



# DEBATES OF THE SENATE

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OFFICIAL REPORT  
(HANSARD)

Wednesday, May 9, 2012

The Honourable NOËL A. KINSELLA  
Speaker

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## THE SENATE

Wednesday, May 9, 2012

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

[English]

Prayers.

[Translation]

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before proceeding to Senators' Statements, I would like to draw to your attention the presence in the gallery of Nancy Madrigal of Costa Rica and her spouse, Glen O'Neill.

Ms. Madrigal founded an association in her country that assists families with a loved one who was murdered. For the past five years, Senator Boisvenu has been working with Ms. Madrigal to create this organization.

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

### SENATORS' STATEMENTS

#### EMERGENCY PREPAREDNESS WEEK

**Hon. Jean-Guy Dagenais:** Honourable senators, this is Emergency Preparedness Week 2012, a week that I believe is of great importance to Canadians and to which I would like to draw your attention.

This week gives us an opportunity to highlight and salute the work of everyone involved in emergency preparedness in the provinces and territories. At the top of the list are firefighters, police officers, paramedics and all of the people working in various provincial departments that handle emergency preparedness, formerly known as emergency and disaster preparedness.

Whenever there is a forest fire, a flood, a hurricane, drinking water shortages or contamination, an earthquake or even a prolonged power outage in winter, these are the people who step in.

Last week, I was especially pleased to announce, together with Public Safety Minister Vic Toews, that the government will soon allocate bandwidth to create a strong communication network among various emergency responders and even our American neighbours.

First responders risk their lives every day to protect our families and communities from disaster. The least we can do is to provide them with a reliable, solid, functional communication system, which we can now do thanks to the 700 MHz bandwidth that was recently freed up when television broadcasts switched from analog to digital signals.

In closing, on behalf of us all, I would like to thank those who work every day to keep our families and communities safe.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of Sylvie, Vanessa and Sasha Vandekerkhove and Dawn Follott, from Surrey, British Columbia. Their philanthropic work with the HOPE International foundation, as well as the Langley Memorial Hospital Foundation, are just a few causes supported by this generous family. They are the guests of the Honourable Senator St. Germain.

### NEW PATHWAYS TO GOLD SOCIETY

**Hon. Lillian Eva Dyck:** Honourable senators, I had the great honour of being invited, along with my colleague Senator Vivienne Poy, by the New Pathways to Gold Society Board of Directors to take part in their annual general meeting and tour the Fraser Canyon.

The events took place on April 18 to 21.

The NPTGS is a community-based organization dedicated to economic development through heritage tourism, First Nations reconciliation, community projects and heritage events along B.C.'s historic Gold Rush/Spirit Trails.

On April 20, I had the pleasure of participating in the opening ceremony of the Tikwalus Trail at Spuzzum First Nation. The Tikwalus Trail is a project put together by Spuzzum First Nation, the Hope Mountain Centre for Outdoor Learning and the New Pathways to Gold Society in partnership. Originally a First Nations trade route, the Hudson's Bay Company used this trail in 1848 for the transport of goods following the establishment of the Canada-U.S. border.

The grand opening of the Tikwalus Trail in Spuzzum and the Alexandra Bridge project involved First Nations representatives, heritage organizations, community activists and all three levels of government. The trail opening took place at the trailhead just north of Alexandra Lodge, where about 100 people attended from Vancouver, Harrison, Chilliwack and Hope to mark the completion of a \$98,000 project to restore a 12-kilometre loop on Lake Mountain.

Senator Poy and I had the honour of speaking at the opening of the Tikwalus Trail and participating in the cutting of a traditionally woven cedar bark rope to open the trail. We also attended a community presentation on the Alexandra Bridge project in Hope.

• (1340)

Learning about the project of restoring the heritage trail allowed us to revisit the history and the trail's significance to the First Nations people, the involvement of the Hudson's Bay

Company in relation to the trail, and the 30,000 gold-seekers who arrived in the Fraser Canyon a decade after the Hudson's Bay Company fur trade disaster in 1847.

I was pleased to learn about the unique history of the Fraser Canyon. The area was occupied by thousands of First Nation people, Chinese, Europeans and Americans during the gold rush. We visited the Yale Museum and saw Chinese artifacts from the gold rush era. In Lytton, we saw old Chinese writing on stone near the sites where they had mined for gold. We were also given a tour of Tuckkwiowhum Village, a First Nation heritage site.

The area between Hope and Lytton is a gold mine of unique history from the fur trade, the gold rush and the original First Nation inhabitants. I wish the New Pathways to Gold Society continued success in their endeavours to revitalize interest in the historic sites and trails in the Fraser Canyon.

## TD SCHOLARSHIPS FOR COMMUNITY LEADERSHIP

### CONGRATULATIONS TO 2012 WINNERS

**Hon. Donald H. Oliver:** Honourable senators, senior bureaucrats and politicians have been complaining for decades about the brain-drain and skilled-worker shortage in Canada, but the TD Financial Group is doing something about it.

I am delighted to inform honourable senators that 20 exceptional young Canadians have just been awarded the 2012 TD Scholarships for Community Leadership. The 20 finalists were chosen from nearly 4,000 applicants from across the country.

These young high school and CEGEP students have distinguished themselves in community leadership by their extraordinary concern for the people and environment around them. They are also, of course, characterized by their academic excellence. Most of the successful students have an overall academic average in the nineties.

Each TD scholarship is valued at up to \$70,000 and includes free tuition for up to four years of study at any approved university or college in Canada, \$7,500 a year towards living expenses, mentorship opportunities, and an offer of summer employment with TD Canada Trust during the years of the scholarship.

These annual scholarships, valued at more than \$1 million, are an integral part of TD's corporate social responsibility platform. The program has been in place since 1995. Since the program started, more than 300 young Canadians have been awarded this scholarship. From a social and business perspective, TD understands the short- and long-term value of investing in our country's youth.

Honourable senators, I wish to congratulate this year's recipients. In particular, I want to acknowledge and commend Paige Zwicker of Fletcher's Lake, Nova Scotia, and Aaron Stevens of Dartmouth, Nova Scotia, for their leadership and remarkable volunteerism.

Paige is passionate about making a difference in the lives of disadvantaged children. She intends to pursue a career in pediatric medicine and continue to provide care to children.

Aaron is dedicated to making Nova Scotia a safer place for lesbian, gay, bisexual, transgender and questioning youth. He is active in a number of initiatives that promote anti-bullying, health promotion and diversity. He hopes to pursue a career in human rights and international affairs.

For many years, I have been one of the judges selecting winning candidates from Ontario. It has always been an honour to interview the short-listed candidates because they are youth leaders who are outstanding community volunteers and advocates and the future leaders of Canada.

Last week, I attended the national awards ceremony at the Château Laurier to honour the 20 successful young leaders.

Honourable senators, it is clear that TD is proud to play a significant role in the education of some of Canada's brightest youth leaders. The TD Scholarships for Community Service are among the most exceptional and sought-after scholarships in Canada.

Congratulations to all of the 2012 recipients, and thank you, TD Financial Group, for supporting Canada's youth and giving back to our community.

[*Translation*]

## CROSS-BORDER SHOPPING

**Hon. Pierrette Ringuette:** Honourable senators, today I wish to draw to your attention the consequences of the government's decision to increase the value of goods that may be imported duty- and tax-free by Canadian residents returning from a trip abroad from \$50 to \$200 after a 24-hour absence and from \$400 to \$800 after a 48-hour absence. I have to wonder if the government consulted any Canadian border merchants or the provincial governments, because I think this measure will lead to problems that are obvious to everyone except the members of the Conservative caucus.

Minister Flaherty said that the loss of the 5 per cent GST will cost the government \$17 million in 2013-14, which brings their estimate of the increase in cross-border shopping to \$340 million.

[*English*]

Minister Flaherty said: "I'm not terribly concerned about cross-border shopping because we haven't changed the 24-hour rule." We know Minister Flaherty is not losing any sleep over his policy, but many other Canadians are.

Minister Flaherty just threw away \$17 million at a time they claim to be forced to cut OAS and EI. Provincial governments stand to lose roughly \$23 million in lost sales tax revenue each year, money that could be going to provincial programs such as health, education and food banks. Annual tax revenue for federal and provincial governments of \$40 billion is gone — about half a billion dollars in the next decade.

The Harper government wants the provinces to take an increased burden for delivery of service at a time when they are also unilaterally cutting their ability to generate revenue. Minister Flaherty and the Prime Minister should be working with the premiers, not passing on responsibility along with reducing tax revenue.

Another hard-hit group will be the retailers, particularly those along the U.S. border. They are a group that is already having trouble due to the economic downturn.

Honourable senators, \$340 million in increased border shopping is the equivalent of close to 11,000 full-time jobs in the retail sector. This government has responded to concerns of retailers by bringing in policy that encourages their customers to spend even more money over the border. Why is Canadian policy aimed at helping the American economy at the expense of our businesses and our jobs?

The mayor of Killarney, Manitoba, said it best: “The only incentive for any Canadians in the last federal budget was, ‘Hey, shop American.’”

In fact, U.S. officials have been raving about how this move will boost their economy. A recent article in the Rochester *Democrat and Chronicle* was entitled “Canada’s change in duty-free rules expected to boost western New York” and included the CEO of the city’s tourism agency saying: “This is great news for the Rochester region.”

Well, it is not great news for Canadians.

### GLOBAL MATERNAL AND CHILD HEALTH

**Hon. Asha Seth:** Honourable senators, next Sunday is a celebration of motherhood. For my family, Mother’s Day will be extra special this year as we welcome a new member of our family. This past weekend, on Saturday, May 5, at 2:35 a.m., my daughter Angie and her husband Roy gave birth to my new grandchild, Daniel Stanjevich, at St. Joseph’s Health Centre in Toronto. I am so proud of my daughter and the dedicated team of nurses and doctors who took care of us. I would like to especially thank Dr. Sybil Judah for a wonderful delivery.

