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(HANSARD)

Thursday, June 4, 2015

The Honourable LEO HOUSAKOS
Speaker

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THE SENATE

Thursday, June 4, 2015

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of the family of our former colleague, the late Honourable Alasdair Graham, affectionately known to us all as Al: his daughter, Eileen Barrett, accompanied by her husband, George; their son, George; and their daughter and son-in law, Maria Barrett and Anthony Casimiri.

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

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

THE LATE HONOURABLE ALASDAIR GRAHAM, P.C.

The Hon. the Speaker: Honourable senators, I have received a notice from the Leader of the Opposition who requests, pursuant to rule 4-3(1), that the time provided for the consideration of Senators' Statements be extended today for the purpose of paying tribute to the memory of the Honourable Alasdair Graham, who passed away April 22, 2015.

I remind senators that, pursuant to our rules, each senator will be allowed only three minutes, and they may speak only once.

However, as it is agreed that we continue our tributes to our former colleague under Senators' Statements, we will have 30 minutes for tributes. Any time remaining after tributes will be used for other statements.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I rise to pay tribute today to our late colleague, the former Leader of the Government in the Senate and a very proud senator, Al Graham, who passed away on April 22.

Colleagues, Al was a long-time friend of mine. We shared a passion for our province of Nova Scotia, a deep commitment to Liberal values and to the Liberal Party, and, of course, a love of politics. However, we never served here in the Senate together. So I hope you will understand that my remarks today will be of a personal nature, reflecting our intertwined lives rather than focusing on Al's proud and productive Senate career, upon which I hope others will elaborate.

Al defined the term "happy warrior." He combined fierce dedication with an infectious enthusiasm for the many things and causes that mattered to him: his Cape Breton roots, the Liberal Party of Canada, the Senate, L'Arche and, above all, his family.

Politics was central to Al Graham's life. He loved politics and the political process with all his heart. He did so because politics is about people. He saw politics as a means of helping others, particularly those who, for whatever reason, had not received a fair shake or an equal opportunity to succeed. To him, the political process offered the means to address those injustices.

Those are values he shared with his family. His son Danny followed him into political life, rising to be the Leader of the Nova Scotia Liberal Party.

My association and friendship with Al Graham goes back through many decades of often-tumultuous political activity in the Liberal Party of Nova Scotia and at the federal level. Indeed, I learned only recently that he had nominated my father as Leader of the Nova Scotia Liberal Party in 1962, an effort that was as unsuccessful as my own 24 years later, which just goes to show that following in your father's footsteps is not always a good thing to do.

Al was no fair-weather friend. He was there when times were toughest and the party's fortunes were at their lowest. He could always be counted upon to lift sagging spirits and hold out the prospect of a better day, even when that seemed to be a highly unlikely outcome. He was a tireless campaigner for whom no trip was too long, no community was too small and no campaign was too hopeless to receive his support.

He was a predecessor of mine and of Senator Moore's as the president of the Liberal Party in Nova Scotia. I was honoured to be appointed to fill his seat after his retirement from the Senate.

Al Graham loved the Senate. He served here with distinction from 1972 until 2004. As a senator, he was an active member of many committees, served as Deputy Leader of the Government and then, from 1997 until 1999, as Leader of the Government in the Senate and Regional Minister for Nova Scotia.

Those weren't easy times for federal Liberals in our province. Once again, he served without hesitation when called upon and then, with extraordinary grace, stepped back again in 1999.

His belief in the power of democracy and democratic values was not limited to Canada. Throughout his career, in the Senate and in retirement, Al travelled the world, promoting democratic ideals and helping struggling democracies establish themselves. He led many election-monitoring missions across the globe.

Following his retirement from the Senate, Al became the first National Patron and Ambassador for L'Arche Canada, an organization founded by another great Canadian, Jean Vanier,

committed to building inclusive communities for adults with special needs. This he considered to be one of the most meaningful activities of his life.

Unquestionably, though, one of Al's proudest achievements was his family, although, as his kids point out and Al acknowledged, much of the credit went to his late wife, Jean, who carried the bulk of responsibility for raising 10 children. Al was justifiably proud of the accomplishments of their children and their families, to whom he had passed on the values of hard work and public service.

Al Graham died on April 22 in Halifax, surrounded by his loving family, who had been at his side constantly as he bravely dealt with the challenges of his declining health.

On April 27, St. Mary's Cathedral Basilica in Halifax was packed with friends, family and admirers for a celebration of the life of this remarkable man. His son Danny delivered a moving eulogy that I thought captured the essence of Al Graham as a family man and as a public servant. With eloquence and good humour, Danny paid tribute to a man who gave so much to his family, his province and his country.

Colleagues, Canada has lost a dedicated public servant, Nova Scotia has lost a true patriot and the Graham family has lost its patriarch. I am sure all senators will join me in expressing our deepest sympathy to the members of his family, a number of whom are with us in the gallery today.

Hon. Marjory LeBreton: Honourable senators, we all mourn the recent passing of the Honourable Alasdair Graham. I will leave it to others to outline his many accomplishments, and there were many, here in the Senate, across this country and, indeed, as Senator Cowan just mentioned, around the world. I will simply relate my own personal reflections and share a unique and interesting but true story that has provided us with a few good laughs over the years.

Al Graham was an enthusiastic and unapologetic partisan who wore his Liberal heart on his sleeve. You can see why I got along with him so well. I'm the opposite as a Conservative.

• (1340)

We called each other "cuz," much to the surprise of our respective colleagues. Were we really cousins, they would ask? No, not exactly, but we had a close family link. You see, Senator Graham's daughter, Eileen, who is in the gallery today, is married to my first cousin, George Barrett, who is also in the gallery. George and Eileen have three children — Maria and twins George and Anna. Of course, George, Maria and her husband are in the gallery today. My cousin and Eileen produced three of Al's many grandchildren. He was so proud of his kids, his grandkids and his great-grandchildren.

We would often remark that my cousin George was probably the only Canadian ever who had a father-in-law and a first cousin who were leaders of the government in the Senate, one a Liberal and one a Conservative.

Now for the unique story. In August 1979, the Right Honourable John Diefenbaker passed away. A state funeral was held here in Ottawa, after which Mr. Diefenbaker's body boarded a train and, accompanied by a large and eclectic entourage, headed for his final trip to his resting place in Saskatchewan. The train made many stops along the way where thousands of Canadians turned out to pay their last respects. Al Graham was aboard that train representing the Liberal Party of Canada. He was the president of the Liberal Party at the time.

Now, as many of you know, Mr. Diefenbaker was surrounded by some interesting characters — fierce loyalists and assorted hangers-on — who had all competed at one time or another for his affection and attention. As this odd collection of people, along with Al Graham and the media, slowly chugged their way out west, old grudges, battles and various other confrontations were raging onboard the train, and these battles were restrained only when the train stopped to allow Canadians to pay their respects.

Back on the rails, the battles resumed anew with many bruised and battered feelings, especially in the bar car late at night. This went on for several days and nights, and Al Graham did his very best to stay out of the fray. When the train finally arrived in Saskatoon, people silently shuffled off the train, each side of the warring factions avoiding the other. There was only one person who survived this ordeal and was on speaking terms with everyone on the train as they disembarked. You guessed it; that person was Al Graham. This is a true story that throughout the years became part of political lore. I can still hear him laughing when we would share the details of this very strange and odd journey in 1979.

To the extended Graham family, but especially to Eileen, George, Anna, Maria and George Sr., and to his political families and colleagues, I offer my deepest sympathies. It was a great honour and pleasure to know Al Graham, and I considered him a friend, and I know he considered me a friend.

Hon. Jim Munson: Honourable senators, those of us who were lucky enough to be close to the Graham family knew Senator Graham as Uncle Al or Big Al. It was the early 1970s and I was thrilled to be a reporter on Parliament Hill, and because of Maritime friendships, family and other political connections, I got to know Al.

He always seemed to be in a hurry. I know that former Senator Hugh Segal was known as the "Happy Warrior," but I believe the same moniker applies to Al Graham. Perhaps a better phrase would be the "Happy Traveller." As president of the Liberal Party of Canada, he would do anything and go anywhere at a moment's notice for his Prime Minister, Pierre Elliott Trudeau.

It always seemed when you covered the Prime Minister that it was Al Graham who was in small-town Canada first, rallying the troops, making sure that a few days later when Mr. Trudeau would arrive, the room was full of enthusiastic Liberals.

In those days, there were also enough Liberal MPs to form a good hockey team. Big Al was the leader. I must say it was easier playing against him than against his sons. They are a legendary hockey-playing family.

His children loved him and he loved them. That ever-present smile and infectious enthusiasm seemed a permanent fixture of his personality, but there was a sensitive, serious and committed Al Graham. On this day, June 4, the twenty-sixth anniversary of the massacre in Tiananmen Square, I'm sure Al Graham would be standing here in the Senate talking about human rights.

The Happy Traveller took democratic freedoms and human rights quite seriously. He travelled the world on election-observing missions. One in particular stands out. In 1986, Senator Graham was an election observer in the Philippines. He wasn't happy with what he saw with the corrupt Marcos regime. At the time, Senator Graham said the election observers saw widespread evidence of irregularities, fraud, vote-buying and intimidation.

The Filipino community in this country never forgot Senator Al Graham's courageous stand, and they were also by his bedside in Halifax when Al passed away in April. That says something about the man.

At the end of the day, I believe a person is measured not by what he or she says they will do, but just by getting it done. This is where commitment comes into play.

Disabilities, particularly adults with special needs, are also an issue close to my heart. As mentioned, Senator Graham was the first National Patron and Ambassador for L'Arche Canada. We know the L'Arche movement founder was Jean Vanier, son of former Governor General Georges Vanier. Al was a disciple in the true meaning of the word in spreading the word of helping others. The Happy Traveller was dedicated to this work.

When he died, L'Arche Canada said they were:

> . . . remembering Al today as a committed public servant, as a great statesman, and as a man of true wisdom and compassion.

As my leader Senator Cowan said, many of us were there at St. Mary's Cathedral Basilica in Halifax for Al's funeral. Never ever have I heard "Amazing Grace" sung so beautifully. The song captured the moment.

These words from his obituary capture the man:

> . . . Al possessed a down-to-earth Cape Breton sensibility, and had a gracious ability to connect with people from all walks of life. He saw beauty in everyone and treated all with dignity.

For my part, honourable senators, Al Graham was a friend who, by example, was a teacher in what a good senator can do. Thank you.

[*Translation*]

Hon. Dennis Dawson: Honourable senators, I too would like to pay tribute to Senator Al Graham. Like my colleague, Senator Cowan, I arrived in the Senate after Senator Graham left this chamber, but our paths crossed frequently before that.

[*English*]

We crossed paths for many years in the Liberal Party, and that's the part I will be addressing today. I know other members want to speak, so I will try to keep my remarks short.

From 1976 to 1980, he was the president of the Liberal Party of Canada at a time when the political pressures and the political climate were very tough because the PQ had taken power in 1976. We were in a referendum in 1980, and having a strong political presence in Canada and in Quebec in particular was very important.

During this vibrant and heated period, Al demonstrated a sense of commitment with a sense of measure to position a Liberal Party ready to make a strong but positive contribution to the impassioned debates of the day. He stayed away from unnecessarily antagonizing a very emotional debate, because people were clashing in 1980.

Those were the years that the Liberal senators were allowed to be active in the Liberal Party. They weren't only allowed to be active; they could even be president of the Liberal Party. I had the occasion, which I will talk about briefly, to travel with Al on the occasion when he was president of our party.

Senator Gil Molgat was president of the party. Marie Charette-Poulin was president, and Dan Hays was president, too. I could go on and on. I think they did a good job. That being said, I have to admit that Anna Gainey is raising more money than most of them did. Anna Gainey has more activities and a stronger membership. Senator Cowan, I guess they can get along without us.

The good old days: When Al Graham was president, he was active in organizing the twinning of ridings. In those days, Quebec Liberals had 74 out of 75 seats, so we thought we were good and could tell people how to run their campaigns. We were twinned with ridings in the west of the country. We had numerous travelling caucuses.

• (1350)

One of the stories he liked to tell about me, and it relates to his sense of humour and his mastery of politics, is we went into this very small francophone village in Saskatchewan called Leoville, population 100. There was a sign in the conference centre — everything was in the same building — and it was written: "The travelling caucus of the Liberal Party will be here under the presidency of Senator Al Graham. In the travelling caucus will be Cliff McIsaac, the local MP for The Battlefords—Meadow Lake, and two well-known MPs, Louis Hébert and Dennis Dawson." So Al would love to say, "Not only, Dennis, did you get second billing on that ad, but you got second billing to a guy who died 350 years ago."

He loved to say it is efforts like that that force MPs, and senators every once in a while, to have a little bit of a sense of modesty.

He was a consummate gentleman who devoted his skills and energy to improving the lives of Canadians through political activism via the Liberal Party of Canada.

He said himself of Allan MacEachen, following the passing away of this Cape Breton monument, and it applies to both of them, Al Graham "brought the heart and soul of Cape Breton to Canada. He gave to Canada the best of his birthplace, and he fully deserves the tributes we are paying to him today."

My sincere condolences to the family and friends, and many thanks to Nova Scotians for giving us the opportunity to have such a gracious and eminent personality in our lives. Thank you very much.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to pay tribute to one of on our former colleagues and my friend, the Honourable Senator Al Graham, who passed away in April.

Long before he became a senator, Al Graham's commitment to serve Canadians, and to the Liberal Party in particular, was exceptional.

In 1972, he was named to the Senate by Prime Minister Trudeau, and later he became the president of the Liberal Party of Canada. It was around that time that I came to Canada as a refugee, and it was his inspiring leadership that made me believe that I could also be part of this great country of Canada.

More than anything, Senator Graham worked tirelessly with Liberal International, travelling around the world, often at his own expense, to connect with Liberals all over the world. He truly believed that an inclusive, interconnected world would lead this country and the world to a more prosperous future. We can see the fruits of his labour today, as the Liberal Party is more diverse than it has ever been.

Senator Graham and I often travelled together, he as a senator and I as the vice-president of the Liberal Party of Canada. We travelled to Amsterdam, Barcelona, Oxford and many other places.

Senator Graham tried many times to have me deliver my message with honey. I failed miserably. I told him that I was an Indian, and I ate hot spices. Therefore, I could never be like him. He always delivered his position with a smile.

Senator Al, even now, when I go for the jugular, afterwards I remember you. I wish I would remember you before I speak. I am trying.

To his family, thank you for sharing Al with us. The Liberal Party and Canada are richer for the work he did on our behalf. Thank you for your sacrifice.

It is with a heavy heart that we say goodbye to the Honourable Al Graham. His legacy in this place and in the Liberal party of Canada will live on forever.

Hon. Jane Cordy: Honourable senators, it was his deep and hearty laugh that we will remember well. Al loved life, and while he took his job and his many social projects very seriously, he had a great sense of humour.

As has been said, Senator Graham served as deputy leader and government leader in the Senate. When Al retired, Conservative leader Senator John Lynch-Staunton spoke about Senator Al, who always went out of his way to accommodate a responsible opposition. Senator Lynch-Staunton said that because Senator Graham showed an understanding for the opposition position, he and Senator Graham were always able to find solutions. I think we would all agree this was an excellent way to accomplish what had to be done in the Senate for the good of all Canadians.

Honourable senators, I have known Senator Graham for a long time. He and his family and my family attended St. Joseph's Church in Sydney, Cape Breton, when I was growing up. When I started teaching at St. Joseph School, there was a Graham child at almost every grade level because, after all, there were 10 Graham children. When I was sworn into the Senate in June 2000, Senator Al was my sponsor.

Al Graham grew up in Cape Breton, in the towns of Dominion and Glace Bay. He was raised with a great sense of community and a love of family.

When you grow up in Cape Breton, you had better be a down-to-earth person with no airs, and indeed this was Al. He could connect with people from all walks of life: prime ministers, coal miners, steel workers and businesspeople. He treated everyone with dignity.

It was always interesting to watch Al in a political or social setting. Whether it was in a living room or a church hall, Al would speak to every single person in a room because that's the kind of guy he was.

Al Graham loved Cape Breton, and he often spoke proudly of his heritage and the influence that it had on his life.

On February 6, 2003, Senator Graham spoke to the student honours society of the University College of Cape Breton, now known as Cape Breton University. He said:

> In my own life, as I think back to my days as a young boy growing up in Dominion and Glace Bay, I think of the coal culture and the unwritten codes about the buddy system, bravery and loyalty and brotherhood, codes which provided strength and compassion in communities which experienced all the hardships and insecurities of a dangerous business. I knew at a young age that it was those unwritten codes that made our community one of the strongest in North America.

He went on to say:

> . . . generations of the men of the deeps and their families drew their strength from the power of community and the values and humanity of a human resource which was much richer than gold.

Honourable senators, I believe we would all agree this background and this heritage prepared Al Graham well for his journey in life.

Throughout his life, Al was dedicated to improving the lives of all Canadians, but especially those in his beloved Cape Breton. He was a proud Cape Bretoner and a great Canadian. Thank you.

Hon. Wilfred P. Moore: Honourable senators, I too wish to speak in tribute to the late Honourable B. Alasdair Graham, who was my sponsor when I entered this chamber in 1996. He was born in 1929 in St. Joseph's Hospital in Glace Bay, Cape Breton. His father, Jack, had passed away several months before Al was born. Al grew up in the Glebe House at Immaculate Conception Parish in Dominion where he was raised by his mother Genevieve and his uncle, Father Charlie MacDonald.

Senator Graham grew up, as has been mentioned, in a coal mining community where, as he put it, "The coal culture taught people to look after each other." He would bring this lesson from growing up in that community to both the national and international stages.

He graduated in 1950 from St. Francis Xavier University in Antigonish.

It was at St. FX where Al began his career as a newspaperman, working while a student for *The Xavierian*, the campus newspaper; *The Chronicle Herald*; The Canadian Press; the CBC and then as managing editor for *The Casket*, the Antigonish weekly. He also entered the world of broadcasting, doing the play-by-play for St. FX football, hockey and basketball games.

With a growing family, eventually five boys and five girls, work was necessary as expenses grew. Al noted once that, "It seemed every time Jean and I had another child, I'd have to get another job. It was no secret in Antigonish that I had seven or eight jobs at one time."

He ran in the 1958 federal election in Antigonish, losing in the Diefenbaker sweep. He returned to teaching for a stint before coming to Ottawa in 1965 to work as special assistant to the Minister of Labour, the Honourable Allan J. MacEachen.

In 1966 he returned to broadcasting, moving to London, Ontario, where he became vice-president and general manager of Middlesex Broadcasting.

In 1967, Al Graham was made executive secretary of DEVCO in Sydney, Nova Scotia, where he worked to expand that community's economy beyond solely coal.

In 1972, Al Graham was summoned to this chamber by Pierre Elliott Trudeau, his designation being "Highlands, Nova Scotia." In 1975, he became the President of the Liberal Party of Canada, serving two terms.

In 1979, an approach came from the Nova Scotia Liberals for Senator Graham to run for the premiership of the province after the departure of Gerald Regan. As the story goes, the family decided to have a vote on the matter. The result was a tie. His wife, Jean, no political slouch herself, refused to break the tie. Thus, Al would remain in Ottawa doing his good work here.

• (1400)

The Chretien cabinet call came as Leader of the Government in the Senate and regional minister for Nova Scotia, where he served with distinction from 1997 to 1999.

Internationally, Senator Graham was an active member of Liberal International from 1977 and served as its vice-president. He also was a member of the National Democratic Institute for International Affairs in Washington, D.C., monitoring elections in numerous growing democracies. He recorded these experiences in his 1996 book, *The Seeds of Freedom: Personal Reflections on the Dawning of Democracy*.

After his retirement from the Senate in 2004, Al continued to serve and contribute to the public good as National Patron and Ambassador for L'Arche Canada, as has been mentioned.

On behalf of this chamber, in which he served Canada with such distinction, I extend to his 10 children, 24 grandchildren and four great-grandchildren our sincere condolences.

I would like to conclude with a quote from Senator Graham, which I think says it all:

> The Senate itself is really what you make of it. Public life generally is the same way. There are a lot of people who need help, so I am always prepared to do that and I find it a pretty exciting life.

Thank you, Senator Graham.

Hon. Senators: Hear, hear.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a delegation from the United Korean Commerce and Industry Association, led by Mr. Bongsup Lee. He is accompanied by business leaders from across Canada here on the Hill for the 3rd Canada Korea Economic Forum. They are the guests of the Honourable Senator Martin.

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

Hon. Senators: Hear, hear!

NEW BRUNSWICK

COMMEMORATION OF TRAGEDY IN MONCTON

Hon. Rose-May Poirier: Honourable senators, for the people of the Greater Moncton Area, June 4 will forever be remembered as a day of sadness and grief since the unthinkable happened for this peaceful and loving community. A year has passed since a young man jeopardized the security of the whole community for two days, which made Moncton lose a little bit of its innocence. Most tragically, the community lost three of its finest citizens who devoted their lives to ensuring the security of their neighbours.

For small communities with a low rate of violence, we sometimes innocently take for granted the comfort of security. It is in these crises and tragedies that we realize the enormous sacrifices made by these officers and their families. To all fallen, past and current members of all the law enforcement forces in Canada, you have our utmost gratitude, respect and support for the remarkable work that you do in keeping our lives safe.

Honourable senators, in the wake of the tragedy, the community of Moncton was shaken up. It was tested. But it also showed its strong will to not give up and to move forward. The outpouring of generosity for the victims' families, the many projects to commemorate the victims, and how everybody came together in these hardships show how vibrant and spirited the citizens of Moncton are. Today is a hard day for them, but, to the people of Moncton, you are not alone on this sad day.

Honourable senators please join me in honouring the victims and their families. To the families and friends of Constables David Ross, Fabrice Gevaudan and Douglas Larche, as well as the two injured officers, Constables Eric Dubois and Darlene Goguen, the sacrifice made and your losses will not be forgotten. You are in our thoughts and prayers for always.

Thank you, honourable senators.

[*Translation*]

THE LATE JACQUES PARIZEAU, G.O.Q.

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, like Senator Bellemare did two days ago, I would like to pay tribute to the late Honourable Jacques Parizeau.

[*English*]

He was an outsize man, an outsize talent and an outsize personality. He was one of that absolutely extraordinary generation of Quebecers who transformed not only Quebec but Canada, both at the provincial and federal levels. We were very fortunate in those years to have people of such calibre and quality on both sides of our great national debate.

[*Translation*]

When the Parti Québécois was elected, I was an economics reporter in Montreal. Back then, Radio-Canada occasionally produced a weekly paper. That is how I had the pleasure of meeting Mr. Parizeau, who was the Minister of Finance in the first Parti Québécois government. If ever I saw someone happy to be doing their job, it was Jacques Parizeau when he was Minister of Finance. He adored it. Later, when he became Premier of Quebec, he did not seem quite as content, but as Minister of Finance, he was happy and he adored his work. He loved debating with people. Even back then he had a talent for tricks, but his tricks were always part of fair play. When you read his budgets, you had to read every note carefully to find out what trick was being played. The evidence was always there for those smart enough to look for it.

One Friday in June 1977, he called me to his office in Quebec City around 5:30. I had no idea what it was about, but I was an economics reporter, and he was the Minister of Finance, so I went. My memory of that meeting is representative of the Jacques Parizeau for whom I had so much respect.

He asked me to sit down and said, "This is Maurice Duplessis's office." "Oh," I said. "But I'm here now." He opened a drawer and poured himself a nice glass of scotch — just for himself. Then, good and relaxed, he said, "Okay, I want to offer you a job." "What?" "Yes!"

He wanted me to be Quebec's financial representative. I looked at him and said, "Thank you for the compliment, but frankly . . . First of all, I am a staunch federalist; second of all, I am a journalist, not a public relations person." He replied that the first thing wasn't a problem. Whether I was a federalist or not, he knew I would do a good job. However, he thought the second thing was a problem because journalism becomes so much a part of you that it is hard to give up.

I thought that was rather insightful. He never said another word about it. However, while I was there, I asked him for an exclusive interview, which he granted me. It made the headlines the next day. I was very proud of that. No one knew how I got access to the minister.

I, who am so passionate about Canadian unity, will never forget hearing that man, who was so passionate about Quebec's independence, say to me, "That is no problem. I trust you." He was a great and honest man, a man of dignity who served us well, even when he wasn't on our side.

[*English*]

THE LATE BRIGADIER-GENERAL SYDNEY VALPY RADLEY-WALTERS

Hon. Larry W. Smith: Honourable senators, to celebrate and remember the seventy-first anniversary of D-Day, I rise today to pay tribute to one of Canada's military heroes, who passed away on April 21, 2015 — Brigadier-General Sydney Valpy Radley-Walters.

Valpy was born in the town of Malbaie, Gaspé, in 1920, son of Reverend Sydney Radley-Walters and brother to three sisters. He graduated from Bishop's College School of Bishop's University in 1940, at age 20.

Known as "Rad" to many, he enlisted as an infantry officer in the Sherbrooke Fusiliers Regiment, which was later designated as the 27th Canadian Armoured Regiment. In February 1942, the regiment was sent for armour training in Debert, Nova Scotia, and by October 1942 the regiment embarked for England.

On June 6, 1944, Captain Rad landed, second-in-command of C Squadron, on the Normandy beaches as part of the D-Day mission. Within 10 days of intense battle, Rad was promoted to major and commander of A Squadron.

Mastering the skills was key to survival and Rad's success was built on three basic principles: the welfare of his soldiers was paramount, the importance of battlefield innovations and his practice of leading from the front.

One example of how Rad cared for his men was his practice of taking a keen interest in each soldier, which allowed him to notice when individuals were not coping well psychologically or physically. He used a technique of moving men to the back of the team, where they could rest. Rad improvised on the battlefield to protect his men by having mechanics spot weld parts from broken tanks onto his unit's tanks for added protection, and adding sandbags to the floors of the tanks to protect the men from land mines. He trained his men to cover each other and strike the weakest spot on the enemy panzer tanks. His unit was credited with taking out the German ace, "the Black Baron," Michael Wittmann of the 101st Division.

• (1410)

Sydney Valpy Radley-Walters was awarded the Distinguished Service Order and the Military Cross for his outstanding leadership and gallantry as a squadron leader. In 1945 he was promoted to lieutenant-colonel, making him the youngest regimental commander at the age of 25.

By the end of war he was the top tank ace, the Ace of Aces of Western allies and therefore of Canada. He has been recognized at the Canadian War Museum as Canada's tank ace of the Second World War.

After the war, Rad remained in the army and, at the age of 27, married Patricia Holbrook, and had four sons. In 1957 he was commanding officer of the 8th Canadian Hussars; promoted to brigadier-general in 1968. He was commander of the 2nd Canadian Infantry Brigade and commander of CFB Petawawa. In 1971 he was promoted to commander of the Combat Training Centre at CFB Gagetown, New Brunswick. In 1974, at his retirement, he was invested into the Order of Military Merit as a commander and continued to serve eight years as colonel of the 8th Canadian Hussars. In 1980 he became Colonel Commandant of the Royal Canadian Armoured Corps.

Even in retirement, Rad continued as a guest lecturer at the Canadian Land Forces Command and Staff College in Kingston and participated in numerous battlefield teaching tours of Normandy.

Honourable senators, it is a pleasure to share this military history with you in the hopes that Sydney Valpy Radley-Walters will be remembered for his courage and leadership, and equally for his joie de vivre and his infectious laugh, for he was a man of immeasurable courage and energy, a man that all Canadians can be proud of.

[*Translation*]

ROUTINE PROCEEDINGS

COMMISSIONER OF OFFICIAL LANGUAGES

ACCESS TO INFORMATION ACT AND PRIVACY ACT— 2014-15 ANNUAL REPORTS TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the 2014-15 annual reports of the Commissioner of Official Languages, pursuant to section 72 of the Access to Information Act and section 72 of the Privacy Act.

[*English*]

TOUGHER PENALTIES FOR CHILD PREDATORS BILL

BILL TO AMEND—TWENTY-NINTH 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, June 4, 2015

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

TWENTY-NINTH REPORT

Your committee, to which was referred Bill C-26, An Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts, has, in obedience to the order of reference of Tuesday, May 12, 2015, 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?

