SENATE SÉNAT

CANADA

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OFFICIAL REPORT
(HANSARD)

Monday, June 29, 2015

The Honourable LEO HOUSAKOS
Speaker

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*Debates Services:* D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
*Publications Centre:* David Reeves, National Press Building, Room 926, Tel. 613-947-0609

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# THE SENATE

**Monday, June 29, 2015**

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

Prayers.

## SENATOR'S STATEMENT

### TERRORIST ATTACKS IN FRANCE, KUWAIT, SYRIA AND TUNISIA

**Hon. Daniel Lang:** Honourable senators, I rise to express our sympathy to the families of loved ones who were murdered during the Friday terrorist attacks in France, Kuwait, Syria and Tunisia.

These unwarranted attacks, motivated by a radical Islamic ideology, have left over 242 dead and countless wounded. The attack in Tunisia killed 38 foreigners, of which 30 were British nationals who were enjoying a beach holiday. It is the most horrific attack on British citizens that the United Kingdom has seen since the bombing of London's transportation system 10 years ago this July.

One can only imagine the grief that is being experienced by the family in Britain who lost their daughter on the beach in Tunisia; or the families in Kuwait that lost their fathers in the bomb attack at the mosque during prayers; or the family of Mr. Cornara, whose father and husband were beheaded as part of the terrorist attack on a gas plant in Lyons, France.

The effects of these premeditated, barbaric attacks are far reaching. One only has to look at Tunisia, where repercussions to their tourism industry will be severe. Over 226,000 jobs depend on this industry and there is little doubt that this extremist act will cause additional hardship. It is disappointing to see how a young college student can become radicalized while off at school and then cause such death and destruction in the name of religion.

What we know so far is that he was not motivated by poverty, mental illness, or rhetoric, as some would suggest whenever a terrorist attack occurs.

Colleagues, the tentacles of the jihadist movement are far reaching and we are seeing death and destruction nearly every day. As a result of your Senate committee's hearings, Canadians are now aware of the 318 Canadians who are confirmed to be supporting ISIS. We are also are very aware of the recent jihadi attacks in Ottawa and in Saint-Jean-sur-Richelieu. We are aware of the "Toronto 18" case, the *Khawaja* case, the VIA Rail plotters and, of course, the plot to blow up the B.C. legislature. One cannot imagine the carnage if any of these Canadian jihadists would have been successful.

Colleagues, the world is under siege and Canada has to continue its efforts to defeat this Islamic fundamentalist movement that is sweeping the world. We have to identify and work with the leaders of the moderate Muslim communities and support them in their denunciation of the jihadist ideology that is the foundation for the belief system that extremists use to justify their barbaric acts.

Today, as our prayers go out to the people of Tunisia, Syria, Kuwait, France and Britain, who had to endure these unwarranted barbaric attacks, let us renew our resolve to the defeat this jihadi terrorist movement. As we prepare to celebrate Canada Day, let us also resolve to stand together with the members of our Armed Forces, our intelligence community and our law enforcement agencies, who are working overtime to keep Canada and Canadians safe.

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

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## ROUTINE PROCEEDINGS

### ADJOURNMENT

NOTICE OF MOTION

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, September 22, 2015, at 2 p.m.

### STUDY ON SECURITY CONDITIONS AND ECONOMIC DEVELOPMENTS IN THE ASIA-PACIFIC REGION

TWELFTH REPORT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE TABLED

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

**Hon. A. Raynell Andreychuk:** Honourable senators, I have the honour to table, in both official languages, the twelfth report of the Standing Senate Committee on Foreign Affairs and International Trade entitled: *Securing Canada's Place in Asia-Pacific: a Focus on Southeast Asia*.

I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

**Hon. Senators:** Agreed.

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

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# QUESTION PERIOD

## NATIONAL REVENUE

### PROPOSED AMENDMENTS TO INCOME TAX ACT— BILL C-377—UNIONS—DISCLOSURE OF INFORMATION

**Hon. Jim Munson:** Thank you, Your Honour. My question, obviously, is for the Leader of the Government in the Senate and concerns that draconian anti-privacy bill, Bill C-377.

The Canadian Life and Health Insurance Association has said that all of the disclosure obligations will apply to mutual funds, including RRSPs and TFSAs. If just one union member buys one unit of a mutual fund, the whole mutual fund will become "a labour trust" because of the legislation as drafted and — in their words — "with all the reporting and disclosure obligations then applying to all individuals who purchase units of that mutual fund, regardless of any personal labour organization affiliation."

So, Mr. Leader, this bill will require the names and personal information of millions of Canadians to be posted on the Internet. Does your government believe this is a good idea?

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** Senator, as you know, this bill is currently under review by this chamber. I will leave it to parliamentarians to debate these matters during the time provided for that purpose.

As we said in the government's notice of motion to dispose of the bill, we feel it is important for the Senate to vote on the bill. I believe it is in the interests of Canadians for a vote to be held. That is our priority.

[*English*]

**Senator Munson:** If your government has so much courage, why was this bill brought in through a back door? Why was it put on our Order Paper as a private member's bill?

If you feel so strongly about having this bill become law — which the unions don't like, which the provinces don't like, which no one seems to like — why would you not have presented this as a government bill?

[*Translation*]

**Senator Carignan:** Senator, the rules of Parliament allow every member and senator to introduce bills. If I am not mistaken, more private bills have passed during this Parliament than in any other time in the history of Canada. A record number of private members' bills were passed. This process is entirely appropriate and enhances the role of members of Parliament.

• (1410)

I don't see why you think it's inappropriate for an MP to introduce a bill that matters to him. We think that workers should have the right to know how their mandatory dues are being spent. That's why we support Bill C-377, which is a reasonable step toward increasing union transparency.

Might I remind you, senator, that this bill was introduced for the first time in 2011. The Senate has worked hard for nearly two years to study it. That's why the time has come to vote on it. That's why we moved a motion about that last week.

[*English*]

**Hon. Jane Cordy:** I find it interesting that you say the bill first came to us in 2011. It did come to this chamber at that time and we had a great discussion. In fact, this chamber, with a Conservative majority, actually passed an amendment, but the bill died because Parliament was prorogued. The bill was sent back to us later without the amendment that was passed in this chamber. A number of Conservative senators felt it was important to have that amendment and yet the government ignored their own members and the majority in this chamber.

I'm from Nova Scotia and I received an email from Doctors Nova Scotia, which is the medical association that represents doctors in Nova Scotia. They had legal advice that, because of the drafting of the definition of "labour organization," they will be caught in Bill C-377's — to quote them — "extremely onerous reporting requirements." That was in the email to me.

Does the government believe it's a good idea for doctors to spend their time filling out forms, detailing every contract for cleaning services, photocopier maintenance services, copy supplies and office rental, instead of working to help patients and advance health care for Canadians?

[*Translation*]

**Senator Carignan:** Senator, we think it's important for unions to be more transparent. Workers pay union dues. They have the right to know what union leaders are doing with their contributions. That is a totally legitimate right, particularly because, let's remember, they have to pay union dues whether they're members of the union or not. I think it's completely legitimate for union members to have access to information about how union leaders are spending the members' money. I think that is completely appropriate.

We have been debating this bill here at third reading for several days. You proposed amendments, one of which was to refer the bill to committee of the whole. You then proposed a subamendment to refer it to committee of the whole one day later instead of two. Your amendments amount to stalling tactics. You haven't tried to debate the bill or propose substantive amendments.

You did not do that; instead, you moved procedural amendments. Therefore, it seems to me that you are in complete agreement with the content of the bill.

[*English*]

**Senator Cordy:** For the record, I don't agree with the content of the bill.

It's interesting; you said that we should be passing this bill and that unions should be more open and more accountable. It was interesting on the first go-round of this bill when the question was asked of the proposer of the bill, Mr. Hiebert, whether or not he had received any complaints in the drafting of the bill.

It's always interesting when someone brings forward a private member's bill to ask, "What made you do this?" People usually say they got letters from somebody in their riding or they spoke to somebody in their riding, but, in this case, the response that Mr. Hiebert gave was that he didn't receive any complaints. He developed a bill but he didn't have any complaints. So, to suggest that we would pass this to create more openness and transparency when there were no complaints about openness and transparency seems a bit disingenuous to me.

You also said in response to the previous questioner that it's in the interest of Canadians to pass this bill. Seven out of the 10 provinces disagree with this bill.

Going back to the question that I asked initially, should doctors in my province of Nova Scotia — this letter was from Nancy MacCready-Williams, the CEO of Doctors Nova Scotia. The doctors of my province will have to spend time sending in the paperwork for cleaning supplies and services, photocopier materials and rent, instead of taking care of the patients, the people of my province of Nova Scotia? Is that what you are suggesting?

[*Translation*]

**Senator Carignan:** Senator, what we are saying is that union members have the right to know what union bosses are doing with their money. That is quite legitimate. For example, charitable organizations that receive donations must fill out forms and disclose their contracts and salaries, which are public and posted on the Web. They are non-profit organizations that accept charitable donations.

I believe that transparency is a good thing. That is what we have been told and the Office of the Auditor General recommended it. Canadians want transparency and union members are asking that their unions be transparent. Perhaps you talk to prime ministers and provincial premiers, but I talk to the people on the ground, the union members who are encouraging us to pass this bill and who want to know what union bosses are doing with their union dues. That seems quite legitimate to me.

Why are you against transparency, senator? I'm having difficulty following you. Didn't your leader, Justin Trudeau, say recently that he wants more transparency? How can you explain that your leader wants more transparency when you vote against transparency here? I'm not following you.

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

[*English*]

**Senator Cordy:** By the way, Senator Cowan is my leader.

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

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

**Senator Cordy:** Why am I against this bill? I'm against it because it's unconstitutional. Yet, once again, the Harper government will be spending millions of dollars in the court system, as they did with our veterans and refugees who come into this country who need help with health care. Once again, this government will be spending millions of dollars fighting unconstitutional legislation.

In response to Senator Munson, you said "We've passed more private members' bills than ever." That's really good. It's really interesting because the vast majority of these have been government bills masquerading as private members' bills. I actually raised that with one of your Conservative MPs from the other place. I said, "You guys are just handed these bills to pass." And do you know what his response was? "Oh, you don't have to take it if you don't want to." Clearly Mr. Hiebert decided he would take this one.

But you still haven't answered my question. You've talked all around it. Doctors Nova Scotia is very concerned that they will have to spend their time doing paperwork instead of providing care to their patients. All I want is an answer to the question I've already asked twice. Let's try for three times.

• (1420)

[*Translation*]

**Senator Carignan:** Senator, unionized workers expect their union leaders to be transparent and to disclose what they're doing with members' union dues. Under the Rand formula, unionized workers must pay union dues whether they are members of the union or not. Given that, under a government law, unions are allowed to force unionized workers to pay dues, it seems entirely legitimate for those workers to be able to look at the books and see what expenses are being authorized by their union leaders.

Senator, I realize that Senator Cowan is your leader, but I would remind you that Justin Trudeau, your party leader, sent a letter to your leader here asking you to do whatever it takes to oppose Bill C-377. You can try to convince other people that Justin Trudeau isn't your leader, but it is clear that you are following the directives of your party leader, Justin Trudeau, when you oppose the transparency of union leaders.

Please, senator, out of respect for union members, why will you not support Bill C-377 and give them access to information related to how union leaders spend their dues?

[*English*]

**Hon. Mobina S. B. Jaffer:** I have a supplementary question to the Leader of the Government in the Senate concerning Bill C-377. The Canadian Life and Health Insurance Association has said that all the disclosure obligations will apply to mutual funds, including RRSPs and TFSAs. If just one union member buys one unit of a mutual fund, the whole mutual fund will become a labour trust because of the definition as drafted with, in their words, "all of the attendant reporting and disclosure obligations then applying to all individuals who purchase units of that mutual fund, regardless of any labour organization affiliation."

Leader, this bill will require the names and personal information of millions of Canadians to be posted on the Internet. Does your leader agree, and does he have this idea that this is what will happen with this bill?

[*Translation*]

**Senator Carignan:** Senator, with all due respect, I don't understand your question. You often speak in the Senate on behalf of people who are less fortunate, people who sometimes need protection or information. The bill currently before us would provide union members with more information so that they will know what union leaders are doing with their money.

Senator, I think that it is perfectly legitimate to ask union leaders to disclose what they are doing with unionized workers' money. Obviously, we want to ensure that union members have access to better information. Why deprive these workers of that information?

[*English*]

**Senator Jaffer:** Thank you for the backhanded compliment, but I understand from union members that they are able to get this information. This is the information you want all Canadians to see. Union members are able to get the information. What this bill will do is that we will also know how many hours a union member spends at a Boy Scout meeting. That's what's wrong with this bill. This bill is unconstitutional. This is not a bill that protects union leaders. It is an unconstitutional bill.

Do you see this as a constitutional bill? I see this as an unconstitutional bill.

[*Translation*]

**Senator Carignan:** Senator, the Canada Revenue Agency website provides the same type of financial information for registered charities and foundations. Why do you want to give union leaders more rights than the directors of non-profit organizations and the volunteers there?

[*English*]

**Senator Jaffer:** Leader, this also affects the privacy of union leaders in what they do, what organizations they work with. Do you think that's correct?

[*Translation*]

**Senator Carignan:** Senator, I was once a mayor and any information regarding my expenses and contracts with the municipality, regardless of the amount of the contract, was made public. Even if it was $55 for groceries or other things, all of that information was made public.

No one could complain that their privacy was being violated, because whenever a contract was negotiated with a municipality, everyone knew that the transaction would be made public. Why are we doing this? We are doing it because people pay taxes. Unionized workers have a right to know because there is a law that requires them to pay taxes.

Unionized workers are required to pay union dues whether they are members of the union or not, and union leaders can spend that money. Unionized workers deserve nothing less than to have access to all of the information about their union, whether they are union members or not. That is completely legitimate.

[*English*]

**Senator Jaffer:** You were doing the right thing. As the mayor of a municipality you were telling the people of your municipality how you were spending your money.

The union tells its members what they are doing. This bill will make it open to all Canadians. This is between the union and union members, and if there is an issue where union members feel they are not being well served, it's the provinces that have this jurisdiction, not the federal government.

[*Translation*]

**Senator Carignan:** I heard a number of witnesses say that, even though they were union members, they did not receive any information from their union leaders. I would like to remind you that union members have access to certain information. However, those who are not members still have to pay union dues but do not have the right to attend the general meetings and do not have access to the union's financial statements. Nevertheless, they are still paying union dues and so they should have access to that information. That is perfectly legitimate.

[*English*]

**Hon. Sandra Lovelace Nicholas:** My question is to the Leader of the Government in the Senate. Tom Stamatakis of the Canadian Police Association testified that the disclosure requirements of Bill C-377 will put police officers at risk for their safety. The people whose names and personal information will have to be posted on the Internet are working police officers, including undercover officers fighting organized crime. In his words, in this day and age, with technology the way it is, it probably would not take much for someone to do something.

The question is, does your law-and-order government really think it is a good idea to force individual police officers to post their personal financial information online for everyone to see, including criminals?

[*Translation*]

**Senator Carignan**: Senator, it is a matter of transparency. Anyone who enters into a contract with a union that receives, either directly or indirectly, union dues from members who are required to pay those amounts is a unionized worker, and it is perfectly legitimate for those workers to have access to information regarding the spending of union leaders.

• (1430)

Senator, I believe that is what union members want. This bill is about transparency. It is a matter of changing certain habits and being accountable when it comes to production, documentation, and information. That is the cost of having more transparency and ensuring that the money spent by the unions and union leaders is spent legitimately in the interest of union members.

[*English*]

**Senator Lovelace Nicholas:** Thank you for that answer, but as you know, the RCMP already has enemies. If a criminal wants to hire somebody to go and shoot them, don't you think this is a problem that they might run into?

[*Translation*]

**Senator Carignan:** Senator, you are speaking out of context. The union transparency bill will ensure that people take their responsibilities seriously. They will provide all the pertinent information to give union members a legitimate sense of how their union leaders are spending their money. We recently saw that in the First Nations transparency bill, where First Nations chiefs were required to disclose their salaries. I am sure that a number of band council members were quite surprised to learn how much money their band chiefs were earning.

[*English*]

**Hon. Wilfred P. Moore:** Leader, my questions follow up on those of Senator Lovelace Nicholas. I'm trying to connect the dots.

You're saying that because the officers of a union receive some pay for that job from union members, therefore the salaries union members earn should be made public to the whole world. Because once you put it on the Internet, it's gone. That's the point Senator Lovelace Nicholas is trying to make. However, when you put that private information out there, it will be an attraction for those who would do ill against members of police forces. Is that what you're saying?

[*Translation*]

**Senator Carignan:** Senator, my salary is public knowledge and that doesn't bother me.

[*English*]

**Senator Moore:** As is mine. Like you, I have been a municipal official, but I don't remember us ever having posted the salaries of members of our Halifax police force online. I bet you didn't either. Do you want to answer that?

[*Translation*]

**Senator Carignan:** I believe we were talking about salaries over $100,000. In any event, whether the amount is more or less, if we accept a salary from a public body or an organization that receives income and certain benefits from the public, then we have to agree that letting the public know exactly who is earning these salaries and how this money is being spent is the right thing to do.

Those benefits and amounts are financed by union members. Those organizations do not pay tax, which means that taxpayers are contributing too. It therefore makes complete sense that all taxpayers should also have access to that information.

[*English*]

**Senator Moore:** You're saying that your government's policy is that any person on a public payroll, regardless of the nature of their job, can expect that their privacy will be violated and their income will be made a matter of public knowledge to the world. Is that your policy?

[*Translation*]

**Senator Carignan:** Senator, what I'm saying is that when anyone gets a contract, whether they're hired by a public entity or an association that benefits from public taxes or funds, there's no reason why the members of that association, union members and Canadians who support those organizations through their tax dollars shouldn't know how that money is being spent. Over the past few months, you have tried to position yourselves as champions of Senate modernization and transparency. Your leader, Justin Trudeau, holds press conferences to talk about transparency. However, when the rubber hits the road with a bill that will really give millions of Canadians more transparency and information about what their union leaders are doing with their money, you want to vote against it, and you resort to archaic procedures to obstruct the process. You try to filibuster bills like this to prevent Canadians from finding out what union leaders are doing with their money. I don't understand you.

[*English*]

**Senator Moore:** I understand that you wouldn't understand. I guess it's a matter of philosophy. Having been a union member myself in the city of Halifax, and I don't remember when I joined the union —

**The Hon. the Speaker:** The time for Question Period has elapsed.

**Senator Moore:** Saved by the bell.

## PUBLIC SAFETY

### STATUS OF WRITTEN QUESTION

**Hon. James S. Cowan (Leader of the Opposition):** On January 29, 2015, I tabled a written question asking for the following:

> For the three-year period ending December 31, 2014, in respect to each inmate death in federal institutions under the *Corrections and Conditional Release Act*, what was:
>
> (*a*) the name and number of the inmate;
>
> (*b*) the date of death of the inmate;
>
> (*c*) the age of the inmate;
>
> (*d*) the cause of death of the inmate;
>
> (*e*) the sentence being served by the inmate; and
>
> (*f*) the institution where the death occurred?

Again, that was on January 29, 2015. I have not received an answer. Could the deputy leader or the leader advise when I could expect to receive that answer?

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** Senator, I have to tell you that that is private information. I have asked for follow-up on all of the as-yet-unanswered questions. We hope to get back to you soon about that.

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[*English*]

# ORDERS OF THE DAY

## BUSINESS OF THE SENATE

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that, as we proceed with Government Business, the Senate will address the items in the following order: Motion No. 118, followed by Motion No. 117, followed by all remaining items in the order that they appear on the Order Paper.

## INCOME TAX ACT

BILL TO AMEND—DISPOSITION OF BILL—
ALLOTMENT OF TIME—MOTION ADOPTED

**Hon. Yonah Martin (Deputy Leader of the Government),** pursuant to notice of June 26, 2015, moved:

> 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.

She said: Honourable senators, I rise today to speak to Motion No. 118.

• (1440)

Adoption of Motion No. 118 will ensure a timely debate on Motion No. 117, which will ultimately allow us to vote on Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations), as we near the end of this forty-first session of Parliament.

Bill C-377 has already received extensive scrutiny in two standing committees, as I previously stated, which included 72 witness testimonies and 23 hours of committee consideration. At third reading alone, senators opposite have spoken more than 40 times. As such, a significant amount of resources have been dedicated to this bill — more than most government legislation.

