changed in his case so that we can justify the change in the motion. Do you think it was a fair process? Was that a due process for Senator Brazeau?

Senator D. Smith: Well, those circumstances are a different set of circumstances that we don’t all know the consequences of and things like that, but they weren’t imposing the same sort of penalty that’s being imposed here. The penalties they’re now talking about are very dramatic and very heavy, and much worse, quite frankly, than lots of criminal cases I have heard where there weren’t any penalties of any consequence. I think when you are dealing with people who are winding up with that sort of consequence, the minimal rights, at least to question those who are putting forward the evidence under which those conclusions are being based, is pretty fundamental to me, and regardless of what the outcome is, they are at least entitled to that due process.

Hon. Roméo Antonius Dallaire: I equate what Internal Economy did as similar to what in my experience would be a board of inquiry. A board of inquiry looks at the information, seeks input from witnesses and the like, and then takes a decision and provides recommendations. The recommendations are twofold. They can be recommendations that are purely administrative, or they could be disciplinary. There are many cases where they do recommendations on both sides.

As an example here, our board gave us administrative recommendations to implement, that is to say, garnish the money that they believe the people owed, and it also

recommended a disciplinary action/legal criminal action, which is sending these findings to the RCMP for them to pursue that side of the house.

We have got the administrative side covered. They have been pulled out of their party. They have lost their jobs as chairs. They are under surveillance for their expenses, and they have had to pay back, without recourse, because if they didn’t pay back, they simply would rip the money out of their salary and pay back the money that the committee said was owed.

Now that we have a disciplinary/judicial process with the RCMP, why are we engaged with another disciplinary action from our side of the house without having the results of the disciplinary action that the committee recommended, which is going to the RCMP, and after we get the result of that, then take whatever subsequent administrative/actions that we should take? Why are we doing a new exercise when, in fact, the board itself said we went as far as we could? We did the administrative side, and we also told them to go to the RCMP, which is certainly disciplinary, and in my case it would have been sent for review by the Judge Advocate General for court martial. On top of that, we will now add another disciplinary action even before we get the answer from the RCMP. Is there some cart before the horse or whatever term you use in that case?

Senator D. Smith: I’m not defending what has happened as a result of all these exercises, but when they were before the committee, I don’t think anybody had any idea that, as a result of that, these recommendations would come — not from them — but of such a severe penalty. When that is what has happened, it is still not too late to fix it, and I think we can fix it to try and ensure that they have due process. I certainly think that if what we’re talking about are these severe penalties, as a minimal requirement, you should at least have the right to have some counsel there and ask questions of those providing this evidence as to whether or not, in fact, the interpretation of whether they qualified was there. It is kind of that simple. I don’t want to make it too complicated. I like to keep it fairly simple so that the fundamentals of what our society is all about and due process and human rights are respected. I think we as an institution should do that.

Senator Dallaire: Supplemental: When I look at the scale of the punishment, the sentence — because this is what we’re talking about, in whatever other words people want to use — when I look at the scale of about \$275,000, maybe \$300,000, plus no guarantee that that thing is going to end at the end of this session, because the next session we simply could come back and say we want to extend it, and so we could keep this thing going — and God knows the concept. That scale of punishment to me is at the level of criminal activity. It is not administrative. We have already talked about administrative, but garnisheeing salaries on that scale to me is on the scale of criminal.

On top of that, Senator Andreychuk explained that the requirement for disciplinary action seems to be an element of our responsibilities and that we should look at that. I thought, maybe begrudgingly, if under duress, I’m doing that. However, there’s been no argument of why we’re doing it now. There’s been no presentation that it had to be now, particularly when we have got disciplinary/legal actions in motion. No fundamental argument has been put forward saying it had to start last week

and we have to implement it ASAP. None. I wonder if, from your experience in this sort of realm, imposing such a decision so soon is a bit out of the ordinary, if not inappropriate?

Senator D. Smith: Well, I think it is. It is a long question and I could give a long answer, but I think if I put my lawyer hat on and try and keep it simple, it is not too late for us to fix it, and we can do it.

The option that to me has the most appeal is to support the motion of Senator Cowan and refer it there and see if it's possible to have a fair hearing where they are given these rights to which I think Canadians feel they are entitled. Just read the Charter of Rights. I have read it so many times. It is not too late to fix it, and I hope we do.

Hon. Jane Cordy: Would you accept another question? Maybe you should have spoken longer. Thank you very much.