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

ECONOMIC ACTION PLAN 2015 BILL, NO. 1

FIFTEENTH REPORT OF INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION COMMITTEE ON SUBJECT MATTER TABLED

Hon. Elizabeth (Beth) Marshall: Honourable senators, on behalf of the chair of the Standing Committee on Internal Economy, Budgets and Administration, I have the honour to table, in both official languages, the fifteenth report of the Standing Committee on Internal Economy, Budgets and Administration, which deals with the subject matter of those elements contained in Division 10 of Part 3 of Bill C-59, An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures.

The Hon. the Speaker: Honourable senators, pursuant to the order of the Senate of May 14, 2015, the report will be placed on the Orders of the Day for consideration at the next sitting of the Senate, and the Standing Senate Committee on National Finance is simultaneously authorized to consider the report during its study of the subject matter of all of Bill C-59.

ELEVENTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ON SUBJECT MATTER TABLED

Hon. Irving Gerstein: Honourable senators, I have the honour to table, in both official languages, the eleventh report of the Standing Senate Committee on Banking, Trade and Commerce, which deals with the subject matter of those elements contained in Divisions 14 and 19 of Part 3 of Bill C-59, An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures.

The Hon. the Speaker: Honourable senators, pursuant to the order of the Senate of May 14, 2015, the report will be placed on the Orders of the Day for consideration at the next sitting of the Senate, and the Standing Senate Committee on National Finance is simultaneously authorized to consider the report during its study of the subject matter of all of Bill C-59.

DÉLĮNĘ FINAL SELF-GOVERNMENT AGREEMENT BILL

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-63, An Act to give effect to the Délįnę Final Self-Government Agreement and to make consequential and related amendments to other Acts.

(Bill read first time.)

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

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

NATIONAL SPINAL CORD INJURY AWARENESS DAY BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-643, An Act to establish National Spinal Cord Injury Awareness Day.

(Bill read first time.)

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

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

PIPELINE SAFETY BILL

BILL TO AMEND—THIRTEENTH REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE PRESENTED

Leave having been given to revert to Presenting or Tabling Reports from Committees:

Hon. Richard Neufeld, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Thursday, June 4, 2015

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

THIRTEENTH REPORT

Your committee, which was referred Bill C-46, An Act to amend the National Energy Board Act and the Canada Oil and Gas Operations Act, has, in obedience to the order of reference of Thursday, May 14, 2015, examined the said bill and now reports the same without amendment.

Respectfully submitted,

RICHARD NEUFELD
Chair

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

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

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF THE INCREASING INCIDENCE OF OBESITY

Hon. Judith Seidman: Honourable senators, on behalf of the chair of the Standing Senate Committee on Social Affairs, Science and Technology, I give notice that, at the next sitting of the Senate, I will move:

> That notwithstanding the order of the Senate adopted on Wednesday, February 26, 2014, the date for the final report of the Standing Senate Committee on Social Affairs, Science and Technology on the increasing incidence of obesity in Canada be extended from June 30, 2015 to September 30, 2015.

• (1420)

[*Translation*]

QUESTION PERIOD

EMPLOYMENT AND SOCIAL DEVELOPMENT

INTERNATIONAL MOBILITY PROGRAM

Hon. Claudette Tardif: Honourable senators, my question is for the Leader of the Government in the Senate. The new rules that the government has imposed, without notice, on people who want to immigrate to Canada do not just affect temporary foreign workers. They also affect hundreds of foreign students. Thousands of internships for foreign students in Canada are in jeopardy because of a new directive imposed by the federal government, which is making things difficult for the companies that bring interns to Canada.

Effective February 21, 2015, companies that want to hire foreign interns have to pay a fee of $230 per intern and fill out a long online form. The government is trying to discourage organizations that want to hire foreign workers under its International Mobility Program. Mr. Leader, why is the government choosing to reduce the number of foreign interns in Canada and make life difficult for the small businesses and community organizations that could use their help?

Hon. Claude Carignan (Leader of the Government): As you know, senator, we have a system to manage applications from foreign workers. This system also applies to students in certain cases and certain circumstances. When it comes to choosing candidates, we give priority to Canadian workers, and then to people who have work experience in Canada or who are participating in the Provincial Nominee Program. Priority is given to post-secondary students who have work experience in Canada or who have acquired the skills needed to work in either of the two official languages. We have a series of requirements based on the different situations of the immigrants or foreign workers that enable us to optimize the use of resources.

Senator Tardif: Leader, this is not about taking a job away from a Canadian worker. This is about unpaid internships. According to Judith Laurier, Director of Communications for the Fédération des cégeps, half of the 200 non-profits in Quebec that have previously sponsored foreign interns will not be able to do so this year. France's Association des Directeurs d'Instituts de Technologie has indicated that it will be forced to choose other countries for its students. I would like to quote Ms. Laurier:

> That puts us in an awkward position. We are concerned that other French institutions will follow suit and end their collaboration with Canada. Also, if the French institutions start questioning the Canada-France agreement, that will jeopardize the positions of the interns we send to them.

How will the government address the situation of our Canadian students who run the risk of losing out on wonderful opportunities for international internships?

Senator Carignan: Senator, as I said, we have put in place measures to give top priority to Canadians when it comes to jobs. Furthermore, we have implemented measures that promote professional opportunities for Canadian and foreign students. We will ensure that these measures strike the right balance between the right of Canadians to find employment in Canada and the ability of employers to find skilled workers.

Senator Tardif: These new rules threaten a historic agreement between Quebec and France, which results in exchanges for hundreds of interns every year. More than 1,000 internships for French students in Quebec are affected by the government's changes. Hundreds of Quebec interns in France are also caught up in this dispute. Allow me to quote a resolution of the Association des Directeurs d'Instituts Universitaires de Technologie, which comprises 113 institutes in France:

> These lockout measures threaten the relationship between the IUT and Canadian institutions in the long term. The Association finds it unfortunate that the rules for the issuing of international co-op visas for students from France have been changed in the middle of the academic year, without any information or prior notice from Canadian authorities.

French interns need this experience in order to obtain their degrees, and changing the rules just a few weeks before their departure is unacceptable. Leader, how does the government intend to solve this problem?

Senator Carignan: The programs are created using the Express Entry system, which manages the applications related to programs for skilled workers, skilled tradespersons and

provincial nominees. These programs have not changed at all. The requirements remain the same. With the Express Entry system, only those candidates who are most likely to succeed — not just the first to apply — can present as candidates for immigration to Canada. As for the issue of selection based on skills, that is done based on needs and the students' qualifications. We take into account the labour needs in order to increase the competitiveness of Canadian businesses while serving the interests of Canadians first.

Senator Tardif: Leader, I thought that attracting more international students was one of the government's objectives. Why, then, did the government go ahead and reform how temporary foreign workers are hired, when those reforms make it harder and more complicated for Canadian businesses to offer internships to students who want to come to Canada, and for our students who want to go elsewhere? This is not to mention the fact that those countries will turn to other countries besides Canada.

Senator Carignan: I think it is important to encourage immigration that respects the government's parameters and objectives. You are probably referring more specifically to francophone immigration. The minister was very clear about the 4 per cent target for francophone immigration outside Quebec. Our government developed a plan to achieve that target and we are seeing tangible results with the Express Entry program. I know that the commissioner made some recommendations regarding francophone immigration. Rest assured that we took note of those and that we will continue to work on achieving these objectives.

[*English*]

HEALTH

END OF LIFE

Hon. Jane Cordy: My question is for the Leader of the Government in the Senate. On February 6 of this year, the Supreme Court of Canada ruled unanimously that people with grievous and irremediable medical conditions should have the right to ask a doctor to help them die. This decision overrules the current law, which makes it illegal to help anyone to end their lives.

The Supreme Court gave the federal government 12 months to draft new legislation to amend the law to allow doctors to assist with death in specific situations where a competent adult, enduring intolerable suffering, can clearly consent to end their own life. It's been four months since the decision from the Supreme Court was handed down. What is the status of the new legislation from the federal government and have discussions started with Canadians about what the government plans to do?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): We are taking the ruling under advisement and will hold consultations in the coming months to ensure that fundamental rights are upheld within the parameters set out in the Supreme Court ruling.

• (1430)

[*English*]

Senator Cordy: I understand that you want to consider the decision, but four months have passed. That leaves us eight months. My concern is that very little or no progress has been made on this issue. There are only eight months before the 12-month deadline expires. Between now and then, we have parliamentary summer recess, and we have an election. That doesn't leave much time for consultation. I'm sure those on the other side will be concerned with their elections.

Minister MacKay said in February that it isn't his "primary consideration," to use his words, to draft new legislation before the next election; but to many Canadians this issue is very important. I have spoken to many people in my province of Nova Scotia who are very concerned by this ruling. They want Canadians to have input into whatever proposed legislation is drawn up. Will there be a process for public input? I guess I'm asking what the government's plan is.

You say that you want consultation and you want time to consider the decision. Time is getting shorter and shorter. Four months have gone by; eight months remain. It is time to at least have a plan. Many people are very concerned about this issue, whether on one side of it or the other. They would like to have input into whatever decision is made by the government.

Can you give us more than just platitudes about considering a decision?

[*Translation*]

Senator Carignan: Senator, this is an extremely serious and difficult issue to deal with, and we want to study it carefully. There are two different views on this issue, and we will take the time needed to conduct proper consultations and to introduce a bill in due course that complies with the Supreme Court ruling.

[*English*]

Senator Cordy: I agree with you, it is a serious issue. I also agree that there are two distinct perspectives on it. It is great to study things prudently, but we have eight months left; four months have gone. It is a complex issue that touches millions of Canadians' lives, either directly or indirectly. Canadians want to be involved in the discussion of any new legislation.

When you are doing consultations, who will be consulted? What's in your plan about who will be consulted?

[*Translation*]

Senator Carignan: I'll repeat what I just said: we realize that the Supreme Court set an extremely tight deadline and we plan on making an announcement on this issue in due course. This is an extremely sensitive topic for many Canadians. We respect the experience, personal views and deep convictions of all Canadians. We will study the Supreme Court decision carefully and, in light of all of the views on this sensitive topic, we plan on making an announcement in due course.

[*English*]

Senator Cordy: It is a tight deadline, and it is getting even tighter. Will the government ask the Supreme Court for an extension so that Canadians can be consulted?

Senator Fraser: That's a good question.

[*Translation*]

Senator Carignan: I reiterate my answer, Senator Cordy.

[*English*]

Senator Cordy: I asked you whether or not the government would ask for an extension for one year because time is going by quickly. Four months have gone by, and eight months remain of the time allocation that the Supreme Court gave you.

My question was, will the government ask for an extension to the one year that the Supreme Court put forward?

[*Translation*]

Senator Carignan: I understood your question, senator, and I said that I reiterated my answer that we are aware of the tight deadline set by the Supreme Court. We expect to make an announcement in due course.

[*English*]

Senator Cordy: When I'm speaking to people in Nova Scotia on the weekend, I don't think they will feel any comfort in your answers, which are basically non-answers. We all know as you have said that the timeline is pretty tight. But Canadians are asking to be consulted. What is the plan? When I listen to your answers, I get the impression that there is no plan, that the one year will come up and that there will be a knee-jerk reaction at the end of January when suddenly we'll be presented with proposed legislation and asked to rubber-stamp it.

This is not the kind of legislation that should be rubber-stamped. This is the type of legislation that should have input from people across the country who feel strongly about it on one side or the other.

Please let me know today whether or not Canadians will be consulted before the government brings forth proposed legislation.

[*Translation*]

Senator Carignan: I don't know what else to tell you. I don't know what isn't clear when I say that we will take the time needed to study this issue. We said that this is a sensitive topic and that we will find ways to listen to and consider all Canadians' views. We will then announce our position in due course.

[*English*]

Senator Cordy: Can you let Canadians know what methods you'll be using to consult?

[*Translation*]

Senator Carignan: Senator, we will make an announcement in due course.

[*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: Bill S-3, followed by Bill C-2, followed by Bill C-52, followed by Bill C-42, followed by Motion No. 113, followed by Bill C-51, followed by all remaining items in the order they appear on the Order Paper.

COASTAL FISHERIES PROTECTION ACT

BILL TO AMEND—MESSAGE FROM COMMONS—AMENDMENTS FROM COMMONS CONCURRED IN

On the Order:

> Resuming debate on the motion of the Honourable Senator Manning, seconded by the Honourable Senator Batters:
>
> That the Senate concur in the amendments made by the House of Commons to Bill S-3, An Act to amend the Coastal Fisheries Protection Act; and
>
> That a Message be sent to the House of Commons to acquaint that House accordingly.

Hon. George Baker: Honourable senators, I would again like to congratulate the Fisheries and Oceans Committee of the Senate. They do an extremely commendable job, as do all our committees. We are recognized in adjudications by panels, quasi-judicial tribunals and our courts on a daily basis. It is one of our main functions in committee.

As members know, I'm not a fan of Question Period in this place, and I have always advocated that we have a committee period instead of Question Period so that our committees can be heard and we can examine them and what's happening — where the real work is done and where accountability is actually meaningful.

Senator MacDonald: Hear, hear.

Senator Baker: Accountability on government policy in the Senate is not meaningful. That's my personal opinion. Hopefully with the new session approaching, perhaps we can get on with changing Question Period to committee period. The reason I say that is in my remarks here today about the Fisheries Committee.

I would like to recognize the phenomenal work being done by Fabian Manning, Chair of the Standing Senate Committee on Fisheries and Oceans. He knows a great deal about the fishery. He's well versed. We have Senator Tom McInnis, from the legal world, who is also well versed in the fishery on that committee.

• (1440)

We have Senator Wells, who is from the corporate community in fisheries, having served with corporate boards in fisheries for years, both nationally in Canada and in the international community. We have other committee members: Senator Greene Raine, Senator Meredith, Senator Poirier, Senator Hubley, Senator Stewart Olsen, Senator Munson and Senator Lovelace Nicholas. The bill that we're dealing with today — and passing, hopefully, because I think this is a good government bill — received some opposition from the NDP and the Liberals in the other place. I think, upon consideration, that they were wrong, that they didn't understand what the existing law is in Canada as it relates to the Fisheries Act.

They spent an entire hearing dealing with one clause in this bill that said, and I will quote:

> Every person who contravenes subsection 5.6(1) or (2) is guilty of an offence and liable
>
> (*a*) on conviction on indictment, to a fine of not more than $500,000; or
>
> (*b*) on summary conviction, to a fine of not more than $100,000.

They concluded in the committee hearing that this was a mandatory maximum, that here was the Conservative government fixated on mandatory minimum sentences and that this was a mandatory maximum. This is what they claim.

They spent an entire hearing on this one subject, wondering if it was, in fact, legal to have this mandatory maximum of $500,000.

I want to put on the record what's in the existing Fisheries Act, what's been there for 50 years. The Fisheries Act says, unmistakably, that the fine for a summary offence is up to a maximum of $1 million. Subsequent offences have a figure of $1 million in addition to the penalty.

Here we are with a committee of the House of Commons dragging their heels on this bill because they're concerned about a mandatory maximum of $500,000, when, in the existing law, it is $1 million. I wanted to put that on the record and to say that, although there was considerable delay and holdup and amendments and so on introduced by the NDP and the Liberals in the other place, they were completely unjustified. They claimed that this created a precedent. Quite a precedent — it is already there in the Fisheries Act and has been for the past 50 years.

I wanted to point that out, first of all. The significance of this bill, however, is that the Government of Canada decided to break with tradition and give the Senate the bill first and second, the House of Commons. We're supposed to be sober "second" thought. In this case, the Government of Canada decided, "Let's give it to the Senate first, and let's have the evidence presented before the Senate standing committee. Then, we will take the bill and their recommendations, and we'll see what we think of their recommendations.

I sat in on the Senate committee hearings. They did a thorough job of examining the bill, and Senator McInnis, a well-known lawyer from the province of Nova Scotia, who knows the issues of the fishery quite well, raised an interesting point: This bill deals with setting up a punishment regime for those foreign nations that are fishing in what we call the NAFO zone, the Northwest Atlantic Fisheries Organization zone, which stretches from each headland in Canada on the East Coast, around Newfoundland and Labrador and Nova Scotia, northern Quebec, into the Gulf. It stretches out to 200 miles. The NAFO zone then goes beyond the 200 miles, out to about 350 miles.

In other words, it is a group of 20 foreign nations that decide the quotas on designated fisheries on Canada's coastline. It is a remarkable organization. That doesn't happen anywhere else in the world. What other nation in the world would want 20 foreign nations determining their quotas and to also get a piece of the action? But that's the way we have operated ever since we joined Canada. I say "we," Newfoundland and Labrador. We joined in 1949. I remember it well. One of the considerations, at that time, was the fact that foreign nations had quotas off of our coasts.

What this bill does is set up a regulatory regime of punishment for violations of the Fisheries Act, and it enables fisheries officers to board a foreign vessel outside the 200-mile zone, on the Canadian continental shelf, at any time, to inspect their books, to inspect their cargo, to inspect their fish, and then to bring charges against them if they've violated the NAFO rules and regulations. In fact, they have authority to bring the vessel into a Canadian port and prosecute them in a Canadian court. That's the way it should be.

So this sets up the regime that was so badly needed over the years, and Senator McInnis said, quite frankly, "Okay, we now have a regulation for the foreign fleets in the NAFO zone outside 200 miles, but what about the other fleets that come inside 200 miles and outside 200 miles that don't belong to this regulatory regime called NAFO, the Northwest Atlantic Fisheries Organization?

He gave the example of tuna. Tuna is a very valuable resource. A tuna fish could be worth $5,000 a fish exported out of Halifax, Nova Scotia, overseas.

The Japanese fleet and the American fleet come within Canadian waters. They chase the tuna every single year. It happens in about a month from now, and they chase the tuna

because it is the same tuna stock all over the Atlantic Ocean and the Indian Ocean. It is the same stock. The stock goes in pursuit of the fish. The greatest spawning area for mackerel, which is their favourite delight, is the Gulf of St. Lawrence, one of the greatest areas of birth of small fish, spawning zones, in the entire world.

When the mackerel come on stream the first week in July, in the Gulf of St. Lawrence, the tuna are coming up the coast of the United States offshore. Then they go into the gulf and up around Newfoundland and Labrador, and then they move in a circle across the Atlantic Ocean. They are actually capturing the birth of the mackerel at that moment in time.

So the fleets chase the tuna. You have the Japanese fleet off the coast of Nova Scotia, off the coast of Newfoundland, coming into our ports to be serviced. They're after the tuna. The quotas for tuna are established by the International Tuna Commission, of which Canada is a part. Canada gets a quota. Unfortunately, the quota is less than we give to Japan and the United States, but it is a quota. It is a quota that has been established over time.

So Senator McInnis raised the interesting point in the Senate committee. He said, "You are going to board foreign vessels that are regulated by NAFO outside 200 miles, catching turbot and shrimp." That's what they do. At any given moment in time, there are 20 factory ships out there fishing for shrimp and turbot. These are bottom dwellers. They use draggers, and they drag the continental shelf outside 200 miles on a regular basis. Any moment in time there's a dozen ships out there, that's what they do. They have quotas.

• (1450)

Senator McInnis raised the point that if we're going to do that for those vessels, what about other regulated fisheries like the tuna fleets? Shouldn't they be regulated as well?

The bill went through the Senate. We didn't see any objection in the fines because we knew in the Senate committee that this was far less than what was in the existing Fisheries Act. There was nothing we could object to as far as the fines were concerned, and the rest of this present bill we're dealing with is both necessary and needed. My goodness — you have to regulate the foreign fleets if you are regulating your own fleet and they are fishing in the same place!

So we approved it, good bill. We sent it to the House of Commons. Don't forget, this was not second sober thought but first sober thought.

The Department of Justice then took the bill — and here I'm speculating — and they took Senator McInnis's remarks and they changed the bill. That's why we're getting this bill back in an amended form. Each amendment here deals with regulating the fleets that were not regulated under the original bill, which will now take into account the tuna fleets and other fleets that fish in those same areas. We should have the authority to board their vessels to look at them and bring them to justice if they have violated our international rules.

You can see there is a value of the Senate committee — not just in sober second thought but in sober first thought. Unless you attended the committee meetings or you discussed the committee meetings, you would not know where the Department of Justice came up with these amendments after we had approved the bill and sent it back to the House of Commons and said, "Look, this is a good bill." They sent it back to us because of what was raised in the committee, namely a perfectly logical question put forward by Senator McInnis and I imagine other committee members as well. I think the chair, Senator Manning, had a few words to say about that as well because he was concerned about the regulation of all foreign fleets in the Canadian zone and outside the Canadian zone.

I think that this bill is particularly important given the fact that over the past year, the Canadian government has done perhaps the most important thing that has ever been done for our fishing resources on our continental shelf. They should have done it before, but they did it at the last minute. That was to file with the United Nations an application to extend our jurisdiction over the continental shelf out beyond 200 miles.

What shocked me about this was that it didn't receive any publicity. Somebody is falling down on the job in the Prime Minister's Office. The Conservative Party of Canada should be —

Could I have another five minutes?

The Hon. the Speaker *pro tempore***:** Would you like more time, senator?

Senator Martin: Five minutes.

Senator Fraser: Five minutes.

Senator Tardif: Agreed.

Senator Baker: It was perhaps the most important thing that I can think of that's been done in our history, and that is to put in an application to extend jurisdiction out to 350 miles over the continental shelf.

We look forward to the day, now — if that is accomplished — when we can stop those foreign fleets from dragging our ocean floor outside 200 miles. That will give thousands of jobs to Canadians. It will save our environment, our ocean floor, our fishery. That's what we can have down the road.

In closing, let me make one observation. This is the first bill we're dealing with here today. The last bill we will be dealing with, as the house leader just said, is Bill C-51. Let me point out that under the Fisheries Act there's a two-year period. It states that a proceeding by way of summary conviction in respect of an offence under this act may be instituted at any time within but not later than two years after the time when the minister became aware of the subject matter of the proceedings. In other words, you can lay a charge within a two-year period if it's summary in nature.

Bill C-51 that we're dealing with at the end of the day has a one-year maximum period; the CSIS provision, six months. This is two years. We think our fishery is so important, which it is, and we give a two-year limit during which a police officer or a fishery officer can lay charges, yet we deal with the terrorism provisions

that contain only a one-year limitation and a six-month limitation, and the police are not allowed to lay a charge, and CSIS is not allowed to lay a charge. At the end of the day, it is determined by a bureaucrat sitting in an office in Ottawa, just to be sure that everything is right.

You know, what is right for most Canadians as far as the Criminal Code is concerned and the Fisheries Act is concerned should be good enough for all future legislation before both this chamber and the other chamber. It is the one inadequacy in Bill C-51.

I congratulate the committee. The Bill C-51 committee came forward with a recommendation to extend it to five years. That's the value of that Senate committee, the fact that they did that. Unfortunately, they didn't go far enough — as Senator Dagenais has always advocated — and let the police lay the charge. He hasn't said that publicly about Bill C-51 — he isn't going to — but he says it about everything else. His advice should be taken because he's an experienced enforcement officer. Why should we treat the terrorism provisions any differently than we treat other provisions in the Criminal Code and especially in the Fisheries Act?

Thank you for your attention and thank you for the five minutes, Your Honour.

The Hon. the Speaker *pro tempore***:** Are senators ready for the question?

Some Hon. Senators: Question.

The Hon. the Speaker *pro tempore***:** Is it your pleasure to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

[*Translation*]

CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Hon. Jean-Guy Dagenais moved third reading of Bill C-2, An Act to amend the Controlled Drugs and Substances Act.

He said: Honourable senators, I thank Senator Baker for his very apt allusion. I am pleased to speak to you today about a very important bill that will help protect public health and maintain public safety for all Canadians.

Bill C-2, the Respect for Communities Act, strengthens the Canadian drug control regime and enables us to protect our communities across the country.

Illegal drug use is a serious problem. Drugs can destroy lives and tear families apart. Illegal drugs make our neighbourhoods less safe and negatively affect our communities at every level. Our government has already taken steps, but despite major improvements, rates of drug use in Canada remain worrisome.

Other problems are emerging, such as the illegal use of prescription drugs, driving while under the influence of drugs and the growing availability of synthetic drugs on the market.

Bill C-2 is further evidence of the federal government's enduring commitment to the health and safety of Canadians. Bill C-2 would amend the Controlled Drugs and Substances Act, the CDSA.

• (1500)

The CDSA is the Canadian law that controls drugs. It has two objectives: to protect public health and to maintain public safety. This law governs the control of substances that can alter mental processes, harm the health of users and undermine all society when they are diverted or misused. This act prohibits activities involving these substances, such as possession, trafficking, importing, exporting and production. Although it is essentially proscriptive, the CDSA authorizes the legitimate use of controlled substances either through regulations or exemptions.

Exemptions are permitted under section 56 of the CDSA, which authorizes the Minister of Health to grant exemptions for activities which, in the minister's opinion, are necessary for a medical or scientific purpose, or are otherwise in the public interest. For example, this authority makes it possible to hold clinical trials or conduct university research with controlled substances. Bill C-2 would not affect these types of exemptions.

However, we know that drugs can pose a serious risk to public health and public safety. This threat increases when these substances are obtained through illicit sources because they are very often unregulated and produced in uncontrolled environments.

With that in mind, I would now like to address the issue of supervised consumption sites. The drugs used at these sites are illegal and are obtained illegally. An exemption under section 56 of the CDSA is necessary to operate such sites. Otherwise, the clients and staff could be charged with possession of illicit substances.

In its decision concerning Insite, the Supreme Court of Canada clearly stated that the Minister of Health retains the discretion to grant or refuse an exemption to the CDSA and its regulations.

During the hearings of the Standing Senate Committee on Legal and Constitutional Affairs, we discussed the question of the minister using this discretionary power and the need for an objective assessment of all applications. The law still requires that decisions be made responsibly, even though that may not be explicitly stated.

Under the law, both common law and the Constitution, the minister must act and make decisions responsibly. For instance, when the minister examines an application, he or she must take this into account and must make a decision based on the merits of the application.

The minister must therefore exercise his or her discretionary power based on the purpose of the legislation, namely protecting public health and maintaining public safety. The minister's

decision must be made in good faith and must also be procedurally fair, taking into account the nature of the application and all other relevant considerations. When making a decision, the minister must also take into account the need to protect public health and maintain public safety, while respecting the Charter. Bill C-2 is solidly based on those principles.

Because of the seriousness of the risks associated with illicit drug use, all applications to undertake any activities in relation to these substances should be considered only when strict criteria have been met. In our attempts to meet the needs of people with additions, we run the risk of creating a critical situation related to the use of dangerous drugs, which could lead to even greater dependencies among addicts.

That is why Bill C-2 proposes adding a section to the CDSA that deals specifically with applications for activities related to illicit substances at supervised injection sites.

Bill C-2 sets out the requirements for anyone who applies for an exemption for activities involving illicit substances at a supervised consumption site like InSite. The minister will only be able to consider the application when all of the criteria are met.

In committee we heard from a number of witnesses regarding these criteria, and I would like to take a few minutes to reiterate some points and to make some clarifications.

The bill contains some criteria — eight of them, to be precise — that include the expression "if any." This means that the applicant must provide information to the minister only if it exists. If the information does not exist, the applicant must clearly indicate this in the application, and the criteria will be deemed to have been considered. Applicants are not being asked to provide information that does not exist, and there will be no penalty if this is the case. This also applies to the criteria regarding subsequent applications.

We also heard that former drug addicts who have a criminal record will not be able to work at a supervised consumption site, since criminal background checks will be required. I want to point out that the criminal record checks provided for under Bill C-2 are consistent with the existing framework under the Controlled Drugs and Substances Act and other regulatory provisions, such as the Narcotic Control Regulations. It is reasonable to require criminal record checks, since there is a high risk to public safety and security when we are dealing with illicit substances.

The purpose of these requirements is to help the minister get access to the information needed to make a decision that balances the public health and safety considerations associated with these supervised consumption sites, in accordance with the Charter.

The bill also includes the requirement to consult the provincial or territorial ministers responsible for health and public safety, the head of the local police department and the lead public health professional of the province or territory. Let us remember that the Supreme Court of Canada stated that the community's support or opposition must be taken into consideration.

Some witnesses believe that an applicant should not have to consult these people because their opinions are not based on solid evidence. In my opinion, these individuals must be consulted on the basis of their professional capacity, their experience in the field and the responsibilities they hold by virtue of their positions.