During discussions at scroll, an agreement on the allocation of time on this motion was not reached. Therefore, I ask all honourable senators to adopt Motion No. 118 to ensure that we bring Bill C-377 to an eventual vote. I hope that all honourable senators will agree that it is time to conclude what has been a very lengthy debate.

Thank you.

**Hon. James S. Cowan (Leader of the Opposition):** Your Honour, thank you. Colleagues, this motion for time allocation marks an important and dangerous turning point for our institution. As we all know, we are having this debate today only because Senator Carignan convinced 31 of his Conservative colleagues to join him in overturning a ruling by our Speaker last week.

Our Speaker had ruled that Senator Martin's disposition motion for Bill C-377 was out of order because it was contrary to the Senate Rules. I don't believe that any of us genuinely believe that Speaker Housakos was in error, that he misinterpreted the *Rules of the Senate*. His decision followed Speaker Kinsella's ruling two years earlier on the identical issue, and no one will seriously argue that the very experienced Senator Kinsella was ignorant of the rules.

We have two clear and strong Speakers' decisions informing us that what was being proposed by Senator Martin was out of order, that it was improper, that it violated the *Rules of the Senate*, and that it failed to recognize the critical distinction in our rules and long-standing practices between government and non-government business.

So what do you do when the rules prevent you from getting what you want? Most people would confront that situation by considering different approaches to work around the difficulty. Most people respect rules and adjust their behaviour accordingly. That is what we expect from citizens in a civil society — respect for the rules.

However, that approach did not appeal to Senator Carignan because it made it much more difficult for him to get what he wanted when he wanted it. Law and order is all well and good so long as it's followed by everyone else and does not unduly inconvenience those who see themselves in charge.

So a new approach was needed in the circumstances. A new doctrine was required. And Senator Carignan created one. Henceforth, when one is prevented by a referee or a judge from getting what one wants because of the rules, one simply ignores the rules. That is what happened on Friday. The Speaker told Senator Carignan that he was acting improperly. Senator Carignan declared that he was going to continue with his course of action, notwithstanding the ruling, and that his loyal supporters were going to enforce his will.

When Canadians requested how clear Senate rules and precedents could be ignored and broken, they were told that this was actually an exercise in democracy because the voices of those shouting to overturn the Speaker's ruling were louder than those who raised their voices to support the Speaker. Many Canadians will have a difficult time distinguishing this from mob rule, where the majority gets its way no matter what the rules may say.

What makes the Carignan doctrine particularly noteworthy is that there was not even the pretense of formally changing the rules that stand in his way, because to formally change the rules would mean following more rules that govern the process. That would be too difficult to manage. It would take too much time.

So Senator Carignan, faced with an admittedly difficult problem arising out of the application of the rule of law, turned to that great overriding democratic principle: The end justifies the means. The end was forcing passage of Bill C-377, as demanded by the Prime Minister and Mr. Hiebert, and the means was using his loyal, partisan followers to overturn the decision of an impartial Speaker — overturning the decision of our referee.

Colleagues, we should never have come to this point.

The Leader of the Government in the Senate is responsible for managing the government's legislative agenda here. He should never have decided that he was also the leader of private members' business in the Senate. He should not have decided that it was up to him to pick and choose between private members' bills introduced in the Senate, and to be responsible for the fate of those bills passed by the elected members of the House of Commons. Senator Carignan decided that all Senate business — not just government business — is his responsibility.

Unfortunately, from his perspective, the *Rules of the Senate* do not permit that. Our rules and practices distinguish clearly between government business and non-government business. Until last Friday, our chamber took for granted, particularly following the detailed and strong ruling of Speaker Kinsella, that the tools available to Senator Carignan to expedite government business are not available to expedite private members' business. In fact, the new June 2015 publication, *Senate Procedure in Practice*, on page 107, states the following:

> Time allocation establishes a limit on the time that can be spent to debate an item of Government Business. . . . Only the government can propose time allocation and only for its own business.

So what is "its own business?" What is government business?

On Friday, we were given the definitive answer by the government leader — it's anything he says it is. In words better suited to imperial decrees from the past, Senator Carignan said: "The only people in this chamber who can determine what is considered Government Business are the Leader of the Government and the Deputy Leader."

The Divine Right of Kings — Louis XIV in the 17th century, meet Senator Carignan in the 21st century. "I alone will decide," he says.

His declaration on Friday was breathtaking. He alone will decide, and if anyone has difficulty with that proposition, perhaps believing that Senate rules and Senate practice and Senate precedents and the Speaker are to play any role in such decisions, his followers will line up behind him to neuter the referee and silence the critics in a display of another apparently increasingly popular democratic principle: Might is right.

Much has been made of my own challenge of a Speaker's ruling in 2009, as if they were comparable. They are not. In March of 2009, two weeks after the Senate passed the government's budget bill, the government's official "Canada's Economic Action Plan" website was telling Canadians: ". . . the Senate must still approve the Act for it to become law. Senators must do their part and ensure quick passage of this vital legislation."

Colleagues, what was on the website was a blatant falsehood, an outright lie. Individuals were emailing me about the budget bill, concerned about their EI benefits. I was emailing them back, telling them not to be concerned because the Senate had already passed the bill and it was now law. On its official website, however, the government was telling these same people that the Senate had not passed the bill. This made me look as if I were not telling the truth in my correspondence with these people, so I raised a question of privilege as soon as I learned of it.

When the Speaker ruled that there was no prima facie case of privilege because I had failed to present evidence that the responsible department of government had done this intentionally, Senator Tardif, my deputy leader at the time, successfully appealed the ruling. The matter was referred to our Rules Committee, which heard from witnesses, accepted an apology from a senior government official, and then, under the leadership of Senator Oliver, the chair, prepared a unanimous report.

The committee unanimously concluded that what appeared on the government's website was "an affront to the Senate," and that it was "offensive to the authority, dignity and privileges of the Senate." This report was unanimously adopted by the Senate on June 23, 2009.

• (1450)

So my appeal of the Speaker's ruling was to defend the privileges of the Senate and all senators. It was about personal and institutional privilege, and to liken it to what Senator Carignan did last week is the height of hypocrisy.

Senator Carignan's appeal of the Speaker's ruling was entirely different. More and more Canadians see it as subverting our rules and traditions, and being prepared to undermine the authority of our Speaker, solely to help ensure the success of a vendetta that Mr. Hiebert, with the support of the Prime Minister, is waging against Canadian unions.

Even though the ruling was overturned last week, in my view it was the correct ruling and we are heading down a very dangerous road.

Is there now any meaningful difference between government bills and non-government bills in the Senate? There is absolutely none so far as limiting debate is concerned. If two bills are reported without amendment from committee, one a government bill and another a private member's bill, both could now be forced to come to a final third reading vote at exactly the same time, two days later. For the government bill, this would be done through direct application of the time allocation measures and, for the private member's bill, through the application of time allocation on a government disposition motion.

I don't know why Senator Carignan doesn't just end the charade of using a government disposition motion to force government time allocation on a non-government bill. Why doesn't he just declare to us all, echoing his words of last Friday, that for everything on the Senate Order Paper, Government Business will be whatever he decides is Government Business and that he will apply government time allocation motions directly on any item he decides is Government Business?

We, on this side of the chamber, would obviously raise points of order. The Speaker, just as he did last week, would rule against the government leader. But the Speaker's ruling could then be overturned by Senator Carignan and his loyal subjects, thereby ensuring a remarkably efficient Senate, where we would be able to minimize the amount of time we would otherwise be forced to spend in this chamber.

Colleagues, I cannot exaggerate how appalled I am by what we are about to do today.

On this side of the chamber, as law makers, we have always assumed that our proceedings would be governed by the rule of law. That changed on Friday and the new order is being cemented into place with every additional vote that we take. Instead of the rules, we are told that we should place our faith in wise benevolence.

I have very little faith in the decisions that will be taken in the future when I see how much of this institution is being sacrificed in order to pass an absolutely atrocious piece of legislation. What has taken place in the last few days is truly incomprehensible to me.

Colleagues, since I can't speak again on the disposition motion on the bill itself, I will now take the opportunity to speak for a few minutes on the merits of the bill.

This is the last debate of the Forty-first Parliament. The last Parliament, the Fortieth, ended with the Harper government being found in contempt of Parliament, a first in Canadian history and indeed in the history of the Commonwealth. Now this Parliament is ending with the Harper government acting yet again in a manner that can only be described as contemptuous of Parliament.

We have seen our Senate rules broken and a decision of our Speaker — actually, the decisions of two Speakers, Speaker Housakos and Speaker Kinsella — set aside, overturned because it did not suit the wishes of the Harper government. As Senator Mitchell pointed out last Friday, the Prime Minister who boasts that he "makes the rules" has easily morphed into one who breaks the rules. So much for being a "law and order" government. Canadians now know that means a government that considers itself above the law, while the Prime Minister issues orders. As any lawyer will tell you, when a government is prepared to break laws and rules — when rules are applied arbitrarily, depending on the whim of the ruling power — well, that's not law at all.

Colleagues, what kind of law-making body are we when we are prepared to break our rules in the making of those laws? How can we ask Canadians to respect our laws when they can only be passed in this way?

Why has the government done this? To force through Bill C-377, a private member's bill that is unconstitutional, a gross violation of Canadians' privacy rights, poorly drafted and opposed by fully seven provincial governments, representing 81.4 per cent of Canadians.

Some senators opposite have derided our attempts to prevent a vote on this bill. Let's be clear, colleagues: This bill sat here in the Senate, either in this chamber or in committee, for month after month without anyone opposite taking any step to move it along. We, on this side, have taken every step we could to delay its progress. Frankly, putting the brakes on such bad legislation is our duty as the chamber of sober second thought. But, until very recently, there was no need for us to take this action, as the government itself seemed, to all observers, to be studiously delaying progress of the bill.

We knew — and know — that a number of senators opposite are uncomfortable with provisions of this bill. Indeed, we heard that members of the government — cabinet ministers — were themselves uncomfortable with this bill and quietly hoped it would die on the Order Paper.

Colleagues, amending or allowing this bill to die on the Order Paper would be the right thing to do.

Bill C-377 is unprecedented in Canadian law, in the gross violation of Canadians' privacy that it would demand. I will not repeat what I have said in my previous speeches. Suffice to say that in no other sphere of Canadian life do we force Canadians who are employed in the private sector to post their names and salaries on the Internet for their neighbours and the world to see. We don't require that of our own federal government employees. Our privacy laws, in fact, prohibit that. But this bill would require that gross violation of privacy, overriding our privacy laws, just because this government doesn't like unions.

Two federal Privacy Commissioners have expressed their concerns about this bill. The current Privacy Commissioner, appointed by Prime Minister Harper, was very clear, warning that the bill goes too far and saying it could be subject to a challenge under the Charter of Rights and Freedoms.

It isn't only public posting of names and salaries; Bill C-377 requires public posting on the Internet of how much time a person spends on political activities. Colleagues, is there any right more fundamental in a democracy than the right to engage in political activities without having to report them to one's government? Frankly, colleagues, provisions like these could have been written in certain totalitarian countries.

The list of public disclosure required by this bill is long. It goes on for several pages. Some of it, as I have described previously, is frankly incomprehensible. How any organization will comply is beyond me. I don't understand what is encompassed by some of the paragraphs, and we heard during the testimony that the sponsor of the bill, Mr. Russ Hiebert, isn't clear about it himself. When pressed on what certain language means, he simply said it

would be left to the Canada Revenue Agency to figure out. Colleagues, what kind of answer is that? The CRA will have no choice but to apply the law as it is written. We are being asked to pass a bill that will impose onerous reporting obligations on a wide swath of private sector organizations and individual Canadians, and not even the sponsor of the bill can tell us exactly who must report and what must be reported.

It's an offence not to comply with the bill, with fines of $1,000 a day to a maximum of $25,000. How can we impose fines and conviction for an offence if we ourselves don't know who and what is required to comply with the bill we are passing?

That brings me to the next point: The bill is poorly drafted. It is, as everyone here knows, a private member's bill. That means it was not drafted by Department of Justice officials who know how to do these things. The results in this case would be humorous if they weren't so shocking and onerous in their impact.

The bill has been presented to us, and justified by the Leader of the Government today, as a bill to provide transparency and accountability for trade unions. Well, the evidence was clear that, as drafted, it will apply to many more organizations than traditional trade unions. Medical doctors have told us they are covered. Doctors Nova Scotia wrote to tell us they have received legal advice that they will be caught by the bill, and no one would typically consider them a trade union.

• (1500)

Screenwriters, Crown attorneys, even the National Hockey League Players' Association all have told us that this bill will apply to them. Like the trade unions, they are deeply concerned about the intrusive, extensive and expensive reporting obligations that the bill will impose.

Senators opposite suggested that we on our side have no concern for taxpayer dollars in keeping this place going to debate this bill. That's our job. That's what we are being paid to do. But let me turn that around: Where is the concern opposite for the massive costs we are imposing on Canadians if we vote to pass this bill without amendment? I have received hundreds, perhaps thousands, of emails from Canadians concerned about the impact on them of the provisions of Bill C-377. I have not received a single one protesting our staying here at work to debate it.

One of the most shocking discoveries was that the bill will apply to mutual funds. The millions of ordinary Canadians who own shares in a mutual fund — who may never have belonged to a union in their lives — may find their names and personal information posted on the Internet. This will happen without their consent or possibly even their knowledge. Millions of Canadians have carefully invested their savings in RRSPs or a TFSA, the Tax-Free Savings Accounts so central to this government's plan to encourage Canadians to save more money. Well, these ordinary Canadians, encouraged by the government to invest in a TFSA, will be surprised to discover that the same government has pushed through a bill that will result in their names and personal information being posted on the Internet.

As the Privacy Commissioner told our Legal and Constitutional Affairs Committee, while the Privacy Act would normally require that these individuals' consent be obtained, under Bill C-377 no such consent is required.

This is the result of the poor drafting of the so-called "labour trust" provisions of Bill C-377. And there is no provision for the government, by regulation, to exempt anyone or anything from the bill's scope, so whatever this chamber passes is what will be the law. You will be voting to put the personal information of all these millions of unsuspecting Canadians online. And, of course, all the disclosure obligations of the bill — the requirement to post names and salaries, bonuses, time spent on political activities, the whole long list — will apply to officers, directors, trustees, "persons in positions of authority" of each labour trust; in other words, of each mutual fund. There are over 9,000 mutual funds in Canada. How do you think the investment advisers and executives on Bay Street and across the country will feel about this?

We could fix these provisions, colleagues. If there is a disclosure that would be constitutional and appropriate for a labour trust, let's legislate for that. But surely no one in this chamber believes there is anything positive to be gained by requiring the posting on the Internet of the names and personal information of every Canadian who invests in a mutual fund.

Is that really what you want this government's last act to be, the last bill passed by this Parliament?

There are many problems with this bill, colleagues, but above all of them, serious as they are, is the fact that this bill is unconstitutional. That was the clear conclusion of the overwhelming number of experts who testified and wrote to us. Despite its name, Bill C-377 is not an income tax law. It is a labour relations law, and except for the very few federally regulated industries, labour relations is a matter of provincial jurisdiction.

All the experts told us that, with one unusual exception. As I detailed in my earlier speech, former Supreme Court Justice Michel Bastarache had a different opinion. But his opinion, as he told us openly, was paid for by Merit Canada, one of the leading proponents of Bill C-377. As others have suggested, perhaps more charitably, his opinion could at best be described as a "dissenting" view.

We heard that the bill is likely to be found unconstitutional under the division of powers of the Constitution, and also very possibly in violation of the Charter. We heard from the Canadian Bar Association and numerous other constitutional experts — including the Privacy Commissioner of Canada — that the bill raises very serious Charter issues, with respect to freedom of expression, freedom of association and also privacy rights.

And we heard from the provinces. In fact, seven provinces — Nova Scotia, New Brunswick, Prince Edward Island, Quebec, Ontario, Manitoba and Alberta — either wrote to us or actually had cabinet ministers testify, asking us not to pass this bill. Seven provinces, representing 81.4 percent of the population. Are we prepared to ignore those voices?

Not one provincial government wrote urging us to pass Bill C-377. Not one.

We heard that this bill is not needed, that Bill C-377 is a solution in search of a problem. Labour unions already provide financial disclosure as required under provincial laws. Eight out of 10 provinces have legislated the disclosure they believe is appropriate to demand of labour organizations. Proponents of Bill C-377 defend it because they do not believe provincial laws go far enough. But that is not a valid ground for us as federal legislators to legislate in an area of provincial jurisdiction — because someone doesn't agree with the choices of a duly elected provincial government.

Colleagues, you are correct to see a common, very disturbing theme. Just as the Harper government rides roughshod over fundamental rules of Parliament when it wants to impose its will, so it ignores even the limits of our Constitution. Prime Minister Harper makes the rules, you see, and no province, no Charter of Rights and Freedoms, no pesky Constitution will get in the way.

In fact, we were told that the existing system of financial disclosure works well. Labour Minister Kelly Regan, from my own province of Nova Scotia, testified that there have been no complaints over the past five years about the disclosure provisions in our province.

Provincial governments told us of the critical balance that is at the heart of labour laws. If we barge in, especially with an ill-considered, poorly drafted private member's bill, we upset that balance, and the consequences could be far-reaching, with impacts on our economy at a time when, as the federal government keeps reminding us, the economy is still very fragile.

The previous labour minister from Nova Scotia expressed it well when he testified before our Banking Committee in 2013. He said that Bill C-377 would be ". . . a grenade in the room of collective bargaining."

Is that what we want, colleagues? Is that the government's new "economic action plan," to undermine our economy in the interest of pursuing an ideological attack on trade unions?

Our late Speaker, Senator Nolin, spoke eloquently in this chamber on our role representing the regions of the Canadian federation. He launched an inquiry on this very subject and spoke to it on February 25, 2014. He said:

> . . . the bicameral structure of the Parliament of Canada gives the Senate, among other duties, the responsibility of ensuring that it takes the interests of the regions and their populations into consideration when exercising its roles.

How are we fulfilling this fundamental responsibility if we ignore the representations of seven provinces asking us not to pass this bill? Are we really going to give more weight to the representations of Russ Hiebert than to the appeals of Premier MacLauchlan of Prince Edward Island, Premier Gallant of New Brunswick, Premier McNeil of Nova Scotia, Premier Couillard of Quebec, Premier Wynne of Ontario, Premier Selinger of Manitoba and Premier Notley of Alberta?

Other senators joined Senator Nolin's inquiry and spoke powerfully about the importance of this role. But those words are not enough. It is in situations like the one before us where we must demonstrate that we are prepared to act and truly represent the regions that have come to us, asking us to do our job of representing them.

Provincial governments do not have a voice in the passage of federal legislation. We are their voice. How can we stand silent?

Colleagues, we did a good job in our study of this bill. Two Senate committees spent considerable time listening to witnesses and reading submissions on the bill. The other place rushed through their consideration of the bill and passed amendments with little or no scrutiny and very little debate, which is one of the reasons for the many drafting errors in the bill. But we didn't do that. We had excellent debates on the merits and problems with the bill. We heard from witnesses, and in the course of our examination, we discovered many problems, including the ones I have highlighted here.

• (1510)

The problem is that the government majority is refusing to listen to what the witnesses said.

All of us acknowledge that one of our responsibilities as senators is to give interested and concerned Canadians an opportunity to be heard. But that is meaningless if, when they speak, we refuse to listen.

The overwhelming weight of evidence — testimony and submissions — before our two committees told us that this bill is deeply, profoundly flawed. It is unacceptable that the government would refuse to accept the legitimacy of the overwhelming body of evidence presented to two committees of this house. Yet that is clearly what is about to happen.

The last act of the Harper government in the forty-first Parliament is to break the rules of one of the two houses of Parliament, and for a bill that experts agree is unconstitutional, a gross violation of Canadians' privacy, and is opposed by seven provinces representing 81.4 per cent of the Canadian population. This sums up much of what so many Canadians dislike about Mr. Harper's government: He breaks the rules to get his way; he ignores the views of provincial governments; he ignores the Constitution and the Charter; and he even ignores the ruling of his own appointee as Speaker. The story of Bill C-377 is the story of the Harper government, in a nutshell.

But we are an independent chamber, colleagues. We don't need to be a party to that.

Canadians are watching what goes on in the Senate. We have many critics, colleagues. Make no mistake: Every time we fail to do our job — we fail to listen to the witnesses who come before us, we ignore the provinces we are supposed to represent, we ignore the provisions of the Constitution and the Charter — every time we simply stand to vote the position dictated by the

government, we provide more and more ammunition to our critics. Why have a Senate, indeed, if that is how we use our power here?

