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OFFICIAL REPORT
(HANSARD)

Tuesday, April 8, 2014

The Honourable NOËL A. KINSELLA
Speaker

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THE SENATE

Tuesday, April 8, 2014

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

QUEBEC PROVINCIAL ELECTION

Hon. Ghislain Maltais: Honourable senators, yesterday we witnessed a remarkable and much-anticipated election in Quebec. The people of Quebec had a number of choices, but they decided to choose the forward-thinking party that would make Quebec a nation within Canada, within the Confederation.

Once again, Quebec rejected an election that was essentially a referendum. It refused to take this stand and instead chose the openness of the Canadian federation and the universal inclusiveness that the world offers to young Quebecers.

If you look at the results of this campaign, you will see that young Quebecers overwhelmingly voted for the Quebec Liberal Party and for the new premier because they saw within Quebec and the Canadian Confederation the amazing possibility that this great country of Canada would open up the world to them.

Once again, Quebecers refused to be led into the lobster trap. I think that trap is now shut for a decade. They refused to be a small nation. They chose to be part of a big nation. They refused to be exclusionary. They chose to join together, and the people's choice must be respected, both within Quebec and within Canada.

I was a member of the Quebec National Assembly for a long time, and I sincerely believe that when the people of Quebec speak, they are always mindful of the fact that they were co-founders of Canada and that they respect and feel comfortable in this country.

In the coming years, both nations — the Quebec nation and the Canadian nation — must work hand in hand. Quebec held its hand out to the Canadian federation yesterday. Current and future governments will have to acknowledge Quebecers' desire to work within their great country. They are proud of their nation and of their country. That is why we must respect that choice.

I wish the new premier the very best. Actually, the Premier of Quebec is elected a little like how we are appointed to the Senate. All regions of Quebec — north and south, east and west — are well represented. The premier can legitimately claim to represent all of the regions, Montreal, Quebec City and all of the other big cities. He therefore has the power to put Quebec back on track, hand in hand with Canada.

Some Hon. Senators: Hear, hear.

[*English*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a delegation from the Scottish Parliament, led by the Right Honourable Tricia Marwick, M.S.P., Presiding officer of the Scottish Parliament.

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

Hon. Senators: Hear, hear!

MS. GINA HARGITAY

Hon. Don Meredith: Honourable senators, I rise today to recognize a young woman who is an inspirational global ambassador and an outstanding advocate for children and youth. She is the reigning Miss Jamaica World — Ms. Gina Hargitay. At 19, she has already amassed a proud list of accomplishments.

I must tell you that as the fourth African-Canadian and the first of Jamaican heritage in this chamber, I'm very proud to learn about how she has valued education, has demonstrated a focused work ethic and harbours an abiding passion to make a positive change in the world.

She has been a straight-A student who graduated with honours in history, chemistry and German last July. Now in her gap year, she has already earned scholarships to a number of universities, including the University of Westminster in the United Kingdom; Kursk State Medical University in Russia; and the University College of the Caribbean in Jamaica.

As a pastor and community activist committed to the cause of our youth, I was also inspired by her work with the four charities that she has adopted as Miss Jamaica. These are STEP, or School for Therapy, Education and Parenting of Children with Multiple Disabilities; McCam Child Development Centre; St. Patrick's Foundation; and the Jamaica Christian School for the Deaf.

She is inspired by the life of Nelson Mandela and seeks to leverage her current platform to further Madiba's legacy of selfless service and human compassion. And she is also doing this

at opportunities around the world where she speaks about issues affecting marginalized children, particularly children with disabilities.

This includes a recent keynote at the Confederation of North, Central America and Caribbean Association of Football Sports Summit in Grand Cayman, and the United Nations fourth Pan-African Youth Leadership Summit in Dakar, Senegal. Her message is about how we can each endeavour to make a difference.

• (1410)

I listened with pride just this past weekend in Canada's capital city, where she told attendees at the Afro-Caribbean Cotillion about how she was doing that which Mahatma Gandhi said:

> Be the change you want to see in the world.

In this pursuit, Ms. Hargitay played an important role in the United Nations declaration that was later signed and ratified by the Prime Minister of Jamaica, the Honourable Portia Simpson-Miller.

As co-founder of the GTA Faith Alliance Learning Centre, I often tell our young people to remain engaged in courage and in power, to maximize their own potential. Gina Hargitay, by her actions and her character, already embodies that change. She is on a firm path to realizing her potential and has already spoken to me about her desire to take over her family's business, the ECN group of consultancies, after studying history and politics at university. She has the courage to dream, and she will execute.

In the wise words of the renowned author Maya Angelou, "... one isn't born with courage. One develops it by doing small courageous things..."

Honourable senators, I invite you to join me in acknowledging Ms. Gina Hargitay, the reigning Miss Jamaica World. She's a good ambassador, and not only for Jamaica. She is worthy of recognition and encouragement by all honourable colleagues in the Senate of Canada.

Thank you.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Ms. Gina Hargitay, Miss Jamaica World and Ms. World Caribbean 2013-14, accompanied by her mother and chaperone, Marlene Hargitay. They are the guests of the Honourable Senator Meredith.

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

Hon. Senators: Hear, hear!

[*Translation*]

QUEBEC PROVINCIAL ELECTION

Hon. Dennis Dawson: Honourable senators, I do not want to repeat statements made by my colleague, Senator Maltais. Instead, I want to go one step further because I disagree with him to some extent.

[*English*]

We have announced the death of sovereignty in Quebec many times in the past, but as I told my colleague Senator Nolin six weeks ago, I think I will be very unhappy on April 8 because I will be making a speech I would not want to make about trying to save Canada once again. I went through the 1980 referendum as a member of Parliament; I went through the 1995 referendum; and six weeks ago, most of my Quebec colleagues, I know some of them voted Liberal for the first time, because they were afraid of the sovereignty debate.

As we can see with our delegation from Scotland, sovereignty is not a desire only for Quebecers. Over 30 per cent of Quebecers still voted for a sovereigntist party, so I'm not sure that we will have peace for the next 10 years. I'm quite sure, actually, that we must double up our efforts to be more responsive to Quebec and Mr. Couillard.

Yesterday's results show that the majority of Quebecers are proud to be Canadians, like my colleague said, but we must stop seeing special arrangements with Quebec as a problem for Canada. All of you heard during this election that if Quebecers voted yes, let them leave. I'm sorry, I don't agree with that. I think we have a message to give to Quebecers, that they're welcomed in Canada.

Hon. Senators: Hear, hear!

Senator Dawson: There's also a message that we have to tell Canadians, that that desire for sovereignty still exits, and we should never take it for granted. I don't believe that in the last six weeks, if the election had gone differently, we would all be in a different mood today, but that's six weeks.

First of all, it proves that campaigns do make a difference, because the polls were quite indicative. There was a danger, but they failed their campaign. Mr. Couillard led a fabulous campaign, and we should now take the opportunity, as Quebec senators in particular, to sell Canada to Quebecers, but also as Quebec senators, to sell Quebec to this chamber.

Hon. Senators: Hear, hear!

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a delegation from the United Kingdom of Great Britain and Northern Ireland, led by the Right Honourable Anne McGuire, M.P.

She is accompanied by The Lord Faulkner of Worcester, The Baroness Hooper, Mr. David Morris, M.P., Mr. Andrew Percy, M.P., and Ms. Annette Brooke, M.P.

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

Hon. Senators: Hear, hear!

WORLD PLUMBING DAY

Hon. Donald Neil Plett: Honourable colleagues, each year at this time, I give all of you in this chamber the opportunity to come over here and give me a hug.

Some Hon. Senators: Oh, oh.

Senator Plett: March 11, colleagues, is "Hug a Plumber Day," or officially World Plumbing Day.

I did not have the opportunity to speak to it this year as it fell during a parliamentary break. However, I invite all senators to join me in honouring plumbers around the world on this occasion of the fifth annual World Plumbing Day celebration.

World Plumbing Day seeks to bring attention and awareness to how plumbing and sanitation systems contribute towards humanitarian goals and the health of people around the world. World Plumbing Day also seeks to highlight how basic sanitation and safe drinking water are not luxuries and are possible everywhere in the world if sound, simple plumbing practices are adopted.

The United Nations declared 2005 to 2015 the International Decade for Action 'Water For Life.' This initiative places increased attention to water-related issues and shows how important clean drinking water and basic sanitation are for the health of those around the world. This decade of action includes international goals of giving 97 million more people worldwide access to safe drinking water and drinking water services, as well as 138 million more people access to sanitation services by 2015.

Today is also Canadian Institute of Plumbing & Heating and the Mechanical Contractors Association's joint annual Day on the Hill. Representatives from both groups are meeting with parliamentarians all day to discuss two key issues that are affecting plumbers and contractors across the country.

The first issue is one I have spoken about before in this chamber, and this is the issue of prompt payment. I know from first-hand experience that there is a very serious problem in Canada of late payment for trade contractors, which is why I cannot afford to resign from the Senate. It has devastating impacts on private business, thereby impacting employment and the economy. Delayed payment means added costs to businesses through greater interest payments and can limit the ability of the contractor to carry out future business. Delayed payment means that hard-working Canadians can be out of work, all because invoices are not being paid on time.

Both organizations are also advocating the need to develop a joint Canada-U.S. streamlined standards system to avoid duplicative testing, which impacts consumers, businesses and economies with higher costs and less effective supply chains. A joint Canada-U.S. standards secretariat would help facilitate the true harmonization of standards, testing and certification requirements through the creation of North American consensus standards. These standards would deliver cost savings, productivity gains and facilitate a greater speed to market.

For more information on either of these important issues and to meet industry representatives or just to give me a hug, please feel free to stop by our reception this evening between 5:30 and 7:30 in room 256-S, and please, colleagues, pay your plumber well.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mr. Robert Whitty, Chair of the Canadian Institute of Plumbing and Heating, and Mr. Gaetan Beaulieu, Chair of the Mechanical Contractors Association. They are the guests of the Honourable Senator Plett.

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

Hon. Senators: Hear, hear!

THE LATE ZEENAB KASSAM

Hon. Mobina S. B. Jaffer: Honourable senators, on March 20, 2014, Zeenab Kassam and Roshan Thomas, both Canadians volunteering in Afghanistan, were brutally gunned down by several Taliban. I will speak of Roshan Thomas at another time. That same day, Zeenab's family in Calgary was informed about her murder.

• (1420)

Honourable senators, Zeenab Kassam was born in Zanzibar to an esteemed family. Her great grandfather was Vazir Saleh and her grandfather was Count Mohammed Varas. Both contributed to the economic welfare and emergence of democracy in Zanzibar.

Service through volunteerism was a central tenet of her family. Zeenab, the first and eldest grandchild, grew up with these values. Zeenab and her family had to leave Zanzibar because of the intolerance in the country. They found Canada to be welcoming, and a place where pluralism, democratic values and opportunities for all citizens flourished.

Zeenab did not take this for granted and she dedicated her life to helping others. From a young age, Zeenab was known to have a vibrant personality. She spoke several languages, English and French among them. She was a track and field athlete and a sculptor. Later in life, she was an amateur ballroom dancer. But her real passion was nursing because she believed that it would give her a chance to make a difference in the world.

It was this conviction to make a difference that drove her to go to Afghanistan and give young people the gift of education. She went to Afghanistan under His Highness the Aga Khan's program of time and knowledge for the marginalized people of the world.

For Zeenab, Afghanistan was not her first adventure into unknown and dangerous territory. Year after year, Zeenab worked until she saved just enough money to be able to take a humanitarian trip. She volunteered in many places around the world. Zeenab believed so strongly in education that she made the ultimate sacrifice: her life.

I want to share with you a story that embodies the strength of Zeenab Kassam. While Zeenab was teaching in Afghanistan she was approached by a young man she was teaching. This young man asked her if she was worried that she would be killed or kidnapped for the work she was doing. Zeenab looked at the man and told him that she did not know for sure if she would be killed, but she did not want to live in fear.

Honourable senators, Zeenab is an example of a woman who was so dedicated to empowering both women and men through education that she could thrust aside all fear.

Honourable senators, I know that you will join me in honouring Zeenab Kassam and all that she stood for. She implemented Canadian values of pluralism and equality.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of the Honourable John Pandazopoulos, a Member of the Legislative Assembly in the Parliament of Victoria in Australia and President of the World Hellenic Inter-Parliamentary Association. He is the guest of our colleagues Senator Merchant and Senator Housakos.

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

Hon. Senators: Hear, hear!

HEALTH CARE FOR SENIORS

Hon. Jim Munson: Honourable senators, while it's always good to look after your plumbing, it's also always good to look after your cardiovascular system.

There's a clinic going on today, sponsored by the Canadian Medical Association. Representatives from the Canadian Medical Association are meeting with parliamentarians all day today; perhaps you've had those meetings. They're here to discuss the need for action on seniors' care in light of the projected doubling of Canadians aged 65 and older in the next 25 years with diabetes and cardiovascular issues.

I want to remind you briefly that there is a cardiovascular and diabetes risk assessment clinic for parliamentarians in the Commonwealth Room, 238-S Centre Block, until four o'clock this afternoon. If you walk out this afternoon and walk back here, you'll be fine.

I congratulate those of you who are taking a moment from your busy schedules to meet with a physician today and encourage all honourable senators to visit the clinic for their ten-year risk assessment of cardiovascular disease and six-year risk of diabetes.

ROUTINE PROCEEDINGS

TLA'AMIN FINAL AGREEMENT

DOCUMENTS TABLED

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Tla'amin Final Agreement and related Appendices, and the Tla'amin Tax Treatment Agreement.

[*Translation*]

AGRICULTURE AND FORESTRY

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON THE IMPORTANCE OF BEES AND BEE HEALTH IN THE PRODUCTION OF HONEY, FOOD AND SEED—THIRD REPORT OF COMMITTEE PRESENTED

Hon. Percy Mockler, Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Tuesday, April 8, 2014

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

THIRD REPORT

Your committee, which was authorized by the Senate on Thursday, November 21, 2013, to examine and report on the importance of bees and bee health in the production of honey, food and seed in Canada, respectfully requests funds for the fiscal year ending March 31, 2015 and requests, for the purpose of such study, that it be empowered to:

(*a*) engage the services of such counsel, technical, clerical and other personnel as may be necessary for the purpose of such study;

(*b*) travel inside Canada; and

(*c*) travel outside Canada.

Pursuant to Chapter 3:06, section 2(1)(*c*) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

PERCY MOCKLER
Chair

(*For text of budget, see today's Journals of the Senate, Appendix A, p. 719.*)

The Hon. the Speaker: Honourable senators, when will this report be taken into consideration?

(On motion of Senator Mockler, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

[*English*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON THE INCREASING INCIDENCE OF OBESITY—SEVENTH REPORT OF COMMITTEE PRESENTED

Hon. Kelvin Kenneth Ogilvie, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, April 8, 2014

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

SEVENTH REPORT

Your committee, which was authorized by the Senate on Wednesday, February 26, 2014 to examine and report on the increasing incidence of obesity in Canada, respectfully requests funds for the fiscal year ending March 31, 2015, and requests, for the purpose of such study, that it be empowered to engage the services of such counsel, technical, clerical and other personnel as may be necessary.

Pursuant to Chapter 3:06, section 2(1)(*c*) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

KELVIN K. OGILVIE
Chair

(*For text of budget, see today's* Journals of the Senate*, Appendix B, p. 726.*)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Ogilvie, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

CONFLICT OF INTEREST FOR SENATORS

BUDGET—FOURTH REPORT OF COMMITTEE PRESENTED

Hon. A. Raynell Andreychuk, Chair of the Standing Committee on the Conflict of Interest for Senators, presented the following report:

Tuesday, April 8, 2014

The Standing Committee on Conflict of Interest for Senators has the honour to present its

FOURTH REPORT

Your committee, which is authorized on its own initiative, pursuant to rule 12-7(16) to exercise general direction over the Senate Ethics Officer, and to be responsible for all matters relating to the *Conflict of Interest Code for Senators*, including all forms involving senators that are used in its administration, subject to the general jurisdiction of the Senate, respectfully requests funds for the fiscal year ending March 31, 2015.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

RAYNELL ANDREYCHUK
Chair

(*For text of budget, see today's* Journals of the Senate*, Appendix C, p. 732.*)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Andreychuk, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

• (1430)

[*Translation*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

BUDGET—STUDY ON PRESCRIPTION PHARMACEUTICALS—EIGHTH REPORT OF COMMITTEE PRESENTED

Hon. Kelvin Kenneth Ogilvie, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, April 8, 2014

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

EIGHTH REPORT

Your committee, which was authorized by the Senate on Tuesday, November 19, 2013 to examine and report on prescription pharmaceuticals in Canada, respectfully requests funds for the fiscal year ending March 31, 2015.

Pursuant to Chapter 3:06, section 2(1)(*c*) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

KELVIN K. OGILVIE
Chair

(*For text of budget, see today's Journals of the Senate, Appendix D, p. 737*)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Ogilvie, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

STUDY ON CBC/RADIO-CANADA'S OBLIGATIONS UNDER THE OFFICIAL LANGUAGES ACT AND THE BROADCASTING ACT

THIRD REPORT OF OFFICIAL LANGUAGES COMMITTEE TABLED

Hon. Claudette Tardif: Honourable senators, I have the honour to table, in both official languages, the third report of the Standing Senate Committee on Official Languages entitled *CBC/Radio-Canada's Language Obligations, Communities Want to See Themselves and Be Heard Coast to Coast!*

On motion of Senator Tardif, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[*English*]

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, we make a distinction between the tabling of reports and the presenting of reports. When reports are presented, the chair will automatically ask when the report is to be taken into consideration. When a report is tabled, sometimes they wish to have it moved, and so a specific motion, as was done by Senator Tardif, is made. If no motion is made, it has simply been tabled. That's the distinction. I thank Senator Tardif for her motion.

HUMAN RIGHTS

BUDGET—STUDY ON ISSUE OF CYBERBULLYING—FIFTH REPORT OF COMMITTEE PRESENTED

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

Tuesday, April 8, 2014

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

FIFTH REPORT

Your committee, which was authorized by the Senate on Tuesday, November 19, 2013, to examine and report upon the issue of cyberbullying in Canada with regard to Canada's international human rights obligations under Article 19 of the United Nations Convention on the Rights of the Child, respectfully requests funds for the fiscal year ending March 31, 2015.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

MOBINA S. B. JAFFER
Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix E, p. 743*.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Jaffer, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT

BILL TO AMEND—FIRST READING

Hon. Yonah Martin (Deputy Leader of the Government) introduced Bill S-4, An Act to amend the Personal Information Protection and Electronic Documents Act and to make a consequential amendment to another Act.

(Bill read first time.)

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

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

QUESTION PERIOD

THE SENATE

SENATE REFORM

Hon. Grant Mitchell: This question comes to us from a student from B.C. who is actually here in Ottawa for a week, seeing how things work in the Senate. I will say, parenthetically, that I hope she is finding that they do. The student's name is Tobekile Mpofu, and she emailed us to say:

> I am a Political Science Major in my third year. My areas of interest are Criminal Justice and Immigration Reform. I find the discussions on Senate reform intriguing. I like writing essays and I am a published poet. In the future, I would like to study Criminal Law. I moved to Canada 3 years ago and I am a Permanent Resident.

She submitted a question last night of her own volition. She's actually in the gallery today, and I would just like to recognize her. She waved to us all. Her question is a very interesting one, and I'm sure that Senator Carignan, the Leader of the Government in the Senate, will find it to be exactly that.

She asks:

> The Senate has more members from central and east Canada than from the Western provinces. I understand that the fathers of our confederation made it that way in order to allow representation by population. However, the relevance and necessity of that is now questionable as it puts more power on the well-represented regions.

She goes on to say:

> The issues of well represented regions are not more important than those of less represented regions.