The bill also makes it possible to take into account the views of Canadian communities. It allows the minister to post a notice of application, once an application has been received. The public would then have 90 days from the date on which the notice of application was posted to share comments and opinions regarding the proposed site.

When this bill was being examined in committee, some witnesses indicated that the requirements set out in the bill are excessive. I agree with my colleague, who said:

> I wouldn't know how you could go into a province and bring about one of these sites, or more than one, without dealing with the provincial health authorities, the health departments. You have to deal with the police, with the local governments and with the public. If you don't do that, then it's not fair; it's not democratic in any sense of the word. . . . I wouldn't know any other way around it if you're going to balance health and safety.

All the provisions of Bill C-2 will leave room to consider the points of view of police forces, public health professionals, provincial, territorial and municipal governments, and the public.

Bill C-2 essentially attempts to balance public health with public safety. Since we know the risks associated with drug use, the exemptions given to activities associated with dangerous drugs, such as heroin, should be made only in accordance with very strict criteria. It is our responsibility to establish clear criteria.

Illegal drugs bought and sold on the street are dangerous in and of themselves and pose a danger to the communities where they are found. We know, for example, that the proceeds of the sale of illegal substances often contributes to organized crime, and that using these substances can increase risks to health and safety, especially when those substances are not regulated or evaluated.

[*English*]

Organized crime is never far away from the drug consumption. It's our responsibility to fix clear rules when permission to use is given.

[*Translation*]

We must balance the needs of the clients with the needs of Canadians, the people, organizations and businesses that have to co-exist or cohabitate with a supervised injection site in their community.

The approach proposed in Bill C-2 establishes the legislative structure needed to properly respond to public health and safety concerns and it allows the public and key stakeholders to have their say.

• (1510)

This new approach will bring clarity and transparency to the way the Minister of Health evaluates requests to set up supervised injection sites. Each request will be examined case by case once the required information has been provided.

Through initiatives like the national drug strategy and Bill C-2, the federal government is working hard to crack down on illegal drug use and reduce the associated ills across the country. I encourage my honourable colleagues to take a careful look at the bill and how it will benefit the health and safety of Canadians. Thank you.

[*English*]

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

Senator Dagenais: Yes.

Senator Campbell: As you know, senator, I have huge respect for you. I have huge respect for your background and your knowledge. The question I have to ask is around why we keep referring to this bill as "health and safety." I'm not sure what is unsafe about addiction. From your experience, do you find addicts who are high up in organized crime? Do you find addicts who are importing? I'm talking about the people who are on the street with no visible means of support, except trying to take care of their addiction. Do you think that that is a danger to the public?

[*Translation*]

Senator Dagenais: I do. Thank you for your question, senator. I agree with you that we have to help people who use drugs. Nevertheless, I used to be a police officer, and having visited InSite in Vancouver with my Vancouver police colleagues, I think we need a bill to regulate these sites. Ask people from small communities if they want a place like InSite where they live. I'm not sure they do.

With Bill C-2, we will protect not only users, but also public safety. We also have to consider the safety of people who live near these places. The bill covers all of that. You mentioned my experience. I visited InSite. I think that InSite can indeed provide a service and help drug users, but I can tell you that police forces are worried — as you know, being a former mayor of Vancouver. The bill will ensure that these sites, if more are created, are safe. As I said, the purpose of this bill is to ensure the health and safety of Canadians.

[*English*]

Senator Campbell: Just a clarification. You seem to give the impression that the police forces in Vancouver don't support this. I suppose that probably came from Constable Stamatakis, President of the Canadian Police Association, but I can assure you that his views do not match the views of the police in Vancouver, the City of Vancouver or the Province of British Columbia in any way, shape or form.

Do you honestly believe that you would want to open up a supervised injection site in a small town? Why? Why would you do that? This is the problem we have here. Would you actually think that we would put an injection site in a small Prairie town, for instance, where there are no addicts?

[*Translation*]

Senator Dagenais: Thank you for your question. You mentioned Mr. Stamatakis, whom I know very well.

[*English*]

Senator Campbell: So do I, unfortunately.

[*Translation*]

Senator Dagenais: I also met Chief Chu from Vancouver. I think that the bill has a number of objectives and — I repeat — seeks to protect the health and safety of Canadians. I agree with you that if, for any reason, we had to open a new supervised injection site — and I know that the Mayor of Montreal, Denis Coderre, talked about opening a site — it would not be in a small town. Those who want to open such sites will have to meet strict criteria. The size of the town is not the only consideration. We also need to consider the health and safety of the residents. There will be a bill in place to ensure that any sites that may need to be opened meet strict criteria.

Bills are not perfect. We have to consider the purpose of the bill, and in this case, it is to protect the health of drug users because, unfortunately, we must protect their health and the safety of the people who will have to live near these sites.

[*English*]

Senator Campbell: Thank you, senator. I will take the adjournment in my name.

(On motion of Senator Campbell, debate adjourned.)

SAFE AND ACCOUNTABLE RAIL BILL

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator LeBreton, P.C., for the second reading of Bill C-52, An Act to amend the Canada Transportation Act and the Railway Safety Act.

Hon. Jane Cordy: Honourable senators, I will be speaking using Senator Eggleton's notes, so if you notice that it's Ontario-centric, you will understand.

Honourable senators, I rise today to speak on Bill C-52, An Act to amend the Canada Transportation Act and the Railway Safety Act. I support the intent of this bill. It is a step forward, but I have concerns.

Frankly, the government hasn't stepped up to the plate in the past, and it has not provided the necessary resources to increase rail safety in Canada. Honourable senators, rail safety should be a top priority. We are seeing dramatic increases of hazardous substances being shipped by rail, especially oil. The Railway

Association of Canada reported oil shipments increased from 500 carloads in 2009 to 110,000 in 2014. In five years, that's a huge jump. If a derailment happens, it does not only put the environment at risk, but also people in communities.

The train derailment in Lac-Mégantic is a tragic illustration of this. That derailment destroyed much of the downtown and killed 47 people. They are just now putting the pieces back together.

In the province of Ontario, there have been three train derailments over the past few months. In two of those derailments, tank cars carrying crude oil burst into flames, destroying infrastructure and contaminating the area. Thankfully, these were in remote areas where the damage was not as great.

But rail safety is not only a rural or small-town issue. Toronto has two rail lines that go through the heart of the Greater Toronto Area carrying dangerous substances, including highly flammable crude oil. The lines go through busy commercial and densely populated residential neighbourhoods and could pose a significant risk to the citizens and their communities.

Now, the government will say that they have made rail safety a priority, but their actions bring this into question. From 2010 to 2015, this government cut Transport Canada's budget by 20 per cent. The cuts affect the people who ensure goods are shipped safely across Canada.

In 2013, the Auditor General wrote a scathing report on Transport Canada. He found that the department only conducted 26 per cent of all required rail safety audits — only a quarter. When it came to VIA Rail, which transports 4 million passengers a year, they didn't safety audit them at all — not even once.

The Auditor General also found that the inspections themselves were inadequate. The safety audits didn't inspect the cars or the rail lines. All they looked at were the rail companies' plans. The actual inspection of the lines and cars was left up to the rail companies themselves. That is a major problem.

In a recent derailment of crude oil in Gogama, Ontario, the Transportation Safety Board's preliminary report said that poor track infrastructure probably played a role in the accident. This accident not only destroyed the cars, the track and a bridge, but also leaked crude oil into the local river system, causing environmental harm.

• (1520)

Honourable senators, the Lac-Mégantic tragedy was in July 2013. A few months later, in November, the Auditor General's report came out. Did we see improvement? Was there a dramatic increase in the number of inspectors and safety audits that were done? Regrettably, the answer is no.

Transport Canada's budget has continued to be cut. This year, the government will spend only $34 million on rail safety. Let me put this into perspective. They plan to spend $42 million on the Economic Action Plan advertising — $34 million on rail safety, but $42 million on Economic Action Plan advertising. I guess it tells us where the priorities of this government are. That would be on advertising or vanity videos.

Also, through questioning in the House of Commons, the government admitted to only hiring one additional inspector since 2013. Since the scathing AG report, that's it. Now there are 117 inspectors, but with only one quarter of safety audits being done, and with train derailments happening more often, you would think the government would have invested more. There is no money left after the ads, I guess.

Honourable senators, it is important to know that the government is moving slowly in other areas of rail safety. The government rightly announced new standards for the old DOT-111 cars used in Lac-Mégantic and said they will eventually be replaced. However, the deadline for replacement is in 10 years' time, despite the fact that the Transportation Safety Board said these cars are unsafe, dangerous and should be removed promptly. Unfortunately, the government once again didn't listen.

Honourable senators, I raise these issues because this is the environment the government has created for rail safety in Canada. It also helps place some context around the proposed changes in Bill C-52.

Much of what Bill C-52 is about is creating an insurance scheme in the polluter-pay model. This would require rail companies to have a certain amount of insurance coverage to operate in Canada in case of a derailment. The government has proposed certain insurance levels that different classes of companies are required to have. They said in the technical briefing that this level is based on historical data of payouts.

That level may already be inadequate. During a technical briefing, officials admitted that under the proposed changes, the Montreal, Maine and Atlantic Railway, the rail operator in Lac-Mégantic, would have carried liability coverage of $250 million. That may seem like a lot, but the cost in Lac-Mégantic is already pegged at over $500 million and this cost may still climb. This would certainly not be adequate to pay for the damages.

Also, Lac-Mégantic is a small town. How much would it have cost if the derailment was in Toronto, Montreal, Vancouver, Edmonton or Halifax — our big cities? The costs would be much higher.

For the big rail lanes, CP and CN, the level of insurance under this legislation is pegged at $1 billion. That may seem adequate, but there are reports that these companies actually carry higher insurance coverage already. Why lower the threshold?

Honourable senators, this bill rightfully creates a compensation fund that railway companies have to pay into. However, this compensation fund only applies to oil shipments and not to other dangerous substances and goods. The Federation of Canadian Municipalities and others wondered at committee in the House of Commons why other substances were not included. Will the government listen?

There was a major derailment in Mississauga in 1979 that resulted in over 200,000 residents evacuating their homes. The cars weren't carrying oil; they carried propane and chlorine. This

was the largest peacetime evacuation in North American history. The evacuation from Hurricane Katrina in 2005 only recently topped it. The compensation fund would not have covered the costs of that accident.

What about disaster response? Who are the first to respond? It is firefighters and paramedics, of course. They put their lives in danger to save others. The fire chiefs asked that some of the money from the compensation fund be directed toward training, but the government has yet to heed their call. Why not? Surely some of the money could be used to ensure that first responders — our firefighters and paramedics — get the necessary training they need. These are complicated and difficult responses, and having a well-funded training regimen would make sense.

Honourable senators, there are two other troubling parts that I would like to touch on. The first is that the bill deletes the definition of "fatigue management." Essentially, the current law states that fatigue management should be based on science. Why would this be deleted? Is the government afraid of science? Many would say yes.

Fatigue management is a very big issue. Train operators are working long hours and in difficult conditions. We should use the best knowledge available to direct our regulations. That is now gone.

The second part is that this bill may hurt the environment long term with no recourse. Basically, this bill doesn't allow citizens or groups to sue rail companies if the environment is impacted long term by a derailment. The government would have the sole responsibility for any action taken. It seems that if the government doesn't recognize or prioritize the governmental impact, then that's just too bad. No compensation will be sought.

Honourable senators, rail safety should be a top priority for this government, but clearly the government's record is lacking. This bill is a step forward, but there are some concerns that need to be addressed. I look forward to hearing more at committee.

The Hon. the Speaker *pro tempore*: Are senators ready for the question?

Some Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Martin, bill referred to the Standing Senate Committee on Transport and Communications.)

COMMON SENSE FIREARMS LICENSING BILL

BILL TO AMEND—SECOND READING

Hon. Lynn Beyak moved second reading of Bill C-42, An Act to amend the Firearms Act and the Criminal Code and to make a related amendment and a consequential amendment to other Acts.

She said: Honourable senators, I am pleased to sponsor and speak today on Bill C-42, the Common Sense Firearms Licensing Bill. This legislation would build on the significant actions the government has already taken to combat the criminal use of firearms and to ensure a strong licensing system in Canada. It also continues our balanced approach — one that is helping us to protect the safety of Canadians, while at the same time reducing the administrative burden for law-abiding hunters, farmers and sport shooters.

It's the first time in 20 years that substantial changes would be made to the way we license firearms in Canada. Hunting, fishing, trapping and sport shooting are all a part of our shared Canadian heritage, practised and enjoyed by people from coast to coast, in cities and towns across the country.

• (1530)

Canadians have enjoyed these activities for hundreds of years, and both our native peoples and early settlers depended on hunting, fishing and trapping for food and clothing. Parents passed down their expertise to their children over the generations and it's important that government makes it easy for people of all backgrounds and incomes to participate in and enjoy these pursuits.

How will our legislation make it easier and safer for Canadians? To start, the bill proposes four key changes to the licensing system.

First, it would streamline the licensing system by eliminating the Possession Only Licence and converting all such existing licences to Possession and Acquisition Licences. The PAL, as it is known, is the only licence available today for new firearm owners.

Holders of the Possession Only Licence average about 60 years old today and most have owned firearms, used them and bought ammunition for more than 20 years. They are clearly experienced in the handling and use of firearms, so there is little need to make them go through a whole second certification system just to buy a new hunting rifle.

Second, it would allow licence holders to retain lawful possession of their firearms up to a period of six months beyond the expiry date of their licence without the possibility of criminal sanctions for simply possessing their firearms.

Third, it would make classroom participation in firearms safety training mandatory.

Finally, the bill makes important changes to the authorization to transport when engaged in the routine transport of firearms. Currently, an individual seeking to target shoot with a restricted

firearm must fill out paperwork every time he or she wants to go to the shooting range. This paperwork is then sent to the CFO, where it is filed in a drawer and never seen again. It is not shared with law enforcement and it is not searchable.

Honourable senators, I believe these are common sense improvements to the licensing system that will provide additional clarity for law-abiding firearms owners, all the while protecting the safety of Canadians.

This proposed legislation would also amend the Criminal Code to ensure that the property rights of lawful firearms owners are protected. To this end, the bill would amend the Criminal Code so that it contains a definition of non-restricted firearms, which it currently does not. Moreover, we propose to give the Governor-in-Council the ability to make firearms non-restricted or restricted in appropriate circumstances. This means the elected government will have the final say on classification decisions.

Why is this such an important change? As many have noted, the government already has the power to move firearms to a more restrictive classification, but it does not have the power to specify that a firearm ought to be non-restricted. This gap became abundantly clear on February 25, 2014. That was the day when tens of thousands of Canadians awoke to find out that the Canadian Firearms Program had turned them into criminals by the stroke of a pen.

Unilaterally, without consultation with the minister or any other Canadian, a change had been made to the Firearms Reference Table. There was no legislation, no regulation, not even an order-in-council that authorized this change. There was no way of fixing it, and that is why this bill is so important.

I am pleased to reconfirm, as the Minister of Public Safety has said numerous times, that as soon as this legislation receives Royal Assent, the government will restore the non-restricted classifications of the Swiss Arms and CZ858 families of rifles.

This bill also proposes important changes to the broader firearms controls regime. It would allow for improved information-sharing between the Canada Border Services Agency and the RCMP about the commercial importation of restricted and prohibited firearms into Canada.

This is important because, under current law, when a business imports a restricted or prohibited firearm, they must fill out forms and be checked by the Canadian Border Services Agency on entering the country and then must register the firearms with the police when they are received at the store before they are sold, but no one matches the numbers of firearms imported at the two locations. This is a particular problem in British Columbia and Bill C-42 will allow police and the CBSA to share information.

Bill C-42 would also clarify that the discretionary authority granted to chief firearms officers under the Firearms Act can be limited by regulation. This will help ensure, as appropriate and as needed, that the Canadian Firearms Program is applied fairly across the country.

Finally, consistent with the government's strong commitment to support families and to stand up for victims of crime, we have also proposed a meaningful change that will allow us to better protect victims of domestic violence. Specifically, this bill would amend the Criminal Code to strengthen the provisions prohibiting the possession of weapons, including firearms, when a person is sentenced for an offence involving domestic violence. In this way, we can ensure that the firearms regime is actually targeting those we need to target in the name of public safety — those who have demonstrated that they pose a threat to society, particularly to women and children in their homes.

To conclude, we believe that the measures proposed in this bill are common sense and balanced. Moreover, they will enable us to better protect public safety and, at the same time, alleviate administrative burdens on law-abiding gun owners across the country.

Thank you very much, honourable senators. I look forward to your support.

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, Senator Hervieux-Payette had volunteered to be critic on this bill. She is extremely interested in the subject. Unfortunately, she has to be out of the chamber just now, so she has left me her prepared remarks. For the purposes of this afternoon, I will be the critic of the bill.

I did do some research of my own on the bill and I must tell you that I agree in large measure with her analysis of the content of the bill. It will not surprise those of you who have heard me before on matters concerning gun control that, in general, I'm not in favour of this bill.

I will say that there are some things in it that offer some improvement to the current system, notably the new mandatory prohibition order on possession of firearms, weapons and other articles. That's a lifetime mandatory prohibition order for possession of firearms where violence has been used, threatened or attempted against a current or former intimate partner, child or a parent, or any person who resides with the offender's current or former intimate partner.

As far as I'm concerned, this is basically about domestic violence and I can think of no better field in which to tell an offender that that offender may never again possess a firearm.

I also think it is a good thing that new applicants for Possession and Acquisition Licences will actually be required to go to school for the safety course, rather than just try to beat the odds by taking the test and hoping that they can wing enough answers to get it right. We have to go to school to learn how to drive a car. We should certainly have to go to school to learn how to handle firearms safely.

Now I'm going to turn to Senator Hervieux-Payette's prepared remarks.

[*Translation*]

Please understand that from this moment on, the pronoun "I" refers to Senator Hervieux-Payette.

Honourable senators, I rise today as the critic of Bill C-42, whose short title is the Common Sense Firearms Licensing Act.

However, before I get to the core of my speech, I would like to remind everyone of a terrible tragedy that happened one year ago today. On June 4, 2014, in the city of Moncton, Justin Bourque committed one of the most violent crimes in the history of this country. During an intense manhunt, the young man, who was 24 years old at the time and armed with a pump-action shotgun and a Norinco M305 .308 calibre semi-automatic rifle, shot five RCMP officers. Three of the officers died and two survived.

Justin Bourque had the privilege of owning and purchasing those kinds of weapons.

Honourable senators, today is the day when I must speak to Bill C-42. What a terrible coincidence.

Minister Blaney and the government want to use Bill C-42 to give additional privileges to owners of restricted firearms, like the firearms that Justin Bourque owned and used, while also loosening controls over firearms once again.

• (1540)

I had the opportunity to examine Bill C-42, and I must admit that I was not impressed by Minister Blaney's measures. Since this government took office in 2006, it has developed the very bad habit of weakening gun control measures.

We saw what this government did in 2012 with Bill C-19, which abolished the long gun registry, and now we have Bill C-42, which gives gun owners even more privileges.

Honourable senators, I am disappointed to see that the minister is using simplistic arguments to promote this bill. As he said many times during the very short debates in the other place, Bill C-42 essentially seeks to reward — and I am quoting the minister here — "law-abiding" gun owners by getting rid of "red tape irritants."

When the minister presented his bill to the House of Commons Standing Committee on Public Safety and National Security on Thursday, April 23, 2015, he said, and I quote:

> I consider that a firearms owner who complies with legislation makes the whole context safer. That is why it is important, of course, to remove the irritants.

Must I remind Minister Blaney and this government that we live in Canada and that none of our laws and none of the provisions of our Constitution provide for an inherent right to possess or purchase a firearm?

Must I also remind the minster and the government that the possession and purchase of firearms in Canada is a privilege, not a right? In fact, the Supreme Court of Canada unanimously declared that to be the case in 2005 in *R. v. Wiles*. Justice Charron stated, and I quote:

> . . . possession and use of firearms is not a right or freedom guaranteed under the Charter, but a privilege

As a parliamentarian, I find it appalling that the minister forgot these two important aspects of our legislation and Canadian law regarding firearms when he promoted Bill C-42.

As I mentioned earlier, honourable senators, Bill C-42 essentially gives more privileges to firearm owners, but at what cost?

Contrary to what the minister claims, it is obvious that these privileges constitute a threat to public safety.

Three key points that stood out in my study of Bill C-42 support this conclusion and contradict the minister's claims. They are:

- first, the changes to how licences are issued;
- second, the weakening of controls over restricted firearms, including handguns; and
- third, the increase in cabinet's decision-making power over the classification of firearms.

There is no doubt that the changes Bill C-42 makes to how licences are issued undermine the notion of public safety.

One of the changes that really concerns me pertains to the automatic renewal of all licences to possess or acquire a firearm, for all classes of firearms, including prohibited firearms.

Honourable senators, if this measure passes, there will no longer be any screening for risk factors for violence and suicide. As a result, there will be an increased risk of dangerous people having access to firearms.

This measure is of no benefit to Canadians, especially Canadian women. A significant number of the men who kill their spouses have a criminal record or a history of psychiatric treatment.

Another worrisome realization: the Office of the Chief Coroner for Ontario said in its *Domestic Violence Death Review Committee 2002 Annual Report* that access to firearms is among the five to ten primary risk factors in domestic violence deaths for women.

Allowing all permits to be renewed automatically could also increase suicide risk factors. We all know that suicide remains a scourge among our youth. The minister and the government are ignoring that sad reality and are thereby compromising the safety of those young people by passing bills like Bill C-42.

Secondly, Bill C-42 obviously encourages relaxed controls of restricted firearms, which includes handguns and other dangerous guns.

For example, Minister Blaney proposes that restrictions no longer be imposed on permit holders when they transport their firearms within their home province. Bill C-42 is abolishing authorizations to transport by automatically including them in possession and acquisition licences for restricted firearms.

This measure is serious, honourable senators, since it encourages the free movement of dangerous firearms within our provinces without any authority having knowledge of it.

In other words, repealing the authorizations to transport would allow people who own handguns and semi-automatic firearms, like the ones used during the massacres at the Polytechnique, Dawson College, and in Moncton, to transport them freely at all times.

It is obvious that if we encourage the circulation of firearms, we are also fostering an increase in the homicide rate.

Since the minister and the government are increasingly looking to the U.S. firearms system as a model, I hope that comparing a few statistics on the death and homicide rates in the United States and Canada will convince them that relaxing gun control has devastating consequences and does not ensure the safety of Canadians at all.

First of all, honourable senators, did you know that the firearm death rate in the United States — a country with very weak gun controls — was 10.3 per 100,000 population in 2011? That represents 32,163 deaths according to the *National Vital Statistic Reports* from the U.S. Department of Health and Human Services. That would be the number of deaths if 20 towers, like those of the World Trade Center, were to collapse every year in the United States. There were 2,977 victims on September 11, 2001. In Canada, firearm deaths for the same year, 2011, totalled 679, or 1.9 per 100,000 population. That's 1.9 here versus 10.3 in the U.S. Thank you Canadian legislation and jurisprudence.

In 2012, the non-firearm homicide rate in the United States was 1.33 per 100,000 population, according to the FBI, whereas in Canada it was 1.07 per 100,000, according to Statistics Canada. That was the non-firearm homicide rate. The rates are more or less comparable.

That same year, the firearm homicide rate in the U.S. was 3 per 100,000 population, which is six times higher than our firearm homicide rate, or 0.49 per 100,000 population.

• (1550)

These statistics are even more shocking when we compare the handgun homicide rate in the United States in 2012, which was 2.16 per 100,000 population, to that of Canada, which was 0.31 per 100,000 population. That is seven times higher than the Canadian rate.

The rate is therefore six and seven times higher there. Given those numbers, any right-thinking, reasonable, moderately intelligent person can easily see that the weaker gun control laws are, the greater the risk of homicide. It is sad but true.

Why do the minister and the government not trust Canadians? Why are they so zealously pursuing their crusade against gun control policies? The third key point of my speech may be the answer to that question.

Honourable senators, Bill C-42 is one of the most worrisome measures that the minister and the government are trying to implement. Bill C-42 gives the cabinet a significant amount of authority — the final decision-making authority — over the classification of firearms.

However, I would like to clarify one thing. Right now, the Criminal Code gives the cabinet some authority in this regard, but it is different than the authority proposed in Bill C-42.

The only decision-making authority that the cabinet currently holds with regard to the classification of firearms is the authority to change the classification of a weapon to put it in a more restrictive category. That is essentially what is set out in the Criminal Code right now.

With Bill C-42, the minister wants to give the cabinet decision-making power that would allow the government to unilaterally declassify a weapon and make it more accessible. The minister would be authorized to change the classification of a restricted firearm to make it non-restricted. Let us not be naïve. This change coincides with the difficulty the minister is having satisfying the pro-gun lobby in the Swiss Arms affair under the existing legislation. This issues dates back to the winter of 2014, when the RCMP decided to ban Swiss Arms rifles following an investigation. However, under pressure from lobbyists, who disagreed with the RCMP's decision, the minister decided to order an amnesty for owners of this kind of gun since he was unable to declassify the weapon by law. This political decision contradicted the RCMP, not Liberal do-gooders. The RCMP did not want to declassify Swiss Arms rifles, so the minister's decision contradicted the RCMP and put Canadians' safety at risk.

This power is very troubling, particularly because this government is opening the doors of the Langevin building wider and wider to pro-gun groups. Honourable senators, it is completely false and illusory to pretend that Bill C-42 is meant to protect the lives of Canadians. The three key points that I just outlined demonstrate that Bill C-42 is nothing more than a Conservative pre-election measure meant only to serve the interests of one specific group, while putting the public safety of Canadians at risk.

That is why, honourable senators, I oppose Bill C-42 and I invite you to vote against it.

Thank you.

[*English*]

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

Some Hon. Senators: Question.

The Hon. the Speaker *pro tempore*: It was moved by the Honourable Senator Beyak, seconded by the Honourable Senator Enverga, that this bill be read the second time.

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 *pro tempore*: Honourable senators, when shall this bill be read the third time?

(On motion of Senator Beyak, bill referred to Standing Senate Committee on Legal and Constitutional Affairs.)

ANTI-TERRORISM BILL, 2015

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

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of June 3, 2015, moved:

> That, pursuant to rule 7-2, not more than a further six hours of debate be allocated for consideration at third 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, Bill C-51 is an important bill that 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.

I want to remind all honourable senators that not only have many of our colleagues already spoken at third reading, but also there has been considerable examination of this bill to date. While the bill was still in the other house, it was pre-studied by the Standing Senate Committee on National Security and Defence, which heard from 38 witnesses.

After our second reading debate, the Standing Senate Committee on National Security and Defence then completed a study on the bill. It heard from 20 witnesses before completing clause-by-clause consideration.

Bill C-51 remains a priority for our government. Adoption of this motion will ensure an efficient and timely debate of Bill C-51 at this final stage.

During discussion at scroll, 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. By passing this motion and subsequently adopting Bill C-51, we are better protecting Canadians from terrorist threats, which is the first duty of any government.

Thank you.

Some Hon. Senators: Hear, hear.

Hon. Joan Fraser (Deputy Leader of the Opposition): This whole business of recourse to time allocation is becoming a travesty in this chamber, and it is making a travesty of this chamber.

Some Hon. Senators: Hear, hear.

Senator Fraser: Time allocation is a tool that is on the rule books for good reason. There are occasions when it is in fact urgent to pass a given bill, or when opponents of the bill have put up such systematic obstruction that the government has basically no option but to bring in what amounts to closure.

Neither of those things is true in this case. It is not urgent. We understand that the government wants the bill before we rise for summer, but we're not rising for summer today or next week or, by my bet, the week after that. I figure we're here for at least three more weeks.

This bill could receive normal debate and then, thanks to the government's control of the majority of votes in the Senate, unfortunately, from my point of view, be passed into law without having to use time allocation.

• (1600)

Instead, here we go again. It is true that some senators have spoken to the bill, but many more want to. At least eight are working hard to get it done this afternoon. In a number of cases that is creating considerable difficulty for those senators.

There are others who would have spoken next week, if they hadn't been deprived of the opportunity, and for what reason? For the convenience, for the feel-goodness of the government. That's not a good reason. That's not a sufficient reason.

I urge colleagues to vote against this motion.