Many of us have said very fine things about the role and value of the Senate and the importance of acting independently and not being a rubber stamp. But words are not enough. Canadians are watching. They will judge us by what we do, not by what we say.

Bill C-377 must not pass, at least not without amendment. We joined together in 2013 and recognized this. The bill is the same now as it was then. There are no new members in this chamber. Our response should be exactly the same as it was in 2013.

Let us do our job and amend this bill or reject it altogether.

**Hon. Jane Cordy:** Honourable senators, I will speak on the time allocation motion.

Honourable senators, Bill C-377 originated in the other place as a private member's bill. The House of Commons followed the procedure for private members' bills, and yet here in the Senate, the Conservative senators have chosen to ignore the rules. Even worse, the Conservatives have used their majority to overturn the Speaker's ruling.

I guess it goes back to Prime Minister Harper's comment, "I make the rules." As Senator Mitchell said on Friday, Mr. Harper should have said, "I break the rules."

I understand that government business is a priority in this place. I also understand that closure can be used to move government legislation, and that is written in the rules. I don't always like it, but the government needs to get through the legislation that it campaigned on. This Harper government has used closure more than any other government to get their legislation passed, both in the House of Commons and here in the Senate.

I look back fondly to former Senator John Lynch-Staunton, who served as the Conservative leader when I was appointed to the Senate. He spoke in this chamber about Senator Graham on Senator Graham's retirement, and he spoke about the respect that Senator Graham had for the role of the opposition. Senators Graham and Lynch-Staunton had the ability to move government legislation through while respecting the role of the Conservative opposition in our democracy.

Honourable senators, time allocation rules do not apply to private members' bills. Speaker Kinsella ruled that time allocation could not be used for private members' bills; and last week the Speaker of the Senate, Senator Housakos, ruled again that the government's motion to use closure was out of order.

As Senator Kinsella stated in his ruling about the time allocation motion, once again put forward by Senator Martin in 2013, when he ruled that her motion was out 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.

I find Senator Carignan's comment offensive — that the only people in this chamber who can determine what is considered government business are the Leader of the Government and the Deputy Leader of the Government. Surely, in a democracy, the rules should be followed.

I agree with Speaker Housakos when he ruled that Senator Martin's motion is out of order. I was quite surprised and disappointed when Senator Carignan and the majority of Conservative senators voted to overturn the ruling of our Speaker, and a ruling that had been made previously by Speaker Kinsella. What are we doing to our institution? If this Harper government doesn't like the rules, then — presto — just change them. On Friday, the Conservative majority voted against the rules of our institution.

If the Harper government wanted this bill to be a government bill, they had the opportunity to do so when it was reintroduced in this Parliament. Instead, it is a government bill pretending to be a private member's bill.

Why was the bill brought back without the amendments that were passed by the majority in this Senate chamber? Why was that amendment ignored? Why was it ignored?

I'm appalled that the Conservative majority in this chamber have pushed democracy to the sidelines. I cannot support this motion that breaks the Senate rules. I cannot support this motion which overturns our Speaker's ruling made last Friday. Why do we have closure on a private member's bill? Why have we broken our rules? What has been done to our institution? This motion on closure is shameful in our country of Canada. This bill will be challenged in the courts, as has been the custom with many government pieces of legislation.

I cannot support this motion, honourable senators.

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

**Hon. Dennis Glen Patterson:** Would the honourable senator take a question?

I've heard Senator Cordy — and, before her, Senator Cowan — talk about the Senate breaking its own rules, or I think she just said voting against the rules of this institution. I just checked the rules, and rule 2-5(3) says: "Any Senator may appeal a Speaker's ruling at the time it is given . . . ." Another rule, 1-2, says: "These Rules shall not limit the Senate in the exercise and preservation of its powers, privileges and immunities," sometimes called the inherent jurisdiction of the Senate to govern its own affairs.

I would like to ask Senator Cordy this: Considering these rules that I just cited, what rules was it that the Senate voted against when it broke its own rules?

**Senator Cordy:** Thank you very much for that question.

This motion goes against the rules of this chamber. There is a provision that you can overturn the rules. Clearly, your side decided to do that. But this is a case of politics overruling democracy, politics taking priority over democracy. My father fought in the Second World War for democracy.

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

**Senator Cordy:** Don't boo that my father fought for this country.

**Senator Campbell:** They don't like veterans anyway, so it doesn't really matter.

**Senator Cordy:** That's true; they don't like veterans. My brother —

• (1520)

**The Hon. the Speaker** *pro tempore***:** Honourable colleagues, listen, if you want to take it out in the alley, fine. We're in the chamber here. Order, everyone. Let's give Senator Cordy the courtesy of listening to her.

**Senator Cordy:** Thank you very much. I appreciate that, because I find it offensive that Conservative senators would boo the fact that my father served in the war. My brother went to Afghanistan to fight for democracy.

This is a sad day in our country when we see that the government is turning its back on the rules of this chamber.

This is a sad day when a private member's bill that followed exactly what your colleague, the Conservative member of Parliament from Alberta, told me when I asked him whether or not bills were handed to them and that they had to take them. He said, "You don't have to take it if you don't want to."

Clearly, this bill is masquerading as a private member's bill. You had the opportunity to make it a government bill when it was reintroduced in the House of Commons. Instead, you chose to keep it as a private member's bill. If you chose to keep it as a private member's bill, then you should darn well follow the rules for private members' bills.

**Hon. Joseph A. Day (Acting Deputy Leader of the Opposition):** Honourable senators, I would like to join my colleagues who have already spoken on this particular matter, motion No. 118, which is referred to as "closure, time allocation," and I adopt all of the points that have been made. In the short time I have available to discuss this matter, I would like to try to add to what has already been said.

Honourable senators, this is motion No. 118 that we're dealing with. There are also floating around here motion No. 117 and Bill C-377, and we don't want to confuse the sequence of these various matters, but this is the route which honourable members opposite have decided to take.

With respect to motion No. 118, pursuant to rule 7-2, not more than a further six hours of debate will be allocated. If you look at rule 7-2, it says that a motion under this rule shall allocate at least six hours. So we're right on the line — not more than, at least.

But the interesting thing about rule 7-2, when it says at least six more hours, is that it contemplates that there had been previous debate on the matter and that the matter had been adjourned, and then the closure or time allocation motion can be brought in. That's in fact what happened. There was some debate and then time allocation was brought in.

If one looks at what we're trying to time allocate — and I am suggesting it's helpful to look at these — motion No. 117, you would think there would be some period of time for debate after we're into a limited closure period, because that's what is contemplated in relation to motion No. 118 that is being used, six hours at least — not less than, not more than. But motion No. 117 states "That notwithstanding any provisions of the Rules or usual practice, immediately following the adoption of this motion . . ." the Speaker will call a vote.

No debate. No further debate on Bill C-377, which is contrary to the general spirit of what takes place in this chamber where we have debate on matters and, if the government feels that the debate has gone on long enough, then there is still a limited time to wind that down and for those that do speak to highlight some of the important points before a vote.

So have that in mind, honourable senators, if motion No. 118 creates time allocation on No. 117, and then No. 117 is passed, we will immediately go into a vote on the bill without further debate.

Honourable senators, that's one of the points I wanted to make; so we will keep that in mind.

Motion No. 117 is in fact a disposition motion. Typically, we would see that motion in Other Business — always we would have seen it in Other Business. Senator Kinsella's ruling confirmed that, and the current Speaker confirmed that again himself in following the precedent.

That's another point that I wanted to make, honourable senators, that the way we deal with matters so that we can have some understanding about where we're going in relation to how these rules will be interpreted and the precedent of a ruling by the Speaker is very important. It's like a common law jurisdiction judge's ruling. It's one of those items that help to keep predictability and decorum in the chamber.

That's a very important aspect of what we're dealing with here, because the matter being dealt with by our Speaker was exactly the same kind of situation that Senator Kinsella had looked into. With reason and time and the submissions of many honourable senators in this chamber, he came to the conclusion that it would be improper to use a government disposition motion to deal with other private members' business.

Last Friday, honourable senators, it was very disappointing that the Speaker's ruling was appealed. We've heard it again today, and I heard it last week, that appealing is another rule in here so we just use that like any other rule. I submit, honourable senators, that's not the case, and that was certainly made very clear to me when I arrived here by a number of honourable senators who were sitting in opposition, including Senators Lynch-Staunton and Kinsella. A number of senators made that point, that an appeal is an extraordinary thing that is

not used willy-nilly like any other rule, but it does provide an escape hatch to make sure that the senators are masters of the chamber in the end and not the Speaker. That is why it's there.

It's the same argument, honourable senators, I made with respect to precedent. In the normal rule, we show due deference to the Speaker. For decorum in this chamber, we don't just stand up and appeal any ruling unless it's absolutely wrong.

Now, if the Speaker had ruled contrary to Senator Kinsella's ruling when he was Speaker, I don't know what I would have done. It would have been clear to me that he had ruled contrary to precedent, but I also have this feeling of decorum in a chamber that is extremely important. Basically, what has happened in this appeal is a vote of non-confidence in the new Speaker, who was appointed by the Prime Minister. That is absolutely the way we should read the appeal that was voted on in this chamber.

I went home on Friday with a very heavy heart because of that, because I felt we had done a very significant injustice to this institution, but it happened. It's a terrible precedent that we have set here, honourable senators. I hope that we can find our way to rectify this over time.

• (1530)

Now we have time allocation on a disposition motion. The motion for time allocation needed the disposition motion. Motion 117 needed to be in Government Business so that time allocation, 118, could be applied to it. That's what we've got now: time allocation on time allocation. That's in effect what we have here because of this very strange routing within the rules that has been adopted. The first time allocation provides for debate, and the second time allocation provides for no debate.

Honourable senators, don't get me wrong. Time allocation is not a new tool. It has been seen before, but time allocation should only be used sparingly and in extreme situations, such as something in legislation that the government needs to be brought in and things are not moving as quickly as they should. Sometimes time allocation is done cooperatively between the parties for reasons like that, and that's contemplated in the rules. That is a use of the tool that is accepted and understood, but it should, as I said, be used sparingly.

This particular government has issued, in this session, 18 different notices of time allocation. That's not "sparingly," honourable senators. That is almost routine. There have been 18 different notices.

**The Hon. the Speaker** *pro tempore***:** Senator Day, do you require more time?

**Senator Day:** Would honourable senators give me five more minutes?

**The Hon. the Speaker** *pro tempore***:** Do we have leave?

**Hon. Senators:** Agreed.

**Senator Day:** Thank you very much, honourable senators.

This time allocation of a disposition motion of a private member's bill is very worrisome. By limiting debate on the disposition motion, the government is essentially putting time allocation on a time allocation, as I indicated earlier.

Most importantly, using a disposition motion or time allocation on Bill C-377 is not, as we know from the Speaker's ruling, a legitimate tool. The Speaker's ruling is that that is not a legitimate tool, yet the appeal has kept this thing in motion. It's a shame that the government decided to override that thoughtful decision of our Speaker. He gave an entirely fair and reasoned judgment, one based on precedent and our rules, not on politics or prejudice. It was a reasonable, thoughtful decision. The Speaker's ruling should have been accepted by this chamber.

There are other ways to get where we want to go, and that is an ultimate vote on Bill C-377. We would run out of time. There is a majority here. There are ways to get there where we don't have to break the rules. That was the debate between Senator Cordy and Senator Patterson. That is what breaking the rules does. We had an interpretation of the rule by the Speaker, and the majority overrode it by appealing. You've heard my comments with respect to appeals.

If Bill C-377 is such a priority for this government, it could have been introduced as a government bill and should have been. It wouldn't have taken three years to get around to passing it, however, if it was a government priority. That is what has been the case. The bill was first introduced in 2012. We know that this bill is on its second time through this chamber.

Senators on the government side have said that the bill was overwhelmingly passed by the majority of the House of Commons, to which we should be asking: What is the House of Commons doing passing a bill that, according to the letters we have received and according to seven premiers, is overwhelmingly opposed by provincial governments and the people of Canada representing, as Senator Cowan has said, over 81 per cent of the country's population? We have received thousands of letters saying that this bill is not proper legislation and should not be passed.

We did our job in committee and in this chamber in 2013, honourable senators. We heard from Canadians and stakeholders overwhelmingly opposing the bill, so we amended the bill and sent it back. It was returned but was never looked at by the government and never looked at by the sponsor of the bill to address the issues that we raised.

What are we supposed to do now? The government wonders why we are using all of the rules that we can find to stop this bill. The issues have not changed. The concerns remain. We feel that the reasoned amendments we proposed previously should be looked at. If they are looked at and sent back to us, we would look at this bill in an entirely different light. To take a look at a bill that we once spent a considerable amount of time on, sent over to the Commons, and then it comes back to us, it is very difficult for honourable senators to say, "Well, sure, we'll just take another look at it."

The majority in this chamber decided to shut down debate and ignore the majority of Canadians, and that's not acceptable. That's what is happening with this ongoing process. We ignore the fact that this is clearly a bad bill, and I hope to have the opportunity to point out a number of places where the bill is a very bad one.

They are saying go ahead and pass it anyway. The motion to allocate time is a motion to break the Senate's rules, overriding the Speaker after he quite rightly pointed out that the motion is against our rules. It is shutting down further debate, honourable senators, and we should not be supporting this particular time allocation.

**Hon. Lillian Eva Dyck:** Honourable senators, I thought I would join the debate on Motion No. 118, time allocation. What happened here last Friday was quite incredible, so I think it's very important to put on the record what we all think.

I have listened very carefully to what other honourable senators have said this afternoon. Senator Martin told us that this time allocation motion would allow us to have a timely and effective debate, that debate on the bill had been sufficient, that enough witnesses were called and that it was therefore equivalent to a government bill. I beg to disagree. I don't believe we took the process in the chamber.

If it had been a government bill, it wouldn't have sat for such a long time on the Order Paper with no action. We received the bill on October 17, 2013, for first reading. Senator Day pointed out that we amended the bill in its original form and sent it back to the House of Commons. However, when it came back to us, those amendments were no longer there.

The bill was received in October 2013, and a year and a half later, in May 2015, we got it back from the committee. If this was such a pressing issue, if this really was a government-like bill, why did we leave it sit for months and months? It was not managed like a government bill. Suddenly, at the end of June, it's critical that we pass it. We are doing things like issuing time allocation motions and overruling the Speaker, of all things. The Speaker thought about this carefully and in an independent manner. Both Speakers Kinsella and Housakos came to the conclusion that we should not be turning this into a government bill and should not be putting time allocation on Bill C-377.

If this were a government bill, it would have had the involvement of Department of Justice lawyers and officials, and all the drafting errors and unconstitutional aspects of the bill probably would have been caught before it even got here. They would have been caught in the House of Commons. So clearly this bill is not equivalent to a government bill — not only because of the way we have managed it but also because of the way it was drafted. The flaws that are contained in it might have been caught long before it got here.

• (1540)

Senator Cordy talked about the breaking of the rules, and Senator Patterson said, "Oh, but we're not breaking our rules," and he quoted a couple of rules from our books. However, the Speaker had looked at the rules and decided that they were perfectly valid and that we should not be doing what we are doing now, namely, trying to convert this bill into government business. The Conservative majority has overruled the Speaker.

When we have rules, there is also the spirit and the intent of the rules. I'm sure Senator Patterson understands that phrase, "spirit and intent." Senator Day talked about how we in the Senate have a certain spirit. We know that here in the Senate we are supposed to be giving things sober second thought. We're supposed to be representing our provinces and the people who have written to us — that is, the thousands and thousands from each province who have written to us saying, "This is not a good bill. Please do not pass it as is. It needs to be amended. It is a tremendously flawed bill." All those people have been writing to us and saying, "Don't pass this bill."

The other thing that Senator Day spoke about is setting a precedent of overruling the Speaker. In a sense, what we are also doing is taking retroactive action. We are saying that when this bill arrived here, in a sense, it was a government bill. Are we going to keep doing this? With the next private member's bill, for some reason are we going to change it into government business?

The really big question that has to be asked and that has to be answered by your side, by the Conservative senators in support of this, is this: Why have you decided to do this? Canadians deserve to know why you have decided to do this, because two years ago, 16 of you voted to support amending the bill. I think about five of you abstained. So the bill was amended and sent back to the House of Commons. Why has that position changed? Why are you now pushing to have the original bill passed without any amendments?

That is what Canadians want to know. That's a really big question. I think during this debate the onus is upon you — especially those of you who voted in support of amendments last time — to get up and defend your position. Why now, all of a sudden, are you saying, "Well, it's okay. It's a government bill now, and I have decided those amendments are no longer necessary"? You should be standing up and defending your position.

**An Hon. Senator:** Hear, hear!

**Senator Dyck:** The onus should not just be on our side to get up and say why we think time allocation is not good. It's up to you to get up and defend why you have changed your position.

You know who you are. I have the list in my front of me; I don't know if I should read it or not. You know who you are. Perhaps I will find it and read it in here — no, I won't. It's okay to change your mind, but you have to be convinced. You could be convinced by your other colleagues to change your mind, but it's also incumbent upon you, I think, to explain why you've changed your minds. Is it a party position? What has convinced you that you should go forward in this way? That's the thing that sticks in my craw — the fact that you have changed your position and have not explained to us or to Canadians, not explained to all those thousands of people who are against this bill, why, all of a sudden, it is necessary to pass this bill in its original, unamended form when we know full well that it's unconstitutional. It breaks

the Privacy Act, the majority of unions are against it, and it is simply not right. Can you explain to Canadians why you have done this? That is what you really need to do.

I am definitely not in support of this motion on time allocation. For those reasons, I can't support this motion. We are essentially breaking our rules. Speaker Housakos and Speaker Kinsella have told us that we have done that. We are breaking our own rules for a bill that should not be passed. It makes no sense, people. It makes no sense. Why are you doing this? Can you explain that to me and to Canadians?

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

**Hon. Wilfred P. Moore:** I would like to participate in this debate, honourable senators.

Where to start? First, I want to start by commending the Speaker for adhering to the *Rules of the Senate*. I think that the matter he decided upon was fundamental as to how this institution operates. He did the right thing. Perhaps it was not an easy position for him to be in, but he did do it. He showed his mettle, and I'm proud of his decision.

Members opposite have made comments about their thoughts that we should be passing these bills that the House of Commons puts before us. Bill C-377 didn't come before us in its amended form — why, I don't know — but we should pass it anyway, regardless of its not being constitutional and that it flies in the face of the Charter. I don't understand how we can not do our job, how we can not seek better legislation, and how we can not amend legislation to make it better for the greater good.

Honourable senators, I am speaking on the matter of time allocation. I am against that, and I want to be associated with the comments of my colleagues on Bill C-377. That bill — and there is no doubt about this; this will happen — Bill C-51 and Bill C-59, Division 18 that I spoke to, will be challenged in court and will be overturned. All this government is doing is forcing Canadians to go to court to try to keep their country on an even keel. You are causing people to incur legal fees unnecessarily. Instead of working and trying to make the country better, they have to go and fight their own government, which is ludicrous, to try to make their country better.

The approach on this legislation is rooted in mean-spiritedness. The philosophy behind the bills is contrary to what the nature of Canada is. I'm seeing here an unwinding of our country, and I don't like it.

We all took an oath at this table when we came in here to uphold the law. I have said this before in the past. Others here, on both sides of the aisles, are members of bars in their respective provinces; they are still officers of the court. They have a duty to uphold the law, whether in their province or in Canadian law. Colleagues, fellow barristers, you know that. You should be thinking about that accordingly. I think you were aware of that when we amended this bill the last time it came around, as Senator Dyck mentioned. I urge you to stay true to your oath and do the right thing.

I have worn the uniform of our country. I have served in municipal government, and I have played sports of all kinds at championship levels. In all of those undertakings, the reason you are able to do those things — that is, to aspire to promotion, to serve your people and to try to win a cup — is because there are rules under which you are performing. The rules don't change in the middle of the game. You know what the rules are when you start, and that's what you play toward.

**An Hon. Senator:** Absolutely!

**Senator Moore:** That's how you get there.

It's not proper — in fact, it's totally un-Canadian — for these fundamental rules to be changed in the middle of the game.

People have talked about the very poor draftsmanship of this legislation. It wasn't fixed, but everybody knew it should have been. We fixed it last time. We didn't fix it this time. I have to wonder why. Maybe the intention was not to fix it. Maybe the government liked it. I hate to think that, but what else can one think? No one has stood up. We all knew it had to be fixed before and we all did the right thing, but not this time around. What happened in the last few months? Somebody better explain that to me, because I don't understand it.

