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(HANSARD)

Monday, December 10, 2012

The Honourable NOËL A. KINSELLA
Speaker

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(Daily index of proceedings appears at back of this issue).

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THE SENATE

Monday, December 10, 2012

The Senate met at 6 p.m., the Speaker in the chair.

Prayers.

[*Translation*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw to your attention the presence in our gallery of Jacques Chagnon, the speaker of the Quebec National Assembly.

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

Hon. Senators: Hear, hear.

The Hon. the Speaker: Honourable senators, I also wish to draw to your attention the presence in the Governor General's gallery of Catherine Coutelle, the chair of the France-Canada Interparliamentary Association; Claudine Lepage, the chair of the Groupe d'amitié France-Canada of the French Senate; Corinne Narassiguin, the chair of the Groupe d'amitié France-Canada of the National Assembly of France; Marc Le Fur, the deputy speaker of the National Assembly of France; Charles Revet, an alternate member of the Groupe d'amitié France-Canada of the French Senate; Alexandre Michel, the executive secretary of the FCIA; and Ilde Gorguet, the first secretary of the Embassy of France in Ottawa.

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

Hon. Senators: Hear, hear.

[*English*]

SENATORS' STATEMENTS

INTERNATIONAL CRIMINAL COURT

TENTH ANNIVERSARY

Hon. A. Raynell Andreychuk: Honourable senators, I rise today, on International Human Rights Day, to acknowledge the tenth anniversary of the International Criminal Court.

On the July 1, 2002, the Rome Statute entered into force with the ratification of the sixtieth country, establishing the ICC at The Hague. This achievement was in many respects the outcome of years of work by Parliamentarians for Global Action. Bringing parliamentarians together on a non-partisan basis, PGA built understanding of what the court can do. It is not retroactive, but complementary to the laws of nation states. It provides means to stop impunity for the kinds of horrific crimes we have witnessed in the past.

Working with domestic jurisdictions, the PGA helped countries implement the Rome Statue in their national systems and move towards a rules-based international order. It is a central feature of the Rome Statute that it is binding on all states that ratify it. Today, this spans 121 countries. It is also central to the court's purpose that it handles only the world's most heinous crimes: genocide, crimes against humanity and war crimes.

I noted this morning Canada's ongoing leadership in establishing the International Day of the Girl and in providing almost $14 million to the fight against sexual violence in emerging democracies.

The Rome Statute shares Canada's recognition of gender-based violence among the gravest crimes. It lists rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence as weapons of war. Such is the severity of the crimes that the ICC aims to eliminate.

It is critical that the ICC not limit its prosecutions to heads of government or state. Indeed, anyone who commits such crimes — from presidents, government officials and military generals to press officials and indeed any person — can be brought to trial at The Hague. No one can hide behind their title or lack thereof. This is critical to what I believe will be the ICC's highest achievement, which is to set an international standard so widely recognized and binding upon all people that ICC's very existence will act as a deterrent.

In July the ICC concluded its first trial. Thomas Lubanga Dyilo was sentenced to 14 years for crimes committed in the Democratic Republic of Congo. The ruling sent a strong message on the unacceptability of the use of children and rape in armed conflict. Warlords will have to take note, but there is still more work to do.

Honourable senators, we as the Senate and the Parliament of Canada need a renewed commitment to finish the universalization of this important court.

INTERNATIONAL HUMAN RIGHTS DAY

Hon. Joseph A. Day: Honourable senators, I rise to salute International Human Rights Day. Sixty-four years ago today, the United Nations unanimously adopted the Universal Declaration of Human Rights, which ranks high among international instruments of all time.

John Peters Humphrey, a native of Hampton, New Brunswick, was the principal author of the Universal Declaration of Human Rights. His original handwritten draft is in the archives at McGill University, where he was a law professor for many years.

A book entitled *The Boy Who Was Bullied* has recently been written by Anne Scott, of the same community of Hampton, New Brunswick. The book will be officially launched at the United Nations in New York on Wednesday of this week, in commemoration of International Human Rights Day.

Scott's book tells the story of John Peters Humphrey, starting with his childhood in Hampton, the tragedies he faced and his great achievements. The book's target audience is children, but I believe we can all benefit from the reading of this book, which sheds light on the pressing issue of bullying as a human rights issue. By telling John Humphrey's story, Scott sends the message to students that human rights education begins with them in the classrooms and the playgrounds.

The book highlights the many hardships that John Humphrey endured in his early life. Both of his parents died when he was still a young child, and due to a severe accidental burn his left arm was amputated when he was six years of age. Because he was different, John was bullied and taunted as a child, in spite of which, or perhaps because of which, he developed a keen sense of compassion in his later years.

John Humphrey went on to become a professor and dean of law and became a director of the United Nations Division for Human Rights. It was there that he prepared the first draft of the Declaration of Human Rights, working with several others, including Eleanor Roosevelt, who expressed her hope at the time that the declaration would become the international Magna Carta of human rights. It was adopted on 1948 on this day, December 10.

Copies of the book, *The Boy Who Was Bullied*, have been distributed in New Brunswick schools in both of the province's official languages.

Honourable senators, it is important to remember that human rights are not only meant to be protected in the international arena. We all have a commitment to respect human rights and to uphold the fact that all human beings possess the same rights, regardless of gender, race, or religious, cultural or ethnic background.

Scott's book educates young children in elementary and middle school about the importance of standing up for human rights. She shows how in the case of John Peters Humphrey, standing up against bullies and standing up for what is right is defending human rights, and that anyone — whether a child or a representative at the United Nations — has the power and the responsibility to defend human rights.

• (1810)

John Humphrey's legacy lives on in the practice of respecting human rights in Canada and worldwide and now, with Anne Scott's new book, *The Boy Who Was Bullied*, that legacy will be enriched by educating and inspiring our youth about the importance of respecting universal human rights, by taking a stand against bullying and by promoting respect and dignity. Congratulations to Anne Scott and best wishes for a successful launch of her book on Wednesday of this week at the United Nations.

Hon. Asha Seth: Honourable senators, December 10 marks International Human Rights Day. Today is also the last day of our 16 Days of Activism Against Gender Violence campaign. In light of these events and last week's National Day of Remembrance and Action on Violence Against Women, it is urgent that I bring your awareness and attention to an issue of violence affecting women of many ethnic communities.

During my medical career, I have witnessed a disproportionate number of ethnic women who have suffered discrimination, violence and domestic abuse at the hands of people they trusted. The children of abused women often suffer the effects as well. Domestic abuse calls to the police in Toronto, where I live, have nearly doubled from 2003 to approximately 6,500 in 2011.

What concerns me is that statistics prove nearly 40 per cent of South Asian women have suffered domestic abuse — an alarming number we cannot ignore. I believe we have an opportunity to protect women while maintaining cultural sensitivities. Many South Asian women feel as though they cannot escape domestic violence for fear of isolation from their community. We are seeing this pressure placed on younger children. Women are forced to marry men, many times much older than they are, often by marrying outside of the country. These are matters of great concern to me, to our leaders and to our citizens.

Honourable senators, as we pay tribute to the families who have been affected by ethnic gender-based violence, I urge you to consider what we can do to stop the cycle of violence. I advise you that I will continue to look into these matters because I feel passionate about protecting Canadian women from preventable violence.

Remember that God cannot be everywhere, so he created mothers.

Hon. Mobina S. B. Jaffer: Honourable senators, 64 years ago today, the United Nations General Assembly adopted the Universal Declaration of Human Rights. I want to thank honourable senators for supporting my motion for the Senate to join the UN General Assembly in recognizing December 10 as Human Rights Day. Every day we read about human rights violations that take place around the world. Today, however, I want to speak about the rights of Canadian children.

Canada signed the Convention on the Rights of the Child over 23 years ago. Article 19 of the convention declares that states have an obligation to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence.

Recently, the Standing Senate Committee on Human Rights visited Winnipeg, where we were invited to attend a children's powwow. When we entered the Indian and Metis Friendship Centre of Winnipeg, the hall was full of children and their teachers. Some of the children were dressed in beautiful, colourful outfits.

After a while, they were joined by mothers, aunts, grandmothers, grandfathers, great-grandmothers and great-grandfathers who also entered the room dressed beautifully in the most colourful outfits. We all got involved in the powwow. We visited arts and craft

tables, chatted with the children, and admired their outfits. I cannot describe to you the sense of the community coming together, even as visitors. We felt like we belonged.

While we were there, drums were constantly played. Elders and adults were teaching the young adults and children to play drums. Then the procession started. One by one, elders, teachers, other adults and children joined in. I marvelled at how even a two year old was dancing in her beautiful outfit to the rhythm of the drums.

Then came the banners. At first, I could not read the banners, but when I was able to read the message, I was in absolute disbelief. The banner said: "Powwow to Honour Children Who Have Died as a Result of Violence."

Honourable senators, this was in downtown Winnipeg, a Canadian community organization that was hosting a powwow to honour its children as a result of violence. We witnessed an incredible celebration of life, of community and of remembrance.

Honourable senators, I ask you to join me on this Human Rights Day and to commit to doing more in Canada to protect the rights of our children. All our children deserve to live their lives free from violence.

[*Translation*]

Hon. Roméo Antonius Dallaire: Honourable senators, it has been mentioned that today is the 64th anniversary of the Universal Declaration of Human Rights. I witnessed a mass abuse of human rights 18 years ago, when even some of the signatory countries allowed these rights to be horribly abused in an unprecedented manner through a genocide. This was a term that was believed to have disappeared from the language when the foundations of these human rights were defined.

On the contrary, the international community allowed this violence to take place and to happen again in other countries, such as Darfur. There are currently 2.5 million people who, because of their African Sudanese ethnicity, are being harassed, raped and killed by militias funded and supported by the Sudanese government. These people are being prevented from returning to their homeland, despite the fact that this is one of the fundamental rights included in the declaration that we signed and promised to help implement.

It is true that it took 34 years for our own country to get its Charter, but we have it nonetheless. However, there are still shortcomings in the international community for which we should be more actively and determinedly trying to find solutions.

I would like to applaud the initiative of the International Criminal Court in The Hague that, with the help of the Rome Statute, led to the elimination of the possibility of impunity. I would also like to applaud our country's initiative with regard to many conventions, such as the Convention on the Rights of the Child and the part of that convention that prevents us from recruiting, training and using children as weapons of war or, in other words, child soldiers. Some 40 per cent of the 250,000 child soldiers reported annually are girls who are used not only as weapons but also as bush wives and sexual objects.

• (1820)

Rape has now become a crime against humanity and is considered an act of torture.

However, there are other initiatives that we did not follow through on. I am referring, for example, to the Durban Programme of Action, which we abandoned. We should have persevered and continued the discussion of the evolution of human rights. By abandoning this debate, we abandoned many other initiatives in this area. However, in this place, we have taken some initiatives that I would like to point out to you.

[*English*]

I would like to call the attention of honourable senators to the All-Party Parliamentary Group for the Prevention of Genocide and Other Crimes Against Humanity, which meets regularly and will be meeting tomorrow morning at 7:30 in Room 256-S. The Ambassador of Mali will come and explain that the civil war going on in that country is religious-based and not only power-based.