I am also proud of the initiatives our Prime Minister has taken to address global issues affecting mothers. Less than a year ago, Prime Minister Stephen Harper endorsed the final report of the United Nations Commission on Information and Accountability for Women’s and Children’s Health, which contains bold and practical measures to help save the lives of mothers and children living in the world’s poorest countries. The Prime Minister worked alongside co-chair President J.M. Kikwete of Tanzania and UN Secretary-General Ban Ki-moon to focus Canada’s efforts on strengthening health services at the community level, improving nutrition for both mothers and children, and preventing and treating the most prevalent illnesses and diseases that cause maternal and child mortality.

Every child one encounters is a divine encounter.

At home, the Prime Minister proposed a clear, economically sound plan to support families and communities by keeping taxes low for families and individuals, and investing in projects

for mothers in communities of all types. It includes providing \$11.9 million in 2012-13 to support shelter services and violence prevention programming on reserves.

I want to wish all mothers, grandmothers and daughters across Canada the warmest wishes on their special day. I wish to continue to support the empowerment of mothers and women across Canada and around the world, because it is not until one becomes a mother that one’s judgment slowly turns to compassion and understanding.

Happy Mother’s Day!

• (1350)

### MULTIPLE SCLEROSIS AWARENESS MONTH

**Hon. Jane Cordy:** Honourable senators, May is Multiple Sclerosis Awareness Month. As you all know, multiple sclerosis is the most common neurological disease affecting young adults in Canada. Most people with MS are diagnosed between the ages of 15 and 40 years of age, and the unpredictable effects of MS last for the rest of their lives.

There is groundbreaking research being undertaken in more than 50 countries around the world in the area of CCSVI for MS patients. Indeed, venous angioplasty is being done in over 50 countries in the world. Unfortunately, Canada is not one of them. These studies have shown measurable results in relieving symptoms for those suffering from MS through the improvement of blood flow to and from the brain. Enough evidence exists that we need to look at this treatment more closely and to figure out what is valid and what is not regarding our understanding of CCSVI and MS. Canada owes this to the thousands of Canadians and their families who are afflicted with this disease. Canada should be contributing to this research with our own Phase II clinical trials.

Honourable senators, we need the science. We need the “made in Canada” evidence.

It has been almost a year since the federal government announced it would begin the long process to allow clinical trials here in Canada, but their efforts have fallen far short of what is required and progress is at a standstill.

The MS registry was announced in March 2011 by Health Minister Aglukkaq, and yet information will not be collected until September 2012. We will have lost 18 months of data.

Just as member of Parliament Kirsty Duncan has been doing in the House of Commons, I have been working to raise consciousness about MS in the Senate with my Senate private member’s bill, Bill S-204, which seeks to establish a national strategy for CCSVI, and with my inquiry on MS and CCSVI.

As this is Multiple Sclerosis Awareness Month, I urge honourable senators to examine closely the issue of MS and CCSVI so that one day in the near future, Canadian MS patients can benefit from “made in Canada” research and treatment. Honourable senators, talk to those who have MS and listen

to their concerns. Canadian MS patients should not be forced to travel to the United States, Europe, Mexico or Poland to be cared for and treated for MS. Canadians expect, and rightfully so, to be treated and cared for in Canada by Canadian doctors. Our government should not be promoting medical tourism.

[Translation]

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw to your attention the presence in the gallery of members of the Saint-Eustache Order of the Knights of Columbus and their spouses. They are guests of the Honourable Senator Carignan.

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

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## ROUTINE PROCEEDINGS

### CANADIAN NATO PARLIAMENTARY ASSOCIATION

JOINT VISIT OF THE MEDITERRANEAN  
AND MIDDLE EAST SPECIAL GROUP (GSM) AND  
THE SUB-COMMITTEE ON NATO PARTNERSHIPS,  
NOVEMBER 14-17, 2011—REPORT TABLED

**Hon. Joseph A. Day:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canadian NATO Parliamentary Association respecting its participation at the joint visit of the Mediterranean and Middle East Special Group (GSM) and the Sub-Committee on NATO Partnerships (PCNP), held in Djibouti, Republic of Djibouti, from November 14 to 17, 2011.

[English]

JOINT VISIT OF THE COMMITTEE ON CIVIL  
DIMENSION OF SECURITY AND THE SUB-COMMITTEE  
ON EAST-WEST ECONOMIC CO-OPERATION  
AND CONVERGENCE, OCTOBER 25-27, 2011—  
REPORT TABLED

**Hon. Joseph A. Day:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association respecting its participation at the Joint Visit of the Committee on Civil Dimension of Security and the Sub-Committee on East-West Economic Co-operation and Convergence, held in Sarajevo, Bosnia and Herzegovina, from October 25 to 27, 2011.

[Translation]

PARLIAMENTARY TRANSATLANTIC FORUM,  
DECEMBER 5-6, 2011—REPORT TABLED

**Hon. Joseph A. Day:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canadian NATO Parliamentary Association

respecting its participation at the Parliamentary Transatlantic Forum, held in Washington, D.C., United States of America, from December 5 to 6, 2011.

[English]

ROSE-ROTH SEMINAR AND VISIT OF  
THE SUB-COMMITTEE ON TRANSATLANTIC DEFENCE  
AND SECURITY CO-OPERATION,  
NOVEMBER 21-25, 2011—REPORT TABLED

**Hon. Joseph A. Day:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association respecting its participation at the Seventy-eighth Rose-Roth Seminar and the Visit of the Sub-Committee on Transatlantic Defence and Security Co-operation, held in London, Lincoln and Glasgow, United Kingdom, from November 21 to 25, 2011.

### BANKING, TRADE AND COMMERCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO MEET DURING SITTING OF THE SENATE

**Hon. Irving Gerstein:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Banking, Trade and Commerce have the power to sit from 1 p.m. to 3 p.m. on Wednesday, May 16, 2012, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO EXTEND DATE OF FINAL REPORT ON STUDY  
OF THE PROCEEDS OF CRIME (MONEY LAUNDERING)  
AND TERRORIST FINANCING ACT

**Hon. Irving Gerstein:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the order of the Senate adopted on Tuesday, January 31, 2012, the date for the presentation of the final report of the Standing Senate Committee on Banking, Trade and Commerce in relation to its review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (S.C. 2000, c. 17) be extended from May 31, 2012 to June 21, 2012.

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## QUESTION PERIOD

### HEALTH

#### TOBACCO CONTROL PROGRAM

**Hon. Catherine S. Callbeck:** Honourable senators, my question is for the Leader of the Government in the Senate. The Tobacco Control Program at Health Canada has been doing good work in getting people to quit smoking. The smoking rate has gone

from 22 per cent down to 17 per cent in 10 years. However, this program is losing 30 per cent of its funding at a time when one in five adult Canadians still smoke.

Why is the government cutting funding for a program that saves lives and reduces health care costs?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, I think the answer is obvious; the answer is in the honourable senator's statement. Thanks to the work of Health Canada, tobacco cessation programs have been extremely successful. I add a personal note to this: My sister was an Associate Deputy Minister of Health and was in charge of this program when it was in full flight.

• (1400)

Canada is a world leader in tobacco control. Smoking, as the honourable senator pointed out, is at an all-time low in Canada, dropping from 22 per cent to 17 per cent over the past decade. We are extremely proud of this record, and the previous government should be equally as proud of these efforts.

We are now focusing our resources on areas that we hope will make a real difference with regard to the use of tobacco, such as Aboriginal smoking rates. Sadly, as we know, these rates are about three times national levels.

Honourable senators, like all programs that this or any government embarks upon, the resources used to get such great results for those programs can be redirected to emerging issues in the Department of Health.

That program is still very active, well funded and is focusing on areas of need, such as the one I mentioned in the Aboriginal community.

**Senator Callbeck:** I thank the leader for that answer. I certainly believe that the program has been successful, but the fact remains that one in five Canadians still smoke. Tobacco is the leading preventable cause of disease and death in the country. It kills 37,000 Canadians a year and costs about \$4.4 billion in health care.

The fact of the matter is, honourable senators, that this program is being cut by 30 per cent this year. The leader says that the government will focus more on population groups whose smoking rates are higher than the national average. If that is the case, what specific initiatives does this government plan to bring forward and how much does it plan to invest in these initiatives? Is it still the same figure? As I said, the cut was 30 per cent. Will the government add any more money for these new initiatives, or will it still cut funding by 30 per cent?

**Senator LeBreton:** Honourable senators, any reasonable person would acknowledge that when the government puts money into a particular program and the program works and is successful, it becomes like a lot of other things that the government does: it does not go on forever, particularly beyond when there is an opportunity to reassess and use resources elsewhere.

With regard to the use of tobacco, all honourable senators would acknowledge that over the years remarkable progress has been made in getting people to quit smoking. In particular, it is

heartening to see young people quitting, though I still worry about some of the programs targeted to young women.

Having said that, the Minister of Health and the officials at Health Canada are targeting their efforts toward those areas that still require a lot of attention. As we know, the Aboriginal community is particularly vulnerable in this regard. Health Canada introduced new warning labels on cigarette packages, and we passed laws to ban the flavoured cigarillos that are popular with young people. Of course, they were targeted to young people; we ended that. All of these initiatives will continue.

With regard to what specific plans health officials have with regard to targeting our Aboriginal communities, I would be happy to attempt to get more information on them.

**Senator Callbeck:** I would appreciate the leader getting the information on the specific programs.

The other part of the question is how much will the government invest in these initiatives? As I said, the program that was so successful is being cut by 30 per cent. Will the government increase that for these specific initiatives, or will it just remain what it was last year, minus 30 per cent?

**Senator LeBreton:** Honourable senators, unless I am missing something, when a program is successful and one has expended a certain amount of money, it is prudent and wise to assess it. If the program has worked and the money that was expended achieved the results desired, then there is no law that the same level of funding will always be there forever and ever. We are accountable to taxpayers, and we are certainly accountable to our public for making proper decisions about their health.

Honourable senators, we should be celebrating the success of this program. It has been completely successful. Obviously, as I have acknowledged, there are areas of concern with Aboriginal communities and some initiatives targeted at youth. However, honourable senators, this is good news. Please accept it as that: It is good news.