I went home to Nova Scotia on the weekend and people asked, "What's going on up there? What are you going to do about it?" I said, "Well, I'm going to stand up and speak about it, because I don't want anybody to say that I didn't." I don't want my kids, my wife or my neighbours to say that. I hope you think about that yourselves, because this is terrible stuff.

• (1550)

Whether you're serving in uniform, on a municipal government or in the locker room with your teammates, it's not good when there's instability in the centre, when the rules in the centre aren't stable and fixed so that you know what game you're playing. That's what we're doing here. We are undoing the basic decorum of how we function as a government and as a nation. I think it's terrible.

I never thought this would happen. I mentioned this last week when I spoke to Division 18. The leader opposite said that the opposition was using an archaic rule to obstruct the progress of government. Well, archaic rule? It has been on the books for some time. We are here as Her Majesty's Loyal Opposition, not to roll over and do everything the government wants. We are here to hold them to task, to have them explain the value of what they are putting forward and then we'll move on, but not to say, "Well, I don't like it this time. What you're doing is holding me up. It's archaic." Some archaic.

I don't see how this institution as one of the Houses of Parliament could even function with that type of instability and basic government whimsy. That's not how it works.

I just hope that the senators opposite reflect on what we are doing here. Don't think that Canadians aren't watching and listening, because they are. I can tell you because I spent all

weekend talking about this. People raised it with me whether I was in church or at funerals or at social or cultural events. They wanted to know what's going on up here. Here we are. I'm back up here, but I'm telling you, this is not good stuff. Don't take Canadians for granted, because they are listening and you will pay for this if you don't do the right thing.

**Hon. Anne C. Cools:** I'm just wondering if you have given it any thought, but it is common knowledge, well known that when the federal government is trying to rope in an area of interest to them or wanting it to be of interest, they really have very few statutory choices to utilize. The two that they have, and which they tend to use more, are the Criminal Code and the Income Tax Act. I'm just wondering if you have given this any thought, because the bill reads as though someone was trolling and looking for a mechanism to hook in the unions, and somebody sat down and drafted in that respect. It is so obvious that I don't understand how everybody else hasn't seen that.

You will hear the lawyers say quite often, "Well, we can't do this; we can't do that; we don't have the jurisdiction, but we have the Criminal Code; let's hook it in."

Have you given that any thought? Or maybe you didn't think about it or notice it.

**Senator Moore:** I have thought about it, senator. During Question Period it was mentioned today and I think I might have mentioned it myself. This is such a violation and such a grab of information. This is the proverbial Big-Brother-type of legislation that would require Canadians to reveal just about everything they do, all of their activities.

We've heard examples of people who have tax-free savings accounts or mutual funds; all of these things will be hooked into this. I would venture to say that we will be in court and this will be turned down, because I don't think any judge in his or her sense of fairness reading the law, understanding how our civil society works, will think this is good judgment and that this is a type of law that Canadians should be subject to.

**Hon. Serge Joyal:** Honourable senators, the curtain is falling on the last act of the Forty-first Parliament. It's the last part of the life of a Parliament that has lasted for four years.

Over the weekend, following what happened on Friday, I was led to reflect on what we were doing. When I say "we," I thought of each senator individually and what we are being asked to do.

The first thing that came to my mind was, of course, that we had as Speaker an honourable senator, a senator who defined his conduct in relation to the point of order that was raised and debated in front of him with a decision that was in sync with the precedent that was well-established by his predecessor, who was also an appointee of the executive government as provided for in the Constitution, by the Prime Minister.

When Senator Kinsella rendered his decision in October 2013, it was also a very tense moment. I don't know if you remember, honourable senators. It was during the debate on the suspensions of Senator Brazeau, Senator Wallin and Senator Duffy. You will remember how difficult and heavy the ambience in the Senate was during those months. Even though there was a lot of pressure from all venues outside the Senate, Speaker Kinsella stood firm and honest in his decision, and we all recognized the appropriateness of it, because, as he wrote in his ruling, it was directly linked to the structure of the institution. In it, he reminded us that it was the way it was structured when the rules were reformed in 1991. In other words, he was upholding the practice, the tradition, the spirit and the rule of law under which we are governed in the standing *Rules of the Senate*.

In making his decision on Friday, Senator Housakos did the right thing in his soul and conscience. I might have questioned, being very frank with you, when he was first appointed to the chair. I thought he is a young senator. He has taken part in the deliberations and he sits on the Transport Committee. But in the first days when he took the chair, I was impressed by his concern about re-establishing transparency and accountability, and the fact that he took it upon himself to follow in the footsteps of our late former speaker, Speaker Nolin.

Today I have to commend him. I am happy to serve in the Senate with such a Speaker. I feel confident. I feel that whatever political game might be played around here, we can trust the Speaker. I think it's comforting intellectually to know that we have that kind of colleague sitting in the chair.

I think he sits in the chair in the same way former Speaker Kinsella and former Speaker Molgat did. Some of us served under Speaker Molgat, and one thing you have to know is that Speaker Molgat, for a decision that he took personally, not to support a government bill in those days was removed from the chair and he came back to the front bench, honourable senators. I was personally a part of that decision.

• (1600)

I tell you, when the Speaker takes a firm decision in his soul and conscience, it is reassuring for the future of this institution. Without that, this house of Parliament would be, in my opinion, unrulable. There would be no possibility to re-establish the trust of the public in it.

I deplore the issue of the vote of confidence that was taken, but on the other hand, I rest on the fact that —

[*Translation*]

— he is a man of integrity, an honest man whom we can trust.

[*English*]

As I said, even though the curtain falls on this day and tomorrow for the last vote on this bill, I think there are a lot of lessons that we have to draw.

The first lesson I would like to submit to you, honourable senators, is that with this bill we are compelled to adopt a bill that is unconstitutional. Many of my colleagues have developed one aspect or the other for which this bill is not constitutional.

There is no doubt that this bill doesn't respect the division of powers between sections 91 and 92 of the Constitution. But, honourable senators, this is not the first time that the government is proposing a bill that doesn't respect sections 91 and 92. In fact, the Securities Act that this government proposed has been ruled unconstitutional by the Supreme Court. You remember that act very well. It was studied by the Finance Committee or the Banking Committee.

I subscribe to the general objective of the Securities Act, which is to try to establish common rules among provinces. The federal government argued that under section 91 trade and commerce was the competence of the federal government, but the Provinces of Alberta and Quebec contended that it was against section 92. On the basis of the Civil Code, the Supreme Court ruled that that act was against the division of powers.

This act will be ruled against the division of powers because it's a clear intrusion into the Civil Code under the guise of an amendment to the Income Tax Act, because in pith and substance, it is essentially an attempt to rule the management of unions in Canada.

There is not even a penalty if a union doesn't file the information in due time. You know very well how fast Canada Revenue Agency is when a taxpayer doesn't file in time. You will quickly receive a letter establishing the amount of money you have to reimburse because you have not filed in time.

This is clearly against the division of powers, and the provinces have seen it quite clearly. My colleague Senator Cowan has mentioned it. I'm sitting for the province of Quebec, in the district of Kennebec. I want to read into the record a letter of the Quebec Minister of Labour —

[*Translation*]

> . . . we believe that this bill, if it were passed, would lead to a serious imbalance of power between unions and employers since it aims exclusively and specifically labour organizations.

[*English*]

The minister continues:

[*Translation*]

> This bill . . . is already deemed as a violation of the division of jurisdictions . . . .

[*English*]

This is where this bill failed, so we are compelled to adopt a bill for which seven provinces will rush to the court Wednesday, after Royal Assent, to challenge it, and I tell you where, under section 3 of the bill. I will read it for you:

> This Act applies in respect of fiscal periods that begin after the day that is six months after the day on which this Act is assented to.

This act will be assented to tomorrow. On Wednesday, honourable senators, some provinces — be it Quebec, Alberta, Ontario — will make a reference to the Court of Appeal to challenge this bill.

That's the first count, and we have it on record. I asked the question when those ministers were appearing through video conference at the sitting of the Legal and Constitutional Affairs Committee. So today we are adopting a bill that will be challenged the next day.

May I have five minutes more?

**Hon. Senators:** Agreed.

**Senator Joyal:** That's the first count on which this bill will be ruled unconstitutional.

Then there is another count, which is the privacy of it. It is common sense that if you are compelled to disclose what you do outside your professional job, in your leisure time, that this is totally against privacy rules. This is written in this bill.

I'm not against transparency of unions. I'm not against the fact that unions should disclose the money that they receive from their members and how that money is spent. I have no problem with that. Most of the provinces have rules in relation to their own unions.

Again, when I read the letter of the Quebec Minister of Labour, the minister added to her letter the provisions of the Civil Code, the provisions of professional union acts, the provisions of the Canada Labour Code, the provisions of the Canada Labour Code on labour relations, and the provisions of transparency and ethics in relation to lobbying that clearly compel unions to disclose.

No one is against disclosure under the proper legal, constitutional authority — which is the provinces — in relation to unions. This is where the responsibility lies and where those rules should be enunciated, adopted, promulgated and implemented. No one questioned that.

I was listening to the Honourable Leader of the Opposition this afternoon answering the question about transparency. No one is questioning transparency.

If there is a need for that, that's where the decision has to come. When you go overboard and compel the union to declare the private activities of union leadership, that's where you cross the line. It's so obvious. And the Privacy Commissioner is on record about that. There are limits to disclosure. That's the second count on which this bill will fail.

Then on the third count, is the fact that it creates an imbalance between the union leadership and the employer. Our colleague Senator Gerstein will understand that.

When you put two parties, one in front of the other, and they have to negotiate "in good faith" — this is the term in the law — conditions of work, social benefits, everything related to the

implementation of the collective agreement in a particular industry or economic activity, you have to keep a balance between the two. You cannot say to one party, "Tell me everything about you, but I will keep everything behind my back, and you won't know how much money I have to stem the strike or to keep you locked out."

There has to be a balance. The Supreme Court said in January 2015, in a decision I refer you to, honourable senators, *Saskatchewan Federation of Labour v. Saskatchewan*. I refer to you another decision that I would like to quote to you, which is the *Mounted Police Association of Ontario v. Canada (Attorney General)*. It says they have the right to a union, but they have to face equal arms, one in front of the other.

This is a fundamental principle of what my mother would say —

[*Translation*]

— "justice immanente," —

[*English*]

— which means "common-sense balance."

• (1610)

This bill ties the hands of union leadership in collective bargaining by compelling them to disclose all of their assets, how much time they devote to this and that, and leaves the bosses with absolutely no obligation to disclose anything of their capacity to resist a strike or to resist the pressure. That's where this bill fails.

Honourable senators, to be compelled to adopt a bill that is unconstitutional — I'm sorry; I can't vote for that. It happened many times in this Forty-first Parliament whereby I stood up here, as have my colleagues Senator Baker, Senator Jaffer and others, to say —

I'm sorry. I would have liked to finish, but this is the rule. I have to abide. Thank you, honourable senators.

**Hon. George Baker:** Honourable senators, I would like to continue what Senator Joyal was about to say and to elaborate on a portion of his speech, which I find fascinating but which he didn't have the time to devote much of an explanation to, and that is section 241 of the Income Tax Act.

Section 241 of the Income Tax Act, as Senator Joyal has pointed out, is the privacy provision. It's perhaps the most litigated portion of the Income Tax Act when it comes to constitutionality of a provision. As Senator Gerstein would tell us, the bankruptcy and insolvency provisions even came into play in a case in which the trustee in bankruptcy used information from Revenue Canada in its proceedings, but the spouse of the bankrupt was objecting to the Federal Court that this was unconstitutional and violated section 241 of the Income Tax Act.

The court ruled that under the Bankruptcy and Insolvency Act, that was permissible under those circumstances because it was fulfilling a function of the Income Tax Act. In other words, it was legitimized.

There is only one other way that section 241 can be accepted. Senators, in this bill we're passing, proposed subsection (4) opens with the words "Despite section 241," the privacy provisions of the Income Tax Act. It says:

> . . . the information contained in the information return referred to in subsection 149.01(2) shall be made available to the public by the Minister, including publication on the departmental Internet site in a searchable format.

Section 241 of the Income Tax Act says as follows:

> (1) Except as authorized by this section, no official or authorized person shall
>
> > (*a*) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*, . . . .

The one exception is subsection (3), which reads: "Subsections 241(1) and 241(2) do not apply in respect of criminal proceedings." It's the one exception.

Yet as Senator Joyal has pointed out, subparagraph (vii.1) on page 3 of this bill says, "a statement with a reasonable estimate of the percentage of time dedicated by persons referred to in subparagraph (vii) . . . ." Who are those persons? Those persons are persons in positions of authority who would reasonably be expected to have, in the ordinary course, access to material information about the business, operations and assets of the union organization. A "labour organization" covers every single union in Canada, including the municipal workers' union in the smallest town.

So you would have what disclosed? You would have disclosed the time spent on political activities, lobbying activities and any other labour relations, any other non-labour relations activities. If you attend the Boy Scouts or the Girl Guides as an instructor, it must be covered under this — that's what we found out in our committee hearings — and published by the Canada Revenue Agency. If you don't supply the information: $1,000 a day "in respect of fiscal periods that begin after the day that is six months after the day on which this Act is assented to," up to a maximum of $25,000.

I didn't think about it before, but I think Senator Joyal is absolutely correct that section 241 of the Income Tax Act will once again be litigated to strike down this particular section of the bill.

Now, some people in this chamber are wondering: Look, the United States has similar legislation. How come we can't have similar legislation in Canada?

The point is that the United States doesn't have similar legislation. That's what we learned. The United States has legislation that applies to employees of unions that are of such a large number as to exclude all of those — mainly, in our country — provincial jurisdiction unions that are covered under this act. And the provisions of the U.S. legislation are not the same. The same information is not disclosed.

So Senator Joyal is absolutely correct in that it's a strange piece of legislation to have "despite section 241" of the Income Tax Act, which has been so protected by the Privacy Commissioner of Canada, whom we established, protected in our courts as being beyond challenge, apart from criminal proceedings and apart from the Bankruptcy and Insolvency Act.

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

**The Hon. the Speaker** *pro tempore***:** Senator Baker, would you accept a question?

**Senator Baker:** Yes.

**Senator Moore:** In the remarks here today, we've heard mention of Merit Canada. When I hear the name "Canada" hooked onto a name, it means maybe there is a bigger company somewhere. What is Merit Canada? Would you know?

**Senator Baker:** I'm sorry. I didn't hear your question.

**Senator Moore:** Would you know what Merit Canada is? When I hear the name "Canada" tacked onto a word before it, I wonder if it's a Canadian division of some other larger company or corporation. What is it; do you know?

**Senator Baker:** Yes, I do know what it is, but I don't wish to comment on it.

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** Senator, will you take a question?

My question follows up on what Senator Joyal was saying. Since you said that you were continuing in the same vein as Senator Joyal, I will ask you a question about one of the points he mentioned, namely the imbalance with respect to information. It was said that one party will take advantage of the information it has about the other party.

I was the mayor of a municipality for nine years. Consequently, I had to negotiate seven or eight collective agreements with different associations representing the employees. Those associations had access to all the information about the municipality such as my expenses, the contracts awarded, and all expenditures of $10 or more, because everything was made public. I never had the impression that the union's access to the city's financial information in the most minute detail created an imbalance in negotiating power.

Can you explain what imbalance you see in a situation where, as mayor, I would have access to the union's figures? Would that not restore the balance rather than create an imbalance?

• (1620)

[*English*]

**Senator Baker:** Well, the real imbalance created by the bill is that the shop steward in the municipal workers' union of your town would have published every year what that shop steward did as far as lobbying activities, political activities or any other non-union activities, published every year on the Internet for everyone to see.

There is a problem with that if you have somebody who wants to be a nuisance and who says, "Oh, so-and-so said he spent a certain amount of time in this particular activity, but he didn't tell Revenue Canada that he also belongs to this or that organization." That would constitute, under that particular bill, an offence, punishable not by criminal action but by summary conviction. If somebody knew the law here, you would never want to be a member, an officer of a union in a small town.

**The Hon. the Speaker** *pro tempore***:** Senator Baker, do you wish to have more time?

**An Hon. Senator:** Five minutes.

**Senator Baker:** That's the main problem. When I looked at the bill, the thing that jumped out at me was that non-union activities must be reported yearly, together with your political activities; so somebody is a member and, okay, they spent time with the Conservative Party, but also here are your other non-union activities in your community.

That's a huge invasion of privacy, and under the umbrella of what Senator Joyal was saying, the Privacy Act and section 241 of the Income Tax Act, which says — not a municipality here; it's Revenue Canada, and all citizens respect Revenue Canada. I mean, of all the people to get to collect your information, Revenue Canada, of course they're going to get some return every single year. But then to be under a fine, under summary action if you do not report a non-union activity or you were late in reporting it is not the same as being open as a municipality versus your union.

We're talking here about the Income Tax Act and the Privacy Act and a violation of section 241, as Senator Joyal pointed out.

[*Translation*]

**Senator Carignan:** Let's say I'm a unionized employee of a municipality. You can consult my municipality's website and see whether I own a residence or building and see my tax bill. You can even see if I owe 55¢ in interest because of a late payment. Everyone on the planet can see it. Why is that allowed and why is that not considered an invasion of my privacy? It's because that is public information. It is the connection to the public aspect that justifies this way of doing things, even when someone simply owns a house or apartment building. Why, then, must a unionized worker pay dues to a union even if he doesn't support it or doesn't

want to be a member? Why should he not be allowed to access information about how union leaders are using those dues? In the case of non-profit organizations, why are volunteers obligated to release that information? If I can access that information for a non-profit organization, why, as a unionized worker, would I not have access to information on the amount of money that unions have to spend, when I have to pay dues against my will?

[*English*]

**Senator Baker:** That information is justified and legitimatized by the Municipal Act, coming under the umbrella of the provincial government authority. There is authorization and justification for it established in law. As Senator Joyal pointed out, there is no justification established in law for this mandatory disclosure of everyone's activities, not just money they get or meetings they attend or political activities, but also all of their non-union activities.

There is no comparison simply because your example is lawful, but this, as Senator Joyal has pointed out, would be unlawful.

[*Translation*]

**Senator Carignan:** I have one last question, Senator Baker. The Rand formula is the most flagrant example, because the law requires me, as an employee, to pay a certain amount every week to an association that I don't even want to be represented by, but to which I am bound under the law, to be represented by. I have to hand over a certain amount of money under the law, not because I want to be a member of the union and I want to pay it that money, but because, under the law, I have to pay it a certain amount of money and be represented by —

[*English*]

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

Senator Merchant, on debate.

**Hon. Pana Merchant:** Honourable senators, I thought I would read into the record two letters that arrived following what happened here on Friday. One was sent to all the Saskatchewan senators:

> Dear Senator:
>
> I am writing to express my outrage with the decision of Conservative Senators to subvert democracy in order to pass the anti-worker Bill C-377.
>
> I have just been made aware of a Conservative motion that, if passed, would limit debate and force closure on Bill C-377. Under current Senate rules, this is not allowed for private members' bills.
>
> Once again, the Conservatives are ramming controversial legislation through the Senate, even if it means they have to change the rules of our democracy to do it. I find it insulting that Conservative Senators would take such inappropriate action.
>
> As a taxpayer, I am concerned about the outrageous costs associated with Bill C-377, as well as the threats that it would pose to the privacy of union members and pensioners. The bill is unconstitutional and will result in an expensive series of court challenges.
>
> I know the same concerns were expressed by the majority of witnesses who appeared before the Senate Committee on Legal and Constitutional Affairs to discuss Bill C-377. Similar concerns were also expressed by now-retired Senator Hugh Segal, who has stated that Bill C-377 "was badly drafted legislation, flawed, unconstitutional and technically incompetent."
>
> I agree with Senator Segal. I am strongly opposed to this unconstitutional bill, and I urge you to vote against the Conservative motion to limit debate and force closure on Bill C-377.
>
> I also urge you to vote against or abstain from voting on Bill C-377 on third reading, as it is an expensive, invasive, and unnecessary piece of legislation.

There is a second letter, which says:

> As the leaders of Canada's largest union, —

This is the Canadian Union of Public Employees.

> — representing over 630,000 members, we have been following the passage of C-377 closely. We had hoped to have been able to appear in front of the Senate Committee to voice our concerns with the overreach of this legislation. We are writing now with great urgency —

This was on Friday again.

> — and outrage having just learnt that the Conservatives' unprecedented move to limit debate on a private members' bill in order to rush it through the Senate.
>
> Such a move is undemocratic and diminishes what little public respect is left for the Senate. The many legal and constitutional problems with C-377 have been flagged for all Senators; 5 provinces have questioned its validity —

• (1630)

Seven now, but the letter says five.

