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(HANSARD)

Thursday, May 14, 2015

The Honourable LEO HOUSAKOS
Speaker

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THE SENATE

Thursday, May 14, 2015

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

FORT MCMURRAY, ALBERTA

MUSLIM COMMUNITY

Hon. Mobina S. B. Jaffer: Honourable senators, I rise to recognize the Muslim community of Fort McMurray. The Muslim community in Fort McMurray is one of the fastest-growing Muslim communities in Canada. They have a fluctuating yet growing congregation of between 8,000 and 10,000 members.

Honourable senators, the mosque in Fort McMurray is an inclusive place where Canadians, new immigrants and temporary foreign workers come together to share in a collective spiritual experience. Like Canadians all across the country, members of the congregation in Fort McMurray originate from a range of places. Canadians of Pakistani, Arab, Indian, Somali and Bengali origin are just some of the peoples who come together in the Markaz Ul Islam.

The mosque caters to both Sunnis and Shias who pray together every Friday. It is a sight that is not often seen in other countries, but it is a symptom of the environment of inclusion that we have spent decades fostering here in Canada.

When asked about the diversity fostered in the mosque, Mr. Abdo, the president of the mosque, said:

> It makes you feel more proud. In Lebanon you only see Lebanese. You don't see anyone else. Here, you think, "This is Islam."

Honourable senators, this place of worship gives many Muslims who travel to Canada's North to work in oil fields and other specialized industries the opportunity to connect with their faith community. In an area that can often seem isolated, with workers who come for two weeks at a time without their families, this place of worship provides the members of its congregation the chance to have a home away from home. Many of us in this chamber know how difficult it can be to be away from our families for an extended period of time.

The community in Fort McMurray provides strength to those who work at difficult and dangerous jobs to provide for their families. It allows them to be active in their community by participating in food bank initiatives and the community emergency response program. It also provides a space to get together and socialize with those who share a collective identity as visible minorities.

Honourable senators, Markaz Ul Islam stands as an example of the positive impact that faith-based communities can have in Canada — a place that allows Canadians to congregate and contribute to their wider community, while also providing comfort and support to many new immigrants, allowing them to easily integrate into our diverse Canadian society.

I would like to congratulate the leadership of this community for what they have built. It is a model that we and the whole world can learn from and emulate.

THE LATE G. RAYMOND CHANG, O.C.

Hon. Don Meredith: Honourable senators, I rise to acknowledge the late G. Raymond Chang, O.C., who posthumously received the Order of Canada last Friday from the Right Honourable David Johnston, Governor General of Canada. The Order of Canada recognizes outstanding achievements and dedication to the community. The insignia was presented to Mr. Chang's wife and son.

As a Canadian senator of Jamaican descent, I continue to be inspired by the contributions of Mr. Chang. He moved from the beautiful island of Jamaica to Canada in 1967 to pursue a post-secondary education. After earning his engineering degree, he gained his qualifications as a chartered accountant and financial analyst. Mr. Chang found his calling in the world of finance and he went on to establish CI Financial, a multi-billion dollar mutual fund company.

Honourable senators, Mr. Chang was not just a successful businessman. He was also a champion for education and lifelong learning. In 2006 he was appointed chancellor of Ryerson University, where he served students faithfully. Upon his passing, Ryerson's president Sheldon Levy stated:

> Whenever students needed help, Ray was there for them. He put students at the centre of everything that he did with Ryerson. He was excited to be around students and was on campus often, whether sitting in on classes or sharing in the celebration of their achievements.

Mr. Chang had an easy-going spirit with a calming demeanour, and he was a progressive man. A philanthropic individual who committed his time and resources to support education, he donated $5 million to Ryerson to establish the G. Raymond Chang School of Continuing Education. In addition, Mr. Chang made contributions to the University of the West Indies, and he established a fellowship for Caribbean doctors at the University Health Network, a medical research organization in Toronto.

Honourable senators, please join me in congratulating the late G. Raymond Chang, O.C., recipient of the Order of Canada. We wish his family strength and guidance to continue his work, and we thank them for embodying the Order of Canada's motto: "They desire a better country."

ERA 21 NETWORKING BREAKFAST FOR YOUNG CANADIANS

Hon. Lillian Eva Dyck: Honourable senators, on Wednesday, May 6, I hosted the 11th annual Era 21 Networking Breakfast for Young Canadians at the Parliamentary Restaurant. This is a joint Asian Heritage Month and Black History Month diversity celebration made possible by the Ottawa Asian Heritage Month Society, the J'Nikira Dinqinesh Education Centre, the Ottawa-Carleton District School Board and our sponsor, the Royal Bank of Canada. One hundred high school students in Grades 11 and 12 attended the breakfast.

This year we were honoured to have Justin Holness, Gabrielle Fayant and Angelique Francis as our distinguished young speakers.

Justin Holness is the founder of Ottawa's Indigenius Art, Music and Fashion Show, which showcases indigenous culture through the arts. He also works at the Wabano Centre for Aboriginal Health as the Aboriginal Youth Diversion Coordinator, working directly with indigenous youth who are facing difficult times in their lives.

Justin has a mixed First Nation and Jamaican heritage, both of which have had a strong influence on his identity. At the breakfast he spoke passionately about his story of how his purpose drives his actions.

Coming from a rough situation in Winnipeg, Justin travelled to Ottawa and found the purpose of helping others as a core driver in his life. Through his rap and spoken word, he conveyed his own powerful message to the students of the struggle of indigenous Canadians throughout Canadian history. His message was one of peace and purpose.

Gabrielle Fayant is the co-founder of a youth-led and youth-driven organization called the Assembly of Seven Generations. She has worked for a number of organizations, such as the National Association of Friendship Centres, Native Women's Association of Canada, the Aboriginal Healing Foundation, the Canadian Commission of UNESCO's Youth Advisory Group, and Walking With Our Sisters Ottawa. She was recently named an Indspire laureate for 2015 and is of Metis heritage.

At the breakfast, Gabrielle shared her passion for discovering and learning her native language. Gabrielle led the entire group in a circle song to close the event. All in attendance stood in a circle, kept the beat with their hand over their heart as Gabrielle beautifully sang an indigenous song. What an incredible way to end the event.

Angelique Francis is a multi-talented, multi-instrumental singer-songwriter and composer. Angelique first took to the stage at age 7, and ever since then she's been wowing audiences across North America with her stage presence, instrumentals, songwriting abilities and her deep, textured vocals. Some of her performances include Canada's Walk of Fame Festival, Ottawa Bluesfest, Youth Day festival Toronto, UNITY Festival Toronto, Canadian War Museum, and Library and Archives Canada. At the breakfast, Angelique sang an original song entitled "Maybe I." Her soulful and powerful message deeply impacted the students.

• (1340)

I want to thank Justin, Gabrielle and Angelique for sharing their stories and experiences with us all. They truly inspired the high school students to believe in themselves and in their dreams of a Canada that embraces and values multiculturalism.

[*Translation*]

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I draw your attention to the presence in the gallery of Jacques Daoust, member of the Panthéon des sports board of directors and member of the implementation and development committee of the Musée des sports du Québec. He is the guest of the Honourable Senator Demers.

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

Hon. Senators: Hear, hear!

[*English*]

UNIVERSITY OF PRINCE EDWARD ISLAND

HONORARY DOCTOR OF LAWS RECIPIENTS

Hon. Elizabeth Hubley: Honourable senators, I would like to acknowledge the four outstanding Islanders who were recognized this past weekend with an Honorary Doctor of Laws degree at the University of Prince Edward Island. These degrees are presented during the convocation ceremony to individuals who display the highest levels of achievement in public and community service.

Over the course of his life, Father Charlie Cheverie has been a pastor, a professor, a chaplain and an avid fiddler. He taught at St. Dunstan's University and then at UPEI, and after retirement he became the university's chaplain. He has also served as both a commissioned officer and a military chaplain in the Canadian Armed Forces. Father Charlie enthusiastically promotes traditional music around the province and is a dedicated member of the Queens County Fiddlers.

Lennie Gallant is a singer, songwriter, musician and producer. He released his first album in 1988 and has since recorded nine more, including two in French. He has toured North America and Europe and won more than a dozen East Coast Music Awards. He has been inducted into the Order of Canada, and he regularly donates his time and talents for worthy causes, most notably UNESCO and World Vision.

Our former colleague, the Honourable Catherine Callbeck, was also among this year's distinguished recipients. As we all know, she served in both the House of Commons and the Senate. She is

a former premier, provincial cabinet minister and MLA, as well as a successful business woman. In addition to receiving her honorary degree, she addressed the graduates during the morning convocation.

Finally, Patricia Mella is a retired teacher and former provincial cabinet minister. She has served her community in a variety of ways, from the legislature to the Prince Edward Island Teachers' Federation, to her local recreation commission. Interestingly, she served as Leader of the Official Opposition — in fact, the opposition's lone MLA — during the Premier Callbeck government. Ms. Mella addressed the graduates at the afternoon convocation.

All four recipients are deserving of this recognition. They have helped to shape the communities around them and have contributed to the well-being of Islanders. Please join me in offering congratulations and wishing them all the best in the future.

[*Translation*]

ROUTINE PROCEEDINGS

INFORMATION COMMISSIONER

INVESTIGATION INTO AN ACCESS TO INFORMATION REQUEST FOR THE LONG-GUN REGISTRY— SPECIAL REPORT TABLED

The Hon. the Speaker: Honourable senators, pursuant to section 39 of the *Access to Information Act*, I have the honour to submit, in both official languages, the special report of the Information Commissioner of Canada entitled: *Investigation into an access to information request for the Long-gun Registry*.

[*English*]

CANADIAN HUMAN RIGHTS TRIBUNAL

2014 ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the 2014 Annual Report of the Canadian Human Rights Tribunal pursuant to subsection 61(4) of the Canadian Human Rights Act.

THE ESTIMATES, 2015-16

SUPPLEMENTARY ESTIMATES (A) TABLED

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Supplementary Estimates (A) 2015-16, for the fiscal year ending March 31, 2016.

INCOME TAX ACT

BILL TO AMEND—TWENTY-SEVENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. Bob Runciman, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, May 14, 2015

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TWENTY-SEVENTH REPORT

Your committee, to which was referred Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations), has, in obedience to the order of reference of Tuesday, November 25, 2014, examined the said bill and now reports the same without amendment.

Respectfully submitted,

BOB RUNCIMAN
Chair

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

Senator Ringuette: Never!

(On motion of Senator Dagenais, bill placed on the Orders of the Day for third reading at the next sitting of the Senate, on division.)

BANKING, TRADE AND COMMERCE

BUDGET—STUDY ON THE USE OF DIGITAL CURRENCY—TENTH REPORT OF COMMITTEE PRESENTED

Hon. Irving Gerstein, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, May 14, 2015

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

TENTH REPORT

Your committee, which was authorized by the Senate on Tuesday, March 25, 2014, to examine and report on the use of digital currency, respectfully requests funds for the fiscal year ending March 31, 2016.

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,

IRVING GERSTEIN
Chair

(*For text of budget, see today's* Journals of the Senate*, Appendix, p. 1853*.)

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

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

THE ESTIMATES, 2015-16

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (A)

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, with leave of the Senate, I move:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2016.

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.)

PROMPT PAYMENT OF FEDERAL GOVERNMENT CONSTRUCTION WORK

NOTICE OF INQUIRY

Hon. Donald Neil Plett: Honourable senators, I give notice that, two days hence:

I will call the attention of the Senate to the need for action to ensure prompt payment of federal government construction work.

• (1350)

OFFICE OF THE AUDITOR GENERAL

NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, pursuant to Senate rules 5-1. and 5-6.(2), I give notice that, two days hence:

I shall call the attention of the Senate to:

the terms, conditions and tenure of office of the Auditor General of Canada, pursuant to the *Auditor General Act*, sections 3.(1) and 3.(1.1), that say:

3. (1) The Governor in Council shall, by commission under the Great Seal, appoint an Auditor General of Canada after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

(1.1) The Auditor General holds office during good behaviour for a term of 10 years but may be removed for cause by the Governor in Council on address of the Senate and House of Commons.

and, to his tenure in office, and the unique independence granted to this officer as "the auditor of the accounts of Canada," to permit him to verify and certify that government spending is in accord with the appropriation acts, as dictated and adopted by the Commons House; and, to his constitutional duty to support the Public Accounts Committee and the Commons House in their pre-eminence in the national finance and their power in the *control of the public purse*.