The Internal Economy Committee brought the RCMP in to investigate the expenses of all three senators named in Senator Carignan's motions. I'm just wondering whether or not you are concerned that if Senator Carignan's motion does pass in this chamber, that, in fact, it could have an effect on the investigation currently under way by the RCMP?

Senator D. Smith: Yes, I think it could. I don't think this is a black and white situation, but I think that it could prejudice that we are doing it prematurely, and they may not want to repeat the whole thing again. To go back to the answer I gave about two minutes ago, I don't think it is too late to fix it, and I think we should try and do that with no ill will or criticism of those who were on that committee. I believe they were acting in good faith, but the end result I don't think has really worked to produce the sort of thing that is consistent with the principles that this country is all about.

Senator Cordy: Another question?

Senator D. Smith: Sure.

Senator Cordy: Will you take five extra minutes of time, please, Senator Smith?

• (2220)

Senator D. Smith: Sure.

Senator Cordy: Now I've forgotten my question.

In the chamber, with all of the speeches that have taken place, particularly the speeches of Senator Wallin, Senator Brazeau and Senator Duffy, a number of questions have been left in my mind about what has actually taken place behind the scenes, who knew what, when they knew it and what they did when they knew the information. I agree with Senator Smith that Senator Cowan's amendment would bring these issues of the expenses to another committee.

Do you think that by having a hearing at another committee perhaps we could find some of the answers to what happened behind the scenes, who gave permission for these cheques to be

written, who knew about the cheques that were written, and any number of other questions that have been brought forward in the chamber?

Senator D. Smith: Well, yes, I think we could. I don't know that the scope of it needs to be so dramatic that we're questioning everybody. To keep it fairly simple, the fundamental things are that they should at least have the right to ask questions of those who produced this evidence as to why they believe they haven't broken the rules, try and get the answers, and try and have a decision made based on the evidence before them.

Would it be interesting to have another one as to who in the PMO knew what? That would be quite a thing, but I'm not really talking about that with regard to this. What I'm talking about is to see that these three senators get the due justice that this country is all about.

Senator Baker: In other words, the senator is not asking for anything extraordinary. He is only asking for what we provide in every proceeding in our courts and in our disciplinary proceedings, rules of evidence, that something is hearsay unless there is the right to cross-examine the author of a report when it is produced. I presume that's exactly what the honourable senator is talking about, which is not extraordinary but something that complies to the rules of evidence as we know them.

Senator D. Smith: That's it: basic, fundamental rights. Look in the Charter of Rights. That's what we should be doing. That's the ethical compass that I like.

The Hon. the Speaker: Further debate?

Senator Martin: Question.

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

It is a motion in amendment moved by the Honourable Senator Fraser, seconded by 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."

Senator Martin: Dispense.

The Hon. the Speaker: I would like to hear what Senator Martin is saying.

Senator Cowan: With respect, I think it is important that we read out the motion so everybody is absolutely clear what it is we're voting on.

The Hon. the Speaker: Actually, honourable senators, I already read out everything that is in the motion, but I will read it again.

It is moved by the Honourable Senator Fraser in amendment, 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."

Honourable senators, those in favour of the motion will please say “yea.”

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will please say “nay.”

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do we have guidance from the respective chief whips?

Senator Mitchell: One hour.

Senator Mercer: A couple of weeks.

Senator Munson: Mr. Speaker, we wish to defer the vote.

The Hon. the Speaker: The chief Opposition Whip is exercising his rights under the Rules to defer the vote. The vote on this motion will take place after the vote which is being held at 5:30 tomorrow afternoon. It will be held immediately after, and the bells that are rung for the vote at 5:30 will be deemed to be the bells for the subsequent vote on this particular amendment.

On debate; next item.

Senator Martin: Speaker, if I may?

The Hon. the Speaker: Senator Martin.

Senator Martin: Honourable senators, with leave, I would like to move an amendment to the motion, to the previous motion, to the main motion, No. 3 — Motion No. 3 — 2, 3 and 4, actually. It's an amendment to Motions No. 2, 3 and 4.

The Hon. the Speaker: Senator Martin, for the benefit of the chair, would you repeat what you're asking the house?

Senator Martin: With leave of the Senate, I would like to propose an amendment to the main Motions 2, 3 and 4.

The Hon. the Speaker: Unanimous consent is required. I have heard that there is not leave granted by —

Senator Fraser: We agree.

Senator Cowan: We agree.

The Hon. the Speaker: Order.

