



# DEBATES OF THE SENATE

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OFFICIAL REPORT  
(HANSARD)

Friday, June 26, 2015

The Honourable LEO HOUSAKOS  
Speaker

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## THE SENATE

Friday, June 26, 2015

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

Prayers.

### SENATOR'S STATEMENT

#### HOUSING AND INFRASTRUCTURE IN FIRST NATION RESERVES

**Hon. Dennis Glen Patterson:** Good morning, honourable senators. In November 2013, your Standing Senate Committee on Aboriginal Peoples began our study on housing and general infrastructure on reserve. We studied the challenges and successes experienced by First Nation communities across Canada, while identifying innovative alternative funding options. Yesterday, our final report, entitled *On-Reserve Housing and Infrastructure: Recommendations for Change* was adopted by this chamber.

I'd like to take this opportunity to thank all the committee members who participated extensively in drafting and redrafting this report, committee staff and Library of Parliament analysts — particularly Julie Cool, who held the pen — for their hard work and dedication to this study over the past 19 months.

Over the course of the study, your committee heard from 147 witnesses and visited 16 First Nations communities, aware that all regions should be represented in this report.

Honourable senators, I strongly believe that housing is a fundamental determinant of a community's well-being. If everyone is well housed, it leads to safer, more stable communities, which in turn leads to more educated, prosperous and happy community members. I also believe that you cannot discuss the challenges and successes of housing without discussing general infrastructure.

In total, colleagues, our report offers 13 recommendations aimed at improving the housing and infrastructure situations on-reserve and enabling First Nations communities to have greater access to capital. Much of the media coverage we have received is focused on our recommendation to remove the 2 per cent escalator cap on core funding for Aboriginal Affairs and Northern Development. However, we also included strong recommendations for the federal government to consult First Nations governments and community members in an effort to create opt-in legislation that would facilitate private property ownership for First Nation members living on-reserve. Property ownership would enable homeowners on-reserve to leverage their properties as collateral when securing further loans, like many off-reserve Canadians do.

Our committee is also proposing a highly innovative solution calling for the creation of a ministerial loan-guarantee program specifically for community infrastructure. This new program

would make it possible for First Nations to securitize a large amount of financing dollars that would enable them to use funds from private lending institutions to chip away at the infrastructure deficit on-reserve. Approval for this program would be linked to participation in the First Nations Fiscal Management Act, as well as certification by the First Nations Financial Management Board. It's important to note that this model could also be constructed in such a way that First Nations, with and without access to own-source revenue, would be able to participate.

One final recommendation I would like to highlight, honourable senators, pertains to building codes. Your committee is recommending that legislation be developed, in consultation with First Nations, that would lead to the creation, implementation and enforcement of building codes on reserves. This would, in turn, ensure that safer, more stable homes are being built and hopefully help to protect residents from future tragic fire-related deaths.

Thank you, colleagues, for your support in adopting this important report.

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[Translation]

### ROUTINE PROCEEDINGS

#### CHIEF ELECTORAL OFFICER

##### ACCESS TO INFORMATION ACT AND PRIVACY ACT—2014-15 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 Office of the Chief Electoral Officer, pursuant to section 72 of the Access to Information Act and section 72 of the Privacy Act.

[English]

#### STUDY ON THE IMPACTS OF RECENT CHANGES TO THE IMMIGRATION SYSTEM ON OFFICIAL LANGUAGE MINORITY COMMUNITIES

##### FOURTH REPORT OF OFFICIAL LANGUAGES COMMITTEE—GOVERNMENT RESPONSE TABLED

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, the government response to the fourth report

of the Standing Senate Committee on Official Languages entitled: *Seizing the Opportunity: The role of communities in a constantly changing immigration system.*

## QUESTION PERIOD

### PUBLIC SAFETY

#### INFORMATION SHARING—PARLIAMENTARY OVERSIGHT OF SECURITY AGENCIES

**Hon. Grant Mitchell:** Colleagues, we all know that Bill C-51 was recently passed and received Royal Assent. Having done so, it permits the sharing of information about activity that undermines the security of Canada, something two distinguished law professors who did a great deal of work on this bill, Craig Forcese and Kent Roach, called “a new and astonishingly broad concept” in the way that it was implemented.

Privacy Commissioner Daniel Therrien denounced the scope as “clearly excessive,” saying it would make available all federally held information about someone of interest to as many as 17 government departments and agencies with responsibilities for national security.

On the other hand, in a presentation to federal deputy ministers last year, CSIS, the Canadian Security Intelligence Service, said significant improvements to the sharing of national security information were possible within the existing framework, within the pre-Bill-C-51 framework.

Why would it be that the government would bring in astonishingly broad legislation that jeopardizes Charter rights, undermines due process and jeopardizes privacy rights, when its own intelligence service, CSIS, is saying that they could have done pretty much what they had to do without Bill C-51?

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** Thank you for your question, senator. As you know, the primary duty of any government is to keep its citizens safe, and that is why our government brought in measures to counter terrorism. We are not going to stay on the sidelines.

Your question gives me the opportunity to say that our thoughts and prayers are with those affected by this morning’s terrorist attack in France, as well as the one that occurred almost simultaneously in Tunisia. Canadian security officials have contacted France to offer our help. This event reminds us that jihadism poses a serious threat to Canada and its allies.

[ Senator Martin ]

• (0910)

That is why, under the Prime Minister’s leadership, Canada has joined its allies in the international coalition against the Islamic State. We cannot ignore this threat. Furthermore, senator, that is also why our government has implemented measures to protect Canadians against jihadi terrorists who are trying to harm them.

[*English*]

**The Hon. the Speaker:** Honourable Senator Plett, you have a supplementary?

**Hon. Donald Neil Plett:** Honourable senators, this is also a supplemental —

**Senator Mitchell:** Well, I’m not finished yet, so sit down. You’ll get your chance in a minute.

**The Hon. the Speaker:** Senator Mitchell.

**Senator Plett:** The chair —

**An Hon. Senator:** Oh, oh.

**The Hon. the Speaker:** Gentlemen — honourable senators!

**Senator Mitchell:** Come on, Don. Don, give me a vote, would you?

**The Hon. the Speaker:** We will let Senator Mitchell put his supplementary and then we will go on with our Question Period.

**Senator Mitchell:** Professor Forcese went on to say that, really and truly, CSIS saw that within the existing legislation, the pre-Bill C-51 legislation, there was ample room for work-arounds with a bit more coordination within government. What both he and CSIS were talking about is that we need leadership. We don’t need legislation that takes away Charter and privacy rights and undermines due process.

Why didn’t the government consider giving the National Security Advisor more authority to provide the kind of direction that could have solved the problems that Bill C-51 was excessive in trying to solve?

[*Translation*]

**Senator Carignan:** Senator, I am pleased that you are talking about leadership in this matter. Obviously, you can be assured that there will be real leadership on security under the current Prime Minister. All the positions and measures taken, whether we are talking about legislative measures or government decisions, attest to the Prime Minister’s leadership when it comes to security and protecting Canadians against the jihadi threat. Bill C-51 is another example of this leadership.

[English]

**Senator Mitchell:** I would say the Prime Minister is certainly a leader when it comes to tightening the reins on democracy bit by bit and allowing for repression creep.

In view of the fact that even CSIS, the core intelligence agency, is saying they could have done so much of what was required to enhance Canadians' safety without excessively eroding Canadians' rights under the existing structure — that is, if they only had greater leadership and more forceful leadership — would that not be a further reason for proper parliamentary oversight for both houses so that organizations like CSIS could get the leadership they need? Whether or not you have Bill C-51, you still have the same lack of leadership structure.

[Translation]

**Senator Carignan:** Senator, our current leadership structure is solid. We have a Prime Minister whose priority is Canadians' safety and security. I must tell you that I feel much safer with Prime Minister Stephen Harper than with your leader, Justin Trudeau, who promised to run away from fighting jihadists, or your NDP cousin who has been saying all along that he is opposed to the fight against jihadists.

Senator, with regard to leadership on security, I invite you to support our Prime Minister's efforts.

With regard to the issue of oversight, I have said many times that in our opinion, non-partisan, independent, expert oversight of our national security agencies is a better model. Furthermore, the main powers granted by Bill C-51, which is now law, are subject to judicial oversight and authorization and strike a good balance between the rights of Canadians and protecting their interests and safety.

[English]

**Senator Mitchell:** I just love it when you talk about the Prime Minister's ability to lead 10 years later, because 10 long years later, he still hasn't been able to lead us to build a pipeline, not a single pipeline. Way to be, Mr. Harper.

**An Hon. Senator:** Watch what's coming.

**Senator Campbell:** Liberal government, yes.

**Senator Mitchell:** What is it about the fact that the Conservative government wasn't truthful — if only we could have a pipeline for maple syrup, Senator Mockler. But he wouldn't be able to build that, either, because he just can't lead.

Now that we have learned that the Conservatives weren't truthful when they told Canadians that this law, Bill C-51, was necessary, what can the government do to ensure that Bill C-51's excesses will be tempered? Can the government not now at least

admit to the need for proper parliamentary oversight and proper parliamentary review of all of the 17 agencies that have national security responsibilities?