The question to Senator Carignan, the leader, is this:

> Would you recommend equal provincial representation for senators?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): I would like to thank you for your question. The issue of Senate reform is currently before the Supreme Court of Canada. The Senate reform bill before the court proposes two main areas for reform: the method of appointment and the length of senators' terms. We expect a ruling from the Supreme Court within the next few months. Then we will determine how to proceed with Senate reform.

Your question deals specifically with the number of senators per region. That decision was made by the Fathers of Confederation, in order to ensure regional representation in the Senate. In 1867, the Fathers of Confederation decided that each region—the eastern provinces, Quebec, Ontario and then a few years later, the West—would be represented by 24 senators. Subsequently, a few more senators were added when Newfoundland, the Northwest Territories and the Yukon came onto the scene, bringing the current total to 105 senators.

• (1440)

Senators represent specific regions, and they play an important role. The Fathers of Confederation wanted to make sure that there was regional rather than demographic representation.

In your question, you mentioned representation by population. That was not the objective. Canadians are represented by population in the House of Commons and by region in the Senate. It is common in parliaments or legislative chambers for the second chamber, the chamber of sober second thought, to be based on regional representation rather than representation by population. The best example of this is the United States Senate, where two senators represent each state, regardless of the state's population.

This is a decision that was made by the Fathers of Confederation and it was a condition for joining Confederation for some provinces, including Quebec. Clearly, we do not intend to reopen constitutional debates, and such a change to the composition of seats in the Senate would automatically reopen the Constitution. That is not our intention.

Some Hon. Senators: Hear, hear!

Senator Mitchell: I would like to thank the Leader of the Government in the Senate for that detailed response. I am sure that Ms. Mpofu really appreciates it.

[*English*]

With respect to the effectiveness of regional representation, clearly the leader is correct in suggesting that an effort was made to create some regional balance. Now, as his government proposes to elect senators, that question of regional balance might actually be eroded.

Is the Leader of the Government in the Senate aware that a province like Alberta has, as a percentage of the number of seats in the Senate versus the percentage of their seats in the House of Commons, a lower representation in the Senate than it has in the House of Commons? Were we to be elected, it wouldn't enhance regional representation because we would be exercising our considerable powers under a situation where we would have less regional — less Alberta and less B.C., for example — influence in the Senate than we would have in the House of Commons.

How would electing senators elevate, sustain and ameliorate any kind of regional imbalance that the Senate was originally designed and hopefully continues to make an effort to pursue and enhance?

[*Translation*]

Senator Carignan: As I said, there are four main regions with an equal number of senators for each. As for the other areas of the country, the number of senators was set out in constitutional agreements.

With regard to the reform, your allegation regarding how regional representation would be affected if senators were elected rather than appointed gets to the heart of the issue of an elected Senate. This issue is currently being considered by the Supreme Court so, out of respect for that institution, we will wait for its ruling in this regard. Obviously, I believe that Canadians understand that changes need to be made to the Senate. We are going to move forward with reforms geared toward making the Senate a more accountable institution.

The referral includes questions that allow us to consult the court regarding the proper procedures for the proposed constitutional amendments. Following the ruling, we will be able to take a position on each opinion.

[*English*]

Senator Mitchell: That's a very interesting point. If the courts were to decide, and I think they will, that it would take 10 provinces, or at least the 7/50 formula, to implement the two reforms presented by the government and, therefore, it would be practically impossible, for all intents and purposes, to get it done, would the Leader of the Government in the Senate give us some idea of what other ideas of reform he might be considering with his caucus? For example, there is sitting as regional caucuses in the Senate or maybe even televising the Senate. Could he give us his opinion on that kind of reform?

[*Translation*]

Senator Carignan: Any question that begins with "if" is a hypothetical question, and that is the kind of question I never answer. Our committees are working on this issue. The Committee on Conflict of Interest for Senators worked on it and tabled a report on the changes to the Conflict of Interest Code for Senators.

In fact, I would like to thank the members from your side who took part in that effort. For the members on our side, it's already done, but on your side too, Senator Eggleton and Senator Joyal worked very hard on this report and they continue to work on improving the transparency and ethical aspects.

There are many things that can be done in terms of communication, the discipline of members and the management of Senate business. For the time being, it is important to have a Senate that is as responsible, effective and efficient as possible, and to work within the established parameters as we await the Supreme Court ruling. Once the Supreme Court renders its decision, as I said earlier, it will answer a series of questions on ways to amend the Constitution and on the Rules. We will then be able to debate the political questions on what the Senate should be and on the conditions to achieve it.

EMPLOYMENT AND SOCIAL DEVELOPMENT

DISTRIBUTION OF WEALTH

Hon. Céline Hervieux-Payette: I would like to digress for a moment and say to the Leader of the Government in the Senate that I am sure he did well in his constitutional law course. Perhaps the government should consult him on these issues, given that he is not part of cabinet. His explanation of regional representation was very clear, and I agree with him on that.

My question is far more trivial and mundane. It stems from a report that we just received, titled *Outrageous Fortune: Documenting Canada's Wealth Gap*. I have read it and I would simply like to share some numbers and ask how we can remedy the issues addressed in the report.

The Canadian Centre for Policy Alternatives just released this report, which indicates that the 86 wealthiest individuals and families in Canada, or 0.002 per cent of the population, keep getting richer and now hold $178 billion in wealth, which is more than the poorest 11.4 million Canadians combined. That is enough to buy up everything in New Brunswick — I apologize for mentioning a specific province — and still have $40 billion to spare. That really puts things into perspective. The numbers have increased since 1999, when the 86 wealthiest people held the same wealth as the poorest 10.1 million Canadians. In other words, the gap is growing every year.

It is clear that the Conservative government's policies are not only increasing the income gap between the rich and the poor, but also creating a greater inequality of accumulated wealth.

Mr. Leader, how does your government intend to remedy the situation to help the least fortunate and stem the impoverishment of the middle-class, which is favouring Canada's richest individuals? Specifically, how is the latest budget going to do that?

Hon. Claude Carignan (Leader of the Government): Senator, as you know, our Economic Action Plan guides the work we do to ensure that Canadians, and middle-class families in particular, have more money.

• (1450)

The measures that our government has taken since 2006 to significantly lower various taxes have helped to create wealth for average Canadians and Canadian families. This is a practice that

the government has developed and will continue to develop to ensure that Canadian families keep as much of their money as possible.

Senator Hervieux-Payette: I would invite the Leader of the Government in the Senate to put in his earpiece because I would like to address my other colleagues in English and quote the report in the language in which it was originally written.

[*English*]

According to this same report, "Wealth inequality is always more extreme than income inequality."

> ... Canada's richest 20 per cent of families take almost 50 per cent of all income. But when it comes to wealth, almost 70 per cent of all Canadian wealth belongs to Canada's wealthiest 20 per cent. Move higher up the income spectrum and the wealth gap is even greater....
>
> ... even the poorest of families have a measurable share of income (thanks to Canada's tax and transfer system), but they have no measurable share of wealth. In fact, the poorest are in net debt.

Moreover:

> What differentiates The Wealthy 86 is that their wealth does not come from a paycheque; it comes through the building and trading of assets, mostly companies. In other words, while being part of a wealthy family can land you a top paying CEO job, the reverse is not true. Even the best paid CEO can't save enough to make it into The Wealthy 86.

Mr. Leader, when will the Conservative government take measures to ensure that hard-working Canadians are compensated for their efforts and receive a fairer share of the prosperity that they have contributed to our country and make sure that they will eventually reduce the gap between the richest and the middle-class people?

[*Translation*]

Senator Carignan: Senator, the best way to combat poverty is to help Canadians find good jobs. That is exactly what our plan seeks to do by stimulating economic growth and creating jobs. Since July 2009, over a million net new jobs have been created in Canada, nearly 85 per cent of which are full-time jobs.

We also introduced the Working Income Tax Benefit, which helped 1.5 million low-income Canadians in 2011. Our government raised the amount families in the lowest two tax brackets can earn before paying taxes. A typical Canadian family now pays $3,400 less in tax under our government, and one million low-income Canadians no longer pay taxes as a result of our tax cuts. We enhanced the National Child Benefit and the Canada Child Tax Benefit. We brought in the Universal Child Care Benefit — $100 per month for each child under the age of six — which enabled 24,000 families to get out of the lowest income tax bracket.

There is also the Child Tax Benefit for children under 18. It provides more money for over 3 million children. Thanks to this benefit, 180,000 low-income individuals pay no taxes and can save their money for essentials. The Canada Social Transfer is increasing by 3 per cent per year. Do I have to remind anyone that the Liberals reduced provincial transfers?

Senator, I think that these are concrete measures. What's important to us is making sure the economy runs smoothly and people have jobs. We want Canada to remain prosperous for as long as possible. That is what will help Canadian families build wealth.

Senator Hervieux-Payette: Thank you for your answer. I am astounded that you had an answer ready before I even asked the question. All the same, I would like to repeat my question about the 86 people and families who own 70 per cent of the wealth in this country. Can you tell us that these people are paying tax on all of their income and that they are not stashing money in tax havens, money that should be flowing into federal coffers and enabling the government to balance the budget and eliminate the deficit?

Can you promise me that you will do everything you can to ensure that all of these groups pay all of the taxes they should be paying?

Senator Carignan: Senator, as you know, the Minister of Finance and the Canada Revenue Agency ensure that people pay their taxes and that everyone who has to pay taxes pays. The Canada Revenue Agency is working hard to combat tax evasion. This does not mean that the 86 people you are talking about employ tax evasion strategies. The government makes sure that everyone who has to pay taxes pays.

FOREIGN AFFAIRS

BURMA—HUMAN RIGHTS

Hon. Mobina S. B. Jaffer: My question is for the Leader of the Government in the Senate. I understand that you may not have an answer today, but I would really appreciate it if you could give me an answer this week. My question has to do with the people of Burma and the situation facing the Rohingya. I'm very concerned because a number of Canadians fought very hard for the rights of the Burmese peoples, but the situation for the Rohingya in Burma has become unbearable.

[*English*]

The Rohingyas are denied food. They are not being properly given rights to be accounted for. The British government paid $10 million to the Burmese government so that the census could be taken for the Rohingya, and the president of Burma, President Thein Sein, has broken that promise and he is not going to

comply with making sure that the Rohingya are counted. United human rights experts have raised alarm about the state of the Rohingya.

[*Translation*]

My question for the leader is the following: what has our government done to help the Rohingya in Burma? What support is our government giving the Rohingya?

Hon. Claude Carignan (Leader of the Government): Thank you for your question, Senator Jaffer. Since that question requires a more comprehensive answer, I will take it as notice. You asked me to get back to you this week, but I'm sure you would prefer a more comprehensive answer over a quick and incomplete one. I'll pass your question along and will get back to you with an answer in the next few days, if possible, but more likely in the next few weeks.

[*English*]

ORDERS OF THE DAY

FIRST NATIONS ELECTIONS BILL

THIRD READING—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Tannas, seconded by the Honourable Senator Batters, for the third reading of Bill C-9, An Act respecting the election and term of office of chiefs and councillors of certain First Nations and the composition of council of those First Nations.

Hon. Lillian Eva Dyck: Honourable senators, before I begin my speech on Bill C-9, I want to say a few words about the notice of motion for time allocation on Bill C-9. I was disappointed that Senator Martin, the Deputy Leader of the Government, presented that notice because it was unnecessary. I gave my word to Senator Patterson, the chair of the committee, and to Senator Tannas, who is the sponsor of the bill. I know that they believed me and that they trusted me. There was no intention on this side in any way to delay passage of the bill. I informed our deputy leader as well. As I said, I had no intentions of creating any delays in passage of this bill, despite its significant shortcomings. There was no need to give this motion.

Although I have been told I shouldn't take this motion personally, it does imply that those of us on this side are trying to delay the bill. It does imply that perhaps you don't trust me, that when I give my word, you don't really believe that I am going to keep it. I think all honourable senators know that when I pledge to do something, I do it, so keep that in mind.

• (1500)

I would note that the members of the Standing Senate Committee on Aboriginal Peoples do have in-depth discussions. We don't always agree, but we do have very good relationships, and what has happened here in the chamber is not reflective of what happens within our committee meetings. I wish that tone of relationship was more prevalent within the chamber as a whole.

To get back to the bill: Honourable senators, I rise today, as promised, to speak at third reading of Bill C-9, the First Nations Elections Bill. As noted by the sponsor, Senator Tannas, and outlined in the report of our committee, Bill C-9 does contain many good provisions such as lengthening the terms of office, establishing penalties for electoral offences, and improving nomination and mail-in ballot procedures. However, as I outlined in my speech at second reading of the bill, there were and still are significant and substantial objections from First Nation witnesses and the Canadian Bar Association to clauses 3(1)(*b*) and 3(1)(*c*) of the bill.

Our committee heard witnesses from Aboriginal Affairs and Northern Development Canada and the Department of Justice. We heard Aimée Craft, from the National Aboriginal Law Section of the Canadian Bar Association, from Chief John Paul of the Atlantic Policy Congress, from Chief Ron Evans of the Norway House Cree Nation in Manitoba.

We also invited witnesses from the Assembly of First Nations, the Federation of Saskatchewan Indian Nations, and the Assembly of Manitoba Chiefs, but though they accepted, they were unable to appear for various reasons.

The Confederacy of Treaty 6 First Nations asked to appear and was accepted as a witness but, unfortunately, they also were unable to appear.

We did, however, receive written briefs from the Assembly of First Nations and the Treaty 6 Confederacy. I'll speak about these written briefs later in my speech.

Two organizations, the Atlantic Policy Congress and the Assembly of Manitoba Chiefs, initiated the process to improve Indian Act elections by extending the length of office of chief and council members to four years, and by allowing for the provision of a common election day. The original intent of the bill focused on First Nations who conduct their election under the Indian Act, which only allows for two-year terms of office.

Bill C-9, which is touted as being opt-in legislation, does nevertheless allow the Minister of Aboriginal Affairs and Northern Development Canada, through clause 3(1)(*b*), to order a First Nation to come under the provisions of this bill. Through this clause, the minister can order a First Nation undergoing a protracted leadership dispute that has significantly compromised their governance to come under the provisions of Bill C-9.

It is important to note that this provision not only applies to those First Nations who conduct Indian Act elections, it also applies to those First Nations who conduct community custom code elections. Custom code elections, which are approved by

Aboriginal Affairs and Northern Development Canada, are an improvement over Indian Act elections and generally have terms of office longer than two years.

When we examined this bill two years ago, the department gave conflicting answers as to whether or not First Nations who hold custom code elections could be ordered to come under Bill C-9 and hold this type of election rather than one according to their own custom code electoral provisions.

The extent of the lack of clarity with regard to whether or not First Nations who hold custom code elections could be ordered to come under the provisions of Bill C-9 is perhaps best exemplified by referring to the testimony two weeks ago of Ron Evans, Chief of Norway House First Nation and former Grand Chief of the Assembly of Manitoba Chiefs. He was a key player in the genesis of Bill C-9, and yet even he was not aware that First Nations who hold custom code elections will be subject to clause 3(1)(*b*). And he is chief of a First Nation that holds custom code elections. He was genuinely surprised to hear this.

Chief Evans did state that he accepted this possibility, but of course he obviously hasn't asked his band members about this because he wasn't even aware of this possibility prior to his appearance two weeks ago as a witness to the Standing Senate Committee on Aboriginal Peoples.

The current Grand Chief of the Assembly of Manitoba Chiefs, Derek Nepinak, is opposed to the passage of Bill C-9. He was asked to be a witness, but he was unable to appear. Chief Evans, the former Grand Chief of the Assembly of Manitoba Chiefs, told the committee that Chief Nepinak could not oppose Bill C-9 on behalf of the Assembly of Manitoba Chiefs because a resolution to that effect has not been passed by the Assembly of Manitoba Chiefs. That's relevant information. There is no resolution objecting to Bill C-9 on the AMC website. However, there isn't one supporting Bill C-9 either. That's right. There isn't one supporting Bill C-9 either. So Chief Evans' complete support for Bill C-9 is his position only and is not backed up by resolution from the Assembly of Manitoba Chiefs as a whole.

The resolution that gave Chief Evans the authority to speak on behalf of the AMC in the past does not address Bill C-9 itself. Instead the resolution indicated the support of the Assembly of Manitoba Chiefs for the initiation of the process to develop federal legislation to lengthen terms of office for First Nation leaders, and to allow for a common election day amongst different First Nations. In other words, as I said previously, Chief Evans himself did not have the appropriate resolution from the Assembly of Manitoba Chiefs to claim total support for Bill C-9. So there is some doubt as to the complete validity of his testimony when it comes to total support.

I will read into the record the pertinent details of this resolution, from January 2009, on the Assembly of Manitoba Chiefs' website. It reads:

> **THEREFORE BE IT RESOLVED,** that the Chiefs-in-Assembly support and endorse the Common Election Day and Standard Term of Office concept.
>
> **FURTHER BE IT RESOLVED,** that the Chiefs-in-Assembly direct the AMC Grand Chief and the AMC Chiefs Governance Table to:
>
> - Notwithstanding other Canadian jurisdictions, develop a Common Election Code that respects the authority and jurisdiction of each First Nation and ensures our inherent right to self-government.
>
> - Work in partnership with the First Nation communities to prepare referenda options for a province-wide referendum with potential timelines to be brought to the next Chiefs in Assembly in September 2009 for deliberation and decision.

In other words, honourable senators, while the testimony from Chief Evans may have convinced the members of the Standing Senate Committee on Aboriginal Peoples that Bill C-9 is perfect as is, he did not have a resolution from the Assembly of Manitoba Chiefs to support the bill itself. Furthermore, it is unfortunate that we were unable to hear testimony from the current Grand Chief of the Assembly of Manitoba Chiefs, Derek Nepinak, to get a more complete understanding of the AMC's position. It is also unfortunate that we did not hear in-person testimony from any First Nations who are opposed to clause 3(1)(*b*) or other aspects of the bill. We only heard from First Nations who supported the bill — from the Atlantic Policy Congress and from Chief Evans. We did, however, receive written briefs from the Assembly of First Nations and from the Confederacy of Treaty 6 First Nations who are opposed to the bill, but those briefs were not distributed to the committee until the day after we had an in camera discussion of the bill. In other words, honourable senators, the dissenting opinions were at a disadvantage.

• (1510)

As I outlined in my speech at second reading of this bill, when we studied this bill two years ago, there were significant and substantial objections from the majority of First Nations witnesses and the Canadian Bar Association to paragraphs 3(1)(*b*) and (*c*) of the bill.

As I mentioned earlier, while the Assembly of First Nations, the Assembly of Manitoba Chiefs and the Federation of Saskatchewan Indian Nations were invited to appear as witnesses, they were unable to appear.

But the committee did hear in-person testimony from supporters of paragraph 3(1)(*b*). As I said previously, we heard from Chief Paul from the Atlantic Policy Congress of First Nation Chiefs Secretariat and we also heard from Chief Ron Evans from Norway House Cree Nation in Manitoba, who was formerly the Chief of the Assembly of Manitoba Chiefs. Both of these witnesses gave very powerful presentations that indicated their clear support for Bill C-9 as is; that is, they did not see a problem with paragraph 3(1)(*b*), which gives the Minister of Aboriginal Affairs and Northern Development the power to order a First Nation to come under its provisions.

As I said earlier, it's unfortunate that none of the First Nations witnesses who were opposed to paragraph 3(1)(*b*) were able to appear in person before the committee, because such a

presentation is much more powerful than a written brief. As I also just mentioned, the committee members didn't even receive the written submissions from the Assembly of First Nations and the Confederacy of Treaty 6 First Nations until after we had already discussed the bill in camera. Committee members did not have the opportunity to ask questions of these witnesses and explore in depth their objections to paragraph 3(1)(*b*) and other portions of the bill. Later in my speech, I will read the written briefs from the Assembly of First Nations and from the Confederacy of Treaty 6 First Nations so that their thoughts are captured in the official records of the Senate.