## AGRICULTURE AND AGRI-FOOD

### CANADIAN AGRICULTURAL ADAPTATION PROGRAM

**Hon. Terry M. Mercer:** Honourable senators, the Canadian Agricultural Adaptation Program, or CAAP, was designed to be industry and locally led to have the flexibility to respond to large and small research and development projects and proposals that would benefit local farming industries across the country. CAAP works through local councils of directors in each province and territory.

In Nova Scotia, the CAAP is maintained by Agri-Futures Nova Scotia, one of fourteen regional councils across the country. There are 10 directors from all sectors in agriculture and agri-food and even a youth director. All members are nominated by the Nova Scotia Federation of Agriculture and there is no involvement by government in the process. There are, however, two liaisons — one for the province and one for the federal government — who sit on the board as non-voting members.

[ Senator Callbeck ]



On April 11, Agri-Futures Nova Scotia was notified by staff of Agriculture and Agri-Food Canada that there is no role for regional councils in the delivery of future federal programs after the end of the currently delivered CAAP program, which is scheduled to end on March 31, 2014.

Would the Leader of the Government in the Senate kindly tell us why the federal government has decided to end such a worthy program that is maintained by local people for local people?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, I did note that the Senator Mercer mentioned 2014; that is two years from now. Again, I do not have specific details, but I will be happy to make an inquiry on the honourable senator's behalf.

As I said to Honourable Senator Callbeck, programs are initiated by governments, and we have many that were initiated back in the 1970s that are ongoing. Programs were initiated for specific reasons and they go on and on. They are supposed to be "sun-setted." I have been known to say, and I have said it here, the sun never sets on some of these programs.

In our efforts to prudently manage taxpayers' dollars, we go through a process of evaluation. We decide, after consultation with officials, which programs are working and which ones are not. We often change the focus of programs. One such case was under Status of Women, where, unlike the charges from the honourable senator's side that we were cutting from the program, we actually increased the funding to the Status of Women, but changed the focus of the program. Instead of funding advocacy groups, we funded actual community programs. That is the prerogative of the government.

Honourable senators, we believe, in the interests of taxpayers' dollars, that all programs are subject to assessment and revision or, in some cases, termination. Otherwise we would still be paying for every program ever started by government, going back to 1867, many of which are absolutely of no use.

However, with respect to the honourable senator's question, I will attempt to get an answer.

**Senator Mercer:** Talking about "value for money," honourable senators, this is yet another example of the federal government not trusting the local people.

• (1410)

Honourable senators, since 2009, Agri-Futures Nova Scotia has approved 62 projects. Listen to this: The cost to administer them was 7.65 per cent as of March 31. That is a pretty good ratio. If the administration costs are down to 7.65 per cent, that is a good deal; one cannot get any better than that.

One of the projects that Agri-Futures funded dealt with blueberries, specifically pollination by honeybees. Because of declines in the honeybee population, researchers were brought together to discuss the issues affecting the pollination of crops, including bee health and ecosystems. Bluets NB/NB Blueberries was the recipient of an award to do this research.

I bring this project to your attention, honourable senators, because you may ask why Agri-Futures Nova Scotia is funding a New Brunswick project. That is the beauty of this program and it is another one of the important things that CAAP does. It can fund across provincial boundaries because the growth of blueberries in Nova Scotia and New Brunswick is a regional issue.

We all know how much this government likes to share. Again, why is a program like CAAP being cut when it obviously helps the agriculture industry with problems and concerns as they arise at the local level?

**Senator LeBreton:** Honourable senators, I point out that I will make inquiries on the honourable senator's behalf about the specific program mentioned.

Again, this government, unlike previous governments, does get out of the way of provincial governments. There are programs that are administered federally and working across provinces. We went through these things with the officials, and the officials are always very much part of the deliberations. We obviously work with the various officials and the provinces and territories to ensure that funding the federal government provides is actually doing what it was intended to do.

I do not know the specifics of the program that the honourable senator mentioned, but I can quite confidently tell him that our government is not in the business of cutting programs just for the sake of cutting programs. An assessment is done. In all cases, the question is: Is this program delivering what it intended to deliver? If the answer is no, then the program is not continued. That is what any reasonable government of whatever political stripe would do in the interests of the taxpayer.

**Senator Mercer:** The Leader of the Government in the Senate talks about the government getting out of the way. That is exactly what has been going on here. The government has been out of the way. The local regional councils have been meeting and making decisions. They have been monitored by a representative of the province, and the government is staying out of it.

The Agri-Futures Nova Scotia people have been told that control will now come from Ottawa. The government wanted to stay out of the way. Now, they have been told that the government will get right in the thick of it, when we have a system whereby these proposals are peer-reviewed by local farmers and agri-industry people. They make a decision that is beneficial to all sectors in the agricultural industry at the local level. Everyone is happy. Problems are solved. New research is done. Farmers become more efficient and consumers get a better product more quickly. Now, however, the government wants to get involved.

Does that not run counter to the argument that the government wants to stay out of the way?

**Senator LeBreton:** Honourable senators, I wish to point out again that I am not aware of the particular program that the honourable senator is referring to, and that I did say that I would inquire about it.

However, there are many programs. When we went through the process of reviewing programs, there were many programs where 10, 12, or 14 different groups were involved in delivering the same

program. In many cases, in the name of streamlining programs, it was determined that one organization, whether it be local or here in Ottawa, was a much better and more efficient way. I have no idea, as I have already said, about the particular program to which the honourable senator refers. I will make inquiries.

## HEALTH

### MENTAL HEALTH STRATEGY FOR CANADA

**Hon. Jane Cordy:** Honourable senators, my question is for the Leader of the Government in the Senate. A national strategy on mental health was released by the Mental Health Commission yesterday. That was a great day for those of us who have a special interest in mental health and mental illness. It was certainly a great day for those of us who served on the Standing Senate Committee on Social Affairs, Science and Technology that produced our study *Out of the Shadows at Last*, which dealt with mental health, mental illness and addictions.

Last night on CPAC, I watched an interview with Dr. David Goldbloom, the new Chair of the Mental Health Commission. He did an excellent job of explaining the new national strategy. Then, I watched an interview with Minister Aglukkaq.

**Senator Mitchell:** She will be helpful.

**Senator Cordy:** It was not very helpful. The minister stated that the Conservatives brought in the Mental Health Commission. That is true. Those of us who were on the Social Affairs, Science and Technology Committee were delighted that the government accepted that recommendation.

The minister went on to comment at the close of her interview that the Mental Health Commission was not supported by opposition members.

**Some Hon. Senators:** Shameful.

**Senator Cordy:** That comment was worse than misleading; it was blatantly false. I would call it a lie, which it was, but that would be unparliamentary language, so I cannot call it a "lie."

**An Hon. Senator:** Go ahead.

**Senator Cordy:** However, as a member of the Senate committee that recommended the creation of the Mental Health Commission, I find this offensive.

The minister is making mental health a partisan issue. Senators on both sides of this chamber feel passionately about doing the right thing for those with poor mental health. Yesterday was a prime example when statements were made about Mental Health Awareness Week by senators from both sides of the chamber, and no one made those statements partisan.

Will the leader please ask Minister Aglukkaq to apologize for her public comments, which are false and an insult to senators from both sides of this chamber who are working on this issue?

[ Senator LeBreton ]

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, I did see the interview with Dr. Goldbloom, but I must confess that even with my great interest in the whole issue of mental health, I was curious about what was going on in the hockey game between New Jersey and Philadelphia. I switched the channel and did not see the minister's interview.

**Senator Dawson:** Ignorance is bliss.

**Senator LeBreton:** Obviously, honourable senators, I cannot comment on what the minister was referring to, although in the parlance of this new Parliament, we all know that when the opposition is referred to, it is actually the New Democratic Party.

I do not know if something happened in the House of Commons between the NDP and the government; I will have to check.

Having said that, like all of honourable senators on both sides of this chamber, I welcomed the release of the Mental Health Commission's Mental Health Strategy for Canada.

I must confess, I was very disappointed at the coverage on our national news networks, both the CBC and CTV, with regard to this very important subject.

**Senator Munson:** What does that have to do with the question?

**Senator LeBreton:** On CTV we had Lisa LaFlamme bemoaning the fact that we were the only country in the civilized Western World that did not have a mental health strategy, to which I answer, yes, that was true until we formed the government. Of course, that is a fact.

• (1420)

As Honourable Senator Cordy has acknowledged, the Mental Health Commission was created as a result of the Senate study chaired by our former colleague, the Honourable Senator Michael Kirby, who then took leave of the Senate and was appointed by the government to head up the commission.

Obviously, the government is taking the recommendations and the roadmap very seriously. We have already taken a number of measures on the mental health front which I would be happy to put on the record. If there is fairness done in this place, honourable senators will acknowledge that we have done so.

In answer to the honourable senator's question about the comments of Minister Aglukkaq, I do not know the circumstances of them or to what she was referring, but I will be happy to ask her.

**Senator Cordy:** Honourable senators, her comments were specifically related to the Mental Health Commission. She specifically said that it was not supported by opposition members. That is offensive to every senator in this chamber, and it is also offensive to every member of Parliament in the other place.

This should not be a partisan issue. The Minister of Health has made it a partisan issue. I am very disappointed. I was very troubled by her comments last night.

I ask the leader again to please refer to the comments on CPAC. I am sure that her office staff can get them. Again, the comment was, "It was not supported by opposition members."

I ask the leader to please ask the Minister of Health to apologize to us in this chamber.

**Senator LeBreton:** Honourable senators, I believe that when we specifically earmarked significant funds for the treatment of mental illness in Budget 2012 and previous budgets, the opposition in the other place voted against those budgets. Perhaps the minister was referring to that.

However, as I indicated earlier, I will ask my colleague exactly what she was referring to and I will let the honourable senator know.

[*Translation*]

## VETERANS AFFAIRS

### LONG-TERM CARE PROGRAM

**Hon. Roméo Antonius Dallaire:** Honourable senators, my question is for the Leader of the Government in the Senate. Last week, I asked a question about Ste. Anne's Hospital, which will be transferred to the Government of Quebec.

The leader promised me answers on some very specific aspects of this issue. There have been developments since then, and I would like her to take them into account when she examines this issue in order to provide a response.