We can continue to do more for human rights by engaging in the prevention of massive abuses of human rights by involving ourselves more in genocide prevention in this country. Thank you.

ROUTINE PROCEEDINGS

CANADA LABOUR CODE EMPLOYMENT INSURANCE ACT

BILL TO AMEND—SEVENTEENTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE PRESENTED

Hon. Kelvin Kenneth Ogilvie, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Monday, December 10, 2012

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

SEVENTEENTH REPORT

Your committee, to which was referred Bill C-44, An Act to amend the Canada Labour Code and the Employment Insurance Act and to make consequential amendments to the Income Tax Act and the Income Tax Regulations,

has, in obedience to the order of reference of Tuesday, December 4, 2012, examined the said bill and now reports the same without amendment but with observations, which are appended to this report.

Respectfully submitted,

KELVIN K. OGILVIE
Chair

(*For text of observations, see today's* Journals of the Senate*, p. 1803*.)

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

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

[*Translation*]

FEDERAL FRAMEWORK FOR SUICIDE PREVENTION BILL

EIGHTEENTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE PRESENTED

Hon. Kelvin Kenneth Ogilvie, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Monday, December 10, 2012

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

EIGHTEENTH REPORT

Your committee, to which was referred Bill C-300, An Act respecting a Federal Framework for Suicide Prevention, has, in obedience to the order of reference of Thursday, November 1, 2012, examined the said bill and now reports the same without amendment.

Respectfully submitted,

KELVIN K. OGILVIE
Chair

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

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

[*English*]

COMMONWEALTH PARLIAMENTARY ASSOCIATION

BILATERAL VISIT TO INDIA, FEBRUARY 17-26, 2012—REPORT TABLED

Hon. Terry M. Mercer: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Commonwealth Parliamentary Association to the Bilateral Visit to India, held in New Delhi, Amritsar, Mumbai and Chennai, India, from February 17 to 26, 2012.

QUESTION PERIOD

NATIONAL DEFENCE

AIRCRAFT PROCUREMENT

Hon. Terry M. Mercer: Honourable senators, when we have asked about the F-35 program in the past, we have often been warned of the dangers that withdrawing from the process would do to Canadian industry. In fact, the Prime Minister himself had this to say, honourable senators:

> I do find it disappointing, I find it sad, that some in Parliament are backtracking on the F-35 and some are talking openly about cancelling the contract, should they get the chance.
>
> Cancelling a contract that way would be completely irresponsible. The opposition parties must stop playing partisan games with these crucial contracts.

Could the Leader of the Government in the Senate explain how the Prime Minister of Canada could make this statement in the middle of an election campaign when he knew full well the problems with the joint strike fighter program, especially now that we find ourselves only a year later going down the exact road that he said would never happen?

Senator Munson: What is a billion?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for that question. The exact same question was asked by one of the honourable senator's colleagues in the other place; I happened to be watching Question Period earlier today. The Prime Minister answered the question as I will answer it right now. The National Fighter Procurement Secretariat is in place to ensure transparency and due diligence in the decision to replace our CF-18s. We are committed to completing the seven-point plan and moving forward with our comprehensive, transparent approach to replace Canada's CF-18 fleet. Our seven-point plan includes a review of options that will not be constrained by the statement of requirements.

As was reported in the other place when the Prime Minister answered the question earlier, there will be a transparent, open report made on this before Parliament adjourns for Christmas.

Senator Mercer: I am tempted to say this replaces the "Rick Mercer Report" there is so much humour involved here.

I have a supplementary question, honourable senators. According to the Department of National Defence, the consequences of withdrawing from the joint strike fighter production and the follow-on development memorandum of understanding would be that Canada will have to complete payments on all joint activities that the partnership has already contracted. Additionally, if Canada has already submitted a procurement request for aircraft, Canada would be responsible for all the costs incurred and any other costs resulting from the termination of the order. In addition, Canada's industrial plants with the prime contractors would be suspended.

Can the government tell Canadians, if there is a monetary penalty, are they on the hook now because the PMO has decided to look at other options?

Senator LeBreton: Many times I have received a question from the honourable senator's colleague, Senator Moore, and I have put on the record a few times that our seven-point plan includes a review of options.

• (1830)

The government has received a report from KPMG and, as I indicated, we will be providing a comprehensive public update on the KPMG report. Before we jump to conclusions about what is in the report or respond to some of the hysteria and headlines in the media, let us wait to see what is presented before Parliament before we rise for Christmas.

Senator Mercer: The government has maintained a come-hell-or-high-water stance on the Canadian participation in the F-35 program since 2006. Needless to say, Canadian businesses have taken the government at its word and have geared their efforts for future contracts around the F-35 program.

Indeed, several were involved in a futures contract conference with Lockheed Martin just last month.

Has the government considered their stake in this? Has the government considered the stake that Canadian business has in this and the plans they have put in and around the F-35 program?

Senator LeBreton: Senator Mercer is jumping around on this matter. Bear in mind, honourable senators, that Canada's involvement in the F-35 was started under the previous government.

Obviously, the government listened to the recommendation of the Auditor General and put in place the seven-point plan. I would suggest that honourable senators not be swayed by headlines about meetings that did not take place or decisions that we are not aware of one way or the other, and to wait for the report, which will be presented to Parliament before the House of Commons rises for Christmas.

Senator Mercer: Honourable senators, the Minister of Defence had stated in no uncertain terms that the F-35 is Canada's only choice of aircraft and to consider other options is to put our pilots in jeopardy. The minister claimed that a competition had been held, and then he claimed we did not need one. One was held, but we did not need it. The minister claimed that interoperability was at stake. The minister said the plane would cost only $62 million per unit. The minister said all of these things and none of them proved to be accurate.

Can the Leader of the Government in the Senate give me just one good reason why the Minister of National Defence has not been fired?

Senator LeBreton: Honourable senators, the government will not purchase a replacement for the aging CF-18s until our seven-point plan is completed, including an independent verification of costs and a full options analysis. The options analysis is a full evaluation of choices, not simply a refresh of the work that was done before.

Honourable senators, I think most reasonable people would acknowledge that, as a result of the Auditor General's report last spring, the government stopped the process and set up the secretariat for the oversight. I would suggest to honourable senators, without jumping to conclusions, that we let the secretariat complete its work and see what KPMG has to say, which, of course, will be released before we break for Christmas.

Hon. Jim Munson: My question is for the Leader of the Government in the Senate. Here are words from then Associate Minister of National Defence, Julian Fantino. In November 2011, he said:

> We will purchase the F-35. We're on record. We're part of the crusade. We're not backing down.

This is the minister at that time. Tellingly, Minister Fantino may have overshadowed what was to come. Like the F-35 program, after some early successes, these later crusades were largely failures.

The minister also added:

> There's a plan A, there's a plan B, there's a plan C, there's a plan Z and they're all F-35s.

I take it from this that the minister knows both his ABCs and that the F-35 was, at that time, the only option for Canada.

Despite the words about hysteria in the media, there are a lot of questions of bungling and what has happened in this F-35 program. How does the leader explain those comments, which were made not very long ago, in light of the recent developments?

Senator LeBreton: Honourable senators, I was not talking about hysteria in the media. I was talking about headlines in the newspapers in the last few days.

Obviously, something did happen, honourable senators, and it was the Auditor General's report. Senator Munson is quoting from the late fall of 2011; we are dealing with the Auditor General's report from earlier this year. As a result of the Auditor General's report, when he made a specific recommendation for the full lifespan of the aircraft, the government put in place the National Fighter Procurement Secretariat to look at the whole program to ensure transparency and due diligence in the decision

to replace the aging CF-18s. We are committed to completing the seven-point plan and moving forward with a comprehensive and transparent approach to replacing the CF-18s. Our seven-point plan, as I have said many times, so it should not come as a surprise to anyone, includes a review of the options that will not be constrained by the statement of requirements.

Again, we have only a few more days before we rise for Christmas. The government is committed to providing KPMG's report, the comprehensive review of the CF-18 replacement program, and I would ask honourable senators to await the release of that report before jumping to any conclusions.

Hon. Joan Fraser: Honourable senators, I would like to come back to that quotation from Mr. Fantino that my colleague Senator Munson read.

There is a sentence in it that strikes me as being perhaps very revealing when he said, "We're part of the crusade." Can the leader tell us what he meant by "the crusade"? Am I possibly correct that the whole concept of the purchase of the F-35s was not just a rational defence procurement decision, but a crusade? Is that what got us into the mess we are in now where the *National Post* is telling us it is going to cost $45 billion?

Senator LeBreton: I would suggest that honourable senators wait until we release the KPMG report.

With regard to Minister Fantino's choice of words, obviously, we have not purchased any aircraft. This was a program that the previous government embarked upon. It was a program that was paused because of the Auditor General's report, which the government took very seriously. That is why we put in place the National Fighter Procurement Secretariat to ensure transparency and due diligence on the decision to replace the CF-18s.

I would suggest to the honourable senator, as I did to Senator Munson and Senator Mercer, that Christmas is coming, Parliament will adjourn later this week, and we do not have many more days to wait for the KPMG report. I would appreciate a little patience. I am sure we will get the information and then be able to properly assess where we go from here.

Senator Fraser: The leader keeps telling us to be patient and wait for the KPMG report, but can she explain why we do not already have it? The government has had it for some time now. Selected journalists appear to have been apprised of its contents. Why not Parliament?

Senator LeBreton: I do not see any evidence that journalists have the report. The fact of the matter is the government has the report, will be responding to the report, and, as indicated, will be responding to it before we rise for Christmas.

• (1840)

Hon. Jane Cordy: Honourable senators, the Leader of the Government in the Senate has spoken about the process to ensure transparency and due diligence, so can she let the chamber know when the government received the KPMG report?

Senator LeBreton: No, I cannot.

Senator Cordy: Does she not know when the government received the report? She spoke about the importance of transparency and due diligence. Does she know when the government received the report?

Senator LeBreton: I stand by the answer I gave a few moments ago: No, I cannot.

Senator Cordy: I guess she will not.

Senator LeBreton: No, I said "cannot."

Senator Cordy: So much for transparency.

It is a shame that the government has to bring in a special process to ensure transparency and due diligence. One would hope the government would always be transparent and conduct its due diligence, but I guess they have to bring in a special process to make that happen.

Was there a contract signed for the F-35s?

Senator LeBreton: The fact is that we are being transparent and open. The Auditor General clearly indicated that he wanted the full lifespan costs for the replacement, including operational costs.

It is very clear, as we have said many times, all members of the government, that no contracts have been signed. The fact of the matter is that when the Auditor General brought in his report earlier this year, the government obviously realized that there had to be some pause to look at the whole program. We remember the stories in the newspapers about Public Works and National Defence.

Obviously, it was necessary to put the secretariat in place and call in an independent, outside organization like KPMG. They have submitted their report. As I have indicated many times during this Question Period, that report will be fully released before Parliament rises for Christmas.