It is my belief that because the committee did not hear the in-person testimony from the AFN, the AMC or the Federation of Saskatchewan Indian Nations, and because we did not get a chance to ask them questions, we did not get a balanced overview of the bill and, in particular, the acceptability of paragraph 3(1)(*b*). While it could be argued that we heard the opposing testimony two years ago, the membership of the committee has changed substantially. There are new senators who did not hear these First Nations witnesses two years ago when we studied this bill.

Our committee did hear from the Department of Justice witness that paragraph 3(1)(*b*) actually limited the power of the Minister of Aboriginal Affairs and Northern Development compared to his powers under the Indian Act. It was pointed out that the phrase "protracted leadership dispute has significantly compromised governance of that First Nation" was spelled out more so than "whenever he deems it advisable for the good government of a band," which is the phrase used under the Indian Act.

The key observation made, though, was that any ministerial decision to impose the provisions of Bill C-9 on a First Nation could be subject to scrutiny by the courts; thus the wording under Bill C-9 would make it more difficult for the minister to justify the use of this power. So, although I had argued at second reading that this phrase was vague and undefined and could therefore give the minister wide scope to impose Bill C-9 on First Nations, I was persuaded that the scope of his powers is not nearly as wide as I had originally thought, especially as it is ultimately reviewable by the courts.

I would like to note that this bill could have been improved significantly if the government had been willing to accept small changes. One such change could have been placing a further limit on the minister's power in paragraph 3(1)(*b*) by making it be subject to the consent or the request of the First Nation. We could have amended that paragraph to read:

> ... the Minister is satisfied that a protracted leadership dispute has significantly compromised governance of that First Nation and has the consent of that First Nation;

We didn't amend the bill in that fashion, but had we done so, it would have allowed the First Nation members or leadership the power to request the minister to intervene and order an election, rather than giving the power just to the minister.

Critics of this idea believe that when there is a protracted leadership dispute, it would be difficult, if not impossible, for the First Nation to pass any band council resolution or referendum to ask the minister to intervene under paragraph 3(1)(*b*). However, my perspective is different. If a First Nation is experiencing serious governance problems and their leadership was offered the chance to ask to be placed into a system of governance that by all appearances is better, surely they would choose to ask the minister to conduct an election under Bill C-9. Without giving such troubled First Nations the power to choose to come under the provisions of Bill C-9, we are prejudging their abilities to make sound decisions when under duress. In other words, by not even giving First Nations undergoing significant governance problems the choice to ask the minister to add them to the schedule of Bill C-9, the bill perpetuates a colonial and paternalistic pattern of thinking.

While Bill C-9 is not a self-governance bill, the constitutionally embedded rights of First Nations to their existing Aboriginal and treaty rights are interpreted as meaning they can govern themselves. Having the minister order them to hold an election under the provisions of Bill C-9 is seen as a violation of those rights.

In the committee's observations of Bill C-9, we noted that:

> Finally, the committee heard objections from witnesses that clause 3(1)(*b*) perpetuates the power of the minister over the affairs of First Nations. In examining this concern, the committee noted that the vesting of the power of dissolution of government of all types is a common and necessary feature in Canada (including federal, provincial, and municipal governments).

Honourable senators, I would like to examine this piece of information in more detail. In our federal system of government, it is the Governor General who is vested with the power to order new elections. The Governor General is prescribed the power to summon Parliament and dissolve Parliament under sections 38 and 50 of the Constitution Act, 1867.

While these powers are prescribed to the Governor General, it is the Prime Minister, by constitutional convention, who tenders and advises the Governor General to use these powers. If the Prime Minister would like to summon, prorogue or dissolve Parliament in order to call a new election, he or she makes a request to the Governor General, and the Governor General can either grant or reject this request.

In fact, as I recall, when Prime Minister Harper made his visit to see the Governor General Michaëlle Jean, they spent several hours discussing, so people were wondering if she was going to grant the request or deny it. I'm sure we all remember that occasion.

Rejection of these requests is rare in our history. Honourable senators may recall the tale of the King-Byng Affair of 1926. I don't think any of us here were born at that time, but other people who are interested in these types of things have likely read about it. In this instance, to avoid a vote on the "Fansher amendment," a motion of censure against King, Prime Minister King requested that Governor General Lord Byng dissolve Parliament. Byng refused the request on the grounds that Prime Minister King had gone back on a previous agreement with Byng when he first formed government and that, as the Conservatives held the most

seats of a single party in the House of Commons, they should be afforded a chance to form government before an election was called.

• (1520)

What is critical to point out here is that under constitutional convention, the Governor General acts after a request from the representative leadership. The Prime Minister makes that request. The Governor General may refuse the request, but this refusal is not the same thing as initiating the summoning, proroguing or dissolving of Parliament without a request from the elected leadership, such as the Prime Minister.

The important point is this: Under Bill C-9, there is no mechanism for the elected leadership on a First Nation to request the minister to use the power of paragraph 3(1)(*b*) and order that First Nation to come under Bill C-9 and order a new election according to the provisions of this bill. There is no mechanism for the leadership to request the minister to act, unlike what happens with the Governor General and the Prime Minister.

While I agree with the principle that there should be someone vested with the power to summon, prorogue or dissolve government, it is clear that paragraph 3(1)(*b*) as is does not create a truly analogous situation with respect to comparing the Governor General's powers over the federal government to those of the Minister of Aboriginal Affairs and Northern Development over First Nation governments — not unless it were amended so that the minister had to be asked to act by the First Nation. Then we would have a truly analogous situation to our Westminster Canadian practice and constitutional conventions. That would have been the preferable scenario.

If a more fulsome discussion had been possible on the issue of First Nation sovereignty versus the Westminster model of governance, perhaps the committee would have gained insights into the strong objections by First Nation leaders to investing the Minister of Aboriginal Affairs and Northern Development with the power to impose Bill C-9 on custom code First Nations. Unfortunately, we did not have that discussion.

In addition, I am still not convinced that the Minister of Aboriginal Affairs and Northern Development is the right person. Unlike the Governor General or the lieutenant-governors, the minister is not at arm's length from the operations of First Nations governance. The minister is not neutral. No one is ever completely neutral, but the minister, through the department, is involved intimately in the oversight of the day-to-day functions of First Nations.

A few weeks ago, for example, First Nation chiefs were being asked to sign on to their annual contribution agreements by the department. This is the annual funding they receive from Aboriginal Affairs and Northern Development Canada, and some First Nations have refused to sign, in part because of a perceived lack of negotiation or accommodation of First Nation input into the agreements. It could be with all the paperwork and all the meetings that are going on with respect to signing those agreements and the cutbacks to organizations like the Federation of Saskatchewan Indian Nations and the Assembly of Manitoba Chiefs, that may have complicated their ability to appear as witnesses at the committee, because of what was going on within their day-to-day operations. They had to make choices about what they could do or could not do.

In the current scenario of development of resources located on First Nations' land, it is easy to imagine scenarios in which there will be leadership disputes that affect First Nation governance. Conflict over resource development, environmental protection and revenue sharing is bound to occur and is occurring. With a federal government that favours resource development over environmental protection, how can a First Nation trust the minister not to intervene in their leadership disputes over such issues, when that First Nation has differing priorities from the federal government?

Furthermore, and perhaps more important, there is another problem with the minister having the power ascribed to him by paragraph 3(1)(*b*). There is a longstanding historic mistrust of the Minister of Aboriginal Affairs and Northern Development by some First Nations. The minister states that he wishes to give up the colonial, paternalistic practice of being in charge of First Nation election appeals, yet, at the same time, he doesn't want to give up the power to compel a First Nation to come under the provisions of Bill C-9. Such mixed messages do not create trust. To create trust, the department and the minister should be giving consistent, straight answers to questions about the bill or other matters.

It was most perplexing and confusing that, in one answer, the minister of the day or the department officials would first state one thing and then later on would state the exact opposite regarding the application of ministerial power under paragraph 3(1)(*b*) of this bill. Which answer are we to believe?

Honourable senators, let me give you some examples of the conflicting answers that we heard during consideration of this bill.

During the February 15, 2012 meeting of the Aboriginal Peoples Committee, Senator Meredith asked the following question:

I take this from the transcripts. Senator Meredith said:

> Minister, you indicated that this piece of legislation does not affect those who hold elections under their custom codes; is that my understanding? Is that correct?

Minister Duncan replies:

> That is correct.

During a subsequent meeting on March 6, 2012, I asked whether First Nations that operate under a custom code would be excluded from the power of the minister in paragraph 3(1)(*b*). My question was:

> Does that exclude custom code elections, too?

Ms. Kustra, Director General, Governance Branch, Regional Operations Sector, Aboriginal Affairs and Northern Development Canada, said:

> No, it does not because the communities that elect their leadership under a community custom code are still considered Indian bands within the meaning of the Indian Act.

Honourable senators, let me highlight the contradictions in these two answers. In the first answer, we were told that First Nations with custom code elections are not affected by this bill, but in the second answer, we are told they are — quite contradictory answers.

Similarly, during committee study in the other place on November 7, 2013, Ms. Jean Crowder asked the following question:

> So under the proposed legislation under clause 3, one aspect of that is for a nation to indicate that they want to be included, but there are also provisions in this legislation for the minister to order somebody under the new legislation.
>
> Would that be either Indian Act bands or custom? Just custom?

And the Honourable Minister Bernard Valcourt said:

> No, just Indian Act bands.

Ms. Jean Crowder then asked:

> Okay. That's not clear from this.
>
> So what you're saying is—

And then Honourable Minister Bernard Valcourt said:

> Yes, there was a protracted...no, you're right. Sorry.

Ms. Jean Crowder said:

> But it could be either Indian Act—first nations currently under the Indian Act legislation or custom code. Both could be referred to the new legislation.

Mr. Valcourt then said:

> If the minister was satisfied that there was indeed a protracted leadership dispute, in that case, yes, either an Indian or a custom band could be ordered to come under the act.

Okay, let me explain this again: First, Minister Valcourt says that custom bands can't be ordered to come under Bill C-9; then he corrects himself and says, yes, they can be. But this answer contradicts what the previous minister said about the exact same paragraph, paragraph 3(1)(*b*). Most confusing.

How can First Nations trust the minister or the department when they hear contradictory answers to the same question? Which answer is true?

But, right now, do we finally have one and only one answer to this question from Indian and Northern Affairs Canada, right here, today, April, 2014? No, we do not.

Under tab 2 of the bill kit, which lists frequently asked questions, question 9 is:

> Will this affect First Nations who hold their elections under their own community or custom election code or self-governing First Nations?

• (1530)

The answer given in the kit is:

> A9. No. The proposed new regime is optional. First Nations who do not wish to "opt in" will continue to hold their elections according to their own rules.

To sum up all of that confusion, first we get our custom code bands included. The first answer from Minister Duncan is "no." The second answer from Kustra is "yes." The third answer from Minister Valcourt is "no." The fourth answer from Valcourt is "yes," and from the bill kit it's "no." It's no, yes, no, yes, no. If we ask again, the answer is "yes," and when I asked Senator Tannas, the response we got back was "yes." This lack of consistency in the answers to the same question has likely made it difficult for First Nations to trust the minister, as First Nations try to figure out — let alone me, as the critic of the bill — which answer is true.

Honourable senators, while I believe the election provisions spelled out in Bill C-9 are a major improvement over Indian Act elections, and while I agree that the implementation of Bill C-9 will create greater stability for First Nations who hold the Indian Act elections who choose to opt into it, I do not agree that it is acceptable for the Minister of Aboriginal Affairs and Northern Development to impose Bill C-9 on any First Nation which conducts custom code elections without their consent or without at least being asked to do so.

A number of witnesses had strong objections to clause 3(1)(*b*) and consequently opposed the bill. These witnesses were trying to protect the electoral rights of First Nations who have adopted custom code elections which are self-designed and departmentally approved. In addition, they were trying to protect those First Nations who hold elections according to their traditional customs and have never held an Indian Act election. While the departmental witnesses and those organizations that represent First Nations who hold Indian Act elections were convinced that the minister would rarely, if ever, use his power on First Nations who hold custom code elections, I don't think the dissenting opinions were given an equal chance to be heard.

Furthermore, how can First Nations trust the minister to use his power only in rare instances when they can't get a straight answer as to whether or not this power extends to custom code First Nations?

In my opinion, the dissenting opinions of the Assembly of First Nations, Treaty 6 Confederacy, the current Assembly of Manitoba Chiefs and the Canadian Bar Association were too quickly dismissed. The role of senators ought to be to listen more carefully to minorities, such as First Nation citizens and their leaders, especially when they have an opposing viewpoint. I regret that we missed an opportunity to amend Bill C-9 as suggested by these First Nation witnesses. If we had done so, it would have been proof positive of the value the Senate to improve legislation that comes before us and protect the rights of minorities such as First Nations.

Though I still think Bill C-9 has major flaws, I also recognize that the federal government is not willing to make any changes. I am thankful, though, that at least at the Standing Senate Committee on Aboriginal Peoples meetings we were able to have a good discussion and agree to disagree respectfully. We have a good working relationship.

To sum up what I have just said over the past 30 minutes, clause 3(1)(*b*) gives the minister the power to include a custom code First Nation under the provisions of Bill C-9. That clause should have been amended so that the minister has to be asked to intervene. However, that did not occur.

Second, the opponents of Bill C-9, the First Nation witnesses from the Assembly of Manitoba Chiefs, the current grand chief, the Federation of Saskatchewan Indians and the Treaty 6 Confederacy, were not given a fair chance to be heard because they didn't actually appear in person. Opposition to the bill was not really heard to the extent it could have been.

The third issue is one of trust. This is a big one because in order to have a good working relationship, you have to have trust. We see that in the chamber here. In our committee, I believe we have a good understanding of each other and we trust each other; perhaps overall in the whole Senate we don't, but if you look at the relationship between the many First Nations and the Minister of Aboriginal Affairs and Northern Development, that relationship is not solid because of the trust issue. When the minister does not give the same answer to the same question time after time, then First Nations are wondering what to believe. How can you trust someone when you are not sure you are getting the truth?

Finally, it's clear that the federal government wants Bill C-9 passed as soon as possible. We had the notice of motion given that was unnecessary; nevertheless, it's there. This seems to be a pattern. Unfortunately, First Nation leaders are always struggling to have their voices heard. That has happened over the last few years. I have been the critic on a number of bills affecting First Nations. They struggle really hard to have their views heard and recognized, yet I don't think they are receiving the hearing or the full attention that they should be getting. That really is a sad situation.

I do not support the passage of Bill C-9 as is. To conclude my speech, I will read into the record the written brief submitted to the Standing Senate Committee on Aboriginal Peoples on March 26 and circulated to the committee members on March 27 in both official languages.

This is the brief from the Assembly of First Nations, and it states:

> The AFN acknowledges the work that many First Nations have undertaken with the Government of Canada to develop and champion this bill and the significant support they provide for this optional legislative framework.
>
> This legislation could create improvements for our First Nations that conduct their elections pursuant to the *Indian Act*, particularly those that have found the current two-year terms limit economic development and opportunities for longer-term planning.
>
> The inherent right of self-government is protected under section 35 of the *Constitution Act, 1982*. There can be little doubt that core governance, and in particular the selection of the governing body, is an aspect of the inherent right. Consequently, we caution Canada that passage of this legislation is subject to constitutional challenge where the act is not enabling (optional) and does not recognize a First Nation's choice to establish its rules for selecting its governing body in accordance with the Act.
>
> This infringement on the inherent right is of particular concern with respect to section 3(b) and (c) where the Minister can order a First Nation which currently conducts its elections outside of the *Indian Act* to follow the provisions of the *FNEA*, where the Minister is either satisfied that "a protracted leadership dispute has significantly compromised governance of that First Nation" or where "the Governor in Council has set aside an election of the Chief and councillors of that First Nation under section 79 of the *Indian Act* on a report of the Minister that there was corrupt practice in connection with that election."
>
> In practice, this will compel First Nations that have developed their own systems to then return to conducting elections under federal law without their express consent or the direction of their citizens.
>
> Additionally, while removing the role of the Minister or Governor-in-Council in appeals for First Nation elections is welcome, transferring responsibility to courts will entail costs for First Nation citizens and governments.

• (1540)

> First Nations have identified the need for broader institutional support and capacity in the area of leadership selection to assist in developing and ratifying their own leadership selection processes, based in their own traditions and practices.
>
> This legislation does not take steps towards that goal, nor towards support for reinstituting traditional governance practices outside of federal laws and policy, but as an interim step could provide improvements for many governments.

The AFN supports enacting the full decision-making authority by First Nation governments, empowered by their citizens. In choosing and designing mechanisms for the fulfillment of this authority, care needs to be taken that new barriers or new oversight mechanisms are not being created, further vesting control in the office of the Minister of Aboriginal Affairs and Northern Development. Fundamentally, this bill attempts to fix the practical governance issues created by the imposition of the Indian Act through further federal interference. However, it can ameliorate specific challenges that have been identified by First Nations.

Regardless, the new powers granted to the Minister under this legislation are inappropriate and the AFN recommends that the committee strike Section 3, sub-sections (b) and (c).

That's the end of the written submission from the Assembly of First Nations on Bill C-9.

I will read into the record the written submission from the Confederacy of Treaty Six First Nations. It's quite a bit longer.

The Confederacy of Treaty Six First Nations were created in the spring of 1993 with the purpose of serving as the 'united' political voice for those Treaty Nations who are signatories of Treaty No. 6 for the continued protection of the fundamental Treaty, Inherent and Human Rights of the Treaty peoples of those Nations. The member Nations of Treaty Six are as follows:

1. Alexander First Nation
2. Alexis Nakota Sioux Nation
3. Beaver Lake Cree Nation
4. Cold Lake First Nation
5. Enoch Cree Nation
6. Ermineskin Cree Nation
7. Frog Lake First Nation
8. Goodfish Lake First Nation
9. Heart Lake First Nation
10. Kehewin Cree Nation
11. Louis Bull Tribe
12. Montana First Nation
13. O'Chiese First Nation
14. Onion Lake First Nation
15. Paul First Nation
16. Saddle Lake Cree Nation
17. Samson Cree Nation
18. Sunchild First Nation.

The Confederacy is dedicated to ensuring that the terms, spirit and intent of Treaty No. 6, including sovereignty and jurisdiction are honoured and respected. Sovereignty and jurisdiction includes our right to self-determination, which includes the right for the Treaty No. 6 First Nations to choose their own governmental and political structures; and to direct the social, cultural, spiritual and economic advancement of their peoples in their lands and territories. These rights are protected domestically in our Treaties and other laws, as well as internationally in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Background

The Confederacy of Treaty Six First Nations forwarded (11-29-2012/#01R) opposing all federal legislation, regulations and policy changes to Prime Minister Stephen Harper and Minister Duncan, with copies to opposition members, Alberta Members of Parliament, and the Assembly of First Nations. The resolution declared in part that the Federal Government had failed to consult and accommodate First Nations rights —

The Hon. the Speaker *pro tempore***:** Do you need more time?

Senator Dyck: Could I have five more minutes?

The Hon. the Speaker *pro tempore***:** Are Honourable senators agreed to five minutes?

Hon. Senators: Agreed.

Senator Dyck: I'll continue reading:

... the Federal Government had failed to consult and accommodate First Nations rights and interests as mandated by the constitutional nature of our rights. This legal obligation has been further enhanced by the United Nations Declaration on the Rights of Indigenous Peoples, which now requires that our free, prior and informed consent be obtained before Canada makes any decision, action or legislation that has the potential to impact our rights. We called on the Government of Canada to provide First Nations the opportunity to participate in meaningful process.