> — and expert testimony has indicated that it is a problem in search of a solution. With all of this in mind, we also urge you to oppose the final passage of the bill, which singles out trade unions in a most unfair manner.

**Hon. Sandra Lovelace Nicholas:** I will only take a few seconds. I'm not a big writer.

This government has rammed through bad legislation because of their majority in the chamber. It is not what Canadians, the people, want this chamber to do. In particular, Bill C-51 was

passed because this chamber does not represent the voice of the people and a fair vote is impossible. Democracy is in jeopardy. Bill C-51 will have negative impacts, especially on First Nations people. I have had hundreds of emails to this effect.

It's too late for Bill C-51, but Bill C-377 is another bad bill. It is unconstitutional, and it seems to me that Harper's cronies are told to pass this bill no matter what the consequences are. I wonder what my colleagues opposite in this chamber will think when they return home to face their constituents.

I represent minorities in New Brunswick, and the province is against this bill. I am now concerned that Bill C-377 will face the same end, and again Canadians are expressing their grave concerns about this bill, with lots of emails and telephone calls.

Under this Harper government, honourable senators, sober second thought has left the building.

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

**Some Hon. Senators:** Question.

**The Hon. the Speaker** *pro tempore***:** It was moved by the Honourable Senator Martin, seconded by Honourable Senator Marshall:

> 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.

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

**Some Hon. Senators:** Yea.

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore***:** Those in favour of the motion will please say "yea."

**Some Hon. Senators:** Yea.

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

**Some Hon. Senators:** Nay.

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

*And two honourable senators having risen:*

**The Hon. the Speaker** *pro tempore***:** I see two senators rising. Have the whips decided?

**Senator Marshall:** One hour.

**Senator Munson:** One-hour bell, thank you.

**The Hon. the Speaker** *pro tempore***:** The vote will be at 5:35. Call in the senators.

• (1730)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Beyak
Black
Carignan
Dagenais
Eaton
Enverga
Frum
Gerstein
Greene
Lang
LeBreton
MacDonald
Maltais
Marshall
Martin
McInnis
McIntyre
Mockler
Ngo
Oh
Patterson
Plett
Poirier
Raine
Runciman
Seidman
Smith (*Saurel*)
Stewart Olsen
Tkachuk
Unger
Wells
White—35

NAYS
THE HONOURABLE SENATORS

Baker
Campbell
Cools
Cordy
Cowan
Dawson
Day
Downe
Dyck
Furey
Hervieux-Payette
Hubley
Jaffer
Joyal
Kenny
Lovelace Nicholas
McCoy
Merchant
Mitchell
Moore
Munson—21

ABSTENTIONS
THE HONOURABLE SENATORS

Bellemare
Wallace—2

• (1740)

BILL TO AMEND—DISPOSITION OF BILL—MOTION AND MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Martin, seconded by the Honourable Senator Marshall:

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;

And on the motion in amendment of the Honourable Senator Cowan, seconded by the Honourable Senator Hubley, that this motion be not now adopted, but 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".**

**Hon. Donald Neil Plett:** Colleagues, I rise today to add my voice to the debate on Motion No. 117 in relation to Bill C-377.

As all honourable senators know, former Supreme Court Justice Michel Bastarache explained to our Committee on Legal and Constitutional Affairs that this bill is a valid enactment of the federal Parliament's power over taxation under section 91(3) of the Constitution Act, 1867. He also stated that this bill is consistent with the Charter of Rights and Freedoms and that in any case any infringement would likely be justified as a reasonable limit under section 1 of the Charter.

Justice Bastarache is a renowned and respected constitutional expert. However, Senator Cowan appallingly questioned his expertise and reputation earlier today.

For some to suggest that Justice Bastarache is the only expert attesting to the bill's constitutionality is absurd. The House of Commons Subcommittee on Private Members' Business meets to determine whether it wishes to designate any items as non-votable according to a list of criteria, including constitutionality. The constitutional and parliamentary affairs adviser, Mr. Michel Bédard, who is a non-partisan employee of the Library of Parliament, stated that this bill "is within federal jurisdiction. It is not unconstitutional, and there's no similar bill currently on the order of precedence, either from the government or a private member."

After an extensive discussion, the committee took a recorded vote on whether Bill C-377 met the criteria, including constitutionality, and they determined that the bill was constitutional. It is worth noting that the committee's membership included renowned constitutional scholar Stéphane Dion.

Another respected legal expert in labour and employment law, Mr. L.F. Seiferling, made a submission to the committee, stating that this bill is not only constitutional but that it is "justified because of the unique nature and privileged status of unions and labour organizations in Canada."

In Senator Bellemare's argument that this bill is unconstitutional, she referenced Jennifer Stoddart, former Privacy Commissioner of Canada, who as we know was not invited to the committee to testify on constitutionality but rather in accordance with the Privacy Act. Ms. Stoddart confirmed at committee that nothing in this legislation violates the Privacy Act.

Senator Bellemare and others have also referenced Paul Cavalluzzo, a lawyer who failed to disclose to the committee the fact that he is on retainer as legal counsel to the Ontario English Catholic Teachers Association, a fact that I believe needs to be considered when evaluating the merits of his testimony.

I trust that since Senator Cowan believes that Justice Bastarache's opinion is invalid because the senator claims he was appearing at the behest of Merit Canada, he would also clearly conclude that Mr. Cavalluzzo's testimony should be discredited. Furthermore, Mr. Cavalluzzo represents labour unions in the United States, where similar disclosure reports are mandatory.

The other individual that Senator Bellemare referenced to support her claim that the bill is unconstitutional is Bruce Ryder. I would like to remind honourable colleagues that this is the same

Bruce Ryder who claimed that the appointment of 18 senators on December 22, 2008, by Prime Minister Harper was also unconstitutional.

Several senators have referenced the opposition of the provinces. Specifically, we keep hearing about Ontario and Manitoba's apparent opposition. Manitoba's labour minister, Erna Braun, testified at committee and was unable to answer any questions on her own about the legislation, stating that she was new to the job after having been the Minister of Labour for nearly two years. Further, when Senator Dagenais asked her about her prior work, she indicated that she was in fact a former union boss herself, as head of the teacher's union in Manitoba. And colleagues — no, there's nothing wrong with that, Senator Mitchell.

And colleagues, it is no surprise that the Liberal Ontario labour minister, Kevin Flynn, is opposed to union transparency, as unions have been electing Liberal governments in Ontario since 2003 as a result of their lack of control on third-party spending. In the last election, the union spent roughly $1 million more than the limit imposed on all political parties. I believe there's something wrong with that, Senator Mitchell.

A number of senators opposite, including Senators Ringuette, Cowan and others, have stated that seven provinces, representing 80 per cent of Canadians, are opposed to this legislation. Seven provinces are not opposed to this legislation. Seven labour ministers are opposed to this legislation. As far as their representation of the electorate goes, allow me to present a few figures.

In the last federal election, 5.8 million Canadians voted for the Conservative Party of Canada, whereas only 2.7 million voted Liberal. They elected the Conservative Party to develop and implement sound conservative federal policy.

As for provincial governments who are opposed to the bill, Senator Cowan very recently mentioned Alberta. In the last federal election, 66.8 per cent of Albertans voted for the Conservative Party of Canada to develop federal policy, and only 9.3 per cent voted Liberal. In my province of Manitoba, 53.5 per cent voted Conservative; 16.6 per cent voted Liberal. You will have an opportunity, Senator Cools.

In our most populous province, 44.4 per cent voted Conservative, and 25.3 per cent voted Liberal.

Clearly, the views of seven anti-business labour ministers do not represent 80 per cent of Canadians, not even close. Canadians overwhelmingly put their trust in the Conservative government to develop federal policy, and in fact, the only province that had more Liberal supporters than Conservative supporters was Newfoundland and Labrador, which by the way is not opposed to the legislation.

Colleagues, several senators have claimed that this bill infringes upon provincial jurisdiction. However, as this bill in no way attempts to regulate labour relations or dictate how labour organizations can spend the money they collect, Bill C-377 does not interfere with provincial jurisdiction. This is merely financial disclosure, which clearly falls under the purview of the CRA and is appropriately dealt with in federal legislation.

Some senators raised concerns about the requirements under Bill C-377 that union leadership report the time they spend on non-labour activities, suggesting that this would require them to report non-work activities. This is clearly not the case. Bill C-377 only covers workplace activities and mirrors, for example, the system the Canada Revenue Agency uses for charities that are required to report the percentage of time they spend on political activities.

Similarly, the Commissioner of Lobbying requires registered lobbyists, including many union leaders, to report how much of their time is spent on lobbying activity.

In addition, U.S.-based unions that operate in Canada already have to report the time they spend on lobbying and similar activities to the U.S. Department of Labor. In no case do these reporting regimes require anyone to report what they do in their off time on charitable or volunteer activities, as has been suggested by some in this chamber.

• (1750)

Senator Baker has inferred that the bill would require union officials to disclose how much of their time they spend at Boy Scouts. This is simply not the case. Again, colleagues, unions are required to disclose a reasonable estimate of working time that their executives spend on lobbying and political activities. This is entirely appropriate.

**Senator Cordy:** Non-labour related. Read the bill.

**Senator Plett:** Rank-and-file union members, as well as the public, are entitled to know if executives at unions are spending a significant amount of their work time in non-labour-related activities, given the favourable tax treatment of union dues.

With regard to Senator Bellemare's amendment, the purpose of Bill C-377 is to provide transparency under the Income Tax Act in lieu of the favourable tax treatment that the act provides unions and union dues. This favourable tax treatment applies equally to both provincially regulated and federally regulated unions. It would make no sense to exclude unions that fall under provincial jurisdiction, since these unions benefit from the favourable tax treatment provided by the federal Income Tax Act.

Colleagues, we need to keep in mind that the impetus for initiating this legislation was from union members approaching members of Parliament because they could not access the information they, as paying members, are entitled to. We heard horror stories at committee about the bullying and intimidation tactics used on union members when trying to obtain this information.

For example, Ken Pereira is a whistle-blower who can no longer work in the province of Quebec after the intimidation from Quebec's FTQ-Construction union, a union where senior

Mob and Hells Angels bosses were woven into the fabric of the organization's top echelon. He appeared at our committee and stated:

> It is clear that some union leaders will say almost anything to hide this reality from Canadians, including the unionized ones. Those who speak against this bill, let alone who want to find a way to stop it, would enable this terrible reality to continue. I challenge you to look me in the eye and tell me why anyone should have to be where I am today. Only full public disclosure will create more pressure on the labour movement.

Colleagues, while several union bosses have been opposed to this legislation, I have personally received calls and emails from several members of various unions who are thanking us for putting this legislation forward. On the other hand, I have received calls and emails from panicked union members who are getting false information from their union leaders; for example, that their personal pension details will be made public.

We know that pension plans, health benefits and other regulated plans will not be required to report under Bill C-377, and registered benefits to individuals will not be reportable. Thankfully, I have had the opportunity to speak with many of these misled members to clear up these misconceptions.

Colleagues, Bill C-377 is about transparency and fairness. We have thoroughly studied this legislation. It has been studied at two Senate committees. We have heard from 72 witnesses and have heard testimony for 21 hours. It has now been extensively debated in this chamber. We have all had plenty of time to form an opinion on the legislation.

Canadians have encouraged honourable senators to either vote for or against the bill, but I think you would be hard pressed to find Canadians encouraging you to filibuster, delay, waste tax dollars and stall the democratic process.

Colleagues, it is time we allow Bill C-377 to come to a vote.

[*Translation*]

**Hon. Jean-Guy Dagenais:** Honourable senators, people have the right to choose sides on such important issues. I chose to do what I always did during my life as a union leader, and that is to stand with those who have the best interests of unionized workers at heart, rather than the interests of union leaders and their lawyers who want to maintain a culture of secrecy, which I call *omertà*, in unions.

A former Supreme Court justice has told us that the bill is constitutional. Others disagree with that opinion. I would like to point out that, every day in our courts, lawyers face off against each other and 50 per cent of them lose their cases. Nevertheless, all of those lawyers told their clients that they were right. You will therefore understand that I have the right to be concerned when I hear the legal opinions of professionals who may well be looking to make money from those who oppose this bill.

As Senator Bellemare indicated, we were told in this institution that people examined and analyzed this bill. With all due respect for the people who conducted those studies, I would like to point out that, every year, universities welcome students who spend a lot of time studying a certain subject but who still fail the exam because they did not understand what they were studying. Obviously, Senator Bellemare should understand that Bill C-377 is about transparency of financial statements, which is necessary today, and especially about protecting unionized workers.

I have no intention of getting into a legal debate. However, I am going to defer to the opinion of Justice Bastarache and the experts who were consulted before this bill was passed by the House of Commons. All of the documentation on this issue is available, and I sincerely hope that all senators have read it. If you have not, I invite you to do so.

This bill, which I am defending as its sponsor, was studied at length by former Supreme Court of Canada justice Michel Bastarache. According to him, it is constitutional, does not interfere in any way in provincial jurisdiction over labour relations, and does not encroach on the decision-making or spending powers of union organizations. Copies of this opinion are available to all senators.

I am not impressed when lawyers who have had lucrative contracts with unions tell us that Bill C-377 is unconstitutional. What is more, my colleague, Senator Plett, mentioned Mr. Cavalluzzo. Personally, I am going to rely on former Justice Bastarache's opinion, which convinced us that we could move forward with the provisions of this legislation. There is nothing anti-constitutional about this legislation because it is simply a tax law matter.

Senators have mentioned that a number of people were heard during meetings of the Banking Committee and the Legal Committee. I would point out that, for the most part, those people were union leaders and their overpaid lawyers. Why didn't we hear more from rank-and-file workers? My colleague Senator Plett mentioned that we heard from Ken Pereira. Having spent 28 years in the union movement, I can tell you this. Imagine for a moment that a worker tells us that he is in favour of Bill C-377 and two or three weeks later he ends up in a grievance situation with his employer and has to ask his union to defend him. Unfortunately, that worker will be burned, to say the least. He will not get any help from his union because of its opposition to Bill C-377.

Last weekend, I read the papers, and in one of the popular Montreal papers there was an article about Bill C-377. The title of the article was "Standoff in the Senate over union transparency bill." What got my attention were some comments from rank-and-file union members. Some of them have to use pseudonyms, and I can understand why they would fear their union leaders. I would like to read you three of those comments. The first is from a rank-and-file union member who used a pseudonym:

> Another good reason not to vote Liberal, those union protectors. And the NDP is also a union protector and a big union party.

• (1800)

The second comment I read that caught my attention read as follows:

> Hurray for transparency. Yes, this bill must be passed as quickly as possible.

The third comment that caught my attention is the following:

> Well, I'm a union member, and I completely agree with this Conservative bill!
>
> What do unions have to hide? I have wanted to know for quite some time what they really do with the $20 a week that I give them . . . .

I believe that these comments are quite revealing. I will repeat that this bill is for the benefit of Canadian unionized workers, not union leaders. I was a union leader and, as I mentioned, I know what I am talking about. I appreciate the fact that I occasionally meet, on Highway 50, some of my former Sûreté du Québec police colleagues who tell me, "We miss you, Mr. President, because we knew what was happening when you were around, because you were transparent." They have even said, "We know that you are the sponsor of Bill C-377. Good luck, Mr. President! We know that you have always cared about workers."

That is why I asked to sponsor the bill. This bill is for the workers, and it will defend them rather than protect the union leaders and their overpaid lawyers.

**Hon. Diane Bellemare:** Would Senator Dagenais take a question?

**Senator Dagenais:** With pleasure, senator.

**Senator Bellemare:** I could have also asked this question of the Honourable Senator Plett. However, you rose rather quickly, so my question is for you.

Given that, according to you, Bill C-377 is constitutional, how do you reconcile the fact that the American legislation that the bill's sponsor, Mr. Hiebert, based his legislation on relates to the U.S. Labor Department and is not a tax bill, like Bill C-377 is? Also, how do you reconcile the fact that the American legislation on which Mr. Hiebert based his bill also legislates accountability for employer associations, unionized businesses and consultants? How do you reconcile the fact that this American legislation and all legislation worldwide in this area are developed by their respective labour departments, while the bill currently before us amends the Income Tax Act? I look forward to hearing your answer.

**Senator Dagenais:** With all due respect, Senator Bellemare, you said "American legislation" three times. To begin with, I would like to point out that we are in Canada. You said that Mr. Hiebert referred to the American law. I would refer to the ruling by Justice Bastarache. How many times has the Supreme Court handed down decisions that were followed by accusations against the government, saying that it has been critical of Supreme Court decisions? For once we accept the decision of a former Supreme Court justice who sat on the highest court in the land for 11 years.

I would not question Justice Bastarache's word, his judgment or his analysis. I will rely on what he told us, and I repeat: the bill is not unconstitutional, it is not anti-union and, more importantly, it will not undermine union activities.

**The Hon. the Speaker** *pro tempore***:** Will Senator Dagenais accept another question?

[*English*]

**Hon. Anne C. Cools:** I have great respect for the Honourable Senator Dagenais; he knows this. But I wonder if the honourable senator could tell me whether he has any qualms about adopting a motion that begins "That notwithstanding any provisions of the Rules or usual practices."

Do you have any qualms about voting for a motion that waives and suspends every single rule in the place? Do you not see anything wrong in that? This is what we are on right now; we are on Motion 117. I would like to know your concerns, if any, about such harsh and severe measures to abrogate debate.

[*Translation*]

**Senator Dagenais:** Senator Cools, when I agreed to sponsor Bill C-377, I agreed to sponsor it in its entirety and as it stood. You will therefore understand that I accept the bill in its entirety as it was first introduced, without amendment. That is how I see it.

[*English*]

**Senator Plett:** I have a question. Senator Bellemare said that she would have liked to have asked me the question. Let me simply ask Senator Dagenais whether he would agree — also in response to Senator Bellemare's question — that this bill is not attempting to regulate labour, that it is, in fact, disclosure only, and purely federal jurisdiction?

[*Translation*]

**Senator Dagenais:** What you must understand, and what Senator Plett explained, is that this bill seeks to protect workers, the rank-and-file members, and ensure that they know what is being done with their money.

I am a bit disappointed by what I have heard recently in the Senate. I am not blaming my colleagues opposite because not everyone in the Senate worked for a union for 28 years.

I would like to give you an example. It has been said that the names of union members who contribute to a pension plan will be disclosed, as will the total amount of their contributions and, if

necessary, the pension they will receive. I do not agree with that. As the chair of the pension committee for my union, I can tell you that the financial statements do not contain that sort of information. The financial statement for a retirement plan is an actuarial report that, of course, includes the financial status of the retirement plan, which may be two or three billion dollars. It includes the various companies in which the funds have been invested. It also includes any changes in the mortality rate of participants, since that can affect the sustainability of the plan.

I have to take issue with claims that it will include names, contribution amounts and TFSA amounts because I have never seen such a thing in 20 years. Having chaired the retirement committee with the Commission administrative des régimes de retraite et d'assurance du Québec, I can tell you that that information was never there and never will be. The record has to be set straight.

I'm not trying to blame anyone. That's fine. When you work somewhere, you learn over time. The process is pretty complicated. However, I can tell you that that information will never be there, so I don't understand what the concern is. The only concern I have heard about this bill was from union leaders, who didn't want people to know how their money was being spent.

In Quebec, union leaders have relaxed at a spa belonging to a boat owner. Take, for example, Jocelyn Dupuis, who spent $63,000 of his members' dues. Take Johnny Lavallée. Those incidents did not help union leaders. I think that rank-and-file union members have the right to ask for clarification about what's being done with their money. Union dues amount to between $1,000 and $1,500 per year, but people have no right to ask for explanations.

What disappointed me the most was the Ontario Provincial Police Association. I think that a police officers' union should be setting an example, but Canada's biggest police union invested in tax havens, unbeknownst to its members. Unfortunately, the only information sources available to members were the newspapers.

Now we have Bill C-377 to clarify such things. Canadian unionized workers will know how their money is being spent. That is why this bill is so important. That is what we must keep in mind. That is why I urge you to vote in favour of the bill. Think of Canadian unionized workers. Do not think of union leaders. Do not think of their overpaid lawyers. Those people will still have the same salaries. Think of making union dues more transparent. Workers have the right to know where their money is going.

**Senator Bellemare:** Senator Dagenais, I have another question for you. What assurances does Bill C-377 provide that the information that will be disclosed on the forms will be accurate? Are there any deterrence measures in the bill?