Senator Cordy: On December 13, 2010, Minister MacKay said in the other place:

> Mr. Speaker, let us look at the actual contract. What the Canadian government has committed to is a $9 billion contract for the acquisition of 65 fifth generation aircraft.

The Prime Minister also made reference to a contract being signed. Was there or was there not a contract signed?

Senator LeBreton: I think it is pretty clear, and we have made it pretty clear, that no contract has been signed.

Senator Cordy: It really is not very clear. We have been asking questions for two years now and we have not been getting any answers. Senator Tkachuk says it is ridiculous to ask questions. We asked them before; we did not get the answers. We are asking them now; we are still not getting answers.

Could the leader tell us, in the spirit of openness and accountability, how much money the government has spent to date on the F-35s?

Senator LeBreton: Again, when the Auditor General reported last spring, the government brought in a seven-point plan, put in place an oversight secretariat and called in KPMG, like any responsible government would do. That is what we did.

The KPMG report, as the government, the Prime Minister, the Minister of National Defence and the Associate Minister of National Defence, Mr. Valcourt, have all said, will be tabled in Parliament before we rise for Christmas.

Hon. Roméo Antonius Dallaire: Honourable senators, let us take a look, if we may, at this problem from maybe 35,000 feet, from a higher level, inasmuch as this is where we want to be in the battle space with this issue. There is not necessarily a question on the contractual arrangement because I am of the opinion that maybe we are going through this process because in the fiscal framework of the Canada First Defence Strategy, this aircraft is unaffordable. By delaying it with another process for a couple of years, it may fall within an affordable line at that time.

However, it seems to me that this project is also indicative of many other projects that are putting in jeopardy the Canada First Defence Strategy and putting in even more jeopardy the government's defence policy at a time when we have been expecting an update of that, if not a rewrite — in fact, it could use a rewrite — and that has been delayed also. The minister has been putting that off, and we are not sure why that is so. Maybe it is because of the budgetary requirements and that they are still trying to figure out the full depth of budget cuts they want to do in Defence.

To the minister, is it fact that the procurement program or, put another way, the capital program behind the Canada First Defence Strategy is absolutely unaffordable, far beyond simply the budget cuts, that this project, like many others, has been moved to the right or downscaled, that it now requires a review by the government and that the government is stalling in wanting to give us that review?

Senator LeBreton: No money has been spent on a contract to replace the CF-18s.

With regard to the Department of National Defence, honourable senators, since we took office, the defence budget has grown substantially every year. We have delivered planes, helicopters, trucks and tanks; we have committed to care for ill and injured personnel; and we have invested in infrastructure to meet the needs of our men and women in uniform as they work and train. We did not, like the previous government, send them off to Afghanistan ill-equipped with the wrong uniforms and vehicles that were not armoured.

With regard to procurement, our focus in the future is on procuring necessary equipment at the right price while protecting taxpayers. Unlike the previous government, as I mentioned a moment ago, we actually buy equipment for the military. For example, we have delivered four C-17 Globemasters, 17 new Hercules aircraft, 1,300 new medium-support vehicles, and Leopard 2 tanks.

Therefore, honourable senators, as I have pointed out before in terms of the budgetary obligations of the government, all departments are contributing to it, but I would argue strenuously that the Department of National Defence has been very well looked after in the budgeting of this government.

Senator Dallaire: Let me put it this way: This government better have done that because while we were at war, they were in power and they did not decide to pull us out; they decided to continue the war effort. Therefore, yes, to put equipment in the hands of the troops at that time, not to say it was done under duress, but it was done under absolute requirement because we were actually facing an enemy.

That capital program did not start the day they came to power. It started years beforehand, and in fact the Liberal Party in 2002 commenced the revitalization of the air force and the army, and this government accelerated it under those conditions, absolutely.

It is interesting that in 1987 the Conservative government brought in a white paper, and two years later it crashed because of budgetary concerns. It was unaffordable. At that time, there was 3 per cent annual growth. In 2008, this government brought in the Canada First Defence Strategy. In 2010, they started chopping that one as well. In the same light, that strategy required 2 per cent annual growth and it was unaffordable. We argued that it was unaffordable, but they said no, it is affordable. Now we have budget cuts on top of that, and we are seeing these projects being downscaled and pushed to the right.

Without a policy framework, this government will continue giving us these nuts and bolts responses to significant expenditures and requirements to be met by the forces.

• (1850)

Can the leader tell us where the new defence policy framework for all this stuff that is going on sits today and whether she will ask the minister to table it or present it soon?

Senator LeBreton: Honourable senators, it was the previous government that sent Canada to war in Afghanistan. They sent them into the desert with green uniforms. There was no heavy-lift aircraft capability to get our equipment there. The land-use vehicles they were using were like tin cans. They did not protect anyone. They did not have proper tanks.

When we came into government, all this we committed to the Canadian Armed Forces, including getting heavy-lift aircraft. We did not have to stand in line and wait for the Russians to come and pick up our equipment. We were also capable, with the C-17s, of responding immediately to disasters like Haiti, unlike what the previous government did during the tsunami in Indonesia.

Honourable senators, I think it has been very clear that the monies budgeted to the Department of National Defence have been properly utilized. They have provided the equipment and the backup for the men and women in our forces.

With regard to the budgets, all departments have scaled back on expenditures. I can assure honourable senators that the Department of National Defence, as I mentioned a moment ago with regard to our procurement, is completely capable of fulfilling all its duties within the mandated budget it has been given.

Senator Dallaire: Just a few clarifications, if I may. In terms of the C-17 purchase, the project had been in existence for 10 years and was making its way, just as the F-35 will be 10 years in gestation, because those major projects need time. Yes, the present government acquired them while in power. The tanks were already there. They were upgraded, and then new-generation tanks were purchased, which was fine, to replace the upgraded ones. The LAV IIIs were already there, and there was a need to upgrade because of the threat of that mission. The government did that, but that was also already in the mill.

The government has implemented the capital program that the Liberal Party created and has accelerated it. That is fine. I am not fighting that; I am just asking whether it is affordable. Is the leader able to say that the Canada First Defence Strategy is affordable? We are seeing all those projects moving to the right and being downscaled; and this F-35 exercise, to me, is simply moving the project to the right a couple of years because the government does not have the funding envelope in the years it had planned to be able to expend that amount of money.

Can the leader say that all that stuff is not putting the Canada First Defence Strategy in jeopardy? The minister himself said that he wanted a review and that he wanted to table a review, but we are still waiting for it; it is months late. Can the leader tell us when the review will come out?

Senator LeBreton: I hope everyone noted that Senator Dallaire talked about the F-35.

Honourable senators, when we came into government, we increased funding and support for the Canadian Armed Forces. We well remember the words of the former Chief of the Defence Staff, "the decade of darkness." When one talks about coming into office, what our government did not do is something that the former government did when they came into government in 1993, when they scrapped the helicopter program at great cost to the Canadian taxpayer.

Some Hon. Senators: Shame!

Senator Dallaire: I think it is important to read General Hillier's books, because the decade of darkness we talk about is the 1990s. One of the reasons we ended up, as the leader articulated, in a decade of darkness is that by 1993 this country was going broke and in fact did not have the economic credibility to buy a jeep, let alone to buy sophisticated equipment. Yes, massive cuts happened in the 1990s and created that situation in the Department of Defence, which made it very difficult for them to achieve the missions.

Fine; it was recognized in 2002. Capital programs were built up. The funding line that the government took over had already been escalated by the Liberal Party, as was the capital program, with the only exception being the Chinooks. The Chinooks had been sold to the Dutch and we were not looking at replacement at that time. The government brought in Chinooks, yet we have still not received them. We just rented six, and one got shot down. The war is over, but we are still waiting for the Chinooks.

Could the leader put the question to the minister whether he will present a modified policy paper on the Canada First Defence Strategy, which is now deemed to be unaffordable?

Senator LeBreton: White papers, green papers, blue papers; they are all useless. There is no doubt, honourable senators, and I think it is obviously acknowledged by many people, that there has not been a government — the previous government or the government before that or the government before that — that has made a commitment to the Canadian Armed Forces to the degree that this government has.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that, when we proceed to Government Business, the Senate will address the items in the following order: Bill C-45, Bill C-24, Bill S-12, Bill C-27, Bill C-28, Motion No. 53, committee reports 1 to 5 and, lastly, Inquiry No. 3.

[*English*]

JOBS AND GROWTH BILL, 2012

SECOND READING

Hon. JoAnne L. Buth moved second reading of Bill C-45, A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures.

She said: Honourable senators, I am honoured to sponsor and commence debate on Bill C-45, the jobs and growth act, 2012, legislation to implement parts of Canada's Economic Action Plan 2012.

When I first read this bill, I was impressed with how the various components provide for the individual, for businesses and for our country. This legislation will protect the most vulnerable in our society, provide support for small businesses and ensure that Canada will maintain its economic record — an economic record born from the sound fiscal plans of our Conservative government.

With the global economic recovery still fragile, our government remains focused on ensuring that Canada continues to offer the best environment to create jobs and help businesses grow. Jobs sustain us, provide for a better future and keep our economy strong.

It is a simple concept, but without jobs, there are no taxes to provide for our health and social programs and to keep our economy going. On that front, our performance has demonstrated that we are on the right track for the Canadian economy and for Canadian families.

[*Translation*]

Canada has one of the best economic records in the industrialized world, and all Canadians are benefitting from it as we once again face economic uncertainty beyond our borders.

[*English*]

You will recall how in 2009, in an unprecedented global crisis, our government responded with Canada's Economic Action Plan. The plan supported the economy, protected Canadian jobs during the recession and invested in long-term growth. The plan's successes quickly became clear.

• (1900)

For example, since July 2009, employment in Canada has increased by over 880,000 — the strongest job growth among G-7 countries over the recovery period, with over 90 per cent of jobs created in full-time positions. In fact, 59,300 jobs alone were created this past month, in November.

Honourable senators, there are more positive statements about our successes. The World Economic Forum says our banks are the soundest in the world. *Forbes Magazine* ranked Canada as the best country in the world to do business. The OECD and the IMF predict our economy will be among the leaders of the industrialized world over the next two years. Our net debt-to-GDP ratio remains the lowest in the G-7, by far. All three of the major credit rating agencies — Moody's, Fitch, and Standard and Poor's — have reaffirmed Canada's top credit rating. The list goes on and on.

What is more, a growing number of international leaders are pointing to Canada as an exemplary model for the global economy. In the words of German Chancellor Angela Merkel:

> Canada's path of great budgetary discipline and a very heavy emphasis on growth and overcoming the crisis, not living on borrowed money, can be an example for the way in which problems on the other side of the Atlantic can be addressed. This is also the right solution for Europe.

While praise for our achievements is encouraging, even a cursory glance at news headlines about the economic turmoil in Europe and the United States — our largest trading partners — underscores the need to avoid becoming complacent about our economic future. There are many challenges and uncertainties still confronting the economy and Canada is not immune to these global pressures.

Honourable senators, it is for these very reasons that we introduced Canada's Economic Action Plan 2012 and why its implementation, which includes Bill C-45, is so fundamental to Canada's continued economic well-being.