The chair is a little slow this evening, and it's important that we understand exactly what's being asked. I understand that the Deputy Leader of the Government and the Leader of the Opposition seem to say the same thing and I see consent.

Once again, Senator Martin, would you slowly read your proposal?

Senator Martin: Thank you, Mr. Speaker.

Honourable senators, I move that the motion be amended —

Senator Fraser: Which motion?

Senator Martin: The main motions, with leave, 2, 3 and 4.

Senator Fraser: Do them separately.

Senator Martin: I will read each one separately, then.

Senator Cowan: Did you get leave?

Senator Martin: Yes.

The Hon. the Speaker: Honourable senators, leave is very important in this instance. Why? Because we have not disposed of the motion in amendment. It has been deferred to a decision tomorrow at 5:30. However, if the house is in full agreement that, notwithstanding this, they want to hear the proposal for amending the main motion, is the house in agreement that we hear that?

An Hon. Senator: No.

The Hon. the Speaker: There's not unanimous consent.

Next item.

MOTION TO SUSPEND THE HONOURABLE SENATOR
MICHAEL DUFFY—MOTION IN AMENDMENT—
VOTE DEFERRED

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 Duffy 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 Duffy, while under suspension, shall not receive any remuneration or reimbursement of expenses from the Senate, including any sessional allowance or living allowance;
- (b) Senator Duffy'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 Duffy 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 Duffy's office and personnel for the duration of the suspension;

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

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

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

Hon. Joan Fraser (Deputy Leader of the Opposition): Colleagues, I rise again. For purposes of symmetry, I shall be doing on this motion as I did in others, but before I do that I would like to make a couple of comments arising out of the extraordinarily thoughtful debate that we have been listening to.

The other day I said that this debate, which has been in my view really impressive — very careful, very thoughtful — has raised many more questions than it has answered. I thought that then. I think it even more now. Every contribution to this debate raises fresh questions that, in my view, cannot be answered through the process of a Senate debate but really need to be examined by a committee.

I cite again the extraordinarily erudite and learned debate we heard this evening among Senators Nolin, Baker and Joyal. Not many of us are in a position to have a very solid, well-grounded view on which of them is right. They were raising extremely important questions, and I really think that a committee would do us all a service if it could hear from solid legal experts — former Supreme Court judges, people of high, high calibre who are not members of this body — because we can talk among ourselves, but an outside view I think would be extremely helpful to address that question.

• (2230)

We heard — how shall I put this — impassioned statements from Senator Duffy, Senator Wallin and Senator Brazeau which raised questions about the reasoning that they all had when they claimed the expenses in question.

I repeat, for the fourth time: I support the reports that the Internal Economy Committee produced. I think they were done carefully and eminently justified on the basis of the work done by the independent auditors, which was thorough and careful. I agree that the expenses in question were not allowable under the *Rules of the Senate*. However, I make no judgment as to the circumstances, motives, mistaken reasoning or whatever other reason there may have been for the claiming of those expenses. That's a separate question.

To say that an expense is not allowable is not to say that the person who claimed it is necessarily blameworthy. We need to know much more and that again, in my view, is the kind of thing that can only be tested properly and thoroughly in a committee.

If the amendment that I am about to propose is defeated, believe me, I shall vote with great enthusiasm for the amendment proposed by my leader, Senator Cowan. Just before I do that, I would like to address myself to a couple of points raised by Senator Andreychuk in her very interesting remarks a few moments ago.

She may have misspoken herself a little bit. It's late, and we're all capable of doing that, including myself, but she did say at one point that she did not think we should be revisiting the disciplinary process. Well, colleagues, there was no disciplinary process in the work of the Internal Economy Committee. Absolutely the contrary is the case. The Internal Economy Committee confined itself to examining pure narrow issues of fact: Were specific expense claims allowable or not? I was there. The committee never addressed the question of sanctions or of discipline, other than to say money should be paid back, which is what you usually do when an expense claim is disallowed. But the Internal Economy Committee did not address the disciplinary matter and, as has previously been stated, some members may have thought it had no mandate to do so; other members may have thought it would be inappropriate to do so. Whatever the reason, it did not do so.

Some of us agreed with my leader, who at the time expressed some regret that Internal Economy had not gone that extra step to recommend sanctions. That would have been the appropriate time for such a decision to have been made, but it wasn't. No one knows why suddenly now, six months later, we are being faced with demands for sanctions and motions for closure of the debate. That has never been explained to us. I have no notion what on earth impels us suddenly to find ourselves contemplating sanctions of our own in the middle of a police inquiry. I find that extraordinarily inappropriate.