The Quebec health minister, Mr. Bolduc, has said that there are fewer and fewer veterans, but that there are more and more seniors who need specialized care.

That means that veterans do not become seniors. That means that veterans will remain veterans and that civilian seniors need care.

Modern-day veterans were offended and outraged by the minister's statement because he did not specify that he was talking about veterans of World War II and the Korean War.

In her discussion and response, could the leader tell us whether Minister Blaney is going to talk to his friend in Quebec, Minister Bolduc, and tell him that, although the number of veterans of World War II and the Korean War may be decreasing, the overall number of veterans is not growing smaller. On the contrary, Canada has almost 600,000 veterans. It is rather essential that a minister be able to make this distinction given the importance of this issue.

[*English*]

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, far be it from me, as the Leader of the Government in the Senate, to try to answer for the remarks of a minister of another jurisdiction.

I do not know whether the senator is referring specifically to those veterans who are being cared for at Ste. Anne's Hospital. As the honourable senator knows, the federal government has been in negotiations with the Government of Quebec with regard to transferring Ste. Anne's Hospital to the Government of Quebec. Part of the negotiations between the federal government and the Government of Quebec has been the absolute insistence that veterans in the St. Anne's facility continue to receive priority access to the exceptional care that they have been getting in that wonderful facility, and in both of Canada's official languages.

We have made it very clear that under no circumstances would we compromise the level of care for our veterans. A transfer to the Quebec government would have to take all of those factors into account.

If the Minister of Health for the Province of Quebec was talking about aging veterans, I would have to see the context of what he was saying. Obviously veterans of the Second World War are aging. There is a member of my own family who was at Dieppe and he is now 88, I believe.

I will try to ascertain in what context he made those comments and whether it would in any way be contrary to the agreements that the federal government and the province are negotiating with regard to Ste. Anne's Hospital.

[*Translation*]

**Senator Dallaire:** Honourable senators, the point is still relevant because the previous government invested close to \$132 million to modernize this hospital so that veterans could finally have their own rooms after living 40 to a room for decades. Of the 446 beds in the hospital, over 400 are still occupied by veterans. Yet, all of a sudden, the government is in a hurry to give this large facility to the province, which is too ignorant, with its limited knowledge of federal portfolios such as the veterans portfolio, to notice that there may be a whole lot of veterans in Quebec who are offended because they are not completely comfortable with seeing veterans leave Ste. Anne's Hospital or hearing that there are no more veterans and that veterans are disappearing. In that regard, those who served our country in the past and those who are currently serving it are all in the same mess.

The two ministers need to clear up this misunderstanding. Doing so is really essential for veterans' morale. The government supports veterans' views of the respect that should be shown to them.

[*English*]

**Senator LeBreton:** Honourable senators, I absolutely agree. As I stated, part of the agreement for the transfer of Ste. Anne's Hospital from the federal government to the Province of Quebec was that under no circumstances was the level of care to which our veterans have access to change at all.

I will seek clarification on exactly what transpired with the minister with regard to the transfer of Ste. Anne's.

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## ORDERS OF THE DAY

### CRIMINAL CODE

#### BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

**Hon. Consiglio Di Nino** moved second reading of Bill C-26, An Act to amend the Criminal Code (citizen's arrest and the defences of property and persons).

He said: Honourable senators, I am pleased to rise to speak to Bill C-26, An Act to amend the Criminal Code (citizen's arrest and the defences of property and persons).

• (1430)

Bill C-26 was introduced in the other place in November 2011. It was passed with support from all parties following extensive debate and committee hearings. Some may not be familiar with the policy and objectives of Bill C-26, so I will endeavour to describe the changes it proposes and some of the important revisions made in the other place.

[*Translation*]

Honourable senators, Bill C-26 has two parts. The first consists in broadening, within reason, a citizen's authority to make an arrest; the other consists in simplifying the Criminal Code provisions relating to the defences of property and persons.

Defences of property and persons and the authority to make a citizen's arrest are separate matters of law. However, confrontations between people are fluid and dynamic and the circumstances often evolve in such a way as to bring all these legal mechanisms into play in a single incident.

Allow me to give an example: a homeowner is awoken in the night by the sound of someone breaking the window of his car in order to steal it or its contents. The homeowner rushes downstairs, goes outside and tries to catch the thief and recover any belongings that may have been taken. In doing so, the homeowner would be protecting his property.

A civic-minded homeowner might try to restrain or apprehend the thief in order to hand him over to the police and have him charged with attempted robbery. With that objective in mind, the homeowner proceeds to make a citizen's arrest. In either case, if the thief resists or reacts with force, the homeowner can end up in a situation of self-defence.

[*English*]

Honourable senators, while these are three distinct legal mechanisms, they all relate to the broader question of how citizens are permitted to lawfully respond to urgent and unlawful threats to their property and person.

Before I turn to the details of the legislation, I would like to briefly address concerns that Bill C-26 will encourage vigilante behaviour. Let me state unequivocally that law enforcement is and must remain primarily the function of the police. The police

are trained and educated in the appropriate use of force and in the requirements of the Charter when a person is suspected of a crime and arrested, and the police are subject to numerous specific forms of accountability for their conduct.

Arrests and other encounters with people who are in the process of committing a crime are inherently dangerous. All Canadians are cautioned against taking risky measures or endangering their lives or the lives of others. Attempting to stop a crime can involve conduct that could itself amount to a criminal offence, such as assault or forcible confinement of the suspect. If the conditions for a citizen's arrest or a lawful defence are not met, one may be subject to criminal charges. For all these reasons, it is always preferable to leave crime control to the professionals, namely, the police. This message bears repeating at every occasion.

Honourable senators, let me briefly describe the citizen's arrest proposals in Bill C-26. An arrest consists of the actual seizure or touching of a person's body with a view to that person's detention. The pronouncements of words alone can constitute an arrest if the person submits to that request. However, arrest often involves touching, which can constitute an assault. The power of arrest, if lawfully exercised, prevents the arresting person from being guilty of a crime.

There are arrest powers under the common law, under provincial statutes and, of course, under the Criminal Code. When a person other than a peace officer arrests someone, this is commonly referred to as a "citizen's arrest."

An arrest is not a licence to assault. Whenever an arrest is made, the arresting person is authorized only to use whatever force is reasonable in the circumstances. Any excess force can lead to criminal charges against the arresting person. Causing death or grievous bodily harm during an arrest is only reasonable when it is necessary to preserve a person's life.

[*Translation*]

Honourable senators, the Criminal Code sets out a wide range of powers of arrest for the police and for citizens. Bill C-26 seeks to amend section 494(2), under which anyone who is the owner or a person in lawful possession of property, or a person authorized by the owner or by a person in lawful possession of property, may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property. In other words, a citizen can arrest a person he finds committing a criminal offence on his property.

Even if we wanted the police to respond immediately to every crime, that is simply not realistic. Sometimes people have to have the power to take action to protect their own interests.

For an arrest to be valid, a person has to have reasonable grounds to proceed with an arrest, which means that the person has to believe that an offence is being committed on or in relation to property and that this belief has to be shared by a hypothetical reasonable person in the same situation. Section 494 also imposes a legal requirement on anyone who arrests a person to deliver the person to a peace officer forthwith.

[English]

Honourable senators, while this power of citizen's arrest seems reasonable and balanced, in fact it is limited in a way that can potentially work an injustice to a property owner.

The arrest must be made when the crime is in progress. An arrest made even a short while after the crime was observed is unlawful. There may be many reasons why an arrest was not made on the spot: The suspect may have escaped too quickly, or the property owner may have been outnumbered and fearful to approach multiple suspects.

To address this limitation, Bill C-26 would modestly amend subsection 494(2) of the Criminal Code to permit a property owner to arrest someone they had previously found committing an offence in relation to their property, so long as the arrest is made within a reasonable time of the offence. The person must still detect the crime in progress, but if arrest is not possible at that very moment, it will still be lawful if made a short time later.

The extended time in which an arrest can be made is not unlimited. Any delay must be reasonable. The courts will be scrupulous in safeguarding the rights of the arrested person by inquiring into the circumstances of the delay, such as the reasons for it and whether it had a detrimental impact.

• (1440)

Honourable senators, even though this is a very modest expansion of the citizen's power of arrest, the government remains committed to discouraging vigilante behaviour and to preserving the proper balance between citizen involvement in law enforcement and the role of the police as our primary law enforcers.

Bill C-26 therefore includes an additional safeguard. Before an arrest can be made after the offence is committed, the citizen must turn their mind to whether the police are able to make the arrest, which is a far preferable circumstance. This requirement will ensure that citizens use this expanded power only in cases of a true emergency.

Honourable senators, it is also important to realize that the citizen's power of arrest can be exercised not just by the owners of the affected property but also by private security agencies retained by them. The owner of a small convenience store may be on site to stop a thief, but bigger stores, for instance, hire professional security guards authorized to act on behalf of the store owner.

A lot of concern was expressed in the other place about the potential of Bill C-26 to broaden the powers of private security agents. It is clear that in the last few decades the private security industry has boomed. The overwhelming majority of citizens' arrests are in fact made by private security agents and not by individual property owners. Concerns seem to revolve around the lack of accountability and training of security guards as compared to police and with their willingness to take on more police-like functions.

[Translation]

There are definitely many issues with respect to the private security industry that are worth examining. Some basic facts about this industry may help us understand the situation. The

regulation of the private security industry, just like that of many other industries and most police forces, is a provincial responsibility.

Most provinces currently regulate the private security industry. The regulations require security officers to have licences, which obliges those interested to undergo certain types of training. These regulations also set out specific accountability measures. As with many other activities subject to regulation, licences can be revoked and administrative penalties imposed.

Civil suits can be lodged against police officers for inappropriate actions. Police officers can also face criminal charges, for example, if they use excessive force while making an arrest. These same accountability measures apply to private security officers who use excessive force or act without motive.

[English]

Honourable senators, let me now describe the long-overdue simplification and clarification of the law on self-defence and defence of property contained in Bill C-26.

The defence of property and defence of the person are claims made by a person alleged to have committed a criminal offence, typically some kind of assault. The person asserts that he or she should not be held responsible for the alleged offence because their actions were motivated by a need to defend a protected interest, whether the safety of a person or the possession of property. Both reasons can justify conduct that would otherwise be criminal.