In the Treaty Six Position Paper presented to Prime Minister Stephen Harper on January 11, 2013, we reminded Parliament that the Canadian Constitution Act, 1982, contains the following:

Sec. 52. (1) states:

The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the

provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Sec. 35. (1) states:

The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

The Supreme Court of Canada ruling supports the Crown's legal duty to consult and accommodate First Nations where Crown decisions may adversely impact our constitutionally recognized and affirmed Aboriginal and Treaty Rights. Keep in mind that there are also our traditional laws in relation to these matters that have never been displaced by Canada's laws that must be considered in any matters impacting our First Nation governments. In addition, many Supreme Court rulings have upheld Canada's fiduciary (trust) duty to Treaty Peoples.

"The ultimate legal responsibility for consultation and accommodation rests with the Crown. The honour of the Crown cannot be delegated."

Chief Justice MacLachlin, Supreme Court of Canada in Haida

Now once again, we are forced to address the ongoing failure of government and Parliament to obtain our consent by undertaking adequate consultation for the purposes of accommodation in order to achieve true reconciliation.

Problematic sections of Bill C-9

On October 29, 2013 the Government of Canada, through the Minister of Indian Affairs introduced *Bill C-9: The First Nations Elections Act*. This Act is a reincarnation of Bill S-6 from the previous session of parliament that was killed on the Order Paper through prorogation. Proposing an opt-in approach to First Nations governance, the bill stipulates regulations and changes eligibility, terms of office and composition of councils which are subject to ministerial approval or determination. Applying to those First Nations contained in the schedule, Bill C-9 can also be applied when the Minister is "...satisfied that a protracted leadership dispute has significantly compromised governance..." of a First Nation. This clause appears to create the opportunity for the minister to impose the Act on a First Nation under investigation for governance issues. Unilateral imposition of the Act will not work, as this imposition will override the existing structure, including customary election codes which have been chosen by the nation.

Bill C-9 will also allow for the petitioning of electors to have leadership removed from office, and allows for intervention after the submission of said petition to a respected court. This clause could create further issues of legal and jurisdictional nature when the application of provincial law is questioned. Petitioning for a change in leadership is not a provision of any other government in Canada, yet it could become a tool for removal of leadership within First Nations. Clauses such as the aforementioned create hesitation and concern for First Nations in Canada as they open doors for unilateral intrusion of government policy.

The Hon. the Speaker *pro tempore***:** Unfortunately, time is up.

Continuing debate.

Hon. Dennis Glen Patterson: Honourable senators, I was going to ask the honourable senator a question, but we have run out of time for that.

I want to make a brief comment. I appreciate Senator Dyck's thoughtful comments on the bill and how it was considered quite thoroughly by our committee in public and in camera.

• (1550)

Frankly I find the suggestion that a Minister of Aboriginal Affairs, acting under the authority of a bill entitled the "First Nations Elections Act," would employ clause 3(1)(*b*) to somehow punish or overthrow the leadership of a First Nation government where there is opposition to a resource development project; I just don't think the bill that we are considering today could be twisted and perverted to such cynical, Machiavellian purposes.

It has been argued that the phrase in the bill justifying the minister's ordering of an election under the Indian Act, "a protracted leadership dispute has significantly compromised governance of that First Nation," is unclear and needs to be defined in regulations or otherwise. Frankly, I find the plain meaning of those words to be understandable and common sense. I think that if it were challenged, a court would first consider that it's about an elections act, not about resource development or environmental or other regulatory process. It's about a protracted leadership dispute, something that could not be used on the spur of the moment if a band took a position that was not pleasing to the government.

Finally, it's about a leadership dispute that has compromised governance of that First Nation. The reality is that this power has been very rarely used in the past. The minister appeared before our committee in the previous Parliament and assured us that it would be very reluctantly used. We have pointed out in our observations that it would only and should only be used where all other methods of resolving the governance impasse were exhausted. The minister and the department outlined various processes that they could and would employ to seek to resolve the impasse, short of the minister's using this power. Furthermore, in our observations we said it should be rarely used and with great caution.

Frankly, with all respect to the honourable senator, I think the suggestion that the bill could be used in cases of disputes over resource development is pushing the concerns about this bill too far. I believe that's a challenge to the honour of the Crown. I believe ministers do consider the honour of the Crown seriously in discharging their obligations. They are always given legal advice

when they undertake these difficult decisions, and I just want to put on the record that I respectfully disagree with the honourable senator's fear about clause 3(1)(*b*).

Senator Dyck: Would the honourable senator take a question?

Senator Patterson: All right. That's not quite what I had intended, but sure.

Senator Dyck: Thank you. I believe you implied that I said clause 3(1)(*b*) could be used to punish or to overthrow a government. If those were the words you used, I certainly did not imply that it could be used to punish nor use the word "overthrow"; I just said the minister might be able to impose an election, not to punish them or to overthrow their government. Those were not the words that I used, but I think they were the words that you used. Is that right?

Senator Patterson: Perhaps I was characterizing — perhaps with a little hyperbole — I was characterizing the concern about this clause and how it might be used. The honourable senator did not use those words, but I still believe that, in the climate of mistrust, we have these suspicions and these fears that are really not often founded in the plain words of the legislation that we are considering.

Senator Dyck: I have another question. During the deliberations of the committee, by the initiators of this bill, the Atlantic Policy Congress and the Assembly of Manitoba Chiefs, one of the arguments that they certainly did bring forth was that this improvement would lead to economic development. It wasn't just about elections. Economic development was mentioned many times as one of the reasons we needed this bill. Was that not brought up during committee? Did you not hear that?

Senator Patterson: I don't think it was about resource development per se, Your Honour. I think the point that was being made was that where you have no government, where there is a prolonged impasse, you have no ability to make any decisions leading to progress of businesses of the First Nation band and leading to the delivery of basic government services. Yes, in the sense that there would be no stability and no one with whom businesses or even the Minister of Aboriginal Affairs could deal, and that would lead to not only a lack of opportunities for economic development but also a lack of opportunities for delivering basic services. That's why what some might say are extreme provisions are put in place so that government can be restored for the good of the community in situations where a dispute cannot be resolved by good faith and the best intentions of the federal officials.

Hon. Joseph A. Day: Honourable senators, I believe that we owe it to the Confederacy of Treaty Six First Nations to hear the conclusion of their response to Bill C-9, the First Nations Election Bill, prepared for the Standing Senate Committee on Aboriginal Peoples.

I will pick up at page 4, where Senator Dyck got to before she ran out of time:

> The bill may be the latest attempt to "modernize" First Nations governance; however, the "modernization" should not come at the abolition of traditional practices. The bill seems to be compromised of examples of best practices from First Nations in Canada. However, these successes have been so due to the expression of First Nations right to self-determination, and not government intervention.
>
> Further to this, the Act will allow the Canadian Government and the Minister to determine a First Nations definition of elector. Although some custom election codes do not reflect decisions such as *Corbiere v Canada*, it is not the duty of Canada to impose new election codes on said nations. Discussions must take place on a nation to nation level with those who are utilizing outdated election customs in order to identify best steps forward. Unilateral imposition of a new election system is a violation of Treaty and inherent rights. The aforementioned sections outline only a few problem areas of the bill, at its core the process being utilized by the Crown is detrimental to First Nations sovereignty. The duty to consult lies on the Crown, and any alteration of a right must be consulted upon properly; such is the inherent right to self-determination.

Then, under the heading, "Right to Self-Determination":

> First Nations in North America have existed on this continent since time immemorial, and during their stay have created governments, economies and cultures that are as diverse as the terrain in which they inhabit. These inherent rights are enshrined in the culture and beliefs of each nation, and are the basis upon which the Treaties were entered into with the Crown. The government of Canada is bound to honour these sacred agreements, but has only done so within the parameters of the racist *Indian Act*. First Nations call upon the Crown to recognize all aspects of the Treaties, beyond the five dollar annuity payments, and implement the true spirit of the agreements. In addition to the rights protected through Treaty, First Nation's rights to self-determination have been further recognized in the United Nations Declaration of Rights of Indigenous People (UNDRIP);

• (1600)

> Article 3
>
> Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> Article 4
>
> Indigenous peoples, in exercising their rights to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
>
> Article 5
>
> Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to

participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

These articles, accepted and recognized by the Government of Canada, enshrine the ability of First Nations to determine their own governance structure, apart from the State. These articles reflect the fact that First Nations are unique governmental entities, and should not be subject to Canadian Legislation unless placed following their request. For this position to be respected, the Crown must remove any ability for the Minister to apply the Act to a First Nation without their Free, Prior and Informed Consent. The attempted amendments to the *Indian Act* also serve as an area of concern for First Nations, and seem to position the government on a path contrary to statements made by the Prime Minister himself.

Contradictory Actions of the Government

On January 24, 2012, following the first Crown-First Nations gathering, Prime Minister Stephen Harper stated:

> To be sure, our Government has no grand scheme to repeal or to unilaterally rewrite the Indian Act....

Moving forward from this momentous gathering and the statement, the actions of the Crown appear to be in direct contradiction to the statement. Since January 2012, First Nations in Canada have faced a barrage of legislation. At the national level First Nations have contested Bill S-2, Bill S-6, Bill S-8, Bill S-27, Bill C-38, Bill C-45 and Bill C-428. Each of these Acts somehow impacts the Treaty and Inherent Rights of First Nations, yet the majority have been enacted unilaterally with the Crown failing to meet the duty to consult. The latest assault in 2013 includes Bill C-9, the re-introduction of Bill C-428 and the proposed First Nations Education Act. These three bills directly amend sections of the *Indian Act,* and replace them with sections that may not be reflective of First Nations rights or desires. The amended portions seem to outline a continued abolition of recognized First Nations rights enshrined through Treaty, and the attempt to place First Nations fully under the Constitution of Canada. Pursuing this approach is also in direct contradiction to the position of the government. First Nations have repeatedly called for a nation to nation approach, similar to the process upon which Canada was founded through entering into of Treaty. This approach was reiterated during the January 11, 2013 meeting with Chiefs and the Prime Minister, yet meaningful work and results have yet to come to fruition. First Nations are becoming increasingly impatient with the current approach, and fundamental change must be made in order to repair a severely damaged relationship.

Conclusion

The Chiefs of Treaty Six declare that they are not in favour of the unilateral and paternalistic approach which sees Canada assume control over our governments in violation of our sovereignty, jurisdiction and Treaty rights. Bill C-9, although under the guise of opt-in legislation, permits the Crown and Minister to unilaterally impose the provisions on First Nations not subject to the Act, but undergoing an issue in governance. This provision is not reflective of the UNDRIP nor the Inherent Rights enshrined through Treaty. The Chiefs of Treaty Six oppose and refuse to recognize the current inception of Bill C-9, call for the Minister to thoroughly amend said bill and call for true, meaningful engagement on the subject with First Nations serving as full parties in the process. First Nations have always governed themselves appropriately since time immemorial, and any issues that arise today are due to prior unilateral imposition of a foreign governmental process. This prior violation has hampered First Nations in the past; however through adaptation unique systems have been created which reflect the diversity of the over 600 First Nations. Continued unilateral imposition of European paradigms is not the solution to First Nations problems, and this has been echoed in the genocide of Residential School, relocation of First Nations to reserves and the dissolution of entire First Nations and traditional territory. The Chiefs of Treaty Six call upon the Crown to fully recognize and implement the Treaties with full engagement and utilization of First Nations knowledge and positions. First Nations have a unique place in the foundation of this country, as well as the foundation of its institutions. This existence must be fully appreciated and respected, and the right to self-determination, apart from Crown legislation, must become a reality.

Respectfully submitted by:

Grand Chief Craig Makinaw

Thank you, honourable senators.

The Hon. the Speaker *pro tempore***:** Continuing debate? Are honourable senators ready for the question? It was moved by the Honourable Senator Tannas, seconded by the Honourable Senator Batters, that the bill be read a third time. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

[*Translation*]

The Hon. the Speaker *pro tempore*: On division.

[*English*]

Hon. Joan Fraser (Deputy Leader of the Opposition): We said no, Your Honour.

[*Translation*]

The Hon. the Speaker *pro tempore*: I know and I declared the bill passed on division.

I started by asking if I could put the question and I declared that it was passed on division. Therefore, I acknowledge that there is division.

Senator Fraser: And we rose.

The Hon. the Speaker *pro tempore*: At that time, I saw one person rise. I see you and now I see a second person.

Senator Fraser: We had risen.

• (1610)

The Hon. the Speaker *pro tempore*: At this point, I will ask before I go any further, and before we go to a standing vote.

All those in favour that the bill pass at third reading, please say "yea."

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

[*English*]

The Hon. the Speaker *pro tempore***:** In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore***:** The time being before 5:15, honourable senators, pursuant to rule 7-4(5)(a), the vote is automatically deferred to 5:30 p.m. today with the bells to start ringing at 5:15 p.m.

CRIMINAL CODE
NATIONAL DEFENCE ACT

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator McIntyre, seconded by the Honourable Senator Dagenais, for the third reading of Bill C-14, An Act to amend the Criminal Code and the National Defence Act (mental disorder).

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today at third reading of Bill C-14, An Act to amend the Criminal Code and the National Defence Act (mental disorder), better known by its short title, the "Not Criminally Responsible Act."

Honourable senators, at this time I would first of all like to thank Senator McIntyre for his commitment to this issue and the hard work he has carried out in presenting the government's point of view on Bill C-14. Senator McIntyre, you have worked very hard on this issue and I would like to thank you for the work you have done.

I would like to begin by reviewing the changes that would be brought about by Bill C-14. First, the legislation would explicitly make public safety the paramount consideration in the decision-making process of review boards with respect to accused persons found not criminally responsible.

The concern I have with this is that the government is qualifying what already exists. The review board presently takes public safety as a consideration.

The second main component of this bill is the creation of a high-risk designation for accused persons found to be not criminally responsible for serious personal injury offences and for cases where there is a substantial likelihood of further violence that would endanger the public. A high-risk designation could also be made in cases where the acts committed were of such a brutal nature as to indicate a risk of grave harm to the public.

Persons designated as high-risk, not criminally responsible accused would not be granted a conditional or absolute discharge. Upon being designated as high-risk by the court, a not criminally responsible person would be held in custody and would not be released by a review board until that designation was revoked by the court.

The third part of this pill seeks to enhance victims' rights.

Honourable senators, I believe that we do not need to pass Bill C-14. What we need to do is spend our resources in prevention. Prevention is the best way to protect the public. Chief Justice Beverley McLachlin said, "Mental illness is a disability. It is not a sin, nor a moral wrong. It is just a disability."

The Chief Justice of Canada began a lecture given in October 2010 with the following anecdote:

> A couple of years ago I found myself at a dinner at Rideau Hall in honour of recipients of the Order of Canada. I was seated next to a police officer who was in charge of the police precinct in a downtown area of Toronto where people were poor and crime was high.
>
> "What", I asked the officer, "is the biggest challenge you face?"
>
> I expected him to reply that his biggest problem were all those defense-oriented *Charter* rulings the Supreme Court of Canada kept handing down. But he surprised me. "Our biggest problem," the officer answered, "is mental illness."
>
> My dinner companion went on to explain that a large proportion of the people arrested and brought into his police station were not true "criminals", but people who were mentally ill. They were people who had committed some offence, usually minor, sometimes more major, for no other reason than the confusion their disoriented minds....
>
> Whatever the reason for these individual actions, the officer told me that... the ordinary police processes did not fit well with their situation. How are the police, who are not

> doctors or nurses, to deal with continuing acts of derangement? How do they read a person their rights when they aren't capable of listening or comprehending their situation?
>
> How do they find them lawyers and arrange appearances before judges? In the end, where the initiating incident is not of great consequence, all that can often be done is to keep the mentally ill person for a few hours and then return him to the street, for the cycle to begin all over again.

Chief Justice McLachlin went on to say:

> We don't like to talk about mental illness, but as people like this police officer attest, it is a huge problem.

Honourable senators, just this morning a study asked for by the federal government found that as of today there are 30,000 people with mental disorders on our streets. These are 30,000 homeless people with mental disorders. This is a federal government study of Housing First. That is the situation we have.

The Criminal Lawyers' Association states:

> Most people living with mental health problems and illnesses are not violent or dangerous and do not commit criminal offences. In fact, they are more likely to be victims of violence than perpetrators. Nevertheless, these individuals are overrepresented in the criminal justice system. The reasons for the "huge problem" recounted by the officer to the Chief Justice are complex...

It seems clear, however, that it will not be solved or even ameliorated by the reforms of Bill C-14.

In the strategy document *Changing Directions, Changing Lives*, the Mental Health Commission of Canada states that overrepresentation in the criminal justice system has increased in the process of the deinstitutionalization of people living with mental health problems and illnesses, coupled with the inadequate reinvestment in community-based services that has unfolded. The Ontario government's Select Committee on Mental Health and Addictions reached the same conclusion.

Quoting the worlds of former Senator Michael Kirby, who testified before the committee, "we have made the streets and prisons the asylums of the 21st century."

This is one of our colleagues whom we admired greatly for the work he and Senator Marjory LeBreton did on the mental health study, and what did he say? "We have made the streets and prisons the asylums of the 21st century."

Both the Mental Health Commission and the Select Committee on Mental Health and Addictions recommend that efforts to reduce the overrepresentation must focus on preventing mental health illnesses and providing timely access to services, treatment and support in the community when problems do arise.

Services for young people are particularly important. Seventy per cent of mental health problems and illnesses begin in childhood, and young people are more likely to report mental health disorders than any other group. Early intervention improves the quality of life for the individuals living with mental health issues and reduces the toll that mental health illness can have on the patient's family and friends and on society at large by reducing the burden and cost of our health care, criminal justice and social services.

By definition, individuals not criminally responsible by reason of mental disorder have committed the offence because of their mental illness, because we know what we deal with is underlying mental health issues.

Bill C-14 would enhance the safety of victims by ensuring that they are specifically considered when decisions are being made about persons found not criminally responsible. I very much support that part of the bill, and, in fact, later on I will submit that we should do even more.

The Canadian Bar Association recognizes the delicate balance that must be struck between public safety and individual liberty when determining how best to handle a not criminally responsible accused who has committed a serious offence. Both goals are best achieved by treatment and reintegration into society. This balance, unlike in the sentencing context, must address public safety but still recognize that the accused has not been convicted of a crime and should not be punished as a result. A disposition of a not criminally responsible accused is not a sentence but rather management of mental disorder.

• (1620)

The Canadian Bar Association further goes on to say that the safety of the public is served with state's assistance, which may involve temporary or even indeterminate custody. In *Winko*, Chief Justice McLachlin wrote:

> If society is to be protected on a long-term basis, it must address the cause of the offending behaviour — the mental illness.

In this context, there is no room for fear or blame, but rather, compassion and understanding of the harm done to victims and an awareness that the accused is not at fault in the traditional sense.

The Canadian Bar Association says that Bill C-14 does nothing to ensure that adequate mental health services are available before a person comes into contact with the criminal justice system. Persons with mental illness are much more likely to engage in criminal behaviour when the condition is poorly managed. Once contact is made with the criminal justice system, adequate services must be provided, either through the psychiatric system or mental health services in regular prisons, to reduce any threat to the public upon release.

Public protection and adequate treatment go hand in hand. According to Dr. Alexander Simpson, the Chief of Forensic

Psychiatry at the Centre for Addiction and Mental Health in Toronto:

> It is a moral judgment that we have made down through the ages that there are some people who we should not hold responsible for their actions and that legitimizes, from a moral and ethical basis, our right as a society to punish everybody else and hold them accountable for their actions.

It is not an acquittal, as we have heard already; rather, it is saying: "We cannot punish you for what you did because it was the illness that gave rise to that. But what we can do is hold you to account for the meticulous mental health well-being going forward that we now require you to maintain."

Contrary to this regime, this bill ironically takes an entirely different approach. In point of fact, many witnesses said — and I agree with them — that this bill should be called "the Act Concerning the Responsibility of Not-Criminally-Responsible People." The thrust of this legislation is to hold individuals responsible for their actions, albeit that the rule of law for many hundreds of years has recognized that we don't do that when individuals are not responsible.