That's a great idea. That's leadership.

[Translation]

**Senator Carignan:** Senator, as I said, we believe that non-partisan, independent, expert oversight of our national security agencies is the best model. I've listened to your speeches and presentations, and I'm truly convinced that the best model is to have non-partisan, independent, expert oversight of our national security agencies. To be honest, I would be concerned if you were the one providing that oversight.

[English]

**Senator Mitchell:** Given that only 1 of the 17 really has anything like independent oversight, is the Leader of the Government in the Senate therefore arguing that the other 16 should now get independent oversight boards like SIRC, which oversees CSIS? Is that what you are arguing? You just said that's the best model.

[Translation]

**Senator Carignan:** Senator, our primary duty as a government is to protect Canadians and keep them safe. That is why we have introduced measures that protect Canadians against the jihadi terrorist threat, and that is what we are going to continue to do.

[English]

## NATIONAL SECURITY AND DEFENCE COMMITTEE

### INFORMATION SHARING—PARLIAMENTARY OVERSIGHT OF SECURITY AGENCIES

**Hon. Donald Neil Plett:** My question is to the Chair of the National Security and Defence Committee. Senator Mitchell has made a number of accusations here and raised questions, obviously not through research of his own but simply because he was watching CBC last night. That's where he gets most of his information.

**Hon. Larry W. Campbell:** CBC. That's a bad thing?

**Some Hon. Senators:** Oh, oh!

**Senator Plett:** I wonder if the Chair of the National Security and Defence Committee could shed some light to the ridiculous accusations we have heard today.

**Senator LeBreton:** Good question!

**Hon. Daniel Lang:** Colleagues, I welcome the opportunity to clarify the record because I think this is an important issue for

Canada. It's one that I think every Canadian should be aware of, namely the accurate facts of the matter that faces us.

First of all, it should be pointed out that this legislation passed overwhelmingly in the other place with the support —

**Senator Campbell:** After two hours of debate!

**Senator Lang:** — of Senator Campbell's and Senator Mitchell's brothers and sisters, the Liberal Party. It should be pointed out that the overall principles in that bill were accepted in the other place.

**Senator Campbell:** At least we have brothers and sisters.

**Senator Lang:** There are a couple of other things that need to be clarified so that Canadians understand what took place through the parliamentary process.

**The Hon. the Speaker:** Order.

**Senator Lang:** Thank you, Your Honour.

First of all, from the point of view of the debate that has taken place since October of last year to the passage of the bill approximately a week ago in this house, one of the criticisms to the bill was that adequate resources were not being made available to the various agencies that are responsible for the implementation of the bill agreed to by the House of Commons and this place.

• (0920)

I should point out that multi-millions of dollars have been committed by the Government of Canada for our law enforcement agencies and our intelligence community, as well as for the provisions of oversight of the day-to-day operations of these particular agencies. I think that is very important. That was accomplished over the course of the debate.

The question is on privacy, which, of course, I think concerns all sides of this house and all Canadians. During the course of the debate on the Senate's deliberations, over the period of six weeks, with 66 witnesses who appeared before us, we were able to get a commitment from the Government of Canada to ensure that the Privacy Commissioner would do a privacy impact assessment among the 17 departments that were involved with the sharing of this information. There was a concurrence by all members that there should be the ability to share information, but at the same time, to protect the information of Canadians.

With that statement made by the minister and with the implementation of same, I think that will answer the criticisms that were made during the course of the public debate on this bill, both in the House of Commons and in the Senate.

On the question of oversight, we have probably one of the best systems in the world for the purposes of oversight, and that is judicial oversight for the purposes of warrants.

[ Senator Lang ]

One of the criticisms that was made, rightfully so, was the fact that when a warrant was issued, there was not necessarily any requirement for the intelligence officer who requested the warrant to report back after the warrant had been executed. During the course of our debate, which Senator Mitchell was a part of, we received a commitment by the minister to ensure that any warrant that was requested would require, after execution, a reporting back to the oversight body. Subsequently, we have met that criticism of the bill.

From our point of view within the Senate over the course of our hearings, we brought forward a number of aspects of the bill that had to be considered and we got commitments from the government to proceed in that manner.

I also want to point out, colleagues, the honourable senator indicates that perhaps there wasn't any need for this legislation and perhaps we could have dealt with the existing framework that was in place prior to Bill C-51. I think all members should be aware of this and most members are. I know my colleague, if anyone knows, is that every country has revamped and reworked their legislative framework to face the threats that the free world faces at the present time. There is no question in our minds.

Today there was an attack in Lyon, France. Every day when we wake up, there's a new revelation. Every day it seems that in some part of the free world there is a terrorist attack of some nature with respect to the people of that particular community, whether it's Canada, France or Denmark, who unknowingly and suddenly are put in harm's way for no making of their own.

No one, but no one, can tell me that there's not a movement out there to destabilize the Western world. We have to have the tools to be able to combat that, Mr. Speaker. We have to have the ability as government to ensure the public security of Canadians who go to work day after day to support this country because we have one of the best countries in the world.

**Senator Plett:** Absolutely.

**Senator Lang:** Colleagues, I also want to say this with respect to —

**Senator Day:** Could we have unanimous agreement to extend Question Period?

**Senator Lang:** — the hearings that we undertook. They were comprehensive hearings that this Senate can be proud of. Of the 66 witnesses who appeared, there was one witness who said there wasn't need for change of any kind.

For example, in the bill that we passed here, some of you may not be aware that it gives government, in concert with the judiciary, the ability to start dealing with the question of the Internet, which is a major factor and a major reason why we're facing the threat we have today, because of modern technology and the way it has advanced.

This bill will give us the ability — our government along with the governments in the free world — to deal with the ISIS and the al Qaedas of the world and their use of the Internet to propagate

the propaganda that has been going on for so many years, which up to this point we have ignored.

[English]

So I want to say, colleagues, there is a real reason for Bill C-51. Not only does it take care of the public security of this country, it also recognizes the civil liberties that we all enjoy.

**Some Hon. Senators:** Hear, hear.

## PUBLIC SAFETY

### INFORMATION SHARING—PARLIAMENTARY OVERSIGHT OF SECURITY AGENCIES

**Hon. Wilfred P. Moore:** I would like to follow up on Senator Mitchell's questions with regard to the Leader of the Government.

Leader, you mentioned you thought that the Canadian system of oversight was the best. Are you saying that the oversight systems of the other members of the Five Eyes are not better?

[Translation]

**Hon. Claude Carignan (Leader of the Government):** Senator, I see that you are not satisfied with my answers. You could have asked Senator Lang to answer your questions, in accordance with the *Rules of the Senate*.

With regard to the model, every country has to determine which model is the most appropriate for them. We believe that the existing model, which involves non-partisan, independent, expert oversight of our national security agencies, is the best model for us.

[English]

### SURVEILLANCE OF FOREIGN STATES

**Hon. Wilfred P. Moore:** It was revealed in the last couple of days that the U.S. intelligence service has been spying on the Government of France. Did our security service know that was happening? Do we know whether or not the Americans are doing the same surveillance of our government?

[Translation]

**Hon. Claude Carignan (Leader of the Government):** Senator, what I can tell you is that we have an independent body that oversees our agencies' activities to ensure that they comply with the law and with the rights and parameters set out in the legislation.

**Senator Moore:** That's an interesting answer because I thought we were allies in this work of trying to deflect or counter the interests of those who might be trying to upset our way of life.

Maybe you can tell me this: Is our intelligence service doing similar spying on other governments, particularly our allies?

**Senator Mitchell:** They're spying on Ontario.

[Translation]

**Senator Carignan:** Senator, as you know, there is a legislative framework that governs our agencies' activities. There are oversight bodies that ensure that these agencies operate within the legal parameters that determine their powers.

[English]

**Senator Moore:** Bill C-51 permits Canadian agencies to take action in other countries, even though they may be breaking the law of those countries.

Are you anticipating that our security service could in fact be spying on the activities of other governments in other countries?

[Translation]

**Senator Carignan:** Senator, obviously, I cannot comment on operational security issues. All I am going to say is that, under Bill C-51, which is now law, that role falls to judges in Canada. Judges can approve or reject applications from the police or national security authorities to conduct certain activities to protect Canadians.

This has long been the practice and will continue to be. CSIS will not be able to conduct such an activity without the express approval of a federal court judge who deems it necessary for the protection of Canadians.

• (0930)

[English]

### SURVEILLANCE OF ONTARIO MINISTER

**Hon. Grant Mitchell:** The point I think the leader made, or it was a rhetorical question, was whether CSIS is spying on other governments. I'm saying of course they are. They're spying on the Ontario government. I wonder if he can find out for us and report back on whether or not CSIS actually got one of those new warrants under Bill C-51 to spy on the minister in the Ontario government that's been in the news recently.

[Translation]

**Hon. Claude Carignan (Leader of the Government):** Senator, I will not comment on the agency's security activities. As I said, there is a legislative framework that allows the agencies to appeal to judicial authority when the time comes to monitor activities within the parameters set under the law.