Since its inception in 1892, the Criminal Code has provided defences for the protection of persons and property. However, one of the unfortunate realities is that they are worded in an extremely complex and confusing manner. The problem is that there are, in fact, multiple variations of each defence depending on the slightly differing circumstances, even though all the specific rules share a more basic underlying set of policies.

There are a total of nine sections to describe two defences. Our self-defence laws, in particular, have been the subject of decades of criticism by the judiciary, including the Supreme Court of Canada, trial counsel, criminal law academics, bar associations and law reform bodies. Unclear laws complicate or frustrate the charging decisions of the police who themselves may have difficulty understanding what is permitted.

Judges consider these provisions notoriously problematic when it comes to instructing juries. Juries do tend to get it right, but this is despite the law, not because of it.

The changes in Bill C-26 to the defences of persons and property would completely replace the existing legal provisions with new and much simpler ones. The proposed new defences would reduce the existing rules into their most fundamental elements, elements that are consistent no matter what the particularities of the situation are.

We no longer need different rules for different circumstances. We need only one rule that clearly and simply sets out the conditions for defensive action and that is capable of being understood and applied in all situations.

[*Translation*]

Current legislative provisions are extremely complex and convoluted, but the defences set out in Bill C-26 can be easily summarized. With regard to the defence of property, a person should not be held responsible for a criminal offence when it is a reasonable response taken for the purpose of protecting property in his or her possession from a reasonably perceived threat of it being taken, damaged, destroyed or trespassed upon.

In the case of self-defence, a person should not be held responsible for a criminal offence he or she commits if it was a reasonable action taken for the purpose of protecting himself or herself or another person from a reasonably perceived attack by another person.

Clearly, what is reasonable in one case may not be reasonable in another. The facts, circumstances and individuals involved in each situation must be taken into account. For instance, shooting someone in the leg may be a reasonable reaction if the person was carrying a weapon and had threatened to kill you, but it would not be reasonable if the aggressor was a young person who was threatening to simply push you. Reasonableness must therefore be interpreted as a flexible criterion based on the circumstances.

Self-defence is particularly important; it arises much more frequently than the defence of property, and it can provide a defence to murder. Everyone understands what self-defence means, even if they have not consulted the Criminal Code. Self-defence has to do with human beings' fundamental instinct to protect themselves.

[*English*]

Honourable senators, because of the central role of self-defence in our system of criminal law, Bill C-26 goes an extra step and proposes a list of factors that the courts can consider in determining whether the actions a person took — assuming that the person reasonably feared an attack and acted for defensive purposes — were reasonable in the circumstances.

Without limiting the nature and scope of factors that could be taken into account, Bill C-26 sets out some of the more familiar and important considerations. This list should assist judges in their duty to instruct juries on how to apply the law to the particular set of facts before them. Hopefully, it would also signal to judges that even though the wording of the defence has been simplified, the bulk of existing cases decided under the old law should continue to apply.

• (1450)

Some of the critical, relevant factors include the nature of the threat and whether any weapons were involved; the relative physical composition of the parties, such as their age, size and genders; and proportionality between the incoming threat and the defensive response.

[ Senator Di Nino ]

Another very important factor has to do with the special circumstances of abusive, intimate relationships. The 1990 Supreme Court of Canada decision in *Lavallee* acknowledged the difficulties that juries can have in finding the behaviour of a battered spouse to be reasonable. For instance, juries may believe that the abused person should simply have left and that this would have prevented the abuse.

In *Lavallee*, the Supreme Court of Canada clarified that expert evidence can be called to provide an explanation as to why an accused did not flee when they perceived their life to be in danger, why the accused believed they were in danger, and why they believed they had to act as they did.

For these reasons, the list of factors includes references to the history of the relationship between the parties, including whether there were prior acts of violence.

Honourable senators, the members of the Justice and Human Rights Committee in the other place made several changes to the clause that sets out the list of factors to be considered, which I would like to briefly discuss.

The committee heard from over a dozen witnesses from associations representing criminal lawyers from both prosecution and defence sides, various police associations, associations representing women offenders, the private security industry and convenience store owners.

The committee agreed that the list of factors could be improved in certain ways, and they made three modest but meaningful changes. First, in an effort to ensure that the assessment of self-defence effectively balances the subjective perceptions of the accused against the need for action to be reasonable, they modified the words of the provision to add that “the court shall consider the relevant circumstances of the person, the other parties and the act.” This amendment also converted “may” into “shall” so as to make consideration of all relevant circumstances mandatory rather than just permissive.

Second, the committee modified the wording of proposed subsection 34(2)(e) of the bill, which originally referred to the “the size, age and gender of the parties to the incident.” The committee thought that additional clarity would be helpful and rewrote that proposed subsection so that it now reads “the size, age, gender and physical capabilities of the parties to the incident.” “Physical capabilities” were the words they added.

Third, the committee added a new text that reads: “any history of interaction or communication between the parties to the incident.” I referred briefly to the text that speaks to the “history of any relationship between the parties”; “that incident” is the part that was added. The committee felt that this text could be interpreted narrowly to mean long-standing or intimate relationships. They wanted also to capture brief or more casual interactions between the parties, such as a single conversation that involved a threat. The additional clarity that the committee brought to the bill is very much appreciated.

[*Translation*]

In conclusion, honourable senators, Bill C-26 will pave the way for a new era of clarity and simplicity with respect to the provisions on self-defence and the defence of property. First, to be

found innocent of a crime, people should have reasonable grounds for believing that they or another person, or property in their possession, are being threatened with force. Second, they must act for the purpose of defending themselves and not to take revenge. Third, whatever actions are taken, they should be judged to fall within the range of what a reasonable person would have done in the same circumstances.

Bill C-26 also extends the time during which a property owner can arrest a person who commits an offence in relation to their property, given that, in the situation, it may not be possible for the police to intervene or the private security service to take appropriate action when the crime is being committed.

In general, Bill C-26 strikes the right balance between discouraging crime and confrontation and permitting Canadians to defend their basic interests when no other options are available.

I strongly recommend that all senators support the bill. These reforms are long overdue and represent a principled and measured response to emotional and complex situations.

[English]

**Hon. George Baker:** Honourable senators, I have just a few words concerning this particular bill. First of all, I want to congratulate Senator Di Nino for the very thorough, comprehensive and necessary speech that he gave. What one says in this place in introducing a bill at second or third reading on behalf of the government is considered to be government policy and the intent of the legislation. He was very careful to go over completely the intent of each section of the legislation.

Before I get to what I really want to say about this bill, the intent of the bill relates to a grocer in Toronto, a Mr. Chen, who was charged with an offence, but everyone knows about this. Before I get to that, changes have been made, as the honourable senator pointed out, in a section of the Criminal Code that deals with the defence of the person — in other words, self-defence.

When you look at all of the cases that are adjudicated now in our courts, it is well established that apart from a consensual fight, the act of self-defence has to be reasonable in that you are defending yourself against an aggressor. As the honourable senator pointed out, now there is a list of things. However, I am not too sure whether that list of things will really help matters.

For example, it says here that in determining whether the act committed is reasonable in the circumstances, the court shall consider the following: the size, age, gender of the parties in the incident — the size of the parties in the incident. If I were to select somebody that I would not want to get into a fight with on the other side, who are the most dangerous people over there?

**Senator Angus:** Senator Brazeau.

**Senator Baker:** As Senator Angus points out, I might choose Senator Brazeau, certainly, because he is an expert in the martial arts. I know what honourable senators are thinking: In boxing he is not, and that is true. As Senator Brazeau knows, in a boxing match, you can only hit with that side of a cushion. As you could

tell from that famous bout, Senator Brazeau is an expert in the martial arts. If he could only do what he wanted to do, but he could not.

• (1500)

**Senator Angus:** Hear, hear; we wish he could.

**Senator Baker:** I could tell he was going through all sorts of contortions trying to remain within the rules.

**Senator Carignan:** He did.

**Senator Brazeau:** Rematch!

**Senator Baker:** Having identified perhaps one of the two most dangerous people, the other person is, of course, very slight and weighs, I imagine, about 140 pounds. He has black belts and yellow belts; he has all kinds of belts. He exercises every day. I would hate to get into a physical confrontation with him; and that is Senator Boisvenu.

When you look at these provisions, and consider the size and age of the individual in the confrontation to determine whether it was reasonable that self-defence actually took place, I think it will foster some debate in committee as to whether that is reasonable.

Honourable senators, in terms of the purpose of the bill, it speaks to only one thing: an act that took place in a grocery store in Toronto. The bill states the following in the summary:

This enactment amends the Criminal Code to enable a person who owns or has lawful possession of property or persons authorized by them to arrest within a reasonable time a person whom they find committing a criminal offence on or in relation to that property.

His Honour is a professor of law who is well known down east and he knows about citizen's arrest under the Criminal Code. The last sentence of section 494(2) states, "may arrest without warrant a person whom he finds committing a criminal offence."

I repeat: "committing a criminal offence."

Senator White, former Chief of Police of the Ottawa Police Service, knows full well that that is also a limitation on police officers. Section 494(2) says, "committing a criminal offence." As His Honour knows well because he taught it many times, section 495 of the Criminal Code, under the heading "Arrest Without Warrant by Peace Officer," says, "may arrest without warrant a person whom he finds committing a criminal offence." It then goes on to limit a police officer's right. It says, "A police officer shall not arrest a person without a warrant for an indictable offence mentioned in section 553." That is another matter. It then says, "an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction." That is a hybrid offence. One can be prosecuted either summarily or indictably for an offence punishable on summary conviction.

As Senator White knows, a police officer is extremely restricted under a warrantless arrest. Warrantless arrests and warrantless searches have been judged to be inherently unreasonable and unlawful. Only when it is authorized by law can you do it. Therefore, a police officer cannot do it.