Before I go into the details of the bill, I want to again state that we are all in agreement on the need to enhance victims' rights and to offer victims and their families not just our support, but also the opportunity to be heard in such processes.

But, honourable senators, I believe that's not enough. All of that is on paper. If we were truly committed to victims' rights, we should not download this all to the provinces. The federal government should be providing resources for victims' rights to be protected.

I want to address now the issue of concern around the bill — public safety is paramount. The first of those concerns relates to the constitutionality of this bill. Will Bill C-14, An Act to amend the Criminal Code and the National Defence Act (mental disorders), better known by its title, the "Not Criminally Responsible Reform Act," pass the test of the Charter?

Honourable senators, when I was preparing for this third reading, I was very despondent and was really questioning my presence in the Senate. The only hope I have now is that the Supreme Court of Canada will hold once again, as it has with many other federal bills in the last few years, that this bill is not constitutionally valid.

The Canadian Bar Association, which represents 37,000 lawyers, notaries, law professors and law students, stated:

> ... subsection 672.64(1)(b) is likely unconstitutional as it violates s. 7 of the *Charter*....

The bill also proposes to eliminate the requirement that the disposition must be the least onerous and the least restrictive to the accused and replace it with a requirement that the disposition made must be the one that is necessary and appropriate in the circumstances.

Also, according to the Canadian Bar Association, not criminally responsible accused are not sentenced under criminal law in the traditional sense. Therefore, eliminating the "least onerous and least restrictive" requirement engages different considerations in this area, raising constitutional implications.

Again, according to the Canadian Bar Association, in *Winko*, the Supreme Court of Canada provided an in-depth analysis of Part XX.1 of the Criminal Code. Portions of this part, including section 672.54, were challenged on the basis that they violated section 7 of the Charter on several fronts, including by their ambiguous, vague and punitive character. In rejecting these assertions, the Honourable Chief Justice of the Supreme Court of Canada placed significant reliance on the fact that any disposition made pursuant to section 672.54 must be the least onerous and restrictive possible in the circumstances. Thus, it was understood that section 672.54 was unconstitutional in that it employed means broader than necessary to achieve the objective of public safety.

The Supreme Court of Canada has repeatedly held that the "least onerous and least restrictive" requirement is critical to the constitutional validity of section 672.54. Therefore, according to the Canadian Bar Association, if Parliament eliminates the "least onerous and least restrictive" requirement, as it proposes to do in Bill C-14, it may well expose the legislation to successful constitutional challenges, pursuant to section 7 of the Charter.

In the same vein, the Criminal Lawyers' Association also voiced a position to the amendment stating:

> ... the liberty interest of the accused at every step of the game previously had to be considered, with the least onerous, least restrictive disposition to be made, and that's being taken out of the bill, this time replaced with what is necessary and appropriate, a standard the Supreme Court of Canada has already struck down.

Honourable senators, under the present regime, review boards have to make a disposition that is least onerous and restrictive to the not criminally responsible. In the words of Chief Justice McLachlin in *Winko*:

> ... it [the regime] ensures that the NCR [not-criminally-responsible] accused's liberty will be trammeled no more than is necessary to protect public safety.

The principles were identified in that case wherein the Supreme Court addressed the issue of public safety of people and the rights of people not criminally responsible. In *Winko*, the court stated as follows:

> Part XX.1 protects society. If society is to be protected on a long-term basis, it must address the cause of the offending behaviour — the mental illness.

Honourable senators, we cannot be content with locking the ill offender up for a term of imprisonment and then releasing him or her into society without having provided any opportunities for

psychiatric or other treatment. Public safety will only be ensured by stabilizing the mental condition of the dangerous not criminally responsible accused.

> Part XX.1 also protects the NCR offender.... The NCR offender is not criminally responsible, but ill. Providing opportunities to receive treatment, not imposing punishment, is the just and appropriate response.

• (1630)

This requirement of being least onerous and least restrictive is thus an important component of a balanced approach to the current regime.

The Supreme Court of Canada has on many occasions stated that the least onerous and restrictive principle is central to the constitutionality of the not-criminally-responsible regime. Over the last 15 years, the Supreme Court has stated that this standard is vital for compliance with the Charter of Rights and Freedoms.

The proposed changes to the language may bring the constitutional validity of the not-criminally-responsible regime into question.

In the light of these various arguments, I will repeat my initial question: Will Bill C-14, An Act to amend the Criminal Code, better known as the "Not Criminally Responsible Reform Act," pass the test of the Charter? I respectfully and humbly submit to you, honourable senators, once again, this bill will go to the Supreme Court of Canada and it will be held not to be Charter compliant.

Under the proposed amendment to section 672.54, the paramount consideration will be the safety of the public, not the principle of the disposition least onerous and least restrictive to the accused. This does not address the situation of the person not criminally responsible.

Honourable senators, where is the balance between the interests of the public and the interests of the person who is ill? The amendments will dilute the importance of the acknowledged goal of ensuring that the mental state of the person not criminally responsible has improved, as is expected in a just and equitable society. More importantly, the amendments will change the current assessment and treatment system set out in Part XX.1 of the Criminal Code. This system will now focus more on punishment than on treatment. The Chief Justice has stated:

> ... the regime established in Part XX.1 of the *Criminal Code* appropriately balances the need to protect the public from those mentally ill persons who are dangerous and the liberty, autonomy and dignity interests of mentally ill persons.

The amendments to section 672.54 of the Criminal Code proposed in Bill C-14 remove the wording "... the disposition that is the least onerous and least restrictive" and place the "safety of the public" above any other criteria.

However, honourable senators, the Supreme Court of Canada has explicitly stated that these criteria should be equal. They should balance each other. The amendments, therefore, diminish the importance of the recognized objective of ensuring that the condition of the ill, not-criminally-responsible person has improved as being the most just and equitable way to protect society.

In a Department of Justice press release, the government states: "The legislation reinstated today will put public safety first...."

I find it very interesting that the government said that. With that statement, the government seems to be suggesting that the protection of the public was not a priority before. Yet, the Honourable Justice Schneider told our committee that protection of the public is a priority, and always has been a priority for review boards. I would like to restate what the Supreme Court of Canada said: "Providing treatment to mentally ill individuals is the most just and equitable approach to protecting the public."

The Supreme Court is not alone in saying that treatment and rehabilitation are needed for protecting the public. In the House of Commons, the Honourable Irwin Cotler said:

> Yet the best way of minimizing the potential that someone with a mental illness will commit a violent act, and therefore the best way of protecting the public, which appears to be the objective, as stated by the government, of this legislation, is to ensure effective treatment for the mentally ill.

The advantage of this approach is that it is demonstrated and proven by a number of professionals, and by research by the Canadian Psychiatric Association, for example.

My main concern with regard to the changes proposed by the government is that at no time is the government ensuring public protection over the long term. Indeed, over the short term, the public may be protected. However, stating on paper the importance of protecting the public is very different from a commitment to protect the public over a long time.

Honourable senators, I have been a senator for 14 years, but I have been involved in political processes for almost 40 years. When I was a young lawyer, I always thought that if you had the bill, the status quo would change. I worked very hard to have a bill on female genital mutilation. I worked very hard with others to work on a bill for sex tourism. Not one person has been convicted for FGM, and not one person has been convicted on sex tourism because of an investigation that our government has done. Five people have been convicted, but that was just by happenstance.

My point for saying that is if you want prevention, you have to put the resources into it. Just having a piece of paper to say it will protect the public is not good enough. You have to provide the resources.

Some Hon. Senators: Hear, hear.

Senator Jaffer: The Chief Justice of the Supreme Court of Canada once wrote: "If society is to be protected on a long-term basis, it must address the cause of the offending behaviour — the mental illness."

I would say, as Justice Schneider said when he came before us, that Bill C-14 proposes a set of changes that has the potential to make things less safe rather than more safe. Dr. Simpson, the Chief of Forensic Psychiatry at the Centre for Addiction and Mental Health in Toronto, made the same argument and said that the best way to protect society was through treatment.

I also want to draw your attention to another problem that could arise from this bill. Honourable senators, I have, in my life, been a criminal lawyer, and I really understand what this lawyer is saying, because I would be out there protecting my client as well. Anita Szigeti told our committee:

> ... our streets will be less safe because we as criminal defence lawyers will be advising our clients not to advance a not-criminally-responsible defence if it means indefinite detention without review and with very few, if any, privileges. For that reason, individuals will end up imprisoned without treatment, without access to services and without rehabilitation. When they come back out, they will pose as great a danger, if not a greater danger, than when they went in.

These words are a great source of concern for me when it comes to the long-term safety of the public. If that is the case, more people will be detained in our prisons without treatment, and we already know what the statistics are for recidivism rates for these individuals versus individuals who have received treatment for mental disorders. There is no scientific evidence that taking a step backward and locking people up, as was done under the old system, will make our society any safer, and no evidence was shown to the committee, as well, that it would make our society any safer.

The problem with this government is that it is not taking the long-term safety of the public into consideration. At some point, these individuals will have to be released from custody.

When I was a young lawyer, my senior partner would always tell me, because he had been a Supreme Court justice: "When I used to send somebody to prison, I always used to say we don't throw the key away when we send that person to jail. That person will come out and again be in society, and what kind of person will that person be?"

Honourable senators, we don't throw the key away. We don't put these people in jail forever. They will come out, and it is our duty to make sure that they get treatment. If these people had any other illness, we would be giving them exceptional services, but because they have mental disorders, we are throwing them into prisons. But we don't throw the key away; they will come out again.

Honourable senators, we have to think of our future generations. They are the ones who will have to live with the situation that we are creating. It is these future generations of Canadians who will have to deal with the release of offenders who do not receive treatment they need. It is in this sense that this government is failing to put the long-term safety of the public in the forefront.

• (1640)

My final concern regarding this bill is that there is a lack of research and empirical data. There was nothing in front of us to say that this bill will keep us safe. When the Minister of Justice, the Honourable Peter MacKay, appeared before our committee, he did not at any time mention the research or factual evidence supporting these drastic measures. Instead, the minister said: "I personally believe..." or "I believe that...."

Honourable senators, I find it disconcerting that the minister would use his personal or ideological beliefs as the basis for deciding the fate of the very marginalized and ill people in our society — people with mental disorders. A bill of this magnitude should not be supported by words like "I believe" or "I think" but, rather, by arguments like "research has shown," "statistics prove" and "we know from experience and fact that," — not "I believe" or "I think."

A broad range of professionals in the legal and health sectors appeared before the Legal and Constitutional Affairs Committee and they expressed their concerns about their disagreement with some of the provisions of this bill. I would remind you that the law should not be based on feelings and ideologies but, rather, on proven facts and case law. The government is not listening to the experts on the subject who are opposed to this bill. In fact, here is a list of key organizations whose experts have expressed concerns about Bill C-14. I will read it to you. The Canadian Bar Association —

Hon. Joan Fraser (Deputy Leader of the Opposition): On a point of order, Your Honour, rule 2-8 says that when the Senate is sitting it is not permitted for senators to engage in private conversation inside the bar and, if they do, the Speaker shall order them to go outside the bar.

There are many private conversations going on in this chamber as we speak, or as Senator Jaffer was speaking.

The Hon. the Speaker *pro tempore*: Thank you, Senator Fraser. I am hearing voices on both sides. Colleagues, for the next 15 minutes, we should hear the rest of Senator Jaffer's Speech.

Of course, the time taken on the point of order will not be counted as part of her 45 minutes.

Senator Jaffer: I thank my deputy leader for letting me be heard.

The list of the people are: the Canadian Bar Association; the Canadian Psychiatric Association; an alliance of groups in the mental health sector of mental health service providers, including the Canadian Association for Suicide Prevention, the Canadian Association of Social Workers, the Canadian Mental Health Association, the Mood Disorder Society of Canada, the National Network for Mental Health and the Schizophrenia Society of Canada, the John Howard Society and the Elizabeth Fry Society. They are the professionals in the field. I may be wrong, but I didn't hear one professional supporting this bill.

Together, these expert organizations represent more than 100,000 interested professionals who are opposed to some of the provisions of this bill. They are the true experts, the professionals who are familiar with the subject and with the consequences of mental illness based on actual facts and research. Our role is to listen to them, question them and take their knowledge into account as we forge our opinions on the basis of research and facts, not on personal beliefs and ideological considerations.

The committees of the House of Commons and the Senate heard testimony from members of review boards, members of the bar and medical/legal experts, all of whom expressed concerns that the passage of this bill might lead to difficulties with the Charter.

I would now like to raise another issue which is really troubling for me. It is the issue that, in this act, is called the high-risk designation. Is it just and necessary? To be considered high-risk, an individual must meet the following conditions: the accused must be 18 years of age; be not criminally responsible; has committed a serious personal injury offence as defined in section 672.81; and the court either is satisfied that there is a substantial likelihood the accused will use violence that could endanger the life or safety of another person, or is of the opinion that the acts that constitute the offence were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person.

Prior to the 1992 Criminal Code changes, defendants successfully raising the not criminally responsible defence were automatically and indefinitely confined in an institution. In *R v. Swain*, the Supreme Court of Canada struck down the previous regime accepting that the mentally ill have historically been subject to abuse, neglect and discrimination in our society. The changes made to Part XX.1 of the Criminal Code have had an important effect on the possessing and detention of individuals suffering from serious mental illness at the time of the offence.

The Canadian Bar Association believes the high-risk designation is not only unnecessary, but is in fact self-defeating and counterproductive. Indeed, this bill represents a step backward to another era in that it seeks to impose an ideology dating from the old regime. The Canadian Bar Association also mentioned that under Bill C-14 a high-risk accused would be subject to a different form of custody than a regular not-criminally-responsible accused.

My concern, honourable senators, with regard to this new provision, is that the not-criminally-responsible accused will not be eligible for unescorted temporary absences and could be denied an assessment of their condition for a period of up to three years.

I would like to digress for a moment to consider the three-year period recommended by the government. Honourable Justice Schneider, Chair of the Ontario Review Board and Review Boards of Canada, indicated there is no research to support this proposed period. I wish to tell you, senators, I did not hear in committee any research to support the three-year period. Why would you hold back a person whom we find not criminally responsible for three years?

Similarly, Dr. Alexander Simpson, Chief of Forensic Psychiatry at the Centre for Addiction and Mental Health in Toronto, noted that this period during which individuals have less access to an assessment does not correlate with any clinical process in the field of mental health.

Dr. John Bradford, Professor of Psychiatry at the University of Ottawa, stated that the period of three years was not essential to measure the level of risk that a not-criminally-responsible individual might represent. The treatment, the evolution of a patient, can change from day to day and from week to week.

Honourable senators, I urge you to consider the following question: Why a long period of as much as three years to assess the progress of an individual?

Let us now turn to the subject of high-risk designation. According to Ms. Serradori, an officer with the Association des groupes d'intervention en défense des droits en santé mentale du Québec, this amendment verges on the arbitrary. In Ms. Serradori's view, there is no research or factual evidence to support the change proposed by the government. That being said, the scope of the means brought in by this amendment will be broader than necessary.

Several witnesses who appeared before the Legal and Constitutional Affairs Committee felt this measure was in response to public pressure and did not take research and facts into consideration. Indeed, several witnesses voiced their concern that this bill was based on two or three cases that had become prominent in the headlines rather than research and facts.

What will be the consequences of a high-risk designation for an individual? I will speak about this later, but Senator Runciman kindly arranged for us to go to the Brockville Mental Health Centre. One of the things that will always stay with me is when the head of that institution said that he was really against the high-risk designation because, first, a person who was found to be not criminally responsible had two stigmas against them: that they had a mental disorder and that they had committed a crime. Now, they will have a third stigma against them: that they will be found to be a high-risk person. Who is going to employ them when they get out? Who will want to live in their neighbourhood? Who will want to be near them? This is what we are doing to a person who is mentally disordered.

In fact, this label will be applied not only to the individual but also to Canadians suffering from mental disorders. The government's response to this assertion is that less than 1 per cent of not-criminally-responsible individuals will be receiving a high-risk designation. To me, every Canadian is special. As senators we are there to protect minorities. We can't just say, "Oh, don't worry about it. It only applies to 1 per cent of the people. That's not a lot of people." Honourable senators, that's not our job. If it affects one person's way of living, it is our duty to protect them.

• (1650)

This raises the following question: If fewer than 1 per cent of individuals will be designated high risk, why are we so acutely aware of the details surrounding the stories of Mr. Li and

Dr. Turcotte? The answer is this: Even though these cases account for fewer than 1 per cent of the individuals involved, they are the ones that primarily receive media attention because they are the stories that elicit public reaction.

Honourable senators, the beauty of being a senator is that we are not elected, so we can take the risk for what is right; but we would not take the risk if we had to be elected. That's why, honourable senators, it is our duty to stop this bill.

A few days ago the Supreme Court of Canada upheld the Quebec Court of Appeal's decision in the *Turcotte* case. One journalist conducted man-in-the-street interviews. These were among the comments reported:

> He has to suffer the consequences of what he did" and "Justice was not served. He has to be held responsible.

That's what the public says about people who are not criminally responsible. These statements indicate clearly the extent to which public opinion is shaped through the media. This also demonstrates that the public does not understand our present regime for the not criminally responsible. Therefore, there is a greater onus on us to explain this regime to the public. In the words of the Honourable Justice Schneider:

> It is a moral judgment that we have made down through the ages that there are some people who we should not hold responsible for their actions and that legitimatizes, from a moral and ethical basis, our right as a society and to punish everybody else and to hold them accountable for their action.

As far as members of the public are concerned, to the best of their knowledge, individuals found not criminally responsible must suffer the consequences of their actions.

That is not our regime. We get it that they are sick. Why are we punishing sick people? These remarks merely demonstrate the extent to which mental illness is stereotyped and stigmatized by the population that is not well versed on the subject. Canadians with mental disorders will thus be labelled violent and dangerous. An individual with a mental disorder is already stigmatized by the rest of society because that individual is not part of what is considered the norm.

People who read newspapers or watch the news will naturally be more attracted to a story about someone who killed his wife on account of a mental disorder than a story about someone who has been cured of mental illness. Stigmatization and labelling are concepts used in the psychological study on the structure of social problems, and it is mainly at this level that the stigma and labels are shaped. In this instance, the stigma will be reinforced, as I've already said, by the high-risk label.

The public will not only draw a direct link between mental disorders and dangerousness but also between mental disorders and violence. The effect of this bill will be the opposite of the desired destigmatization. The Minister of Justice, the Honourable Peter MacKay, for whom I have the utmost respect, said concerning cases of individuals found not criminally responsible:

> I believe we have a very mature, informed public. These cases inevitably receive a tremendous amount of attention through the media and other forms of communication. When it is properly presented, when people are properly informed, when you examine the desire to protect the public and look at the very rigorous process that one goes through to arrive at that point of an NCR high-risk accused, it doesn't further stigmatization.

We have a duty not to exacerbate the situation by passing Bill C-14.

The second harmful consequence of the high-risk designation will be the fact of being locked up. An accused given a high-risk designation by the court will be detained in custody in a hospital. The high-risk individual will not be permitted escorted absences other than for medical reasons or treatment. Criminal lawyer Anita Szigeti summed up the problem well when she said:

> Really, the most offensive provision, if I can say that with great respect, is this business about no escorted passes off of a ward, except for compassionate purposes. We really are talking about locking people into the back wards and throwing away the key for significant periods of time.

The third consequence of the high-risk designation is the idea that such behaviour foreshadows future behaviour. Honourable senators, allow me to quote once again the Minister of Justice, who said:

> I believe that previous behaviour is one of, if not perhaps the most prevalent, indicator of future behaviour.

I would respond to that statement with the words of Chief Justice McLachlin, who said:

> A past offence committed while the NCR accused suffered from a mental illness is not, by itself, evidence that the NCR accused continues to pose a significant risk to the safety of the public.