[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: first, Motion No. 117, under the heading of Motions, followed by all remaining items in the order that they appear on the Order Paper.

#### POINT OF CLARIFICATION

**Hon. James S. Cowan (Leader of the Opposition):** Colleagues, I rise on a point of clarification to apologize for inadvertently misleading the house during my remarks on Bill C-377 when I said six provinces representing 70 per cent of Canadians have asked us to defeat this bill. The six provinces were Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba and Prince Edward Island.

There are, in fact, not six provinces but seven provinces, representing 81.4 per cent of Canada's population and every region of our country.

Yesterday, I received a copy of the following letter to Senator Carignan from the Labour Minister of Alberta:

Dear Senator Carignan:

The Alberta Government wishes to express our opposition to Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations). We believe this Bill infringes on provincial jurisdiction —

**The Hon. the Speaker:** Order. Senator Cowan is on a point of order. I think he's entitled to finish his point.

[Translation]

**Hon. Claude Carignan (Leader of the Government):** However, the senator's point of order is on the debate of a bill. He has to raise his point of order when we are debating the bill, not at the beginning of Orders of the Day.

**The Hon. the Speaker:** The senator is clarifying his speech from yesterday. We will therefore give him the floor.

[English]

**Senator Cowan:** Thank you, Your Honour. I'll start again. This is a letter I'm reading into the record from Lori Sigurdson, Minister of Innovation and Advanced Education, and Minister of Jobs, Skills, Training and Labour for the Province of Alberta. It's addressed to my friend the Leader of the Government in the Senate, copied to me and to the Alberta senators. It's dated June 25, 2015.

Dear Senator Carignan:

The Alberta Government wishes to express our opposition to Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations). We believe this Bill infringes on provincial jurisdiction over labour relations legislation and, if passed it will compromise the capacity of unions to advocate effectively on behalf of their members. This Bill will force Alberta's labour unions to divert important resources from collective bargaining in order to meet prejudicial reporting and filing obligations.

We are also deeply concerned this legislation could affect the privacy rights of labour organizations, their members and their employees and we strongly believe working Albertans deserve better.

Honourable Members of the Senate, I would ask you to vote against this legislation.

Colleagues, I thought it was important at the first opportunity to correct the unfortunate impression I may have left that the Alberta government was indifferent to Bill C-377. In fact, as you see, they're very interested and they're very concerned.

### INCOME TAX ACT

#### BILL TO AMEND—DISPOSITION OF BILL— MOTION—DEBATE ADJOURNED

**Hon. Yonah Martin (Deputy Leader of the Government),** pursuant to notice of June 25, 2015, moved:

That notwithstanding any provisions of the Rules or usual practice, immediately following the adoption of this motion:

1. the Speaker interrupt any proceedings in order to put all questions necessary to dispose of bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations), without further debate, amendment or adjournment;
2. if a standing vote is requested in relation to any question necessary to dispose of bill under this order, the bells to call in the senators ring only once and for



15 minutes, without the further ringing of the bells in relation to any subsequent standing votes requested under this order;

3. no vote requested in relation to the disposition of the bill under this order be deferred;
4. no motion to adjourn the Senate or to take up any other item of business be received until the bill subject has been decided upon; and
5. the provisions of the Rules relating to the time of automatic adjournment of the Senate and the suspension of the sitting at 6 p.m. be suspended until all questions necessary to dispose of bill have been dealt with.

**The Hon. the Speaker:** The Honourable Senator Cowan.

#### POINT OF ORDER

**Hon. James S. Cowan (Leader of the Opposition):** Your Honour, I rise on a point of order. This motion is an attempt to turn an item of private member's business into government business and consequently it is totally out of order.

Bill C-377 is a private member's bill, which we received from the House of Commons. In the other place it followed the normal procedure for private members' bills. There was absolutely no overlap with any procedure or process designed for government business.

After it received first reading here, Bill C-377 was placed on our Order Paper not under Government Business but under Other Business, under the subheading, "Commons Public Bills — Second Reading." It was treated throughout as a private member's bill here in the Senate.

In Appendix 1 of our rules, dealing with terminology, a public bill is defined as follows:

A bill of general application, concerning matters of public policy. A public bill introduced in the Senate may be a Government bill (introduced by a Cabinet Minister or in a Minister's name) or a non-Government bill (one introduced by a Senator who is not a Cabinet Minister). A similar distinction is made for public bills originating in the Commons.

Bill C-377 was not introduced in either house by a cabinet minister or in a minister's name.

The appendix then defines "Government Business" as follows:

A bill, motion, report or inquiry initiated by the Government. Government business, including items on notice, is contained in a separate category on the Order Paper, and the Leader of the Government or the Deputy Leader may vary the order in which these items are called.

Bill C-377 is a bill, but it was not initiated by the government. Under this definition in our rules, it simply cannot be an item of government business.

So there is no question whatsoever that Bill C-377 is a private member's bill. The issue is therefore whether nevertheless, at the discretion of the government, such a bill can be treated as government business procedurally as this motion is attempting to do.

Currently Bill C-377 stands on our Order Paper under "Other Business," "Commons Public Bills — Third Reading." If the Deputy Leader of the Government wished to move it down the Order Paper, she would need to seek an order of the Senate pursuant to rule 4-14. She would have no right to unilaterally change its position via rule 4-13(3), pretending Bill C-377 is an item of government business, no matter how desirable it might be for the government or for the country itself, for that matter. The rules are the rules, and they are not dependent on the benevolence of the government.

• (0940)

Why do our rules make a distinction between "Government Business" and "Other Business"? The simple answer is for the chamber to give precedence to Government Business.

Rule 4-13(1) makes it very clear. It states:

Except as otherwise provided, Government Business shall have priority over all other business before the Senate.

This rule does not say that Government Business and any other business that the government thinks is important shall have priority. It says Government Business will have that priority, period.

But not only is Government Business given priority in our proceedings, the government is also given very specific tools to help move its business along more expeditiously. For instance, rule 4-13(3) provides as follows:

Government Business shall be called in such sequence as the Leader or the Deputy Leader of the Government shall determine.

In contrast, rule 4-14 provides that so-called "Other Business" —

**The Hon. the Speaker:** Order. Honourable senators, can we please limit the chatter? If you have serious discussions, can you take them out of the chamber while the senator is putting forward his point of order, please?

Senator Cowan.

**Senator Cowan:** I'll repeat the last paragraph because this is important.

I was saying that Government Business is given priority in this chamber, and the government is given certain tools to move its Government Business along.

Rule 4-13(3) provides the following:

Government Business shall be called in such sequence as the Leader or the Deputy Leader of the Government shall determine.

And that's what we see on a daily basis. The deputy leader rises and says this is the order in which we will deal with Government Business today. That's her prerogative, and she sets that order for Government Business.

In contrast, rule 4-14 provides that so-called "Other Business" shall be called in certain specific sequence "Except as otherwise ordered by the Senate . . ." not as determined by the government leader or deputy leader. So, for Other Business, the entire chamber has a say in any change to the projected order.

As we know, we go through our Other Business in the order in which it appears on the Order Paper, unless it is agreed by the chamber that that order is changed. Sometimes we do find that somebody asks, with leave, I would ask that this item be advanced or that we revert for the purpose of hearing to an item and the chamber considers and decides. That's for Other Business. The government decides the order in which its business is to be dealt with.

Another tool available to the government to expedite Government Business is time allocation. But rule 7-1 makes it very clear that time allocation is only available "for one or more stages of consideration of a government bill" or "for consideration of another item of Government Business."

As I explained earlier, Bill C-377 is not a government bill. It is not Government Business, so the time allocation rules simply cannot apply. Likewise, time allocation cannot be used to expedite the consideration of any item on the Order Paper found under "Other Business," because it can only be used for items of Government Business.

So these are some of the tools that are available to the government to expedite consideration of Government Business.

What the government is doing with this motion is taking a piece of "other" or non-government business and attempting to treat it as if, in fact, it were Government Business.

I want to make it very clear that I am not objecting to the terms of the motion itself. There is precedent for it. In 2004, the Senate had before it a third reading on a private member's bill, Bill C-250, An Act to amend the Criminal Code (hate propaganda). Senator Murray, on April 21, 2004, gave notice of a disposition motion.

This motion then appeared on the Order Paper under Other Business, and it was formally moved by Senator Murray the next day, on April 22. This is an example of the procedure that can be used in an attempt to expedite passage of a private member's bill.

Although the government of the day, in 2004, was very supportive of Bill C-250, it recognized that it was not a government bill and that's why this motion was not introduced as a government motion.

When there is business before the Senate, it cannot be part Government Business and part Other Business. It is one or the other, and it must be treated consistently. If there are senators who wish to expedite the consideration of Bill C-377, they should give notice of motion, as Senator Murray did in 2004, and then bring the motion forward for debate under the normal rules. Frankly, for Senator Martin to use her privileged position as Deputy Leader of the Government to move a government motion directed at private members' bills is unprecedented and, in my view, outrageous.