AUDIT OF SENATE ACCOUNTS BY AUDITOR GENERAL

NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, pursuant to Senate rules 5-1. and 5-6.(2), I give notice that, two days hence:

I shall call the attention of the Senate to:

a) the Auditor General of Canada, the statutory officer, that parliament did not, and never intended to give a power to audit its houses, the Senate and the House of Commons; and, to the predecessor auditor general who, until 1878, was united and merged in the office of the deputy minister of finance; and, to this parliament's An Act to provide for the better Auditing of the Public Accounts, which statute was adopted here in 1878, to completely divide these two offices and functions, and to absolutely separate the auditor general from the finance department and the government, so as to extract him from all government business forever, all of which were for the purpose of constituting the Auditor General of Canada as an wholly independent officer, freed from, and free of, the control, influence, and politics, of the government of the day; and,

b) to the sad and unfortunate fact, which the government does not seem to note, that the unique independence granted to this officer, the Auditor General of Canada as the auditor of the public accounts, wholly forbids his obedience to the government's wishes in any way, particularly its motions which, when adopted, become house orders, that subject him to the contempt powers of the houses; and, to the auditor general's audit of the Senate, the upper house, which is a hurtful and menacing compromise of this officer's independence, caused by the fact that this overly-publicized Senate audit was not born of senators, but was born of the Senate Government Leader's government business, at the instance of that government leader's government measure, moved here by that government minister, and hastily adopted last June, with little debate, in a government whipped vote; and, to the fact that senators learned of the government's intention, and the auditor general's agreement to audit senators from that day's media reports; and, to the terrible fact that senators were the last to hear of this unilateral development.

PARLIAMENTARY APPROPRIATIONS AUDIT BY THE AUDITOR GENERAL

NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, pursuant to Senate rules 5-1. and 5-6.(2), I give notice that, two days hence:

I shall call the attention of the Senate to:

the Auditor General of Canada, and his public role as "the auditor of the accounts of Canada"; and, to the parliamentary action known as the *appropriation audit*, which audit was the very purpose for the creation of the new and independent auditor general by the 1878 Canadian statute which followed the British practice of 1866; and, to the parliamentary appropriation audit; and, to this audit that tracked the government's public expenditures in the public service and public administration to certify and verify that the public monies were expended, as dictated in the appropriations acts, adopted by the House of Commons; and, to the fact that the appropriation audit was created and intended to assist the Commons House's control of the national finance, the public revenue and the public expenditure; and, to the House of Commons'
pre-eminence in the power of the *control of the public purse*; and, to the fact that the creation of the appropriation audit and its later universal application to all, not some, of the departments of government, was one of the greatest achievements of the House of Commons, and of parliament; and, to the fact that the whole of the powers and duties of the auditor general follow his duties as the auditor of the accounts of Canada, of which the Senate is no part, as it is no part of the public service or the public administration of Canada.

[*Translation*]

QUESTION PERIOD

PUBLIC SAFETY

FEMALE GENITAL MUTILATION

Hon. Mobina S. B. Jaffer: Mr. Leader, I know that you won't be able to give us an answer today, but I am asking you to conduct an inquiry on female genital mutilation and to come back to this chamber with an answer as soon as possible.

As you know, I am working on the problem of female genital mutilation. I would like to know whether the Department of Justice has taken measures to prosecute the alleged offenders or whether it intends to adopt any such measures.

Hon. Claude Carignan (Leader of the Government): Senator, I can take your question as notice. I would like to remind you that the Government of Canada condemns these barbaric practices. When immigrants arrive in our country and are sworn in as new Canadians, the principles set out in the citizenship guide are very clear: to promote the equality of women and men and to respect people's physical integrity, especially women's.

Senator Jaffer: Mr. Leader, I have a supplementary question. Since 1997, we have considered all forms of female genital mutilation to be child abuse. However, no charges have been laid.

Senator Carignan: I am not sure whether you are asking me a question or you are answering your first question. In short, I am not exactly sure where this is going, senator. Our society condemns violence against women and girls. It is not tolerated. The Government of Canada is committed to preventing all forms of violence and supporting victims. Canadians can count on our government to crack down on violent crime, particularly crimes against women and children.

Since we took office, we have brought in harsher sentences for crimes, including sexual assault and kidnapping. We have imposed mandatory prison sentences for the most serious crimes. We have enhanced support for victims of crime and we have invested in various community projects. Funding for these projects has more than doubled.

Since 2007, we have funded over 300 projects to eliminate violence against women and girls through Status of Women Canada. Since 2006, we have adopted 30 justice- and public-safety-related measures. We have taken decisive action to keep women and girls safe. We have put an end to house arrest in cases of sexual assault involving serious injury, and we have brought in harsher sentences for the sexual exploitation of children and for the importation, manufacturing and sale of date rape drugs. We will continue our efforts to keep women and girls safe from exploitation and abuse.

[*English*]

Senator Jaffer: Thank you, leader, for your answer. I will repeat my question. Maybe I didn't explain myself clearly.

I am specifically asking about female genital mutilation. This law came in place in 1997. Since 1997, there has been not one prosecution. I'm specifically asking for you to inquire of the Justice Department why that is not the case.

• (1400)

In England, which has double the population that we have, there have been several prosecutions. They have set up a separate unit to deal with issue, while here we do not seem to be doing anything on the issue of female genital mutilation.

[*Translation*]

Senator Carignan: Senator, it's harsh of you to say that we are not doing anything, considering the measures I described. Our government is a champion of maternal and child health, as illustrated by the Muskoka Initiative. Our government is playing a leadership role in addressing the health challenges facing women, newborns and children in the poorest countries in the world.

We recently promised an additional $3.5 billion over five years for the maternal, newborn and child health initiative. In addition, during the most recent Francophonie Summit, the Prime Minister announced a contribution that will make it possible to immunize 300 million more children and to save as many as 6 million lives. That money will enable us to act on our policies and redouble our efforts in a number of critical areas: immunization, nutrition, birth and death registration and, of course, women's and children's health.

I find your accusations quite crude considering the leadership of our Prime Minister and our government on women's health and maternal health.

[*English*]

Senator Jaffer: Mr. Leader, I appreciate your answer. I was not asking you about maternal health. I was asking you about genital mutilation. May I ask you to please find out from the Justice Department what they are doing on this issue?

[*Translation*]

Senator Carignan: It's clear that you don't really like my answers about the government's record on maternal health. I thought you were going back to your first question because it seemed like you had the answer to your second comment.

I will ask the Department of Justice to provide you with a written response to that specific question.

[*English*]

LONG-GUN REGISTRY DATA— ACCESS-TO-INFORMATION REQUESTS

Hon. Joan Fraser (Deputy Leader of the Opposition): For the Leader of the Government in the Senate, two months ago, Information Commissioner Suzanne Legault told the government that the RCMP should be charged in connection with its role in withholding and destroying gun registry data before the long-gun registry was abolished. Well, the government did not see fit to refer the RCMP to itself or to have the RCMP charged. Instead, the government, in its omnibus budget bill, tucked in a neat little provision to rewrite the law retroactively. How can the government justify rewriting the law retroactively in what is so obviously a patent case of wishing to spare the RCMP any inconvenience?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): The bill speaks for itself. We will have the opportunity to study it in committee thanks to the motion for pre-study that will be moved. At that point you will have the opportunity to question the witnesses and to look at the technical aspects of this provision of the Access to Information Act.

[*English*]

Senator Fraser: The bill is not yet before us; the Information Commissioner's report is. Therefore, I ask again for an explanation of what looks to me like inexplicable government policy in this matter.

[*Translation*]

Senator Carignan: Senator, I think you're quite familiar with our government's policy on keeping its word. We put an end to the long-gun registry once and for all. It was inefficient and a waste of money.

However, it is still possible to get old copies of the registry through the Access to Information Act. Parliament made its wishes clear. All copies of the registry were to be destroyed, and this legislative amendment will ensure that this happens.

Senator, you will have the opportunity to the study the bill and to study the technical aspects of this provision. However, the wishes of Parliament and this government were clear with respect to the elimination of the firearms registry once and for all.

[*English*]

Senator Fraser: The access-to-information requests concerned, as I understand it, would not in fact have been useful to anybody except academic researchers because names and other personal information were to be deleted from the data that had been requested.

The government has proposed in the budget bill to change the law retroactively to make access-to-information requests about those data illegal — requests which were legal when filed — and

not just to the day when the law abolishing the gun registry took effect but to the day when it was tabled in Parliament before Parliament had even made a decision about it. How can you justify this? Can you not at least see that it constitutes serious contempt of Parliament?

[*Translation*]

Senator Carignan: Excuse me, senator, but I think that the opposite would be considered contempt. Parliament clearly expressed its will to destroy the firearms registry, and that is what is happening.

[*English*]

Senator Fraser: I participated in the study of that bill. I do not remember any retroactive applications of it to the access-to-information law, and now, all these years later, suddenly we're getting around to doing it. Are you trying to tell me that it's a coincidence that this happened after the Information Commissioner recommended the laying of charges?

[*Translation*]

Senator Carignan: Senator, you may not remember the study of this provision, but surely you remember that the government clearly said it wanted to destroy the firearms registry. That's what Parliament decided and that's what was done.

[*English*]

Hon. Grant Mitchell: As a supplementary question, it always strikes me as odd how this government believes that it is a tough-on-crime government except when it's inconvenient to be tough on crime. Suzanne Legault revealed that this is the fourth time that she has recommended to the Attorney General of Canada that there are grounds for criminal charges under the Access to Information Act. Do you know what? No charges have ever been laid, despite past findings of blatant and illegal political interference in the working of the system which is designed to give Canadians access to information. Why is it that this "tough-on-crime government" isn't tough on crime when it comes to revealing information that may be, I guess, embarrassing to them?

[*Translation*]

Senator Carignan: Senator, when Parliament speaks and clearly expresses its desire to destroy all copies of the firearms registry, then destroying these copies is a matter of complying with the wishes of Parliament. It is a matter of complying with the technical provision set out in the bill, whose purpose is to follow through on the wishes clearly expressed by Parliament a long time ago.

[*English*]

Senator Mitchell: But that's the very point. Parliament hadn't spoken yet. That's the very point about this. This was done before Parliament had spoken. I don't care what the RCMP does with respect to anticipating what Parliament might say. They don't have a right to act on a law that has yet to be passed by Parliament.

Can't you understand the difference between the law being tabled and the law being passed? Do you not understand that Parliament had not yet spoken and that the RCMP was acting in a way that was absolutely before Parliament had spoken and was, therefore, outside the law?

• (1410)

[*Translation*]

Senator Carignan: Senator, as you know, our government has kept its word and put an end, once and for all, to the long-gun registry, which was a waste of money and not effective. Old copies of the registry could be obtained through the Access to Information Act. However, Parliament clearly expressed its will to destroy all copies of the registry.

[*English*]

Senator Mitchell: In the context of Bill C-51, which many people fear is a real affront to Charter rights and civil liberties, what message does it send to the RCMP and to other enforcement and national intelligence agencies when they can literally break the law with some sense of knowing that they will be saved by a government that will simply change it retroactively if it becomes a problem?

[*Translation*]

Senator Carignan: Senator, I believe that I answered your question. Parliament clearly expressed its will to destroy the long-gun registry and its will has been respected.

[*English*]

Senator Mitchell: It's a culture of lawlessness that's actually being created, not a culture of "tough on crime."

What confidence can Canadians have that a government that would change the law retroactively to save itself embarrassment or to help its friends in the RCMP, for example, wouldn't go so far as to change a law retroactively to entrap somebody they don't like so much?

[*Translation*]

Senator Carignan: I believe that Canadians know that our government keeps its word. When the government promises to abolish the long-gun registry, it keeps its word, just as it does when it promises to reduce taxes and balance the budget. The opinion that Canadians should have of their government is that it is a government that they can trust, that is competent and that keeps its word.

[*English*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: Motion No. 105, followed by second reading of Bill C-46, followed by Motion No. 108, followed by second reading of Bill C-51, followed by all remaining items in the order that they appear on the Order Paper.