Along the same lines, both Dr. Simpson and Justice Schneider told our committee that there was no correlation between the severity and the frequency of the acts.

These experts in this matter work with mental disorder cases on a daily basis. The opinions put forward by these experts are based on experience, research and, in particular, facts.

May I have five more minutes, please?

Hon. Senators: Agreed.

Senator Jaffer: They are not based on ideological considerations or personal beliefs. To support this argument, I would also point out that the recidivism rates for not criminally

responsible individuals are extremely low. In fact, many of the witnesses who appeared in connection with the study of Bill C-14 stated that recidivism rates for these individuals were considerably lower than for individuals who had been, for example, freed on parole, on probation or on court-ordered release pending trial.

Chris Summerville, Chief Executive Officer of the Schizophrenia Society of Canada said:

> The Mental Health Commission of Canada submitted to the Department of Justice, through Dr. Anne Crocker of McGill University, this very information, that there is no correlation between brutality and recidivism rates, and that recidivism rates are about 7.5 per cent for people released from forensic units as opposed to recidivism rates being 45 per cent for people released from the federal correctional system.

Ms. Szigeti also pointed out that according to research, actuarial risk assessment instruments, such as the Violence Risk Appraisal Guide, demonstrate an inverse correlation between the brutality of an index offence and the risk that the individual poses in terms of recidivism.

In light of these various research-based arguments, let me repeat my question: Is the high-risk designation just and necessary? To justify these drastic measures the government has brought before us, this government has used the strategy to build up a problem that is already under control. Why tamper with or break something that is already working well?

I am certain honourable senators will agree with me that victims' rights need to be protected. We heard from Ms. O'Sullivan, who always does a thorough job explaining victims' rights and how we can protect them. I would respectfully suggest that we ensure that every review board has those recommendations before them.

I want to take a minute to talk about our visit to the Brockville Mental Health Centre for the treatment of people suffering from mental health disorders. It was one of the highlights of my career as a senator. It is the best facility in North America. The facility exists in Ontario, and I would be remiss if I didn't recognize the great work that Senator Runciman has done to establish this institution.

Some Hon. Senators: Hear, hear.

Senator Jaffer: Do you know what the sad part is? It's only for men. Women in our country do not have an institution like that. Only men have the best facility in North America to treat them. At the moment there are two women in the institution, while the rest are men.

There is work that we have to do, honourable senators. The one mantra that I heard over and over when we went to that institution was this: The day they arrive, we have to look at ways to reintegrate. But they will not be able to consider a reintegration plan if the person is stuck in jail for three years.

Honourable senators, you have heard from me and how I feel about this bill. Public safety paramountcy already exists. I agree that victims' rights should be protected.

I have asked every psychiatrist that I know, because I worked in this area of law for a long time, and every psychiatrist that came before the committee: What does a brutal attack mean? It's not defined in any books on mental disorders.

• (1700)

In the one book that I use, the *Diagnostic and Statistical Manual of Mental Disorders*, fifth edition, DSM-5, there is no definition of a brutal attack. There is no definition. I asked the psychiatrists, "How is the judge going to decide this is a brutal attack?" They said, "That won't be in our report because we do not recognize 'brutal attack'." There isn't a definition of "brutal attack" in the legal books, so we will start again.

Honourable senators, I truly believe this bill is not what Canada is all about. I ask my friends who are going to support this bill tonight to truly think about it. Think about all the people, one in five in our communities, who suffer from mental disorders. Is this what we want for Canadians? We who are supposed to protect the minorities, is this what we are all about? We are bigger than this, and I ask you all to not support this bill.

Thank you very much.

The Hon. the Speaker: Continuing debate.

Senator McIntyre: Senator Jaffer, will you take a question?

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

Hon. Jane Cordy: I'm assuming the time is up. I had been going to ask a question, but I would make a few comments instead of asking a question.

Senator Fraser: Senator McIntyre had a question.

Senator Cordy: The time is up, but if he wants to speak first, go ahead.

Senator McIntyre: Thank you, Senator Jaffer, for accepting to take a question from me.

Senator Cordy: The time is up.

The Hon. the Speaker: Honourable senators, I'm obliged to advise that Senator McIntyre has spoken on this bill. Should he speak, it has the effect of closing the debate. The time for asking questions of Senator Jaffer has expired. We are on debate.

Senator Cordy: In light of the fact that I can't ask a question, I will make a few comments. I'm making these comments because this was one of the best speeches that I've heard in the Senate in almost 14 years. It was superb, and I congratulate you on your comments.

Hon. Senators: Hear, hear!

Senator Cordy: I was a member of the Social Affairs Committee when Senator Kirby chaired the committee and we did our study on mental health, mental illness and addictions. The deputy chair at that time was Senator LeBreton, and Senator Callbeck was also a member of that committee. We had just finished doing a study

on the health care system in Canada, and we recognized that a number of issues related to health care really deserved more than a couple of paragraphs or even more than a chapter in our report on the health care system. One of them was women's health, one was Aboriginal health, and one was mental health.

Senator Kirby went around the table and said, "Out of all of these issues related to health, what would you like to do as your next study, as a follow-up to our study on the health care system?" Every senator on that committee — every senator, Conservative, Liberal, independent — spoke about a family member or a very close friend who suffered from poor mental health, so therefore we all said that this was the study that we had to do next, mental health and mental illness.

I wonder, if we went around the Senate Chamber as a whole, to each and every one of us, how many people in this chamber could say that they have a relative or a close friend who suffers from poor mental health? I know that my husband's sister has schizophrenia. This is a very bright woman who has her master's degree and who, in the 1970s, actually opened up one of the first family resource centres on a military base in Dartmouth and then another one in the Halifax area. In her late twenties she developed schizophrenia. She is a very kind and very gentle woman. I shudder to think of what would happen if she broke the law and what would happen to her under this new bill that is coming forward. She would be found not criminally responsible, and then would she be given a high-risk designation?

We've already talked about the stigma that those who suffer from poor mental health and mental illness suffer. The stigma is incredible. The government has spent millions of dollars on television advertisements and in the media to reduce the stigma for those who suffer from poor mental health. They have spent money trying to reduce the stigma of those with mental health and mental illness problems, and I agree that money was well spent, but then you turn around and bring forward a bill that is going to yet again further stigmatize those with poor mental health.

As Senator Jaffer said, fewer than 1 per cent of the people who are mentally ill are violent, yet this bill is based on two very high-profile cases in Canada. Unfortunately, a bill should not be based on fear-mongering for the public. Fewer than 1 per cent of those with mental illness are violent, and that's something we have to remember. I think Senator Jaffer addressed this very well. Bills should be based on research and on facts; they should not be based on a minister saying, "I believe," or "I think."

This bill is wrong. It's wrong for Canadians, who should feel compassion for the people who live in Canada. It is wrong for the one in five Canadians who suffer from poor mental health. Thank you.

Senator Fraser: I have a question for Senator Cordy. I know that you were an active and engaged participant in the Social Affairs Committee study on mental health. I want to ask you something that I don't know but that I suspect you may know as a result of your work on that study. This goes back to what Senator Jaffer was saying about the nature of a brutal attack. It's my understanding, not only based on her speech but based on my own reading, that there are no definitions in psychiatry or in law of what a brutal attack is, but okay, suppose somebody has made what somebody has deemed to be a brutal attack.

Under this bill, their case or their progress could be reassessed as seldom as every three years. My question is, what do we know about the time for people who are capable of being helped, capable of being brought back to a normal level of functioning, or an acceptable level of functioning? What do we know or what do you know about how long it takes? It seems to me, based on people one knows, that it is not infrequent for somebody to be engaged in a therapeutic regimen of some sort for maybe a couple of years and then be fine. Suppose they were going to be fine after two years, but after 18 months they come up for review and the word is, "Go away for another three years." How can we reconcile this with what we know about the treatment of mental illness?

Let me preface your answer by saying I know there are some people who are incurable. I know that there are some people who, tragically, will always represent a public danger, but it is my understanding that the law already takes care of that.

Senator Cordy: Thank you for that question. I will try to answer it. When you speak without your notes that you haven't prepared, you always keep your fingers crossed that nobody will ask you a question, but I will take that question because I feel very passionate about this whole issue.

The saddest part for me about this whole bill is the additional stigma that is going to be given to those who are mentally ill. I know the Schizophrenia Society and other agencies that help those who suffer from poor mental health have done so much in trying to reduce the stigma, and yet, as I said earlier, here we are again increasing the stigma for those with poor mental health.

In terms of brutal attacks, you're absolutely right that there is no definition. Yet, this bill makes reference to it. Indeed, if the bill was going to make reference to it, one would have thought they would have done research, gotten facts and put that in the bill as a definition. But, unfortunately, that's not there. As I said earlier, it seems to be a bill based on fear mongering, not on facts and evidence.

• (1710)

You said that somebody could be reassessed after three years, and you're absolutely right. Unfortunately, in the prison system, we have discovered that there is very little help for those who suffer from poor mental health because it seems there are not enough people in the prison system to help deal with those who are mentally ill.

Absolutely, there are some who have a mental illness that will remain with them for the rest of their lives, but indeed, it can be controlled with medication and with help from psychologists and psychiatrists. Certainly, it can be done well before three years.

Speaking from experience with my sister-in-law, who fortunately has been able to live in the community on her own for large periods of time, on rare occasions, she has had to go to the hospital but was only there for a few weeks to have her medications adjusted and then is absolutely fine again.

So three years is far too long for somebody to be languishing in jail who is there because they are not criminally responsible, who suffers from poor mental health, and yet is left in jail languishing

when the doctors have actually made them quite self-sufficient and well again.

Senator Fraser: Could I just ask a supplementary? I will be quick because of the time.

If you have reached the point where you would normally be able to go back and function in society, what's the likelihood that you'll get sick again if you have to be locked up for another two and a half years?

Senator Cordy: Sorry, I missed the end of the question.

Senator Fraser: If you are well but you are still stuck in prison for another prolonged period of time, what is the likelihood that that in fact will contribute to making you sick again?

Senator Cordy: Absolutely. We know that when the bill was brought forward, Bill C-10, going back a long time, those who have poor mental health are the ones who will suffer most with double-bunking, poor prison conditions and all of those things happening. Certainly, those would not be the best conditions for somebody who suffers from poor mental health and has been brought back to good health by the doctors.

To remain in a prison cell when are you again healthy and under the care of a doctor and doing very well, even somebody who is not mentally ill would find that stressful and difficult, so I agree with you.

Hon. Paul E. McIntyre: Senator Cordy, would you take a question?

Senator Cordy: Yes.

Senator McIntyre: You seem to suggest that this bill stigmatizes people with mental illness. Let me assure you that that is not what the bill is doing. The bill deals with people suffering from mental illness, but at the same time, they committed a very serious crime. That's what the bill is doing.

There is also some suggestion about people having committed an attack of a brutal nature. Let me tell you what an attack of brutal nature is all about, and this is what this bill is all about.

We have talked about high-profile cases, such as Allan Schoenborn and Guy Turcotte, but there is another high-profile case I would like to mention, and that's the case of Gregory Allan Despres. In March of 2005, this young man killed an elderly couple in Minto, New Brunswick. He knifed them about 100 times each. He decapitated the male occupant.

I know about this case because I was chairperson of the New Brunswick review board, and I did both hearings; I did the fitness hearing and the NCR hearing. First, he was found unfit to stand trial, and then he was found fit to stand trial but not criminally responsible on account of mental disorder. He is currently still being held at the Shepody Healing Centre, which is part of Dorchester Penitentiary. The reason for that is because he has no insight into his mental illness. That's why he is being held. He is taking his medication but has no insight and suffers from chronic paranoid schizophrenia.

If this is not a case of a high-risk offender, I don't know what a high-risk offender is all about.

Senator Cordy: I have to disagree with you in terms of stigma attached to those who are mentally ill. I've seen it; I've heard it from many organizations. We heard it over and over again when our committee did a report on mental health and mental illness. To talk about somebody who is mentally ill as having a high-risk designation and to suggest with this bill that those who are mentally ill are more likely to commit crimes is wrong; less than 1 per cent of the population will do that. We are going to have to agree to disagree on that because I think it will bring additional stigma to those who suffer from poor mental health.

The Hon. the Speaker: Continuing debate.

Hon. James S. Cowan: The honourable senator looked like he might have had a supplementary. I think the bells will ring at 5:15. I have a few comments, but I'd rather not start now and wait until afterwards. If Senator McIntyre has a follow-up, it might take us to 5:15.

Senator McIntyre: The only comment I would make is that this bill deals with high-risk offenders.

Senator Fraser: To clarify, we are on questions or comments to Senator Cordy's speech. This is not a new speech by you, Senator McIntyre.

Senator McIntyre: In answer to Senator Cordy, the only thing I wish to say is that this bill deals with high-risk offenders. We're not dealing with low-risk offenders at all. We're not dealing with people that are just suffering from mental illness. We're dealing with people that, yes, suffer from mental illness but at the same time have committed a very serious crime. That is what this bill is all about. Okay?

The bill contains three elements: public safety, creating a high-risk designation and enhancing victims' rights. I don't want to start a debate because I already spoke on this bill last Thursday, but once again, this bill deals with high-risk offenders, people like Gregory Allen Despres, who is presently being held in custody at the Shepody Healing Centre because he has no insight into his mental illness and suffers from chronic paranoid schizophrenia. That is where they belong, and that's where they should be.

I can assure you, senator, that people who suffer from mental illness are presently being treated either as in-patients at a hospital or at a local community mental health centre. That's all there is to it. I see nothing wrong with this bill.

The Hon. the Speaker: Honourable senators, it being 5:15, I'm obliged to interrupt the debate and to order the ringing of the bells for the ordered vote at 5:30.

• (1730)

FIRST NATIONS ELECTIONS BILL

THIRD READING

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Tannas, seconded by the Honourable Senator Batters,

> That Bill C-9, An Act respecting the election and term of office of chiefs and councillors of certain First Nations and the composition of council of those First Nations, be read the third time.

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

YEAS
THE HONOURABLE SENATORS

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

NAYS
THE HONOURABLE SENATORS

Callbeck
Campbell
Chaput
Charette-Poulin
Cools
Cordy
Cowan
Dawson
Day
Dyck
Eggleton
Fraser
Hervieux-Payette
Hubley
Jaffer
Joyal
Lovelace Nicholas
Mercer
Mitchell
Moore
Munson
Ringuette
Robichaud
Sibbeston
Tardif
Watt—26

ABSTENTIONS
THE HONOURABLE SENATORS

Nolin—1

FISHERIES AND OCEANS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Fabian Manning: Honourable senators, with leave of the Senate, I move:

> That the Standing Senate Committee on Fisheries and Oceans have power to sit today, even though the Senate may then be sitting, and that the application of rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (1740)

CRIMINAL CODE
NATIONAL DEFENCE ACT

BILL TO AMEND—THIRD READING—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator McIntyre, seconded by the Honourable Senator Dagenais, for the third reading of Bill C-14, An Act to amend the Criminal Code and the National Defence Act (mental disorder).

Hon. James S. Cowan (Leader of the Opposition): First of all, colleagues, I want to thank Senator Jaffer for her very comprehensive and thoughtful speech.

Hon. Senators: Hear, hear!

Senator Cowan: I think all of us were moved by her comments and by the passion with which she addressed the issue. I'm sure I speak for all of us when I say "thank you" to her for that.

The Hon. the Speaker: Honourable senators, as a courtesy to the members of the Standing Committee on Internal Economy, Budgets and Administration, the meeting that was scheduled for this evening has been cancelled. You might not have gotten that message if you didn't go back to your offices.

Senator Cowan: A few weeks ago, I spoke to my private member's bill, Bill S-208, An Act to Establish the Canadian Commission on Mental Health and Justice. In that bill, I proposed a way to address the serious issue of the overrepresentation of people with mental health problems in our criminal justice system, what many are calling the criminalization of mental illness.

I proposed an approach grounded first and foremost in evidence, and early identification and treatment of mental health problems. In its preamble, the bill states:

> Whereas a comprehensive approach to promoting positive mental health and treating mental illness would contribute to public safety, and would result in less crime, reduced incarceration rates, decreased costs, improved rehabilitation prospects, and better use of resources within the criminal justice system;

I suspect that there is no one in this chamber who would disagree with that — that the best policies are those that are grounded in evidence and knowledge that health problems, including mental illnesses, should be treated and not left to fester and get worse, and that public safety is best protected when mental illness is treated. Unfortunately, I'm not convinced that this is achieved by Bill C-14.

The issue addressed by Bill C-14 is the "not criminally responsible" regime in the Criminal Code. That regime is grounded in the fundamental principle of our criminal law; namely that society does not convict someone of committing a crime if they lacked the capacity to appreciate what they were doing or did not know that it was wrong because of a mental disorder. In such a case, the person will not be criminally responsible, or NCR, on account of mental disorder.

But let's be clear, colleagues: The person is not then simply released into the public. He or she is referred to a provincial or territorial review board, which decides on the appropriate course of action. These review boards are composed of at least five people, chaired by a judge or someone qualified to be a judge. At least one member of the review board must be qualified to practise psychiatry, while other members customarily include individuals with experience in mental health, medicine, psychology or criminology.

When a person is found NCR and referred to the review board, the board can make one of three decisions: they may order the person be detained in custody in a hospital; they may order a conditional discharge; or, if the person does not pose a significant threat to public safety, they may order an absolute discharge.

Bill C-14 would make several changes. First, it would provide that "public safety" is to be the paramount factor when the review board makes NCR determinations. Well, colleagues, I understand that is the case now. So, in reality, as Senator Jaffer said, this is a codification of existing practice, not a change.

The bill includes provisions to keep victims' families better informed, which is a goal I certainly support. Several witnesses raised concerns about the way this is done in the bill, but I certainly agree that victims and their families should be better informed.

The highly controversial change contained in Bill C-14 is the creation of a new category of so-called "high-risk accused." I will get to the details of how that would work that shortly.

The impetus for this legislation is generally regarded to have been several high-profile cases that unquestionably horrified all Canadians, myself included.

Colleagues, let's be clear: All of us here — every last one of us — wants to ensure that our nation is as safe as it can possibly be for our families, for our neighbours, for our friends — for all of our fellow citizens. The question is: How is that best achieved? And to answer that question seriously, if we truly want to work towards real public safety, not merely the appearance of working towards public safety, we need to set raw emotion aside and take a careful, objective look at how that is best achieved.

As legislators, our responsibility to Canadians — our job — is to make decisions based on the facts, on the evidence, for the simple reason that the goals are best achieved through rational behaviour and not through emotional reactions, however passionate and genuinely well-intentioned.

Colleagues, the evidence is that the existing NCR system in place in Canada today is working, and that Bill C-14 could well result in less public safety for Canadians, not more. Let me explain.

Dr. Anne Crocker is a professor in the Department of Psychiatry at McGill University and researcher at the Douglas Mental Health University Institute in Montreal. For years, she has done in-depth research on persons found not criminally responsible, or NCR.

She conducted a study commissioned by the federal Department of Justice, completed last year. Among other things, it looked at the question, "How many persons found NCRMD [not criminally responsible on account of mental disorder] had reoffended while under a review board disposition?" One would have thought the answer to this question is highly relevant when considering a bill that would change the NCR regime, ostensibly to address fears that someone found NCR could endanger lives or the safety of the public. You would think it would be critically important to first know, how valid are those fears.

Yet, colleagues, this government is not interested in evidence, and certainly not in this evidence. Dr. Crocker's study, prepared as I said for the Department of Justice, found that those persons

found NCRMD are actually among the least likely to reoffend, less likely than offenders in the general criminal justice system. Dr. Crocker told Postmedia News:

> The review boards are doing their jobs in knowing when to release because the recidivism rates seem to be relatively low.