Bill C-377 is not a government bill and it should not be the subject of government procedural trickery. If Prime Minister Harper is so enthusiastic about this legislation, he should direct his Minister of Labour to introduce it as a government bill and not ask his representatives in the chamber to pervert the normal rules to ensure its passage here.

The government does not have the ability to wave a magic wand over Bill C-377 to transform it into a government bill at this stage in the process. Bill C-377 went through the different procedural stages in the other place as a private member's bill and it was approved and sent to us as a private member's bill. It is numbered as a private member's bill. Can someone seriously claim that it would be proper for the Senate to send back a message to the other place saying that we have passed the bill you sent us, but in the meantime we have changed its number and transformed it into a government bill?

If the government could use its sole discretion to transform a private member's bill into a government bill, it would then have the sole discretion about whether to even move it through the various stages of consideration here. The government could simply decide to freeze a bill by not moving the motions necessary to advance it any further.

Mr. Speaker, as Senator Cools has so often reminded us, the Senate is among the highest of courts in the land and what takes place here is in fact defined as a "judicial proceeding" in our statute law. In section 118 of the Criminal Code of Canada, it states that: "'judicial proceedings' means a proceeding . . . before the Senate. . . or a Committee of the Senate. . ."

One of the most fundamental principles of law is that you cannot do indirectly what you are prohibited from doing directly. In 1928, when ruling on the constitutional validity of certain sections of the Fisheries Act, Justice Newcombe of the Supreme Court of Canada, speaking for the majority, said the following:

What cannot be done directly cannot be done indirectly.

In our case, that is exactly what the government is attempting to do with this motion, treating Bill C-377 both as a private member's bill and a government bill, when it can only be one or the other.

We all know why this motion is being brought forward as a government motion. The government cannot apply time allocation to a private member's bill, but it can apply time allocation on a government motion. If you find that this motion is in order, the government could subject it to time allocation, and thus force a final vote on the bill itself. It will do indirectly what it is prohibited from doing directly, namely, applying the time allocation provisions to non-government legislation.

Mr. Speaker, I want to emphasize that it is improper to apply the processes that exist in our rules for one type of business to a completely different type of business. Bill C-377 is a private member's bill and we should respect that fact.

Colleagues, the critical distinction I have described between Government Business and so-called Other Business, or private members' business, was in fact stressed by one of our most learned and experienced speakers, Speaker Noël Kinsella, in a ruling that he delivered on October 30, 2013.

On October 29, 2013, Senator Martin moved a government motion which the Speaker characterized as a disposition motion. Her motion was proposing to establish a process to deal with three motions to suspend Senators Brazeau, Wallin and Duffy. Those three suspensions were on our Order Paper under Other Business. They were not government motions any more than Bill C-377 is a government bill. Nevertheless, Senator Martin, as the Deputy Leader of the Government, proposed a disposition motion under Government Business to deal with these three non-government items on our Order Paper.

• (0950)

As Speaker Kinsella explained, and I'm quoting from his decision:

If the disposition motion is accepted as an item in the category of Government Business, time allocation could be applied to the motion. If the Senate agrees to this, the Government would then be able to limit debate on items in the category of Other Business using specific powers that are now clearly reserved only for Government Business.

Colleagues, this situation today is identical. If Senator Martin's disposition motion is accepted as an item in the category of Government Business, time allocation could be applied to her motion.

If the Senate then agreed to such a time allocation motion, the Government, in the words of Speaker Kinsella:

... would then be able to limit debate on items in the category of Other Business using specific powers that are now clearly reserved only for Government Business.

What did Speaker Kinsella think of Senator Martin's proposal in 2013? He said:

A proposal of this type could, in the long term, distort the basic structure of Senate business, allowing the

Government's time allocation powers to, in effect, be applied to items of Other Business.

He then went on to describe how:

All senators have an obligation to the long-term interests of the Senate, to maintain the integrity of its traditions and practices, especially open debate within a clear structure, that have been hallmarks of the Senate since its very beginning.

He ruled:

... that Senator Martin's motion is out of order and is to be discharged.

However, before doing so, he said this about his ruling in 2013 on identical circumstances to those under consideration before Your Honour today:

... this ruling is based on a thorough examination of the matter, including a full review of the Rules, precedents and procedural literature. I have also considered advice from senior advisors, over several meetings in a short period of time. The issues raised are complex, important and sensitive, and could have profound effects on how the Senate works in the future.

Senator Kinsella was one of the longest serving Speakers in our history and earlier he had served as the Leader of the Opposition. Following what he described as "a thorough examination of the matter," he concluded that a government disposition motion for non-government business was a danger to our institution and ruled it out of order.

Significantly, Your Honour, his ruling was not appealed by the government at that time, even though it was a ruling that concerned a matter that was critically important to the government. It is a ruling that stands and, I respectfully suggest to you, should be respected.

I also need to remind colleagues that in 2013, Senators Martin and Carignan defended that proposed use of a government motion on non-government business, arguing that government business was being hampered by the time being spent on the non-government business in question. Senator Martin said at that time that "all other business in the Senate is being delayed." Senator Carignan said, "At this time, we cannot move forward with the government's agenda."

Speaker Kinsella correctly rejected that argument. But let's be clear, colleagues: no similar situation exists today. There is no government business that is today being hampered, delayed or obstructed by our continued debate on Bill C-377. In fact, it has been our side, not colleagues opposite, that has engaged in debate on the few remaining items of government business on our Order Paper.

Your Honour, we have clear rules and even clearer precedents. We all understand political pressures, but the rules and our procedures are the framework within which those pressures are

managed and dealt with. If we destroy that framework, if we undermine those clear rules, how will our chamber operate in the future? The rules of Parliament, just like the statutes and laws of the country, govern our behaviour, and we all should be able to rely on them.

Your Honour, again, this motion is totally and completely out of order, and Speaker Kinsella told us why less than two years ago.

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** Honourable senators, first of all, I think it's important to distinguish between a motion and a bill under consideration.

My colleague believes that this motion should come under Other Business, rather than under Government Business, because it is a private member's bill that was introduced in the other place.

My colleague is confusing "motion" and "bill." The motion stands alone; it is autonomous and not incidental to the main item, which is the bill. The motion exists, is substantive, and can be amended, debated or suspended. It stands alone. It should not be confused with or tainted, if you will, by what it is meant to promote. That is a fundamental distinction.

Senator Cowan quoted rule 4-13 of the *Rules of the Senate*. I would also like to repeat that rule, which states, and I quote:

**4-13 (2)** Except as provided in subsection (3), Government Business, including items on notice, shall be called in the following order, with Senate bills preceding Commons bills as appropriate, and items otherwise called in the order most recently proceeded with . . . .

The rule goes on to list the various items called as part of the Orders of the Day, including motions in paragraph (f). "Motions" is in the plural.

The Rules don't say "motions except disposition motions," but rather "motions," without any reference to the type of motion or subcategory of motions, which could be government motions or not.

What determines whether a motion is or is not a government motion? What determines whether an inquiry is or is not a government inquiry? It is the fact that it is moved either by the Leader of the Government or by the Deputy Leader of the Government that determines that, in the order of precedence, it is a government motion. That criterion alone is what determines whether a motion or inquiry is a government one or not. The simple fact that this motion was moved by the Leader of the Government or the Deputy Leader of the Government makes it a government motion.

In this case, we are talking about a disposition motion. The *Rules of the Senate* make no mention of a disposition motion. There is indeed a system set out for time allocation, but there is nothing about disposition motions in the Rules. Nevertheless,

[ Senator Cowan ]

such motions exist. They are part of our parliamentary law. Senator Cowan spoke about this and recognized the existence of such motions. A disposition motion was used in 2004 by Senator Lowell Murray. This type of motion exists. Senator Fraser also recognized the existence of this type of motion when she brought up Speaker Kinsella's ruling in the debate we had earlier on suspension motions. The existence of such motions has been recognized, and Speaker Kinsella also recognized the independent existence of these disposition motions in his ruling.

When the *Rules of the Senate* were revised, was the intent to limit the use of disposition motions? No. Such motions are not mentioned in the Rules. There are no provisions in the Rules to limit the use of or otherwise define the notion of a disposition motion. Thus, any senator can move such a motion whenever they feel it is appropriate to do so.

Senator Martin, the Deputy Leader of the Government, and I, the Leader of the Government, have exercised our discretion and moved this motion under a government notice of motion in order to make it a government motion.

• (1000)

There is absolutely nothing in the *Rules of the Senate* to limit our discretion, as Leader of the Government, to determine what is considered to be Government Business.

Mr. Speaker, I urge you be cautious before limiting the Senate's discretionary power to determine what is considered Government Business. Otherwise, where does it stop? If the chamber or the opposition or even you, Mr. Speaker, with all due respect, start identifying or picking and choosing what is considered Government Business, I think that will take us down a very slippery slope.

[*English*]

**Senator Cowan:** That's what you're doing.

[*Translation*]

**Senator Carignan:** The only people in this chamber who can determine what is considered Government Business are the Leader of the Government and the Deputy Leader.

We could have done what Senator Murray did in 2004 when he made use of a non-government motion. However, we also have the option of using a government motion.