ECONOMIC ACTION PLAN 2015 BILL, NO. 1

MOTION TO AUTHORIZE CERTAIN COMMITTEES TO STUDY SUBJECT MATTER—MOTION IN MODIFICATION ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Martin, seconded by the Honourable Senator Marshall:
>
> 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-59, An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures, introduced in the House of Commons on May 7, 2015, in advance of the said bill coming before the Senate;
>
> That the Standing Senate Committee on National Finance be authorized to meet for the purposes of its study of the subject matter of Bill C-59 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-59 in advance of it coming before the Senate:
>
> (*a*) the Standing Senate Committee on Aboriginal Peoples: those elements contained in Division 16 of Part 3;
>
> (*b*) the Standing Senate Committee on Banking, Trade and Commerce: those elements contained in Divisions 3, 14, 19 of Part 3;
>
> (*c*) the Standing Senate Committee on Social Affairs, Science and Technology: those elements contained in Division 15 of Part 3;
>
> (*d*) the Standing Senate Committee on National Security and Defence: those elements contained in Divisions 2 and 17 of Part 3; and
>
> (*e*) the Standing Committee on Internal Economy, Budgets and Administration: those elements contained in Division 10 of Part 3;
>
> 2. The various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-59 be authorized to meet for the purposes of their studies of the those elements even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto;
>
> 3. The various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-59 submit their final reports to the Senate no later than June 4, 2015;
>
> 4. As the reports from the various committees authorized to examine the subject matter of particular elements of Bill C-59 are tabled in the Senate, they be placed on the Orders of the Day for consideration at the next sitting; and
>
> 5. The Standing Senate Committee on National Finance be simultaneously authorized to take any reports tabled under point four into consideration during its study of the subject matter of all of Bill C-59.

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, with leave of the Senate, I move:

> That the motion be modified by deleting, in paragraph (*b*) of point 1, the reference to Division 3 of Part 3 of the bill.

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.)

PIPELINE SAFETY BILL

BILL TO AMEND—SECOND READING

Hon. Michael L. MacDonald moved second reading of Bill C-46, An Act to amend the National Energy Board Act and the Canada Oil and Gas Operations Act.

He said: Honourable colleagues, it is an honour to sponsor this legislation in the Senate, and I am pleased to have the opportunity to lead off this debate.

The pipeline safety act directly addresses our government's priorities: energy security, economic growth and environmental protection. It recognizes the importance of pipelines to transport the energy we need and use every day, whether it is to fuel our cars, power our businesses and factories, or heat our homes. It supports the significant role that the oil and gas sector plays in our national economy.

We've heard the numbers many times in this place, but they bear repeating. The energy sector, led by our abundant oil and gas resources, directly contributed close to 10 per cent of Canada's economy in 2013. It also generated an average of $25 billion a year in federal and provincial revenues between 2008 and 2012.

Finally, the pipeline safety act reflects the importance we have placed on making pipelines safer. Under our government, energy security and economic growth will never come at the expense of environmental safety. That's why our comprehensive plan for responsible resource development makes it clear that no resource development will be permitted unless projects are deemed safe — safe for Canadians and safe for the environment.

The pipeline safety act is a key component of this plan for responsibly developing our natural resources.

Colleagues, Bill C-46 is based on three key pillars of incident prevention, preparedness and response, and liability and compensation. There is widespread agreement that this legislation hits the mark on all three aspects. Indeed, a cross-section of witnesses offered expert testimony on the bill to the Standing Committee on Natural Resources in the other place. There was general consensus that the legislation is needed and is a positive step. I look forward to a thorough study of this legislation during committee stage here as well.

This piece of legislation fulfills our government's commitment to enshrine into law the "polluter pays" principle. If a company is the source of pollution, they will pay to clean it up. Moreover, any losses or damages will be paid for by the company responsible.

This is not a new idea. We have already enshrined the "polluter pays" principle in a variety of other similar bills passed by Parliament. We see this in the offshore industry under Bill C-22. We've seen it in the nuclear sector. We see it in the Fisheries Act. The list goes on.

The bottom line is clear: It's polluters that must be held responsible for the harm they cause, not Canadian taxpayers.

Our government took into consideration a wide variety of factors before legislating $1 billion in absolute liability for companies operating major oil pipelines. This included an analysis of everything from historic incidents involving pipelines to the size of current and pending pipeline projects.

Government officials also looked at the volume and nature of the goods being transported by Canada's pipelines, and considered what other peer jurisdictions such as the U.S. and the United Kingdom are doing and the approaches they have taken. We know, for example, that these peer jurisdictions do not have absolute liability in their pipeline legislation. So we are very comfortable with and confident in what we have arrived at in the pipeline safety act — and not only in terms of "polluter pays" principle, but also in terms of ensuring pipeline operators have the financial resources to meet the bill's other provisions on preparedness and response, as well as on liability and compensation.

On preparedness and response, we are amending the National Energy Board Act to require companies operating major oil pipelines to have a minimum of $1 billion in financial resources, a portion of which must be on hand to respond quickly to an incident. If a company is unable or unwilling to respond, the National Energy Board can, in exceptional circumstances, be given the power to take over response operations, and the National Energy Board will recover the costs of those operations from the industry.

• (1420)

In other words, the Government of Canada will provide the NEB with the authority and the resources, through a financial backstop, to respond and complete the cleanup. This means that if there is an incident involving a pipeline, the response will be immediate. It will be thorough and the cost of it will not come out of the Canadian taxpayers' pocket.

The pipeline safety act also strengthens our system of liability and compensation in a variety of other ways.

Yes, absolute liability is set at $1 billion for operators of major oil pipelines for costs and damages, regardless of what happened or who caused the incident. However, the pipeline safety act reinforces the polluter-pay principle by making it very clear that pipeline operators have unlimited liability when they are negligent or at fault.

So, to repeat: If you are at fault, your liability is unlimited, period. We can't make it any clearer than that, Mr. Speaker. In addition, as I alluded to earlier, this bill will also allow the government to pursue pipeline operators for the costs of damages to the environment. As well, this new legislation empowers the NEB to order reimbursement of clean-up costs incurred by either governments or individuals. Finally, the NEB will be able to recover its own costs for stepping in to coordinate a response.

These sweeping changes are a clear indication of how committed the government is to ensuring that Canada can safely transport the energy we all use every day.

I opened my remarks by noting how the pipeline safety act reflects three priorities: economic growth, energy security and environmental protection. After taking a closer look at some of the key provisions in this legislation, I hope Canadians will have an even better understanding of how Bill C-46 contributes to achieving all three of these.

We continue to create and protect jobs and opportunities for Canadians from coast to coast to coast by encouraging our country's energy independence. We do so while maintaining and

strengthening one of the most stringent and effective pipeline safety regimes in the world. That's why I urge all honourable senators to support this world-class legislation and, for the record, this bill was unanimously supported by all parties in the House of Commons.

Thank you for your attention.

[*Translation*]

Hon. Paul J. Massicotte: Honourable senators, I am honoured to rise today as the sponsor of Bill C-46, An Act to amend the National Energy Board Act and the Canada Oil and Gas Operations Act, whose short title is the Pipeline Safety Act.

The purpose of this legislation is to create a liability regime for pipelines under federal jurisdiction, in other words, those that cross provincial borders. Bill C-46 is part of a series of bills that the government has brought forward recently and whose common goal is increasing accountability for damage caused to the environment and strengthening Canada's prevention and safety mechanisms.

Other such bills include Bill C-22, the Energy Safety and Security Act, which received Royal Assent on February 22, 2015, and brings greater accountability to the offshore oil and nuclear energy sectors, as well as Bill C-3, the Safeguarding Canada's Seas and Skies Act, which received Royal Assent on December 9, 2014, and creates a framework for increased liability and compensation for damage in connection with the transportation of hazardous and noxious substances by sea.

With Bill C-46, the federal government is proposing initiatives for federally-regulated pipelines in order to improve mechanisms for prevention, recourse, protection, compensation and accountability in the event of any accidents that have adverse environmental effects.

Of the 825,000 kilometres of pipelines that cross this country, 73,000 kilometres come under federal jurisdiction. Those pipelines generate $7 billion in annual revenue and provide 6,000 jobs to Canadians. They move approximately 1.3 billion barrels of oil annually across provincial and international borders. That fact is that 99.999 per cent of the oil transported through those pipelines is moved very safely, without any incidents, which is a reflection of our consistent and impressive safety standards. These pipelines are an integral part of our economy and have proven to be a safe way to transport oil and other fuel sources that we depend on.

[*English*]

I agree with Bill C-46 in its overall direction for the following reasons: The enforcement of the polluter-pay principle ensures that the liability and financial responsibility is on the pipeline operator. Despite proof of fault or damage, the notion of absolute liability of the bill ensures that all major operators have access to a minimum of $1 billion to cover unforeseen loss or damages incurred by any person, government or public resource, noting also that a company may be required to pay amounts exceeding its liability limit in the circumstance of proof of fault or negligence. It is important to note that no other country has an absolute liability regime for its pipelines.

Furthermore, the bill clarifies that pipeline companies will be responsible for their abandoned pipelines until they are removed from the ground, thus responding to common concerns from provinces and landowners.

Finally Bill C-46 gives the National Energy Board greater power to act if necessary. It provides the NEB with mechanisms of enforcements and compensation tools to ensure these regulations are followed and respected, such as more frequent audits and inspections, as well as access to a claims tribunal.

Honourable colleagues, for these reasons I support in principle the objectives of Bill C-46 and recommend further study and consideration in the Standing Senate Committee on Energy, the Environment and Natural Resources in order to fully analyze this proposed legislation, to hear from experts, to identify potential gaps and potential improvements, but foremost to ensure this bill offers the best pipeline safety and protection for Canadians.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator MacDonald, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.)

ANTI-TERRORISM BILL, 2015

BILL TO AMEND—SECOND READING—
ALLOTMENT OF TIME—MOTION ADOPTED

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of May 13, 2015, moved:

> That, pursuant to rule 7-2, not more than a further six hours of debate be allocated for consideration at second reading stage of Bill C-51, An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts.

She said: Honourable senators, I rise today to speak to Motion No. 108 which states:

> That, pursuant to rule 7-2, not more than a further six hours of debate be allocated for consideration at second reading stage of Bill C-51, An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts

Adoption of this motion will ensure efficient and timely debate of Bill C-51 at this second reading stage. Bill C-51 authorizes Government of Canada institutions to disclose information to other Government of Canada institutions that have jurisdiction or responsibilities in respect to activities that undermine the security of Canada; provides a framework for identifying and responding to persons who may engage in an act that poses a threat to transportation security or who may travel by air for the purpose of committing a terrorism offence; criminalizes terrorist activities; and takes measures to reduce threats to the security of Canada.

Though some honourable senators may raise concerns about limiting debate at this stage, we can all be assured that examination of Bill C-51, while it was still in the other house, had been done by the Standing Senate Committee on National Security and Defence in their pre-study of the bill.

• (1430)

The committee heard from 38 witnesses during the pre-study. Once the bill is referred to the committee at the conclusion of second reading, I have confidence that they will do a very good job in their examination of Bill C-51.

Honourable senators, we are near the end of this sitting and this session of Parliament. Bill C-51 is a priority for our government. I am aware that both the chair and deputy chair have had discussions about the conclusion of second reading of Bill C-51 being a priority for today to refer to committee. This motion ensures that a timely debate on Bill C-51 will occur within the anticipated timeline.

During discussion at scroll this morning, an agreement on the allocation of time for Bill C-51 was not reached. Therefore, I ask all honourable senators to adopt this important motion at this time.

Hon. Joan Fraser (Deputy Leader of the Opposition): Agreement was not reached for many reasons, one being that time allocation really is something that should be reserved for cases of true necessity. This motion is not needed.

The government knows that we on this side have a few senators who wish to speak to this bill. All plan to do that today, whereupon the question on second reading can be called. Should somebody try to adjourn the bill, the government has, of course, the numbers to deny the adjournment without going through the hoops of time allocation.

Time allocation is getting to be such a habit around here. It's a bad habit. It's a habit we should not fall into.

Senator Cordy: Two in one day.

Senator Fraser: Two in one day.

Senator Martin: Just one.

Senator Fraser: Who knows? Two in one day may be a record; we must look that up. But in any case, this motion is unnecessary, undesirable and, to that extent, unparliamentary. I urge colleagues to vote against it.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Hon. the Speaker: On division.

(Motion agreed to, on division.)