Senator Segal: Hear, hear.

Senator Fraser: Anyway, here we are being asked to consider sanctions. But we cannot answer all these vital questions ourselves on the floor of this chamber. We will have to make the ultimate decision and, as has been established by others, there will be no appeal from the decision that we make, which makes it all the more important that when we make our decision it be based on the best possible expert and other testimony and on full representations from the senators involved of how they got to the point where they made those claims. We've heard some indications from their point of view of how they got there. We need to know a great deal more before we reach this final, unappealable and potentially very severe judgment.

Senator Andreychuk also said that she didn't think it would be appropriate to reopen the entire inquiry and that, Senator Andreychuk, is one of the key reasons why I think it is appropriate to give this chamber the option of voting to send the matter to the Internal Economy Committee. The Internal Economy Committee has done, as I said the other day, the first phase of this inquiry and has completed that work.

By the very nature of things, the Rules Committee will have to go back and re-familiarize itself and, in the nature of committees, maybe even hear some more witnesses on phase one. Even if the Rules Committee would, by many of our traditions, be the more — both committees are appropriate — usual vehicle for the study of what I have called phase two, which is the study of whether and which sanctions we should adopt on the basis of what information we discover and what criteria we learn are appropriate for application in such cases.

You have choice, colleagues. You can vote to send it to the Rules Committee. You can vote to send it to the Internal Economy Committee. Ideally, we would have set up a special committee, but that, it has been made very plain to us, is not going to happen and therefore we offer you two perfectly reasonable possibilities, both well within the traditions of this place and both in full respect of the gravity of the decisions that we are being asked to make.

I said, the first time I stood up to move this amendment, that I did believe it would be important, if the matter were referred to the Internal Economy Committee, for any senator who is a member of that committee and whose personal conduct has become part of the debate to recuse him or herself. That would be appropriate and respect the public interest in being sure that this was an eminently fair process. It would also enable us to substitute into the committee some experts on rules or on whatever else we thought was appropriate.

I think the process would work. I think it would be in the interests of the Senate, of the public interest and, not least, of the senators whose lives we are being asked to make such a serious decision about.

MOTION IN AMENDMENT

Hon. Joan Fraser (Deputy Leader of the Opposition): That, colleagues, is why I move one more time:

That the motion in amendment 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 pro tempore: On debate, Honourable Senator Day.

Hon. A. Raynell Andreychuk: Just to clarify, if I said that the process was disciplinary, that is not what I intended. I’ll review the record. What I intended is to say that they had a hearing, as they do about all matters to do with our expenses and the conduct of the internal workings of the Parliament. They could have gone to a disciplinary phase, as you’ve pointed out. That’s all I intended. I would not want the record to show otherwise, so I’ll review it.

• (2240)

Senator Fraser: If I could just respond to Senator Andreychuk, very briefly.

I thank her for that clarification. I will say that I was pinning on her — because she had spoken most recently — something other people had also raised. I didn’t want to put the whole burden on her shoulders.

Hon. Joseph A. Day: Mr. Speaker, I appreciate your indulgence with respect to that one series of questions. As I understand it — and you almost need a scorecard to keep on top of what has been happening in the past while — this is No. 4 on our Order Paper, and this is the second amendment of that, which would mean that if I speak on the second amendment, which I’m intending to do, Senator Fraser’s amendment, I reserve the right to speak for the first amendment on this particular matter and then for the main motion, and that is the same with respect to the other two, one amendment each with respect to the other two motions that I haven’t spoken on.

My first comment, honourable senators, is that I think it’s quite unfortunate, the fact that we’ve been dealing with three motions at the same time. I think that is making it difficult for honourable senators to follow the debate, and we’ll see people standing up on one particular motion and talking on another one. What just happened with the attempted further amendment by the honourable senator, the Deputy Leader of the Government, is an illustration of the difficulty of dealing with talking about one amendment on the main motion, but you were talking about one amendment with respect to each of the motions. So I think that is unfortunate and has caused some confusion in this chamber.

When we first started the debate on this particular motion with respect to Senator Duffy, my thoughts went to the work that we had done in law school a long time ago. Listening to Senator Baker and all his Latin terms, I had a Latin term that came to my mind, and that is *audi alteram partem*. I’ve got the definition for you, honourable senators, because, as the Speaker will know, it’s a term that is very common in administrative law matters.