Senator Kinsella's decision was about a suspension motion. Just because we didn't appeal that ruling at the time does not mean that today we cannot exercise our power to move a government motion when appropriate.

We are debating a bill from the House of Commons that was passed by the House of Commons. This bill was amended in the Senate and sent back to the House of Commons. It is a private member's bill. As Leader of the Government and Deputy Leader

of the Government, we used our discretion to determine that the chamber should vote. We are not asking the opposition to vote in favour of the bill. We are recommending that it be up to the Senate, as the final arbiter, to vote on bills sent to us from the House of Commons. Thank you, Mr. Speaker.

[*English*]

**The Hon. the Speaker:** Honourable senators, the cold winter we had has thawed us out a little bit, and we're all getting a little bit hot under the collar unnecessarily at this particular point.

I think we should also be reminded there are no cameras in this chamber, so we don't need any extra theatre other than facts and vigorous debate on the issue before us.

**Hon. Wilfred P. Moore:** Thank you, Your Honour.

I don't think, Leader, that anybody is objecting or trying to say that the government can't bring in a motion that it wants to bring in. However, you are bringing in a motion that, to use your words, is tainting the subject of your motion. This is a non-government bill, Bill C-377. It is Other Business. Senator Cowan has explained that in great detail.

This is quite clear. You are simply trying to do indirectly what you're not permitted to do directly. Nobody says you can't bring in a motion, but, if a motion is out of order, it's out of order. That's what this is. You are trying to circumvent the long-standing rules of this chamber.

I support the Point of Order of Senator Cowan.

**Hon. Yonah Martin (Deputy Leader of the Government):** Your Honour, this motion is a disposition motion to conclude debate at third reading of Bill C-377, an Act to amend the Income Tax Act, specifically dealing with requirements for labour organizations.

This legislation was first introduced in the Senate on December 13, 2012, and it has been here for quite some time, 925 days, I believe.

It has received the scrutiny of two standing Senate committees since its introduction in December 2011. It has been thoroughly studied by the Standing Senate Committee on Banking, Trade and Commerce, and the Standing Senate Committee on Legal and Constitutional Affairs. The Banking Committee heard 49 witnesses when studying this bill, conducting 14 hours of hearings. The Legal Committee had 23 witnesses over 7 hours. With 72 presentations in 21 hours in committee, this bill has received far more attention than most bills, including government bills. No one can say that the Senate has not done its due diligence on this bill or has acted in haste — 925 days, Your Honour.

It's time to bring this legislation to a vote, as our leader has said. Our job here is not simply to debate, but we are also asked to make decisions. It's clear that the opposition does not wish to do

so, since they have tried to obstruct through amendments and subamendments and amendments to the subamendments and other procedural tricks —

**Senator Cowan:** It's called the rules.

**Senator Martin:** — tactics, various measures. It's clear that we have spent quite a considerable amount of time on this bill as such.

There is, in fact, on Other Business, the fifth report of the Standing Senate Committee on Rules, Procedures and the Rights of Parliament because all of us in the committee and others have been questioning the process of bills in the category of Other Business. There are bills that have languished over a long period of time, so there was a process that was proposed. It was adopted at committee. It was brought to the Senate floor. Again, I believe Senator Cowan and Senator Mitchell proposed an amendment and subamendment, and that, too, was stuck.

We are here today to say that it's clear that the opposition is willing to have the Senate sit all summer long, and there is a sort of sense of impasse.

Your Honour, there is a cost for this institution to sit for weeks and weeks. Therefore, it's in the interest of the Senate and Canadian taxpayers to have this debate conclude.

Your Honour, I urge you to rule against the Point of Order and let us vote.

[*Translation*]

**Hon. Diane Bellemare:** Mr. Speaker, I would ask that when you rule on this point of order that you take into consideration some of the themes that Speaker Kinsella raised in 2013. I would like to read two important paragraphs that you should take into account:

Honourable senators, there is a coherence in our Rules. Government Business has priority, and there are mechanisms to facilitate its dispatch. As to Other Business, the Senate follows more traditional practices, so that debate is more difficult to curtail. The disposition motion currently before the Senate appears to cross the boundaries between these two categories.

A proposal of this type could, in the long term, distort the basic structure of Senate business, allowing the government's time allocation powers to, in effect, be applied to items of Other Business. To avoid the long term risks to the integrity of the basic structure of our business, it would be preferable to find a solution to this particular case that avoids establishing such a far-reaching precedent.

Consequently, Senator Kinsella proposed at the time that the leaders meet to establish a schedule. I know that we are not there. However, in the interest of a more open debate in this chamber, it

might be beneficial for us to set a schedule, particularly to bring back witnesses whose testimony we did not hear.

In your forthcoming ruling, Mr. Speaker, I would like you to answer some questions that trouble me and have been troubling me throughout this entire debate. I have two questions that I would like you to answer.

How is it that we are about to adopt a closure motion that, according to Senator Kinsella, could be out of order and could create a dangerous precedent?

• (1010)

All that for a bill that, in the opinion of most witnesses, is a bad bill bound to be challenged in the courts and one that will give rise to unwarranted public spending at a time when public finances are in a precarious state.

Why can we, in this chamber, not have a rational debate about the details of this bill when a majority of the witnesses and the Standing Senate Committee on Banking, Trade and Commerce pointed out so many problems with it?

I have an answer that I can share with you. I think that one of the explanations for this situation is that there is a kind of cancer at work here, and that it is petty political partisanship, which has perhaps become prevalent. I would ask you please not to succumb to it, but to fight it.

**Hon. Pierrette Ringuette:** Honourable senators, I would like to support the point of order raised by Senator Cowan.

We debated this bill for long periods of time in May and June 2013. The will of the Senate was to send an amended bill back to the House of Commons.

[*English*]

The proof of that is that when the Segal amendment was called in June 2013, many Conservative senators voted in support of the amendment. Some abstained; I clearly remember that. Some have retired since then. However, some of those who voted in support of amending Bill C-377 are still here. They were: Senator Doyle, Senator Green, Senator Lang, Senator McIntyre, Senator Nancy Ruth, Senator Seidman, Senator Smith (*Saurel*), Senator Unger and Senator Verner.

The Senate had done its work in regard to Bill C-377. It was sent as amended to the other place. Now, we all know the technicalities that happened at that time. As a result of prorogation, this measure came back when we started to sit again in October 2013.

This bill has been sitting on our Order Paper as Other Business from October 2013 all the way to November 2014 — 13 months — without it being called for second reading. I repeat —

[ Senator Bellemare ]

13 months during which the government thought that it was not a priority bill even though it was a private member's bill.

Regarding the arguments from Senator Carignan, saying that they have priority, the ability, the power and the dictatorship to identify and do a little triage of what is Government Business and what is Other Business, when Other Business can become Government Business and when Government Business can become Other Senate Business, I'm sorry, but that's not the way this institution works.

This motion was introduced by the Deputy Leader of the Government.

In regard to public opinion and the clarity of Senate rules, I do believe that we have clear rules. As a former member of the House of Commons, I can say that our rules are much clearer than those of the other place. Whether we're looking at procedural rules or administrative rules, the rules are clear and we have abided by these rules.

[*Translation*]

If we wish to support having debates in accordance with the Senate's rules of procedure, we cannot, after two years, ask the House of Commons to suddenly transform a private member's bill into a government bill. Quite frankly, if that is what this is about, we should not be surprised if in the coming months the public criticizes us for not following the rules of debate and providing second sober thought.

There has been a great deal of sober second thought with respect to this bill. During the entire time that we debated this bill and proposed amendments in 2013, it was never a government bill.

[*English*]

The boys in short pants across the street from here were actively talking to the media and saying, "No. This is not a government bill. This is not government policy. This is a private member's bill." You can look back at the media and the quotes on this issue.

With all due respect for this institution, I wholeheartedly support the point of order that was introduced by Senator Cowan.

**The Hon. the Speaker:** Honourable senators, as you can appreciate, I've been reflecting on this issue since yesterday. I will take into consideration —

**Hon. Anne C. Cools:** On a point of order. There are other people who wish to speak.

**The Hon. the Speaker:** Honourable senator, we are on the point of order.

**Senator Cools:** No, senator, you are wrong on this.

**Some Hon. Senators:** Oh, oh!

**The Hon. the Speaker:** Order, please. Order!

**An Hon. Senator:** Respect for the Speaker.

**Senator Cools:** I do respect the Speaker, I really do, but there are many people here who wish to speak.

**The Hon. the Speaker:** Senator Cools —

**An Hon. Senator:** Order.

**Senator Cools:** At least he should begin by inquiring whether the point of order —

**The Hon. the Speaker:** Senator Cools, as you are fully aware, it is up to the discretion of the chair to listen to debate on the point of order. When the chair feels they have received sufficient information and debate on the point of order, the chair can retire to deliberate.

I feel that I have received sufficient debate and information. As I pointed out, I have been reflecting on this issue since yesterday. In addition to the debate I've heard, I will suspend the chamber for 30 minutes with a five-minute bell and return with a ruling. Thank you.