**The Hon. the Speaker** *pro tempore***:** I regret to inform you that your time is up.



• (1810)

[*English*]

**Hon. Joseph A. Day (Acting Deputy Leader of the Opposition):** Colleagues, it's always helpful to me to regroup and figure out where we are. We have been discussing Bill C-377 in the Senate of Canada, and where we are right now is Motion No. 117, the motion which is sometimes referred to as a disposition motion, which has been accepted as a government motion, and we are debating that. It has time allocation attached to it. We have six hours to debate this No. 117 and its amendments. There is one amendment, honourable senators, and I will discuss the amendment and the motion as well as what it's trying to achieve.

The amendment, first of all, honourable senators, is basically to change the wording that says that when the motion is adopted we shall proceed immediately to disposing of Bill C-377; in other words, there will be no further discussion. That's the guillotine. It's over.

The amendment is to replace ". . . immediately following the adoption of this motion" with the words "following the adoption of this motion, but no earlier than October 20, 2015." A rather auspicious date, October 20, is the suggested amendment. I am hoping honourable senators will carefully consider that suggestion as to when we should deal with Bill C-377.

Bill C-377 was referred to the Standing Senate Committee on Banking, Trade and Commerce when it was before us in 2013. This time around, in 2014, it was referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The Banking Committee reported the bill back unamended but with observations, stating that they had issues that could better be dealt with here in this chamber, and this chamber did deal with that particular bill when it came back and amended it.

The Standing Senate Committee on Legal and Constitutional Affairs, which has looked at the bill this year, reported the bill back unamended and with no observations.

In 2013, the Senate ended up voting to amend the legislation and send it back to the House of Commons. The House of Commons never considered the fine work done by our committee and by this chamber. The government prorogued, not because of this particular Bill C-377, I'm sure, but prorogation took place. Under a quirky rule, back the bill comes as if it had just received third reading in the House of Commons.

I'm unsure, therefore, what changed between the first and second times we looked at it. Either we didn't do our job properly the first time or we're not doing our job properly this time because there are very significant differences. Time only will tell, or perhaps the Supreme Court will tell. That is part of the issue, honourable senators.

We know court challenges will rise if we pass this bill. We've heard it from many different sources. The constitutionality of this legislation has been called into question by many witnesses and by many people who weren't witnesses.

The Canadian Bar Association, in submissions to the House of Commons Finance Committee, stated:

> The Bill interferes with the internal administration and operations of a union, which the constitutionally protected freedom of association precludes, unless the government interference qualifies as a reasonable limitation upon associational rights. It is unclear from the Bill what the justification is for these infringements.

Honourable senators will know the Canadian Bar Association represents a huge number of jurists from across Canada.

We've heard from many speakers on this, and many issues have arisen, and I don't have the time and you don't have the inclination to listen to me go over those points, but the Canada Revenue Agency workload was referred to. I remind honourable senators that this is an act to amend the Income Tax Act. This is income tax legislation, and so the Canada Revenue Agency is required to gather all this information from all these different sources and to publish it. There are the privacy considerations that have been raised: privacy of individuals, the individual members of associations, school teachers' associations, dental associations, doctors' associations, accountants' associations, all of those and many more.

The tremendous cost to the associations or the unions has been raised. I went through the bill picking out how many different reports they're required to keep, and I stopped at 23; but not to worry, honourable senators, if something isn't caught there is a little basket clause at the end here that says "any other prescribed statements." So there are 23 prescribed statements plus any others that somebody in the government decides to add later on, without any review by honourable senators or members of the House of Commons.

That is what we're dealing with in terms of the costs. It's too broad.

In legal interpretation, the word "including" means other things could be added. We often say this particular item, or a very general statement, and then say "including" and list a certain number of specifics, but they aren't all the specifics. In drafting legislation, one tries to avoid that term as much as possible because it's imprecise. Those who are responsible to follow the law don't know what else might be included.

I looked at Bill C-377. The first clause is a definition clause, "labour organizations," and in the first two lines there are three "includes." Labour organizations include but are not defined by — "includes." In the next line they go on to talk about "include the regulation," and the next line "includes a duly organized group" — includes but is not limited to.

Over in the next page, "includes" appears three times in lines 9, 15 and 35. Over on the next page there are at least two "includes" that I have circled in just reading through this. That is part of the imprecision that appears in this legislation.

• (1820)

I can guarantee you this legislation was not drafted by the Justice Department and was not drafted by someone familiar with the drafting of legislation. That, honourable senators, is another issue that we have to deal with in deciding whether we should or should not support this particular legislation.

The Canadian Bar Association talked about solicitor-client privilege as well. They're concerned that certain solicitor-client privilege, under this legislation, may be required to be divulged in one of those 23 statements or one of the other statements that come along.

As to constitutionality, we heard about division of power between the provinces and the feds, the different sections, but there is also the question of constitutionality under the Charter and the Charter concerns that were expressed — freedom of association, freedom of expression.

As well, lobbying issues are not well-defined. Indeed, a lot of issues are not well and clearly defined here. These issues were dealt with by witnesses and speeches by many honourable senators, each of which I found very helpful in making an assessment of this legislation. Any one of these arguments is compelling and would form a basis for legal challenge.

The Canadian Labour Congress had the following to say:

> Bill C-377 contravenes federal and provincial privacy legislation, and singles out and discriminates against unions compared to other organizations similarly treated in the Income Tax Act.

Other organizations in the Income Tax Act don't have the same discrimination against them as do unions.

> . . . it will impose significant, unnecessary and unwarranted costs on the government and labour organizations.

The Privacy Commissioner, Mr. Daniel Therrien, has raised serious privacy concerns with respect to the legislation. He suggested ways in which to maintain the supposed principle of accountability, which seems to be a driving force for creating this, while simultaneously protecting privacy rights. In his remarks to the Legal and Constitutional Affairs Committee of the Senate, Mr. Therrien stated:

> If enhanced transparency and accountability are for workers and union members as suggested by some members of Parliament, I would submit that public disclosure of sensitive and extensive personal information on a CRA website is not necessary to achieve this objective. Provincial laws already require unions to make available financial statements to their members. This information is internally available to members and, in many cases, publicly posted on union websites. These statements do not provide names and are usually in aggregate form.

That is to protect the privacy of the individual union members. Mr. Therrien states that:

> . . . accountability may require the disclosure of some elements of personal information of union leaders —

— he accepts that —

> — for instance their salaries, but if accountability is for members, I do not see why disclosure of this information to the public at large is necessary.

As far as I am aware, he has not been given a satisfactory answer in that regard.

The Canadian Bar Association again maintains that there are significant privacy concerns and this bill "lacks the appropriate balance between legitimate public goals and respect for privacy interests protected by law" — Senator Joyal's point of balance.

When explaining the purpose of the bill, proponents have argued that there is a substantial benefit to unions and union membership through tax exemptions and tax deductions and that workers have the right to know how their union dues are being spent. However, this bill goes much further than that with the public disclosure provisions.

On implementing these changes through the Income Tax Act, Alain Barré of Laval University said the following after having studied this legislation:

> I arrived at the conclusion that this was backdoor legislation. The legislator —

— Mr. Hiebert —

> — is attempting to use an appropriate legal structure in order to increase the chances of obtaining a favourable decision, were there to be a constitutional challenge.

If we pass this legislation, honourable senators, there is sure to be a legal challenge on some or all of the grounds I have just mentioned. Surely this is not a desirable path we in the Senate wish to follow on passing what is clearly over-enthusiastic, over-reaching legislation, and then to wait for the courts to do the job that we should have done in the first place.

**The Hon. the Speaker** *pro tempore***:** Do you require more time, Senator Day?

**Senator Day:** I wonder if I may have five more minutes to finish?

**Hon. Senators:** Agreed.

**Senator Day:** Thank you.

The facts are as communicated by provincial representatives in the form of seven premiers who insist this proposed federal legislation is unwanted and unnecessary. Current labour relations laws do provide for disclosure to membership, and there have been very few complaints by membership asking for greater disclosure. When there are complaints, those complaints can be dealt with, but this legislation is not a reaction to a series of complaints that have to be looked after.

By passing this legislation, Bill C-377, we would be upsetting a well-balanced system between management and organized labour. That is the point Senator Joyal was making, and I wholly endorse it. That is the most compelling argument that I have heard of all the different arguments in relation to this bill. This legislation is not needed from a marketplace point of view. Even if its many imperfections could be cured by some of the amendments that have been proposed, I'm not convinced that amending the Income Tax Act to require public disclosure of private rights in associations and legal unions is a desirable objective in the first place. The Income Tax Act is not the place for this kind of issue.

Honourable senators, Senator Richard Cartwright was a senator back in 1910. Senator Cartwright, in this very chamber, stated the following:

> . . . an ideal Senate is not a Senate that should thwart the will of the people but a Senate that should be at pains to ascertain the true, calm and deliberate reasoned judgment of the people.

Honourable senators, based on all the submissions we have received, all the letters we have received, all the emails we have received, all the communications from the premiers that we have received and that of the stakeholders, the testimony before the Banking and the Legal Affairs Committees and the testimony before the Finance Committee in the House of Commons, I don't believe this legislation would be, as Senator Cartwright stated, asserting the true, calm, deliberate and reasoned judgment of the people of Canada.

**Hon. Denise Batters:** Honourable senators, Bill C-377 has been thoroughly debated and studied more than most government legislation let alone private member's legislation. It is patently obvious that the opposition was using delay tactics to prevent this bill from coming to a vote. The last few amendments to Senator Ringuette's subsidiary motion were to only change one number. I submit that these are not substantive amendments but rather an effort to tie up debate. In contrast, my amendment to Bill C-586 last Monday night was one-and-a-half pages.

Honourable senators, this legislation has been in front of the chamber for more than 925 days. It has been thoroughly studied by two Senate committees, including the committee on which I sit, Legal and Constitutional Affairs. At that committee, we heard compelling and thorough testimony from former Supreme Court Justice Michel Bastarache, who advised us that Bill C-377 is constitutionally sound.

• (1830)

Mr. Justice Bastarache sat on the Supreme Court of Canada for 12 years and told us that during that time, 20 per cent of his caseload at the Supreme Court of Canada was constitutional law. In fact, Mr. Justice Bastarache's evidence was so compelling that

Senator Jaffer lamented at clause-by-clause that those opposed to Bill C-377 didn't have anyone of legal calibre of Justice Bastarache.

**An Hon. Senator:** Oh.

**Senator Batters:** Honourable senators, I also want to bring to your attention that at Legal Committee we did hear from three provincial Liberal ministers who were opposed to this bill who were from Manitoba, Ontario and Nova Scotia. However, with each of those three labour ministers under direct questioning from Senator Joyal, none of them would provide Senator Joyal with confirmation that their provincial governments had a legal opinion saying that Bill C-377 is unconstitutional.

At third reading alone, Liberal senators have spoken more than 40 times on this particular bill. This is, of course, in addition to the reams of speeches, questions and other interventions we have heard when the bill was studied in committee and when it was debated in the Senate in 2013. Frankly, we all know well what the Liberal senators think about this legislation, so what could they have possibly added to the debate at this point if we were continuing debating this bill for weeks on end?

We must let the democratic process take its course. As parliamentarians, we have a duty to come to a conclusive decision on this bill. I do not think it is in the interest of Canadian taxpayers or our democratic process to sit here all summer in an effort to arrive at a vote on this bill.

Honourable senators, we have given this legislation more than its fair share of consideration. I respectfully ask you to join me now in supporting this motion to bring Bill C-377 to a vote.

Thank you.

**Hon. Mobina S. B. Jaffer:** Honourable senators, I rise to speak to Motion No. 117 and its amendment.

Honourable senators, we are at a tipping point. Today, as we debate Motion No. 117, Canadians are watching. They are frustrated and, frankly, I cannot blame them. I am also frustrated.

Instead of using my own words to restate what my colleagues have said, I will use the words of a Canadian who wrote to all of us over the weekend. Mr. Mike Brecht from Saskatoon stated:

> I am writing with respect to the decision by the Senate to vote against the Speaker of the Senate on his ruling with respect to Bill C-377. The Speaker clearly laid out his case which goes back to Rule of Order established in 1991. He also referenced former Speaker Kinsella's ruling "proposing to use a government motion to determine the dispatch of non-government business violates a fundamental distinction in our rules and practices."
>
> By voting against the Speaker's decision you have just put the last nail in the coffin of the Senate. If there is no longer a distinction between how government business and other business are treated in the Senate, there is no longer any use for the Senate as "sober second thought" as all future business will already be decided by the House of Commons.
>
> Until now I was one who believed the Senate still had an honourable place in parliamentary proceedings in Canada but after your vote against the Speaker's ruling you have clearly removed that last sliver of defence of necessity of the Senate. In closing I ask you as a concerned Canadian taxpayer to vote against the motion and properly debate C-377 at a future sitting.

From a very disappointed taxpayer.

Honourable senators, to reiterate what he has said, if we vote for this motion, we are making the Senate a redundant institution.

I reflected all weekend on this letter, wondering what more can be said? How can we truly reveal and understand what is happening in this chamber right now? It is unlike anything we have seen in many, many years.

Today we have become entangled in heated discussions. Frustrations are running deep through this chamber. Let us step back from that — step back from the current emotions we all feel and reflect on what is about to happen. We are on the verge of doing something that will profoundly affect our institution. What Mr. Brecht's letter said to me is that, once again, we are about to lose the trust of the very public that we serve. We will make ourselves redundant.

I wish to reflect further on this point. I believe some members in this chamber are forgetting that our duty is to no other individual other than Canadians. Our duty is only to Canadians and to no one else.

Honourable senators, the motion today is bigger than one motion. It is bigger than us. Therefore, I believe from that perspective everything is at a tipping point.

Our institution is under siege. We have faced a punishing year — no one can deny this fact — and when we return home, we will all be thinking never again will we want a year like we have just had. We have had suspensions, we underwent a highly publish sized audit, and at times reading the news it felt as though "scandal" had become synonymous with "Senate." Yet, let us not forget why we went through the audit in the first place: We wanted to regain the trust of Canadians. Why? Because it was our duty to serve them. If we do not have their trust, how can we serve them?

The trust of Canadians in our credibility as an institution is not only a worthy goal but also our responsibility. Its importance cannot be overstressed, nor can this point be debated: We agreed that this was important when we agreed to the audit. So why, today, are we reversing our commitment to Canadians?

I ask the senators who are voting for this motion how their actions today — that will disrupt our democracy and our democratic process — are serving the goal to regain the public's trust in our institution?

After deep reflection, I am convinced that I cannot elucidate any more clearly than other senators have as to why supporting this motion is wrong. Instead, I wish to make only one appeal today — an appeal to reason.

Honourable senators, I should not feel so defeatist about an appeal to reason in this chamber. We are, after all, supposed to be the chamber of sober second thought. In the other place, reason takes a back seat to partisan politics, but here reason and rational thought are supposed to be a standard across the board. Regardless of political affiliation, reason must win in this chamber.

As the chamber of sober second thought, we are not supposed to fall prey to partisan gains. We should not make rash decisions out of concern for poll numbers or re-election numbers. We serve national interest and we serve Canadians. In theory, our job is simple, yet it is crucial to ensuring the balance of our democracy. We ensure that reason, fairness and fact prevail in what will become the law of our great nation.

Honourable senators, I fear that we have done an ill-fettered job communicating this to Canadians, so their frustration is understood. But we have spent a punishing year working to regain the trust of Canadians. I am very proud of this chamber and the work we all do. But today we are threatening all the good work that is a done here and once again sending the wrong message to Canadians.

An appeal to reason should not be made with the defeatist feeling that I currently feel — one that I hope my Conservative colleagues will prove me wrong in feeling. Today is as much a responsibility to recommit to the sanctity of this chamber as any other day that we have fought to do so this year.

My final charge is this. To my honourable Conservative senators who are choosing to vote in support of this motion because they made up their own minds to do so before coming into this chamber, consider what side of history you want to be on today. Do you want to participate in a further deterioration of our sacred institution, or are you going to maintain your independence of thought?

• (1840)

We have heard the words of Speaker Kinsella — and even our current Speaker, Senator Housakos — saying that this motion should not stand. You know that reason is on their side in this decision. I appeal not to your partisan values or emotions. No, today I appeal to reason. Each of you must maintain a tight grip on your independence of thought because the future of our democracy is reliant upon this one simple fact. No matter what we have said before this date or even what has been said today, nothing will matter except for what you choose to vote. Today it is crucial that you exercise independence of thought. The rebuilding of credibility to Canadians is reliant on this. It is reliant on you.

For the past year, we have all committed to strengthening the trust of Canadians in our institution. Every single one of us has done this, of that I am certain, but today we demonstrate that actions speak louder than words. Enough talk about credibility of the Senate as an institution. Canadians are done with talking. They want to see — and they deserve — action from me, from you, from us.

This vote is our chance to act, to speak directly to Canadians, because this is the truth. Talk gets drowned out by action. What we vote to do with this motion today will speak louder than any statement that is made on this motion, than any interview that can be given, than any tweet that can be sent. The vote today is our message to those we serve.

I am a very proud Canadian senator, and I believe that this institution has a crucial role to play in our democracy, but rewriting the rules to play to partisan favours is not part of our role. All it will do is weaken our credibility and further polarize us from the very public we are supposed to be serving. It goes against everything this chamber stands for. It goes against the reason for our roles.

Colleagues, in the last few years we've had the suspensions and we've had a very open audit. It has been a punishing audit, and I feel that after it, a lot of people would understand that we were doing the right thing. But when we pass this motion, what we are doing is destroying our institution, because we know what will happen with this bill; it will immediately go to the court, and it will be held unconstitutional. Sadly, the damage will be further to our institution and not to the unions.

**Hon. Jane Cordy:** I'm wondering if I can ask a question. We heard earlier this afternoon that the reporting of non-labour activities was not in the bill, yet when I read the bill, section 149.01(3)(*b*)(vii.1) states:

> a statement with a reasonable estimate of the percentage of time dedicated by persons referred to in subparagraph (vii) to each of political activities, lobbying activities and other non-labour relations activities, . . . .

This is a pretty broad definition. I think we heard earlier that this could include such things as volunteering to be your child's Scout leader or Girl Guide leader or that you are president of the parent-teacher association at your child's school, trying to make the school a better place for learning for your children, that all of these could in fact be captured under "non-labour relations activities" — which, in fact, is in the bill, for those who bothered to read the bill.

Do you think this section is pretty broad and would in fact encompass all of the things that Senator Baker mentioned earlier?

**Senator Jaffer:** Senator Cordy, thank you very much for asking me that question. As you know, I am a member of the Standing Senate Committee on Legal and Constitutional Affairs, and this was one question I asked many of the witnesses that appeared before us.

What concerns me is yes, we can find out about how much union members earn; yes, we can find out about how many political activities they have, if that's what we want. But to also want them to set out "other non-labour relations activities" is a bit too rich. I asked, "So does that mean if the union member is a Cub leader, it also must be included on the list?"

Honourable senators, that's what we are asking of union members. We would never accept it if we were asked to set out all the charitable organizations that we work on. This bill is just unconstitutional.

**Senator Cools:** Honourable senators, I rise to strenuously oppose Senator Martin's draconian Motion No. 117. This motion will abrogate and end debate on Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations). The government wants this bill urgently but will not give its reasons why. Deputy Leader of the Government Senator Martin has invoked large and harsh urgency powers available only to Crown ministers, of whom there are none in this place. These procedures are most unusual and are even irregular.

Last Friday, senators here divided on the government supporters' appeal of Speaker Senator Housakos' ruling on Opposition Leader Senator Cowan's point of order respecting Senator Martin's questionable Motion 117. I voted to sustain our Senate Speaker's ruling. The majority government supporters voted to defeat his ruling. They did and they won.

Honourable senators, the Senate Speaker is not the Senate's man, he is the Queen's man. Overruling and defeating him should rarely be done, and when done, should be founded only on clearly identified errors of fact and law in his ruling, but never because the government has a need.

I note that unlike the House of Commons Speaker, our Senate Speaker is not the mouth and voice of the Senate. The Commons Speaker is that house's man and also its voice and mouth. The Senate Speaker is the Queen's man in this upper, the royal and the federal house of Parliament. The nature and character of the office of the Senate Speaker is that of a vice regal. His authority and powers are derived solely from the monarch. The American constitution retains this sovereign fact. Their Senate Speaker is the Vice President of the United States of America. I note that our Gentleman Usher of the Black Rod, like the Senate Speaker, is also the Queen's man. He is the personal attendant and guardian of Her Majesty.