The government's reaction? Did they welcome the evidence and immediately apply it to inform their reconsideration of the policy on NCR? No, colleagues, they did not. The report suggested that the government's proposed changes were wrong, so the Harper government buried Dr. Crocker's report. You can't find it on the Department of Justice website. It was paid for by Canadian taxpayers and, because the government did not like its findings, it doesn't want Canadians to read it. Indeed, the department was in the process of translating the report and then, as Dr. Crocker told my office, suddenly that work stopped.

In fact, the government actually tried to misrepresent Dr. Crocker's findings to Canadians, using figures from an earlier draft of her report, long after the minister's office had the final report. I will return to this later.

That was last year, in 2013. Meanwhile, Dr. Crocker has been working with a team of researchers on a project called the National Trajectory Project, funded by the Mental Health Commission of Canada, which we all recall was established by the Harper government with our full support and with much fanfare.

I'm told the National Trajectory Project is the largest study in the world of persons found not criminally responsible. The researchers looked at the trajectory of individuals found NCR in our three largest provinces: Quebec, Ontario and British Columbia. The goal was to "examine the operation of current criminal justice provisions for individuals declared NCRMD by the courts, and made subject to the jurisdiction of a provincial or territorial review board."

• (1750)

That sounds relevant to our discussion, doesn't it, colleagues? Two papers setting out the results of this research will be published this summer in the *Canadian Journal of Psychiatry*.

Dr. Crocker obtained special permission from the journal to provide embargoed copies of these papers to our Legal and Constitutional Affairs Committee so that senators could consider the findings in our deliberations on Bill C-14. Dr. Crocker and Dr. Patrick Baillie, who has been advising the Mental Health Commission of Canada, both offered to appear before our committee to present the results of their research and to answer questions.

The steering committee of our Legal and Constitutional Affairs Committee agreed, and invitations were extended. But suddenly, the next day, they were rescinded. No explanation. I can only conclude that it was at the direction of the government. Once again, the government was determined not to allow the evidence and certainly not the results of this extensive research conducted right here in Canada by highly respected researchers to interfere with the passage of this bill.

Let me give you an example of the impact of this on our own study. On March 1, 2013, the then Minister of Justice, Rob Nicholson, spoke in the other place in defence of this bill, then Bill C-54. He said the following:

> Here are some of the interesting facts about those who are not criminally responsible. A little over 27 per cent of individuals found not criminally responsible have had a past finding of not criminally responsible; 38 per cent of those found not criminally responsible and accused of a sex offence had at least one prior NCR finding; 27 per cent of those accused of attempted murder had at least one NCR finding; and, 19 per cent of those accused of murder or homicide had at least one prior finding of not criminally responsible.

The problem, colleagues, is that those statistics were wrong. Dr. Crocker's research shows that it is not true that 38 per cent of those found not criminally responsible and accused of a sex offence had at least one prior NCR finding. That number is not 38 per cent but 9.5 per cent. It isn't true that 27 per cent of those accused of attempted murder had at least one NCR finding; that number is actually 4.6 per cent. And the 19 per cent figure that those accused of murder or homicide had at least one prior NCR finding is actually 5.2 per cent.

The wrong, higher figures were contained in an early draft of Dr. Crocker's 2013 report for the Department of Justice and resulted from a coding error. The error was caught in preparing the final report. It was identified on March 14, 2013, and Justice Canada was immediately notified of the correct numbers. However, members of the government continued to use the incorrect numbers for months after being informed that they were wrong. The then Natural Resources Minister, now Finance Minister, Joe Oliver, used the incorrect statistics more than two months after his government was told they were wrong. Another Conservative MP, Scott Armstrong, from Nova Scotia, used the wrong figures in the committee studying the bill. When asked about it by reporters, he said that he was only aware of the earlier draft report. "If it was tabled in the House of Commons, I assumed it was accurate," he said.

Notably, colleagues, the government tabled the draft report in the other place but never tabled the final report with the correct numbers.

And this continued to reverberate in our own committee study. Rondi Craig, of the Toronto Police Association, testified in favour of Bill C-14 before our Legal and Constitutional Affairs Committee. In making the case for why his association supports the bill, he cited the statistics given by then Justice Minister Nicholson — the wrong statistics.

As I mentioned a moment ago, Dr. Crocker was not permitted to present her findings of the correct numbers — the real numbers — to our committee. The invitation was issued to her on the decision of the steering committee and then, without explanation, it was withdrawn.

Given how hard the government worked to ignore and bury her final report for their own Department of Justice, we probably shouldn't be surprised that the government did not want her to testify. Let me read to you from the latest 2014 reports, from the introduction of the National Trajectory Project papers,

commissioned, as I said, by the Mental Health Commission of Canada and to be published this summer:

> The increase in the number of individuals found NCRMD over the past 20 years, some recent "high profile" cases, and the increasing voice of victim advocacy groups has brought to the forefront issues around processing and dispositions of individuals found NCRMD. The prominence of these types of cases has supported the current "tough on crime" approach to legislative reforms in Canada, including the trend towards longer detentions. The foundation of this approach is its appeal to the public desire for safer communities and decreased violence and crime. However, recent crime statistics have continued to show trends of decreasing criminality, and in particular violent criminality, in Canada.

This is Dr. Crocker writing in the introduction to the report that will be published this summer:

> As our colleagues very eloquently demonstrated, current "tough on crime" policies are not supported by current scientific evidence. In fact, theory and research firmly demonstrate that excessive interference disproportionate to risk can actually increase the rates of adverse events such as criminal recidivism, suggesting that the platform on which tough-on-crime laws are stationed are unstable and lacking an evidence base. This disconnect between evidence and public discontent/conservative agendas is no less relevant with regard to the NCRMD finding and the provisions of psychiatric services to mentally ill persons who come into conflict with the law.

This is from the letter that Dr. Crocker wrote to the Senate committee:

> [T]he enclosed brief submitted to the Commons committee last June shows that NCRMD accused reoffend at rates that are lower than general offenders processed by the criminal justice system. This disconnect between evidence and public discontent is particularly relevant with regard to the NCRMD finding and the provision of psychiatric services to mentally ill persons who come into conflict with the law. A group who [are] dually stigmatized due to living with mental illness and having come into conflict with the law as a direct result of their psychiatric symptoms.

Colleagues, the evidence that the government has worked so hard to suppress from our consideration is that individuals found NCR reoffend less than offenders in the general criminal justice system. Why is this issue of particular concern for us in considering Bill C-14? Because the evidence — there's that word again — is that the result of Bill C-14 will be that fewer accused persons will seek a NCR finding. Instead, more will take their chances with the regular criminal justice system, and the results of the research by Dr. Crocker and her colleagues are clear. The recidivism rates are higher for those who go through the general criminal justice system rather than the NCR system.

In other words, colleagues, Bill C-14 could very well reduce public safety, not enhance it.

As I noted earlier, the most controversial feature of this legislation is the new proposed designation of someone as a "high-risk accused." This is found in the new subsection 672.64. First of all, the determination is being made by a criminal court, not by qualified mental illness specialists. But note the test itself, colleagues. Under the bill, the court would be authorized to make this finding if:

> (*a*) the court is satisfied that there is a substantial likelihood that the accused will use violence that could endanger the life or safety of another person; or
>
> (*b*) the court is of the opinion that the acts that constitute the offence were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person.

Notice colleagues, that the issue of whether there is a substantial likelihood that the accused will use violence that could endanger life or safety is only one ground.

• (1800)

Even if the court were to conclude that they are as minimal as written, or if the court were to conclude that there is zero risk that the person will use violence to endanger someone's life or safety, under the bill the court could designate someone as a high-risk accused if "the court is of the opinion that the acts that constitute the offence were of such a brutal nature as to indicate a risk of grave physical or psychological damage or harm to another person."

In effect, colleagues, this says the court may designate someone as a "high-risk accused" in order to denounce the "brutality" of what took place, separate and apart from whether they are likely to do such an act again. No doubt we could all understand this if we were dealing with a criminal who deliberately committed a brutal crime. But colleagues, we're not dealing here with hardened criminals who are well aware of what they're doing. We are dealing with someone who has an illness, and it is the illness that resulted in the act. That is what it means to find someone not criminally responsible by reason of a mental disorder. They're not responsible for their act; the mental disorder is.

In our society we don't punish illness, we treat it — at least we should do that. But, colleagues, this clause will change that. Finding someone to be a high-risk accused under paragraph (*b*) is explicitly not an issue of protecting public safety; that's covered under paragraph (*a*). It's an issue, pure and simple of punishment. We'll be denouncing and punishing mental illness.

Once the person receives this "high-risk" designation, then the person isn't permitted to leave the secure forensic hospital, even escorted, except for medical reasons. And while the current NCR regime allows a person's case to be reviewed annually by boards comprised of both legal and mental health experts, Bill C-14 would provide that, instead of annually, this review can be extended to take place only after three years.

Mr. Justice Richard Schneider, whom my colleague Senator Jaffer referred to, is the chair of the Ontario Review Board and the Review Boards of Canada. He testified before our Standing

Senate Committee on Legal and Constitutional Affairs. This is what he said:

> With provisions like the HRA in Part XX.1 of the Criminal Code, I, as a lawyer going back a few careers consulting with my mentally disordered client and considering tactically which way to respond to these allegations, would have to discuss with my client the potential that an HRA designation may be made against him or her. As the minister indicated, that would potentially cause my client to be locked in a secure psychiatric facility with no privileges for up to three years with no review, whether or not hospitalization was indicated. That might cause my client to instruct me to avoid Part XX.1 of the Criminal Code. My instructions might be, "Counsel, I think I'll take my lumps in the regular prosecutorial stream."
>
> You have an individual who under the current scheme might have availed himself of the provisions of Part XX.1, avoiding those. NCR is a defence, one that the accused can elect to avail himself or herself of. To the extent that individuals could decide as a result of these provisions to skirt Part XX.1, they will come, as you know, senators, to warrant expiry.
>
> I'm from Toronto, and they have the potential of being dropped on Yonge Street, wearing an orange suit and having received no treatment, with their prognosis worse as a result of being a mentally disordered person and kept in a jail — and we know from the Ashley Smith inquiry that that is counter-therapeutic — with no supports, no treatment, probably no assistance and nowhere to go — a very dangerous situation that escalates the probability of recidivism.

In Justice Schneider's words:

> The proper debate is: How do we best achieve public safety? I would say to you that Bill C-14 proposes a set of changes that has the potential to make things less safe rather than more safe.

Anita Szigeti of the Criminal Lawyers Association was equally clear about the likely impact of these high-risk accused provisions. She told our committee:

> The people for whom the current regime works the best are the people with serious offences, who are able to receive the help that they desperately need in the review board system in the hospital to get the appropriate treatment and to be slowly and carefully, in a measured way, reintegrated into the community. However, even those with serious offences will want to think twice about the prospect of a high-risk accused designation. It's not something I would recommend to a client knowing that, until the Charter challenge is successful, that individual is going to be caged, in a sense, without access to the community, even with accompaniment, and without access, necessarily, off the ward at all unless somebody dies or there is a dental or medical emergency. It's very concerning. I would not advise any client to risk a high-risk designation under the amended provisions.

Now Senator Baker may point out that in fact it's the trial judge, not defence council, who orders the NCR assessment. As witnesses replied, that's true, but in practice a judge will not necessarily see the conduct to raise the NCR issue. As a practical matter, most of the time that will fall to be raised by defence counsel.

And colleagues, you will have noted that Ms. Szigeti used the words — and Senator Jaffer referred to this earlier — "until the Charter challenge is successful."

The Criminal Lawyers' Association and the Canadian Bar Association raised a number of serious issues about the constitutionality of Bill C-14.

So we have a bill that's put forward as being all about enhancing public safety, where strong testimony says, in fact, it will make Canadians less safe, not more. Serious issues have been raised about its constitutionality, and the arguments in its favour cited erroneous statistics, while the government did its best to bury the accurate ones.

Mental health organizations have lined up in opposition to the passage of this bill. These include the Canadian Mental Health Association, the Centre for Addiction and Mental Health, the Canadian Psychiatric Association, the Canadian Psychological Association, the National Network for Mental Health, the Mood Disorders Society of Canada, the Canadian Association of Social Workers, the Canadian Association for Suicide Prevention and the Schizophrenia Society of Canada.

Frankly, the lineup of all the mental health authorities in the country in opposition to Bill C-14 bears a striking resemblance to the lineup of all the impartial authorities on electoral law in opposition to Bill C-23, the so-called fair elections act.

But I digress.

Another major concern that has been raised with Bill C-14 is that it will inadvertently contribute to the stigmatization of mental illness, which, in turn, will inhibit people who need mental health treatment from seeking it — which, in turn, can lead to a worsening of their mental health problems.

Colleagues, I appreciate that, as Senator McIntyre told this chamber last week, "The bill does not seek to punish individuals who have been found by courts to be NCR or unfit, nor does Bill C-14 seek to stigmatize the mentally ill. But, colleagues, the evidence suggests that these in fact will in all likelihood be the unintended consequences of the bill. Surely that's not what any of us would desire.

I have referenced Dr. Crocker and the National Trajectory Project's extensive, in-depth study of NCR in Canada. The results show quite clearly that the NCR system in place in Canada now is working and that it contributes to enhanced public safety more so than if these individuals were in a general corrections system. However, colleagues, one finding was especially striking: Fully 72.4 per cent of persons found not criminally responsible had at least one prior psychiatric hospitalization.

Let me read to you again from the report to be published this summer by the *Canadian Journal of Psychiatry*. That's the one that was delivered on an embargoed basis to our committee, but

the steering committee reversed its decision and refused to allow its author to appear:

> What is glaringly apparent from these findings is that most individuals had been under the purview of civil psychiatric services, with a median of two prior psychiatric hospitalizations. Their first psychiatric consultation occurred much earlier than their index NCRMD verdict. This suggests violence risk assessment training and interventions to reduce violence are a priority in civil psychiatric services.

• (1810)

Colleagues, if our goal is public safety, then surely this is where we need to focus our efforts. However, there is nothing in Bill C-14 that will enhance mental health services in our communities. To the contrary, Catherine Latimer of the John Howard Society told our committee of their concerns for the impact the new high-risk accused designation will have on scarce mental health resources in both the NCR and the prison systems.

As Senator Jaffer mentioned, she, Senator LeBreton, Senator McIntyre, Senator Baker and I had the opportunity, as members of the Standing Senate Committee on Legal and Constitutional Affairs led by Senator Runciman, to visit the secure forensic facility at Brockville that works with persons found NCR. Colleagues, as Senator Jaffer has told you, the facility is world class and they are doing excellent work. We need to support our mental health providers so that those Canadians who suffer from mental illness receive the treatment they need, not punishment that will accomplish nothing to address the underlying illness.

As I said at the beginning of these remarks, there are a number of elements in Bill C-14 that I have little or no problem with. But I cannot support a bill that witness after witness has warned may very well make Canadians less safe, not more. My concern is exacerbated when the government seeks to have us pass the bill without having access to all the relevant evidence — when it seeks to bury important research, which it commissioned, and to decline the researchers' request to testify. And now we are having this debate under time allocation. The government is clearly so nervous about what we would decide after a full, informed debate that it refuses to allow us the time to have that debate, or reflect on the bill and its likely impact on those Canadians suffering from mental illness, and on Canadian public safety.

I was appalled that notice was given by the government to cut off further consideration and debate at third reading after only a single speech had been given on Thursday by Senator McIntyre. The same notice to prevent further consideration and debate was also given that day on Bill C-9, after only Senator Tannas had spoken at third reading — two government bills; two speeches by supporters of the government; and two virtually automatic notices of time allocation by the government following those speeches. It is as if this chamber was being told: Now that we have heard from the government why these bills are terrific, there is nothing of value left to be said, so it is time to move along.

The routine use of immediate time allocation — of closure — by a government that has an overwhelming majority in this chamber is an admission that it knows of no way of managing its all-too-empty legislative agenda than through force.

Colleagues, this is not sober second thought.

And this failure of allowing us sufficient time and opportunity to do our job is all the more regrettable as the legislation before us now deals with the unfortunate victims of serious mental health disease — all the victims. We need a serious way to address the vast over-representation of these people with mental illness in our criminal justice system. But that is not what I see in Bill C-14.

Accordingly, I will not be supporting the bill.

Senator McIntyre: I listened to your presentation carefully, and you were right when you mentioned section 672.54 of the Criminal Code. That is the most important section in dealing with persons found fit to stand trial but not criminally responsible on account of mental disorder.

In rendering its decision, the court or review board always takes into consideration the exhibits on file, the oral and documentary evidence, victim impact statements and those factors set out in section 672.54 of the code, including the requirement that any disposition be the least onerous and least restrictive to the accused, bearing in mind four important factors: the need to protect the public from dangerous persons; the reintegration of the accused into society; the mental state of the accused; and his other needs.

Bill C-14 proposes three amendments to section 672.54, which is the disposition-making provision to be codified. The first proposed amendment is of course public safety. Parliament and the Supreme Court of Canada have made it very clear that public safety must be the paramount consideration for courts and review boards in rendering a disposition. The problem is that there were concerns from provinces and territories that this principle was not applied consistently across Canada; and this is the point I raise.

The second proposed amendment, which was raised by Senator Jaffer, is that the terms "least onerous" and "least restrictive" be replaced with the term "necessary and appropriate in the circumstances." I suggest to the opposition that the wording is consistent with *Winko*. We have to look at the intent. The amendment is not intended to eliminate the requirement that a disposition is to be the least onerous and least restrictive. The intent of the amendment is to make the concept easier for the public to understand.

The third proposed amendment to section 672.54 are the words "significant threat to the safety of the public." When a court or review board renders a decision, you were right that it has three choices: It can grant a conditional discharge, order detention in a hospital facility, or order an absolute discharge. The difference between detention in a hospital facility and a conditional discharge, as opposed to an absolute discharge, revolves around the issue of dangerousness. Once again I'd like to have your comments on that. The reason section 672.54 is codified is to ensure that the courts and those review boards across Canada and the territories use public safety as the first and primary consideration as opposed to the other factors, which are: the reintegration of the accused into society; the mental state of the accused; and his other needs. That's the reason we're codifying section 672.54. May I have your thoughts on that?

Senator Cowan: Senator McIntyre, I believe you chaired the board in New Brunswick for 25 years. I wouldn't presume to quarrel with him on his actual experience.

I visited the facility in Brockville, as you did, and listened and talked to the doctors there. I think there was not a great deal of support for the bill amongst those we spoke to. I read the evidence in the House of Commons committee and in our committee. Frankly, I was persuaded by the arguments made by those witnesses who appeared.

I have no personal experience as a lawyer in that field. As you know, I had some experience in the mental health system some years ago with the deinstitutionalization of mental institutions and psychiatric hospitals. You and I have talked about the effect that that has had and the lack of support in the community. For me, the preponderance of evidence adduced in the committees of both the House of Commons and the Senate was the real fear that we are responding to sensational cases.

When you were discussing the situation with Senator Jaffer and Senator Cordy earlier this afternoon, you referred to a case that you had personal experience with. That was horrific, and there are several similar cases on the minds of all Canadians. We're all horrified by them. As a lawyer, I think you would agree with me that hard cases make bad law. If you simply pick up such a case and generalize too broadly, you end up with unintended consequences.

• (1820)

The evidence that I've read, the people that I've talked to and the reports that I've read lead me to the conclusion that this is an attempt to fix something that is really not a problem, at least not a widespread problem, and that the existing NCR regime, as I understand it, as you work with it, works well and doesn't need these kinds of reforms. This may fix particular problems you are concerned about, but I think there's a very serious risk of further stigmatizing mental illness. Because of the high-risk offender addition here, people who should receive an NCR designation may choose to take their chances in the ordinary criminal justice stream. The evidence I presented here today and which is contained in those reports would indicate that the incidence of recidivism is much, much higher in those who go through the general stream than those who are NCR and are reintegrated into the community.