[*Translation*]

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Beyak, for the second reading of Bill C-51, An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts.

Hon. Claudette Tardif: Honourable senators, I rise to express my opposition to Bill C-51. Like many of you, I was in Centre Block on October 22, when this symbol of our country's democracy was attacked. The tragic events of October 22 and the deadly attack on a soldier in Saint-Jean-sur-Richelieu had a profound impact on us all. However, I do not believe that those attacks justify the urgent need to violate Canadians' rights and freedoms, as Bill C-51 proposes to do.

The government chose to legislate without providing us with concrete evidence that permanent restrictions to individual liberties would contribute to making Canada safer. We have a duty to take all the time we need to properly analyze this immensely important matter, which could have harmful consequences if we do not strike the right balance between the powers granted to federal institutions and the protection of individual rights recognized under the Canadian Charter of Rights and Freedoms.

[*English*]

While I realize that some aspects of this bill may be necessary, I fear that we are trading precious rights and liberties for a false sense of security.

Some Hon. Senators: Hear, hear.

Senator Tardif: Like many of you, I have received numerous letters from Canadians expressing their concerns with Bill C-51. Not form letters — some were — but many I have received were actual written letters, and I would like to share with you, honourable colleagues, excerpts from some of the letters I have received from fellow Albertans.

One Alberta citizen wrote to me about Bill C-51:

> It makes me afraid, and not of extremists, or radical groups, it makes me afraid of the powers that watch over us and govern us. The way our basic freedoms are slowly being taken away from us is absolutely terrifying.

A Calgary resident states the following:

> The purpose of this bill is touted as being anti-terrorism, however, coordinated terrorist attacks are already being thwarted, and therefore it appears to be an unnecessary bill founded on pure paranoia.

A woman from Edmonton writes:

> This bill passing DOES NOT make me feel more safe from international threat. . . . I feel let down by the fact that my government would rather let my rights suffer than find alternative ways to support the citizens.

Another Calgary resident writes:

> For too long now Canadians have had to trade in their Charter Rights for a theoretical increase in security. We do not need Bill C-51, if passed this bill will take decades to work its way through the court system and will have a huge negative impact on all our rights.

Honourable colleagues, like these Albertans and thousands of other Canadians, I also have serious concerns with several parts of this bill, which I will outline in my remarks today.

[*Translation*]

First, the proposed definitions in the bill are too vague. These definitions do not tell us what specific acts will be considered a "terrorism offence in general." In fact, the Canadian Bar Association issued a warning about this broad definition of an act of terrorism. Allow me to read an excerpt from the Association's submission:

> If narrowly construed by the courts, the proposal will add nothing to existing offences . . . . If widely construed, it will be subject to significant challenges, at great cost to taxpayers, and may include activity more political in nature than dangerous.

The addition of the definition of what constitutes an "activity that undermines the security of Canada" is also subject to debate. Among other things, interference with critical infrastructure is considered a threat to our country's security. Many people wonder what the words "critical infrastructure" entail and whether this category includes bridges or roads. Although I acknowledge that the government amended this clause of the bill to delete the word lawful from the interpretation clause, the language remains vague and there are still many ambiguities.

[*English*]

The creation of a new security of Canada information sharing act is of major concern. Although he was not invited to testify in the other place, the newly appointed Privacy Commissioner, Daniel Therrien, did submit a very thorough review of this part of Bill C-51 and did appear before the Standing Senate Committee on National Security and Defence during its pre-study of the bill. He made several recommendations to improve Bill C-51 and to establish the necessary safeguards to protect privacy rights.

Regrettably, none of his recommendations was accepted in the other place. In his submission, Mr. Therrien stated:

> . . . the scale of information sharing being proposed is unprecedented, the scope of the new powers conferred by the Act is excessive, particularly as these powers affect ordinary Canadians, and the safeguards protecting against unreasonable loss of privacy are seriously deficient. While the potential to know virtually *everything* about *everyone* may well identify some new threats, the loss of privacy is clearly excessive.

• (1440)

In his written statement, the Privacy Commissioner stated that he believes "the threshold for sharing Canadians' personal information [is] far too low, and broadens the scope of information sharing far too much" and that "Bill C-51 is far too permissive with respect to how shared information is handled."

Indeed, information not limited to information of known terrorism suspects could be shared between 17 government agencies. This could include information on law-abiding Canadians as well, so long as it is, according to the Privacy Commissioner, "relevant to the detection of threats" — not necessary, relevant. There is also no limit on how long these government agencies could keep the information, thus allowing the 17 government agencies to keep the information indefinitely.

Honourable senators, I also have many concerns in regard to the new provisions contained in Part 2 of the bill, the secure air travel act, concerning what is commonly referred to as the "No-Fly" list. Today, a person is added to the "No-Fly" list if the minister has reasonable grounds to suspect that the individual poses a threat to aviation security. Under this bill, anyone who the minister has reasonable grounds to suspect of travelling for terrorism-related purposes will be included on this list.

I am concerned with the proper administration of this list and potential abuse against ordinary citizens. The minister is not required to provide a justification as to why an individual was added to the list or why he or she is not removed from the list.

There is an appeal process for any decision made by the minister. However, the appellants may not be able see all of the evidence against them or how that information was gathered. Although the judge is required to provide both the appellant and the minister with an opportunity to be heard, how does the appellant defend himself or herself with minimal knowledge of the evidence presented to the judge?

In addition, any information, even if gathered illegally, without a warrant, which in a court of law would be inadmissible, such as information received from torture or illegal wiretaps, will be allowed to be presented to the judge as long as, in the judge's opinion, the information is "reliable and appropriate."

The similarities between the provisions of Bill C-51 and those for dealing with security certificates are clear. Both allow for the Attorney General to present evidence to the judge but withhold that same evidence from the accused. However, Bill C-51 directly contradicts a decision made by the Supreme Court of Canada on security certificates in the *Harkat* and *Charkaoui* cases. The court ruled that security certificates are constitutional so long as a third party, known as the special advocate, has access to all of the government's information.

Bill C-51 does not provide for a special advocate, although history has made it clear that a third party is highly needed to ensure a fair assessment of the case.

The measures brought forward by this bill will undoubtedly lead to innocent Canadians being added to the "No-Fly" list without knowing the reasons why. This is definitely a serious flaw in the bill.

[*Translation*]

Bill C-51 amends the Criminal Code of Canada to address terrorist propaganda. It also adds a criminal offence in clause 16 by enacting section 83.221 of the Criminal Code of Canada. Everyone who advocates the commission of terrorism offences in general can be found guilty of an indictable offence, regardless of whether that advocacy results in an attack or not. In addition, any publication, written or recorded, whose distribution constitutes terrorist propaganda, may be seized by means of a warrant authorized by a judge. The seizure of a publication may occur if the court is satisfied, "on a balance of probabilities," that it is "terrorist propaganda." The concept that there must be reasonable grounds to believe that a crime was committed, which appears in section 487 of the Criminal Code for peace officers and allows a court to issue a search warrant, does not seem to apply. In my opinion, if this bill passes, creating an oversight mechanism to prevent potential abuses will be essential.

[*English*]

Furthermore, Bill C-51 lowers the evidentiary threshold needed for a recognizance with conditions and for preventive arrests. Under current law, the Attorney General requires reasonable grounds to believe that a terrorist activity will be carried out and that a recognizance with conditions on a person is necessary to prevent the carrying out of the terrorist activity in order to request a recognizance with conditions on a person.

Under Bill C-51, the Attorney General will need reasonable grounds to believe that a terrorist activity may be carried out — we've gone from "will" to "may" — and that a recognizance with conditions is likely — we have gone from "necessary" to "likely" — to prevent the carrying out of the terrorist activity, thus changing the word "will" for the word "may" and the word "necessary" for the word "likely" to lower the required threshold of proof needed to impose a recognizance with conditions on a person.

The same type of change can be observed for preventive arrests without warrant. Under Bill C-51 a peace officer only needs to suspect on reasonable grounds that the detention of the person in question is likely to prevent a terrorist activity instead of being necessary to prevent a terrorist activity.

This change in language will have serious consequences in the way the law is interpreted. We will likely see more people being detained preventively and under recognizance conditions.

[*Translation*]

Bill C-51 enables judges to require sureties when they order recognizance with conditions. In addition, judges will have the power to ask individuals under recognizance to surrender their passport or remain in a designated region for the duration of the recognizance. If the judge does not order this type of condition, he will have to explain the reasons for that decision. Clearly, by asking judges to explain themselves if they do not add conditions, the government is seeking to ensure that orders with these two conditions become standard practice, not exceptional measures.

[*English*]

One of the most troubling aspects of this bill is the changes to the Canadian Security Intelligence Service Act. This bill will give greater powers to CSIS and no oversight to ensure that these added powers would be used adequately.

Currently, the role of CSIS is primarily to gather information. Bill C-51 will enable CSIS to actively intervene against terrorist plots, both domestically and internationally. This is a huge and fundamental change to CSIS's mandate. Bill C-51 does put forward boundaries or limits to the intervention, but with a warrant. CSIS can break those very same boundaries not only domestically but also internationally.

Honourable senators, no other democracy in the world would allow a judge, in a secret hearing, to allow for a warrant for their intelligence agencies to violate the Constitution.

The government is trying to reassure Canadians that these added powers will be overseen by the Security Intelligence Review Committee, as they have to submit annual reports which would include the number of warrants issued.

May I have five minutes more, honourable senators?

The Hon. the Speaker: Five more minutes?

Hon. Senators: Agreed.

The Hon. the Speaker: Five more minutes is granted.

Senator Tardif: The government is trying to reassure Canadians that these added powers will be overseen by the Security Intelligence Review Committee as they have to submit annual reports which would include the number of warrants issued to break those boundaries and the number of times warrants were refused. However, the Security Intelligence Review Committee is not adequately equipped to be part of a democratic oversight process over CSIS.

Honourable senators, there needs to be parliamentary oversight over CSIS.

The issue of the lack of parliamentary oversight has been criticized by many, including four former prime ministers and several retired Supreme Court judges.

In a statement published in *The Globe and Mail* and *La Presse*, the former prime ministers stated:

> Protecting human rights and protecting public safety are complementary objectives, but experience has shown that serious human rights abuses can occur in the name of maintaining national security. Given the secrecy around national security activities, abuses can go undetected and without remedy.

• (1450)

It is standard practice internationally, honourable colleagues, for these types of agencies to have some sort of parliamentary or congressional oversight to ensure that the fundamental rights of citizens remain protected. In fact, the UN Committee against Torture has called on Canada to improve oversight of its national security agencies. If Bill C-51 is adopted as it stands, Canada would be the only country of the Five Eyes — including the U.S., New Zealand, Australia and Britain — that would not have legislative oversight of intelligence authorities that have additional powers to deal with terrorism threats.

France is currently debating measures similar to those proposed in Bill C-51, but these measures would include an independent, national commission — *la Commission nationale de contrôle des techniques de renseignement* — that would provide direct oversight to its intelligence agency. On this commission, there would be representation from both members of l'Assemblée Nationale and their Senate.

Why is this government refusing to even consider having parliamentary oversight for CSIS?

[*Translation*]

Dear colleagues, this bill certainly has good intentions. I truly understand the world we live in. However, we also run a great risk of giving up rights and liberties. Once they are gone, it is very difficult to change course and to recover these rights and liberties.

Honourable senators, we have to strike the right balance between the right to security and the right to preserve fundamental liberties, especially individual liberties, for all citizens. According to many experts in this area, this bill does not strike the right balance. For that reason I cannot support Bill C-51.

[*English*]

Hon. Mobina S. B. Jaffer: Honourable senators, I rise to speak on second reading of Bill C-51 as well.

I would like to begin by thanking Senator Mitchell for taking on this bill as the critic, as well as Senator Runciman for sponsoring this bill and Senator Lang for all his work during the pre-study of this bill.

I have served in this chamber for 14 years. They have been some of the most rewarding years of my life, but in those years I have never been more concerned for the direction that Canada is taking than I am today. I have never been more concerned for Canadians than I am today.

Honourable senators, the list of problems with Bill C-51 is very long. There are issues with increased information sharing among 17 different agencies; issues with warrants that would violate our Charter; a new civil litigation provision that would remove accountability; new terrorist propaganda provisions that would quell freedom of speech; new no-fly provisions without showing the efficacy of such a list; a lowered threshold for preventative detainment, which would violate the rights of Canadians; unprecedented new disruption powers being given to CSIS; and a severe lack of oversight for this entire program.