Hon. Joseph A. Day: Honourable senators, on this issue of time allocation, I want to clarify the record a bit. We did do a pre-study. But what we did was a pre-study of the previous bill. It

was the bill before it was amended in the House of Commons. That's the danger of doing a pre-study here in this chamber: We tend to put all our time and effort into studying something that ultimately doesn't come here as the bill for sober second thought.

That's exactly what happened in this case. If we want to be exact with respect to the statistics that my honourable colleague gave, we spent one day on this bill. One day on this bill. Then we brought it back here. We cooperated when we got the bill here in the chamber so that we could have it for the Monday to deal with it. Then we spent one day in hearings on this bill, and then it's back here again. Now we're being asked to give up an opportunity to debate this.

Closure is unnecessary. There has been full cooperation with respect to this, and as my honourable colleague Senator Fraser has said, there has been no indication that this bill has to be done today and not in the next three weeks. We know we're going to be here for the next three weeks, so why couldn't we just continue our debate, let honourable senators consider the amendments that were made in the other place, and then we would cooperatively pass this bill into law? Thank you, honourable senators.

Hon. Anne C. Cools: Honourable senators, I would like to say just a few words in the debate on closure. I have a strange feeling that I am having to be repetitive and having to repeat, as if to children or to my dog, again and again, for the dog to get it: repetition.

Colleagues, closure motions are known to be throwing the chamber or the house into a state of dictatorship. They are supposed to be used rarely, and when used, used for very good and serious reasons. Those reasons are, one, that the measure itself is urgently required by the public for the public good, and two, it can only be used in situations when the opposition has been involved in sustained and prolonged obstruction of the passage of a government measure that is urgently needed by the public for the public good. I repeat: long and sustained.

Colleagues, this Senate does not know what a long and sustained opposition is.

Some Hon. Senators: Hear, hear.

Senator Cools: In the last many years, there's not been one. Sustained opposition is not two or three weeks. It's sustained and prolonged.

Finally — and this is going to be a very serious question, and the government has to address it — such motions are intended to be moved only by ministers of the Crown. It is a privilege that belongs to a minister of the Crown. This house has no ministers of the Crown in it. No one in this house is qualified and privileged to be able to move such a motion.

This thing is getting out of hand because this Senate cannot keep operating in this area of grey illegality. The rule is that a minister of the Crown can use these motions because it is urgently needed for the public.

I have said this — this is about the fourth time, in the last few years — and the use of these motions — closure, disclosure, time allocation, or whatever you want to call them — has become habitual. They are these supposed to be used in exceptional circumstances. I do not think this is an exceptional circumstance.

I think some of the supporters of the government over there should prevail upon the Prime Minister to make someone in this Senate a minister, if you want to use these motions. In the absence of that, I propose that some bold and learned senator move an address soon to ask the Governor General to make a senator a minister of the Crown so that the wishes of the Crown can be properly expressed in this chamber. Thank you.

Hon. Daniel Lang: Colleagues I wasn't going to rise to speak to the closure motion, but I think it's important to perhaps correct the record.

First of all, in respect to the deliberation of the bill before you, Bill C-51, we had, as a Standing Committee on National Security and Defence, six weeks of hearings. We had a total of 63 witnesses. So we had clear and well-thought-out committee hearings for the purposes of the deliberation of the bill. The member from New Brunswick raises the point that formerly within the house we had only one particular meeting for the purpose of this bill. The point I'm making is that we had a better hearing process, in my judgment, than they did, quite frankly, in the other place. I think we would all agree with that as members of the committee.

Secondly, I just want to make this point with respect to the bill that we're dealing with and the seriousness of the bill that we're being asked to vote on, hopefully later today: This bill contains provisions that, had our present legislation in place had them — might well have prevented the death of Warrant Officer Patrice Vincent in Quebec. This bill does lower the thresholds required for both our intelligence community and our law enforcement community to bring very serious and immediate situations to the court to be dealt with expeditiously.

No one in this place can say whether an incident like this is going to happen tomorrow, but it could well happen tomorrow. There is nothing preventing it from happening. To diminish that and say that we could sit here for another month, for the purposes of the deliberation of this bill, I think, quite frankly, could even be referred to as irresponsible. The other point I would —

Senator Moore: Fear mongering? What is this?

Senator Lang: Rudeness is something that seems to be commonplace sometimes.

Senator Cordy: Fear mongering.

Senator Lang: To conclude what I am saying, with respect to the bill before us, with respect to the deliberations by this house and our committee, we have been dealing with the issue of terrorism on a week-to-week basis since October — in fact, since that fateful day when we lost Warrant Officer Vincent. The seriousness of the issues that face us as a society, as a country, cannot be understated.

I say to you it is important. I say to my colleague, Senator Cools, that this is in the public interest. It is a bill that has had due consideration for the purposes of scrutiny, and I believe our observations point that out, if members take the time to read what was presented to this house as the results of our committee hearings.

I want to prevail on all members to look at this bill from the perspective of the general well-being and security of this country. The sooner it's passed and given Royal Assent, it will give the tools to our intelligence community and our law enforcement agencies that are required to be able to do the job we're asking them to do.

• (1610)

Hon. Mobina S. B. Jaffer: Honourable senators, I was not going to stand and speak to this motion, but I want to put a question to you: What is the seriousness? The seriousness is that people's rights are going to be denied. That's not the Canada I know. It is very important that we have a complete discussion on these issues.

When the pre-study was being set, I was clearly comforted by my deputy leader that we would have more extensive studies when the bill came to committee. We had one day of hearings. We didn't have one Muslim witness from a community that is going to be most affected by this bill. Not one Muslim witness to say how the community will be affected.

Honourable senators, the seriousness is: The rights of people are going to be affected. We need to debate this longer than the six hours we are being asked to do.

Some Hon. Senators: Hear, hear.

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

Some Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker *pro tempore*: Call in the senators.

Do the whips have advice as to the length of the bell?

The bells will ring for 30 minutes. The vote will be at 4:42 p.m.

• (1640)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	McIntyre
Ataullahjan	Meredith
Batters	Mockler
Bellemare	Nancy Ruth
Beyak	Neufeld
Black	Ogilvie
Carignan	Oh
Dagenais	Patterson
Doyle	Plett
Eaton	Raine
Enverga	Rivard
Fortin-Duplessis	Runciman
Frum	Seidman
Gerstein	Smith (*Saurel*)
Greene	Stewart Olsen
Lang	Tannas
LeBreton	Tkachuk
MacDonald	Unger
Maltais	Wallace
Manning	Wells
Marshall	White—42

NAYS
THE HONOURABLE SENATORS

Chaput	Jaffer
Cools	Lovelace Nicholas
Cordy	Mitchell
Cowan	Moore
Day	Munson
Downe	Ringuette
Dyck	Sibbeston
Fraser	Tardif—17
Furey	

• (1650)

BILL TO AMEND—THIRD READING—MOTIONS IN AMENDMENT NEGATIVED—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Boisvenu, for the third 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;

And on the motion in amendment of the Honourable Senator Mitchell, seconded by the Honourable Senator Lovelace Nicholas, that the bill be not now read a third time, but that it be amended

(*a*) in clause 2, on page 5:

(i) by adding after line 15 the following:

"(1.1) Each Government of Canada institution that discloses information under subsection (1) must do so in accordance with clearly established policies respecting screening for relevance, reliability and accuracy of the information.", and

(ii) by adding after line 18 the following:

"(3) Prior to disclosing information under this section, the Government of Canada institution must enter into a written arrangement with the recipient Government of Canada institution specifying principles governing information sharing between the Government of Canada institutions.

(4) The written arrangement entered into pursuant to subsection (3) must be consistent with the principles enumerated in section 4, and include provisions respecting the circumstances under which shared information is retained and destroyed, the confirmation of the reliability of the shared information and future use of the shared information.

(5) The Government of Canada institution must

(*a*) notify the Privacy Commissioner of any written arrangement into which the institution plans to enter; and

(*b*) give reasonable time to the Privacy Commissioner to make observations.

(6) A copy of any written arrangement entered into pursuant to subsection (3) must be provided to the Privacy Commissioner.";

(*b*) in clause 6,

(i) on page 8, by replacing line 31 with the following:

"**6. The portion of subsection 241(9) of**", and

(ii) on page 9,

(A) by replacing line 2 with the following:

"(*b*) designated taxpayer information, if there are reason-", and

(B) by deleting lines 19 to 21;

(*c*) in clause 42, on page 49,

(i) by replacing lines 21 to 23 with the following:

"measures will be contrary to", and

(ii) by replacing line 29 with the following:

"enforcement power or authorizes the Service to take measures that will contravene a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms*.";

(*d*) in clause 50, on page 55, by replacing line 1with the following:

"**50. (1) Paragraph 38(1)(*a*) of the Act is amended by striking out "and" at the end of subparagraph (vi), by adding "and" at the end of subparagraph (vii) and by adding the following after subparagraph (vii):**

(viii) to review the use, retention and further disclosure of any information disclosed by the Service to a Government of Canada institution, as defined in section 2 of the *Security of Canada Information Sharing Act*, or to the government of a foreign state or an institution thereof or an international organization of states or an institution thereof;

(2) Section 38 of the Act is amended by";

(*e*) on page 55, by adding after line 8 the following:

"**50.1 Subsection 39(2) of the Act is amended by striking out "and" at the end of paragraph (*a*), and by adding the following after paragraph (*b*):**

(*c*) during any review referred to in paragraph 38(1)(*a*)(viii), to have access to any information under the control of the Government of Canada institution concerned that is relevant to the review; and

(*d*) during any review referred to in paragraph 38(1)(*a*)(viii), to have access to any information under the control of the government of a foreign state or an institution thereof or an international organization of states or an institution thereof that the government, international organization or institution consents, upon request by the Review Committee, to disclose any information that is relevant to the review.

50.2 The Act is amended by adding the following after section 39:

39.1 (1) If on reasonable grounds the Review Committee believes it necessary for the performance of any of its functions under this Act, those of the Commissioner of the Communications Security Establishment under the *National Defence Act*, those of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police under the *Royal Canadian Mounted Police Act* or those of the Privacy Commissioner under the *Privacy Act*, the Review Committee may convey any information that it itself is empowered to obtain and possess under this Act to

(*a*) the Commissioner of the Communications Security Establishment;

(*b*) the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police; or

(*c*) the Privacy Commissioner.

(2) Before conveying any information referred to in subsection (1), the Review Committee must notify the Director and give reasonable time for the Director to make submissions.

(3) In the event that the Director objects to the sharing of information under this section, the Review Committee may decline to share the information if persuaded on reasonable grounds that the sharing of the information would seriously injure the Service's performance of its duties and functions under this Act.

(4) If the Review Committee dismisses the Director's objection, the Director may apply to a judge within 10 days for an order staying the information sharing.

(5) A judge may issue the stay order referred to in subsection (4) if persuaded on reasonable grounds that the sharing of the information at issue under this section would seriously injure the Service's performance of its duties and functions under this Act.

(6) At any time, the Review Committee may apply to a judge for a lifting of any stay issued under subsection (5) on the basis of changed circumstances.

(7) For greater certainty, the Review Committee may request information it believes necessary for the performance of any of its duties and functions under this Act from the Commissioner of the Communications Security Establishment, the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police or the Privacy Commissioner.";

(*f*) on page 55, by adding after line 16 the following:

"**51.1 The Act is amended by adding the following after section 55:**

PART III.1

SECURITY OVERSIGHT COMMITTEE OF PARLIAMENT

55.1 (1) There is established a committee, to be known as the Security Oversight Committee of Parliament, which is to be composed of members of both Houses of Parliament who are not ministers of the Crown or parliamentary secretaries.

(2) Subject to subsection (3), the Committee is to be composed of eight members, of whom four must be members of the Senate and four must be members of the House of Commons, and it shall include at least one member of each of the parties recognized in the Senate and in the House of Commons.

(3) If either of the two Houses of Parliament has more than four recognized parties, the committee membership must increase to include at least one member of each of the parties recognized in the Senate and in the House of Commons and to maintain an equal number of members of the Senate and members of the House of Commons.

(4) Members of the Committee must be appointed by the Governor in Council and hold office during pleasure until the dissolution of Parliament following their appointment.

(5) A member of either House belonging to an opposition party recognized in that House may only be appointed as a member of the Committee after consultation with the leader of that party.

(6) A member of either House may only be appointed as a member of the Committee after approval of the appointment by resolution of that House.

(7) A member of the Committee ceases to be a member on appointment as a minister of the Crown or parliamentary secretary or on ceasing to be a member of the Senate or the House of Commons.

(8) Every member of the Committee and every person engaged by it must, before commencing the duties of office, take an oath of secrecy and must comply with the oath both during and after their term of appointment or employment.

(9) For purposes of the *Security of Information Act*, every member of the Committee and every person engaged by it is a person permanently bound to secrecy.

(10) Despite any other Act of Parliament, members of the Committee may not claim immunity based on parliamentary privilege for the use or communication of information that comes into their possession or knowledge in their capacity as members of the Committee.

(11) Meetings of the Committee must be held in camera whenever a majority of members present considers it necessary for the Committee to do so.

(12) The mandate of the Committee is to review the activities of the Service and the legislative, regulatory, policy and administrative framework under which the Service operates, and to report annually to each House of Parliament on the reviews conducted by the Committee.

(13) The Committee has the power to summon before it any witnesses, and to require them to

(*a*) give evidence orally or in writing, and on oath or, if they are persons entitled to affirm in civil matters, on solemn affirmation; and

(*b*) produce such documents and things as the Committee deems requisite for the performance of its duties and functions.

(14) Despite any other Act of Parliament or any privilege under the law of evidence, but subject to subsection (15), the Committee is entitled to have access to any information under the control of federal departments and agencies that relates to the performance of the duties and functions of the Committee and to receive from their employees such information, reports and explanations as the Committee deems necessary for the performance of its duties and functions.

(15) No information described in subsection (14), other than a confidence of the Queen's Privy Council for Canada in respect of which subsection 39(1) of the *Canada Evidence Act* applies, may be withheld from the Committee on any grounds.

(16) The annual report required under subsection (12) shall be submitted to the Speakers of the Senate and the House of Commons, and the Speakers shall lay it before their respective Houses on any of the next 15 days on which that House is sitting after the Speaker receives the report.

(17) In this section, "Committee" means the Security Oversight Committee of Parliament established by subsection (1).

Related Amendments

National Defence Act

51.2 The *National Defence Act* is amended by adding the following after section 273.64:

273.641 (1) If on reasonable grounds the Commissioner believes it necessary for the performance of any of the Commissioner's functions under this Act, those of the Security Intelligence Review Committee under the *Canadian Security Intelligence Service Act*, those of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police under the *Royal Canadian Mounted Police Act* or those of the Privacy Commissioner under the *Privacy Act*, the Commissioner may convey any information that the Commissioner is empowered to obtain and possess under this Act to

(*a*) the Security Intelligence Review Committee;

(*b*) the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police; or

(*c*) the Privacy Commissioner.

(2) Before conveying any information referred to in subsection (1), the Commissioner must notify the Chief and give reasonable time for the Chief to make submissions.

(3) In the event that the Chief objects to the sharing of information under this section, the Commissioner may decline to share the information if persuaded on reasonable grounds that the sharing of the information would seriously injure the Establishment's performance of its duties and functions under this Act.

(4) If the Commissioner dismisses the Chief's objection, the Chief may apply within 10 days to a judge designated under section 2 of the *Canadian Security Intelligence Service Act* for an order staying the information sharing.

(5) The judge may issue the stay order referred to in subsection (4) if persuaded on reasonable grounds that the sharing of the information at issue in the application would seriously injure the Establishment's performance of its duties and functions under this Act.

(6) At any time, the Commissioner may apply to a judge for a lifting of any stay issued under subsection (5) on the basis of changed circumstances.

(7) For greater certainty, the Commissioner may request information the Commissioner believes necessary for the performance of any of the Commissioner's functions under this Act from the Security Intelligence Review Committee, the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police or the Privacy Commissioner.

Royal Canadian Mounted Police Act

51.3 The *Royal Canadian Mounted Police Act* is amended by adding the following after section 45.47:

45.471 (1) Despite any other provision in this Act, if on reasonable grounds the Commission believes it necessary for the performance of any of its functions under this Act, those of the Security Intelligence Review Committee under the *Canadian Security Intelligence Service Act*, those of the Commissioner of the Communications Security Establishment under the *National Defence Act*, or those of the Privacy Commissioner under the *Privacy Act*, the Commission may convey any information that it itself is empowered to obtain and possess under this Act to

(*a*) the Commissioner of the Communications Security Establishment;

(*b*) the Security Intelligence Review Committee; or

(*c*) the Privacy Commissioner.

(2) Before conveying any information referred to in subsection (1), the Commission must notify the Commissioner and give reasonable time for the Commissioner to make submissions.

(3) In the event that the Commissioner objects to the sharing of information under this section, the Commission may decline to share the information if persuaded on reasonable grounds that the sharing of the information would seriously injure the Force's performance of its duties and functions under this Act.

(4) If the Commission dismisses the Commissioner's objection, the Commissioner may apply within 10 days to a judge designated under section 2 of the *Canadian Security Intelligence Service Act* for an order staying the information sharing.

(5) The judge may issue the stay order referred to in subsection (4) if persuaded on reasonable grounds that the sharing of the information at issue in the application would seriously injure the Force's performance of its duties and functions under this Act.

(6) At any time, the Commission may apply to a judge for a lifting of any stay issued under subsection (5) on the basis of changed circumstances.

(7) For greater certainty, the Commission may request information it believes necessary for the performance of any of its functions under this Act from the Commissioner of the Communications Security Establishment, the Security Intelligence Review Committee or the Privacy Commissioner.

Privacy Act

51.4 The *Privacy Act* is amended by adding the following after section 34:

34.1 (1) Despite any other provision in this Act, if on reasonable grounds the Commissioner believes it necessary for the performance of any of the Privacy Commissioner's functions under this Act, those of the Security Intelligence Review Committee under the *Canadian Security Intelligence Service Act*, those of the Commissioner of the Communications Security Establishment under the *National Defence Act* or those of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police under the *Royal Canadian Mounted Police Act*, the Privacy Commissioner may convey any information that it itself is empowered to obtain and possess under this Act to

(*a*) the Commissioner of the Communications Security Establishment;

(*b*) the Security Intelligence Review Committee; or

(*c*) the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police.

(2) Before conveying any information referred to in subsection (1), the Privacy Commissioner must notify the head of the government institution and give reasonable time for the head to make submissions.

(3) In the event that the head objects to the sharing of information under this section, the Privacy Commissioner may decline to share the information if persuaded on reasonable grounds that the sharing of the information would seriously injure the government institution's performance of its duties and functions.

(4) If the Privacy Commissioner dismisses the head's objection, the head may apply within 10 days to a judge designated under section 2 of the *Canadian Security Intelligence Service Act* for an order staying the information sharing.

(5) The judge may issue the stay order referred to in subsection (4) if persuaded on reasonable grounds that the sharing of the information would seriously injure the government institution's performance of its duties and functions.

(6) At any time, the Privacy Commissioner may apply to a judge for a lifting of any stay issued under subsection (5) on the basis of changed circumstances.

(7) For greater certainty, the Privacy Commissioner may request information it believes necessary for the performance of any of its functions under this Act from the Commissioner of the Communications Security Establishment, the Security Intelligence Review Committee or the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police.";

(*g*) in clause 57, on page 57, by deleting lines 4 to 33; and

(*h*) in clause 59, on page 57, by replacing line 43 with the following:

"**85.4** (1) The";

And on the motion in amendment of the Honourable Senator Jaffer, seconded by the Honourable Senator Fraser, that the bill be not now read a third time, but that it be amended in clause 16,

(*a*) on page 25, by replacing lines 36 to 41 with the following:

"nicating statements, wilfully advocates or promotes the carrying out of a terrorist activity for the purpose of inciting an act or omission that would be a terrorism offence — other than an offence under this section — "; and

(*b*) on page 26,

(i) by deleting line 1, and

(ii) by adding after line 4 the following:

"(1.1) No person shall be convicted of an offence under subsection (1)

(*a*) if the person establishes that the statements communicated were true;

(*b*) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text; or

(*c*) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds the person believed them to be true.";

And on the motion in amendment of the Honourable Senator Fraser, seconded by the Honourable Senator Munson, that the bill be not now read a third time but that it be amended in clause 2, on page 3, by adding, after line 43, the following:

"**2.1.** For greater certainty, nothing in this Act or the regulations is to be construed so as to abrogate or derogate from any existing Aboriginal or treaty rights of the Aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.

Hon. Lillian Eva Dyck: Honourable senators, I rise today to speak to Bill C-51, the Anti-terrorism Act, 2015. We heard just a few moments ago how the bill creates the right balance and that we should deal with it today because we have satisfied Canadians by having enough witnesses. However, when we walk into the Reading Room, what do we see on the television but that there is great concern by the public about Bill C-51 and how it's trampling upon their rights and privacy rights?

It is a highly contentious bill which I think we should have spent more time debating in the chamber.

Also, each and every one of us received hundreds and hundreds of emails from people across Canada. Each of us has been targeted by the provinces or territories that we represent that we should stop passage of this bill. We have received hundreds if not over a thousand email messages from Canadians urging us to prevent this.

Even today, in the *Toronto Star*, Ed Broadbent wrote an article on Bill C-51 and I'm going to quote from it. Even today he's saying that Canadians should exhort us not to pass Bill C-51, that it is not too late and that we should continue to pressure for this bill not to be passed. He said:

> At the onset of the debate former Saskatchewan premier Roy Romanow and I called on Parliament to reject the bill. We argued that C-51 threatened our civil rights, and placed the very protections guaranteed by the Charter under the shadow of wider powers to interfere with lawful and legitimate conduct. Further, we pointed out that the bill in itself did not protect us from terrorism. We recognized that terrorism demands a serious, sustained and effective response. The bill did not do this, but it does undermine the rights of Canadians.

That's Ed Broadbent speaking. He continued:

> Vague definitions in the text of C-51 open up troubling questions with regard to who can be targeted, and what might be censored under the new bill. For example, the bill seeks to counter not only "terrorism" but what it describes broadly as "threats to the security of Canada." How broadly will "threats" to Canada's "security" be defined?

My colleague Senator Mitchell introduced amendments to the bill to address the concerns expressed to us by hundreds of Canadians about erosion of their Charter rights. He wants to

amend clause 42 to prohibit any warranting that would break the Charter. This is an issue that is very important to Canadians and that's why they are continuing at this very moment to email us and to ask us to stop the bill.

In the testimony before the House of Commons Standing Committee on Public Safety and National Security on March 23, our former colleague, former Senator Hugh Segal, said:

> Accountability on the part of our security services to the whole of Parliament is not needless red tape or excessive bureaucracy. In fact, it is the democratic countervail to the kind of red tape and bureaucracy which might unwittingly lose sight of the security mission appropriate to a parliamentary democracy, where laws and constitutional protections such as the presumption of innocence and due process must protect all citizens without regard to ethnicity or national origin.

That's particularly important because he's pointing out that we have Canadians who are minorities who may be targeted unfairly by this bill.

We all received a letter from the Civil Liberties Association, signed by Sukanya Pillay, Executive Director and General Counsel, which states:

> There would be an exceptional increase in mass information sharing flow across governmental agencies and institutions, and with foreign powers and actors, without adherence to legal safeguard or accountability mechanisms, and without a demonstrable security benefit. Privacy rights would be severely undermined — all in the name of an extraordinarily broad description of "activities that undermine the security of Canada."

Again, it is referencing the fact that we do not have good definitions of what these activities that undermine the security of Canada could or will be.

In her speech yesterday, Senator Jaffer raised concerns about systemic discrimination. She said:

> . . . we can no longer deny that for many Canadians discrimination in many forms has become part of everyday life. Our policy of multiculturalism is one of the most advanced in the world. Yet, simply including multiculturalism in our Charter is not enough. To combat systemic discrimination, the spirit of multiculturalism must run through every policy that we make. This includes how Canadians are policed.

As you know, colleagues, the Truth and Reconciliation Commission released the summary of its final report on its work on Indian residential schools this week. The commission's report verifies the annual reports from Howard Sapers, Correctional Investigator. His reports document the shockingly high overrepresentation of Aboriginal peoples in federal prisons. This overrepresentation is one facet of systemic discrimination against Aboriginal people.

While Aboriginal people make up only 4 percent of the Canadian population as of February 2013, they made up 23 percent of the federal inmate population. Aboriginal women are even more overrepresented than Aboriginal men in the federal correctional system, representing 34 per cent of all federally sentenced women in Canada. These figures document the discrimination that occurs already within our criminal justice system toward Aboriginal people, let alone what might happen to them if we enact Bill C-51.

According to Justice Sinclair:

> The causes of the over-incarceration of Aboriginal people are complex. The convictions of Aboriginal offenders frequently result from interplay of factors, including the intergenerational legacy of residential schools. Aboriginal overrepresentation in prison represents a systemic bias in the Canadian justice system.

Colleagues, systemic bias or racism is part of the culture of the justice system already. Already Aboriginal people are racially profiled. There is no doubt that under the provisions of Bill C-51 Aboriginal people will continue to be viewed unfairly compared to Euro Canadians. Systemic bias or racism towards Aboriginal people is part of Canadian culture. This week Justice Sinclair explained clearly why this is so. He said:

> . . . at the same time that Aboriginal people were being demeaned in the schools and their culture and language were being taken away from them and they were being told that they were inferior, they were pagans, that they were heathens and savages and that they were unworthy of being respected — that very same message was being given to the non-Aboriginal children in the public schools as well. As a result, many generations of non-Aboriginal Canadians have had those perceptions of Aboriginal people "tainted."

Justice Sinclair is diplomatic. He used the word "tainted," where others would have said "racist."

Honourable senators, in my second reading speech I outlined how the RCMP are already targeting and monitoring Aboriginal protests and how, in their internal reports, the RCMP have taken what can be called a discriminatory or racist stance by prejudging Aboriginal protesters as violent or extremists.

The January 2014 internal RCMP report entitled *Criminal Threats to the Canadian Petroleum Industry* states that:

> . . . extremists advocate the use of arson, firearms, and improvised explosive devices. And some factions . . . have aligned themselves with violent Aboriginal extremists.

They have said this when there is no evidence proving that that is true. It is a preconception, a prejudging.

This document and other documents reveal how easily Canadian authorities, such as the police, the RCMP and the security officials, assume the possibility of violence when it comes to monitoring First Nation demonstrators. First Nation demonstrators are seen in a light that they are more violent than they really are in the real world.

• (1700)

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. The word "protest" is not defined within the bill. Protest is often a way by which all Canadians and Aboriginal Canadians try to assert their rights and try to convince people that their rights need to be recognized.

Aboriginal people, as well as hundreds of thousands of other Canadians, are concerned about Bill C-51 and about erosion of their rights, while Aboriginal people are concerned about erosion of their constitutionally protected Aboriginal and treaty rights. The National Chief of the Assembly of First Nations, Perry Bellegarde, has said he's worried about the unjust labelling of First Nation activists as terrorists. He said that Bill C-51 could potentially be used to further oppress defence of Aboriginal rights and titles. Similarly, 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.

Honourable senators, Senator Jaffer has told us that the committee did not hear from a single Muslim witness. The committee also did not hear from a single national or regional Aboriginal chief.

Senator Munson: What a shame.

Senator Dyck: They heard from Pamela Palmater. She's not a chief and not a leader. How can we pass this bill when the Aboriginal leaders have not had a chance to put their case forward as to how this bill will affect them? Chief Bellegarde may have been invited. Maybe he couldn't make the timeline. Why could we not wait until he could appear? Why could we not have a national or a regional Aboriginal leader speak?

Senator Fraser: All good questions.

Senator Munson: They do it for ministers.

Senator Dyck: Absolutely. They are sovereign nations. Their viewpoint should have been taken into consideration.

We all know that all Canadians are concerned about Bill C-51. It is on the news daily. We're getting emails daily, every minute, on our email system asking us to do our job as senators. Not calling a single Muslim witness and not calling recognized Aboriginal leaders, such as National Chief Bellegarde or Chief Phillip, shows that the committee did not do a thorough job, did not do a thorough review of the bill, because they should have appeared. It is just not right not to have them on the witness list.