[Senator Buth]

Bill C-45, the proposed jobs and growth act, 2012, includes initiatives that will build a strong economy and create jobs; support Canadian families and communities; promote clean energy and enhance the neutrality of the tax system; and respect taxpayers' dollars. Specifically, this legislation will build a strong economy and create jobs by extending the job-creating Hiring Credit for Small Business, which will benefit over 500,000 employers and help them create jobs; promoting interprovincial trade; improving the legislative framework governing Canada's financial institutions; facilitating cross-border travel; removing red tape and reducing fees for Canada's grain farmers; and supporting Canada's commercial aviation sector.

The bill supports families and communities by improving Registered Disability Savings Plans; helping Canadians save for retirement by implementing the tax framework for Pooled Registered Pension Plans; improving the administration of the Canada Pension Plan; and strengthening the Canadian Environmental Assessment Act, 2012.

Bill C-45 promotes clean energy and enhances neutrality of the tax system by, among other measures, expanding tax relief for investment in clean energy generation equipment and phasing out tax preferences for the mining and oil and gas sectors. The bill also respects taxpayers' dollars through changes such as taking landmark action to ensure the pension plans for federal public sector employees are sustainable and financially responsible; closing tax loopholes; and eliminating duplication.

In my remaining time, I want to highlight just a few of the plan's key initiatives in more detail, starting with key reforms to the Registered Disability Savings Plan, or RDSP.

In Budget 2007, we announced the introduction of the RDSP to help parents and caregivers save to ensure the long-term financial security of children with a severe disability. The government reviewed the RDSP program in 2011 to ensure that it continues to meet the needs of Canadians with disabilities and their families. Based on feedback received during the review, the proposed jobs and growth act, 2012, proposes a number of measures to improve the plan, including providing greater flexibility to make withdrawals from certain RDSPs.

Under current rules, any Canada Disability Savings Grants, or CDSGs, and Canada Disability Savings Bonds, CDSBs, paid into an RDSP in the preceding 10 years generally must be repaid to the government if any amount is withdrawn from the RDSP; if the RDSP is terminated or deregistered; or the RDSP beneficiary ceases to be eligible for the Disability Tax Credit or passes away. This is known as the "10-year repayment rule."

To provide greater access to RDSP savings for small withdrawals, while still supporting the long-term savings objectives of these plans, Bill C-45 proposes to introduce a proportional repayment rule that will apply when a withdrawal is made from an RDSP.

The proportional repayment rule will require that for each $1 withdrawn from an RDSP, $3 of any CDSGs or CDSBs paid into the plan in the 10 years preceding the withdrawal be repaid, up to a maximum that would be repaid under existing rules.

Similarly, today's legislation proposes changes to the rules governing maximum and minimum withdrawals from RDSPs. These changes will provide greater flexibility in making withdrawals from an RDSP and will ensure that RDSP assets are used to support the beneficiary during their lifetime.

I want to stress for senators how important this program and these improvements are to Canadians with disabilities and their families. In the words of the *Toronto Star*'s Alison Griffiths:

> The RDSP . . . means that the disabled have a shot at accumulating a retirement nest egg, rarely possible for a group with low or non-existent earned income.

Honourable senators, clearly this bill provides essential tax relief for the most vulnerable Canadians, but it also provides a new opportunity for many more Canadians to save for their retirement.

Today, I am very pleased to note that the government is also implementing changes to Canada's pension landscape that will make saving for retirement easier for millions of Canadians.

Bill C-45 will make changes to the Income Tax Act and the Income Tax Regulations to accommodate Pooled Registered Pension Plans, or PRPPs, a new low-cost private pension option for the millions of Canadians currently without access to a workplace pension plan, including employers, employees and the self-employed.

This is important because it is estimated that more than 60 per cent of Canadians do not have access to a workplace pension plan. While participation in retirement savings vehicles like pension plans and Registered Retirement Savings Plans, or RRSPs, is reasonably high for middle- and higher-income earners, some Canadians may not be taking full advantage of these personal retirement savings opportunities.

With this initiative, our government is helping to ensure that our retirement income system remains effective and well-balanced in helping Canadians achieve their retirement goals, while securing its long-term strength and sustainability.

Honourable senators, these are all important changes that will ensure that PRPPs will be a reality in the very near future. In the words of the Canadian Federation of Independent Business:

> RPPs will be an excellent addition to the retirement savings options for small business owners and their employees. Small firms tell us that the main reasons 80 per cent of them do not have any form of company retirement plan for the business owner or their employees are the costs and administrative burden of offering a plan. . . . we expect PRPPs to move the ball forward on both fronts.

Looking to the future, it is also important to focus on the drivers of growth and job creation: innovation, investment, education, skills and communities.

The new measures in Economic Action Plan 2012 will strengthen and draw upon entrepreneurship to drive Canada's economy. Canada's businesses, entrepreneurs and innovators have proven time and again that they are up to the task, provided they are given the opportunity.

Before coming to the Senate, I worked in one of the most innovative agricultural commodities — canola. Canola was designed by Canadian researchers and now provides a healthy culinary oil for Canadians and consumers around the world. I personally know that the support of this government for innovation is very important for the development of new ideas, new industries and new jobs.

• (1910)

For starters, this transformational agenda includes a new approach to supporting entrepreneurs, innovators and world-class research. As a world leader in post-secondary research, combined with a highly skilled workforce, Canada has the strong fundamentals required for groundbreaking innovation. Our government provides significant resources to support research, development and technology. In fact, Canada invests more in higher education research and development as a share of the economy than any other G7 country.

Our Scientific Research and Experimental Development Tax Incentive Program, commonly known as SR&ED, which provided more than $3.6 billion in tax assistance in 2012, is currently one of the most generous systems in the industrialized world. Bill C-45 proposes design improvements that will better align the tax credits received with the actual business expenditures on SR&ED projects, as well as a measured reduction in the general tax credit rate.

These improvements will affect the calculation of overhead expenditures and arm's-length contract payments. First, to limit instances where the rules result in tax credits being provided for overhead costs that exceed the actual costs incurred, today's legislation proposes to gradually reduce the "prescribed proxy amount" — used to compute overhead expenditures under the so-called "proxy method" — from 65 per cent to 55 per cent of direct labour costs.

Second, to remove recognition from SR&ED relief for the profit element of arm's-length contract payments, today's bill proposes to allow only 80 per cent of these contract payments to be used for the purposes of calculating the SR&ED tax credits. This change is consistent with the current tax treatment of non-arm's-length contracts and will target the tax credits to SR&ED expenditures incurred, as opposed to profit margins.

The legislation before us today also proposes a reduction in the general SR&ED investment tax credit rate. The recent corporate income tax rate reductions, from over 22 per cent in 2007 to 15 per cent in 2012, have effectively increased the relative generosity of the SR&ED tax incentive program and have generated growing pools of unused investment tax credits. Effective January 1, 2014, the general SR&ED investment tax credit will be reduced from 20 per cent to 15 per cent.

[*Translation*]

I would like to assure you that the savings generated by these measures will be invested in programs to provide direct support for business innovation in Canada.

[*English*]

Finally, honourable senators, this past August, our government also launched a study to better understand why firms choose to hire SR&ED consultants to prepare their SR&ED claims on a contingency fee basis and determine whether any action is required. Small and medium-sized businesses sometimes rely on tax preparers charging on a contingency fee basis to prepare their SR&ED claims. Commentators have suggested that these fees may be as high as 30 per cent of SR&ED benefits, or maybe even more. The government is concerned that high contingency fees charged by tax preparers may be diminishing the benefits of the SR&ED tax incentive program to Canadian businesses and the economy.

Honourable senators, we are making it easier for Canadian businesses to compete successfully in an interconnected global marketplace and more attractive for others to invest here in Canada. The end result, of course, is more and better jobs for Canadians and a healthy and thriving economy. However, at the same time, it is important to strike a balance between our economic and our environmental priorities. Canada is an energy superpower with one of the world's largest resource endowments of both traditional and emerging sources of energy. We are increasingly regarded as a secure and dependable supplier of a wide range of energy products.

Since 2006, the Government of Canada has taken significant steps to establish our country as a global clean energy leader through regulatory actions, investments in technology and innovation, and broad-based incentives. The government has also supported these sectors through the tax system, by expanding eligibility for the accelerated capital cost allowance for clean energy generation equipment. The accelerated CCA for clean energy generation equipment applies to a broad range of specified equipment that generates or conserves energy by using a renewable energy source, using fuels from waste or making efficient use of fossil fuels. Through the jobs and growth act, 2012, the government proposes to expand this initiative.

Waste-fuelled thermal energy equipment produces heat using waste sources. Today's legislation proposes to expand the eligibility of the accelerated CCA for clean energy equipment to allow waste-fuelled thermal energy equipment to be used in a broader range of applications, including space and water heating. For example, wood waste could be used as an alternative to heating oil for space and water heating in a shopping centre.

Clearly, today's act — along with Economic Action Plan 2012 — will further unleash the potential of Canadian businesses and entrepreneurs to innovate and thrive in the modern economy for the benefit of all Canadians for generations to come.

Honourable senators, through this comprehensive and ambitious plan, we will maintain and strengthen our advantages by continuing to pursue those strategies that made us so resilient in the first place: responsibility, discipline and determination.

This bill marks an important milestone in our long-term commitment to jobs, growth and long-term prosperity and a brighter future for all Canadians.

Hon. Joseph A. Day: I wonder if the honourable senator would entertain a question.

Senator Buth: I would be pleased to do so.

Senator Day: Thank you. I followed the honourable senator's speech with a great deal of interest, as she might understand, and I thank her very much for her presentation as the sponsor of the bill. However, when she got to the SR&ED, the Scientific Research and Experimental Development program, she talked about the contingency fee initiative. I did not recall that being discussed when we dealt with the bill, but I might have missed it. Could the honourable senator please elaborate on that aspect?

Senator Buth: For non-arm's-length contracts under the SR&ED tax credit program, companies could claim the entire amount of the contract under SR&ED. What this government is doing, essentially, is reducing the amount that can be claimed to 80 per cent so that it does not include the profit component of the non-arm's-length contract. That makes it now consistent with arm's-length contracts under the legislation.

Senator Day: I thank the honourable senator. I understand the 20 per cent non-arm's length. That is also the contingency fee aspect that she dealt with; that is, the non-arm's-length contract is one item; the contingency fee is the other. It was the contingency that I did not understand. If they are tied together, however, I understand where it was.

Senator Buth: Sorry, honourable senators. I mentioned what the government is now doing in terms of contingency fees. Some consultants provide assistance to businesses for their SR&ED applications, so they charge contingency fees. That is not included in the legislation, but it was a comment that the government has now entered into consultations to determine what types of fees are being charged by consultants for preparing the SR&ED tax credits and whether the government should take a look at whether those fees are excessive.

Senator Day: I thank the honourable senator for that comment. That is helpful. I thought maybe I had been out of the room when we had discussed that when dealing with the bill.

The Hon. the Speaker: Continuing debate?