From each one of these broad provisions arise yet more issues, all of which will raise more questions than answers. Hopefully some of these questions will be answered during the committee sessions on this bill.

Sadly, there are many more problems with this bill than I have time to cover, so I will be addressing only four of these issues: first, information sharing; second, compensation; third, warrants; and fourth, terrorist propaganda. I will also further look at the issues of trust of all Canadians and radicalization.

On the first issue of information sharing, I want to start by relating to you a story. It is a story of a young man who arrived on Canada's shores in 1987 from Syria. This man studied in Canada, gained his Canadian citizenship and worked as a telecommunications engineer right here in Ottawa. In 2002, he took his family to Tunisia on a family trip. His return flight passed through New York City, where U.S. authorities detained him and sent him to Syria, where he was tortured. Those U.S. authorities were using information shared with them by the RCMP.

Of course, we all know the story of Maher Arar, but I believe it is worth repeating because it tells us the true cost of sacrificing security for rights. It shows that when we do not balance our security with our rights, we gain neither security nor rights.

Honourable senators, to this day, whenever I see or meet with Mr. Arar, his wife and children, I still see that they suffer daily. I see them still paying the price for our mistake.

Honourable senators, thankfully we were able to bring Maher Arar back to Canada, where he was able to gain some justice for Canada's role in his rendition. An inquiry was launched to understand what occurred and why, and from that inquiry we were given recommendations on how to improve the Canadian security apparatus. Yet, Bill C-51 does not meet some of the most important recommendations from that inquiry with regard to information sharing and oversight. In fact, Bill C-51 will make it more likely that the injustice that happened to Maher Arar could happen again.

The bill allows for 17 different agencies, most of which have no security training, to share information with Canada's security apparatus. Our security agencies, like the CBSA — which we found during our pre-study has no real oversight — could then share that information with foreign governments. This would result in exactly the same sort of consequences that the Arar inquiry was commissioned to prevent.

During our pre-study of this bill, I put this question to Canada's Privacy Commissioner. He explained that among these 17 agencies and our security apparatus, there is no memorandum of understanding.

Honourable senators, imagine; there is no memorandum of understanding on how this information will be shared and how this information will be protected. How are we going to protect our Canadian citizens?

These are the questions we need to address: What information should be shared? Who do we share that information with? Where will that information end up? These are all questions that need to be answered, yet there is nothing in this bill to give that guidance. This can quickly lead to the mistreatment of information.

This brings me to my second point, which is compensation for damages suffered as a result of sharing this information. If a government agency inappropriately shared information with our security apparatus, these agencies would then be protected from any civil litigation. Section 9 of this bill protects persons from civil litigation in relation to good faith information sharing.

This is a government that constantly touts its victim-centric approach to criminality, yet when innocent Canadians fall victim to unjust laws, the government removes their right to compensation. If there were another Maher Arar, he would no longer be compensated for Canada's role in his rendition. He would have no security, no rights and now no justice.

My third point is on warrants. Bill C-51 will allow CSIS to use warrants to violate our Charter of Rights in an unprecedented manner. There has been a lot of confusion about this provision. I would like to be very clear about the power we would be granting CSIS if this bill were to pass.

Currently, our Charter of Rights and Freedoms protects against unreasonable searches and seizures, and against arbitrary detention. These words, "unreasonable" and "arbitrary," are qualifiers that protect the rights of all Canadians. However, Bill C-51 would allow CSIS to present a case that would completely remove those clauses.

• (1500)

Michael Spratt of the Criminal Lawyers' Association put it aptly during our pre-study of Bill C-51 when he stated that this bill:

> . . . is asking judges to bless, in advance, a violation of the Charter of Rights in a secret hearing that isn't subject to appeal, with only the government's side represented and different from the Criminal Code, with no notice, reporting provisions and little prospect that any violations or problems in that process will come to light.

For each warrant that is struck down in court, that's the tip of the iceberg. There are hundreds of warrants that we're not aware of because charges aren't laid.

There is no way for Canadians to know whether CSIS is going beyond the scope of the warrants that it is seeking or remaining within them. Bill C-51 would give CSIS the power to violate the Charter rights of Canadians without being obligated to report back to the judge about how they used their new-found powers.

Fourthly, Bill C-51 puts a definite chill on freedom of speech by including vague provisions on terrorist propaganda. What we must ask is this: Does such a provision significantly enhance the security of Canadians?

Bill C-51 creates a new offence that would criminalize anyone who possesses or shares "terrorist propaganda," which is newly defined in this bill. This measure is extremely broad and overreaching.

To give you an example of how broad it can be, honourable senators, in March of this year the Conservative Party put out an advertisement to promote this bill. In it they reproduced part of a video that the terrorist group al Shabaab had made that threatened the bombing of the West Edmonton Mall.

That act would have contravened Bill C-51. If it is that easy for Conservatives to break a law that they are proposing, I worry about how many ordinary Canadian citizens would be unnecessarily swept up by this law.

Combine this with the expanded definition of "terrorism" that this bill creates, which would include things like undermining economic interests of Canada, and we are compelled to ask: How will this affect Canada's environmental organizations that oppose the Enbridge pipeline in my home province of British Columbia?

I have heard first-hand that Canada's environmental organizations are concerned about the effects of this bill, particularly after the Minister of Natural Resources once labelled them "radicals" and the PMO labelled them as "enemies of the state" for their opposition to the Enbridge pipeline.

Since when it is acceptable to silence one's political critics by passing legislation that threatens their arrest? This is not the way in a democracy. This is not the Canadian way.

Today the government is using legislation to divide Canadians rather than bring us together. Time and time again we have seen this government divide Canadians into two camps: either good or evil, either friends or enemies, either with us or against us.

Framing Canadians in such black-and-white terms is simply not the Canadian way. With such a black-and-white outlook, it is worrying that Bill C-51 will make it easier for the government to persecute those who do not follow its political agenda.

I have laid out four definite issues with Bill C-51, but before I conclude there are two more points that I would like to make. The first is on the importance of trust for effective security, and the second is on the understanding of radicalization.

Honourable senators, balancing security with our rights is no easy task, but it is very important to balance our security and our rights. If the balance is not correct, then either we leave Canada vulnerable or we sacrifice the very thing that we are protecting. More than this, we risk the trust of Canadian citizens, the very foundation upon which our democracy is built.

Will Maher Arar regain trust in the Canadian government to protect his rights? What about Abdullah Almalki, Ahmad El Maati, Muayyed Nureddin, Abousfian Abdelrazik and Benamar Benatta? Will they regain that trust? What about their families, their friends?

Each of these individuals was wronged by our security apparatus. In some cases it was simply because they were Muslim or because they came from a particular ethnic background. That is the same security apparatus that we will be giving unchecked new powers to with this bill.

Professors Roach and Forcese speak about the effects this will have on the Muslim community in particular:

> It is also difficult to deny that since 9/11 the burden of an expression-based offence will fall disproportionately on Muslim communities. An already difficult social and political climate will become more difficult, potentially undermining considerably the promising counter-violent extremism programs being developed by the RCMP. It is exactly these programs that the research suggests may be the ultimate solution to the violent extremism problem.

Honourable senators, this bill will undermine the outreach work that the RCMP and other intelligence-gathering organizations do by eroding the trust between them and visible minority communities. Rather than feeling more secure, these communities will feel less secure. They know that Canadian laws can be used to target and prosecute them disproportionately.

Already we have a law that would prevent women who wear a niqab from reciting the citizenship oath. We know that the abuse has not stopped. Only recently, Benamar Benatta settled his lawsuit against the federal government over the unlawful treatment he suffered in the days immediately after 9/11.

In order for the RCMP and CSIS to be able to gather real, meaningful intelligence, they must have communities working with them. We all know, honourable senators, that if we are to stay safe, we need intelligence from everyone in the community. We all know as well that the recent cases that have come to our attention have come to our attention because the communities have worked with the RCMP. If you threaten the communities, if you lose the trust of the communities, then we will in fact all suffer from this.

Many of the cases that the RCMP has been able to bring forward are because of the trust that they have built with the communities, the intelligence gathering they do by working with all communities. But when innocent people are arrested, when communities are meant to feel unwelcome and when legislation is enacted that makes it easier to spy on members of some communities, that trust can quickly be eroded. That trust is a key component to quality intelligence gathering.

This brings me to the last point I would like to make. Arresting Canadians will not prevent the process of radicalization from occurring. As Senator Mitchell pointed out, we cannot arrest our way out of this problem.

During the pre-study on this bill, we heard from Canada's National Security Advisor, as well as from an expert from Quilliam Foundation. Both agreed that this bill would not prevent individuals from becoming radicalized.

In fact, if you remember, yesterday I asked Senator Runciman, the sponsor of this bill —

The Hon. the Speaker: Honourable senator, your time has expired.

Senator Jaffer: May I have five minutes, please?

The Hon. the Speaker: Will the chamber grant Senator Jaffer five more minutes?

Hon. Senators: Agreed.

The Hon. the Speaker: Five minutes.

Senator Jaffer: Thank you.

In fact, I asked Senator Runciman, who is the sponsor of this bill, if there was anything in this bill that would help prevent radicalization. If I remember correctly, he said he did not see anything in this bill that would prevent radicalization.

Honourable senators, if we truly want to prevent radicalization of individuals, then we must make a concerted effort to understand the root causes of radicalization and confront them in a meaningful way.

One of ways that this can be done is through the Cross-Cultural Roundtable on Security. Years ago, I worked extremely hard and I pushed Prime Minister Chrétien and Prime Minister Martin to have round tables where the government could speak directly with leaders in the communities.

In 2013 I asked the present government what happened to the Cross-Cultural Roundtable on Security. When was it planning to meet for the coming year?

Unfortunately, the present government did not respond to my question. While I have heard the Justice Minister claim that the Cross-Cultural Roundtable on Security has met recently, I found out from the Library of Parliament that the last available summary of a meeting on security was from November 3, 2013.

I also asked the Ministers of Justice and the Minister of Public Safety at the pre-study when the last time was that they met with the Cross-Cultural Roundtable on Security. Both ministers decided not to respond to my question.

• (1510)

Honourable senators, if we are going to get trust from the communities, we have to work with the communities. We can no longer ignore some Canadians. All Canadians are equal.

Honourable senators, all of us in this chamber recognize the importance of laws that make Canadians more secure. All of us in this chamber also recognize that what makes Canada the incredible country that it is for us is our culture of equality, free expression and acceptance. What makes Canada what it is today is the rights that are afforded to each and every Canadian.

Honourable senators, we can have security and rights. They are not mutually exclusive. In fact, they complement each other. I hope that some of the issues I have raised can be carefully studied during the committee sessions on this bill.

Honourable senators, I want to put this on the record: I'm hoping — in fact, I'm praying — that we will have extensive hearings on this bill. This bill is a very important bill. It affects the community that I live in. It affects the people that I walk with and it affects people that I work with. I hope, senators, we will not give it short shrift. I hope that we will have extensive hearings because it affects the people that I love.

Hon. George Baker: Honourable senators, I have a couple of words on this bill. I don't have a prepared text on the matter. There are senators here who are in favour of the bill on both sides and senators here who are opposed to the bill on both sides.

While listening to the evidence in committee — and I did attend a couple of meetings — I heard a lot of conflicting evidence. There was a lot of evidence given in generalities. You have to think about some of the things that are said before you arrive at a conclusion about this legislation.

Let me say off the top that it was necessary for the government to do something concerning this bill because we have a crisis. As far as CSIS is concerned, for four years they were intercepting communications because they thought they had judicial authorization to do so in foreign nations. All of a sudden, our courts declared that they did not have judicial authorization, and now it has gone to the Supreme Court of Canada. As of three or four weeks ago, the Supreme Court allowed the appeal.

We have about four years of warrants that were executed in foreign nations that are judged by our courts to be unlawful, so something had to be done. The government had to move and say, "Look, we've got to fix up our laws so that we are doing things that are lawful and that can be used in a court of law, if necessary, down the road."