I had a case at my desk by the New Brunswick Court of Appeal, *R. v. Dobrotic*. It said:

After being arrested in own **home** and charged with **impaired** driving and causing a disturbance, accused refused demand for blood samples and was charged with refusing to comply — Accused arrested only for **hybrid** and summary conviction offences and was not found in act of committing any offence — Accused successfully appealed from conviction for refusing to comply. . . — Subject to specified exceptions, s. 495(2) of Criminal Code prohibits warrantless **arrests** for summary conviction or **hybrid** offences unless the accused is found in act of committing them.

That is the law for police officers. Is the law for police officers being changed in this legislation? No. It is only changed for a citizen's arrest — not that much turns on that point. This was the case of Mr. Chen in Toronto.

Honourable senators, I have a copy of the judgment. I read the judgment and the facts of the case. A gentleman by the name of Mr. Anthony Bennett had come into a store and stolen some plants. He ran out through the door. Mr. Chen, the owner of the store, saw him. The next time Mr. Bennett came into the store, and I believe from reading the judgment that he was probably intent on stealing more plants, Mr. Chen confronted him and ran after him. They ran down the street and eventually into an alley. By this time, there were three people chasing the thief who had stolen from the store a week previously.

The police were called. Allow me to read to honourable senators what the police were confronted with. Paragraph 19 of *R. v. Chen* — Her Majesty the Queen and Jie Chen, Qing Li and Wang Chen; the Ontario Court of Justice, 2010, ONCJ 641 states:

The initial police response came in the form of police cruisers dispatched to the scene based on so-called 'hot spot' reports. It meant that officers in the vicinity had to give this the highest priority. As they made their way to the location, they were being updated. Based on four calls made to the 911 operator, they had information suggestive that up to 4 individuals were beating up one person, tying him up and placing him in the back of a white van. The first two officers on the scene, veteran Constable Mouter and newly minted Constable Smith, see a white van moving slowly towards them and about to make a turn. It stops when so directed by Mouter. Out comes a male from the driver side while two others exit from the rear of the van. Inside, the officers notice a male on the floor tied up . . .

Those were the facts. The officers arrested them all, every single one of them. Senator White will tell you that it is normal practice when you are called to the scene and you have tips by telephone. You do not know what is going on, so you arrest everyone in the place.

• (1510)

The judge, properly, makes mention of the big fuss that this created and the fact people across Canada were saying all sorts of derogatory things about the police in Toronto for arresting these people. The judge said, in paragraph 13:

Equally and in similar vein as the demand for Capt. Dreyfus' —

— this is a reference he made earlier —

— return from Devil's Island, persistent voices have demanded a stop to the 'persecution' of Mr. Chen this "innocent, hard working, honest businessman". There is even now talk of amending the section of criminal code on citizen's arrest.

Well, guess what? We are amending it.

The judge, in considering why the police officers would have arrested in this situation, said that dispatch has told them that there is an emergency. Two dispatch updates suggested potentially dangerous situations, likely a hostage in the back of a van being spirited away in broad daylight. Mouter and Smith place themselves in harm's way, unaware of what reaction to expect from the van's occupants when they direct the driver to stop. They indeed find someone in the back of the van, tied up and in apparent distress. The judge then says this:

Let us not beat around the bush. This is not the forum for political correctness. Mr. Bennett is black and the other three are Asians. In an urban multicultural environment such as ours one must live under a rock to assume that we all live in perfect harmony or that there are no elements of any ethnic groups, Caucasian or otherwise not dealing in drugs and violence. Toronto the Good like any other large city has an underbelly that does not lend itself to a tourism marketing jingle.

Last I heard the Toronto police do not work for the Toronto Tourism and Convention Bureau. In other words we do not pay them to see us in rose-coloured glasses. We pay them to be suspicious and to initially assume the worse in any situation.

He then says an important thing. This is in paragraph 23:

Once the police have laid the charges, our system has a series of checks and balances. Legally trained professionals, namely Assistant Crown Attorneys and NOT the police determine whether and which charges will go forward for prosecution.

It went forward for prosecution. Mr. Chen and the two other gentlemen, Mr. Li and Mr. Chen, were found innocent of any offence, as they should have been. The alleged thief was given 90 days in jail. That was the end of the matter.

Honourable senators, it happens every day that people are put in jail and arrested for crimes that they are eventually acquitted of. In the circumstances of this particular case, the judge went to great extremes to try to be fair to everybody. As honourable senators know, in the end it is the conscience of the community that determines matters like this. We have two standards, as honourable senators are well aware. One is whether something shocks the conscience of the community; the other is whether it brings the reputation of justice into disrepute. Disrepute to whom? To the general public. The feelings of the general public play into the determinations of the court.

[ Senator Baker ]



That is the case. What is the reaction?

Well, in the other place, everyone agreed with the bill, except one member — I think it was the Leader of the Green Party. However, I noticed that when the interviews were done with the press and on the record, members of the NDP, the Liberals and the Conservatives suggested that perhaps the Senate could make amendments to the legislation. I have not examined what those amendments would be, but a vote did not take place at any stage of this particular bill. One wonders about this suggestion. You have the original wording in the Criminal Code, section 494, which states that, as I said before, someone may arrest a person without a warrant if they find them committing a criminal offence on or in relation to that property, if they make the arrest at that time or within a reasonable time after the offence is committed and if they believe on reasonable grounds that it is not feasible in the circumstances for a peace officer to make the arrest.

Then, as pointed out by Senator Di Nino, there is a qualification there for greater certainty:

A person who is authorized to make the arrest under this section is a person who is authorized by law to do so for the purposes of section 25.

All section 25 says is, if it is to be provided for in law.

It will be provided for in law now because that is the change that is being made.

I suspect, honourable senators, that there will be some interesting witnesses before the Senate as to whether or not any amendments should be considered to this legislation. I am sure that the police associations of Canada will be interested to know what happens to their authority under section 495 of the Criminal Code, as I referenced earlier, in that they are not permitted under section 495 to arrest anyone unless they find them committing an offence or unless they have committed an indictable offence in the past. If they have reasonable grounds to believe this, the police can do what they call investigative detention. However, that is rather complicated to do. There must be what they call exigent circumstances or a problem with the identity of the person being detained. As Senator Joyal is probably thinking now, what happens to our Charter rights under this proposal? Sections 10(a) and 10(b) of the Charter say as follows:

Everyone has the right on arrest or detention —

It does not say the word “immediately;” “forthwith,” perhaps. I am getting cloudy in my old age, but there is a word there that has been interpreted by the Supreme Court of Canada to mean that someone has a right to counsel immediately. You cannot just go out and detain someone without giving them rights to counsel immediately. You are extending, under this law, new arrest rights, but section 494 still demands that it be Charter compliant. The person making the citizen’s arrest must give the person rights to counsel.

I would be interested in knowing what the police forces of Canada have to say about this clause. I asked whether section 495 of the Criminal Code was examined in committee in the other place, and they told me no reference was made to 495 and to the rights and powers of police officers.

• (1520)

His Honour knows from reading case law, which I know he does in his spare time, as I have been doing for 40 years, there are many provisions under the law that lead to someone being arrested or detained unfairly. As provided for in our Customs Act, when someone from certain countries passes through Toronto’s Pearson International Airport, periodic checks are made. In other words, the person is pulled aside, asked how they purchased their ticket, who paid for it and what they have in their luggage, and then, if deemed necessary, they are handcuffed while their luggage is searched. That is all because of section 98(1) of the act, which gives this power if an official suspects non-compliance with the law. Many of those cases arise, but one wonders what the extent will be of this particular move.

I appreciate the words of Senator Di Nino, because he has put this into context. He has explained the intent, and it is not to go as far as some people would think if they knew the facts as given by the judge in the case at hand that caused this legislation to be brought forward. We look forward to it being dealt with in committee.

**Hon. Anne C. Cools:** Would the Honourable Senator Baker take a question?

**Senator Baker:** Yes.

**Senator Cools:** I have been listening to Senators Baker and Di Nino with care. I thank them for their interventions.

Are these new powers that would be created by Bill C-26, or is this bill declaratory of some ancient common law powers of self-defence? I believe that these are totally new powers that would be created by this bill. If, in fact, these are new powers that are to be created by this bill, what is the legal ground on which they are proposed to stand?

**Senator Baker:** First, the power does not reside in the common law. I was looking for the New Brunswick case that I cited in which the Court of Appeal made reference to that fact.

I believe that it is as Senator Di Nino outlined. He was very clear in his explanation of the purpose of the legislation. Let us be clear on this: When you look at decisions of the court on a new bill such as we are discussing here today, you see the names of people who have introduced legislation across the way. His Honour is quoted in one case. He spoke or supported a government bill. Senator Stratton is quite often referred to. As I mentioned before, I imagine that there are people in jail wondering who this fellow Senator Stratton is who caused them to be there. Judges are quoting senators in sentencing.

It is important that when judges have to interpret legislation they look not only at Driedger’s principle of statutory interpretation and the book *Statutory Interpretation* by Ruth Sullivan. They must try to discover the intent of the legislator, and invariably they go to the Senate. Some people have suggested that the Senate is quoted more than the House of Commons in case law because the Senate is the final authority, but I do not think that is entirely correct. I rather suspect, as some justices have

referenced, that the remarks made in the Senate are much more sensible and based more on reasonableness than are those made in the other place, where they are based on politics in many respects.

Knowing the existing law and how it has been applied, upon reading this bill I would find this to be an incredible extension of authority, overly broad and something we must be careful of. However, if one listened to the intent as explained by Senator Di Nino, who would have received his information right from the Department of Justice, who would have received it perhaps from provincial authorities across the nation, as they normally collaborate in the drafting of these laws, one would find this to be a reasonable piece of legislation.

(On motion of Senator Tardif, debate adjourned.)

## INCOME TAX ACT

### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Banks, for the second reading of Bill S-205, An Act to amend the Income Tax Act (carbon offset tax credit).

**Hon. Daniel Lang:** Honourable senators, I would like to share my thoughts on Bill S-205, which recommends adding a carbon offset tax credit to the government's arsenal of tools to meet our environmental responsibilities.

Before considering the bill, we must ask what steps the federal government has already taken to meet these responsibilities and what initiatives are under way that will allow Canadians to maintain their standard of living while ensuring that our environment is taken care of.