Audi alteram partem is considered a principle of fundamental justice or equity in most legal systems. The principle includes the rights of a party, or his or her lawyer, to confront the witnesses against him; to have a fair opportunity to challenge the evidence presented by the other party; and to summon one’s own witnesses and to present evidence, and to have counsel, if desired, in order to make one’s case properly.

That is the fundamental principle in administrative law that we should all be thinking about, honourable senators, and that is the principle that I’m asking each honourable senator to have in mind with respect to our analysis of what has transpired in relation to each of these matters, the three of them.

The Deputy Leader of the Opposition is quite right; the debate has been quite fascinating, but we forget that what we’re dealing with is the livelihood and the lives of three of our colleagues, and that is critically important in bringing us back to what we’re debating here. This is a political debating forum. Perhaps the first place for me to start is that I’m not convinced, having sat through this debate over the past several days, that this forum is the best forum to achieve the results that we all want to achieve in having a fair resolution with respect to each of the honourable senators in relation to the allegations that have been made against them.

It's important for honourable senators to have in mind that there are two distinct processes, one being criminal and the other being administrative. We clearly have the right, from an administrative point of view, to conduct the hearings that we determine should be conducted and provide administrative sanctions according to our Rules.

The discussion that we've had thus far is confusing, in a number of comments that I've made, because people say, "Well, I want to see due process, and therefore we must wait for the RCMP to come back and determine whether there will be a criminal charge laid."

That's due process in the criminal sense, but it does not mean that we cannot have due process in an administrative sense that runs parallel or that can be dealt with beforehand. We think of lawyers and the Law Society. The Law Society is a self-policing organization. If a lawyer has been accused of dipping into a trust fund, the argument isn't, "Well, we'll wait to see if there are going to be criminal sanctions laid against this individual and let him or her continue to administer trust funds on behalf of clients." You act immediately to make sure that the public is protected, because that is the role, the ultimate role in the self-governing body.

We should be thinking about our public and we should be thinking about what sanctions we need to impose in order to ensure that the public interest and the public purse is protected, from an administrative point of view, until the criminal process proceeds.

Another example would be with respect to doctors and their self-administration. If a doctor is accused of not properly practising his or her profession, it's the patients that we should be thinking about. The sanctions, from an administrative point of view, will be there to protect the public. That's what I'm hoping we'll be focusing on as we analyze our way through just what we're dealing with in this particular case.

We don't have to reinvent the wheel here. It wasn't that long ago that we had a situation — two or three or four years ago in this chamber — and we determined the process. The first part of that process that I was involved in was a committee created by Internal Economy to investigate the facts, and that's what we did. There was a group of three of us on this subcommittee, and we went into session, talked to the accuser and talked to the senator involved. It became apparent very quickly that this could escalate into potential criminal charges. As soon as that was determined, we reported back to Internal Economy that this required a higher level of scrutiny; this required another committee — it didn't involve any of the individuals who were involved in the fact-finding committee — that would act more judiciously. We needed to allow for the lawyer to be there with respect to the accused as well as the accuser. Another legal firm was hired to advise the committee, and as a result of that process that we set up here in this chamber, the report came back to Internal Economy. Internal Economy reported back here, and that report was adopted.

• (2250)

The matter flowed very nicely, and I could tell you that Senator Yoine Goldstein was the chair of the committee and he did a fabulous job for us. I had several discussions with him about how we sometimes in this chamber, as individual senators, tend to

have to act quite politically, and we're expected to adopt a political approach to something, and a partisan approach. And at other times the pendulum swings way the other way and we are expected to act in a very non-partisan way.

That is exactly what we must ensure with respect to any committee when we're judging one of our own, one of our peers, peer-to-peer judgment. We must make sure that we're acting non-politically, in a non-partisan way.

I'm not suggesting that we need to create, like the House of Lords in Great Britain, law lords, a group of lawyers who act as law lords or judges within the House of Lords. But I am suggesting that we must make sure, when we set up committees to act in a manner of reviewing and making sure that the proper processes are in place in reviewing an allegation against a senator and helping the public who are coming in and making the complaint, that that process flows well. It's a very important role that must be non-partisan in its approach.

I think there is some suggestion that perhaps we could do a better job in that regard. If you look at the process with respect to Senator Duffy, the first thing that jumps out at you is why the report was changed. There was a report of Internal Economy, and then two weeks later the report was changed. So that raises a question about whether there was partisan interference in this process. There's no explanation for that. That's the kind of issue it's important for us to get to the bottom of.