I want to make a couple of other points. I see Senator Mitchell is here; Senator Kenny, I think, is here; Senator Dagenais is here; Senator Ngo is here, as is Senator Runciman. They are all sitting on the committee that will be hearing this matter, and perhaps there are a couple of things that they could ask. I'm not on the committee, but I'd like to hear some answers to particular questions. When I look at the bill, on the face of it I think there are some things here that go too far, but there are other things that don't go far enough. Perhaps by looking just on the face of it, I could bring up a couple of subjects that Senator Runciman, or one of the other senators, can ask the officials for clarification.

As Senator Runciman pointed out in his speech, all warrants are issued *ex parte*. They are issued with the judge either talking to an officer or talking to the Crown. All warrants are issued in that way. All warrants that are issued give the police authority to do things that would, if they didn't have the warrant, violate our Canadian Charter of Rights and Freedoms. I think that's the first thing.

Here are a couple of things that stand out. I looked at the bill and noticed that on page 21 — and I'll be specific in these points — it says "Limitation period," and then clause 25 says:

> No proceedings by way of summary conviction under this Act are to be instituted after 12 months from the day on which the subject matter of the proceedings arose.

Now, senators, that's a very strange thing to have in a bill these days. The Federal Accountability Act was the first major act introduced by the present government. It did some great things. One of the things it did was establish a limitation period of 10 years for the Canada Elections Act, and it's five years from the time that the Chief Electoral Officer became aware of a violation. That's for summary matters.

If I go out and break the law by catching a cod fish off Newfoundland when I shouldn't be allowed to, the fisheries officer has a limitation period of two years to bring a charge against me. If I spill a deleterious substance in a river in Saskatchewan and violate the environment, the department has two years to lay a charge. So we have 10 years for the Canada Elections Act, two years for the Fisheries Act, two years for an environmental offence, but a limitation period of one year in this bill for a summary matter that's raised under the transportation provisions of the proposed air travel act.

I think the officials should be asked this question: Why is it that we're only allowing the authorities one year? When this bill passes, if there is a summary matter that the officials want to prosecute that happened one year and one day after this bill passes, they cannot prosecute because of this limitation period.

A lot of witnesses said in evidence to the committee that there is no report to a justice. Do you remember that? It was said over and over that there is no report. You get a warrant and there is no report to a judge anywhere in this bill. Well, there is. On page 22, subclause 28(3) says "Search warrants." I'll read it:

> Sections 487 to 492 of the *Criminal Code* apply in respect of any offence committed or suspected to have been committed under this Act.

When you see this wording, "487 to 492 of the *Criminal Code*," it covers the reporting provisions. Section 489 of the Criminal Code says you must, when you execute a warrant, report to a judge within three months. Now, the organized crime provision excludes the three months and allows you up to a year. That is the reporting provision of the Criminal Code of Canada. So a report to a justice is there.

Unfortunately, a lot of people didn't see that. When Mr. Major, a former Justice of the Supreme Court of Canada, was before the committee, I went to the committee because he had said there is no reporting provision. I pointed this out to him. But he was very smart to point out to me, "Yes, but it's only in half of the act." He said the solution is this: Why not have that section apply to the entire act? In other words, you would have reporting provisions on every warrant that's authorized under the act.

I'd better hurry because my time is running out.

• (1520)

Just looking at the bill, the next one that came to my attention has been extraordinary. It is on page 49. The officials should be asked in the committee meeting what the meaning of this section is. It's proposed subsection 12.2. It sets out the prohibited conduct of CSIS in executing a warrant or in the performance of their duties and I will put it on the record. I won't read it all, but it is very simple. It states:

> (1) In taking measures to reduce a threat to the security of Canada, the Service shall not
>
> (*a*) cause, intentionally or by criminal negligence, death . . .

In other words, you can't kill somebody. Then it goes on to say:

> (*c*) violate the sexual integrity of an individual.

So, you cannot sexually assault somebody, violate their sexual integrity, which is on a lower scale, but that's what's there.

Then it says you cannot cause "bodily harm to an individual" as defined in section 2 of the Criminal Code.

Well, bodily harm is defined in the Criminal Code as a harm that is more than transient in nature. If you look up section 2 — and I'd do it, but I don't have the time — it says that bodily harm is harm that is not transient in nature. In other words, bodily integrity would be on a lower scale than bodily harm.

The reason why the officials should be asked to explain this is: What do they mean by that? What authority are they giving CSIS officers?

Now the reason why that stood out to me was because police officers in Canada, as Senator White and Senator Dagenais know, are under a restriction that is quite different in the execution of warrants. I'll read for honourable senators paragraph 487.01 of the Criminal Code of Canada under section 2. Now that particular warrant is called a general warrant and it says that a warrant can be issued at any time to a police officer, subject to this section, to use any device, any investigative technique, any procedure to do anything described in the warrant that would, if not authorized, constitute an unreasonable search — a violation of the Charter.

Okay, so the warrant is practically the same wording as the CSIS warrant that everybody is complaining about. It's practically the same warning. It's for covert activities, but what was the restriction on Senator White and Senator Dagenais when they were police officers? Their limitation was this: It says nothing in subsection 1 should be construed as to permit interference with the bodily integrity of any person.

What is bodily integrity? There is a case before the courts now that the stun grenade used by the service in their execution of warrants into establishments where drug dealers are emits 1 million candle power of light and 120 decibels of sound to distract the people in the dwelling when the police are raiding the place.

So the question is: Does that violate the bodily integrity of somebody? Well, it does. Bodily harm would be, according to the scientists, 125 decibels of sound. You would create an injury to somebody.

Here is the point. The police in Canada are restricted in that they, in the performance of their duties in executing their covert warrants, are not permitted to interfere with the bodily integrity of somebody. Why not have that same provision in this bill, instead of having that you can't kill somebody, you can't sexually assault them and you cannot cause them bodily harm as defined by section 2 of the Criminal Code, which means harm that is more than transient in nature.

That's all the time that I have to highlight those sections, but there is one further thing, Mr. Speaker, since I was mentioning Senator White and Senator Dagenais. Here in Ontario and in seven provinces in Canada, the police learn of a possible unlawful activity. They investigate it and they lay a charge.

Now, what happens, if there is a violation under this act? Who investigates them? CSIS. CSIS is not allowed to lay a charge. They pass their information over to the police. The police are not allowed to lay a charge. They investigate and make all of their phone taps and everything else, and then they pass all that information over — because they are not allowed to lay a charge — to the Director of Public Prosecutions.

Now, along the way, in this bill, the minister is also consulted. It's a rather circuitous route to lay a charge. When they were doing their pre-study, some members of the committee were

concerned about that, that it takes too long. How can you have a limitation period of a year if you have to have three different agencies making a decision on a matter such as this?

Now, we had the deputy commissioner of the RCMP and the Chief of the Vancouver Police Department give evidence to Legal and Constitutional Affairs less than six months ago and they claimed that this restriction on them, not being able to lay a charge, was delaying matters —

The Hon. the Speaker: Senator Baker, clearly 15 minutes was too brief. Can we grant Senator Baker five more minutes?

Hon. Senators: Agreed.

Senator Baker: They gave evidence, senators, that it is safer. There is no doubt about it. The way the CSIS act was written it put a lot of safeguards there. It gives a circuitous route. The experience of the RCMP and the Vancouver Police Department was that not very many charges are laid because of that.

I think the minister should be asked that question, of course. Wouldn't it be better to be able to shorten the road to laying a charge? Why wouldn't you allow the police, who have the experience in this, to lay a charge under the terrorism act? When I am being investigated for murder, the police lay the charge; they investigate and they lay a charge. I would be charged with murder. But under the terrorism provisions, it's a completely different ball game and, in reading the case law of recent times, it presents a real challenge to the justice system.

I would ask that those four matters, the first three especially: Why the limitation period? Why is it that there is a different requirement of a restriction limitation? Why are there different requirements on those people executing warrants? And why not have, as Justice Major said, the reporting that is in half of this bill be extended to the rest of the bill?

Thank you.

Hon. Joan Fraser (Deputy Leader of the Opposition): Colleagues, if there is one thing that I'm sure that we all agree upon, it's that part of our profound duty is to do what we need to do to protect the security of Canada and of Canadians. I'm sure we also agree that the threats to the security of Canada and Canadians have changed so radically in the past few years that our parents would not recognize them.

• (1530)

It is our duty to do whatever is needed and justified to protect the security of Canada and Canadians, but we do have to do that while bearing in mind that we do not want to destroy the village in order to save it.

I served on the first Anti-terrorism Committee, and I can remember the agonized debates we had then about the best way to strike the balance between the protection of Canadians' security and the protection of Canadians' rights. We took that responsibility very seriously, and I'm sure every senator still does, but we will have honest disagreements about where that balance lies and how best to strike it.

In the case of the bill before us, much of it strikes me as being probably or certainly flawed but fixable. My colleagues have outlined a large number of the worrying elements of this bill — the absence of oversight, the inability of the defence to get full information, the worries about sharing of information, the long-standing difficulties in getting one's name off a list drawn up by the government or the authorities, as we say, once your name is on that list, even if it's on that list by accident. Many, many elements of this bill are worrisome. Most of them strike me as being fixable in committee if the will is there to do our job.

However, there is one section of this bill that I cannot support even in principle, and in this I differ somewhat from my colleague Senator Baker. I say that with some trepidation, because his knowledge of the law, heaven knows, is more profound than my own.

I have read Part 4 of this bill over and over again, and I find it extremely worrisome. This is the part of the bill that gives the Canadian Security Intelligence Service the power to take measures within or outside Canada to reduce a threat to the security of Canada. What bothers me about it is that all the way through, this part is frequently so broadly phrased that it seems to open the door to almost anything, short, as Senator Baker has just reminded us, of murder, torture or rape. That still leaves a very wide field that would apparently lie open to CSIS.

Take measures. I'll get to measures in a few minutes, but taking measures is fairly broad concept, right? Taking measures to reduce a threat to the security of Canada — not to eliminate, not to block, simply to reduce a threat to the security of Canada — and to do that in or outside Canada. How minimal would the reduction of a threat have to be before it wouldn't fall under this act? I don't know. Cutting a telephone line? There are an awful lot of things that you could do and claim that they were reductions to a threat to the security of Canada.

I remember when the RCMP burnt a barn in Quebec on the grounds that that was deemed to be reducing a threat to the security of Canada. Stealing party membership lists — also designed to reduce a threat to the security of Canada. Those actions and others were roundly criticized by a commission of inquiry that was eventually held, and I would hate to think that we were opening the door to things like that again.

Just listen to what this bill proposes to give to CSIS. CSIS can apply to a court to get a warrant to take measures to reduce a threat to the security of Canada even if those measures will contravene a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms or will be contrary to other Canadian law.

We've heard, "Well, what's the difference here with your normal arrest warrant or search warrant?" I would suggest that the difference here is the enormous breadth of range that these warrants are going to be allowed to cover.

The warrants can apply to persons or classes of persons. I'm not sure what "classes of persons" means, but I begin to feel some of the concern that Senator Jaffer was expressing about specific communities being targeted. Classes of persons. I find that a worrisome phrase.

The judge can issue a warrant to permit CSIS to enter any place or open or obtain access to anything, to search for, remove or return or examine, take extracts from or make copies of or record in any other manner the information, record, document or thing; to install, maintain or remove anything — so far this may sound like standard police activity where they go in and take copies of documents or install a wiretap or whatever, but then listen to the last one. The warrants can do all the things I just listed, or they can allow CSIS to do any other thing that is reasonably necessary to take those measures, the measures to reduce the threat to the security of Canada. Any other thing that is reasonably necessary. You might think that catch about "reasonably necessary" would be the saving grace of it all, but I'm not sure that the view of CSIS about what is reasonably necessary as it will be expressed before a judge will necessarily match up with what most Canadians would consider reasonably necessary. We have the word of Justice Mosley that CSIS does not always tell the full, total, transparent truth before the courts.

I think, taken as a whole, that this provision is so broad that it doesn't meet the necessary requirements for infringements of the Charter — to be specific and narrow and precise about the infringement that you're authorizing with a given law or warrant. This is an open sesame to almost anything that CSIS might wish to do here or in other countries without regard to any other law, including that of any foreign state. A Canadian judge can issue a warrant to do all of these things anywhere on earth. If you're thinking about the wilder regions of Afghanistan or Iraq, that may sound reasonable. But we hear every day, practically, it seems to me, certainly every week, about friendly, advanced Western countries spying on each other. I don't know how the Americans would react if CSIS were exercising one of these warrants in Washington or Baltimore or wherever and argued in its own defence, "Well, a Canadian judge said I could do this and that I wasn't to pay any attention to American law" — American or Australian or British or French law. I find this all perhaps a bit alarming.