Senator Day: Honourable senators, I will begin by congratulating Senator Buth on her first speech dealing with a budget implementation bill as sponsor of the bill. I would also like to congratulate Senator L. Smith, for I think since the last time I spoke on a budget implementation bill, Senator L. Smith has joined the committee as deputy chair. I congratulate him and thank him and the other new members of the Finance Committee for agreeing to serve on this very important committee of the Senate dealing with the fundamental aspect of parliamentary oversight of the government's request to spend money.

• (1920)

It is critically important that we spend some time dealing with bills that relate to finance. It is also critically important that we understand those matters, because one of our fundamental roles as parliamentarians is the oversight, on behalf of the people of Canada, of government requests for the spending of funds.

Bill C-45 that we are dealing with is the second budget implementation bill for this year, honourable senators. Senator Buth has read out the title to you, but I will take the liberty of doing so again. The title is "A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures."

Honourable senators, it is as it has been in the past. I wish I could stand up and say that I do not have to talk about this deal anymore because the government has seen the light, but they have not.

As is indicated by the title, there are "other measures" in this bill that make our role quite different from the traditional role that we had in dealing with finance bills.

Honourable senators will know that we cannot begin the process with respect to finance here in the Senate. We have an oversight role, the same way that the House of Commons has an oversight role of the executive with respect to this. However, because of party discipline, that oversight tends to be pretty weak in a majority government. Therefore, the oversight role that comes here is even more critical and more important from the point of view of the public, so that they can know that the public purse is being protected by requests from the executive branch.

The "other measures" that appear in this bill, honourable senators, have resulted in us changing the way we deal with bills like this budget implementation.

In the past, we had a tradition that we would recognize, scrutinize and study these bills. I am looking at several honourable senators who have been on the Finance Committee in the past. We might have felt that an amendment would be appropriate, but it would not have been deemed appropriate for us to amend a finance bill. We would study it. We would make observations, if observations were appropriate. However, a finance bill is government policy in the other place. It is a matter of confidence. Therefore, we would deal with these bills in quite a different manner than a normal bill. We would have no hesitation in amending any other bill that came through other than a finance bill.

The government has decided to change the way they are handling budget implementation now, with a finance bill. They have done so by putting in other matters, many of which, admittedly, have nothing to do with the budget or with finance; it is just a convenient way to deal with some other matters.

I want to tell honourable senators that I have no difficulty in recognizing the importance of omnibus bills. I would support an annual one or two omnibus bills when an omnibus bill is dealing with a number of small matters that would not warrant a single standalone piece of legislation, whether it be an amendment or a correction. That kind of thing comes from many, many different departments. We know that, and we know that the Department of Justice has a number of individuals who pick up all these small, little pieces. They keep putting them into one spot, and that one spot could go into an omnibus bill that we could then deal with.

However, honourable senators, in order for the omnibus bill to move through quickly, governments in the past have decided that, "Well, there are only a few of them initially, so, okay, we will just tie it in with finance. We know that budget implementation and finance have to be moved through quickly, so we can just tie these other ones in there. They will not get a full hearing as a result, and they will move them through nice and quickly."

That is how this began. It was something that maybe innocently began when there were not enough to have a standalone omnibus bill. However, honourable senators, this has grown into something very serious. I have spoken on this in the past, and many others have, as well.

We received a bill that is 414 pages, and a good portion of this has nothing to do with finance, budget implementation or a budget. There are 516 clauses, and there are 60 different pieces of legislation that are amended by Bill C-45.

Honourable senators, we now have to adjust our practice. That is what I would like to spend some time talking about today. We are in the process of adjusting our practice to meet the change in practice of the executive branch that has put to the House of Commons, on short notice, a bill like this, following which the House of Commons sent it to us last Thursday. They are expecting to have it back in the next two or three days. That is an insult to the role that we have to play as overseers of the public purse.

Honourable senators, how will we adjust to this particular matter? One of the ways is to do a pre-study, and that is an adjustment. That is an adjustment because we are normally a chamber of sober second thought. We normally look at the changes that are proposed to the executive's proposed legislation in the form of a bill. The House of Commons will make some amendments, and they come over here. They do not go back up to the executive and get rewritten; they come here first.

When we do a pre-study, we lose the advantage of that. We lose that role that is critical to Parliament. We lose the role that the Senate was created to perform. We are giving up on that in order to adjust to a new practice.

Senator Mitchell: It is an assault on democracy.

Senator Day: This has not happened only this year. This has been happening for a number of years.

Honourable senators, Senator Murray spoke about this when he was in this chamber. I will read what he said regarding amendments to the Navigable Waters Protection Act. I point this one out in particular, because honourable senators will find, when

I speak at third reading on this particular matter, that it is a piece of legislation that has arisen again. Yet, Senator Murray originally spoke to it in 2009:

> The amendments to [that legislation and other proposed legislation] are far-reaching. In some cases, there are fundamental changes; in a few cases, there are historic changes. Most important, there are strongly held differences of opinion on these issues among those Canadians who are most knowledgeable, most concerned and most directly affected by these proposals. . . .
>
> In the interests of sound public policy and, indeed, in the interests of the democratic values we espouse, we have a duty to hear them. Their concerns about adverse legislation should not be brushed aside by sneak attack, which is what happens when extraneous measures are forced through in an omnibus budget implementation bill.

• (1930)

"Omnibus budget implementation" — two things being put together that he describes as a sneak attack.

> What is happening is not that a budget or a stimulus bill is being passed because, indeed, it will be passed. What is happening is we will be encouraging this government to tread on the absolute democratic rights of Canadians to have all legislation heard, considered, vetted and given the appropriate thought. Canadians have a right to demand this of us.

Those, honourable senators, are comments made two years ago by Senator Yoine Goldstein.

I do not know if this gentleman went to St. FX, but in 2005, another Nova Scotian said:

> Honourable senators, we have before us a massive omnibus bill of some 23 separate parts.

This was in June 2005.

> Bill C-43 ought to have come before us in at least three or more separate bills, one to deal with the budget measures per se, one to implement the offshore agreements that were not mentioned by my learned colleague and one to provide the legal framework for the government's Kyoto plan.

That, honourable senators, was a statement against omnibus budget bills by Senator Donald H. Oliver in 2005, and I think at the time I was agreeing with him. That was in 2005. That is merely, honourable senators, to point out that this is not a new practice. His adjective was "massive" omnibus bill. It is very important to understand that I have no objection to an omnibus bill. My objection is to tying omnibus to budget implementation to strike it through. That is where the problem lies, honourable senators.

What Senator Oliver was referring to was a massive omnibus bill that was slightly over 100 pages. Honourable senators, we now have one that is well over 400 pages.

Senator Mercer: Four hundred pages! If the other one was massive, what adjective can you give to this one?

Senator Day: Where will we be if this continues?

Senator Mercer: It is gargantuan!

Senator Day: I have suggested in the past how to deal with this, but let me read to you Observation No. 5 from one of the Finance Committee reports. In that particular matter, the Finance Committee is suggesting options, honourable senators, as to what could be done. One of the recommendations suggested that options that might be considered by the Senate for dealing with such omnibus budget bills in the future include dividing the bill into coherent parts and dealing with them separately allowing committees to do their job properly.

Senator Mercer: Good plan.

Senator Day: Another suggested deleting all non-budgetary provisions and proceeding to consider only those parts of the bill that are budgetary in nature.

Senator Mercer: I like that one.

Senator Day: Another observation proposed defeating the bill at second reading on the grounds that it is an affront to Parliament. That is where we are right now, we are at second reading, honourable senators, and I want honourable senators to remember that one.

The observations continued by suggesting the establishment of a new rule of the Senate prohibiting the introduction of budget implementation bills that contain non-budgetary measures.

I hope honourable senators are listening to that one as well because something must be done, honourable senators, or the integrity of Parliament will suffer. There are four options, honourable senators.

I want honourable senators to remember that for this particular bill one of those options was to divide the bill. That is what Senator Oliver was talking about — divide the bill into various portions.

Senator Mercer: We are listening, Don.

Senator Day: This particular bill, honourable senators, was divided. It was at one time Bill C-45 and Bill C-46. Bill C-46 dealt with parliamentary pensions. That was taken off and a separate bill was created. The precedent is clearly established that that can be done at the early stages. That would be a reason why we would want to know what is in these bills to try to encourage that to happen. I think it is important, honourable senators, to recognize that has happened in this bill.

Honourable senators, there is another way that we could instruct the committee. In our normal process, this bill will now be sent to committee after second reading. One way is to defeat the bill at second reading. Another way is to instruct the

committee to divide the bill. It is clearly authorized under the rules to instruct the committee to divide the bill. That could either be a mandatory order or an optional order for the committee to consider that.

Remember that the bill was split once before it even got here, but there is precedent for the Senate, when it receives the bill, to do its normal work, to instruct the committee to which the bill will be sent to look after that by way of dividing it.

Honourable senators, if those options do not appear terribly exciting for whatever reason, I would suggest that the pre-study is one of the processes that we are beginning to adopt with respect to this action by the government of including omnibus bills with budget bills. One of the steps we are taking here is to move toward more frequent pre-study. I know that there are many who object to that, and I understand that and have heard those arguments in this chamber before. However, it is a self-defence mechanism; it is a practice we are developing to be able to defend the rights of the people of Canada.

I know we are dealing with the principle of the bill at second reading and I will not get into any of the details but I can talk about the process and procedure. In this case, six different committees were authorized by this chamber to look at portions of the bill. That was a compromise that we made between both sides of this chamber in recognition that there is absolutely no way we would ever do any work on this bill that would be meaningful if we waited to receive it from the House of Commons, as we received it less than a week ago.

Another matter we may want to consider further is why we are getting these bills so late in time.

Some Hon. Senators: Hear, hear.

Senator Day: This bill is not the only one. This is certainly one of the more important ones.

Finance looked into the major portions of the bill. We had 12 two-hour meetings on the bill, honourable senators. Banking had five meetings; Energy had six meetings, Aboriginal Peoples had four meetings; Transport had four meetings; and Agriculture had three meetings. The total for the Senate is 34 meetings, almost 50 hours of consideration of this particular bill, and 139 witnesses.

That information is important to put on the record as an example of the Senate trying, under difficult circumstances, to do its job in this particular instance.

• (1940)

Honourable senators, I think we should thank the other committees that have looked into this particular bill and the portions thereof. The members of the Finance Committee and I would like to thank all the members of the other committees that came before our committee and told us about what they found in the bill, what challenges there were and what witnesses had been brought before them so that we in the Finance Committee would be in a position to deal on a clause-by-clause basis with the entire bill.

This bill will not be done clause by clause by six different committees; it will be done by, I expect, the Finance Committee. We are now in a position to do clause by clause on this bill when the bill is sent to us. However, that does not mean we have done a job that we would like to stand up and say we are really proud of. There are many other items we would have liked to look into, but to do the job that we would expect to do with any other piece of legislation with respect to all of the aspects of this particular bill, honourable senators, we would not be finished until next May or June. There are 60 or 70 statutes that have been amended. There is no way we could do so, but at least we know what is in the bill. We have superficial knowledge of what is in the bill. That is why I asked Senator Buth that question because I thought I had a bit of a feeling for what was in the bill, having gone through the 50 hours of hearings on it. I could not remember the contingency aspect, but as she explained in reviewing the one aspect, there was some work the government was doing in addition to what in fact is in the bill.