The committee should have considered including an amendment that my colleague Senator Fraser put on the agenda yesterday, a non-derogation clause that would have protected the constitutionally recognized Aboriginal and treaty rights of Aboriginal peoples in Canada. It would not have taken away from the rest of the bill. That would have been the right thing to do. That was not done. We have the amendment to consider. It should be passed. Unless that is passed, I do not support this bill.

Hon. Bob Runciman: Honourable senators, I would like to respond briefly to the amendments proposed by Senator Mitchell and Senator Jaffer.

I have taken a look at Senator Mitchell's proposed amendments to Part 1 of Bill C-51, and it appears to me they are really just statutory direction to government institutions to comply with the existing provisions of the Privacy Act and to follow the policies and procedures they told us in the committee that are already in place.

I would also reference that the new act will create a discretion to share rather than an obligation to share and that clause 4 of the act creates defined principles for information sharing while clause 2 creates a precise definition of "activity that undermines the security of Canada." We have learned that the lack of efficient information sharing was a contributing factor in the Air India attack, and these measures attempt to address that. I am not in favour of adding roadblocks that will accomplish nothing more than slowing down the process.

Senator Mitchell also seems to have overlooked the fact much broader information-sharing authorizations are contained in section 8 of the current Privacy Act — authorizations that appear to contemplate exactly what this act is proposing.

Finally, the proposed amendments detail specific oversight and review functions for the Privacy Commissioner but once again ignore the fact that the Privacy Commissioner already has authority to investigate complaints and even initiate investigations of information use or disclosure and that this power includes jurisdiction over multiple agencies. As the Privacy Commissioner confirmed when he appeared before committee, C-51 doesn't take away that oversight.

In summary, honourable senators, while reinforcement of existing practices and requirements can have some value, I would respectfully suggest that such amendments to C-51 are unwarranted.

Senator Jaffer's amendment to Part 3 of the bill, regarding the new offence of promoting terrorism in general, would create a needless, complex evidentiary requirement by requiring advocacy of terrorist activity that itself is for the purpose of inciting a terrorist act. The wording currently in Bill C-51 is far clearer and more specific and doesn't create the kind of loophole the senator proposes.

More seriously, Senator Jaffer proposes to deliberately create exceptions for the offence of advocating or promoting terrorism offences. I believe it is quite troubling that she would suggest making it lawful to promote terrorism if the communications were made in support of a religious subject or religious text or if they were relevant to a subject of public interest. Honourable senators, this proposed amendment would sanction the very activities that

are root causes of many of the latest terrorism threats. Religion should not be a cover for advocating terrorism offences, period. Nor should political views justify the promotion of terrorism.

The amendments put forward by Senator Mitchell in Part 4 of the bill regarding the expansion of CSIS's authority seem to be based in the argument put forward by some witnesses that the section will require courts to authorize Charter breaches. As the Minister of Justice and his officials pointed out on several occasions, that is simply not accurate.

First, I would remind all honourable senators that the court retains the discretion as to whether to issue the authorization. Second, it is the judicial authorization itself that ensures compliance with existing law in the Charter. In other words, the action taken without judicial authorization is a Charter breach, but the judicial authorization creates Charter compliance.

That's exactly the scenario that is at the root of the recent *Spencer* decision from the Supreme Court of Canada, where police action to acquire an address from an Internet service provider without warrant in a child porn investigation was ruled a Charter breach, despite, I should add, being authorized under the existing provisions of the Personal Information Protection and Electronic Documents Act. The court ruled that same request with a warrant would not be a Charter breach.

Senator Mitchell's proposed amendments also deal with the review authority of SIRC, although I think it is noteworthy that the amendments, unlike Bill C-51 itself, do not create new and expanded review authority for SIRC regarding the new powers granted to the service but rather are generic in nature. I would also like to point out that under the existing CSIS Act, SIRC does have the review authority that the proposed amendments contemplate in defined circumstances pursuant to specific sections of the act. I do not see these amendments as being necessary.

Finally, the amendments propose a new security oversight committee of Parliament.

Senator Moore: Hallelujah.

Senator Runciman: This subject has attracted considerable interest, and I know many of us, myself included, feel it is appropriate in some form for the entire national security sector. I would encourage Senator Mitchell to consider introducing his own bill on this subject so as not to slow down the passage of Bill C-51.

I don't question the motives of senators across the aisle, but I do think the amendments they are proposing show a real lack of understanding of the nature and the degree of the threat we are facing. Adopting these amendments would be a step backward in the fight against terror, and I urge all honourable senators to vote against them.

Thank you.

• (1710)

Hon. Grant Mitchell: I have a question for the senator.

The Hon. the Speaker *pro tempore***:** Will you take a question, Senator Runciman?

Senator Runciman: Yes.

Senator Mitchell: Thank you, Senator Runciman, for joining the debate. I appreciate it.

I want to clarify one thing. There is a bill on the Order Paper now that calls for parliamentary oversight. It was originally moved by Senator Segal, along with the de facto seconding, as it were, of Senator Dallaire. I picked it up and continued the debate. It is alive on the Order Paper. If you would like to comment on that and join in that debate, I would welcome it.

I have many questions I would like to ask, but I will limit it to one question. In your response to my concern that there won't be oversight of the information shared, you pointed out that the Privacy Commissioner has, among other things, the power to investigate a complaint.

Quite apart from the fact there's a real question that the Privacy Commissioner himself raised that he doesn't have the resources to do adequate oversight of this process in any event, given that this is about sharing private information, how would anybody who might want to complain know that there was a complaint to be made?

Senator Runciman: Part of the confidence you can have is the commitment the minister himself made with respect to working with the agencies and developing —

Senator Cordy: Right.

Senator Runciman: — privacy and information-sharing protocols prior to any of this taking effect. We can feel comfort — I know I can — with respect to how this is going to move forward.

Even when we had the Privacy Commissioner before us, it was pointed out quite clearly that he has significant powers currently to address all of the concerns that were raised by many in the public who were opposing this legislation on privacy concerns.

Again, I say I feel quite comfortable with the powers that he currently has, as well as going forward his ability to deal with these in an effective way.

Hon. Joseph A. Day: Thank you, honourable senators. I would like to join in the debate on this particular matter. I feel I owe it to the thousands of people who have sent messages to me expressing their views. I have tried to answer as many as I could, and I will continue to do that.

I would be very interested to know how Senator Runciman is answering the emails that I have received that I'm sure he's been receiving as well.

I have one comment before I go on with the bill itself, and it has to do with what the minister had to say when he came before us at the end of our hearings. I didn't quite take the same comfort that

others did when the minister said he was prepared to consider measures to ensure greater accountability by the Canadian Security Intelligence Service. "Prepared to consider" didn't give me a great deal of comfort. I will leave it at that.

I would like to say that a tremendous amount of work has to be done. This bill is a colossal piece of legislation, when one looks at it. It has five parts to it.

Let's put it back in perspective here. Part 1 is the security of Canada information sharing act — a separate piece of legislation. Why not have a stand-alone bill so that we could deal with that separately? If there were some changes to it, we could deal with those amendments logically.

The second portion of this bill is the secure air travel act. It's another piece of legislation — separate. It could easily stand alone. But it doesn't; it's in this five-part tome that we're asked to deal with very quickly. You heard my comments about the fact that we had only one day of hearings in committee on this.

Part 3 is the Criminal Code amendments. That could have been dealt with separately. Part 4 is Canadian Security Intelligence Service Act amendments, and Part 5 is amendments to the Immigration and Refugee Protection Act.

Honourable senators, there are the pieces of this puzzle that we're asked to deal with all at once. They are different concepts in different pieces of legislation and in different sections of this bill, and that presents its own difficulties.

We had many witnesses, not specifically with respect to this bill, but as the Honourable Senator Lang pointed out, our Committee on National Security and Defence has been dealing with security issues for some time, and we have been doing a study on radicalization. We looked at Bill C-44, we did a pre-study of Bill C-59, and then along comes the bill with some amendments, and we are now dealing with that.

We have some background, and we have gotten to know some of the witnesses who are visiting us on a regular basis with respect to each one of those separate studies that we are doing.

Let's look at it very briefly, honourable senators. I know time will run on out on me. Rather than talking about the amendments that have been proposed, let me say that I support every one of the amendments. I would be pleased if we could accept those amendments. But I have a strong feeling that, even with the amendments, this legislation cannot be salvaged. It is not worth trying to amend it into something acceptable.

If we're not going to reject the entire bill, it would be nice to see some amendments made. I strongly support oversight, like Senator Runciman, but the manner in which that oversight should take place is something that we have to debate. It is not a committee of the Senate and the House of Commons without some debate on what the makeup would be. There are many, many things that we can talk about in terms of oversight, as well as review, and they're not mutually exclusive. We can have both. In fact, we should. I will give you quotes on that a little later.

Let's look first at the security of Canada information sharing act, the first piece of legislation. We have to look at clause 5 of this bill, which is the first sort of operative section on "Disclosure of Information":

> . . . a Government of Canada institution may, on its own initiative or on request, disclose information to the head of a recipient Government of Canada institution whose title is listed in Schedule 3 . . . .

A Government of Canada institution is defined as being an institution that is listed or that is under the Privacy Act. The Schedule 3 that is referred to here lists the 17 different government agencies that can receive the information. There's no overall plan. This is a one-on-one bilateral sharing of information, but honourable senators will know that when information is shared that broadly, leaks do occur, as we have seen this afternoon with respect to the Auditor General's report. Leaks do occur.

Honourable senators, this particular disclosure —

Senator Cordy: Do you think?

Senator Cools: Kind of unusual.

• (1720)

Senator Day: Honourable senators, the only other thing I think I need talk about with respect to the sharing of information is the Income Tax Act and that income tax and Revenue Canada is involved. At page 8 of the statute, the income tax portion appears and what can be shared between all of these government departments and the 17 other institutions listed in the schedule. In subclause (*b*) it says:

> . . . if there are reasonable grounds to suspect that the information would be relevant . . . .

Prior to this bill coming forward, it was designated taxpayer information — much more limited, but it has been dropped. Now it is all taxpayer information. The only test would be if whoever — Revenue Canada — is giving up our taxpayer information considers that it might possibly be relevant to something.

That is very dangerous, honourable senators. That's one of the points I wanted to make in relation to that piece of legislation.

Now, Part 2 is secure air travel. You have heard a number of people discuss the secure air travel act, the legislation that appears here and gives the minister discretion. The no-fly list is a different type of list. Prior to this legislation, the existing legislation was for the protection of aeronautics. That was the basic principle. Now the basic principle is security, and the listing and appeal processes are different and the minister may establish the list under section 8 on his own without having a whole lot of background information. Trying to get your name off that list is an interesting process outlined through appeals and judicial review, et cetera.

Part 3, honourable senators, is the Criminal Code. Here, thresholds have been reduced in relation to warrants. Previously in warrants there was the question of "will." The "will" has been

changed to "may" so that "on reasonable grounds that a terrorist activity may be carried out" is the new threshold. No longer does the person asking for the warrant have to think that it "will" likely be carried out or suspects, on reasonable grounds, that an imposition of recognizance with conditions on a person is "likely" to prevent. Previously, it was "necessarily" would prevent.

That's the lowering of the threshold we see here. Do we have any evidence that the threshold needed to be reduced? No, we don't. We didn't get any evidence at the hearing that would be convincing to any of us.

Part 4, honourable senators, is the security intelligence service, CSIS, and they are well-known to us all. They have been before our committee on many different occasions, but the role of CSIS is reconfirmed here. They can operate both in and out of the country. Their new role is one of counterterrorism as opposed to an intelligence-gathering agency. That's the fundamental shift that we see in the words that appear in this particular one.

Finally, honourable senators, we have the Immigration and Refugee Protection Act. The changes that appear here are equally fundamental and need a separate look in order to give one an understanding of what is being proposed.

In the time that I have left I wanted to talk about, first of all, the various witnesses that have been involved with C-51, the anti-terrorism bill. The Canadian Bar Association has prepared an excellent treatise and they express very serious concerns. Let me read you a paragraph from their document dated March of this year:

> The government should also be clear with Canadians about the limits of law. No law, no matter how well-crafted or comprehensive, can prevent all terrorist acts from occurring. Promising public safety as an exchange for sacrificing individual liberties and democratic safeguards is not, in our view, justifiable. Nor is it realistic. Both are essential and complementary in a free and democratic society.
>
> The key question is, "Does the bill strike the appropriate balance between enhancing state powers to manage risk and safeguarding citizens' privacy rights and personal freedoms?"

Is that balance struck? That's the essential question. You have heard from speaker after speaker and received report after report and had witnesses that have said no, the balance is not there; this is going too far, too quickly.

We saw it in 2001 with the anti-terrorism legislation. It was our first move in that direction after the Twin Towers in New York City, and we talked about balance at that time. Some of what was done at that time turned out to work, and some of it didn't. Shortly after that, we had the creation of special advocates.

Keep in mind what a special advocate is. It is not a lawyer acting for the alleged terrorists. A special advocate is someone trained in the law who is a friend of the court, who makes sure there's fairness and who defends the rights of citizens without being the lawyer specifically for that particular citizen.

The Hon. the Speaker *pro tempore***:** Would you like more time?

Senator Day: I wonder if I could have five minutes.

Hon. Senators: Agreed.

Senator Day: I commend to you this particular document by the Canadian Bar Association. While I have the document out, I'm going to talk about the judicial warrants for search and seizure.

It is important that the point made by Senator Fraser yesterday be repeated again and again, because this bill is poorly worded and far too broad and, in effect, jeopardizes the Charter of Rights and Freedoms. I don't know if that's unwittingly, because we bring witnesses in from Justice and they say, "No problem, a judge would never, ever allow that to happen." Why give the power?

Here is what the Canadian Bar Association had to say:

> Judicial warrants for search and seizure *prevent*, not *authorize*, *Charter* violations. A judge authorizing a search is not authorizing a breach of the *Charter*, but may authorize a search to prevent what would otherwise be a breach of section 8. Other *Charter* rights, such as the right against cruel and unusual punishment or mobility rights, are absolute, and their violation can never be "reasonable".

• (1730)

What can be reasonable, because it's in the Charter, is that there cannot be unreasonable search and seizure. If the judge says you can search or you can seize, he's saying that's not unreasonable. Therefore, the Charter is not being breached.

That's the point. It's a subtle point but an important one because there is no reasonableness qualification with respect to many of the other rights in the Charter, but the wording that appears in this bill says all Charter rights can be breached if the judge orders it. That is the problem. I wanted to make that point while I had that particular document out.

We had the Privacy Commissioner talking to us about many of the concerns. He says it's far too broad, the 17 departments, without any oversight.

I have to mention, because they've come before us on so many occasions and have done such a fine job, Professor Forcese, who is at the University of Ottawa, and Professor Roach, who is at the University of Toronto. They have appeared before us on many occasions, and they have done excellent work in relation to the analysis, particularly the analysis of the sharing of information.

The proposed security of Canada information sharing act contained in Part 1 is based on the concept of activities that undermine the security of Canada. They said, "This is a new and astonishingly broad concept that is much more sweeping than any definition of security in Canadian national security law." In

important aspects it comes close to a "total information awareness approach," or at least a "unitary view of government information."

We worried in the past about silos. This is going to the other extreme, that everybody who works for government knows everything about everybody. They're saying that is extremely worrisome.

I wanted to leave that message with you, honourable senators.

Finally, I wanted to remind you of the statements by former Prime Minister Chrétien and the many people who signed the note to whom it may concern, to everybody, to the Canadian people, about this:

> . . . lack of a robust and integrated accountability regime for Canada's national security agencies makes it difficult to meaningfully assess the efficacy and legality of Canada's national security activities.

They all said there should be more insight, more work to be done in relation to this, and that legislation without oversight is very serious and very troubling.

Honourable senators, I hope you will agree with me that we need to do more work in this area before we pass this legislation.

Thank you.

Hon. Wilfred P. Moore: Honourable senators, I rise today to speak to Bill C-51 as well, the anti-terrorism act, 2015.

We know that terrorism is a threat, both here at home and abroad. As we saw on October 22 here on Parliament Hill and earlier that week in Quebec, acts of terror can destroy lives and families.

Protecting Canadians is of the utmost importance. We need to be vigilant, we need to be aware, and we need to play an active role in countering these threats because the consequences are devastating.

We must also recognize the delicate balance our response to terrorism requires, the balance between human rights, privacy and security.

The Special Senate Committee on Anti-terrorism said this about that balance:

> The fight against terrorism requires striking a delicate balance. On the one hand, terrorism represents a unique and potentially devastating threat to national security, and the public must be protected through vigilant intelligence gathering and proactive law enforcement. On the other hand, Canada has a strong history of commitment to human rights and the rule of law, as evidenced by the *Canadian Bill of Rights*, the common law and the *Civil Code*, and the Canadian constitution, including the *Canadian Charter of Rights and Freedoms*, and the ratification of various international human rights agreements. Attempting to safeguard civil liberties and freedom while also keeping people safe from the threat of terrorism is not an easy feat.

I remember when the government of the day brought in sweeping changes to our security infrastructure following 9/11. I remember the concerns Canadians had about being safe on our soil but also their concerns about safeguarding their privacy and freedom. They want to be secure in the most possible way, but not at the cost of their liberty. They don't want government and law enforcement agencies looking over their shoulders, not because they have something to hide but because that is what it means to be a citizen in this free and mature democratic country.

Honourable senators, I believe we struck the right balance following 9/11 for the most part, but now the government is going too far. The balance has been broken, and the scales are moving drastically way from liberty and freedom. This should concern every one of us because we are changing the very nature of our country, changing the very foundation of what made us who we are and made us a country for others to look up to.

Further, the government has proposed significant new powers to our national security agencies, but what hasn't come with these new powers is significant new resources.

We have heard that CSIS and the RCMP are already stretching their budgets. The RCMP and CSIS have had their budgets cut over the last number of years. CSIS's annual expenditures dropped from $540 million to $496 million between 2012 and 2013. The RCMP's budget has been cut by 15 per cent over the last four years.

CSIS even admitted this is a challenge. Regarding their ability to meet surveillance demands, CSIS Deputy Director Jeff Yaworski told the Senate National Defence Committee last fall: "I would be foolhardy to say we have all the bases covered." Resources are simply lacking, honourable senators.

I will not go through all that is wrong in this bill, but I will focus on three areas of concern.

First — and others have spoken to this — legal experts have said that the provisions in the bill are likely unconstitutional. I know this sounds familiar, like history is repeating itself.

This government has repeatedly brought forward bills that have been struck down in the Supreme Court of Canada. This bill will likely be no exception, and that will come at a great cost to the taxpayer.

As the Canadian Bar Association has stated:

> Bill C-51 proposes several *Criminal Cod*e amendments that generally suffer from overly broad language, uncertainty and vagueness. These weaknesses would make the proposals vulnerable to constitutional challenge . . . .

They point to the fact that the act would allow judges to authorize warrants to the Canadian Security Intelligence Service which contravene the Charter. As the Canadian Bar Association pointed out, in our current process:

> Judicial warrants for search and seizure are intended to *prevent*, not *authorize*, *Charter* violations. This is because the *Charter* protection against search and seizure is qualified: it

> only protects against "unreasonable" search and seizures. A judge authorizing a search does not authorize a breach of the *Charter*, but authorizes the search to prevent what would otherwise be a breach of the section 8 protection from unreasonable search and seizure.

This would not be the case under Bill C-51. The Canadian Bar Association goes on to say:

> . . . sections 12.3 and 21.1 could authorize any conduct that violates the *Charter* in the name of reducing a threat to the security of Canada, as long as it does not obstruct justice, cause bodily harm, or violate sexual integrity.

• (1740)

This is not judicial oversight, and as one group has put it:

> This fundamentally misunderstands the role of judges in our democratic system and the nature of constitutionally-entrenched rights. A judge's role is to prevent Charter infringements and to adjudicate alleged breaches by another branch of government in open court, not to authorize them . . .

To make matters worse, this judicial proceeding would happen in secret, where only the government is represented. A special advocate will not be present to act on behalf of society at large or the accused.

As Senator Mitchell pointed out at second reading, this may hamper criminal prosecutions of suspected terrorists. The information gleaned from those types of warrants would not be admissible in court because they violated their Charter rights.

Honourable senators, another worrisome aspect of this bill is the changes that allow for preventive arrest and detention. The new law would allow police to detain people for longer, from three to seven days, without charge, and this provision would become permanent. The provision would no longer "sunset" and have to be renewed by Parliament. Also, it would vastly lower the threshold for detention. I think Senator Day mentioned that. "Reasonable grounds" would no longer be the threshold to detain someone. Instead, the detention would be based on the suspicion that something may happen and an arrest is likely to stop it. This grants a lot more discretion to law enforcement than we have ever seen in Canada in the past. Fundamentally, this changes our judicial system and practices.

Senators, the second major area of concern that I have is with regard to information sharing and its privacy impacts. Information sharing between departments is important and we do have to break down the silos that permeate throughout government, but this bill would allow the sharing of all personal information between 17 government departments and lower the threshold for shareable information. They would be able to share "relevant," not "necessary" or "proportional" information under the very broad terms "activities that undermine the security of Canada." This is a wide net that this government is casting. What does the "activities that undermine the security of Canada" even mean? There are groups that legitimately protest that could get caught up in this.

The Privacy Commissioner summed it up this way:

> . . . the 17 federal departments in question would be in a position to receive information about any or all Canadians' interactions with government. This information could then be analysed along with information they had previously collected or obtained through other sources, including foreign governments. . . . As a result . . . 17 government institutions involved in national security would have virtually limitless powers to monitor and, with the assistance of Big Data analytics, to profile ordinary Canadians . . .

Honourable senators, this is very extraordinary power. Not only would they share information amongst the 17 departments, but experts also pointed out this information can be shared "in accordance with the law . . . to any person, for any purpose." Legal experts, as has been mentioned before, Kent Roach and Craig Forcese noted that "in accordance with the law" is vague and imprecise and could lead to the disclosing of information to anyone for any reason, which is absolutely astonishing.

Information could also be shared with over 100 other government agencies that these departments have relationships with. Further, the language in this bill also permits sharing of information with close to 300 international organizations or governments that Canada has a sharing relationship with. All of this would happen with little to no oversight.

As the Privacy Commissioner noted, "14 of the 17 agencies listed in Schedule 3 that will receive information for national security purposes are not subject to dedicated independent review or oversight." That's what was spoken to before with regard to the Segal bill. This cries out, and I don't know why we're not dealing with it and putting it in place.

When it comes to the Security Intelligence Review Committee's powers to oversee CSIS, they are very limited. SIRC only reviews what CSIS does and the information it receives. It doesn't have the authority to follow the information sent to other agencies.

Honourable senators, the final issue I would like to highlight is the lack of overall oversight of our security establishment. I've spoken about this in the past as have other senators. We need parliamentary oversight. This is crucial, but it is not in this bill.

Every year the government asks us to pass billion-dollar budgets for national security and intelligence agencies but provides scant information. We also, from time to time, have been asked to pass sweeping legislation, such as Bill C-51, Bill C-44 and, from a few years ago, Bill S-7, but have little idea about what the real threat is. Parliamentarians don't have access to high-level confidential information about threats to Canada and the institutions and policies that govern our security institutions. We are effectively blind, but we are tasked to make the decisions that affect the lives of many Canadians and could change the very fabric of our country. We also place too much power in the hands of a few select ministers, and we have no recourse to hold them to account.

Due to this, we are an outlier internationally. The majority of our NATO allies and all of our partners in the Five Eyes alliance — Australia, New Zealand, the U.K. and the U.S. — have better oversight on national security than we do. We just heard last week about the U.S. Congress — elected officials — putting the brakes on their National Security Agency and their collection of metadata.

All of these other countries have this oversight, and I don't know why we as a mature democracy don't have that. They all allow for certain vetted legislators to access information on the potential threat posed and evaluate the government's policies, decisions, capabilities and resources to counteract them.

I will remind senators of a crucial recommendation from the Special Senate Committee on Anti-terrorism, which passed unanimously in this chamber in 2011:

> That, consistent with the practices in the United Kingdom, Australia, France, the Netherlands, and the United States, the federal government constitute, through legislation, a committee composed of members from both chambers of Parliament, to execute Parliamentary oversight over the expenditures, administration and policy of federal departments and agencies in relation to national security, in order to ensure that they are effectively serving national security interests, are respecting the Canadian Charter of Rights and Freedoms, and are fiscally responsible and properly organized and managed.

Why didn't the government listen to this recommendation? Why isn't this chamber amending Bill C-51 to follow through on this previous decision? We all decided upon it, it's the right thing to do, and we haven't done it and I don't know why.

Honourable senators, we are in an era of enormous complexity and uncertainty with the changing geopolitical landscape, emerging threats and technological change. The need for robust oversight has never been greater, and the need for an approach that balances the rights of Canadians and our collective security is of great importance. Bill C-51 fails in these areas. Therefore, I will not be supporting this bill, and I will be supporting the amendments.

Hon. Lynn Beyak: Honourable senators, it's been a privilege and it is a privilege for me to serve on the National Security and Defence Committee with my own side, of course, because we have similar beliefs on this issue, but also with Senator Day, Senator Mitchell and Senator Jaffer. Their commitment and dedication is outstanding, and I would be remiss if I didn't say that. Although I disagree with them, I have the utmost respect.

Senator Jaffer, we did have one witness, but he was by video conference, so technically, we are both right. It was Haras Rafiq, Managing Director of the Quilliam Foundation. He testified by video conference, didn't he, to the hearings?

Senator Jaffer: No.

Senator Beyak: I'm sorry. Anyway, what we heard from him was he was the former director of the U.K. government task force looking at countering jihadist extremism in response to the 2005 bombings in the London subway. Also, there were other witnesses during all the hearings who were Muslim, but they weren't specifically on Bill C-51.

• (1750)

They told us that clearly we must identify the enemy before we can fight it. If we do not want our streets to resemble the radical Islamic uprisings in Brussels, Belgium, Vienna, Paris and London, we'd better get our heads out of the sand and follow the lead of our allies.

In the U.S., the Central Intelligence Agency can, pursuant to the National Security Act, conduct domestic threat disruption with an executive order. In the United Kingdom, MI5 can, pursuant to section 1 of the Security Service Act, conduct any activity to protect national security.

The Norwegian Police Security Service has a mandate to prevent and investigate any crime against the state, including terrorism. The Finnish Security Intelligence Service is mandated to prevent crimes that may endanger the governmental or political system and internal or external security, pursuant to section 10 of the Act on Police Administration. We must ensure that CSIS has the same tools here in Canada to keep Canadians safe. Bill C-51 gives them those tools, I believe.

Finally, I have Muslim friends. I worked in the United States on national security for several years. I have Muslim friends and associates there and here in Canada. They call themselves Muslims Facing Tomorrow, and one of them was quoted on October 2, 2008, saying something that all my Muslim friends believe as well:

> Islam is my private life, my conscience . . . [but] my faith does not take precedence over my duties . . . to Canada and its constitution, which I embrace freely. . . . I am first and most importantly a Canadian. . . . Only in a free society like Canada will you find Islam as a faith and not a political religion.

In the words of Louise Vincent, the sister of slain Warrant Officer Patrice Vincent, "If C-51 had been in place on October 19, Martin Couture-Rouleau would have been in prison and my brother would not be dead today."

For her and our other fallen victims, we owe Bill C-51 to Canadians, for the rights of 35 million — looking always at the rights of minorities, of course, but at national security as a bigger picture. Thank you.

Hon. Mobina S. B. Jaffer: Would the senator accept a question?

Senator, you spoke so passionately, and I absolutely respect what you say. I agree with you when you talk about preventive rights. We'll never forget that if those rights existed, Louise Vincent's brother would have been alive. Nobody is questioning that.

As you heard in my speech, what I was questioning was the overreaching. There is more to this bill than just talking about preventive rights.

Senator, throughout the time that I have come to know you and work on this bill, you have always talked about dialogue. Do you think this bill is going to increase dialogue between the communities or decrease it?

Senator Beyak: Thank you, senator. I do believe that it will increase dialogue. I think that in Canada there are no victims; there are victors. We are all here in a free society. No one is discriminated against in Canada — not First Nations, not Muslims, not Irish, not Scots, not women. We are always able to talk about these things. We may disagree, we may not always get our way, we may not get as much as we want, but we can always talk. It is a free country, I believe.

Senator Jaffer: Thank you very much, senator. The words you say, that no one is discriminated against in this country, I hope that will be true for my daughter, but one day I will sit with you and tell you what discrimination I have suffered.