**Some Hon. Senators:** Hear, hear.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1050)

#### SPEAKER'S RULING

**The Hon. the Speaker:** Honourable senators, I am ready to rule on the point of order raised by the Honourable Senator Cowan about whether government motion 117 is in order. I was aware of the concerns that might give rise to this point, and I have been considering the issue ever since. The arguments that I heard today raised both sides of the question — the claim of the government to be able to propose any motion as part of its business, and the competing claim that such motions cannot relate to Other Business. We also heard concerns about the duration of debate on the bill.

The issue in this case has to do with the fact that the government disposition motion would apply to a non-government bill, Bill C-377. As has been explained to us, using a government disposition motion to determine how

non-government business will be conducted directly contradicts a ruling given by Speaker Kinsella on October 30, 2013. In that ruling the Speaker explained the clear distinction that must be drawn between Government Business and Other Business. A motion such as the one at issue here could allow the government to use its powerful tools to limit debate on non-government items.

[*Translation*]

The tools that the Government has to facilitate the passage of its business were granted to it by the Senate in 1991. They include, for example, control over the order in which Government Business will be called and, most significantly, the power to propose time allocation. With respect to Other Business, on the other hand, the Senate has decided that these powers should not be available to the Government.

Let me quote from Speaker Kinsella's ruling, which provides a convenient synopsis that is directly applicable to the current situation:

Honourable senators, there is a coherence in our Rules. Government Business has priority, and there are mechanisms to facilitate its dispatch. As to Other Business, the Senate follows more traditional practices, so that debate is more difficult to curtail. The disposition motion currently before the Senate appears to cross the boundaries between these two categories.

[*English*]

A proposal of this type could, in the long term, distort the basic structure of Senate business, allowing the government's time allocation powers to, in effect, be applied to items of Other Business. To avoid the long term risks to the integrity of the basic structure of our business, it would be preferable to find a solution to this particular case that avoids establishing such a far-reaching precedent.

Given the government's important role, it has specific means, already discussed, to secure the dispatch of its business. But even under Other Business, there are ways to seek to curb or limit debate and to come to a decision. The most obvious is by moving the "previous question," which forestalls further amendments, but is only available on the main motion.

[*Translation*]

Honourable senators, my concern as Speaker in this case goes beyond the specifics of this particular point of order. All senators have an obligation to the long term interests of the Senate, to maintain the integrity of its traditions and practices, especially open debate within a clear structure, that have been hallmarks of the Senate since its very beginning. The changes that have been made over the years to modernize our practices, and to establish mechanisms to facilitate the dispatch of Government Business, were made after consideration and reflection. This approach should not change. At the same time, I am aware that the Speaker's

preoccupations cannot trump the judgment of the Senate itself, which always remains the final arbiter of any point of order or question of privilege.

[*English*]

The motion before the Senate does not respect the fundamental distinction between Government Business and Other Business. If the motion only dealt with a government bill, there would probably be no procedural basis to call it into question. But, proposing to use a government motion to determine the dispatch of non-government business violates a fundamental distinction in our Rules and practices. Accepting such a proposal would subject non-government business to the powerful tools of which the government can avail itself. This would be inconsistent with the basic principles of our Rules and practices.

The ruling on this point of order is, therefore, the same as it was in October 2013. The motion is out of order and is to be discharged.

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** Mr. Speaker, although I have the utmost respect for your ruling, pursuant to rule 2-5(3), I wish to appeal your ruling.

**The Hon. the Speaker:** Honourable senators, the question now is whether the Speaker's ruling is sustained.

[*English*]

**Some Hon. Senators:** Shame, shame!

**The Hon. the Speaker:** Honourable senators, the question is whether the ruling of the Speaker is sustained.

Those in favour of the motion will please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Those opposed to the motion will please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** We have agreement on a one-hour bell. The vote will be held at 11:57 a.m.

Call in the senators.

[ Hon. the Speaker ]

• (1200)

The ruling of the His Honour the Speaker was negated on the following division:

YEAS  
THE HONOURABLE SENATORS

|                  |              |
|------------------|--------------|
| Bellemare        | Hubley       |
| Campbell         | Joyal        |
| Chaput           | Kenny        |
| Cools            | McCoy        |
| Cowan            | Merchant     |
| Day              | Mitchell     |
| Eggleton         | Moore        |
| Hervieux-Payette | Ringuette—17 |
| Housakos         |              |

NAYS  
THE HONOURABLE SENATORS

|             |                         |
|-------------|-------------------------|
| Ataullahjan | Martin                  |
| Batters     | Mockler                 |
| Beyak       | Nancy Ruth              |
| Black       | Neufeld                 |
| Carignan    | Ngo                     |
| Dagenais    | Oh                      |
| Doyle       | Patterson               |
| Enverga     | Plett                   |
| Gerstein    | Poirier                 |
| Greene      | Raine                   |
| Lang        | Rivard                  |
| LeBreton    | Seidman                 |
| MacDonald   | Smith ( <i>Saurel</i> ) |
| Maltais     | Stewart Olsen           |
| Manning     | Tannas                  |
| Marshall    | Tkachuk—32              |

ABSTENTIONS  
THE HONOURABLE SENATORS

|            |         |
|------------|---------|
| Andreychuk | Wallace |
| Eaton      | White—5 |
| Frum       |         |

**The Hon. the Speaker:** Accordingly, the ruling is rejected.

**Some Hon. Senators:** Shame.

**The Hon. the Speaker:** Honourable senators, resuming debate on Motion 117.



**Hon. Donald Neil Plett:** Honourable colleagues, it was only six days ago when we heard the Leader of the Opposition state that Canadians are frustrated about the state of their parliamentary democracy. He was speaking about Bill C-586 at that time. We also heard several Liberal senators explain to us that Bill C-586 had to be agreed to because it was adopted by the house — wide majority, Senator Baker said.

While I do not believe it is our role to rubber-stamp legislation that comes from the other place, I do believe that we need to respect the democratic process. That is why many of us who were avidly opposed to Bill C-586, speaking and voting against the legislation, did not play ridiculous games to stall and drag out the process at the expense of Canadian taxpayers.

**Senator Campbell:** Welcome to the Senate rules.

**Senator Plett:** Yet it is the Liberals that rejected our offer to complete debate and vote on Bill C-377, and some other bills, not because they wanted to add this bill or that bill to the list. No, Your Honour, the only reason was because they hate Bill C-377.

They have the right to hate this bill. They have the right — do you have a comment?

**Senator Day:** Yes. We don't hate anything.

**Senator Plett:** You'll get a chance in a minute.

They have the right to hate the bill. They have the right to debate the bill. They have the right to propose amendments to the bill and they have the right to vote against the bill. But to obstruct legislation through procedural tricks simply because you disagree with the bill is simply undemocratic.

**Senator Campbell:** It's called the rules, something you need to take a look at.

**Senator Plett:** Parliament must do its duty. This legislation received the majority of the votes in the other place, and it is now in front of us at third reading.

**The Hon. the Speaker:** Order. Honourable senators, let's accord every honourable senator the respect they deserve to be heard in the chamber. Let's try to keep the debate within a polite decorum, please.

**Senator Plett:** Thank you, Your Honour.

As the Leader of the Opposition did before, let me take the opportunity to repeat some of what I just said.

But to obstruct legislation through procedural tricks simply because you disagree with the bill is simply undemocratic.

Parliament must do its duty. This legislation received the majority of the votes in the other place, and it is now in front of us at third reading. After thorough scrutiny from two Senate committees, it is time to bring this to a vote.

Earlier this week, Senator Mitchell read several letters from Albertans who were opposed to this bill. They asked him to vote against Bill C-377. They did not ask him to hold up the bill or to hold up the democratic process. They asked him to vote.

There is a major difference, Senator Mitchell. I would encourage you to listen to your constituents, and if you are so strongly opposed to Bill C-377, I would encourage you to vote against it.

**Senator Mitchell:** Then get a vote on Bill C-279. It's the same thing.

**The Hon. the Speaker:** Honourable senators, please, let's get a grip here. Let's remain civilized in our discussion and let's keep decorum at a high level. If we can stop the heckling back and forth, it would be appreciated. The floor is with one senator at a time.

The Honourable Senator Plett.

**Senator Plett:** Your Honour, we have heard several Liberals singing praise of a non-partisan Senate, telling us that the Holy Grail of this institution is to act differently than the other place. But then, zap, they get a letter from Justin Trudeau, telling them to oppose Bill C-377.

**Senator Campbell:** You're out of your mind. Are you kidding?

**Senator Plett:** And they turn around, dust up the rule books and try to run out the clock on this bill. Non-partisan? Come on, Your Honour. These guys are not thinking about the institution or Canadians that matter. They just want to serve their master, Mr. Trudeau, with an election issue.

**Senator Campbell:** Give me a break.

**Senator Plett:** They want their boss to go see the union bosses and tell them, "See, my guys in the Senate deliver. Now give me the votes and give me the money. Forget about that Mulcair guy. Me, Justin, I am the protector of union bosses."

Enough of this charade, honourable senators. Let's fulfill our constitutional duty and vote on Bill C-377.