Honourable senators, I would submit that at second reading, on principle, this is not the kind of bill we want to encourage. There are options that we have, and I have gone over those options with honourable senators. If honourable senators see fit to send the bill to the Finance Committee, then the committee has done its due diligence to the extent that we could handle the bill on a clause-by-clause basis.

Hon. Terry M. Mercer: Would the honourable senator accept a question?

Senator Day: Yes.

Senator Mercer: Honourable senators, that was an impressive speech, and I thank Senator Day and the committee for all their hard work. They had 34 meetings over 49 hours and 139 witnesses. Could Senator Day tell me how many amendments were proposed to the bill?

Senator Day: The amendments at this stage would be coming from the House of Commons or they would be proposed during this second reading debate. I have not proposed any amendments because if I proposed an amendment to one portion, that would diminish the other portions. There are so many amendments that should be proposed to this bill. I am aware that over 3,000 amendments were proposed at committee stage and at third reading debate in the House of Commons.

Senator Mercer: During all these witnesses and all these hours of meetings, there have been no amendments made. Six different committees had meetings on parts of this bill. Did any of those committees attach observations to their reports back to the Finance Committee?

Senator Day: Each of the committees prepared reports. The reports have been made available and in fact tabled here for each of us to look at. I hope that the committees will speak on those reports and tie them into debate at third reading, when we get to third reading on Bill C-45.

Senator Mercer: How about the observations?

Senator Day: The report is in itself an observation. The reports are here; there are five of them. We in the Finance Committee did not file a report.

Hon. Grant Mitchell: Honourable senators, I would like to build on the presentation by my colleague Senator Day. I would like to begin by saying that I always enjoyed Senator Gerstein's presentations; he is a happy warrior. He was usually the sponsor

of the government's budget bills and gave a very positive version of events and the statistical and economic analysis, and I must say that Senator Buth has certainly followed in that tradition. She is a happy warrior. She has certainly risen to the occasion and found those bits and pieces of data that somehow seem to support the idea that this Conservative government is actually competent enough to manage an economy or do very much of anything else.

I am provoked to get to my feet and fundamentally argue that there is very little evidence to suggest that they have done any kind of capable job, let alone a competent one, with the economy or with any number of other initiatives. I would like to outline that to further the debate and to clarify some unfortunate misunderstandings that have been perpetrated by Senator Buth.

I begin with a rhetorical question: Why does anyone believe that a Conservative government can actually manage an economy? All the evidence is to the contrary. Since this government took over, unemployment is up somewhere between 20 and 25 per cent. Do honourable senators realize that 1.4 million Canadians are unemployed in this country today? This government, which stakes everything on creating jobs and development and economic growth, has got 1.4 million Canadians unemployed.

When Senator Buth talks about how our GDP percentage of whatever compares with the G8, just imagine what it means in human terms that 1.4 million people are unemployed. That is exactly the case. Not only that, but when it comes to the secondary target they have, which is economic growth, do honourable senators know what the economic growth in Canada was in the third quarter of this year, in the three months leading up to September? It was 0.1 per cent for that quarter. When factoring in the full three quarters, we are annualizing a 0.6 per cent GDP growth. This idea that somehow Canada has the strongest economy in the whole world just — if it were not for northern Alberta, it would even be worse.

U.S. growth this year is going to be 2.7 per cent. This economy that they have been giving advice to — did the Prime Minister not go down and give advice to the U.S. government on the economy? Maybe he should have taken some of his own advice because whatever he said seems to be working there, but it is sure not working here.

Unemployment is up 25 per cent. Youth unemployment is at about 15 per cent. There are 1.4 million people unemployed. The government has run record deficits. They have turned a $12 billion surplus around to a $56 billion deficit at the peak. Now, they continuously miss their deficit reduction targets. They were just out by 30 per cent this year. It was going to be 21. I think it is over 19 and now it is going to be up $7 billion.

What can we believe? It is not just the F-35 data one cannot believe; it is also anything to do, it seems to me, with fiscal management: a $150 billion increase in debt to this point, give or take; it might be $130 billion, as it depends whose figures are used. It is projected to be upwards of $200 billion.

What part of all these figures would indicate to anyone that this government is competent to run an economy? Which one? I do not see it.

They will say, "It is not really our fault," because that is what they are so good at. They do not get that leadership is not about making excuses; leadership is about getting results. They will say, "You know what, there is a worldwide recession and we are doing better than everybody else. By the way, the banks are so strong." I love that one. Who was the Prime Minister and what was he saying in opposition about how we should change the banks, restructure them and deregulate them? We would be in a fine pickle then. At least we have sustained banks because of proper fiscal management of the economy by the Liberal government.

What they forget is that Mr. Chrétien and Mr. Martin, who ran nine consecutive surplus budgets, were confronted with the 1998 meltdown of the European banking system. They were confronted with 9/11 and the collapse of the stock market. Stock markets in North America were cut more than in half. They were burdened by a $42 billion — I know you do not like to hear this, but it is true. They were burdened by a $42-billion deficit that we had to recover from. Thank God we had 13 years of Liberal government. It is just too bad we do not have it right now, because maybe 1.4 million people would not be unemployed.

• (1950)

Some Hon. Senators: Hear, hear!

Senator Mitchell: Let us go on. The government says it has this objective: The most important thing we can do — and they may well be right — is to diversify oil and gas markets for our oil and gas products. Of course, there is a good deal of urgency in that; we have a single export market for our oil and gas. That is the U.S., and it is very likely to be self-sufficient in both of those products within — and this is Mr. Prentice saying this, not me — five, ten or fifteen years. One would think that if the government's stated objective was to diversify markets and get a pipeline built, if they had seven years in power, if they had a prime minister who calls himself an economist and knows how to run a country, he would at least have been able to move that pipeline project along. Are we any closer to getting a pipeline to diversifying our markets than we were seven years ago? Absolutely not.

Why is that? I do not believe that they have been competent — no leadership — to run that file, and it is ending up pretty much like where our economy is ending up.

I should point out some other economic figures. I will come back to my point about the pipeline.

Canada is not even in the top third of OECD countries when one compares the total central government debt as a percentage of GDP, and it is even worse if one compares all of the debt of government in the country. We are not even the fiftieth percentile when it comes to domestic growth, GDP growth this year.

I go back to how it is that this government has so incompetently handled the pipeline file. First, they do not get that the world has changed, that now it all comes down to social licence. If the government is sending the wrong messages, it does not matter

how hard Enbridge tries to prove that it can built a pipeline safely with environmental responsibility; when the government is sending these messages over and above that, they are establishing an almost impossible situation within which to gain social licence. What they have to realize, and they have not, is that you will not get those projects unless you get social licence, and you will not get social licence unless you establish once and for all that you can do the environment and deal with climate change.

When they talk about shutting down the offshore spills office in B.C. — and they shut it down — when the single greatest problem people have with that pipeline is offshore spills, what kind of message does that send? The senators here and the ministers over there get up and start to attack environmental groups, foreign foundations that fund environmental initiative and debate, when Keystone is hinging on getting environmental support. It needs environmental support if it is ever going to be built. It needs to prove its environmental bona fides. What possible good does it do to send a message attacking these environmental groups? I notice that the senators over the other way and even the minister may finally be getting the message that you do not start attacking those people when you are trying to gain social licence and establish the credibility on the environment.

When you shut down the National Round Table on the Environment and the Economy, when you shut down the Experimental Lakes Area, when you gut the environmental process, what does that do? It sends a message to the people, the people of B.C., the people of Canada, the international public, that they are not going to give you the credibility because you are not building the credibility on the environment. You will not get the social licence. I think it has been a disaster, and this government has been incompetent in its ability to move that along.

Second, what is profoundly missing is any sense of national leadership. The premiers of B.C. and Alberta are at odds over the pipeline. One would expect that perhaps they would be; they represent provincial interests. Premier Clark gets paid to do that for B.C. and Premier Redford gets paid to do that for Alberta, but who is representing the national interest? Where is the Prime Minister? When the premiers asked to meet with him to establish some sense of arbitration, some process of mediation, where is the Prime Minister? Some of the most significant oil energy leaders in the country are saying the Prime Minister should fulfill this role.

The premiers asked to meet with the Prime Minister at the November conference in Halifax. The Prime Minister turned it down. We are one of the only Western industrialized nations that do not have a national energy strategy or a national environment strategy. How can it be that a government can meet the kind of challenges facing this country on the economy, the environment and energy if the Prime Minister has cut and run? The Prime Minister is nowhere to be seen. He has a role to lead. There is no national leadership. He cannot manage the economy and cannot even build a pipeline in Canada.

Senator Buth said this is an energy superpower. The Standing Senate Committee on Energy, the Environment and Natural Resources pointed out that that status, if it exists at all, is absolutely in peril. The only way you get out of that peril is through national leadership, and there is none. Unbelievable.

Senator Mahovlich: It sounds like we are on the Titanic.

Senator Mitchell: Third — and this is a kind of a micro-level illustration of how poorly the government can manage basic government responsibilities — is meat. Four years ago 22 people died on this government's watch because of problems with listeriosis. We have recently had the spectre of an E. coli outbreak, which has not killed anyone but has certainly made them ill and has certainly damaged the agricultural economy's ability to export and so on. It is not that this was a surprise. The government knew it had some problems in this sector. It is not that they say they do not have the resources, because Minister Ritz has said over and again that we have more money, millions; we have hired hundreds and hundreds more people. It was not a surprise; they have experience; they have money; they have people. What do they not have? They do not have competent management. What would it take? What would that minister have to do to lose his job? I know, I know. Why do you not stand up and tell us how much you hate those environmental NGOs, because you did such a good job of sending the right message around the world by saying that?

I can go on, of course, but I would like to finish by saying that if ever there was an indication of clear incompetence, it is a government that refuses to accept science. Climate change is a huge issue. If honourable senators think dealing with climate change will hurt an economy, just talk with the people in New York and see how badly climate changes hurt economies.

If honourable senators talk to Justice Cohen, who has attributed the disappearance of 9 million sockeye salmon three years ago in large part to climate change, and talk to people on the East Coast fishery who do not have jobs, and talk to people in the forestry industry who have lost jobs, and talk to the people of the North who see their community and their way or life and their surroundings melting away and with it their economy and their jobs, the fact is that we need leadership on climate change. We need a national environmental strategy. We need a national energy strategy. We need some leadership on unemployment. We have 1.4 million Canadians unemployed. I do not know where it is that Senator Buth can actually stand there and say that somehow she is working with an efficient, competent, capable government, because all the evidence is absolutely to the contrary. It is on that basis that I find myself having to vote against this bill.

I mean it!

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

Some Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

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

• (2000)

APPROPRIATION BILL NO. 4, 2012-13

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-50, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2013.