Honourable senators, the House of Commons Speaker is the voice and mouth of that house. Like that house, his powers and authority were born in the constitutional fact we call "representation by population" and its "no taxation without representation." Representation by population was achieved by the electoral franchise, also called "suffrage." By this franchise, our sovereign monarchs had granted a piece of their prerogative power to their subject citizens. By this, they acquired their individually held powers and rights to vote for the members of the House of Commons, the peoples' house, in representation by population.

*Jowitt's Dictionary of English Law*, Volume 1, defines "franchise" at page 831 as:

> . . . a liberty or privilege. At common law, a franchise is a royal privilege or branch of the Crown's prerogative, subsisting in the hands of a subject, either by grant or by prescription.

Honourable senators, to defeat our Speaker's ruling is a matter of some gravity. I am not sure that many colleagues here really grasp the nature of the gravity. I think that it would be far better if our leaders would find resolutions without such harsh and extreme means to coerce the adoption of private member's Bill C-377, which amends the Income Tax Act. This is a tax act. We are forgetting that. This is a tax act, which means it brings in the whole business of representation by population. We are not that kind of house. Amendments to the Income Tax Act engage the Constitution Act, 1867, sections 53 and 54, and command adherence to the two foundational parliamentary principles. These are the financial initiatives of the Crown and no taxation without representation.

• (1850)

This means that tax measures must originate in the Commons House by motion of a Crown minister who is a member of the house, mainly the Revenue Minister, but Bill C-377, a tax measure, was not sponsored by a Crown minister in the Commons or here, but by private members in both houses.

This is most unusual for a tax bill. Bill C-377 seeks not to raise or collect taxes, nor to regulate tax collection. It seeks to regulate, and even to restrict, one specific class of people, being the labour unions or the labour organizations, one group only. It is a federal entry into regulating the unions. Undoubtedly, this will interfere with the collective bargaining process. Income tax is a federal matter, but collective bargaining is not.

Bill C-377 is quite transparent. It is a vehicle to bring collective bargaining, a provincial matter, into the federal government's regulatory reach. Not purview, reach. Someone has thought much about this. Discovering that they had only two statutory options, the Criminal Code or the Income Tax Act, they chose the Income Tax Act because it was more furtive.

Honourable senators, the House of Commons should be up in arms on this bill's misuse of its taxing power. Motion 117 is most severe. It is not good use of the supposed-to-be-rarely-used government powers in time allocation and urgency motions.

To senators here who may not know this, I will never vote "yes" on time allocation, especially one as harsh and draconian as this.

Honourable senators, Bill C-377 was adopted in the Commons, where it was presented and moved as a private member's bill. The same is true here, until only days ago when government

supporters suddenly made this a government bill. They set out to render this private member's bill liable to time allocation, closure and urgency procedures that only a government Crown minister can move. Senator Martin is not a Crown minister. But the Senate has no government ministers. These inordinate actions are unparliamentary.

Our Senate Speaker upheld Senator Cowan's just concerns, but the government supporters here voted to overturn his ruling, which had upheld Senate Speaker Kinsella's ruling of October 30, 2013.

Honourable senators, I come now to the constitutional question known as the legislative rights of the Crown in the Houses of Parliament. Yes, Her Majesty and the Governor General have legislative rights in these two houses.

On October 17, 2013, Senator Cowan asked Senator Carignan, not a minister, questions about his ability to answer for the government in our Question Period. Senator Carignan answered that he was a member of the Privy Council, and had access to information.

The great Alpheus Todd explains Parliament's necessity for Crown ministers' presence and membership in its two houses. This is not something that any Prime Minister or senators can dismiss.

He tells why government leaders in the two houses must be Crown ministers. The reason is the monarch Crown's rights in legislation known as the legislative rights of the Crown.

In his 1869 work, *On Parliamentary Government in England*, Volume II, under the margin heading "Legislative Rights of the Crown," Todd explains the unique features of parliamentary responsible government. He wrote at page 316:

> Since the establishment of parliamentary government, the Crown has ceased to exercise its undoubted prerogatives, as an essential part of the legislature, by the direct and personal intervention of the sovereign.

Let me read that again:

> Since the establishment of parliamentary government, the Crown has ceased to exercise its undoubted prerogatives, as an essential part of the legislature, by the direct and personal intervention of the sovereign. Its legislative powers are now effectually put forth in both Houses, and especially in the House of Commons, by means of responsible ministers, who, availing, themselves of the influence which they possess as members of Parliament, serve as the mouthpiece and representatives therein of the monarchical element in our constitution. Contemporaneously with the introduction into our political system of the constitutional usage whereby the sovereign abstains from exercising direct and external authority over the Houses of Parliament, in matters of legislation, we find the modern machinery for the control of business in Parliament on behalf of the Crown coming into play. . . . Thenceforth, the rules of Parliament, which prohibit the introduction of a Bill to appropriate any portion of the public revenue, except at the recommendation of the crown, through a responsible minister, and which require the consent of the crown before either House can agree to a Bill affecting the royal prerogative — together with the admitted right of ministers, so long as they retain the confidence of the House of Commons, to regulate the course of public business — have secured the rights of the sovereign, as a constituent part of the legislative body, as unmistakably, if not more effectually than by the direct interposition of a personal veto.

Honourable senators, Mr. Todd is clear that the parliamentary reason for Crown ministers' membership in the two houses is the fact that Crown ministers embody and personify the sovereign monarch's authority. The sovereign monarch's legislative role is now executed by the membership of Crown ministers in Parliament's two houses.

In his *op. cit.* work, Volume I, Mr. Todd wrote at page 2:

> It is the distinguishing feature of parliamentary government that it requires the powers belonging to the Crown to be exercised through ministers, who are held responsible for the manner in which they are used, who are expected to be members of the two Houses of Parliament, the proceedings of which they must be able generally to guide, and who are considered entitled to hold their offices only while they possess the confidence of Parliament, and more especially of the House of Commons.

Colleagues, what I am trying to impress upon you is the gross parliamentary affront that these kinds of motions represent. I do not believe that many senators here fully grasp the significance and the gravity of this fact. This government has the habit of using these severe motions habitually. It is a bad habit. If senators were really aware of its wrongness, they might try to stop it. For years we had difficult situations in this Senate., We never used those kinds of motions. Now we use them far too often.

Honourable senators, the practice for years has been that the leaders of both houses must be members of cabinet. Our Senate rule 4-13(1), which gives government business priority over all Senate business, was created in 1991, expectant that Senate government leaders will continue to be cabinet ministers.

The many propositions in Senator Martin's Motion 117 terminate debate for reasons of urgency. This critical motion presupposes that the government will put the house into a dictatorship.

Chapter III headed "The Urgency Procedure and the Introduction of Closure (1881-1888)" of Josef Redlich's 1903 book, *The Procedure of the House of Commons*, Volume I, is on this matter, the urgency procedure.

About the famous 1880's closure motion by the Great Commoner, the Liberal, William Gladstone, Redlich tells, at page 164:

> It proclaimed a parliamentary state of siege and introduced a dictatorship into the House of Commons. The new rule, called for shortness, the urgency rule, reads as follows:
>
> > . . . That if, upon notice given a motion be made by a Minister of the Crown that the state of public business is urgent, upon which motion such minister shall declare in his place that any Bill, motion, or other question then before the House is urgent, and that it is of importance to the public interest that the same should be proceeded with without delay, the Speaker shall forthwith put the question, no debate, amendment, or adjournment being allowed; . . .

This urgency rule has three requirements. These three are: that the measure is moved by a Crown minister, that the measure itself must be urgent, and that the measure must be of urgent importance to the public interest. Senator Martin's motion 117 meets none of these three criteria. That is a serious problem.

Mr. Gladstone laid out these principles in the face of the extreme and prolonged Irish obstruction. It was famous. He upheld freedom of speech in debate. Noting the prolonged obstruction, he described liberty of speech as "a precious inheritance of Parliament."

• (1900)

Mr. Gladstone noted that these rights should be exercised in the possibilities that must limit the condition and action of representative assemblies. With due respect, colleagues, this Senate has not seen any obstruction of any bill here for a long period, far less a prolonged one.

The frequency with which this government employs these extreme closure procedures is alarming, especially on this bill, which the responsible revenue minister ignored, and deferred his sponsorship to a private member.

It is very questionable. Nobody has answered that question. Nobody has asked it.

Honourable senators, we should know that, in this Gladstone instance, there was huge unanimity on what was happening then, because the obstruction had been so bad.

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

**Senator Cools:** Yes, I do, thank you.

All agreed that the government — this is very important — should not execute the dictatorship itself. Redlich tells us, at page 165:

> The Government, then, had made their choice between the two alternatives; it was not to be the majority of the House, the Government party, but the Speaker who was to exercise the dictatorship that had become necessary.

Honourable senators, the U.K. house took a decision that this dictatorship in the House of Commons should not be conducted by the majority party themselves. They set a minimum of members, 300, who must be present in the house for such process. Redlich adds, at page 165:

> During the time of parliamentary urgency the whole of the regular order of business was suspended, and in its place the Speaker was to lay down whatever rules he considered necessary for the speedy despatch of business.

As I said, the House of Commons Speaker is a different constitutional animal from the Senate Speaker. Their Speaker is their mouth and their voice. Ours is not.

Honourable senators, interestingly, here, Senator Martin's motion charges the Speaker and orders him to execute the dictatorship she has invoked by closure. Every item in Motion No. 117 is an order to our Speaker. This is the very same Senate Speaker whom the very same government supporters just overruled on the very same questions only three days ago. It is very interesting. This alone should be proof to most of us that something very wrong is going on here. That should be proof.

Our Senate Speaker can take hope, though. Gilbert Campion, a former Clerk of the House of Commons in the U.K., writes on the Speaker's right to refuse unjust closure motions. In his 1958 book *An Introduction to the Procedure of the House of Commons*, third edition, he informs, at page 186:

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

This is confirmed by another great Englishman, Sir Reginald Palgrave, also a former Clerk of the U.K. House of Commons. In his famous 1933 book *The Chairman's Handbook*, he says:

> A Chairman is bound to decline to put from the Chair a Motion or Amendment which is out of Order . . .

Colleagues, I would like to appeal to your senatorial side, to your sense of the high place in our community that we occupy — most of us do — and that we are supposed to occupy. I would like us to pay attention to the fact that the British system of governance has always been concerned with how we play the game. The British common law and our parliamentary system are always more attentive to the rules of the game and how we play the game than to who wins the game.

I suggest that perhaps at some point some of us should examine this whole business of the sudden closure motion and see if we cannot come up with some better and less painful, less draconian way to do business. Something is terribly wrong with all of this, and very out of order. Senator Martin's Motion 117 begins by dismissing every rule of the Senate, every single provision of every rule. That is unheard of. That is ungodly. Something is very

wrong and out of order with her harsh closure motion. I urge colleagues to vote against it because, as a species of motion, it is very wrong.

Honourable senators, I have deliberately not gone on to the substance of the bill because this debate is on Motion 117, not on the substance of Bill C-377. I would ask senators this: These matters, the business of the process and how we do it, should be given a lot more attention. We should be studying it very deeply, because this motion is a terrible affront against the Senate, senators, and even the Senate Speaker.

Thank you.

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

**Senator Cordy:** Honourable senators, Motion No. 117 states that "notwithstanding any provisions of the Rules or usual practice, immediately following the adoption of this motion, the Speaker interrupt any proceedings in order to" dispose of Bill C-377.

Honourable senators, this motion does not allow for any further debate on this bill. "Notwithstanding any provisions of the Rules" — in other words, let's just forget about the rules; let's just pretend that the rules aren't there. No further debate on this bill, which will cost taxpayers untold amounts of money, and on this bill which will be challenged in the courts.

The motion also says that the bells shall ring only once and for 15 minutes. Again, let's forget about that rule. Let's pretend it's not there.

Section 3: "No vote requested . . . under this order be deferred." Once again, let's forget about that rule. Notwithstanding any provisions of the rules, let's just forget about that one.

The fourth provision in this motion is "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." So can't adjourn it, can't defer it, 15-minute bell, and can't debate the bill once this motion is passed. That is the most undemocratic motion that I have seen in this place, and I've seen a lot of motions that I didn't agree with. As Senator Lovelace Nicholas said earlier today, democracy has left the building.

Honourable senators, Bill C-377 is yet another unfair, unjust, discriminatory and ultimately unconstitutional Harper bill. If the Senate is to properly do its job, Bill C-377 should not be allowed to pass.

Seven provinces strongly oppose this bill. That's seven provinces that have 81.4 per cent of Canada's population. I think that's quite a few people, represented by the seven provinces who oppose the bill. Just about every constitutional expert in Canada agrees that this piece of legislation infringes on provincial governments' jurisdiction to regulate labour in their own province.

[ Senator Cools ]

Honourable senators, you can be assured that if this bill is passed, it will be challenged in the Supreme Court of Canada and it will be struck down, as much of this government's legislation has been. This legislative abuse is nothing new for this government, and Bill C-377 will be the latest Harper legislation to be added to a long list of Harper legislation designed to trample on Canadians' constitutional rights and which will have to be struck down by the court.

How much taxpayer money has the Harper government wasted defending their unconstitutional legislation in the court system? This is money that could have gone to help our veterans. This is money that could have gone to help our refugees. But instead, the government has spent millions of dollars fighting the refugees and the veterans in the court system — and the First Nations. Thank you very much, Senator Dyck. The First Nations are still in court. This government has spent millions of dollars fighting First Nations, the First Peoples in our country.

Instead of spending money to do good things with the environment, we're spending time and taxpayers' dollars. Hard-earned money by the taxpayers of this country is being spent by this government fighting needlessly in the court system.

• (1910)

Many believe that the intent of Bill C-377 is to cripple organized labour in Canada with unprecedented disclosure and reporting of members' private information. As others have said, openness is a positive thing. But, honourable senators, many smaller organizations simply will not be able to perform such undertaking as required by this bill.

Doctors Nova Scotia, which represents doctors in my province of Nova Scotia, call this "extremely onerous reporting requirements."

While larger organizations will adapt to the new rules, this legislation will effectively put organized labour organizations at a severe and unjust disadvantage when it comes to negotiating and protecting their members' livelihoods.

This bill isn't about transparency; it's about power. As I've stated previously in this chamber, there has never been a government less interested in transparency than this one. This bill is nothing more than a blatant attack on labour unions, while at the same time unlawfully infringing on provincial jurisdictions. The federal government is tipping the balance of power unjustly and unfairly in favour of employers with this unconstitutional bill.

Honourable senators, here we are with a virtually universally condemned and unconstitutional private member's bill which should not have progressed as far as it has through the legislative process. However, the bill does have a supporter in Stephen Harper, and he apparently wields a large stick if the actions by the Conservative majority in the Senate last Friday are any indication. In an unprecedented move, Mr. Harper dictated that the *Rules of the Senate* were of no consequence and that this

private member's bill was to be treated retroactively as government business. Presto! It was a private member's bill last Monday; this Monday, it's a government bill. How is that for following the *Rules of the Senate*?

If this was truly government business, then it would have been introduced as such in the other place. For the Leader of the Government in the Senate to take it upon himself to decide what is government business and what isn't, contrary to the rules governing Parliament, is not only arrogant but damaging to this institution. The actions taken by the Conservative majority in this Senate last Friday when voting down the Speaker's ruling and essentially ignoring Senate rules was a new low for this place, and we've seen some lows in the past while.

Bill C-377 may not have been introduced as proper government business by any of the rules governing Parliament, but the means by which this Conservative government is conducting itself to get its way in the Senate has now become, unfortunately, business as usual for this government.

The actions of the Conservative majority on Friday were shameful. I will support my province of Nova Scotia and the other six provinces in this country. I will support the countless constitutional experts. I will support the privacy experts. I will support the medical associations, the millions of Canadian workers, and I will oppose the passing of Bill C-377.

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

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

**Senator Cordy:** Yes.

**Hon. Grant Mitchell:** Senator Cordy, excellent speech. Thank you.

I don't know whether you will have this at your fingertips, because I don't myself, but I was under the impression that the government has a program where if they are to bring in a new set of regulations, they have to do away with an equivalent set of regulations; so there is never any increase in regulations. It is always reduced, because they hate regulations, although there are a lot of regulations that will be required under this bill.

Are you aware of any regulations they are reducing to offset the increase in regulations that will be required by this bill? Have you heard anything about that, or are they making an exception, breaking the rule?

**Senator Cordy:** Breaking the rule would be an unusual thing for this government to do, wouldn't it?

**Senator Mitchell:** Yes.

**Senator Cordy:** I heard to great fanfare about doing away with red tape and for every regulation we bring in we are going to do away with regulations.

This bill has incredible amounts of regulation in it. The hundreds, perhaps thousands of emails that we received against this bill talked about the heavy responsibility and the onerousness that this will put on unions. Some of the larger unions that have full-time paid staff may be able to do it. However, a number of unions that I heard from in my province of Nova Scotia are very small and run entirely by volunteers, and they are now going to have to spend all this time looking after all these great and wonderful regulations imposed by this so-called private member's bill, if it passes.

Doctors Nova Scotia has legal advice that this bill is going to encompass associations and doctors in the medical community of my province of Nova Scotia.

I asked this question several times of the Leader of the Government in the Senate today in the chamber during Question Period, and I never did get an answer. This government expects that the doctors in my province of Nova Scotia are going to be spending huge amounts of time following all this regulatory process, all these things that are required by Revenue Canada, instead of dealing with the people in my province of Nova Scotia who need a doctor.

That was an excellent question. Thank you.

**Senator Mitchell:** Thank you for the excellent answer.

**Senator Jaffer:** Senator Cordy, you earlier asked me about other non-labour relations activities. I said that I had asked the sponsor of the bill, Mr. Hiebert, to define what "other non-labour relations activities" are and what the definition should be, and his answer was:

> The bill itself does not have a definition of "other non-labour relations activities," and to some degree that would be left to the CRA to provide more specific guidance on the detail of what that would mean. A straightforward reading would be that it's non-labour relations activities.

I asked further:

> Would that cover a Boy Scout leader working in your church? You drafted this, and so I'm asking you: How could you tell any person in Canada to set out what their non-labour activities are? Would it be working in the church, being a Boy Scout leader?

And Mr. Hiebert said:

> As I said, honourable senator, when it comes to the specific examples that you're providing, I believe that in that case, if there's an institution that falls within the definition of labour organization, and they have that particular question, that's a question that they could put to officials at the CRA.

Senator, is that due diligence? Is that the way we should be passing bills, to have the CRA define what non-labour relations activities are?

**Senator Cordy:** Thank you very much for another excellent question.

Can you believe it? You bring forward a bill and you don't know what the definition means, but that's okay because Revenue Canada will deal with that. How many of you would feel comfortable with Revenue Canada knocking on your door and saying, "We will tell you what it means; we will answer that question"?

When I heard Senator Plett say that the words "non-labour relations activities" were not in the bill, I got a copy to refresh my memory. Indeed, as I said earlier, proposed subsection (3)*(b)* states:

> (vii.1) a statement with a reasonable estimate of the percentage of time dedicated by persons referred to in subparagraph (vii) to each of political activities, lobbying activities and other non-labour relations activities, . . . .

Now we know that people who are in the unions are going to have to talk about their activities in their church, their coaching activities and things they do with their children. If they are going to report it — which really makes sense, doesn't it? — they're going to have to report that they are on the executive of their child's school PTA, that they're working to make the school a better place for learning. Would that be a political activity? Who knows. But it certainly would fall under the non-labour relations activities. This is an invasion of privacy. Disclosure of non-union activities goes above what one would expect in openness and accountability by a union member.

• (1920)

It's not just during working hours. You go home to your family, and in the evening if you go to your parent-teacher association meeting because you're on the executive and you want to make the school a better place for learning, you have to put that down. If you go out on Saturday morning and help with your daughter's hockey team, you have to report on that to Revenue Canada, no less. You have to report that you're coaching your daughter's hockey team to Revenue Canada.

Thank you very much for the question.

**Senator Mitchell:** I have another question, if I could ask it.

It struck me. Our side doesn't get to talk to cabinet ministers, but I'm sure that the Conservative senators frequently get to talk to cabinet ministers. That would be kind of like lobbying cabinet ministers, wouldn't it? Do you think maybe they should be reporting how often they lobby a cabinet minister?

**Senator Cordy:** What's good for the goose is good for the gander. If they're making all these rules for union members to provide information on what they do in their spare time, then I guess you're absolutely right. Government members should say, "You know what? I was talking to a cabinet minister." I did that; when the Liberal government was in power, I would talk to a cabinet minister. But this side seems to feel that if you are going to talk to a cabinet minister, you'd better record it and tell Revenue Canada that that's what you did in your spare time.