[*Translation*]

**Hon. Pierrette Ringuette:** Honourable senators, I do not have a speech prepared, but I know the bill and the process surrounding it like the back of my hand.

Since some of our colleagues voted against the Rules of our institution, it is not surprising that since October 2013, they haven't wanted to abide by the decision they themselves made in June 2013, and they still don't. If it respected the debates of this institution and the outcome of the votes that follow, the government could have dealt with this bill by immediately

sending it back to the House of Commons in October 2013, so that the House could have first made the necessary amendments to make the bill constitutional.

• (1210)

Dear colleagues, seven Canadian provinces consider this bill to be unconstitutional, and a vast majority of Canadians think it infringes on their privacy.

I was appointed to the Senate 12 and a half years ago, and I don't understand how senators, who are here to provide sober second thought on behalf of the regions, provinces and Canadians as a whole, are incapable of studying a bill without engaging in partisanship. It's quite clear that this bill is unconstitutional. That's our primary mandate here, especially since this is a private member's bill and therefore the Department of Justice has not reviewed the constitutionality of the bill.

Government officials here in this chamber or across the street do not seem to have an interest in respecting the rule of law or the decisions of this chamber. Politics is the priority, plain and simple. Our chamber — individually and collectively — seems to be filled with nothing more than puppets.

This bill was debated for more than two months in May and June 2013, and we decided to amend it. Today, Conservative Senators Doyle, Greene, Lang, McIntyre, Nancy Ruth, Neufeld, Seidman and Smith (*Saurel*) voted against a bill that they supported in June 2013. It is the exact same bill. How do you explain that? The only conclusion I can draw is that they followed the directives of the Prime Minister's Office. This institution does not exist to please the Prime Minister's Office. It exists to give a voice to the provinces and the regions.

Seven provinces could easily decide to vote in favour of major changes to this institution. According to the Supreme Court, they would have the majority, and you are not even capable of being consistent with your own decision of June 2013.

I'm extremely disappointed, and I'm especially disappointed in my colleagues from New Brunswick. New Brunswick is a small province that doesn't have very many unionized workers.

Senator Plett, you may decide to follow the Prime Minister's orders, but I don't have to do so.

I am really terribly disappointed by the attitude that pervades this chamber. I realize that we are going into an election — don't worry, I know what that means, for I went through four elections — but we aren't here to vote according to the Prime Minister's wishes.

You have been sitting on this bill since October 2013, you just voted against a ruling by the Speaker, who was appointed by your leader, and I can't help but wonder just how low you people are willing to sink.

[ Senator Ringuette ]

That being said, honourable colleagues, regarding Bill C-377, I hope you will stand up and vote in the best interests of each of the provinces and the regions you represent.

I requested that we resolve ourselves into Committee of the Whole in order to hear from witnesses whom the chair of the committee didn't want to hear. That would have been the least we could do. If we can't listen to the people who will be affected by a bill and hear what they have to say, that is very embarrassing.

In any event, I can only say that I am extremely disappointed that you cannot see beyond partisanship, assume your responsibilities and do your job. After all, that is what Canadians are paying you to do. You are paid to give sober second thought to these bills.

Perhaps some of you are anxious to begin your holidays, but I believe that the constitutionality of the bills before us is more important than that.

Mr. Speaker, esteemed colleagues, I will reiterate my opposition to this bill. I will also repeat how disappointed I am that the Senate of Canada is not respecting the will of the majority of Canadians. That is a very low blow, and our institution does not deserve this.

You say that you want to save the institution? The only way to save the institution is to fulfil our role and our responsibilities. At present, I cannot say that most senators are doing so.

• (1220)

I am truly disappointed. I hope that you will give this more thought in the next few hours, and if you cannot provide sober second thought in this chamber, you could envisage other options.

[*English*]

**Hon. James S. Cowan (Leader of the Opposition):** Mr. Speaker, I do want to participate in the debate on this motion. I had expected my friend Senator Martin would speak in support of her motion. I'd be happy to listen to her first and then speak after her.

**The Hon. the Speaker:** Whoever stands, I will recognize. Honourable Senator Batters.

**Senator Cowan:** If that's the case, I would have expected Senator Martin would speak in support of her motion. If she's not going to speak, then I will speak.

**The Hon. the Speaker:** Honourable senators can rise if they wish.

**Hon. Yonah Martin (Deputy Leader of the Government):** I will simply say that the motion is fairly self-explanatory. Of course, I am asking all honourable senators to adopt the motion so that we can get to the vote, as we have explained and as I previously explained in your point of order, Honourable Senator Cowan.

**Senator Cowan:** Colleagues, I regret the decision the government has taken to challenge His Honour's ruling. I thought the ruling was fair. It was, in my view, a correct interpretation of the rules of this place. It was consistent with the carefully thought out and carefully expressed view of His Honour's predecessor, Senator Kinsella. I think our Speaker correctly interpreted the rules and correctly pointed out the dangers that the government's course of action would present for the future of this institution.

As I explained in my remarks earlier, there is a very good reason why we differentiate between Government Business and Other Business. The rules recognize and respect that distinction, and they provide the government with all the resources and all the tools that they need to get their business done. But Other Business is the business of others. It is the business of the institution. It is the business of all senators.

It is not for the government leader or his deputy to decide, as Senator Carignan suggested, what is or is not Government Business. If they feel strongly that a particular piece of legislation requires the support of the various tools that are available for the management of Government Business, then they should have the courage of their convictions and they should bring those pieces forward as Government Business. They can then use the tools that are available to them under the rules.

I deeply regret what the government has done. I think it shows once again that this government is determined to get its way on everything, all of the time. As the Prime Minister famously said, "I make the rules." Here, in this situation, we find that the government can't get what it would like to have by following the rules, so they change the rules. They disregard the rules.

When our Speaker, a Speaker whom all of us support, comes forward with a ruling that is consistent with the rules and consistent with the precedent, and they don't like it because they don't like the rules, then they come forward with a motion that says, "We don't care what the rules say. This is what we want done, and therefore we're going to push the rules aside. We're going to push precedent aside. We don't care about the future of the institution and what it means for the structure of this place and the management of its business on a go-forward basis. We don't care about that because we want this bill and we want it now. We're being delayed. We want to go home for the summer, so let's just disregard the rules and we'll get our own way."

Senator Carignan suggested in the course of his remarks that this was simply a stand-alone motion. He suggested that when he was making representations on the point of order. He said, "This is perfectly in order. This is a stand-alone motion." With respect, that's disingenuous. We all know what's coming next. We all

know that as soon as this debate on this motion is adjourned this afternoon, Senator Martin will stand in her place and give notice of time allocation, closure, the guillotine. That's coming.

He suggested that this is a stand-alone motion and, don't worry, everything is going to go on with this motion, just the same as with Senator Murray's motion back in 2004. It's not. Senator Murray's motion was given under Other Business. It was not given with the intent and with the support of government tools behind it to force this through.

What we're talking about now is step one of a two-step dance. For Senator Carignan to suggest that this is — and perhaps I misinterpreted, listening to the translation, but what came through my earpiece was this is a stand-alone motion. I think that we would be naive to think that this is a stand-alone motion. This is step one; step two is the hammer that is coming down. Notice of that is coming down this afternoon. That's the whole point of the exercise. If that was not the point of the exercise, we wouldn't be doing this, but we are.

Because the government refused to respect His Honour's decision and forced them all, most of them, to stand on their feet in support of the government to overturn what I consider to be a correct decision, we're saying that the government can disregard the rules when they want, when it doesn't suit them. When they can't win according to the rules, they change the rules and disregard them.

What we're doing here is allowing the government to do indirectly what it cannot do directly, and that flies in the face of the advice that His Honour provided in his carefully reasoned judgment, and it was well supported by Senator Kinsella's equally thoughtful judgment and order in 2013, which, as I noted this morning, was not appealed. The government could have appealed Speaker Kinsella's decision at the time. They chose not to do so. We had a clear decision, which stood with the respect and support of the house. His Honour correctly followed that decision, and his friends over there turned on it.

That, in my view, is shameful behaviour. I think, as was pointed out in the ruling and as was pointed out by Speaker Kinsella previously, it poses grave risks to the future of this institution. This institution, as we all acknowledge, is under grave attack, and there are people who are suggesting that it should be abolished. Every time we do something like this, it provides ammunition to those who don't believe, as we believe, in this institution. We give them ammunition every time we do this kind of thing and say, "I don't care what the rules are; we're just going to go ahead and make them up as we go along and we're going to do exactly what the government says on everything — not just with Government Business but every other kind of business that the government decides they would like to have passed for some political advantage."

We have rules. Our society operates on the basis of rules. If it didn't, we would have anarchy. We would have chaos. We have rules about which side of the road you can drive on. If we didn't have those rules, imagine what would happen. Every organization

requires rules of some kind. If you don't have rules and, more importantly, if you don't respect those rules, then the institution itself is at risk.