(Bill read first time.)

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

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

STATUTORY INSTRUMENTS ACT

BILL TO AMEND—THIRD READING

Hon. Linda Frum moved third reading of Bill S-12, An Act to amend the Statutory Instruments Act and to make consequential amendments to the Statutory Instruments Regulations.

Hon. Mac Harb: As honourable senators who have read Bill S-12 will know, it has three main provisions. It gives regulation makers express power to use open or ambulatory incorporation by reference in regulations without any parliamentary oversight; it puts an obligation on regulation makers to ensure that the document is accessible; and it provides for an exception to a citizen's liability unless, at the time of the alleged contravention, the incorporated document was accessible as required by proposed section 18.3 or it was otherwise accessible to that person as stipulated in proposed section 18.6.

Unfortunately, that is not all that Bill S-12 will do if passed in its present form. As I stated in my comments at second reading, Bill S-12, as presented, undermines democratic principles by eroding Parliament's oversight of legislation, and it will make criminals out of otherwise law-abiding citizens who will not have adequate access to the content of Canadian laws.

When Justice Minister Nicholson appeared before the Legal and Constitutional Affairs Committee, he was asked about the proposed lack of parliamentary oversight on the use of incorporation by reference. He replied that incorporation by reference is already being used by Canadian regulation makers and that this bill would not really make much of a practical difference. In fact, I agree. I found that it has been used at least 170 times since 2006 and, more often than not, without the express authorization of Parliament.

This bill in its present form opens the doors for unlimited use of open incorporation by reference, this in direct contrast to the recommendation of the Standing Joint Committee on Scrutiny of Regulations and the established practices of other jurisdictions, such as Ontario and Manitoba here in Canada and in other places such as Australia and New Zealand, which have laws that limit the use of open incorporation to specific instances determined on a case-by-case basis.

Which approach is better, one would ask. In fact, the Chief Legislative Counsel of the Department of Justice, John Mark Keyes, pointed out to the committee:

> That is the very question that before this committee and before these houses; namely, which of those approaches is the better one?

I would argue that the best approach is one that protects the constitutional power of parliamentary oversight and the right of Canadians to have access to the laws under which they are governed. The unfettered use of open incorporation by reference without limit on sub-delegation and clear guidelines on its use does neither, and it can never be seen to be the best approach.

My colleagues on the Senate Legal and Constitutional Affairs Committee and the witnesses who appeared before the committee raised some very serious concerns. Even those witnesses who were generally in favour of a clear federal policy on the use of incorporation by reference found serious flaws in Bill S-12.

Ultimately, amendments were presented that would have mitigated some of the worst excesses of the bill and protected both Parliament's legislative authority and Canadians' rights. Unfortunately, these amendments were voted down by the government members on the committee.

In his statement to the committee, Minister Nicholson claimed:

> [S-12] is a response to the concerns expressed by the Standing Joint Committee on Scrutiny of Regulations and aims to create the necessary legal certainty around the use of this drafting technique.

The bill provides certainty all right, but what is certain is that the government wants Parliament to give it carte blanche by eliminating parliamentary oversight through the increased use of open incorporation by reference.

In no way does this bill as presented respond to the joint committee's concerns about the ill-advised and illegal use of open incorporation by reference. In fact, this bill does just the opposite. The joint committee worked diligently in a bipartisan fashion to uphold the principle of parliamentary legislative authority and to help regulation makers avoid the pitfalls associated with sub-delegation. While Parliament is empowered to delegate its authority as it sees fit, Bill S-12 gives these delegates express authority to use open incorporation by reference in regulations without parliamentary oversight. This, in turn, hands legislative authority to a third party when external material as amended

from time to time is incorporated by reference. The future evolution of the rule or regulation is out of the regulation makers' hands and is never subject to a parliamentary review.

At committee, witnesses from the Canadian Standards Council explained how they currently ensure that international regulations that were incorporated by reference met Canadian standards, not only technical standards but also in terms of official languages requirements. This process may not happen under the new legislation. We would have no control over the continued application of the rules as they change from time to time.

In an attempt to limit the damage that could be caused by a loss of oversight over federal law, Senator Fraser introduced an amendment, moving:

> THAT Bill S-12 be amended in clause 2,
>
> (*a*) on page 1, by adding after line 13, the following:
>
> "(1.1) In this section, "document" means any federal or provincial legislation.";
>
> (*b*) by replacing lines 18 to 2 on page 1, and lines 1 to 7 on page 2, with the following:
>
> "be incorporated only if it is a regulation". . .

Subsections (*a*) and (*b*), but particularly (*a*), of the proposed amendment were designed to address the joint committee's concern over open incorporation by reference of foreign materials, in particular, without some degree of Canadian supervision.

The amendment as presented by my colleague would allow the express use of incorporation by reference, either static or ambulatory, of anything that comes from federal or provincial legislation; in other words, from sources that are readily accessible to Canadians and in both official languages. It would also prevent a loss of control over the intent of legislation to a foreign jurisdiction.

Honourable senators, Robert White of Consumer Health Products Canada, who also was a witness, pointed out to the committee that there is certainly no legal certainty in the ambiguity of what constitutes a document in the terms of this legislation. He called for appropriate safeguards to govern the use of this new act and drew attention to the ambiguity of the term "document" when he said:

> . . . we would suggest amending proposed section 18.1 by adding a clause that would say something to the effect that a document or part of a document incorporated by reference does not include guidance documents that are intended to provide clarity for stakeholders around the regulation or parts of a regulation's intent. . . .
>
> The guidance documents are put together by regulators, but they have never had any oversight through Parliament.

• (2010)

Mr. White also expressed his concerns about what the term "accessibility" meant in practical terms, and he pointed out that this vagueness would make complying with the legislation challenging for the members of the health products industry that he represents.

[*Translation*]

Under the Criminal Code, ignorance of the law cannot be used as a defence. Therefore, the onus is on the citizen to be aware of laws and regulations and to obey them. To facilitate this, the government has an equal responsibility to ensure that the laws and regulations are accessible for its citizens. We were reminded in committee that, although Bill S-12 makes life much easier for regulators, it makes it much harder for the industry and private citizens who may have difficulty accessing the current versions of the integrated documents and knowing which version to use at any given time.

The new clause 18.3(1) states:

> The regulation-making authority shall ensure that a document, index, rate or number that is incorporated by reference is accessible.

According to the minister, people will now be protected by law if a court deems that the regulations incorporated by reference are not accessible. However, it is ridiculous that citizens would have to spend time and money on court challenges or could be unduly prosecuted simply because the wording of the bill is unclear, particularly the undefined expression "is accessible" in proposed clause 18.3 and the ambiguous expression "otherwise accessible" in proposed clause 18.6.

The bill does not define the term "accessible." As a result of the bill's vague wording, which leaves much to be desired, and because the incorporated documents change over time, citizens will be unintentionally breaking Canadian laws.

[*English*]

The ambiguity of the legislation in Bill S-12 undercuts the minister's assurances. In fact, when Senator Jaffer asked how parliamentarians would be made aware of problems with accessibility to Canadian regulations due to the use of open incorporation by reference, the minister could only reply, "If it is not working or people do not have access, you will probably hear about it."

Honourable senators, this is not very reassuring. Surely it would be prudent to clarify what is meant by "accessible" before passing legislation that is simply setting up businesses and individual Canadians for confusion and undue legal hardship.

The amendment that was presented to the committee by my colleague Senator Fraser included a call for guidelines governing the use of open or static incorporation by reference by adding the following to clause 2 in the bill:

> (*c*) on page 4, by adding after line 7 the following:
>
> "18.8 The Governor-in-Council shall, by order, publish guidelines establishing standards in relation to the following:

(*a*) which documents may be considered eligible for incorporation by reference in a regulation; and

(*b*) which documents should be precluded from being incorporated by reference;

(*c*) how the content of incorporated documents is to be made available in both official languages;

(*d*) how incorporated documents are to be made accessible to the public; and

(*e*) how relevant information will be communicated to interested groups and the general public."

These proposed guidelines are good ones. The government members on the committee should have adopted them. Similar to those enacted in New Zealand, these suggestions are vital to protect Parliament's authority and to ensure Canadians have access to the law.

Another witness, John Walter, CEO of the Standards Council of Canada, appeared before the committee and spoke about the benefits of the use of open and static incorporation by reference to his organization. However, he too stressed the need for guidelines on how and when we use these tools.

> . . . we would suggest that there needs to be a government guideline or policy that outlines how these options should be considered and when a static or an ambulatory process would be best . . . there certainly needs to be a policy to advise regulators how to use this static or ambulatory reference, and I would suggest that part of that policy or guideline should then include how that is communicated to Canadians.

That is very sage advice to the committee.

What we have before us is an ill-advised proposed legislation, a flawed bill. It is apparent, from all the witnesses and from all the research this side of the Senate has done, that if open incorporation by reference is to be used as a drafting technique by regulation makers in Canada, it is essential that Parliament approve its use on a case-by-case basis.

It is equally important that Parliament set out specific guidelines outlining how and when the regulation-making authority or the government should use open or static incorporation by reference.

Honourable senators, I deeply regret that the government has decided to introduce this bill at this time in Parliament, because the government is ignoring the will of Parliament as expressed repeatedly by the Standing Joint Committee for the Scrutiny of Regulations and its reports adopted by Parliament in this house more than once before. They have ignored what this house and the other house have told them not to ignore. In fact, I believe they have ignored the Canadian Constitution and the right of Parliament to be supreme.

The adoption of the amendment as proposed by Senator Fraser would have gone a long way towards ensuring that this legislation actually fulfilled its goal of improving the management of regulations in an effective and responsible manner. Instead, we are left with a vague and imprecise law that will weaken Parliament and put Canadians at risk.

Hon. Terry M. Mercer: Would the honourable senator take a question?

Senator Harb: Yes, I will.

Senator Mercer: Honourable senators, traditionally, or by practice, every bill that is drafted and that comes before the other place or this place is sent to an internal committee, I understand, at the Department of Justice to review whether or not the bill is constitutional. Does the honourable senator know whether that was done in this case?

Senator Harb: That is an interesting question. The truth of the matter is whether they should be doing it at all. Whenever Parliament gives authority to the government to do something, the Parliament is supreme. Parliament can take that authority away. As we know, in our system we have a situation where there is a minister who practically is in a conflict of interest by voting on a bill that impacts his Crown, his government. He is voting on a bill in order to give him more authority.

As honourable senators can see, if we really wanted to talk about whether Parliament is able, in a sense, to oversee what government does, the answer is yes and no. In the present form of the democratic system that we have, there is a minister who is both a minister but also a member of Parliament. Instead of the Parliament itself deciding on what takes place in the end, once the legislation is passed, now we will have Parliament deciding on the bigger picture; and when it comes to the tricky details, it is left to the Crown, to the minister, to his agent, to do whatever fits in terms of their overall agenda.

As far as I am concerned, the answer to the honourable senator's question is that this is a very ill-advised move. Parliament on the other side and this side, since the 1970s, has consistently taken the same position, namely, that the government should never have unfettered access to making regulations without the express authority of Parliament. We have to keep that in mind.