**Senator Mitchell:** Wouldn't their caucus be like a union?

**Senator Cordy:** Five minutes, please?

**The Hon. the Speaker:** Is the chamber offering Senator Cordy an extra five minutes?

**Hon. Senators:** Agreed.

**Senator Cordy:** Senator Mitchell, you're absolutely right. The definition is so broad that doctors in Nova Scotia are concerned that the medical association in Nova Scotia will be encompassed in this, so absolutely, if you look at how broad this terminology is, a caucus could certainly be considered to be an association.

**Senator Mitchell:** Might that mean that they would have to report on how much the chief of staff of the Prime Minister's Office is being paid? Because they don't have to now.

**Senator Cordy:** As I stated earlier, this government has been less open and less transparent than any government that I can remember in my history. If you're going to talk about openness and accountability for unions, I would think that you would want to. You wouldn't have to legislate it. You would just want to put that on your website and make it open so that all your staff members' salaries would be there and how much you would pay on advertising would be available. But Senator Mitchell, there is one slight change in that. The problem is that many of these ads, Conservative ads, are being paid for by the taxpayers of Canada. Even though they're Conservative ads, they're paid for by the taxpayers of Canada.

**Senator Carignan:** Vote with us.

**Hon. Lillian Eva Dyck:** I rise to join in the debate on Motion No. 117. At the outset, I will say I'm totally opposed to it.

As other people have said, when you read the first part, "That notwithstanding any provisions of the rules or usual practices, immediately following the adoption of this motion," and then the various subclauses, of course as soon as you see "notwithstanding the rules," you know you're going to break them all, which we have just done by overruling the Speaker. It's not the kind of precedent you would think that a chamber of sober thought would do. As our honourable colleague here has said, it seems that sober second thought has left the building, at least on that side.

We did put on the record why we oppose this bill and why we were debating it and prolonging the debate. We have been accused of prolonging the debate and making us sit all summer long, but is it not our job to debate bills? We said why we were debating the bill — because it's not a good bill.

No one on that side has articulated why they want this particular bill passed now. What is the urgency? What great calamity will happen if we don't pass this bill? That question has

not been answered. Debate would answer those kinds of questions. Maybe they will answer it after I speak or someone else speaks. That's a question that should be answered.

The second question that I brought up just a little while ago was that no one on that side who supported the amended bill has got up to say why they've now changed their mind and want to pass the original, unamended bill. No one has explained why that position has changed. Don't you think part of the debate should be that your side should get up and say, "Here is why we changed our minds"? That's being open and transparent. That's contributing to the debate. That's why we want to have this prolonged debate, so that we figure out what is going on. That's why we're here.

Those are the two outstanding questions that have yet to be answered.

When I was listening to Senators Plett and Dagenais talk about this bill, they were talking about union members who were afraid to ask questions of their union leaders. They were afraid of their union leaders. That was sort of the source of where this bill came from. But there was no indication of how many members were afraid and where they came from. These are kind of anecdotal, hearsay statements rather than any sort of documented evidence that there is a pressing need for this kind of transparency. Where is the documented evidence that shows that this bill is actually needed? Right now, it seems to me we're going on hearsay.

In actual fact, it made me think back to when we were dealing with the First Nations Financial Transparency Act, which we passed in April 2014. Again, the arguments were brought forward by the other side saying band members are afraid to ask their leaders how much their chief and council make. They were afraid to go ask. Well, of course there will always be people who are afraid, but there was no documentation of how big that problem was, none whatsoever. So the bill was passed. In the intervening time that it has been in effect, just a little over a year, what has happened? Not much. A couple of exorbitant salaries of chiefs are now published, but people knew about those anyway. There was great pressure to pass that bill because of the fear of band members, but since the bill was passed, nothing has shown that there was a great need for us to do that. It was the whole idea that somehow people are powerless and the only way they will get power is if the federal government passes a law that protects them.

**Senator Jaffer:** Your Honour, we are having difficulty hearing Senator Dyck on this side. There is too much going on.

**Senator Dyck:** Thank you, Senator Jaffer.

One of the previous senators, and I didn't record whether it was Senator Plett or Senator Dagenais, said we are going to be protecting workers who are wondering what happens to their hard-earned dollars.

**Senator Mitchell:** Maybe it's used for government advertising.

**Senator Dyck:** Yes. That sort of tinkering with the inner workings of unions, setting up a controversy or a conflict between the members and the leaders, seems to be what this bill is looking at. In fact, maybe it could even be creating a problem where there is none, because right now we have hearsay. We don't have any documented evidence as to how big this problem is whereby members are really wondering where the money went.

I'm going to read into the record some letters that I received from Saskatchewan that talk about unions and union members. This highlights the fact that the provinces do have legislation, just like the band councils and band members had rules and regulations that said they have to post all this stuff so that the band members could have access to it. Similarly, the provinces have labour legislation that says certain things have to be disclosed, and that's where the labour union members can get this information. I have some letters here from union members in Saskatchewan.

I have a letter from Burstall, Saskatchewan; one from Leader, Saskatchewan; one from Gull Lake; one from Hallonquist, Saskatchewan; and two from Maple Creek, Saskatchewan. They are all from union members. The first one reads:

• (1930)

Dear Senator Dyck,

You may soon be voting on Bill C-377, An Act to amend the Income Tax Act (Requirements for Labour Organizations).

Bill C-377 has already been debated by the Senate. In 2013, Senators voted to amend the worst elements of this badly drafted legislation. Now it is back in its original form.

I am concerned about this Bill for a number of reasons which I ask you consider.

The Bill wrongly violates Canada's Constitution and the *Charter of Rights and Freedoms*. The Senate Banking, Trade and Commerce Committee heard from constitutional experts who testified that Bill C-377 falls outside Parliament's jurisdiction. These include not only independent constitutional experts but also the Canadian and Quebec Bar Associations.

My union already provides regular financial statements and every three years, delegates to the union's national convention review, amend and adopt a detailed budget. In addition, most provinces and the federal government already have legislation that require unions to make financial reports available to union members automatically or on request.

At a time when the budgets of federal departments and agencies are frozen and jobs are being cut, the Canada Revenue Agency will need to set up and maintain an expensive and unnecessary reporting system to process detailed records from over 25,000 unions and labour organizations if C-377 is passed.

Canada's former Privacy Commissioner has also raised concerns about Bill C-377.

> The Bill will also require making public the details of commercial contracts that small- and medium-sized businesses have as suppliers to 25,000 unions and labour organizations. This will provide their competitors with an unfair advantage.

I'll just add in here that's exactly the same kind of thing that bands were telling us. By posting their financial concerns, it would put them at a disadvantage competitively.

Back to the letter:

> I have to wonder why Bill C-377 singles out unions for this treatment out of all the non-profit and professional organizations that exist in this country. It will do nothing but cause unions to divert resources from providing services to their members, which I think is its only purpose.
>
> I urge you to consider the testimony of the independent witnesses who called for the Bill not to be passed when they appeared before the Senate Committee last year.
>
> Legal obligations and union constitutions ensure that unions are accountable to their members. Bill C-377 is unnecessary and should be defeated. However, if it advances, it should proceed to full committee hearings to remind Senators of the many good reasons for the Bill not to become law.
>
> I look forward to receiving our response,

That's from union members. You can see there is already provincial legislation that will do what the members apparently are afraid to ask for.

I'm going to read into the record a letter I received on January 8. This comes from a number of different people. The top signature is that of Larry Hubich, President of the Saskatchewan Federation of Labour, who writes:

> I write to you as the President of SEIU-West (Service Employees' International Union). We are a province-wide local in Saskatchewan with approximately 13,000 members who work in health care, education, municipalities, retirement homes, light industrial, allied and the community-based sector. My interest in corresponding with you, on behalf of our membership, is to remind you that the people of Saskatchewan are counting on you to participate, in a thoughtful and responsible way, in the upcoming debate on Bill C-377 and, in doing so, to vote against this bill.
>
> Like many of the witnesses who appeared before the Standing Senate Committee on Banking, Trade and Commerce in 2013 when the Senate first considered Bill C-377, and many who will soon appear before you when the Standing Senate Committee on Legal and Constitutional Affairs considers it, SEIU-West has serious concerns about the constitutionality of Bill C-377, both on jurisdictional and *Canadian Charter of Rights and Freedoms* grounds.
>
> SEIU-West appreciates the need for all leaders, whether they are from organized labour, provincial, municipal or federal government, or Senators, and others to be both transparent and accountable to their constituents. As we strive to diligently meet the needs of our membership, in disclosure and accountability for our decision making, we do so in the spirit of fulfilling our oath of office and our legal and moral duty of fair representation. Currently, provincial labour legislation already requires unions to share detailed financial information with their membership. SEIU-West is required by section 6-61 of *The Saskatchewan Employment Act* to provide members with detailed audited financial statements every year. Our long-standing practices are built upon our recognition that being open and answerable to our members is both morally and ethically the right thing to do.
>
> In our respectful view, this Bill, in spite of its title, is not income tax legislation. In pith and substance, in purpose and effect, it is labour legislation. Its main effect, (an effect not intended by its sponsors and proponents) will be to alter the balance of labour-management relations across Canada.
>
> Prime Minister Harper has insisted in the past that his party respects federalism, that he opposes new federal intrusions into provincial jurisdiction, and that he favours "being clear about who does what." Bill C-377 is an intrusion into provincial jurisdiction over labour relations, developed without provincial consultation or consent.

Again, this sounds like the First Nations Financial Transparency Act — no consultation; no consent.

Back to the letter:

> Moreover, it adds unnecessary complexity and confusion to the unions' management of their finances.
>
> We believe that Bill C-377 is constitutionally flawed by design; it offends our freedom of speech, our freedom of expression and our freedom of association. It is an invasion of the privacy of individuals. Simply put, Bill C-377 discriminates against unions. Why should there be such a huge inconsistency between the level of disclosure required for salaries of government members of the House of Commons, senior public servants, and Crown Corporation employees on the one hand, and union leaders and employees on the other?
>
> In the prior Senate Banking Committee Hearings on the bill Senator Hugh Segal, in expressing opposition to the Bill, noted that Conservatives should "believe in less government" and oppose government "sticking its nose into different private parts of life, corporations, trade unions and others." According to Senator Segal, the same Canadian values that are the basis of corporations' right to plan in private for product development, marketing, and labour relations are also the basis of unions' right to plan in private to protect their members' interests. Bill C-377 ignores these values.

Could I have five more minutes, please?

**The Hon. the Speaker:** Will the chamber offer five more minutes to Senator Dyck?

**Hon. Senators:** Agreed.

**Senator Dyck:** The letter continues:

> Bill C-377 ignores these values, and forces unions to disclose internal information that could jeopardize their competitive position with respect to employers and with respect to other unions.
>
> Bill C-377 is a major departure from Canada's traditions of parliamentary government. No private member's bill passed since Confederation has imposed such significant ongoing compliance costs on such a targeted group, nor such major ongoing administrative costs on the federal government. The Bill's proponents say that it promotes transparency and accountability; however, in light of Bill C-377's far-reaching implications, transparency and accountability demand at the very least that the Bill be introduced and scrutinized as a government bill, as opposed to a private member's Bill.

• (1940)

Now we have essentially made it a government bill, but of course it's not a government bill. It's a private member's bill. Back to the letter:

> As was established at the previous Senate hearings, Bill C-377 is a solution in search of a problem. Union members who have questions or concerns about their union's spending or other decisions have multiple ways within the union's internal democratic processes to obtain transparency and accountability. As indicated previously, these are supplemented by provincial legislation. Complaints by union members about access to their unions' financial information are rare and are dealt with adequately at the provincial level. Any legitimate public interest in the political activities of unions is already addressed at the federal level by the provisions of *The Canada Elections Act* and by corresponding provincial legislation.
>
> The remarks made by Bill C-377's sponsor Mr. Hiebert before the Standing Senate Committee on Banking, Trade and Commerce in 2013, expressed his personal view that "bargaining, organizing, and labour relations" are a union's "core" activities. The implication is that these are easily separated from other activities and that other activities are somehow illegitimate for unions to be engaged in, even if approved by the union's internal democratic processes. These views fly in the face of the Supreme Court of Canada decision in *Lavigne* (1991), where the majority wrote, "It is . . . for the union itself to decide, by majority vote, which causes or organizations it will support in the interests of favourably influencing the political, social and economic environment in which particular instances of collective bargaining and labour-management dispute resolution will take place."
>
> In the broad and vague range of organizations to which it applies and the sweeping amount of information it requires of them, irrespective of the organization's type, size, or governance, Bill C-377 lacks the careful tailoring between means and ends needed for a law to pass constitutional muster. It appears the government's intention is to create unnecessary work and expense for unions — costs that will lead to us having fewer resources to do the valued work that our members rely upon.
>
> In May 2004 the Supreme Court of Canada heard *Saskatchewan Federation of Labour v. Saskatchewan*, a momentous case whose central issue is the extent to which the Charter protects union activities. The court has not yet released its decision.

This was in January.

> It would be exceedingly risky — and an abnegation of the responsibilities implicit in the mandate of the Senate in general and the Legal and Constitutional Affairs Committee in particular — to proceed with Bill C-377 without the benefit of the Supreme Court's reasons in this case. We urge you, as a Saskatchewan senator, to adopt a perspective beyond the window of partisan politics and to take your responsibility seriously within the "chamber of sober second thought".
>
> Sincerely,
>
> Barbara Cape
>
> President
>
> SEIU-West

Honourable senators, I do not support this motion. I do not support the bill.

[*Translation*]

**Senator Dagenais:** Would the senator accept a question?

[*English*]

**The Hon. the Speaker:** Senator Dyck, would you accept a question from Senator Dagenais?

**Senator Dyck:** Yes.

[*Translation*]

**Senator Dagenais:** You mentioned that Bill C-377 would result in additional expenses for the unions. We know that most unions provide their financial statements, and rightly so, to all their members.

How does printing an additional copy for governments represent an additional cost given that unions already print some 2,000 copies for their members?

**The Hon. the Speaker:** Unfortunately, senator, your extra five minutes has expired.

[*English*]

Are honourable senators ready for the question?

**Some Hon. Senators:** Question.

**Senator Day:** Question on the amendment.

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

**Some Hon. Senators:** No.

**Some Hon. Senators:** Yes.

**Senator Day:** On division.

**The Hon. the Speaker:** Those in favour of the motion will please say "yea."

**Some Hon. Senators:** Yea.

**Some Hon. Senators:** On division.

(Motion in amendment negatived, on division)

**The Hon. the Speaker:** No, on division? Finally the house came to an agreement: No, on division.

Senator Hubley, on debate on the main motion.

**Hon. Elizabeth Hubley:** Honourable senators, I would like to add my voice to those speaking out against Bill C-377. I have serious concerns about this legislation, just as I did two years ago when we last considered and then amended this bill. I am not the only one with concerns.

The Standing Senate Committee on Legal and Constitutional Affairs received a letter dated April 28, 2015, from my home province of Prince Edward Island, and I would like to share this particular letter with you. It was signed by Faye Martin, who was then Manager of Labour and Industrial Relations at the Department of Environment, Labour and Justice and is now Director of Consumer, Labour and Financial Services at the Department of Justice and Public Safety.

The letter reads:

> This correspondence is written in response to your invitation to submit written commentary on Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations) which would require detailed public disclosure of union finance.
>
> In earlier correspondence from this jurisdiction to the Honourable Kellie Leitch, Minister of Labour and Status of Women, concern was expressed and caution urged regarding Bill C-377. This jurisdiction fully supports the principles of transparency and accountability in the management of funds. However, balance and fairness are crucial in dealing with organizations which will be subject to the provisions of the proposed Bill C-377. Specifically, requirements such as these amendments propose, may result in disparate regulation of the activities of unions. Unfortunately, these circumstances may negatively impact a relatively stable labour relations climate in Prince Edward Island.
>
> I respectfully request that the Government of Canada discontinue efforts in this regard subject to further discussion amongst Federal / Provincial / Territorial Labour counterparts.
>
> Sincerely,
>
> Faye Martin
>
> Manager
>
> Labour and Industrial Relations

P.E.I. joins a chorus. At least seven provinces have voiced opposition to this legislation, and with good reason. There are a variety of ways this bill is a bad bill. Indeed, the Canadian Bar Association calls it "fundamentally flawed."

First, it is absolutely unnecessary and outside the scope of Canada's Parliament. As the Honourable Erna Braun, Minister of Labour and Immigration for the Government of Manitoba, stated in her testimony before the Standing Senate Committee on Legal and Constitutional Affairs:

> Our view is that this bill is unnecessary and that it infringes on provincial jurisdiction. Responsibility for labour relations in Canada rests with provincial governments. Under 10 per cent of workers in Canada work in federally regulated workplaces. Otherwise, the provincial governments throughout the country can and do independently set their own legislative priorities in the area of labour.

Other provinces agree with this assessment, including, as you heard earlier, my own. Also in agreement is Bruce Ryder, a professor at Osgoode Hall Law School, who appeared as an individual before the committee:

> My answer is it's quite clear that the law in pith and substance is in relation to promoting transparency and accountability for labour organizations, a matter that simply does not fall within Parliament's jurisdiction and is therefore ultra vires.

There are also significant privacy concerns. We all know that the result of this bill will be the public naming of any business that is paid more than $5,000 by a union. Individuals, small businesses and corporations will find themselves in public, and that has some experts worried.

• (1950)

Mr. Michael Mazzuca, Past Chair of the National Pensions and Benefits Law Section of the Canadian Bar Association, spoke to the privacy aspect:

> . . . the Canadian Bar Association is concerned that the disclosure of salaries and wages of employees and contractors of independently governed organizations required by Bill C-377 goes well beyond what has previously existed in Canadian law and is inconsistent with the privacy protections embodied in the numerous privacy laws and constitutional jurisprudence in Canada.

Ms. Laurie Channer appeared on behalf of the Writers Guild of Canada, a small national association that represents about 2,100 professional screenwriters working in English-language film, television, radio and digital media production in Canada. She spoke about how the legislation would affect the privacy of its members:

> Payments to almost every party we transact with, including the writers' insurance and retirement carrier, will be reportable, thereby exposing our members' income. Also, our landlord, our Internet provider and office cleaners, et cetera, will have their invoices disclosed for public scrutiny. Additionally, who would want to provide services to us when we are forced to collect intrusive information on their political and non-labour relations activities?

Finally, there will be significant costs to the labour organizations, specifically the smaller ones. Ms. Channer spoke to this as well.

> We are already stretched thin. This bill is punitive to us. If this legislation passes, we will have to spend significant resources out of our budget on new staff to gather and enter all the additional data required.

This view has been expressed by a number of small locals since this bill was first introduced years ago.

We also know that there is significant cost to the Canada Revenue Agency. They provided the estimates to the Parliamentary Budget Officer in 2012, and the numbers were almost $11 million for the first two years, and more than $2 million every year after. For what?

Mr. Paul Cavalluzzo, Senior Partner at Cavalluzzo Shilton McIntyre Cornish LLP, had strong words about Bill C-377 when he testified before the committee:

> It's an intrusive, paternalistic piece of legislation that is an insult to the working people of this country, because it implies that workers cannot — cannot — ensure that their own trade unions are accountable and transparent. A trade union is a voluntary association. It is made up of its members. Its responsibility is to its members. It seems to me — and the Supreme Court noted in a case very similar — that the trade union is a very democratic organization, and the state has no interest in intervening in its internal affairs.

I agree. The federal government has no business imposing this type of disclosure requirement on labour organizations. The Honourable Kevin Flynn, Minister of Labour for Ontario, summed it up best.

> . . . this bill is redundant, unnecessarily burdensome for unions and their members, threatens to derail collective bargaining and good labour relations across this country, and raises serious privacy and constitutional concerns. It does all of that without any perceptible gain for Canadians.

I cannot support this bill, and I would urge others to do so as well.

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

**The Hon. the Speaker:** Are honourable senators ready for the question? Is it your pleasure, honourable senators, to adopt the motion?

All those in favour, please say "yea."

**Some Hon. Senators:** Yea.

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

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** The "yea" side has it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Senator Munson, do we have agreement on a bell?

**Senator Munson:** Your Honour, I believe you should be making the ruling at this particular time, because it is a time-allocated government Order of the Day. I don't believe I have to defer anything. You are the person that has to do that, sir.

**The Hon. the Speaker:** You are right, Senator Munson. I just wanted to hear what you had to say.

Pursuant to rule 7-4(5)(c), the vote is deferred to 5:30 p.m. at the next sitting of the Senate, with bells to ring at 5:15 p.m.

(The Senate adjourned until tomorrow at 2 p.m.)

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