Hon. Jim Munson: Thank you, Your Honour. My dissertation tonight is about Bill C-51 casting a shadow on the work of journalism in this country, and I'll get to that a little later in my speech.

The best possible protection against terrorists — anyone who values life wants assurance of this. Most of us likely still feel the impact of the violent events last October, when a gunman shot and killed a Canadian soldier and then stormed into Parliament to continue his rampage. We all felt the horrific presence of terrorism that day. When the violence stopped, we along with millions of Canadians became a single population united in the pledge that "this can never happen again."

Bill C-51's stated purpose is to deliver better protection against terrorism to Canadians. All of us would support this intention, but stating an intention is not the same as fulfilling one.

Since Bill C-51 was introduced in January, public outcry about its vague language, content and the expected outcomes of its application has spread. In April, more than 100 individuals and interest groups signed a letter urging Prime Minister Harper to scrap the bill. From its failure to strike a balance between "protecting Canadians and safeguarding our cherished rights and freedoms" to the incredibly hasty consultations preceding its drafting, the letter hits all the points that we, as parliamentarians, have to reflect on in the interests of those we serve.

From journalists, lawyers, environmentalists, human rights advocates and social policy experts to civilian libertarians, artists and youth, the signatories represent a range of interests and values. They are united around the conviction that Bill C-51 is dangerous.

Debates are covered in the news. Protests are on the streets. Messages are constantly popping up on social media. Public response to and questions about this bill are contributions to the legislative process.

There is value in every perspective, and we have a responsibility, senators, to respect the messages and the messengers. Having been a reporter for most of my working life, I can easily identify with the concerns of those engaged in bringing the news to Canadians. As they gather with other protesters seeking to stop this bill's passage, they have to feel the threat to their journalistic standards if Bill C-51 becomes law.

Three years ago I joined others here in participating in an inquiry launched by Senator Cowan. The inquiry was to draw attention to the thirtieth anniversary of the Canadian Charter of Rights and Freedoms. The topic I chose to talk about was freedom of expression — its importance to journalists, its importance to people around the world and its importance to democracy.

Having covered stories in countries where freedom of expression is not a value but, rather, grounds for imprisonment, I take to heart the difference between an informed population and a population that is kept in the dark regarding the workings of their governments. You have no doubt heard me describe those tense and terrible and horrible days surrounding the massacre of students in Tiananmen Square. Today, June 4, 26 years later, it is the anniversary of that tragedy.

Civil liberties didn't exist then, don't exist today in that country. Authoritarianism is the order of the day. I think the Beijing government would rather love this bill, but they don't need one in China. They don't need one because Big Brother is always listening; and with this bill, Bill C-51, everybody will be listening.

In undemocratic, corrupt countries throughout the world, journalists are killed and made to suffer for seeking and exposing truths about their leaders and governments. A precursor to democracy and the end of the status quo, freedom of expression is a threat to the rulers of these countries. For citizens who are poor and lacking a voice in how their countries are run, it is an aspiration.

In Canada, we take freedom of expression for granted. We shouldn't. The history of other countries — and indeed our own history — tells us that it has been a difficult struggle, with lives ruined along the way. As citizens of a country where human rights and fundamental freedoms are guaranteed, Canadian journalists are protected. They can be confident and passionately investigative.

If Bill C-51 becomes law, journalists will no longer operate under the same assumptions. None of us will be able to count on guarantees for rights and freedoms as we do today.

Section 16 of the bill includes amendments to the Criminal Code regarding the promotion of terrorism and terrorist propaganda. As the Canadian Bar Association points out in its submission on Bill C-51, references such as "terrorism offences in general" cast the net too broadly. With language such as this setting the parameters of what is and isn't a crime, Canadians will certainly be at a loss.

• (1800)

It is so unclear, that it could well capture innocent speech made for innocent purposes. The line between lawful and unlawful is unclear.

Honourable senators, advocacy, protests and public debate on issues need to happen in a democratic society. Often rules and bylaws alone determine whether such activities are lawful. When those rules and bylaws are ill-defined, this prediction from the Canadian Journalists for Free Expression could prove to be accurate:

> Some political legitimate discussion, whether in newspapers, on social media sites, or in the privacy of your email inbox, could be criminalized.

Others are watching us, honourable senators; other countries and especially European countries are watching us. I think this is important as part of this debate.

The Organization for Security and Co-operation in Europe, the OSCE, is the largest security-oriented intergovernmental organization in the world. It has compared Bill C-51 unfavourably with international standards for restricting freedom of expression. Unlike what this bill proposes, only direct and intentional incitement of terrorism should lead to restrictions on freedom of expression.

People can be reckless. People can inadvertently promote threats to security. What should matter are intentions. In other countries, intent matters. If Bill C-51 is passed, reasonable grounds for restricting freedom of expression and seizing material will plummet to a dangerously low standard. It is not an exaggeration to expect the moral integrity of our citizens on terrorism to become undervalued and the discretion of the administrators and the enforcers our laws to achieve greater clout.

Among several warnings, the OSCE states the following:

> This is potentially of particular concern to the media, which has a professional responsibility to report on terrorism and to ensure that the public are informed about terrorist threats and activities.

Another component of Bill C-51 that is problematic for Canada, generally, and for journalists in particular, is its provision for the creation of the security of Canada information sharing act. Craig Forcese and Kent Roach are experts in national security and the law. Since the introduction of this bill, they have been publishing a series of opinion pieces for national and international news sources.

In a piece published March 11 in *The New York Times*, they identify one of the key hazards associated with Bill C-51 and its proposals for information sharing. Here is what they say:

> Taking a breathtakingly broad view of national security —

— the bill —

> — facilitates information-sharing among federal institutions, with no robust limits on how the information may then be used (or misused).

The changes proposed in Bill C-51 represent a drastic departure from Canada's long held respect for privacy issues and other important concerns. The writers acknowledge this and effectively illustrate how out of national character this plan for sharing is. They say:

> This is a remarkable development for a country that in 2007 agreed —

— we forget our own history —

> — to pay millions to compensate a Canadian citizen who suffered foreign torture as a result of inaccurate intelligence-sharing.

Maher Arar.

Somehow we have forgotten that, Madam Speaker. This should be part of our DNA now. It should be part of the way that we're thinking. This is just simply not right.

There are already significant amounts of sensitive health, tax, financial and other information circulating among government departments as it is. Privacy breaches occur all too often.

With the passage of Bill C-51, the government will be circulating more information, more frequently, in the name of national security. The Canadian public might never know when or why they are being investigated. There will certainly be an impact from treating privacy as secondary to security. Undermining the country's privacy laws will weaken them. There will also be more wrongful accusations involving terror threats. With reason, people will lose confidence in the government and become distrustful and suspicious.

For journalists who depend on speaking with sources to develop their stories, these and other outcomes will make their work more difficult. It is not only journalists who will find themselves at a disadvantage. Those of us who turn to the news media for information about our world, including risks and incidents of terrorism, will as well.

Whenever freedom of expression and privacy are in jeopardy, the capacity of journalists to fulfill their responsibility to their audiences and readers is likewise in jeopardy. In addition to the particular sections I have mentioned, there are several others in the bill that undermine tenets of our federal laws.

If they are worrisome to journalists, then they should be worrisome to us all. The work of journalists, after all, is for everyone. In principle, journalism is about bringing issues to light, striving to uncover the truth and bring about solutions. These are the individuals that are holding the pen. Differences of opinion and beliefs abound within the field of journalism. That is good. We benefit from learning different sides of the same issues.

Honourable senators, as the Canadian Bar Association concludes:

> For Bill C-51 to be a meaningful success, Canadians must not only feel safer, but must in fact be safer — and this reality must be accompanied by the well founded and secure belief that Canada remains a democracy that leads the way internationally in scrupulously protecting privacy rights and civil liberties.

Honourable senators, I oppose this bill. What sets me apart from the thousands of Canadians urging us to scrap this bill is that I'm standing in this room, where the fate of this bill will be decided soon. I'm speaking with colleagues with the hope that my words will help tip the balance of the vote we must make in favour of recognizing Bill C-51 as a mistake.

We can go back to the drawing boards and draft a new piece of legislation with the same important purpose, reducing the threat of terrorist acts in Canada. Honourable senators, please — please join me in listening to what Canadians are saying and conclude that we cannot possibly realize this purpose at the expense of our rights and fundamental freedoms.

Senator Cordy: Hear, hear.

Senator Munson: Honourable senators, at the end of the day, this bill contravenes our cherished Charter of Rights and Freedoms.

Hon. Daniel Lang: Colleagues, I am pleased to rise and speak on Bill C-51. I would like to begin by expressing my thanks to the deputy chair, Senator Mitchell, and the opposition side, including Senator Joan Fraser, who agreed to proceed on the pre-study so we could have full hearings on the bill and hear from as many witnesses as possible.

To that end, the Standing Senate Committee on National Security and Defence held six meetings and heard from 63 witnesses on Bill C-51. During our hearings, the Minister of Public Safety and Emergency Preparedness, the minister responsible for the bill, not only appeared once, he appeared twice to respond to questions from committee members.

I would also like to note that many of your committee's 63 witnesses on this bill did not appear in the other place, including the Privacy Commissioner of Canada and the three main review bodies — the Security Intelligence Review Committee, SIRC, which reviews the activities of the Canadian Security Intelligence Service; the Office of the Commissioner of Communications Security Establishment Canada; and the RCMP Civilian Review and Complaints Commission.

Colleagues, throughout our hearings, Bill C-51 was given full and thorough study, contrary to what some have said in this house. In fact, we had 14 senators participating at the committee, much beyond the 9 regular members. This showed a great deal of interest and commitment by colleagues on both sides of the floor of this house, and the interests that they brought forward were of value.

I would like to single out and acknowledge the hard work that Senator Runciman, the sponsor of this bill, has done on behalf of the public security of Canada. He's done a job, a job well done. I would also like to point out that Senator Jaffer, Senator Baker, Senator Moore and Senator Bellemare, along with our regular members, Senators Mitchell, Day, Kenny, Stewart Olsen, Dagenais, Beyak, Ngo and White, participated in the discussions on Bill C-51.

• (1810)

Colleagues, while no legislation is perfect, this bill is a step in the right direction. It offers valuable tools to our law enforcement community to prevent, disrupt and help to prosecute terrorist-related activities. Canada is not unique in the post-9/11 world in having to update its anti-terrorism legislation to meet the rapidly evolving and serious threat from terrorists. Only 1 of our 63 witnesses who testified felt that we didn't need to update our present legislation.

Going back in time, colleagues, I want to refer to the Right Honourable Jean Chrétien upon the introduction of the Anti-terrorism Act 2001 when he informed the House of Commons:

> It has become clear that the scope of the threat that terror poses to our way of life has no parallel.

That, colleagues, is the case today and even more so.

I also would like to go back to the sentencing of the former public service employee and terrorist Khawaja, where one of the harshest sentences imposed in modern times was brought down, much beyond the 20 years without parole. I want to refer to the Ontario Court of Appeal, which quoted favourably Justice Durno, Ontario, in *Khalid*:

> Terrorist offences are a most vile form of criminal conduct. They attack the very fabric of Canada's democratic ideals. Those involved live by philosophy that rejects the democratic process. Their motivation is unique and fundamentally at odds with the rule of law. It is an offence that has an enormous impact on the public. Their object being to strike fear and terror into the citizens in a way not seen in other criminal offences.

The Ontario Court of Appeal went on and quoted favourably Justice Whealy, in *R. v. Elomar*, New South Wales Supreme Court 2010, to give a descriptive record of what terrorists like Khawaja represented. I quote:

> The mindset evinced by all this [extremist] material may be summarised as follows: First, a hatred of the "KUFR", that is those Muslims and non-Muslims who did not share their extremist views. Secondly, an intolerance towards the democratic Australian Government and its policies. Thirdly, a conviction that Muslims are obligated by their religion to pursue violent jihad for the purposes of overthrowing liberal democratic societies and to replace them with Islamic rule and Sharia law.

The Ontario Court of Appeal also referenced the Honourable John Major, who summed up succinctly the characteristics of terrorism in his report on the terrorist bombing of Air India Flight 182 stating:

> Terrorism is an existential threat to Canadian society in a way that murder, assault, robbery and other crimes are not. Terrorists reject and challenge the very foundations of Canadian society.

The seriousness of the terrorist threat that Canada faces today cannot be understated. Last October, your committee was told that we have 80 jihadist supporters who had returned to Canada, each likely requiring significant police surveillance on a 24-hour, seven-day basis, especially in situations where they received military training in the Middle East, Somalia or Pakistan. We also have 93 individuals, all Canadians, who are seeking to provide material support to ISIS and leave our country to do so. We also have 145 Canadians presently abroad providing material support for the jihadist movement. Your committee was told a number of weeks ago that the numbers of Canadians supporting ISIS have increased since then. Colleagues, the more than 318 radicalized individuals mentioned are a serious concern for law enforcement. We have seen the damage that radical Islamic extremists, such as Zehaf-Bibeau and Martin Couture-Rouleau, can cause acting alone.

As we were told yesterday, some believe that terrorism is caused by racism, rhetoric and mental illness. Unfortunately, this political message is again repeating the blame-the-victim narrative — Canada versus the Muslims perhaps; Canada versus the sheiks perhaps — in order to rationalize the extreme jihadist terrorist movement.

I note, colleagues, that Jocelyn Bélanger, Professor, Faculty of Psychology, Université du Québec à Montréal, told your committee on December 8, 2014:

> To believe that radicalized individuals are crazy or are not playing with a full deck would be our first mistake in developing effective counter-terrorism strategies.
>
> The mental instability hypothesis rather reflects our profound misunderstanding of the process of radicalization.

The suggestions by some that terrorism is caused by racism and rhetoric demonstrates that we are truly failing to understand that the main victims of terrorism in this case are the Muslim community, the minority Muslims such as the Ismailis and Ahmadiyyas, the women and the girls involved.

The simplistic political message ignores the reality of the various types of terrorism faced in Canada, including the FLQ crisis in Quebec, Euro supremacists and, of course, Sikh terrorism. Today, Canada's primary terrorism threat is from jihadist extremists operating in the name of Islam. Yet we cannot forget that at the same time we have other militants with other extreme causes and cyber-espionage that threaten our everyday public security.

Colleagues, as Canada's Muslim population is projected to grow from 950,000 today to 2.8 million in 15 years, we need moderate Muslim communities to come forward and help law enforcement and Canadians to combat the Islamic jihadist ideology that is fueling the terrorism movement under the guise of religion. Being straightforward about terrorism is as important to the Muslim community as it is to all Canadians. We need to work with the vast majority of modern Muslims to denounce the extremist ideology being used to justify extremist and terrorist behaviour.

We should also never lose sight of the fact that the religious fanatics who bombed Air India Flight 182 30 years ago, killing 331 people, 268 of whom were Canadians, were not the victims of racism or rhetoric.

Colleagues, allow me to address some concerns raised about Bill C-51 over the course of the last six weeks. First is the question of resources. When the bill was first debated, legitimate concerns were expressed that the government had not provided the necessary resources to implement the legislation. That criticism has been answered in the 2015-16 budget, which is being considered presently by this chamber. Multimillions of new dollars have been allocated to the RCMP, CSIS and the Canada Border Services Agency. As well, the CSIS review board, the Security Intelligence Review Committee, SIRC, has had its budget increased by 80 per cent.

Second is the question of privacy. The minister confirmed to the committee that all agencies who receive information as part of the information-sharing provision of the bill will be required to conduct a privacy impact assessment in consultation with the Privacy Commissioner of Canada.

Information sharing is very important to fight terrorism, and your committee heard from Dr. Bal Gupta, head of the Air India Flight 182 Victims Families Association, who told us that if these provisions had been available 30 years ago, that tragedy would not have occurred, and he would still have his wife and his children would still have their mother.

This provision is essential, and I'm satisfied knowing that the Privacy Commissioner of Canada will take his job seriously and act to protect the rights and privacy of all Canadians.

Third is the matter of warrants. Warrants, as we all know, are not unusual in the legal context or with law enforcement. Warrants are used every day to conduct actions with the consent of a judge, which would normally violate rights but are taken to ensure that police or security actions remain private. The action can be taken as quickly as possible, once a judge is satisfied with the evidence provided to him or her. Giving CSIS the power to disrupt will save lives. Allowing a judge to grant such warrants is reasonable in our democratic process so that we ensure we have oversight.

• (1820)

Justice John Major, among others, recommended that additional resources be given to SIRC to conduct back-end checks to ensure CSIS was following the warrants as granted. When he was asked at committee about requiring CSIS to report

back on the warrants to the Security Intelligence Review Committee, SIRC, as mentioned in our observations, Justice Major stated: "That would certainly be a very significant step forward."

Colleagues, the Security Intelligence Review Committee was supportive of this requirement to report back to them on warrants and confirmed to your committee that, given their new resources in their budget, they will have the ability to fully carry out their mandate.

Further, in responding to the issue of reporting back on warrants, the minister confirmed to your committee that he is prepared to consider our committee's suggestion to have CSIS report on its warrants to its review body, SIRC.

Colleagues, your committee appended observations in its report, which was unanimously agreed to all by all members. Allow me to briefly address these items.

One, extend the period of time for the laying of charges in summary conviction proceedings under section 25 of the Secure Air Travel Act from one to five years; take steps to ensure that implementation of the act can be achieved without placing front-line airline and other staff, as well as members of the public, in unnecessary physical jeopardy; and consider future inclusion in section 8(1) of the words "photograph or other suitable image" to the information that can be kept in the database. These are reasonable measures which we wanted to call attention to.

Two, enhance Canada's capacity to combat terrorist threats by utilizing the laws passed by Parliament as an effective deterrent. To achieve this, the government should establish a specialized team of lawyers within the Department of the Attorney General of Canada to prosecute terrorism cases and ensure judges who are selected to hear terrorism cases have specialized background and training about terrorism. This reflects the concerns of your committee about the need to vigorously prosecute all terrorist offences.

Three, make it a criminal offence to be a member of a "designated" terrorist group in Canada or a de facto terrorist group, as defined by the courts. Colleagues, your committee was surprised to learn of this omission in the law and wishes to call attention to it.

Four, to increase accountability, the government should develop statutory authorities among the national security review bodies in order to provide for the exchange of operational information, referral of investigations, conduct of joint investigations and coordination in the preparation of reports.

This observation would help to bring the national security review agencies in line with the government departments that will be able to share information under certain conditions as a result of this bill and that was referred to earlier by the side opposite. Interesting enough, colleagues, all members of the committee agreed with this observation, because it's the same authority that has been granted to allow the 17 departments to exchange information.

Five, your committee noted, and I quote:

> Finally, given the rapidly evolving threats to the national security of Canada, and the importance of this legislation to ensuring the safety and security of Canadians, the Standing Senate Committee on National Security and Defence will, with the approval of the Senate, conduct a review of Bill C-51, within five years of it receiving Royal Assent.

Colleagues, with your adoption of the report, the Senate will be taking the necessary step to conduct a parliamentary review of government legislation within five years of its implementation. This was recommended by some, including Professor Craig Forcese, and the committee agreed it is a reasonable and responsible role we as senators should be undertaking as part of our mandate.

In conclusion, colleagues, this bill offers a fair balance between the rights of Canadians and the need for law enforcement officials to have the tools necessary to prevent radicalization and extremist threats. CSIS and the RCMP are mandated to protect Canadians. The radical jihadist movement that Canadians face is real, the cyberspace threats are real and other militant threats that Canadians face are real.

The RCMP, our law enforcement agencies and the intelligence community require the tools in Bill C-51 to do the job. I urge you, pass this bill and give them the opportunity to do their job and keep Canada and Canadians safe.

Hon. James S. Cowan (Leader of the Opposition): Thank you, Your Honour. Honourable colleagues, I rise to join in the third reading debate on Bill C-51, the government's anti-terrorism act, 2015.

This bill has been presented to us and, more importantly, to Canadians as a necessary response to the events of October of last year.

All of us here recall those events: first, when Warrant Officer Patrice Vincent was killed in Saint-Jean-sur-Richelieu and subsequently when, just a few days later, Michael Zehaf-Bibeau fatally shot Corporal Nathan Cirillo at the National War Memorial and then was able to enter this building, where he was quickly shot by Staff Sergeant Vickers.

That was, without question, a terrible time for our nation. Once again, we felt our vulnerability to terrorism.

I say "once again," colleagues, because we all remember July 23, 1985, when 329 passengers and crew of Air India Flight 182 were killed — murdered — by a bomb placed on a flight at the Vancouver Airport. Most of the victims were Canadian. To this day, the Air India bombing remains the worst terrorist attack in Canada's history.

And of course 9/11 is seared in our collective consciousness. Each of us knows exactly where we were when we learned of the planes striking the World Trade Centre in New York City. All of us watched in horror as the events of that terrible day unfolded.

I wasn't in the Senate then, but I will never forget how proud I was after 9/11 at the way parliamentarians came together to meet this challenge — and Canadians came together to meet this challenge, as well. Parliamentarians, some of whom are in this chamber today, wrestled with the challenge to protect Canadians from terrorism while ensuring that our values, our fundamental rights and freedoms, were upheld and remained intact.

Bill C-36 was the response of the government of Prime Minister Chrétien. It was examined in what was then a rare pre-study by a special Senate committee set up specifically for that task. Let me read a paragraph from the pre-study report, which was adopted unanimously by the committee:

> The terrible events of September 11, 2001 have made it clear to all Canadians that securing the freedoms that define us as a nation must now also depend upon actively resisting terrorism. The challenge is to find the right balance: ensuring that our law enforcement and security agencies have the tools necessary to protect us and to prevent terrorism before it strikes while not undermining the freedoms that our government ultimately is mandated to protect. Acts of terrorism must not force us to relinquish our fundamental principles and basic democratic safeguards.

Those powerful words remain equally true today.

In light of this history, colleagues, you will understand my surprise when Senator Runciman introduced Bill C-51 to this chamber at second reading saying:

> Our laws governing national security matters were created at a time when the most significant security threat was espionage. Times have changed, and new solutions are needed. This is why Bill C-51 has been introduced.

Colleagues, with respect, that is simply not a fair representation. It is as though this government would like to pretend that the Chrétien government and Parliament simply ignored the terrorist threat, which is simply not true. Indeed, members of this chamber took a prominent role in crafting that response. Senator Andreychuk, our former Speaker Senator Kinsella, Senator Joyal, Senator Jaffer, among others, all can speak to the very serious, very focused work they did on the special committee working to assess and fine-tune Bill C-36. Senator Eggleton was the Minister of Defence. He appeared before the special committee and I'm sure could speak of the hard work his government did in finding this critical balance.

Has the nature of the threat evolved? Of course it has. But it's wrong to suggest that we're trying to move our laws from the 1950s to the 21st century. That does an injustice to a succession of Canadian governments and to parliamentarians. It ignores the good work done by our security and intelligence agencies in thwarting terrorist plots over the years, including those that have been in the news recently — all work done pursuant to our laws. And frankly, it shows disrespect to the memory of the hundreds of victims of terrorism who perished in the Air India attack to suggest that October 2015 was the "wake-up call."

• (1830)

Do our laws need fine-tuning, updating to meet the evolving nature of the terrorist threat? Absolutely. Do the events of last fall justify a complete overhaul of our laws, such as has been proposed? Perhaps. But in my view, the government has failed to make a persuasive case for that. To the contrary, many witnesses and many knowledgeable, experienced Canadians have expressed the view that there are not fundamental problems with our laws, but rather how they are applied and the resources the government allocates to their implementation.

There has also been a suggestion that the nature of the threat today is such that if our fundamental rights and freedoms need to be sacrificed, so be it. Indeed, it's more than a suggestion — it's written in the bill, as others have warned and I will discuss shortly.

Let me read to you a paragraph from the decision of the Supreme Court of Canada in *Suresh v. Canada (Minister of Citizenship and Immigration)*. This was issued January 11, 2002, just a few short months after 9/11. In the shadow of those events that shook the world, the court wrote — and I point out that this was a decision of the court, so worded to give it the full weight of the highest court. This is what the court said:

> The issues engage concerns and values fundamental to Canada and indeed the world. On the one hand stands the manifest evil of terrorism and the random and arbitrary taking of innocent lives, rippling out in an ever-widening spiral of loss and fear. Governments, expressing the will of the governed, need the legal tools to effectively meet this challenge.
>
> On the other hand stands the need to ensure that those legal tools do not undermine values that are fundamental to our democratic society — liberty, the rule of law, and the principles of fundamental justice — values that lie at the heart of the Canadian constitutional order and the international instruments that Canada has signed. In the end, it would be a Pyrrhic victory if terrorism were defeated at the cost of sacrificing our commitment to those values. Parliament's challenge is to draft laws that effectively combat terrorism and conform to the requirements of our Constitution and our international commitments.

Colleagues, we would do well to reflect on those words as we study Bill C-51.

Prime Minister Harper has said that there is no liberty without security. I agree. I am sure everyone in this room agrees. But equally, a government's job — our job as parliamentarians — is to secure our liberty and not to sacrifice it in the name of security.

That was the challenge of our predecessors and colleagues who worked together to strike the right balance after 9/11. That was the challenge of the Major commission, the commission of inquiry into Air India Flight 182, that produced over 60 recommendations in its final June 2010 report, far too many of which have still not been implemented, five years after they were presented to the government.

That, colleagues, is our challenge with Bill C-51.

More and more Canadians are looking at Bill C-51 — we know this from our email traffic — and they're asking whether we really need to give such unprecedented powers — and they are unprecedented — to our security and intelligence community. What is the evidence that the powers proposed in Bill C-51 would have prevented the acts of last October? They want to know what Canada will look like when all of this is done.

Colleagues, these are valid questions in a democracy, but there have been no good answers from the government.

Indeed, in the case of the October 22 shootings at the National War Memorial and on Parliament Hill, Prime Minister Harper himself acknowledged that it's "difficult to speculate how a case like that would be handled in the future under these laws because . . . . Bibeau was not on the police radar." Public Safety and Justice officials who briefed reporters on Bill C-51 when it was tabled declined to explain how it would have prevented the attacks in Ottawa and Saint-Jean-sur-Richelieu.

Instead of answering the many questions raised by Canadians and seeking to build consensus, instead of truly listening to Canadians as they express their very real fears about the impact of this bill, the government simply chose to dismiss the concerns, often suggesting archly that "law-abiding citizens" need not fear these new powers.

Colleagues, that is dismissive, accusatory and frankly condescending, and it has no place in these discussions. It reminds me of the government's earlier assertions that you either stand with it or the child pornographers. We are discussing a bill that the Privacy Commissioner has confirmed will in fact have enormous impact on the rights of all Canadians, including law-abiding, ordinary Canadians. He published an op-ed in *The Globe and Mail* in which he wrote:

> All Canadians — not just terrorism suspects — will be caught in this web. Bill C-51 opens the door to collecting, analyzing and potentially keeping forever the personal information of all Canadians in order to find the virtual needle in the haystack.

How did we get to this?

Colleagues, it's interesting to contrast the way in which the Trudeau government and the Parliament of the day grappled with the big question of which rights and freedoms to enshrine in the Charter and the way the current government and Parliament is addressing the big question of balancing protection of those rights and freedoms with security.

From its inception, the Charter was viewed as the "people's package," and Canadians turned up in unprecedented numbers to participate and express their views. Colleagues, their voices were heard. Senator Joyal co-chaired a special parliamentary committee that heard from 914 individuals and 294 groups in public, nationally televised hearings.

Colleagues, that is how our great democracy was built and strengthened. Not by dividing, but by unifying. Not by dismissing Canadians' input, but by welcoming it. Not by suppressing criticism, but by encouraging serious, engaged debate. That was leadership at its best.

Canada, like other democracies around the world, is today confronting a grave challenge from terrorism. We know that the rights and freedoms that make our democracy great also make us vulnerable to terrorism and our citizens to potential radicalization. Freedom of expression is the cornerstone of democracy, and that means that dangerous ideas can sometimes enter the discourse.

Our country was built on principles of openness and tolerance of differences, of equality, regardless of ethnic or national origin or religious beliefs. Colleagues, the rights and freedoms enshrined in the Charter are not just words written on a piece of paper. They represent who we are and what Canadians want Canada to be, now and into the future. Just as the Charter was written by all Canadians, so must all Canadians be part of the discussion of how to uphold those rights and freedoms in the face of challenges posed by terrorism.