Senator Carignan outlined many of the policies and programs that the Canadian taxpayer has and is financing to meet national and international environmental obligations. The long list of initiatives in which the federal government has been involved with the provinces, the territories and the business community should give members comfort that serious steps have and are being taken. One need only look at the Clean Energy Fund, which is investing just under \$800 million over the next five years in research, development and demonstration projects to advance Canadian leadership in clean energy technologies.

It should be also pointed out that part of the Clean Energy Fund goes toward carbon capture and storage projects. This, honourable senators, is truly a Canadian success story. One of the world's largest carbon capture and demonstration projects is in Weyburn, Saskatchewan. This technology will significantly assist in reducing global greenhouse gases from the production and use of fossil fuels. These projects will give Canada the opportunity to continue to be a world leader and gives us the ability to sell this technology to countries that are also conscious of their emissions.

[ Senator Baker ]

• (1530)

Additionally, major strides have already been taken with the auto industry and the United States to redesign our vehicles and exhaust systems.

It should be pointed out that it is projected that the average greenhouse gas emissions from the 2016 Canadian fleet of new cars and light trucks will be reduced by 25 per cent compared to those sold in 2008.

I would also like to point out the great strides that are being taken in the field of natural gas vehicles. According to the Canadian Natural Gas Vehicles Alliance, the use of natural gas reduces emissions by an estimated 20 to 25 per cent compared with conventional transportation fuels. This technology is most useful in the tractor trailers we see on the highways every day.

In addition to these policies, I think it is important to highlight the federal government's commitment to assisting in hydro developments, and I refer specifically to the province of Newfoundland and my region of Yukon. We should direct our attention to the decision to have Canada's coal generating plants meet a lower greenhouse gas emission standard within the next decade.

Countless initiatives are under way, including ongoing changes to the building codes and upgrading of our appliance standards. Conservation innovations are taking place throughout the country. Major research and development is taking great strides in curbing the pollution of the oil sands.

Honourable senators, there are many accomplishments Canadians can be proud of, and we all have a responsibility to let other parts of the world know about our successes.

Canada boasts one of the cleanest electricity systems in the world with three-quarters of our electricity supply emitting no greenhouse gases at all.

One of the turning points in the world's commitment to deal with the greenhouse gas emissions has been the inclusion of India, China and the United States, which are among the three highest emitters in the world, to the signing of the Copenhagen agreement. Canada was there, and we made our commitment to meet our obligations to reduce greenhouse gas emissions. These commitments are to reduce our emissions by 17 per cent compared to 2005 levels.

It should be pointed out that the latest greenhouse gas emission reports from April indicate that Canada's overall greenhouse gas emissions have been reduced by 6.5 per cent from the 2005 levels, and together with the provinces, we are already a quarter of the way to reaching our 2020 target.

Honourable senators, the point is that Canadians are working to meet our responsibilities.

The member who sponsored this bill described his bill as one small step and minimized the implications it will have. It was interesting to hear Senator Carignan's assessment that this bill would leave costs open-ended with no limits.

I think we would all agree this is irresponsible and would put the taxpayer in harm's way.

Senator Raine and Senator Brown questioned the science that substantiates the basis for this bill and the premise that the world is facing a catastrophe if we do not enact it. In Senator Mitchell's speech to this bill he went on further to say that those who do not agree with him are wilfully ignorant. As a member of the Senate, I take offence to this presumptuous and dismissive attitude. To infer that my colleagues do not care as much about the environment as he does is very misleading.

As a successful farmer, Senator Brown's livelihood depended on his ability to till the land year after year, and he had a responsibility to take care of the environment to ensure that he could farm every year.

Senator Raine has spent her whole life outdoors and, as we all know, is one of our gold medal Olympians.

I can assure all honourable senators that my colleagues care very much about the environment, not unlike anyone else in this chamber.

I would say to my friend on the other side of this chamber that he should stand back and be prepared to listen to another point of view, be respectful if he disagrees and at the same time be prepared to consider perhaps changing his position when the facts are presented.

We need to be able to have a conversation about these issues. However, I would also like to draw your attention to a well-known British environmentalist, James Lovelock. In a recent interview, he commented on the position that he took in respect to global warming.

He said:

The problem is we don't know what the climate is doing. We thought we knew 20 years ago. That led to some alarmist books — mine included — because it looked clear-cut, but it hasn't happened.

He went on to further state:

The climate is doing its usual tricks. There's nothing much really happening yet. We were supposed to be halfway toward a frying world now . . .

The world has not warmed up very much since the millennium. Twelve years is a reasonable time . . . it (the temperature) has stayed almost constant, whereas it should have been rising — carbon dioxide is rising, no question about that.

Honourable senators, this demonstrates the spectrum of opinions that exist and how positions are changing. The debate on the cause and implications of climate change is not going to be finalized any time soon. One only has to look at my region of Yukon. Animals like the sabre-toothed tiger were extinct due to climate change long before the industrial revolution. In fact, if you look back in time, our Parliament Buildings are built on a

region that was once covered by glaciers. These glaciers melted thousands of years ago. As James Lovelock stated, climate change takes place all the time, not necessarily with man's help.

However, at the same time, I do not think anyone will argue that we should do everything we can to mitigate greenhouse gas pollution and its effect. However, we have to ask ourselves whether this bill before the Senate is necessary to accomplish this. This bill does not reduce pollution. It allows people to get a tax credit for continuing to pollute. There is no incentive in this bill to reduce consumption.

At the end of the day, I believe this bill can legitimately be described as a backdoor carbon tax. Do Canadians want to pay more taxes? I say the answer is very clear: No.

In the last federal election, the majority of Canadians gave their answer, and they want to maintain a low-tax environment.

I should also point out that in recent provincial elections the economy has been in the forefront of Canadians' minds, and that is what these elections were fought on. Canadians do not want more taxes.

Honourable senators will also have to take into consideration Canada's financial future that we will face if we bring in a backdoor carbon tax measure such as this.

One only has to look at the financial crisis that the European Union is facing and ask if we want Canada to go down that road. I think the answer, honourable senators, is no.

One fact that the sponsor of this bill does not bring into the debate is the cost of a barrel of oil today. During the worst part of this past recession, the lowest market value for a barrel of oil went just below \$80 per barrel, a far cry from the \$20 a barrel during the worst times in past recessions.

I raise this fact because the days of cheap energy are over. The reality is that without additional taxes, the consumer is taking steps towards conservation to lower his or her costs, which in turn will lead to lower greenhouse gas emissions. This simple principle applies to the business community as well.

Honourable senators, conservation is the rule of the day. It is good economics, and it is called common sense. I think most Canadians would agree that they are doing their part and are well on their way to meeting their individual and collective environmental responsibilities.

I would also say to all of you that most Canadians would say there is no catastrophe around the corner. They would further say the measures contained in this bill are not necessary.

• (1540)

**The Hon. the Speaker *pro tempore*:** Before the Honourable Senator Lang began to speak, this motion had been adjourned in the name of the Honourable Senator Mockler. Did the Honourable Senator Mockler say whether he would like to have the matter adjourned in his name following Senator Lang's intervention?

**Senator Tardif:** Question.

[*Translation*]

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, we have discussed this, and I believe we are ready to send the bill to committee for study, even though the debate has been adjourned. We are ready for the question.

[*English*]

**The Hon. the Speaker pro tempore:** It has been moved by the Honourable Senator Mitchell, seconded by the Honourable Senator Banks, that Bill S-205, An Act to amend the Income Tax Act (carbon offset tax credit) be now read a second time.

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

**Hon. Senators:** Agreed.

**An Hon. Senator:** On division.

**The Hon. the Speaker pro tempore:** Carried, on division.

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

#### REFERRED TO COMMITTEE

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

(On motion of Senator Tardif, bill referred to the Standing Senate Committee on National Finance, on division.)

[*Translation*]

### STUDY ON AIR CANADA'S OBLIGATIONS UNDER THE OFFICIAL LANGUAGES ACT

#### THIRD REPORT OF OFFICIAL LANGUAGES COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Chaput, seconded by the Honourable Senator Mercer, that the third report of the Standing Senate Committee on Official Languages entitled: *Air Canada's Obligations under the Official Languages Act: Towards Substantive Equality*, tabled in the Senate on March 13, 2012, be adopted and that, pursuant to rule 131(2), the Senate request a complete and detailed response from the government, with the President of the Treasury Board being identified as the minister responsible for responding to the report.

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, the debate on this report is already at day 14. However, since I have not had time to prepare my notes for my speech on this important report, I ask for adjournment for the remainder of my time.

(On motion of Senator Carignan, debate adjourned.)

### FOOD BANKS

#### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Robichaud, P.C., calling the attention of the Senate to the importance of food banks to families and the working poor.

**Hon. Fernand Robichaud:** Honourable senators, the Deputy Leader of the Opposition wanted to postpone the debate, because I had not informed her that I wanted to speak to this issue. I therefore have only a few minutes left.

As I said on April 26, hunger is an ongoing problem. Every month, close to 90,000 Canadians — children, single-parent families, single people, poor workers and seniors — receive help from food banks.

This is Hunger Awareness Week, an initiative of Food Banks Canada. As Senator Mockler indicated, fasting for a day can help us to be more aware of what poor people and the children of poor families in this country experience day after day.

Honourable senators, we can fast for a day to show our support. We can even contribute to a food bank in our community. However, we must ask ourselves whether we are just doing it to ease our consciences and whether we will then just forget all about why we fasted. I will leave you to your thoughts on that.

Measures are needed at all levels of government to attack the root causes of hunger and poverty. In this regard, I invite you to consult the recommendations contained in the 2011 Food Banks Canada report and in the Eggleton-Segal report from the Standing Senate Committee on Social Affairs, Science and Technology entitled: *In From the Margins: A Call to Action on Poverty, Housing and Homelessness*. The purpose of these recommendations is essentially to eliminate poverty.

What we also need to remember and what gives us hope is that many individuals continue to believe in helping one another, in sharing with others, and that even more people are performing acts of great compassion and generosity in order to make a difference in their communities. Finding a long-term solution requires political will, political courage and compassion for others, including the poor of our country.

(On motion of Senator Moore, debate adjourned.)