• (1540)

I know that there are possible precedents to be found for each bit and piece of all this, but as I say, it's putting them all together that perturbs me.

I've heard it said more than once that if you're not doing anything wrong, you don't have to worry about what's going on and what would happen if this bill were passed. That strikes me as a very dangerous argument. Police and intelligence authorities can make mistakes. Ask Maher Arar. Ask Robert Dziekanski, who is dead because of errors, at the very least, by police.

We have laws and we have the Charter of Rights to protect us all. One of the prime things that they protect us against is mistakes or overreaching or abuse of authority by the police, the intelligence services and other arms of the great state apparatus. We need those laws more when we stand under threat from those who wish to destroy our system and our way of life. We need those laws more now than we do when all is peaceful and serene.

For that reason, because I am so perturbed about what I see as the truly dangerous breadth of this section of the bill, I cannot support it at second reading. But I know it will pass at second reading. I urge the committee that considers it to look at the whole bill, particularly at this part, and see if it cannot be repaired, to do what needs to be done and to avoid what we should never do in law, which is imperil the rights of our citizens.

Hon. Lillian Eva Dyck: Honourable senators, I rise today to speak to Bill C-51, the anti-terrorism act, 2015, at second reading.

First, I would like to look at clause 3 of the bill that outlines the purpose of bill, and I will read that into the record:

> The purpose of this Act is to encourage and facilitate the sharing of information among Government of Canada institutions in order to protect Canada against activities that undermine the security of Canada.

To protect Canada from "activities."

Now, if we go to clause 2 of the bill, it says:

> The following definitions apply in this Act:
>
> "activity that undermines the security of Canada" means any activity, including any of the following activities, if it undermines the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada . . . .

Then there are nine subclauses. Subclause (*d*) mentions "terrorism" and subclause (*f*) says "interference with critical infrastructure."

When I read those two very simple clauses, I started to worry, because when you talk about sovereignty and you consider Aboriginal people, right away you have a conflict. We all know there is Crown land that belongs to the Government of Canada, and we also have treaty talks and court battles about First Nations traditional territory. So we have sovereignty of the First Nations and we have the sovereignty of Canada, which means there has been and there likely will continue to be some conflict.

We've heard talk about the balance in this bill between the safety and security of all Canadians from terrorist attacks and terrorist threats. We all want to be safe and secure, but we also must balance it, we've heard, with the individual Charter rights of all Canadians across Canada.

But we haven't really talked about the fact that Aboriginal peoples have section 35 rights under the Constitution, which says that they have existing Aboriginal and treaty rights. The Aboriginal people of Canada are fearful, and I think that fear is justified, that this bill will infringe upon Aboriginal rights.

Senators Mitchell and Jaffer in their speeches mentioned pipelines in B.C., and pipelines can be considered to be critical infrastructure. We all know from watching the news that a lot of Aboriginal people are involved in protests regarding the building of things like the Northern Gateway Pipeline.

The National Chief of the Assembly of First Nations has said he is worried about the unjust labelling of First Nations activists as terrorists. He has said that Bill C-51 could potentially be used to further oppress defence of Aboriginal rights and titles.

So our national leader has said that he is worried about their being oppression of treaty rights.

The Mohawk Council of Kahnawake has also sent a letter to the Prime Minister expressing their concern about Aboriginal rights. Grand Chief Stewart Phillip of the Union of British Columbia Indian Chiefs believes that Bill C-51 directly violates the ability of indigenous peoples to exercise, assert and defend their constitutionally protected and judicially recognized indigenous title and rights to their respective territories.

We have to remember that in June 2014, just last year, there was a Supreme Court decision with regard to the Tsilhqot'in Nation in B.C. that recognized the traditional territory of the Tsilhqot'in people. That was a landmark decision.

So there is concern among Aboriginal peoples in Canada about Bill C-51, but what I'm going to go into next will show why their worries are founded. If we look at what's gone on so far, we've already found out that the RCMP and CSIS routinely monitor indigenous activists and protests; they're already being monitored by the RCMP and CSIS, so this is somewhat worrisome.

Dr. Pamela Palmater, Chair in Indigenous Governance at Toronto's Ryerson University, has said that the federal government's omnibus security bill, Bill C-51, would hand extremists what they want by shackling civil liberties and that it would make all of us suspects. I think what she means by "all of us" is all indigenous peoples.

She is concerned, and she is a very unique individual in that she has PhD qualifications in law. She says that neither the new disruptive powers nor the information sharing provisions apply to lawful advocacy, protest and dissent, but some critics say these elements can be used against Aboriginal and environmental activists who protest outside the letter of the law. This is important to mention, because the letter of the law can be open to interpretation.

If your interpretation is such that you are biased in seeing Aboriginal protesters as being violent, then you will consider it to be violent when it really isn't. Dr. Palmater told the committee in the other place that she herself is routinely tracked by federal agencies that keep tabs on her involvement in Aboriginal issues.

As I mentioned before, her arguments were echoed by Grand Chief Stewart Phillip of the Union of British Columbia Indian Chiefs. He has called for the withdrawal of the bill and has accused the Harper government of retooling its policy-making efforts to foster natural resource extraction.

Now I will talk a bit about Grand Chief Stewart Phillip in B.C. An internal RCMP report was released that Chief Phillip had a chance to look at. He was quite astounded to find out what was in this report, which was released just a little over a year ago, in January 2014. It's entitled *Criminal Threats to the Canadian Petroleum Industry*, and it's stamped "PROTECTED A / / CANADIAN EYES ONLY."

• (1550)

As he read through it, he was astounded to discover what this report says, and what it says is:

> Aside from New Brunswick, the most urgent anti-petroleum threat of violent criminal activity is in Northern British Columbia where there is a coalition of like-minded violent extremists who are planning criminal actions to prevent the construction of the pipeline.

Remember, this is an internal report from the RCMP for Canadian eyes only. But it was obtained by the Aboriginal Peoples Television Network by an access-to-information request. The January 2000 report said that the ". . . extremists advocate the use of arson, firearms, and improvised explosive devices." And some factions ". . . have aligned themselves with violent aboriginal extremists." That's what it said in the report.

Now, Chief Phillip from the Union of British Columbia Indian Chiefs was astounded to hear this because he says he has never met anyone prepared to engage in criminal activity since his association with the B.C. environmental movement which began in the 1970s. He says:

> "Every day when you turn on the television, you witness insane acts on the part of disturbed people . . . . But to suggest there's a very well-organized jihadist-style network out there that's a threat to the Canadian public — in my experience this is absolutely not the case. I hate to say this, but this is Canada. Excuse me?

The Aboriginal Peoples Television Network also looked at internal reports from the RCMP with regard to their surveillance of the Idle No More group. As you may know, the Idle No More protests were started in Saskatchewan by four Saskatchewan women, and they have been surveilled by the RCMP.

The federal Aboriginal Affairs Department has shared information with Canada's spies and other federal law enforcement agencies to foster surveillance of the Idle No More movement, and that's what these internal government documents show. These documents reveal how easily Canadian authorities assume the possibility of violence when it comes to monitoring First Nation demonstrators. So First Nation demonstrators are seen in a light that they are far more violent than they are in reality.

The Public Safety documents stem from surveillance activities around the Idle No More movement during December 2012 and January 2013. These documents show that Aboriginal Affairs not only shared and received protest information from the Canadian Security Intelligence Agency on protests, but it also supplied

details about a meeting between government officials and First Nation leaders. The information was passed on to the Integrated Terrorism Assessment Centre, ITAC, which includes CSIS and police services across the country.

It is quite phenomenal to think these documents from the RCMP were already shared with the integrated terrorism assessment unit two years ago.

While there were no indicators of potential violence specifically for the Ottawa-based action, and you may recall there were protests here in Ottawa about two years ago, security officials at Public Safety were convinced that a possibility of violence existed because some youth in their social media mentioned the 1990 Oka Crisis in their online discussions. According to an Ottawa-based human rights lawyer, Paul Champ, he said that the leap that the security officials made in assuming potential violence, based on a reference to Oka, shows how little these people understood First Nations people. Mr. Champ says:

> Obviously the Oka protest is a seminal moment for First Nation people across the country in terms of an assertion of rights Vis-a-vis the government. It doesn't necessarily imply violence . . . . It shows how deeply they misunderstand First Nation people and the significance they attach to the Oka protest.

To reiterate, Mr. Champ said the documents show how easy it is for security personnel to assume the threat of violence when it comes to Aboriginal protesters. I think that concern has been expressed. Given the lack of clear definitions within the bill of what is terrorism and what are protests, I think it is more than likely that Aboriginal people could easily fall under the net of being labelled terrorists, particularly when it comes to protests involved in things like pipelines which could be considered critical infrastructure.

Interestingly, Cindy Blackstock, a child welfare advocate who has a court case against the federal government right now, was monitored by the RCMP. They were told to stop and give her the files they had on here.

The Chief of Kitchenuhmaykoosib Inninuwug, which is a remote northern Ontario First Nations that our Aboriginal people committee actually visited, found out that he had been monitored by the RCMP because his community is involved in mining, and they were against the mining activity around their traditional territory.

There is significant concern. If you go back to clause 2 of the bill, all of the activities are listed at the bottom. It says:

> For greater certainty it does not include advocacy, protest, dissent and artistic expression.

The word "protest" is not defined. Protest is often a way by which all Canadians and Aboriginal people try to assert their rights and try to convince people that their rights need to be recognized. It's good they have that there, but it's not very well defined.

If you were concerned — and Aboriginal people are concerned — about an erosion of their constitutionally protected rights, the only way to alleviate that would be to put in there, "For greater certainty, nothing in this Act could be construed so as to abrogate or derogate from section 35 constitutionally protected existing Aboriginal and treaty rights." That might be a way that Aboriginal people could feel that their rights were being protected and not being captured by this bill.

Could I have five more minutes, please?

The Hon. the Speaker: Will honourable senators grant five more minutes?

Hon. Senators: Agreed.

Senator Dyck: Thank you.

I would suggest that at the committee there be witnesses from the Aboriginal community, such as National Chief Perry Bellegarde, who are concerned about this and that there be a discussion to look at whether or not something like the insertion of a protection of constitutionally protected Aboriginal rights might be something that would allay their concerns so they don't feel that this bill will capture them as well.

Unless that provision is put in, I don't support the bill. There are many other reasons that other senators have brought up that are major concerns, so at this point I can't see myself supporting it.

Hon. Anne C. Cools: Honourable senators, I would like to join in this debate for a very few minutes.

I wish to register, as I always do, my concern that this debate has been abbreviated and unduly abridged. I will say yet again, as I always do, that these time-allocation motions may only be moved by ministers. Only they are allowed to make such motions in this place. I shall note, again, there is no minister of the Crown in this Senate. That is one of the conditions for these time limitation motions. The other one is that the matter before the house must be urgently needed, and of course urgently needed for the public interest.

Honourable senators, I record these thoughts from time to time in the hope that somebody may take an interest and uphold that these tools to abridge debate are supposed to be used rarely and for exceptions.

• (1600)

Colleagues, I must say that I have been taking a look at Bill C-51, and because I served on the national parole board, and had some experience in the business of dealing with people in the administration of justice as they moved through the system and the processes of clemency, mercy and, of course, paroles.

In many years of what I would describe as substantive and substantial experience, I have never encountered anything as that which is articulated in proposed section 12.2 at page 49 of this bill that Senator Baker alluded to. Interestingly, I had this bill open on my desk and I wanted to ask Senator Baker a question about it. I should put this on the record.

I shall read clause 42. I am speaking about part of this bill for the Canadian Security Intelligence Service Act and of the necessity for amendments to this bill. As we know, the intelligence service was separated from the RCMP and set up and constituted as CSIS. I believe it was in 1980.

Now, clause 42 of this document states that the act, meaning the CSIS Act, is amended by adding the following after section 12. In the margin note, it says "Measures to reduce threats to the security of Canada." This proposed new section 12.1(1) reads "reasonable grounds to believe" — to believe. Let us understand "belief" is quite different from "knowledge." It states:

> If there are reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada, the Service may take measures, within or outside Canada, to reduce the threat.