We'll only know in the fullness of time whether the fears that have been expressed with respect to the constitutionality of this bill are founded or whether, as the government contends, this is Charter-proof. I don't pretend to be an expert in that area, but others are. Some very serious scholars have presented arguments and have presented the case that this will fall afoul of the Charter and be found to be unconstitutional, as have a number of other pieces of legislation. I long ago gave up predicting what courts would do. I don't know what they will do, but I point out to colleagues before we vote on this that there is very credible evidence and very credible arguments from very credible sources that there's a problem here.

The criminal justice system is something we should proceed to change very carefully. If we're not satisfied, if the evidence doesn't justify the changes that are proposed, then I suggest, with the greatest of respect, that it's not appropriate to make them. For that reason, I don't support the bill.

Senator McIntyre: Would you take a further question?

Senator Cowan: Of course.

Senator McIntyre: Senator Cowan, you touched upon the issue of high-risk offenders. You've also questioned the fact that the courts will be deciding the issue as to whether or not an accused person is a high-risk offender. I asked this question of Mr. Justice Schneider when he appeared before the Standing Senate Committee on Legal and Constitutional Affairs. We have to keep in mind that yes, under Bill C-14, the courts will decide, not the review boards, if a mentally accused offender is a high-risk offender. We also have to keep in mind that it's the courts who find an accused person unfit to stand trial. It's the courts that find an accused person fit to stand trial but not criminally responsible on account of a mental disorder. It is the courts that grant stays of proceedings as opposed to the review board. All the review board can do with that issue is to make a recommendation to the court. It's the court that has first choice in rendering a disposition and not the review board. It is the court as well that determines the issue of fitness to stand trial. It's the court that finds them unfit to stand trial. The matter is then referred to the board. Once the board has held a hearing, it sends the matter back to the court so that the court can try the issue and render a verdict. Once again, the courts are always playing a role, so I don't see a problem in the courts deciding the issue of the high-risk offender.

As a matter of fact, the high-risk offender requires two things with Bill C-14: One, there would have to be a serious personal injury offence; and, two, either a substantial likelihood of violence or a risk of a grave physical or psychological harm to another person. Once this is done, once the courts find the mentally accused offender is a high-risk offender, as you know, he or she is sent to a hospital and is kept there until a review board hears the matter.

At the first hearing, the review board cannot extend the duration for the next hearing to 36 months unless it has the consent of the accused and the Attorney General. At the other hearing, it can extend if it is satisfied that the accused remains a significant threat to the safety of the public and will be using violence. After that, once the board has decided that, fine, we can remove the umbrella over him or her, and then the matter is sent back to the court, and then the court will remove the high-risk designation.

Under 672.64(2) of Bill C-14, the court, in deciding whether to find the accused a high risk, must take into consideration various factors, including the opinion of experts who have examined the accused and the mental state of the accused.

My point is this, and I would like your thoughts on this: Once again, we're not dealing with low-risk offenders, Senator Cowan. We're dealing with high-risk offenders. I know that the rate of recidivism is not very high, but we're dealing with high-risk offenders only. Nothing will change under the code as far as your low-risk offenders are concerned.

I really appreciate what you had to say about review boards. Review boards across this country act in good faith, and we have good review board members; I can assure you of that. Once again, the standard that they use for low-risk offenders is the issue of dangerousness and whether or not they remain a significant threat to the safety of the public. As far as your high risk-offenders are concerned, the courts would have to use a higher standard and make sure that violence is not an issue. I would like your comments on that.

Senator Cowan: First, I suppose you did have the discussion with Justice Schneider before the committee, and both of you had experience as chairing similar boards, one in Ontario and one in New Brunswick. I wouldn't want to get in the middle of that discussion because you both have experience that I don't have.

I would point out to you that the high-risk offender designation, as you point out, is made by a court, and you don't have to have both grounds. Either:

> (*a*) the court is satisfied that there is a substantial likelihood that the accused will use violence that could endanger the life or safety of another person; or....

That seems on the face of it to be pretty reasonable; you're looking forward, assessing a risk in the future. But it's not "and"; it's "or":

> (*b*) the court is of the opinion that the acts....

That's not the acts in the future that might be committed but the acts that brought us to the discussion in the first place, the acts in the past that constitute the offence. That's the offence for which a charge was laid and the finding of not criminally responsible was found. The act took place. The offence took place. It's something that took place in the past, and the accused was found not criminally responsible by reason of mental disorder.

The alternate route to this high-risk categorization or finding is that:

> (*b*) the court is of the opinion that the acts that constitute the offence —

— and again that's in the past —

> — were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person.

My point is that we're dealing with an act that took place in the past. A court has found that the person who committed that act was not criminally responsible by reason of mental disorder. We're saying at some future date that because of that, and relying on the factual situation that took place in that case, we're now going to stamp this person with the designation or imprint of being a high-risk accused. That's where I say you're really punishing someone for something that took place in the past. The court has already decided on those facts, made the determination, gone through a board like yours, and all the appropriate designations have been made, but now we are not assessing only the likelihood of a future act of violence or criminal activity. We're going back and looking at what happened before and saying that, on the basis of that, because of the undefined brutal nature of that crime or that act, we're now going to label this person a high-risk accused.

That's what I mean when I say that, in a way, we're punishing the mentally ill rather than treating them. I know you take a different view. You've made a solid argument in defence of the government's bill. I respect that. I've tried to give my own view based upon the evidence I have read, the people I have talked to and my own limited experience in that field. Senator Jaffer has reached similar conclusions.

• (1830)

As I say, I commend the evidence, both in the House of Commons and in the Senate, to your reading and urge you to look at that before you cast your ballot on this question tomorrow.

Hon. Grant Mitchell: Senator Cowan, I have a question, too. I have listened with great admiration and respect to Senator McIntyre's impassioned and determined defence of this bill. In the process of his making his defence, he made the case that the review boards in this country are really good. I think he said they are really good. I guess that raises the question for me that if they are so good — and I accept his point; he was on one — why would the government limit their ability to operate to only every three years? Clearly they have confidence that these really good boards can make good decisions every three years. Well, if they can make good decisions every three years, why can't they make good decisions every single year and not be burdened by an arbitrary limitation, which might mean that, in fact, they're forced to make a bad decision because they don't get to make the right decision one or two years later and let somebody out who should be out?

Senator Cowan: I could be mistaken, but I don't recall any specific reason being given for three years rather than one year. I may be incorrect on that. I don't believe that, but certainly concern was expressed by many witnesses that three years, without any kind of review, would lead people to say, "I'm not going to take advantage of the defence that is available to me under the code; I'm going to take my chances in the regular criminal justice system because I know that I would get a more regular review, and I wouldn't have to wait three years for a review."

But the downside of that, of course, is that the statistics show that those who go through the regular criminal justice system are many times more likely to reoffend than those who receive the kind of treatment they should as NCR.

Senator McIntyre: Could I make a comment? I'll just make a brief comment regarding the number of years. When a person is found —

Senator Cordy: It has to be a question.

Senator Fraser: Just say at the end, "Do you agree?"

Senator McIntyre: I will just explain this and then I will ask the question.

When an accused person is found either unfit to stand trial or fit to stand trial but not criminally responsible on account of mental disorder, he or she faces a disposition from the court or the review board. The review board has to review within 90 days. If the court does not make a disposition, the review board has to review the matter within 90 days.

After it has reviewed the matter within 90 days, if it grants an absolute discharge, that's the end of the matter. However, if it grants a conditional discharge or there is detention in a hospital or facility, then the board has different choices available to it. The board has to review on an annual basis. It can even extend the next hearing to two years, and I've done that as a former chairperson of the New Brunswick review board.

As far as this bill here is concerned, when we're talking about 36 months, it only applies to the high-risk offenders. As far as the first hearing is concerned, once again — as you rightfully pointed out, Senator Cowan — we need the consent of the Attorney General and of the accused.

I would like to go back to what I was saying a while ago. Review boards have to review within 45 or 90 days. Then they have to review on an annual basis, and on top of that, they have discretionary power to review. On top of that, if the accused person is not satisfied, he can always file an appeal with the Court of Appeal if there is a miscarriage of justice or if the case was not supported by the evidence. That's what happens with the number of years. Are you in agreement with that?

Senator Cowan: Thank you for the comment and the question. I can understand how the board operates, but that was not the testimony of many witnesses before the committee, —and I'm talking particularly about Justice Schneider, who used to be a criminal lawyer, and Ms. Szigeti of the Criminal Lawyers' Association. Ms. Szigeti was advising clients in this situation that they might well decide they didn't want to risk taking advantage of the NCR defence because there might be a designation as a high-risk accused, which would then lock you into that three-year period.

We're talking about a very small number of people here who are caught in this system, anyway. Then if you take the number of people who would be in that sub-segment — I'm sure it's not a handful, but it's not a large number of people.

I think it's that particular number where there is a problem, where a lawyer might say to his client, "I would ordinarily advise you to use your right to an NCR defence, but there is a risk that you would then be designated as a high-risk accused and, as a result, have your review not done annually but every three years." That was the point I think the witnesses were making on that.

Senator McIntyre: Would you take a final question?

Senator Cowan: Of course.

Senator McIntyre: I disagree with Mr. Justice Schneider on that, and I've told him that, not at committee but outside of it. The reason I disagree with him is because if a person commits a very serious crime, such as first-degree murder, second-degree murder, manslaughter, sexual assault or robbery with violence, and that person is charged and appears in court, if the judge finds out that the person has mental health issues, it's not up to the lawyer to decide whether his client will plead guilty or not guilty. I'm sure the first thing that defence counsel will do or the court on its own motion will do is order a psychiatric assessment or evaluation. If the psychiatric evaluation comes back and says that this person is unfit to stand trial, that changes the whole picture.

On the other hand, if the psychiatric evaluation says the person is fit to stand trial but not criminally responsible on account of mental disorder, I can assure you that no court in this country will accept a guilty verdict.

Senator Cowan: I appreciate that you and Justice Schneider disagree.

[*Translation*]

Hon. Ghislain Maltais (Acting Speaker): Are senators ready for the question?

Hon. Senators: Yes.

The Hon. the Acting Speaker: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Acting Speaker: Will those honourable senators who are opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Acting Speaker: I hear some senators calling for a vote. It will therefore take place on Wednesday, April 9 at 5:30 p.m.

[*English*]

ECONOMIC ACTION PLAN 2014 BILL, NO. 1

MOTION TO AUTHORIZE CERTAIN COMMITTEES TO STUDY SUBJECT MATTER—DEBATE ADJOURNED

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of April 1, 2014, moved:

> That, in accordance with rule 10-11(1), the Standing Senate Committee on National Finance be authorized to examine the subject-matter of all of Bill C-31, An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures, introduced in the House of Commons on March 28, 2014, in advance of the said bill coming before the Senate;

That the Standing Senate Committee on National Finance be authorized to sit for the purposes of its study of the subject-matter of Bill C-31 even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto; and

That, in addition, and notwithstanding any normal practice:

1. The following committees be separately authorized to examine the subject-matter of the following elements contained in Bill C-31 in advance of it coming before the Senate:

   (*a*) the Standing Senate Committee on Transport and Communications: those elements contained in Divisions 15, 16 and 28 of Part 6;

   (*b*) the Standing Senate Committee on Social Affairs, Science and Technology: those elements contained in Divisions 11, 17, 20, 27 and 30 of Part 6;

   (*c*) the Standing Senate Committee on National Security and Defence: those elements contained in Divisions 1 and 7 of Part 6;

   (*d*) the Standing Senate Committee on Banking, Trade and Commerce: those elements contained in Parts 2, 3 and 4 and Divisions 2, 3, 4, 8, 13, 14, 19, 22, 24 and 25 of Part 6;

2. The various committees listed in point one that are authorized to examine the subject-matter of particular elements of Bill C-31 submit their final reports to the Senate no later than June 19, 2014;

3. As the reports from the various committees authorized to examine the subject-matter of particular elements of Bill C-31 are tabled in the Senate, they be placed on the Orders of the Day for consideration at the next sitting; and

4. The Standing Senate Committee on National Finance be simultaneously authorized to take any reports tabled under point three into consideration during its study of the subject-matter of all of Bill C-31.

• (1840)

Hon. Larry W. Smith: Honourable senators, I will make this short because I know the day is getting long. I will give you an introduction in terms of Economic Action Plan 2014.

The Economic Action Plan 2014, number one, legislates key elements of our Economic Action Plan for 2014. While Canada leads the G7 with more than a million jobs created since the depth of the global recession, we are not immune to challenges beyond our borders. We cannot afford to become complacent.

[*Translation*]

That is why our government will continue to support the engines of economic growth and job creation while keeping taxes low, in order to achieve a balanced budget by 2015. Our Economic Action Plan 2014 will implement positive measures to help create jobs and provide opportunities for Canadians to grow our economy by connecting Canadians with available jobs.

[*English*]

Creating the Canada apprentice loan provides apprentices registered in the Red Seal trades with access to $100 million in interest-free loans each year.

I will just give you a couple of highlights here because there are many: Cutting the red tape burden by eliminating over 800,000 payroll deduction remittances to Canada Revenue Agency made every year by over 50,000 small businesses; with respect to families and communities, increasing competition in the telecommunications market by amending the Telecommunications Act to cap wholesale domestic wireless roaming rates; and introducing the search and rescue volunteers tax credit, acknowledging the valuable contributions ground, air and marine search and rescue volunteers provide to Canadians from coast to coast.

[*Translation*]

Investing in infrastructure, trade and responsible resource development; reducing barriers to the international and domestic flow of goods and services; supporting mineral exploration by extending the Mineral Exploration Tax Credit for investors.

[*English*]

We are on the right track with over 1 million net new jobs created since July 2009 while the global economy remains fragile. That's why the budget bill will implement positive measures, such as creating the Canada apprentice loan, investing in an expression-of-interest immigration system to better respond to the needs of Canada's economy, reducing red tape burden for small businesses and much more.

[*Translation*]

Canadians gave our government a strong mandate to focus on job creation and economic growth. Canadians expect their government to make decisions and take measures that are consistent with its commitments. That is what our government has done.

[*English*]

As in the case with all legislation, our government is ensuring that they have proper review in both chambers and also at committees on both sides at well. At committee, members of Parliament and senators alike will be able to hear from a wide range of witnesses, all testimony that is taken into consideration as we look at the bill. The five committees — National Finance,

Banking, Trade and Commerce, Social Affairs, Transport, and National Defence — will have ample opportunity to hear from witnesses from across Canada in their respective divisions.

I underscore that the budget implementation act is critical, as the name suggests, implementing key measures in the Economic Action Plan.

I'm urging all members, including members on the opposition side, to support our Economic Action Plan 2014-15. Our chair will likely speak in more detail as we progress on this file starting tomorrow.

(On motion of Senator Fraser, debate adjourned.)

LINCOLN ALEXANDER DAY BILL

SIXTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill S-213, An Act respecting Lincoln Alexander Day, with amendments), presented in the Senate on April 3, 2014.

Hon. Kelvin Kenneth Ogilvie moved the adoption of the report.

He said: Honourable senators, I have just two observations to make for the Senate.

The committee considered this bill and it adopted two amendments to the bill presented to the Senate. They are both simply clarification. One adds a small line of additional information on the background of Lincoln Alexander, and the other corrects a date in the bill between the difference that existed in the original document between the English and the French. In the English it said January and in the French it said July; the second amendment brought those two into agreement, both being January.

Hon. Joan Fraser (Deputy Leader of the Opposition): I thank Senator Ogilvie for his explanation. I haven't had a chance to examine these amendments in any detail, so for this evening I move the adjournment of the debate.

(On motion of Senator Fraser, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—ORDER RESET

On Senate Public Bills, Order No. 11:

> Second reading of Bill S-214, An Act to amend the Criminal Code (exception to mandatory minimum sentences for manslaughter and criminal negligence causing death)

Hon. Joan Fraser (Deputy Leader of the Opposition) Honourable senators, this matter is now at day 13. Senator Jaffer does want to speak to it but, as colleagues know, she is a member of the Legal and Constitutional Affairs Committee. They are doing a pre-study of the Fair Elections Bill at this time. I wonder if you would permit me, therefore, to reset the clock, adjourning the debate again in her name.

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

Hon. Senators: Agreed.

(Order reset.)

• (1850)

POPE JOHN PAUL II DAY BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Fortin-Duplessis, seconded by the Honourable Senator Poirier, for the second reading of Bill C-266, An Act to establish Pope John Paul II Day.

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, this debate stands adjourned in my name. I have conferred with colleagues in our caucus, and I'm aware that no one wishes to speak to this bill at this stage. So if there are no others, I wish to call the question on this item.

Hon. Joan Fraser (Deputy Leader of the Opposition): On our side, there is at least one senator who does wish to speak to that bill. It is Senator Mercer. He is in committee as we speak. I therefore seek the adjournment of this debate in the name of Senator Mercer.

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

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Boisvenu, seconded by the Honourable Senator Beyak, for the second reading of Bill C-452, An Act to amend the Criminal Code (exploitation and trafficking in persons).

Hon. Joan Fraser (Deputy Leader of the Opposition): Colleagues, this item is at day 14, and I regret that I have been very slow in consulting my notes and putting notes together on this matter. The exploitation of and trafficking in persons is a subject of grave concern to all of us, being among the most horrible crimes that exist.

That said, I can't guarantee that before the end of this week, at least, I will be in a position to speak on this bill. However, Senator Jaffer does wish to speak to it, so I move the adjournment in the name of Senator Jaffer.

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

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON NON-RENEWABLE AND RENEWABLE ENERGY DEVELOPMENT IN NORTHERN TERRITORIES—FOURTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Energy, the Environment and Natural Resources (budget—study on Northern Territories Energy—power to travel and to hire staff), presented in the Senate on April 3, 2014.

Hon. Richard Neufeld: I move adoption of the report.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

NATIONAL SECURITY AND DEFENCE

BUDGET—STUDY ON STATUS OF CANADA'S INTERNATIONAL SECURITY AND DEFENCE RELATIONS—THIRD REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on National Security and Defence (budget—study on the status of Canada's International Security and Defence relations), presented in the Senate on April 3, 2014.

Hon. Daniel Lang: I move adoption of the report.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON POLICIES, PRACTICES, AND COLLABORATIVE EFFORTS OF CANADA BORDER SERVICES AGENCY PERTAINING TO ADMISSIBILITY TO CANADA—FOURTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on National Security and Defence (budget—study on the policies and practices of the Canada Border Services Agency—power to travel and to hire staff), presented in the Senate on April 3, 2014.

Hon. Daniel Lang: I move adoption of the report.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON NATIONAL SECURITY AND DEFENCE POLICIES, PRACTICES, CIRCUMSTANCES AND CAPABILITIES—FIFTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on National Security and Defence (budget—study on Canada's national security and defence policies—power to travel and to hire staff), presented in the Senate on April 3, 2014.

Hon. Daniel Lang: I move adoption of the report.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON ISSUES CONCERNING VETERANS' AFFAIRS—SIXTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on National Security and Defence (budget—study on Veterans Affairs—power to travel and to hire staff), presented in the Senate on April 3, 2014.

Hon. Daniel Lang: I move adoption of the report.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

FOURTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Committee on Internal Economy, Budgets and Administration (budgets of certain committees—legislation), presented in the Senate on April 3, 2014.

Hon. Larry W. Smith: I move adoption of the report in the name of Senator Furey.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

THE SENATE

LEGISLATIVE ROLE—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Nolin, calling the attention of the Senate to its legislative role.

Hon. James S. Cowan (Leader of the Opposition): Colleagues, I'm still preparing my notes on this important issue, and I would ask leave of the Senate to adjourn the debate in my name for the balance of my time.

(On motion of Senator Cowan, debate adjourned.)

(The Senate adjourned until Wednesday, April 9, 2014, at 1:30 p.m.)

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