### PREVENTION AND ELIMINATION OF MASS ATROCITIES

#### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Dallaire, calling the attention of the Senate to Canada's continued lack of commitment to the prevention

and elimination of mass atrocity crimes, and further calling on the Senate to follow the recommendation of the United Nations Secretary General in making 2012 the year of prevention of mass atrocity crimes.

**Hon. Roméo Antonius Dallaire:** Honourable senators, I began my presentation some time ago. I would now like to continue my speech on this subject, which, I believe, is particularly relevant.

[*English*]

The theme is Canada's continued lack of commitment to the prevention and elimination of mass atrocities and making 2012 as the year of prevention as requested by the United Nations.

Eighteen years ago, the United Nations eviscerated my mission in Rwanda, rendering it incapable of responding to the impending genocide. That catastrophic mission was the product of the unpreparedness of the world's countries to act in the face of genocide. Therefore, it is not lightly that I bring to the attention of honourable senators an issue of the highest importance not only to Canada's security and morality but to its international stature.

Our government still does not have the necessary tools within its foreign policy and defence architecture to take principled and informed action on potential and precipitating mass atrocities — genocide, war crimes, crimes against humanity and ethnic cleansing.

It is imperative that we take immediate action to remedy this lack of capacity. We cannot and must not ignore the progression of history and the demands of our time.

[*Translation*]

Remember, it was the unimaginable horrors of the Holocaust that demanded we vow "never again." That promise gave rise to the resolution condemning the crimes against humanity in 1946 and the Convention on the Prevention and Punishment of the Crime of Genocide and the Geneva Conventions in 1949.

[*English*]

Human frailty, fear and ignorance conspired against these noble laws. Our institutions reflected the fact that we were too insecure, impotent and afraid to do anything about threats that we treated as unknowable and untreatable — primordial evils. We acted as though if we ignored them, they would go away.

What I saw with my own eyes in Rwanda cannot be ignored. The ongoing conflict in the Democratic Republic of the Congo, from which I have recently returned and which is a direct result of genocide in Rwanda, shows us that atrocities do not disappear; they escalate.

These missteps once again reinforce the necessity of developing mechanisms for and of the prevention and elimination of mass atrocities.

• (1550)

Mechanisms such as the international criminal tribunals of Rwanda, Yugoslavia and Sierra Leone, which by 1998 were joined by the permanent International Criminal Court in The Hague, are working to eliminate impunity.

[*Translation*]

These mechanisms are our common heritage. We were at the forefront of establishing the International Criminal Court. And we are the ones who developed the responsibility to protect, which affirms:

That every State has the responsibility to protect its populations from mass atrocity crimes, that the international community has the responsibility to encourage and assist individual States in meeting that responsibility, and that if a State is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.

Responsibility to protect is now deeply embedded in the 2005 World Summit Outcome document, multiple Security Council and General Assembly resolutions, and the UN's Joint Office on Genocide Prevention and the Responsibility to Protect created by Kofi Annan in 2004.

What was only an idea 10 years ago is a reality today. As UN Secretary-General Ban Ki-moon recently said, "Responsibility to protect is here to stay."

[*English*]

Honourable senators, I am not simply asking you to be moved because you find egregious violations of human rights against fellow human beings detestable. I am calling on you to take notice of the global changes that necessitate us to view the prevention of mass atrocity crimes as central to our own interests. The issue of mass atrocities is moving governments and international organizations to action. There is progress. The question is: What about us?

Since 2005, mass atrocities have been central to the mobilization of the African Union and the UN in Sudan. I was recently there, including South Sudan and, of course, Darfur. More recently, they were the central determining factor in the 2011 UN-sanctioned NATO mission in Libya, which we commanded, and the French UN mission in Côte d'Ivoire, which ended in success. Both were supported by the Arab League and the African Union respectively.

We know mass atrocities are moving governments because we sent our young men and women to Libya. Yet, despite this, we are unable to confront these challenges in a principled and structured way. We have not taken any steps to institutionalize the prevention and elimination of mass atrocities within our foreign policy and defence strategies. Instead, we treat these crises as one-off situations that can be responded to on an ad hoc basis, depending on what other countries do and want to do. Essentially, we are going at it as a crisis management and not as a deliberate process within our institutions to give them the tools to be proactive and probably far more effective.

Internal conflicts are an unfortunate but real symptom of the shift from dictatorships to democracy. They are also characteristic of failed or failing states. We know this from experience and a great deal of analysis, particularly over the last twenty years since the end of the Cold War. Insofar as people continue to liberate themselves from the grips of authoritarian tyranny and insofar as certain states remain unable to fulfill their function, there will be violent conflict; and where there is violent conflict, there shall be mass atrocities, abuse of human rights and crimes against humanity. It is the nature of civil wars. It is the nature of failing states and of those who will achieve maintaining power at the destruction of their own people.

This has been proven time and time again, and it continues to be the case today. Look at Syria. We cannot in good faith preach the gospel of human dignity and democracy and then turn our backs on those who suffer the most extreme forms of persecution. To do so would not only be a disservice to the victims of mass atrocities but also a disservice to ourselves and our ethical standing in respect of human rights — an element that is a fundamental law of our nation.

[Translation]

Mass atrocities undermine global peace and security. They increase the likelihood of terrorism, create breeding grounds for diseases and pandemics, destabilize regions and spread conflict. These are matters of primary concern to any state, but especially to ours, which has a strong tradition of international leadership. We cannot allow ourselves to fall into a reactive posture. The future must not shape us; we must shape the future.

At the same time, we cannot be blind to the difficulties of preventing and eliminating mass atrocities. There is no quick fix. Our forces served honourably in Libya; we should be proud of what we did. We saved lives and helped a fledgling democracy.

But we need to ask ourselves if we could have done more and if we should be doing more right now. The protection of civilians does not begin and end with establishing a no-fly zone and hoping for the best.

Similarly, we must expand our sights beyond the costly and weighty choice to approach each crisis through the lens of intervention. Atrocities continue to happen in Sudan because the UN lacks the equipment to deploy the forces it already has on the ground. Should we be contributing more there? Are we doing enough with our diplomatic corps? We cannot approach these difficult and complex issues intelligently and effectively until we have a coherent policy for the prevention and elimination of mass atrocities. If we cannot have a leadership role, then let us participate in some other way.

[English]

Other countries around the world are already making the necessary changes to their institutions. Notably, President Obama recently released a presidential directive making the prevention of genocide and other mass atrocities a core national security interest and moral responsibility for the United States. It called for the creation of an interagency atrocity prevention board

[ Senator Dallaire ]

in the National Security Council and an interagency study for the development of an atrocity and prevention policy. It is a whole-of-government policy that he is seeking.

The U.S. Army Peacekeeping and Stability Operations Institute responded with a mass atrocity prevention and response option called the MAPRO strategy.

I request an extension, if I may.

**The Hon. the Speaker *pro tempore*:** The honourable senator has an extension of five minutes.

**Senator Dallaire:** Two weeks ago, President Obama announced that the primary pieces of their atrocity and prevention strategy are coming together. The main component is the Atrocities Prevention Board, which was accompanied by a number of concrete and innovative policies and mechanisms for the prevention and elimination of mass atrocities.

I do not have to impress upon honourable senators the significance of steps taken by the Americans, our closest allies, our partners in NATO and the predominant military and economic power in the world today, with whom we have conducted so many operations in the past.

I do want to impress on honourable senators that they took these steps in response to the demands of our times and through the consultation of recommendations from reports prepared by the Genocide Prevention Task Force in the U.S. as well as the Will to Intervene report in Canada. While the Will to Intervene report has found success at the highest levels of government in the U.S. it has received little to no response at the federal level here. The Will to Intervene report and recommendations came out of the Montreal Institute of Genocide and Human Rights Studies at Concordia University.

• (1600)

Honourable senators, are we to be blind to the pressing demands of our time and deaf to the recommendations of experts within our very borders? Shall we ignore what experience has taught us and what each coming day confirms? The problem of mass atrocities will not go away until we direct our efforts toward the prevention and elimination of them. Rwanda did not go away; the same is true for the crimes occurring today in Sudan, in the DRC and in Syria. God knows how many others are being lined up. We cannot ignore these situations and hope that they will go away or that their effects will not reach us. We cannot stumble into these situations with the hope that someone else will determine our foreign policy response. We cannot approach these challenges with the same mindset and tools that we have used in the past, that is, “ad hoc-ing” it and crisis managing it. To do so would not only be irresponsible, it would also be putting people, and the success of the mission, clearly at risk.

Because of time, I will go to my final comments. I have four recommendations that are part of the text, but I will go to my concluding remarks.

We must not undermine Canada’s heritage by failing to uphold the humanitarian values that we have worked so hard to establish. We must move beyond the ad hoc approach that has

characterized the Canadian response to mass atrocities thus far and develop the necessary tools within our foreign policy and defence architecture to take principled and informed action toward the prevention and elimination of mass atrocities. We have been in it since 1991. Surely we can bring all of this together after two decades of critical involvement.

In doing so, we shall not only be meeting our international responsibilities, we shall be re-establishing control over our own foreign policy and retaking our position as a global leader in the pursuit of international peace and justice.

The UN Secretary-General's Special Adviser on the Prevention of Genocide, diplomat, author, eminent scholar and friend, Francis Deng, was recently in Ottawa to help me mark the National Day of Remembrance and Action on Mass Atrocities. In discussing the situations in Libya and Syria, he concluded with these wise words:

But it also goes to show that prevention before situations escalate is the best course of action. Because if you engage

governments early on, before they become defensive, much can be done to avert this critical choice between either military engagement or indifference.

Deciding not to act is a decision.

Honourable senators, I have spoken to a great deal today, and you are probably wondering, "What now?" As a modest first step and with Dr. Deng's message in mind, I believe we should take the Secretary-General's recent challenge and make at least 2012 the year of prevention and ask that the Minister of Foreign Affairs consider moving down a road similar to the one President Obama has established with regard to mass atrocities and the prevention thereof.

(On motion of Senator Tardif, for Senator Eggleton, debate adjourned.)

(The Senate adjourned until Thursday, May 10, 2012, at 1:30 p.m.)

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