The margin heading says "Measures to reduce threats to the security of Canada."

Honourable senators, if we look to the bottom of the page, we will come to proposed section 12.2, which Senator Baker read into the record. This is called "Prohibited conduct." This is very interesting, colleagues, because why would anyone in drafting a proposed statute like this, in respect of reasonable grounds to believe that there is a particular activity, a constitutional threat, why does the drafter go into the conduct of the security officers?

This is a huge mystery. I have never read or seen anything like this in my entire life, and I have read a lot. Of course, I went to the dictionary to look up the meaning of "conduct" because we know "conduct" usually means behaviour. In effect, we are passing into statute a law about how CSIS officers will behave or should behave. If we look at "conduct," it says, behaviour in its moral aspect. I am looking at the *Concise Oxford English Dictionary*. It also says: "the action or manner of directing" business.

I thought I should also look to see what Webster has to say. "Conduct," in the *Webster's Encyclopedic Unabridged Dictionary*, says, "Personal behaviour;" a way of acting; "deportment." Do you remember when we were young and we went to the best schools? We received awards for good deportment. This clause is about how CSIS officers will conduct or behave themselves.

So I still read the whole section then, the proposed section:

> 12.2(1) In taking measures to reduce a threat to the security of Canada, the Service shall not
>
> (*a*) cause, intentionally or by criminal negligence, death or bodily harm to an individual;
>
> (*b*) wilfully attempt in any manner to obstruct, pervert or defeat the course of justice; or
>
> (*c*) violate the sexual integrity of an individual.

Colleagues, do we have a problem with security officers in the service of CSIS exercising and doing such things? Do we need to put a statement like this in a statute? What has happened or is about to happen that has provoked a clause like this in a statute? Are there CSIS officers that are behaving themselves in this way? Because this is articulated as behaviour. Do we need a statute — to do what? To prevent it? Statutes usually do not prevent behaviour. These actions are always retrospective. That's the nature of the Criminal Code. It treats bad deeds committed in the past. The Criminal Code comes in after the offences happen. You prosecute under the Criminal Code.

Honourable senators, I am just hoping that this does not mean what I think it means, and I'm hoping that those individuals on the Standing Senate Committee on Legal and Constitutional Affairs will look into this in a very profound and deep way. Any time a clause shows up in a bill, it is usually for a reason. I think we should make it our business to find out what the reason is in this instance. From where I am looking at it, this is very suspicious. In addition to sounding suspicious, it is undesirable and it doesn't speak well about those men and women who serve in our intelligence service.

Honourable senators, we now talk about security, but when I was younger we used the words "spies" and "spying." But this clause is an indictment and offensive to all those good people who are currently serving. So I would like it to be investigated and examined in committee. I have never seen anything like this move in a federal statute.

Honourable senators, there is much about the bill that disturbs me. I want to support what Senator Jaffer and what Senator Dyck said. There is no doubt that persons who are visible minorities will have a fallout effect from this bill. Recently, the large concern is with Muslim peoples and Arab peoples, but it was not that long ago that these concerns were all about Black people. Back in the 1960s it was not uncommon that the fears were about Black people.

Honourable senators, I wish and I hope that the Senate committee will do its utmost best to improve this bill, which sounds more like a public relations exercise than actions to protect the health, well-being and safety of Canadians. Colleagues, I find this bill very disturbing. I hope that senators will see it to be as disturbing as I find it.

I thank you, colleagues. That is all I wish to say on that matter. I was not planning to intervene. I just thought I should record my very strong objections. I find that clause extremely offensive. If there are Canadian individuals in CSIS who are acting in that way, we should know about it. I am sure that those who lead that organization would want to know. But the real question is: What is the need for this clause and why has someone decided to put something like this into a statute? Who is defending whom against what?

I thank you.

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

Hon Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

Senator Fraser: On division.

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

• (1610)

REFERRED TO COMMITTEE

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

(On motion of Senator Martin, bill referred to the Standing Senate Committee on National Security and Defence.)

NATIONAL SECURITY AND DEFENCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(a), I move:

> That, for the purposes of its consideration of Bill C-51, An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts, the Standing Senate Committee on National Security and Defence have the power to meet on Tuesday, May 26, 2015, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

ADJOURNMENT

MOTION ADOPTED

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of May 13, 2015, moved:

> That when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, May 26, 2015 at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

DIVORCE ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Segal, for the second reading of Bill S-216, An Act to amend the Divorce Act (shared parenting plans).

(On motion of Senator Marshall, debate adjourned.)

[*Translation*]

REFORM BILL, 2014

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Tannas, seconded by the Honourable Senator Ataullahjan, for the second reading of Bill C-586, An Act to amend the Canada Elections Act and the Parliament of Canada Act (candidacy and caucus reforms).

Hon. Diane Bellemare: Honourable senators, I will be brief. I rise today to explain why I will be voting for Bill C-586. My speech comes in the wake of discussions about the need to reform our democratic institutions, which have been held in Parliament and in the court of public opinion. I was impressed with the speeches on this subject by Senator Fraser and Senator Tannas.

Furthermore, honourable senators, I received many emails asking us to support this bill, and this led me to further reflect on the details of the bill. The media has also participated in this debate. For example, the *Globe and Mail* editorial of Thursday, May 7 urges the Senate to deal with this bill and pass it.

The editorial states the following, and I quote:

[*English*]

> If any bill passed in the Commons deserved to be rubber-stamped by the Senate, this is it.
>
> Instead, the Senate put the Reform Act on a slow train. And now it's sitting on a rail siding. Why? The inaction leaves the impression that the Conservative majority in the Senate has been told to smother it in the crib.

[*Translation*]

On Tuesday, journalist and columnist Andrew Coyne, of the *National Post*, wrote the following:

[*English*]

> What Chong's bill represented, more than anything, was hope: hope that one day MPs might escape the whip, hope that parliamentary reform, even if it is not possible now, might be in time. And for those in power, hope is a dangerous thing to allow. The whole system depends on MPs being kept in a state of hopelessness, unable even to imagine a better life. What is the point of making trouble, if the effort is futile?
>
> It would be outrageous enough for senators, a good number of whom may soon be under indictment, to defeat any bill passed by a democratically elected House, whether overtly or, as in the present case, by stealth. It is particularly outrageous given the subject matter of the bill, which is entirely to do with the internal workings of the Commons, on which the Senate traditionally has no voice.

[*Translation*]

Dear colleagues, Andrew Coyne wrote in the past tense. We might think that he was speaking of the initial bill. We could also think that he is speaking in the future, with the certainty that the Senate will reject this bill or let it die on the Order Paper. It is true that, in order to avoid debates, the Senate leadership can decide to let bills die on the Order Paper.

Bill C-586, which amends the Canada Elections Act and Parliament of Canada Act, has generated a great deal of debate for over a year now. It was also the subject of a session at the 2014 Manning Conference. This bill has been significantly amended from its first incarnation, and it is now supported by a vast majority of MPs from the three main parties represented in the House of Commons, the Conservative Party, the Liberal Party and the New Democratic Party.

I think that to allow Bill C-586 to die on the Order Paper would also be to allow the Senate to die a slow, painful death, for it would betray our raison d'être. Canadians expect better from us. They expect the Senate to do its job and debate the merits of the bills that are introduced in the House of Commons. They expect us to amend bills that come to us from the other place, if necessary, and to oppose bad bills. Canadians are not fools, and I'm quite sure that they don't want their senators to simply sit on their backsides or bury their heads in the sand, to use some common expressions.

At first glance, the bill introduced by MP Michael Chong may appear flawed, despite the many amendments that were made. This bill could create some political instability and thus have a negative effect on democracy in Canada, as Senator Joan Fraser pointed out in her speech on May 7, 2015. She reminded us of what happened in Australia, where in 2010 the members of the governing party were able to oust their prime minister without any formal cause. The mess that ensued got the better of those who caused it in the first place. Since that little adventure, which definitely had negative consequences for that country, it is no longer possible for the members of the party in power to get rid of their prime minister so easily and without a reason of public order. That is what it is really all about: the ability of a majority of members in the governing party to dismiss the prime minister, without any apparent cause, with a majority of over 50 per cent of the vote.

• (1620)

Currently, when the Prime Minister no longer has majority support of the House, the Governor General is called to step in. He either dissolves the House and an election follows, or he appoints a coalition government. In all these scenarios, the political parties usually have to confirm their leader by a vote of confidence by all the members of the party. However, if a prime minister resigns during his term of office, which happens sometimes, the members of Parliament of the party in power can choose an interim leader who will be confirmed by the party members later.

Mr. Chong's bill is bold in how it seeks to give power to the members of Parliament. Bold because it proposes giving members of Parliament powers that go against traditional practices. Let me explain. This bill is based on the principle that members of Parliament are elected by their constituents and that it is the elected members who give legitimacy to one among them to exercise the powers of a prime minister.

In reality, the leader of a party who aspires to become prime minister is generally chosen ahead of time, well before the election, by all the members of a party. As a matter of fact, the political parties are increasingly broadening the base of those who are entitled to vote. However, members elected by their constituents are most often elected because of the popularity of their leader. Sometimes people vote for the candidate first, but that is not the general rule.

That said, Bill C-586 has some other provisions that are worthwhile. Why are we studying such a bill? Like many others, I think that Bill C-586 was introduced because some members of the House of Commons felt profoundly frustrated with their role as backbenchers and with the fact that the Prime Minister holds so much of the decision-making power. This frustration is nothing new and it is also obvious at the provincial level, regardless of which party is in power.

[*English*]

Is it certain that Bill C-586 can succeed in empowering MPs? Can it succeed in dissipating the frustration of many powerless MPs? I don't know yet, but one thing is clear to me: We in the Senate must do our job and look at this bill with scrutiny. We need to ascertain how and why this bill came into existence. We need to analyze all the clauses in the bill and the risks and benefits of it. Is this bill really in accordance with the concept of responsible government? Does it respect the foundation of the Westminster system of parliamentary democracy, as it pretends to do?

[*Translation*]

I'm not sure.

Dear colleagues, in a speech I made on September 30, 2014, I advocated the idea that we should review how committees submit reports to this chamber on the results of their studies and deliberations on bills under their purview. In this speech I proposed a series of questions that the committees could — or should — answer in their report to senators in order to explain their vote. These questions are obviously not perfect or comprehensive, but the idea behind my comments was that we should require that committees rationally explain their vote to all senators.

The following are some of the questions I suggested, which could serve as a template for committee reports. Is the bill constitutional? Does it comply with the Charter of Rights and Freedoms? Does it violate international conventions? Was the process in the lower House democratic? Does it respect minorities and public opinion?

At first glance, Bill C-586 appears to comply with these questions. It was the subject of numerous consultations, received the support of the three main political parties in the other chamber, has public support, does not violate the rights of minorities and is consistent with the legislative powers of the lower House. However, some provisions of this bill could create some political instability and may be incompatible with the notion of responsible government. In short, Bill C-586 deserves thorough study.

I would reiterate how important it is for the committee that studies this bill to explain why it is recommending for or against passage of the bill and why it has proposed a particular amendment. The Senate has to substantiate its positions and, most importantly, explain them to the people. Canadians support our function of thoroughly examining bills and improving them. The Senate owes the Canadian people explanations. I firmly believe that doing this in committee will result in a clear expression of the value the Senate brings with its analysis and sober second thought.

In closing, esteemed colleagues, we're not here to vote for what we like and reject what we don't like. Our role is to vote in favour of legislation that is in keeping with the public interest and to explain that to Canadians.

[*English*]

Our role is to vote what is right and not what is wrong, whether we like it or not. Our parliamentary system should adapt to the new dialogue that the Senate has the responsibility to establish with the people of Canada and between the two chambers in order to improve the quality of the legislation.

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

Some Hon. Senators: Agreed.

Senator Fraser: On division.

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

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time?

(On motion of Senator Tannas, bill referred to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament.)

BUSINESS OF THE SENATE

The Hon. the Speaker: Before adjourning, I remind honourable senators, please, to maintain a certain basic decorum. I remind senators that there are some basic rules that we must respect. There were a number of occasions this afternoon when honourable senators were speaking that people crossed between the honourable senator and the chair. I ask honourable senators to respect decorum in this chamber, please.

(The Senate adjourned until Tuesday, May 26, 2015, at 2 p.m.)

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