Those rules have to be respected. They are there to balance interests. That is why there are rules there. It is not just the majority that has to be considered. It is the minority, others and independents. We have rules to balance the interest of government, opposition and independents. That is why we differentiate between Government Business and Other Business and why the government has extra tools, as it should have. They aren't always used appropriately, but they are there for a purpose, and that is to enable the government to get its business done.

However, for Other Business, for the business of the rest of us, it's not up to the government to say when and how those items should be dealt with. The rules are there, and rules are there to be respected all the time, not just when they suit the majority, not just when they suit the government.

We all know that the heavy hand of Mr. Harper is at work here. There is no mistake about this. This was not a decision made by people acting independently. The heavy hand of Mr. Harper is upon this. Mr. Harper has made it clear that he wants this bill.

• (1230)

Here we have a situation where the Prime Minister of this country has directed his senators in this place to break the *Rules of the Senate*, to overrule the Speaker's ruling which respects those rules and is consistent with the precedent, to pass a bill which has been considered unconstitutional and an intrusion on the powers of the provinces by every single constitutional expert and lawyer, save one, who appeared before the Senate Banking Committee several years ago and our Legal and Constitutional Affairs Committee — every single legal and constitutional expert except one.

We have had the request of seven governments of all kinds of political persuasions, representing over 80 per cent of the population, and they have asked us not to pass this bill — not just to vote against it but not to pass it. Not one single province, not one single government, has asked us to pass this bill.

And we all know of the thousands of emails we've received. Sure, some have been generated by unions, but I'm sure other senators have received the same kinds of emails that I have received from individual Canadians and organizations that would be caught up by the intrusive nature of this bill.

As I say, Mr. Speaker, I regret the decision of the government today to appeal your decision. I think your decision was the correct one. It was consistent with our procedures, our Rules and our practices, but we are where we are.

Consequently, I wish to move an amendment.

[ Senator Cowan ]

#### MOTION IN AMENDMENT

**Hon. James S. Cowan (Leader of the Opposition):** Therefore, honourable senators, I move:

That this motion be not now adopted but that it be amended by replacing the words "immediately following the adoption of this motion" with the words "following the adoption of this motion, but no earlier than October 20, 2015".

**The Hon. the Speaker:** On debate, the Honourable Senator Mitchell.

**Hon. Grant Mitchell:** Thank you, Mr. Speaker. I want to make a few comments.

I was struck by Senator Cowan's comments about the Prime Minister's statement some time ago when he said, "I make the rules," yet today we find quite the opposite; he could be said to be saying, "I break the rules," because this is exactly what's happened. This is a breaking of the rules and I wanted to make that point.

The second point I wanted to make is just a debating point but worth getting on the record. It has been said that we on our side have taken the position we are taking on this bill because of a letter from a leader on the other side, which is very difficult to square with the fact that we took a very different position on Bill C-51 from the leader on the other side. The fact of the matter is that it is impugning our motives.

My motive for voting against this bill is that this is a very bad bill. It is fundamentally unfair. It will be challenged and defeated in the courts on the basis of its intrusion into Charter rights. It is focused specifically against unions when unions are simply another form of corporation. No government in its right mind, even this one, would think about passing legislation to give BlackBerry an advantage over Apple, for example. The fact is that unions have a right to compete in this marketplace, and they shouldn't be thwarted by arbitrary government-directed, unfair, biased legislation, period.

It is to a large extent yet another step in what I'm terming "repression creep." We've seen the government bring in untold numbers of omnibus bills which are an intrusion into democratic rights. We've seen a record number of times that closure has been used. Most recently, we've seen Bill C-51 infringe upon Charter rights, upon due process and upon privacy rights. This is yet another step in this government's repression of rights, in this case parliamentary rights and parliamentary due process.

It is interesting also that the argument being made by the other side is that there is this fundamental necessity to have a vote on Bill C-377 because it was passed by elected representatives. However, there have been nothing but delays on that side. In fact, we've had over two years to get a final vote on Bill C-279,

which likewise was passed by a majority of members on that side in the other place. Therefore we have a very interesting juxtaposition of intrusion and diminishing of rights. On the one hand they want to pass Bill C-377 that takes away the rights of unions, and on the other hand they don't even want to have a vote on Bill C-279 that would extend rights to transgender people.

It is, Mr. Speaker, a moment in the history of this Senate and of this parliamentary democracy that fundamentally underlines a profound hypocrisy. If you're going to vote on Bill C-377, then at least give us a vote on Bill C-279. It's the only fair thing to do, but then you've lost any sense of fairness.

**Hon. Donald Neil Plett:** Would the honourable senator take a question?

**Senator Mitchell:** Sure, I'd be happy to.

**Senator Plett:** On that last point, Bill C-279, you will recall, because you were in the chamber, that our leader said very clearly, "Let's vote on C-377 and we'll vote on C-279." So where is the hypocrisy? That was suggested some weeks ago.

Senator Mitchell, my question to you is this: Are you prepared to walk down to your leader right now while I walk down to my leader right now and collapse debate on this and vote on both of these bills right now? I'm willing to do that.

Put your money where your mouth is: Are you willing to stop debating Bill C-377? Let's call them both to a vote right now.

**Senator Day:** Will you keep the same number of people you have now?

**Senator Mitchell:** If you would promise to take away your fundamentally biased and prejudiced amendment to take away the rights of transgender people to use facilities, then you and I could talk. But why don't you just have a vote in any event? Why can't you do both?

**Senator Plett:** Senator Mitchell, you didn't answer my question. My question is this: We just heard a biased amendment here. Obviously we're going to have to vote on that one as well. Let's vote on the biased amendment and then vote on the bills.

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** Obviously the Liberal opposition is following the instructions of Justin Trudeau. I invite the leader to share the letter that he received from Justin Trudeau expressing his opposition to Bill C-377. Clearly, Justin Trudeau instructed them to do whatever was necessary to try to stop Bill C-377 from passing.

The Liberals tried using old-style Liberal tactics by rising on a point of order to try to delay passage of the bill. Yesterday, they proposed all kinds of amendments and sub-amendments to items of Government Business and reports in order to block the legislation. What is more, when we moved a disposition motion in accordance with the Rules, they started wanting to make amendments and trying to delay the implementation of the disposition motion.

Obviously, the people across the way would rather waste time at the expense of Canadians than vote on this bill right away. Canadians are asking us to vote and to put a stop to these archaic opposition tactics.

• (1240)

On the other side they are always talking about reforming and modernizing the Senate, but that is all rhetoric. When they keep reverting to old tactics to stall the passage of a bill instead of speaking to it and then voting on it, it is clear that they are like the leopard that cannot change its spots. That is why I must move the adjournment of the debate.

[*English*]

**The Hon. the Speaker:** It is moved by Senator Carignan, seconded by Senator Marshall, that further debate be adjourned until the next sitting of the Senate.

All those honourable senators in favour of the adjournment motion please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** All those honourable senators opposed to the adjournment motion please say "nay."

**Some Hon. Senators:** Nay.

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

**Hon. Anne C. Cools:** Your Honour, the rule says that no motion for adjourning, standing or taking up of any of the items of business can be received until the bill —

**Senator Day:** It hasn't been adopted yet.

**The Hon. the Speaker:** It hasn't been passed. He's allowed to move the adjournment.

I see a number of senators rising against the adjournment.

**Senator Cools:** What's the point of order?

*And two honourable senators having risen:*

**Senator Hubley:** A one-hour bell.

**The Hon. the Speaker:** The vote will be at 1:42 p.m.

Call in the senators.

• (1340)

Motion agreed to and debate adjourned on the following division:

YEAS  
THE HONOURABLE SENATORS

|             |                         |
|-------------|-------------------------|
| Andreychuk  | Marshall                |
| Ataullahjan | Martin                  |
| Batters     | Mockler                 |
| Beyak       | Nancy Ruth              |
| Carignan    | Neufeld                 |
| Dagenais    | Oh                      |
| Doyle       | Patterson               |
| Eaton       | Plett                   |
| Enverga     | Poirier                 |
| Frum        | Raine                   |
| Gerstein    | Rivard                  |
| Greene      | Seidman                 |
| Lang        | Smith ( <i>Saurel</i> ) |
| LeBreton    | Stewart Olsen           |
| MacDonald   | Tannas                  |
| Maltais     | Tkachuk                 |
| Manning     | Wallace — 34            |

NAYS  
THE HONOURABLE SENATORS

Campbell  
Chaput  
Cools  
Cowan  
Day  
Eggleton

Hervieux-Payette  
Hubley  
Joyal  
Kenny  
Mitchell  
Moore — 12

ABSTENTIONS  
THE HONOURABLE SENATOR

Bellemare—1

ALLOTMENT OF TIME—NOTICE OF MOTION

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, I wish to advise the Senate that I was unable to reach an agreement with the honourable senator opposite acting as Deputy Leader of the Opposition to allocate time on Government Motion No. 117.

Therefore, I give notice that at the next sitting, I will move:

That pursuant to Rule 7-2, not more than a further six hours of debate be allocated for the consideration of Motion No. 117 under “Government business”, concerning the disposition of Bill C-377.

(The Senate adjourned until Monday, June 29, 2015, at 2 p.m.)

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