Much of what we've been hearing here is not pertinent to the issues that we and the committee have to deal with. We are looking into the question of residency with respect to Senator Duffy, and with respect to Senator Wallin it's certain travel expenses, et cetera. That's the role the Senate Internal Economy Committee has, and hopefully it will create a subcommittee to deal with and look into those particular issues that are pertinent.

To hear in this chamber statements to the effect that, "Well, she didn't really like me ever since I arrived here," is not helpful. It's not helpful at all. That's not the kind of evidence that we would expect. I would expect the chairman of a committee dealing with this to make sure that that kind of a comment would not be further dealt with. It's unfortunate that we get into that kind of statement.

The statement with respect to the Royal Bank of Canada and borrowing and the encouragement to make certain statements deals with obstruction of justice and fraud, and they are criminal issues that need to be dealt with in another forum. We have to stay focused on what we in this chamber, in our peer-by-peer review, are dealing with.

I have received a number of emails, honourable senators, and I would like to reference some of those. But, before I do, I have an article from *The Globe and Mail* that I found to be very pertinent. It's an article that appeared in *The Globe and Mail* on October 28, just yesterday, and it's by Bruce Anderson. He states:

The 60 Conservatives sitting in Canada's Senate are being urged by Prime Minister Stephen Harper to do something that would set a precedent for our democracy. Regardless of

what these senators think about the guilt or innocence of Senators Patrick Brazeau, Pamela Wallin and Mike Duffy, they owe it to Canadians to think long and hard before they toe their party's line.

He goes on to say:

Based on the stories we have all heard, it's hard to believe these senators have done nothing wrong. But it's just as hard to believe that all the relevant facts are known.

And that's pretty clear from what we've been hearing here over the last few days.

... perhaps the hardest thing to believe, right now, is that the Prime Minister's call for immediate suspension has only to do with what's right by the taxpayer and nothing whatsoever to do with his own political standing. After all, he has been at pains for months to limit scrutiny of this affair.

He goes on to point out:

And so, when considering what to do when the motion is put to a vote in the coming week, let's hope the Conservative senators do more than simply go along with the PM's request. They might want to ask themselves, for example:

- Do they know all the relevant facts?
- Do they believe that the senators have had a fair hearing?
- Are they comfortable setting a precedent that would allow a majority of Members to suspend others without some sort of formal hearing?

I see my —

Senator Mercer: Five minutes.

The Hon. the Speaker *pro tempore*: Are you asking for more time?

Senator Day: Yes.

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

Hon. Senators: Agreed.

Senator Day:

- Are they being asked by their leaders to do this for sound reasons or for political expediency?
- Should any Prime Minister have the power to use a majority to suspend Members of Parliament on a simple vote?

- Is their duty of sober second thought best served by suspending Duffy, Wallin, and Brazeau or by allowing a hearing?

Those, honourable senators, are questions that have been put to you by *The Globe and Mail* and by Bruce Anderson. I put them to you as well.

Honourable senators, this matter must be dealt with in a manner that gives confidence to all of us and gives confidence to the public that we are doing the right thing, that we're doing the honourable thing and that we're giving senators whom we are proposing should no longer be able to sit in this chamber, should no longer be able to represent the people of their region, should no longer receive salaries — Have we given them an opportunity to meet the case against them? I say that we haven't, and I suggest that we can easily, by referring this matter back to either one of the committees that have been referred to in either one of these amendments, and let that committee create a subcommittee that would be a special committee with individuals who understand the responsibility that they have and provide for all of those checks and balances that are in that expression of *audi alteram partem*. Thank you, honourable senators.

• (2300)

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

Some Hon. Senators: Question.

The Hon. the Speaker: Honourable senators, it is moved by the Honourable Senator Fraser, seconded by the Honourable Senator Tardif, that the motion be amended by replacing the words "Rules, Procedures and the Rights of Parliament" with the words "Internal Economy, Budgets and Administration". Those in favour of that motion will please say "yea."

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

Hon. Jim Munson: Mr. Speaker, according to the rules of this great institution, we wish to defer the vote.

The Hon. the Speaker: The chief Opposition Whip, exercising his rights under the rules, moves that the vote be deferred until after the second vote tomorrow afternoon, with the first vote beginning at 5:30 p.m., and there will be a five-minute bell prior to the taking of this third deferred vote.

(The Senate adjourned until tomorrow at 2 p.m.)

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