Unfortunately, rather than facing these challenges as one nation — including and engaging Canadians, beginning right here in Parliament — the Harper government has instead decided to impose its own views on Canadians, ignoring all contrary opinions.

Sixty business leaders wrote a long, open letter to Prime Minister Harper asking him to "scrap this reckless, dangerous and ineffective legislation." The signatories included the heads of many of Canada's high-tech companies.

More than 100 academics, including many law professors from across the country, wrote an open letter to parliamentarians expressing their "deep concern that Bill C-51 . . . . is a dangerous piece of legislation in terms of its potential impacts on the rule of law, on constitutionally and internationally protected rights, and on the health of Canada's democracy."

They continued by noting "with concern" that the bill may turn out to be ineffective in countering terrorism by virtue of what is omitted from the bill, but also that Bill C-51 could actually be counterproductive in that it could easily get in the way of effective policing, intelligence-gathering and prosecutorial activity.

They made a point of adding that the signatories were not "extremists," nor were they dismissive of the very real threats to Canadians' security that the government and Parliament have a duty to protect.

• (1840)

Colleagues, what have we come to that citizens, professors at many of this country's leading universities, feel that they must defend themselves as not being extremists in presenting their views on an important bill like Bill C-51?

Two law professors, who are not among the 100, were so disturbed by the provisions in Bill C-51 that they set up websites where they posted detailed legal analyses of the bill's provisions

and proposed amendments. These were Professor Craig Forcese of the University of Ottawa and Professor Kent Roach of the University of Toronto, both teaching in their respective law faculties.

On February 19, an extraordinary open letter appeared in *The Globe and Mail*, signed by four former prime ministers, Jean Chrétien, Joe Clark, Paul Martin and John Turner, and endorsed by 18 other prominent Canadians who've served as Supreme Court of Canada justices, ministers of Justice and Public Safety, solicitors general of Canada, members of the Security and Intelligence Review Committee and commissioners responsible for overseeing the RCMP and upholding privacy law.

That op-ed began with the words:

> The four of us most certainly know the enormity of the responsibility of keeping Canada safe, something always front of mind for a prime minister.

Of course, colleagues, Prime Minister Chrétien was in that position on 9/11, when the planes hit the World Trade Center. Prime Minister Martin was in that position on July 7, 2005, when the London subway was bombed. One the other signatories to the letter was former Supreme Court Justice John Major, who headed the commission of inquiry into the Air India bombing.

The focus of their letter was their shared view that:

> . . . the lack of a robust and integrated accountability regime for Canada's national security agencies makes it difficult to meaningfully assess the efficacy and legality of Canada's national security activities. This poses serious problems for public safety and for human rights.

Serious problems for human rights, yes, but also for public safety, colleagues. In other words, proceeding as proposed in Bill C-51 will actually undermine public safety, not secure it.

Of course, it isn't only prominent Canadians who oppose the bill. An online petition by Leadnow has received over 100,000 signatures. I encourage honourable senators to read their petition. It is serious, thoughtful and focused on specific issues and proposes several well-considered amendments.

There is also a website called stopc51.ca, again with a petition. We have all received many letters and emails. I believe tens of thousands have been sent to parliamentarians.

Colleagues, not long after the letter from the four prime ministers appeared, I asked the Leader of the Government in the Senate if he could provide a list of similarly eminent Canadians who support the bill. His reply: Stephen Harper.

Colleagues, that answer spoke volumes. This is where we are as a nation, after almost 10 years of self-styled Harper government. All of the voices of all of the Canadians you can line up, from former prime ministers through Supreme Court justices through professors and business leaders down to people in the street, are rejected, ignored, dismissed out of hand. The only voice that matters is that of one man, Stephen Harper.

There is no attempt to gain social licence on this or any other national issue. Colleagues, that is not leadership.

The battle against radicalization and terrorism will not be won by our police or security agencies alone. It can only be won by all of us joining together in common cause — families, teachers and community and religious leaders. If ever we needed our government to unite and not divide us, it is for this challenge.

The concerns being raised by our fellow citizens about this legislation are real, and they are serious. Our critic on this bill, Senator Mitchell, has done an excellent job detailing a number of them, and I know others will join in the debate as well. I will use just a few minutes to highlight very briefly just a few issues of special concern to so many.

I mentioned *The Globe and Mail* op-ed written by Daniel Therrien, the Privacy Commissioner of Canada. He reiterated his concerns when he appeared before our National Security and Defence Committee. This is what he said:

> As Privacy Commissioner of Canada, I am of the view that part 1 of Bill C-51, which contemplates information-sharing for national security purposes between all government departments and 17 specified agencies, is excessive and lacks balance. While I appreciate that information-sharing as contemplated by the bill may sometimes lead to the identification of new threats, I believe this end is accomplished at much too great a cost to privacy.

Please recall, colleagues, that Mr. Therrien is no wide-eyed innocent when it comes to the terrorist threat or the needs of our security and intelligence community in meeting this threat. His career, before he was appointed to the position of Privacy Commissioner, was spent largely serving as legal adviser to federal departments in policing and law enforcement and security and intelligence. Indeed, you will recall that when Prime Minister Harper nominated him for the position of Privacy Commissioner, many of us were worried that he would weigh too much on the side of the security and intelligence community and not enough on the side of the privacy rights of Canadians.

So colleagues, when Mr. Therrien says that Bill C-51 is excessive and lacks balance, we need to pay attention. He confirmed to your committee that under the bill the Canada Revenue Agency could share Canadians' tax information with 17 national security agencies and departments and do so without any warrant, any oversight or any review.

He explained that this would not be confined to the personal tax information of people who are identified as posing a national security threat. Rather, in his words:

> . . . massive amounts of information could be shared with the 17 receiving institutions with a view to detecting new threats, so information about people who are not necessarily threats but with a view to identifying new threats.

Some might call these fishing expeditions, colleagues.

Let me be clear: I am not at all suggesting any inappropriate intentions on the part of any of these government officials. I am confident that they have only the very best of intentions, namely to keep Canadians safe, but the best of intentions can take anyone too far.

I don't propose to get too far into the drafting of the bill, but let me highlight one example: "activity that undermines the security of Canada" is defined to include "covert foreign-influenced activities." Now, reading that, most of us would assume that it covers actions by foreign spies acting in Canada, something most of us would agree should be covered by the section. But colleagues, under this government, we have seen allegations of "covert foreign-influenced activities" that go far beyond espionage.

We all recall that the highly controversial CRA audits of charities were sparked by an inquiry launched in this chamber by Senator Eaton, in which she alleged:

> There is political manipulation. There is influence peddling. There are millions of dollars crossing borders masquerading as charitable foundations into bank accounts of sometimes phantom charities that do nothing more than act as a fiscal clearing house.

These allegations, which I hesitate to emphasize, were never substantiated and would appear dangerously close to alleging "covert foreign-influenced activities." Will the tools in Bill C-51 be used to deal with those alleged threats? Certainly, our committee heard strong concerns expressed by members of Aboriginal communities and by environmental organizations who genuinely fear that these tools will be deployed against them simply if their members exercise their legitimate democratic right of civil disobedience.

John Bennett, Executive Director of Sierra Club Canada, testified before our committee. He told the committee that the Sierra Club has a 100-year history of non-violence and commitment to democratic solutions to environmental issues. He said that under Bill C-51, the Sierra Club could easily find itself engulfed in secret investigations and interference in its lawful operations. He told the committee about an RCMP criminal threat assessment report obtained by the media that mentioned the Sierra Club. He said:

> The RCMP prepared this report in secret. No attempt was made to contact Sierra Club or demonstrate any connection between our activities and any illegal activities or violent actions. . . .
>
> We asked the RCMP for assurances that Sierra Club will not be swept up in a Bill C-51-empowered investigation based on this report, and received a stony silence. So I take that to mean that we could be.

• (1850)

What are we becoming as a country, colleagues, when legitimate groups exercising a fundamental democratic right are at risk of bringing the force of the state down upon themselves — and in secret, without their knowledge, and no right of recourse or appeal? And by the way, we learned a few weeks ago that the Sierra Club is one of the organizations being audited by the CRA for possibly "excessive political activity." According to media reports, auditors were set to arrive at the organization's Ottawa office on May 11.

Once again, I ask the question: What will Canada look like when all this is implemented? A thriving democracy, with a lively exchange of ideas on the full range of current issues? Or a fearful nation where dissent is regarded with suspicion, and honest criticism risks making oneself a target?

As honourable senators know, my colleagues and I hold open caucuses from time to time, focusing with experts and members of the public on various public policy issues. We held an excellent open caucus recently on security and human rights. The discussion, as you might expect, quickly turned to Bill C-51. One invited speaker, Mr. Ziyaad Mia, an adjunct professor at Osgoode Hall Law School, spoke very powerfully about the impact of the bill. He described it as creating a new ethos in Canada, one marked by greater surveillance, greater secrecy and diminished rights and freedoms.

Is that really what we want to create, colleagues? Is that to be our legacy to future generations?

This brings me to what are perhaps the most controversial provisions in the bill, namely the new powers that would be granted to CSIS. The most controversial of these controversial provisions unquestionably is the new proposed subsection 12.1(3). That subsection reads:

> (3) The Service shall not take measures to reduce a threat to the security of Canada 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, unless the Service is authorized to take them by a warrant issued under section 21.1.

Senator Carignan and Senator Runciman have tried valiantly to argue that this section does not allow violations by CSIS of rights and freedoms guaranteed by the Charter. They say that the section does not authorize violations of the Charter but rather asks a court to ensure through the warrant that CSIS' actions will conform to the Charter.

Colleagues, their argument simply does not hold up. As legislators, we must understand the basic rules of statutory construction. This one is not difficult.

The subsection begins by saying that CSIS "shall not take measures . . . [that] will contravene a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms*." The section should have stopped there, because the kicker is the next phrase: "unless the Service is authorized to take them by a warrant . . . ."

What do we mean by the word "them," colleagues? "Them" refers back to "measures . . . [that] will contravene a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms*." In other words, this subsection anticipates a court issuing a so-called warrant to CSIS to take measures that will

contravene a right or freedom guaranteed under the Charter. Let me repeat: The section anticipates a court granting a warrant for CSIS to take measures that "will" — not "may," but "will" — "contravene a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms*."

The use of "will" instead of "may" has been the subject of controversy. Legal scholars have pointed out this means that CSIS only needs to go to a judge for a warrant if it knows, clearly and absolutely, that the proposed measures will contravene the Charter. If a Charter breach is a possibility or a probability, no warrant is needed, even if, as things turn out subsequently, the measures do contravene the Charter. Under Bill C-51, that is allowed, and no judicial authority is required.

Of course, the hearing before the judge is held in secret, with no one there to argue against the application. There is no special advocate to represent the public interest in having the Charter upheld. There is no one required to be present to challenge the assertions of CSIS that the warrant is required.

That's an absurdity. It's a complete contradiction of Canadian principles and values to include this provision in the legislation, to ask our federal court judges to, in effect, serve as a fig leaf to mask the illegality and patent unconstitutionality of our secret service.

Senator Tardif expressed it well at second reading when she said:

> . . . 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.

Colleagues, the only limitations are that the measures in question cannot cause death or bodily harm, violate the "sexual integrity" of an individual, or "willfully attempt . . . to obstruct, pervert or defeat the course of justice." But frankly, colleagues, what does that means when one is being asked to violate the Charter?

Legal experts have said that this likely could authorize CSIS to engage in rendition, sending Canadians abroad to be tortured.

In 2001, Parliament in Bill C-36 put limits around the use by the RCMP of so-called "preventative arrest" — limits that are loosened in Bill C-51 and have been the subject of debate, but still exist. Those limits will continue to apply to the RCMP, but under this section, CSIS could apparently hold someone in preventative detention with no such restrictions. In their case, it would not be called "preventative arrest" but rather a disruptive activity.

Colleagues, why bother placing any restrictions on the RCMP's use of preventative arrest if we are going to give a blank cheque to CSIS to engage in the same activity under a different name?

Let me remind you of the words of the Supreme Court in January 2002:

> . . . it would be a Pyrrhic victory if terrorism were defeated at the cost of sacrificing our commitment to —

— the Charter —

> —values.

The Harper government has gone even further. With this provision, it is tossing out the protections of the Charter altogether.

The Charter, of course, includes the "notwithstanding" clause. But this provision of Bill C-51 goes beyond even that. First, of course, the safeguard in the "notwithstanding" clause was that it must be explicitly invoked — a government must be prepared to stand up, openly, and acknowledge to Canadians what it is doing. That of course is not the case here. It is as if the government were hiding its actions deep in a closet, hoping no one will notice.

Even then, this provision would authorize contraventions of the Charter beyond those that would be allowed under the notwithstanding clause. That clause was limited to allow a government to opt out, if you will, of only certain rights and freedoms. Bill C-51 has no such limitations.

Those are just a few of the many problems raised by this bill. For example, I have not addressed the problems of the proposed amendments to the Criminal Code. These have received international attention, colleagues — and not in a positive way. The Organization for Security and Co-operation in Europe's Representative on Freedom of the Media commissioned an analysis of some of these provisions. The report raised a number of concerns with provisions that restrict the freedom of expression, concluding that their analysis leads "inevitably" to the conclusion that the provision in question "is very unlikely to withstand a constitutional challenge".

Colleagues, the Canada that would result if we pass this bill unamended is a Canada vastly different from the one we know. It will be one whose government and Parliament have given up on the commitment to values of liberty, the rule of law and fundamental justice, where the fundamental rights and freedoms that Canadians set out in the Charter — the "people's package" — are no longer sacrosanct, given up in the name of security.

• (1900)

Let me be clear: I know that CSIS and the whole of our national security community are well-intentioned. We have a first-rate public service, and that includes the security and intelligence agencies.

But, colleagues, mistakes happen, as we saw in the Maher Arar situation. Paul Cavalluzzo is a highly respected lawyer who served as commission counsel to the Arar inquiry under Justice Dennis O'Connor. He also was appointed by the Harper government to be a special advocate. He testified before our National Security and Defence committee, saying, "I can attest to the fact that national security agencies, whether police or intelligence, make honest mistakes." The risk is compounded because "these agencies deal in intelligence — not evidence but intelligence." Mr. Cavalluzzo referred to the fact that "Some people have, perhaps facetiously, referred to intelligence as glorified rumours."

But, colleagues, we have all seen instances where intelligence got it wrong, with terrible consequences that flowed from that. That is the risk in relying on intelligence as opposed to evidence.

These risks of human errors, of problems of intelligence versus evidence, of the secrecy within which these agencies must by definition operate, and given the unprecedented powers that we are entrusting to these agents, all of this cries out for effective oversight. Colleagues, right now, there is no oversight of any of these bodies.

SIRC, the Security Intelligence Review Committee, is a review agency for CSIS. It is not empowered or equipped to do oversight. For colleagues who may not be familiar with the term, "review" is after the fact, usually in response to a complaint. "Oversight" is ongoing, while actions are actually taking place.

There used to be some oversight of CSIS in the Office of the Inspector General, but the Harper government eliminated that office in one of its omnibus budget bills, Bill C-38 in 2012. There is the Civilian Review and Complaints Commission for the RCMP, which is limited to review of actions by the RCMP. There is the Communications Security Establishment Commissioner, whose office, once again, is limited to review.

Right now, there is no oversight body for any of our security and intelligence agencies. Indeed, there are not even any independent review agencies set up for 14 of the 17 agencies that will be covered by powers under Bill C-51.

The review bodies that do exist now are limited in what they can do. Notably, they're not allowed to cooperate and share information with each other — a problem that will be exacerbated by Bill C-51, which explicitly authorizes the 17 agencies to cooperate and share information. This was to address the very real problem of silos — a problem that has been cited in the intelligence failures that allowed the Air India bombing to succeed so terribly.

As was repeatedly pointed out to our National Security and Defence Committee, the review agencies must have explicit authority to cooperate and share with each other for even the limited review we have to be successful. Given the oaths of secrecy that are taken, explicit authority is needed, and there is nothing in Bill C-51 that would address that.

But above all this, colleagues, is the fact that we are giving unprecedented powers to our intelligence agencies to engage in disruptive activities, infringe upon the privacy rights of Canadians and even violate fundamental rights and freedoms of Canadians under the Charter, all of which is to be exercised in secret.

Colleagues, we cannot responsibly give these powers without establishing a full, robust and integrated oversight regime. This is critical for basic democratic accountability — a principle that the Harper government claims to hold high — and it is essential if Canadians are to have any confidence in how these powers are being exercised.

I believe, along with our former colleagues Senator Hugh Segal and Senator Roméo Dallaire, as well as many of our current colleagues, that we have reached a point where nothing short of parliamentary oversight will suffice. The G7, NATO, the Five Eyes as we call them — Canada, the U.S., the U.K., Australia and New Zealand — all of these countries have parliamentary oversight capability, or the congressional equivalent — all except Canada. We are the outlier. Why are the parliamentarians in those countries trusted by their governments with the nation's national security interests but Canadian parliamentarians are not?

The Harper government has rejected calls for parliamentary, or any, oversight of our security agencies, calling it duplication and needless red tape. But how can it duplicate powers that don't exist? Bill C-377 is an example of duplication and needless red tape. Parliamentary oversight of our security and intelligence agencies is essential to protect Canadians and Canadians' rights and freedoms. This isn't red tape; this is a red line that we should all defend.

Colleagues, there is no oversight in Bill C-51 — no oversight whatsoever by any independent agency. Even the review mechanisms in place are lacking, and nothing in this bill would address the very severe gaps in authority.

Colleagues, the government has put forward a bill that is alarming in its potential to violate the basic rights and freedoms of Canadians. The Privacy Commissioner, with a long background in security and intelligence, has told us this bill goes too far. It fails to achieve the balance Canadians expect and deserve, namely, legislation that protects both their safety and their privacy. And with the proposed powers in the amendments to the CSIS Act, it would fail — it doesn't even purport — to protect both Canadians' security and their rights and freedoms under the Charter.

Colleagues, if we pass this bill unamended, we will knowingly be doing exactly what our colleagues refused to do after 9/11: We will have allowed fear of terrorism to lead us to relinquish our fundamental principles and basic democratic safeguards. The Supreme Court of Canada stated, rightly, that our responsibility to Canadians — our responsibility to Canadians — is to draft laws that effectively combat terrorism and uphold our Constitution. If we pass Bill C-51, we will have failed in that responsibility.

Some Hon. Senators: Hear, hear.

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

Hon. Senators: Question.

The Hon. the Acting Speaker: We will deal with the amendments in the order that they are moved. The first amendment we will deal with is therefore Senator Mitchell's.

[*Translation*]

The Hon. the Acting Speaker: It is moved by the Honourable Senator Mitchell, seconded by the Honourable Senator Lovelace Nicholas, that the bill be not now read the third time, but that it be amended —

Some Hon. Senators: Dispense.

The Hon. the Acting Speaker: Is it your pleasure, honourable senators —

Some Hon. Senators: No, no.

[*English*]

The Hon. the Acting Speaker: Stand or read?

We vote for the first amendment. Yes. Are you ready for the question for the first amendment?

Some Hon. Senators: Yes.

The Hon. the Acting Speaker: That's okay? It is clear? No problem? Good.

[*Translation*]

Adopted.

For the second amendment, it is moved by Senator Jaffer, seconded by the Honourable Senator Fraser, that the bill be not now read the third time, but that it be amended in clause 16,

> (*a*) on page 25, by replacing lines 36 to 41 with the following:
>
> "nicating statements, wilfully advocates or —

Hon. Senators: Dispense.

[*English*]

The Hon. the Acting Speaker: Stand. Okay.

It is necessary to have a proposition for the first amendment.

Senator Fraser: He said it was adopted.

The Hon. the Acting Speaker: Is the amendment not adopted? Yes? Okay. Adopted.

Senator Mitchell: Yea!

Some Hon. Senators: No, no!

The Hon. the Acting Speaker: Amendment carried.

Senator Day: It is too late; it is adopted.

The Hon. the Acting Speaker: The second amendment —

Senator Munson: First one is done.

Senator Cordy: First one is done, yes.

Senator Munson: Second one.

[*Translation*]

The Hon. the Acting Speaker: All those in favour of the motion in amendment, please say "yea."

[*English*]

Senator Stewart Olsen: What are you doing? I don't know anymore.

[*Translation*]

The Hon. the Acting Speaker: All those opposed to the motion in amendment, please say "nay."

[*English*]

Some Hon. Senators: No!

Senator Mitchell: Yes.

Senator Mockler: No.

The Hon. the Acting Speaker: On division. Adopted.

Senator Cordy: No, not on division.

• (1910)

[*Translation*]

The Hon. the Acting Speaker: In my opinion, the nays have it. Order. One senator at a time, please.

A division is being requested. Is there an agreement between the whips? I see three senators rising.

[*English*]

Senator Munson: Your Honour, just a point of clarification. This is on the second amendment?

Senator Cordy: Yes.

Senator Mockler: No, on the first amendment.

Senator Munson: We would propose a 15-minute bell.

The Hon. the Acting Speaker: Fifteen minutes?

Senator Munson: Yes, 15 on the second, since the first one was already adopted.

The Hon. the Acting Speaker: On the first amendment or the second amendment?

Senator Munson: On the second one. The first one was already adopted.

Senator Cordy: Yes, it was.

Some Hon. Members: No!

An Hon. Senator: That's not true.

The Hon. the Acting Speaker: One at a time. Order!

[*Translation*]

The Hon. the Acting Speaker: I believe the first amendment was rejected. We will now vote on the second.

[*English*]

The first amendment was rejected.

Senator Cordy: No, it wasn't.

The Hon. the Acting Speaker: The first amendment was rejected.

Senator Cordy: The first one was accepted.

Senator Tkachuk: We are on the second one.

Senator Jaffer: The first one was adopted.

Senator Mitchell: I haven't been this happy in years.

The Hon. the Speaker: Honourable senators, if we can begin on the first amendment —

Senator Jaffer: No.

Senator Cordy: The first amendment passed.

The Hon. the Speaker: Honourable senators, if we can just start on the first amendment, please. Are senators ready for the question? We will deal with the amendments —

Senator Cordy: No.

Senator Fraser: Your Honour —

Senator Cordy: No, sorry.

Senator Fraser: That amendment carried.

Senator Mockler: We are not on the second. You know we are on the first one.

Senator Fraser: He adopted. He declared it was adopted.

The Hon. the Speaker: It might be clear for some of you, but I have been told by the table that it has not been clear and that we need clarification on the first amendment.

Senator Jaffer: No, no.

The Hon. the Speaker: If the table doesn't think it's clear, the record isn't clear, honourable senators. The record can't be clear if the table isn't clear.

Senator Jaffer: Let's get the tape.

Senator Stewart Olsen: Order, please.

The Hon. the Speaker: Order, please. I think the will of the chamber will be served well if we can have clarity on this issue.

Senator Mockler: That's right.

The Hon. the Speaker: I don't think clarity will be muddled if we just make sure that we have the right answer on this question.

Senator Cordy: Get the tape.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

Senator Munson: For the second amendment.

The Hon. the Speaker: We will deal with the amendments in the order that they were moved.

Senator Munson: Your Honour, we heard from the previous speaker. He said *Adopté* on the first amendment and then "Can we move to the second amendment?" That's what we heard and I think it will be on the tape here, sir. So, I think we're calling a vote on the second now.

The Hon. the Speaker: Honourable senators, the table did not get clarity that it was adopted by the Speaker, nor by the senator. So the Speaker did not provide clarity on this. I am looking for clarity from the house. I would appreciate if the house would provide that clarity on this particular issue.

Senator Mockler: That's right.

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

Some Hon. Senators: Question.

The Hon. the Speaker: We will deal with the amendments in the order that they were moved. The first amendment we will deal with, therefore, is Senator Mitchell's.

It was moved by the honourable Senator Mitchell, seconded by the honourable Senator Lovelace Nicholas, that the bill be now read a third time, but that it be amended, A, in clause 2 on page 5.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

Senator Fraser: Yes, yes.

The Hon. the Speaker: Carried, on division. I think that was pretty clear, honourable senators.

Senator Fraser: He just said "carried."

Senator Mockler: Defeated.

The Hon. the Speaker: Defeated, on division.

Senator Fraser: He said "carried."

Senator Cordy: Speaker.

Senator Carignan: He said it was defeated.

The Hon. the Speaker: It was defeated on division.

Senator Cordy: No, not on division.

And two honourable senators having risen:

The Hon. the Speaker: I see three senators rising.

Senator Mockler: That's right.

The Hon. the Speaker: Do we have an agreement on bells?

Senator Jaffer: No, no. One hour.

Senator Munson: We want a one-hour bell.

The Hon. the Speaker: A one-hour bell.

Senator Jaffer: One hour, thank you.

The Hon. the Speaker: Call the senators in for 8:15.

• (2010)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Chaput	Fraser
Cools	Furey
Cordy	Jaffer
Cowan	Lovelace Nicholas
Day	Mitchell
Downe	Munson—12

NAYS
THE HONOURABLE SENATORS

Ataullahjan	McIntyre
Batters	Meredith
Bellemare	Mockler
Beyak	Nancy Ruth
Black	Oh
Carignan	Patterson
Dagenais	Plett
Doyle	Raine
Eaton	Rivard
Enverga	Seidman
Fortin-Duplessis	Smith *(Saurel)*
Frum	Stewart Olsen
Gerstein	Tannas
Greene	Tkachuk
Lang	Unger
LeBreton	Wallace
Maltais	Wells
Manning	White—37
Marshall	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: We are now dealing with Senator Jaffer's amendment.

• (2020)

It was moved by the Honourable Senator Jaffer, seconded by the Honourable Senator Fraser, that the bill be not now read a third time, but that it be amended —

Some Hon. Senators: Dispense.

The Hon. the Speaker: Shall I dispense?

Hon. Senators: Agreed.

The Hon. the Speaker: All those in favour of the motion, please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those against the motion, please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I think the nays have it.

And two honourable senators having risen:

The Hon. the Speaker: I see a number of senators rising, more than two.

Senator Mitchell: There's still a glimmer of hope.

The Hon. the Speaker: Do we have an agreement on the bell?

Some Hon. Senators: Now.

The Hon. the Speaker: Now?

Senator Fraser: No bell.

Senator Munson: No bell. Excuse me, I'm the whip.

Senator Tkachuk: Stand up there, Senator Munson.

Senator Munson: Senator Mockler and I have agreed that we will continue with the votes now. Thank you.

Senator Mockler: In agreement, yes.

The Hon. the Speaker: All those in favour of the motion, please rise.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Chaput	Fraser
Cools	Furey
Cordy	Jaffer
Cowan	Lovelace Nicholas
Day	Mitchell
Downe	Munson—12

NAYS
THE HONOURABLE SENATORS

Ataullahjan	McIntyre
Batters	Meredith
Bellemare	Mockler
Beyak	Nancy Ruth
Black	Oh
Carignan	Patterson
Dagenais	Plett
Doyle	Raine
Eaton	Rivard
Enverga	Seidman
Fortin-Duplessis	Smith (*Saurel*)
Frum	Stewart Olsen
Gerstein	Tannas
Greene	Tkachuk
Lang	Unger
LeBreton	Wallace
Maltais	Wells
Manning	White—37
Marshall	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: We are now dealing with Senator Fraser's amendment.

It was moved by the Honourable Senator Fraser, seconded by the Honourable Senator Munson, that the bill be not now read a third time, but that it be amended in clause 2, on page 3, by adding —

Senator Mockler: Dispense.

The Hon. the Speaker: Shall I dispense?

Hon. Senators: Agreed.

Hon. Senators: All those in favour of the motion, please say "yea."

Some Hon. Senators: Yea.

Hon. Senators: All those against the motion, please say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: I see two senators rising. Senator Munson, do I have agreement on bells?

Senator Munson: No. We will vote. I have had enough bells. We will vote now, Your Honour.

Senator Mockler: Your Honour, it was agreed.

Hon. Senators: All those in favour of the motion, please rise.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Chaput	Fraser
Cools	Furey
Cordy	Jaffer
Cowan	Lovelace Nicholas
Day	Mitchell
Downe	Munson—12

NAYS
THE HONOURABLE SENATORS

Ataullahjan	McIntyre
Batters	Meredith
Bellemare	Mockler
Beyak	Nancy Ruth
Black	Oh
Carignan	Patterson
Dagenais	Plett
Doyle	Raine
Eaton	Rivard
Enverga	Seidman
Fortin-Duplessis	Smith (*Saurel*)
Frum	Stewart Olsen
Gerstein	Tannas
Greene	Tkachuk
Lang	Unger
LeBreton	Wallace
Maltais	Wells
Manning	White—37
Marshall	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (2030)

The Hon. the Speaker: We are now resuming debate on the motion for third reading of the bill.

Are honourable senators ready for the question?

Some Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Runciman, seconded by the Honourable Senator Boisvenu, that this bill be read the third time.

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

Hon. Joan Fraser (Deputy Leader of the Opposition): Your Honour, you're asking for this vote on the main motion after 5:30. It is my understanding that, according to the rules, the vote therefore is automatically deferred until the next sitting day.

The Hon. the Speaker: That is true only if a standing vote is requested. We've jumped the gun a little bit. It's late; I understand.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: Pursuant to rule 7-4(5)(c), the standing vote is deferred to 5:30 p.m. at the next sitting, with the bells to be rung at 5:15 p.m.

Senator Fraser: Senator Marshall, are you going to defer from Friday?

Senator Marshall: Are you talking about the motion to sit on Tuesday?

Senator Fraser: Your Honour, it's been a long day. Can you tell me when you just announced that the vote would be held?

The Hon. the Speaker: The next sitting of the Senate; 5:30 at the next sitting of the Senate.

Senator Fraser: We skipped a stage, but that's fine. That's good. We accept.

ADJOURNMENT

MOTION ADOPTED

Hon. Elizabeth (Beth) Marshall, pursuant to notice of June 3, 2015, moved:

That when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, June 9, 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.)

BUSINESS OF THE SENATE

Hon. Elizabeth (Beth) Marshall: Honourable senators, with leave of the Senate, all other items on the Order Paper stand and we move to the Notice Paper, with leave of the Senate.

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

Hon. Senators: Agreed.

PARLIAMENTARY APPROPRIATIONS AUDIT BY THE AUDITOR GENERAL

INQUIRY—DEBATE ADJOURNED

Hon. Anne C. Cools rose pursuant to notice of May 14, 2015:

That she will 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.

She said: Honourable senators, I speak to the role of audit and the role of the Auditor General of Canada. In Britain, audit examination of the books of the public accounts and public expenditure was ancient. Their House of Commons' audit efforts date to 1689 and include audit commissioners, audit boards, et cetera.

Our 1791, Constitutional Act created the Upper and Lower Canadas. Early, in these pre-Confederation colonial legislatures, the control of the public purse was a large and hard-fought issue. Focused on the national finance, the public revenue and the public expenditure, these conflicts were between the representative houses of assembly and the legislative councils and their governors. They fought constantly on the grave matters of taxing, spending, supply and appropriation, the control of the public purse. These conflicts paralyzed the legislatures and politics, and made the passage of supply bills difficult, and often impossible. The upper houses, the legislative councils, often rejected the lower houses', the assemblies' appropriation acts. In Lower Canada, the disputes were especially aggravated as the lower and the upper houses had difficulty in their constitutional functions. Lower Canada's Governor Lord Dalhousie had to prorogue often. On March 9, 1824, he addressed the two houses, in the *House of Assembly Journals*, at page 360:

> Gentlemen of the Legislative Council, Gentlemen of the Assembly,
>
> I am now to close a Session of the Provincial Parliament, the result of which I am much afraid will prove to be of little public advantage; at the same time your long and laborious attendance is entitled to my best thanks; But before I prorogue this Parliament, I think it is important to that Country that I should here, as His Majesty's Representative, express my sentiments upon the general result of your proceedings during the several Sessions in which I have met you: I declare those sentiments in earnest desire to attract the serious attention of every Member of this Parliament, of every man who values the prosperity of Canada . . .
>
> A claim has been made to an unlimited right in one Branch of the Legislature to appropriate the whole Revenue of the Province according to its pleasure, . . .; this claim, made by one, has been formally denied by the other two Branches of the . . . Parliament; nevertheless it has been persisted in, and recourse has been had to the unusual proceeding of withholding the Supplies, . . .
>
> This subject has occupied every Session from the first to the last, . . . : It has caused incalculable mischief to the Province; . . .

In 1827, Lord Dalhousie had prorogued the same legislature for the same reason.

Honourable senators, these representative assemblies fought long and hard for British rights, powers and freedoms. Of these, their assembly's power of the public purse relation to their executive councils and governor was primary. These assemblies' conflicts and denials of supply were legend. Lord Durham, the High Commissioner and Governor General of British North America, noted this. In his 1839 *Report on the Affairs of British North America*, he wrote that these colonial assemblies wanted the same constitutional powers as the British Commons House, being responsible government, secured by the representative lower house's control of the public purse in taxation, public revenues and expenditures. About Upper Canada, Lord Durham said, at page 107:

> It was upon this question of the responsibility of the Executive Council that the great struggle has for a long time been carried on between the official party and the reformers; for the official party, like all parties long in power, was naturally unwilling to submit itself to any such responsibility as would abridge its tenure, or cramp its exercise of authority. . .
>
> The views of the great body of the Reformers appear to have been limited, according to their favourite expression, to the making the Colonial Constitution "an exact transcript" of that of Great Britain; and they only desired that the Crown should in Upper Canada, as at home, entrust the administration of affairs to men possessing the confidence of the Assembly.

• (2040)

Honourable senators, early Canadians sought and won the constitutional principles and practices called responsible government, by which the Queen's ministers, who spend the monies appropriated by the lower house, are chosen from, and are responsible to, the lower, representative and popular house, exactly as the British Commons House. The 1840 Act of Union set out responsible government principles and judicial independence. But the large constitutional powers were wholly granted by the confederating British North America Act, 1867. This enacted Canada's House of Commons, elected in "representation by population." Its sections 53 and 54 granted the House of Commons its pre-eminence in the national finance, and the control of the public purse. This Senate, the federal house which embodies the federation, was granted a national finance power larger than that of the House of Lords in London. This Senate received full powers to defeat and to reduce, but not to increase the sums in supply and appropriation bills, and not to initiate them — but everything else.

Honourable senators, until 1878, Canada's federal Auditor General had been the deputy minister of finance, in a union of the two offices in one person. That year, under Liberal Prime Minister Alexander Mackenzie, we adopted a new audit bill, An Act to provide for the better Auditing of the Public Accounts. That's what we need, right? We need a new act for the better accounting of the public accounts. Based on the 1866 British Exchequer and Audit Departments Act, our act completely severed audit and the Auditor General office from the finance department and government. This new Auditor General independent from government was secured by his commission from the Governor General with life estate in office. In law this life tenure is called "during good behaviour." This tenure was a British practice for certain high officers of trust in the national finance. It is used for judges in the Constitution Act,

1867, section 99. It is also used and held by senators. In his 1889 *Parliamentary Government in England Volume II,* Alpheus Todd, tells that such offices, at page 6:

> , . . . would be elevated, in point of salary and tenure, to the highest position of dignity and independence.

Like senators and superior court judges, Canada's Auditor General was "elevated . . . to the highest position of dignity and independence." Like our section 96 judges, our 1878 statute enacted the Auditor General's salary as a direct and permanent charge to the Consolidated Revenue Fund. These permanent charges to the Fund are not part of the annual supply bills and supply process, and therefore avoid liability to risky votes of confidence. Supply bill defeats, as we know, are confidence matters, which demand the Prime Minister and the ministry's resignation. The alternative always, of course, is the Governor General's sole decision to dissolve the house and to put the defeat to the electorate by a general election. These protected salaries shield the judges from the political conflict of confidence votes, ministry defeats and high-stake politics.

Honourable senators, the 1878 Auditor General was created to free him from government control, from government favour, or government disfavour, but modern Auditors General are currently at the heart of politics. Daily we note their flamboyant forays into the political and policy fields. By their glossy reports to the Commons, they present in the media and to the public as the representatives of the citizen-taxpayer. By an illusory "audit power," they have assumed an audit power to hold governments, Parliaments, members, and now, senators, to account. Auditors do not represent the taxpayer, and have no representative powers. Such actions are unconstitutional and anti-Parliament. There are sad circumstances when the Commons House divided on the Auditor General, as the opposition championed him. In the Commons, April 1, 1970, Opposition Leader, Conservative Robert Stanfield, moved a non-confidence motion on Trudeau's Liberal Government, with whom the Auditor General was then at war. He moved, at *House of Commons Debates,* page 6109:

> That this House condemns the government for criticizing the Auditor General of Canada for carrying out his duties according to law; and reasserts its support of the principle of unfettered parliamentary scrutiny of government expenditures including the right of the Auditor General to comment on the failure of the government —

Are you ready?

> — to make expenditure in strict compliance with parliamentary appropriations and to report on these and any other cases he feels should be brought to the attention of Parliament.

This motion was well-defeated, colleagues, but it showed the Auditor General's bold foray into politics.

Honourable senators, in 1988, in studying the Main Estimates, our Senate National Finance Committee, of which I was a member, studied the Auditor General, and presented its Report on March 15. This was not long after the then new 1977 Auditor General Act, which was the political result of the combative Auditor General James Macdonell's political efforts to enlarge his powers. Once a Price Waterhouse management consultant, his brazen, political and publicly orchestrated campaign for this act won — succeeded. His loud confrontations with Trudeau's Government were infamous. He won his goal, and he wholly re-made, reformed, whatever, re-did the Auditor General and the powers of the Auditor General. Moved November 1, 1976 in the Commons House by Jean-Jacques Blais for Treasury Board Minister Bob Andras, — as we call it — the 1977 Auditor General Act wholly enlarges this office's powers, granting him long denied powers to "validate" government acts, which judgments are not audit. Auditor Macdonell *ab initio* had sought a power to determine if government public expenditures were economic, efficient and effective, meaning value for money. The act's sections 7.(2), 7.(2)(*d*), and 7.(2)(*e*) say:

> 7.(2) Each report of the Auditor General under subsection (1) shall call attention to anything that he considers to be of significance and of a nature that should be brought to the attention of the House of Commons, including any cases in which he has observed that . . .
>
> (*d*) money has been expended without due regard to economy or efficiency;
>
> (*e*) satisfactory procedures have not been established to measure and report the effectiveness of programs, where such procedures could appropriately and reasonably be implemented;

Honourable senators, these sections gave this auditor a non-audit power to judge government programs' success. This took the auditor out of the audit financial stream, and put him smack right into the public policy stream. Public policy is value laden and qualitative. It is no part of the quantitative, bean-counting role of the auditor. This new Auditor General is a creature unknown to ministerial responsibility, by which qualitative and value laden judgments on public policy properly belong to government and to Parliament's two houses, but not to the Auditor General or to the accountancy profession. We should be told what the value for money is in the Auditor General Ferguson's $21 million audit of senators. I would love to hear what that is.

Honourable senators, Macdonell's predecessor, Maxwell Henderson, Auditor General 1960-1973, set the tone for these political events, that Macdonell described as "the audit revolution," meaning their entry into the policy regulatory role. Regulation is executive. It is no part of financial audits on the public accounts, done for centuries to aid the houses in the control of the public purse. Economy, effectiveness, efficiency and value for money judgment belong to politics, Parliament houses and government, but not to the Auditor General. The next Auditor General, Kenneth Dye, built on all of this and went even farther. In 1985, in the Federal Court of Canada, he brought a court case, *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*. He challenged the federal cabinet. His quest was access and possession of cabinet documents on the 1981 Petro Canada purchase of Petrofina. These were difficult years for the government. Actually, even the provincial government service — very hard years.

Honourable senators, these three Auditors General well knew that the federal government was under stress. It was no coincidence that their adroit media mobilization — like today — and their alliances with the opposition parties were well staged. In the holy name of audit, these auditors engaged in hardball politics, in their real and mortal power struggles with Canada's cabinet ministers. From then, Auditors General have continued to grow their powers, by self-assertion of some definition. This has done incalculable damage to our constitutional system, and it reduced and eclipsed our Commons House, Public Accounts Committee, which is supposed to be the engine that should power the house's control of the public purse, in taxation and spending in the national finance.

• (2050)

Honourable senators, I come to the appropriation audit, and the large constitutional questions posed by Canada's current Auditor General's role, now more qualitative than the old appropriation audit, which in the 1860's Britain had applied to all its government departments, as did Canada slightly later. This demanded an independent Auditor General. Appropriation is the process in which the House of Commons agrees to its sums in dollars to be charged to and drawn on the Consolidated Revenue Fund for payment of the government's public administration and public service. By the Appropriation Act, the Commons House grants the legal authority to the government to draw on the fund. Jowitt's 1959 *Dictionary of English law*, *Volume 1*, defines "appropriation," at page 140:

> In the primary sense of the word, to appropriate is to make a thing the property of a person. Thus, to appropriate a thing which is *publici juris* is to obtain a right to the exclusive enjoyment of it, so that the appropriator becomes the owner. . . .

This is what the House of Commons does - it becomes the owner of the public finance.

The definition continues:

> Appropriation of supplies is the mode by which Parliament regulates the manner in which the public money voted in each session is to be applied to the various objects of expenditure . ., and the Appropriation Act is an annual Act passed for the purpose.

The Hon. the Speaker: Are honourable senators willing to give Senator Cools five more minutes?

Hon. Senators: Agreed.

Senator Cools: The 1964 *A Parliamentary Dictionary*, second edition, by L.A. Abraham and S.C. Hawtrey, defines "Appropriation," at page 21:

> It is one of the cardinal rules of the system of public finance that no money may be spent for any other purpose than that for which it was authorized by Parliament. The allocation of a sum of money for expenditure on any object is called "appropriation", and money is said to be "appropriated" by Parliament for a particular purpose.

Honourable senators, the Commons House jealous constitutional ownership of the public monies is expressed as their appropriation of public monies. This jealousy is seen here in the Royal Assent ceremony on appropriation bills when the Commons Speaker himself presents them to the Governor General who gives his assent and thanks the Commons for its beneficent gift to Her Majesty. Modern Auditors General rarely say the words "appropriation audit." I have a suspicion that this chamber is probably hearing the words "appropriation audit" for the first time in donkey's years. Their expensive and inflammatory role must be considered and examined, considering that in many jurisdictions these auditors general are now called the SSAI, which stands for Supreme State Audit Institution. Perhaps it is time that the two Houses of Parliament and their head, the Governor General, seek a renewed statute for audit of the public accounts in the national finance.

(On motion of Senator Fraser, debate adjourned.)

ROLE AND FUNCTION OF THE AUDITOR GENERAL

INQUIRY—DEBATE ADJOURNED

Hon. Anne C. Cools rose pursuant to notice of June 2, 2015:

That she will call the attention of the Senate to;

(*a*) the Auditor General of Canada, a statutory officer whose powers are limited to those expressly stated in the statute, the *Auditor General Act*; and, to his powers, by this Act, as "the auditor of the accounts of Canada," which powers do not include any audit of the Senate and senators; and, to the British House of Commons' great achievement, being the creation of the appropriation audit, to which audit all government departments were subject; and, to this appropriation audit, which inspired Canada's 1878 statute that created the Auditor General of Canada as an officer wholly independent of our finance department and most particularly of the government; and,

(*b*) to the auditor general's role in the appropriation audit, being to verify and to certify that government spending is as the House of Commons dictated and adopted in their appropriation acts; and, to the purpose and function of appropriation audits, which is the examination of the appropriation accounts of government departments, of which the Senate is not one, and therefore not subject to the Auditor General's audit examination; and,

(*c*) to the distinguished British Liberal Leader, William Gladstone, known for his constitutional acumen, and his defence of the powers of the House of Commons in the public finance and the *control of the public purse*, and who, as the Chancellor of the

Exchequer, sponsored Britain's 1866 *Exchequer and Audit Departments Act*, which was the basis for Canada's 1878 statute, *An Act for the better Auditing of the Public Accounts*, which Act established the new independent Auditor General of Canada; and, to Britain's Commons House famous and powerful Public Accounts Committee and its *1865 Report from the Committee of Public Accounts*, which Report clarified the role of audit in the public accounts of the departments of government; and,

(*d*) to this Report, that records the auditors' views and opinions on their role and proper function as never advising, controlling, or remonstrating, and also to never correct or prevent, but just to detect; and, to the fact that this great achievement of the appropriation audit is now largely unknown to Canadians, because recently, auditors general, by their own self-definition, have expanded their role away from the quantitative, arithmetic functions of audit, and have moved into the qualitative, policy spheres, to the extent that many Canadians now believe wrongly that the auditor general is the taxpayers' representative and guardian of their tax dollars, which function properly belongs to the Commons House, and not to the auditor general, who has absolutely no representative powers, which powers rightly belong to the elected members of parliament, chosen in *representation by population* for the purpose of no taxation without representation.

She said: Honourable senators, the appropriation audit was the unique audit examination of the public accounts, by which the Auditor General verifies and certifies that governments spend money for the purposes stated and adopted by the Commons House in their Appropriation Acts. The Constitution Act, 1867, sections 53 and 54, orders that these acts originate in the commons by Crown ministers. The appropriation audit, known for its accuracy and clarity, had been a great constitutional achievement. By its success and from its early stages, its application grew to include all government departments. On February 8, 1866, the Great Commoner, Exchequer Chancellor William Gladstone, moved Britain's Exchequer and Audit Departments Act. This applied the appropriation audit to all departments. This was followed in Canada when it adopted its 1878 Act to Provide for the Better Auditing of the Public Accounts, that also constituted the new independent Auditor General appointed during good behaviour. About Britain's use of the appropriation audit, Alpheus Todd's 1889 *Parliamentary Government in England* Volume II said, at page 63:

> It is undoubtedly of the first importance that the appropriation audit should be extended to every branch of the public expenditure, inasmuch as the financial accounts which are annually presented to Parliament do not as yet exhibit the precise relation between the grants and the expenditure for each particular service; and Parliament has no means of comparing the expenditure actually incurred with any vote to which the appropriation audit has not been applied.

Honourable senators, this successful appropriation audit established a new unknown audit precision in verifying and certifying that government spending was as the British Commons House intended and decided. That their Auditor General would examine each government department and each appropriation account was a great advance. The schedules to the Appropriation Acts itemize all sums of money and list them as "appropriation votes." Each appropriation vote has its own account and its own number. Each account was audited. This perfected appropriation audit and its application to all departments, to all public expenditure, was a high point for their Commons House pre-eminence in the control of the public purse. The British 1866 act had replaced their Audit Board with the new independent Auditor General whose role was to verify and certify the public accounts. In Britain in 1865, the year before their new act, the base for our 1878 act, these issues were well-studied in their famous House of Commons Public Accounts Committee, their powerful engine that drove the power of the control of the public purse. On March 11, 1862, William Gladstone, then Chancellor of Exchequer, the master of the national finance and the control of the public purse, had moved the motion to establish their Public Accounts Committee as a permanent standing committee. Their 1865 *Report from the Committee of Public Accounts* clarified the role of audit and auditors, and led the way to their 1866 Act. This famous committee report disputed the erroneous idea held by many that audit and auditor's role is to be a control over the public expenditure. It upheld audit's proper role. Quoting Mr. Gladstone, it said, at paragraph 46, page 130:

> The true mission of Appropriation Auditors is admirably described in the few observations which were made by Mr. Gladstone during the debate already adverted to on Lord Robert Montague's Resolution (para. 35).
>
> "The Noble Lord," he said, "and some other Honourable Members would seem to have got an idea of the possible powers of the Board of Audit, which is quite erroneous. They appear to think that that Board can become an efficient control over the public expenditure. But that is not the function of a Board of Audit. That Board is to ensure truth and accuracy in the public expenditure. In point of fact, it may be called, in one word, a Board of verification. But it would be perfect presumption in the Board of Audit, if it were for a moment to attempt to exercise a judgment as to any degree either of parsimony or of extravagance, which the Government might be thought to be adopting under the sanction of this House. As to the proposal of the Honourable and learned Member for Dundalk (Sir G. Bowyer), I confess I think it entirely impracticable and out of the question. He proposes to arm the Board of Audit with coercive powers of committal for contempt, powers of commanding the departments of the Government as to what is to be done, and what not to be done there. I venture to say that such a conception of a Board of Audit is wholly without precedent. Besides, the objection to it is, that it would be transferring to the Board of Audit what is really the function of this House. It is in the Committee of Public Accounts, . . ., it is in that Committee, and in its investigations, that the House will have the best security for the due, speedy, and effectual examining and rendering of the Public Accounts. To the principles which have been declared by the Committee of Public Monies respecting the Board of Audit, I cordially adhere."

Honourable senators, having cited Gladstone on the difference and the separation between the audit function and the Commons House function and on the great principles that found the

national finance enterprise, this Committee Report, still relying on Mr. Gladstone, continues, at paragraph 47:

> These are wise words. Considering the high administrative position of Mr. Gladstone, it might at first sight be supposed that his views on the matter in question would indicate a clearer perception of what is due to the Government, than of what is due to the Board of Audit. But the Auditors themselves, it is believed, will not think so. By them the speech of the Chancellor of the Exchequer cannot but be regarded as bearing powerful testimony to the virtue of a principle which they have for many years maintained, though in some cases unsuccessfully, against the disposition of the Executive to charge them with various kinds of administrative functions, the functions of controllers, of accountants, and of regulators of accounts. . . . In the elaborate Memorandum, which was laid before the Committee on Public Moneys by Sir G.C. Lewis, then Chancellor of the Exchequer, it was proposed that the Exchequer Office should be abolished, and that some of the more important functions of the Comptroller of the Exchequer should be transferred to the Audit Office. This Memorandum was referred by the Committee to Mr. Romilly, the Chairman of the Board of Audit; and Mr. Romilly, in a letter which will be found in the Appendix to the Committee's Report, after pointing out, in nearly the same words as those used by Mr. Gladstone, what the special duties of an auditor are, goes on to show the incompatibility between such duties and those of a comptroller. "In the event," he says, "of its being desirable that this direct Executive control should be maintained over the advisers of the Crown, it should not be exercised by those who are charged with the duty of auditing accounts." And again, "I cannot entertain any doubt that provided the Legislature come to the determination to be promptly and accurately informed as to the mode in which the grants of public money have been dealt with by the Executive, provided the Executive will cordially co-operate in instituting an effectual and permanent check upon its own proceedings, and provided the separation of the duties of the Audit Office, and the functions of the Executive is strictly preserved, there can be no insurmountable difficulty in practically carrying their wishes into effect.

• (2100)

Colleagues, I shall repeat some of these critical words:

> In the event . . . of its being desirable that this direct Executive control should be maintained over the advisers of the Crown, it should not be exercised by those who are charged with the duty of auditing accounts.

I repeat:

> . . . and provided the separation of the duties of the Audit Office, and the functions of the Executive is strictly preserved . . . .

Colleagues, in this audit of senators, this separation has been trampled, just as the Senate has been in this audit by the Auditor General of Canada.

[Senator Cools]

Honourable senators, I note that this British Committee Report was the year before their new independent Auditor General was enacted in 1866. These stated principles are most relevant today when the Auditor General's role is misunderstood and prone to violation. This is evident in the current union of interest and action of this government and the Auditor General, which union has been executed and embodied in the illegal and illicit audit of senators. A Senate motion, by a government minister, ordered senators to subject themselves to an illicit audit examination. The Auditor General, the government and their lawyers must know this, both from the law on the sovereignty of Parliament, and from the Auditor General Act itself, in which Parliament enacted no power whatsoever for this auditor to audit the Senate, and most particularly, not to audit prompted by a government motion, as government business.

Honourable senators, in this seminal 1865 British Public Accounts Committee Report, the auditors themselves speak to their audit role, at paragraph 48:

> If, then, Parliament should ever be asked to confer upon the Auditors any Executive functions, or the right in any case of interrupting or questioning the free action of the Executive, it will be easy to show that though such proposals have been occasionally recommended by the doctrine and practice of the Executive Departments, and have been sometimes even sanctioned by Parliament itself, they have been repeatedly condemned by the Commissioners of Audit. If it is allowable to assume that the Auditors still adhere to the evidence which, during the last six or seven years has been laid before Parliament on behalf of the Audit Office, they may be represented as saying: — "The whole of our experience as Appropriation Auditors tends to satisfy us that we ought to have no further communication with the Executive Departments than may be necessary for the purpose of obtaining information. Whatever tends to associate us, either directly or indirectly, with the pecuniary transactions of the Government, cannot but tend to damage the credit of the reports in which we are required to submit those transactions to the judgment of Parliament. We conceive, therefore, that we should never be required to advise, to control, or to remonstrate."

The auditors themselves gave evidence, saying that they, "should never be required to advise, to control or to remonstrate." Colleagues, their evidence reveals the Senate audit problem, the audit dilemma. Why is the Auditor General advising that the Senate refer senators' files to the police, or to anyone? Why is he speaking about his report in the media, most particularly the *Ottawa Citizen*? Why is this auditor interpreting and defining Senate rules and policies and trying to enforce them? On May 26, Jason Fekete's *Ottawa Citizen* article reveals truths and facts that are denied, and unknown to senators, the last to know, and who often only learn from the media, of these Senate matters. Headlined "Expense claims of 30 senators problematic, auditor general says." We should haul him here and question him about this stuff. This is deadly.

Fekete writes, at page A6:

> The auditor general's report on Senate expenses will be delivered next week to the Speaker of the upper chamber and publicly released shortly thereafter.

By whom, by the way?

> Ferguson said there is enough concern with expense claims from roughly 10 current or former senators to refer their cases to the Mounties for further review.
>
> "That number would be accurate," Ferguson said. "Expenses from approximately 20 other senators also will be flagged in the final report as problematic," he said.

Fekete records the Auditor General's words, again:

> The total, including those (roughly 10 senators who should be referred to the RCMP) that we will be reporting on is about 30. . . .

Fekete cites the Auditor General's campaign message, quote:

> A lot of our message around the Senate audit will be talking about accountability and transparency.

Some of this is to be pretty transparent to be quite frank.

Colleagues, his words are "accountability" and "transparency." That same day, Auditor General Ferguson appeared on CBC's "Power & Politics" with Evan Solomon, respecting details of his report not yet reported to the Senate. All this is out of order, and very sad. Pride and vanity in other peoples' misfortune is a tragic affliction of the human condition. This auditor's private opinions and messaging are no part of financial audit, and no part of the Auditor General's role in the public accounts, which role is to verify and certify the accounts of Canada, of which the Senate accounts are no part — no part whatsoever.

Honourable senators, this seminal British Public Accounts Committee's 1865 Report continues at paragraph 48:

> We ought not to be invited to discuss questionable points with the Departments, or to aid them in the conduct of their business. Our functions should be neither preventive nor corrective, but simply detective. We should be instructed to try the accounts and vouchers of the several Departments, by the requirements of the Legislature, and to bring under the notice of Parliament any expenditure that might in our opinion be opposed to those requirements. It may no doubt sometimes appear to us that the expenditure which it will . . . be our duty to report is justifiable, or even commendable; but we should keep all such opinions to ourselves. It should be no part of our business to acquit or to condemn, but simply to report to Parliament every infraction of the law relating to the appropriation of the public money, leaving it for the Executive Departments to give such explanations as they might think fit, and for the House of Commons to pronounce the sentence.

I repeat, the auditors said that their functions are not to prevent or correct. They also said, "It should be no part of our business to acquit or to condemn." But the Auditor General has condemned many senators publicly, though the Senate and senators do not have his report. I haven't got it. I do not know about anybody else here.

The Auditor General has made statements in the media to wit that some 10 senators should be referred to the RCMP for investigation, and that 20 other senators have "problematic" expenses. This is a very sinister condemnation. It is a judgment, dressed and decorated as messaging. But it is a judgment that is not his to make. It is one which belongs to senators and to this Senate. The judgment that is his to make, and that he should make, is whether the monies granted to him by the Commons House Appropriation Act intended that he should spend $21 million to audit senators and publicly condemn them.

Senator Mockler: Order!

Senator Fraser: Order!

Senator Mockler: Order!

The Hon. the Speaker: Senator Cools.

Senator Mockler: Order! The Speaker is standing.

The Hon. the Speaker: Are there further senators that wish to speak on this?

(On motion of Senator Fraser, debate adjourned.)

(The Senate adjourned until Tuesday, June 9, 2015, at 2 p.m.)

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