Here the situation is that it used to be considered by Parliament, in the Senate and the House of Commons, as an illegal act on the part of the government, over all those years, but finally the executive came to Parliament and said, "Excuse me. I am the boss here. I now want you to allow me to make legal what you previously considered to be illegal." They said, "Therefore, from here on in, you cannot tell me that what I am doing here with regulations is outside of my authority. It is now because you gave it to me."

• (2020)

Mind you, honourable senators, we can take it away at a later date. That is the argument of the government, but how could we? As long as ministers are voting on those laws, one cannot do it. One cannot really give Parliament its express authority as it was set out in the Constitution, and that is the problem.

Senator Mercer: It would seem to me, honourable senators, that we continue to hear about open, transparent and accountable government, but this is going entirely in the opposite direction. More and more power is being shifted from the two chambers that are in this building to the Langevin Block across the road, which houses the Prime Minister's Office and the Privy Council Office. Am I correct?

Senator Harb: It is a slippery trend, really. When one looks historically at what happened, the government in the past used to use this technique on and off. We used to tell them to stop, but if we look at the time since this government came to power in 2006 up until now, it has been used more than ever before. In fact, the statistic that we looked at is 170 times. That is a lot of times. We have to ask ourselves: If we really want to delegate something, why do we not set guidelines, as my colleague Senator Fraser has said? Why do we not set under what terms these kinds of amendments can be done and how I, as a Canadian who is governed by these rules, will be able to have access to them? They will not be put in the *Canada Gazette*, so I will not know what is in the regulations. What happens if those documents that are put in the regulations change from time to time? Which version will I go and look at? Worse, what happens if one makes reference to a document that deals with a trade arrangement with another country? Those arrangements change from time to time. Am I to jump on a plane and go to London or Brussels or China or elsewhere in order to dig and find out which document I am dealing with? How will one ensure that they are up to date? This is all very serious.

In fairness to the Justice Department, the chief legislative counsel, John Mark Keyes, was very honest. He told the committee, "Listen, it is up to you. You decide. You tell me what you want to do. One thing is for sure: The committee and Parliament have told us that they wanted clarity. They do not want us to do it." However, now the government has somehow decided that they want to do it.

I remind honourable senators on the other side that there will be a time when the government will change. The very same senators who are really pushing for this bill might turn around and say, "Sorry, that was a bad move that we made." When we talk about the halls of democracy and about parliamentary oversight, we have to keep that in mind. We have to exercise the oversight that the Constitution has allowed us to exercise. Do not give it away. It can be delegated. Yes, we can delegate anything we want to within the rules of the law. This is being delegated to the executive, but should it be? The answer is no, so why are we doing it?

Senator Mercer: I have a great deal of respect for Senator Harb's term here in the Senate and for his previous role in the other place. As he said, this type of thing has come up in the past where the executive branch wants to have more power and Parliament has said no. What was the role of various caucuses in saying no to the leadership of governments in the past when they wanted to take it? My understanding of the history is that members of Parliament and senators who are members of various caucuses have said to their own leadership, "Hold it, now; you will not get away with it." Is that your recollection as well?

Senator Harb: Honourable senators, I do not talk about what goes on in caucus because of caucus confidentiality, but obviously that would be the place where I would rebel as a member of Parliament. I will stand up to my leaders and say, "What happened here? Why are you trying to take away my authority? This is the one time I can decide on what goes on." The frustrating thing about it is that this Senate has the opportunity to turn it down. Here, we do not have that conflict. Senator LeBreton is the only one, and maybe she will abstain and not vote. Allow senators to vote the way they like, freely and democratically, because this is the chamber of sober second thought, and see how we will turn down a bill that goes against our position because we have already taken a position. This Senate has already taken a position against the move to allow the administration to proceed with amendments to regulations, from time to time, without the express authority of Parliament.

This house and the other house have already adopted the report of the committee. Basically, we are now reversing ourselves. I do not think that any of my colleagues on the other side or on this side would want to reverse themselves on a fundamental issue such as this one, that is, parliamentary authority and the right of Parliament to have oversight over what goes on with the bureaucracy and the executive.

Hon. Joan Fraser: Honourable senators, Senator Harb is right. As far as I can see, this bill is the culmination of a long-standing battle between the civil servants and Parliament, and it is a source of disappointment to me that the government decided that the civil servants should win.

It is fairly obvious to anybody who has been around the Hill for any particular length of time that, for many civil servants on many occasions, Parliament is a nuisance and very inconvenient, if I may borrow a word from Senator Day's comments on Bill C-45. They wish we would go away. Well, they are sending us away with this bill, and let me explain why I find this particular bill, as formulated, so distressing and worrying.

This bill allows regulators to incorporate in regulations — and we know that regulations have the force of law for all intents and purposes — basically anything they want — any document, any index, any rate, any standard. It would be one thing if we were just talking about, as Senator Harb suggested, documents, rates, indices or standards that come from a Canadian source. However, in this case, they are throwing the whole world open. There is no limitation on the documents, rates, indices, standards and what have you that the regulators will be able to incorporate in regulations. What is worse, they can use this wonderful phrase "ambulatory incorporation." What that means is that they can incorporate a foreign document not only as it stands today but also as it may be amended, from time to time, in the future.

We do incorporate quite a lot of foreign material right now, and much of it comes from the United States and probably from Europe, trading partners with whom our systems have a great deal in common. However, this government — not the first but perhaps the most active — is hell-bent on signing trade agreements with almost anything that moves on the face of the earth: China, Panama, everything in the Pacific and a long list of countries whose names Senator Downe knows better than I do.

Honourable senators, I do not know much about the Chinese regulatory system, but I will bet you that 99.99 per cent of Canadians do not know much about it either and do not know

how to ascertain if some Chinese standard that we have incorporated is later changed by the powers that be in Beijing.

• (2030)

How will we know about that? How will we know if the change is in our interest? There is an assumption underlying this bill that all these future changes will be good, modern and adapted to the realities of a changing world.

Our trading partners sometimes do not want to improve the level of their regulation; they want to diminish it so they can be more competitive against us. What will we do when that happens? Half the time we will not know until it is too late.

This is a bad bill. It could have been a perfectly good one if, as the joint committee had so often recommended, we confined our incorporation by reference to Canadian, federal and provincial sources. That is not what we are doing. We are saying it is a free-for-all; come and get it. Some people will, and we will live to rue the day.

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

Some Hon. Senators: Question.

The Hon. the Speaker: It was moved by Senator Frum, seconded by Senator Fortin-Duplessis, that Bill S-12 be read a third time.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: Carried, on division.

Some Hon. Senators: No!

The Hon. the Speaker: Order, please. I will put the question to the house formally.

It was moved by Senator Frum, seconded by Senator Fortin-Duplessis, that Bill S-12 be read a third time. Those in favour of the motion will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will significant by saying "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: The whips will advise as to the time of bell.

It will be a 30-minute bell. Call in the senators. The vote will take place at nine o'clock.

• (2100)

Motion agreed to and bill read third time and passed on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Martin
Ataullahjan	McInnis
Boisvenu	McIntyre
Braley	Meredith
Brown	Mockler
Buth	Ngo
Carignan	Ogilvie
Comeau	Oliver
Dagenais	Patterson
Demers	Plett
Doyle	Poirier
Duffy	Raine
Eaton	Runciman
Enverga	Segal
Fortin-Duplessis	Seidman
Frum	Seth
Greene	Smith (*Saurel*)
Housakos	Stewart Olsen
Johnson	Tkachuk
Lang	Unger
LeBreton	Verner
MacDonald	Wallace
Maltais	Wallin
Manning	White—49
Marshall	

NAYS
THE HONOURABLE SENATORS

Callbeck	Furey
Campbell	Harb
Chaput	Jaffer
Charette-Poulin	Mahovlich
Cordy	Mercer
Cowan	Mitchell
Dallaire	Munson
Dawson	Ringuette
Day	Robichaud
Downe	Smith (*Cobourg*)
Eggleton	Zimmer—23
Fraser	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

THE SENATE

STATUTES REPEAL ACT—MOTION TO RESOLVE THAT THE ACT AND THE PROVISIONS OF OTHER ACTS NOT BE REPEALED—DEBATE ADJOURNED

Hon. John D. Wallace, pursuant to notice of December 4, 2012, moved:

That, pursuant to section 3 of the *Statutes Repeal Act*, S.C. 2008, c. 20, the Senate resolve that the following Act and the provisions of the other Acts listed below, which have not come into force in the period since their adoption, not be repealed:

1. *Agricultural Marketing Programs Act*, S.C. 1997, c. 20:

-sections 44 and 45;

2. *An Act to amend the Canada Grain Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act and to repeal the Grain Futures Act*, S.C. 1998, c. 22:

-sections 1(1) and (3), 2 to 5, 6(1) and (2), 7, 9, 10, 13 to 16, 18 to 23, 24(2) and (3), and 26 to 28;

3. *An Act to implement the Agreement on Internal Trade*, S.C. 1996, c. 17:

-sections 17 and 18;

4. *Budget Implementation Act*, 1998, S.C. 1998, c. 21:

-sections 131 and 132;

5. *Canada Grain Act,* R.S.C 1985, c. G-10:

-paragraphs (*d*) and (*e*) of the definition "elevator" in section 2, and subsections 55(2) and (3);

6. *Canada Marine Act*, S.C. 1998, c. 10:

-sections 140, 178, 185 and 201;

7. *Comprehensive Nuclear Test-Ban Treaty Implementation Act*, S.C. 1998, c. 32;

8. *Contraventions Act*, S.C. 1992, c. 47:

-sections 8(1)(d), 9, 10, 12 to 16, 17(1) to (3), 18, 19, 21(1), 22, 23, 25, 26, 28 to 38, 40, 41, 44 to 47, 50 to 53, 56, 57, 60 to 62, 84 with respect to sections 1, 2.1, 2.2, 3, 4, 5, 7, 7.1, 9 to 12, 14 and 16 of the Schedule, and section 85;

9. *Firearms Act*, S.C. 1995, c. 39:

-paragraph 24(2)(*d*), sections 39, 42 to 46, 48 and 53;

10. *Marine Liability Act*, S.C. 2001, c. 6:

-section 45;

11. *Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12:

-sections 89, 90, 107(1) and (3), and 109;

12. *Preclearance Act*, S.C. 1999, c. 20:

-section 37;

13. *Public Sector Pension Investment Board Act*, S.C. 1999, c. 34:

-sections 155, 157, 158, and 161(1) and (4);

14. *Yukon Act*, S.C. 2002, c. 7:

-sections 70 to 75, 77, 117(2), 167, 168, 210, 211, 221, 227, 233 and 283.

He said: Honourable senators, the Statutes Repeal Act was passed with unanimous support in both houses of Parliament and received Royal Assent on June 18, 2008. It came into force two years later on June 18, 2010. Section 2 of the act requires that the Minister of Justice table an annual report before both houses of Parliament on any of their first five sitting days in each calendar year. Each annual report must list the acts and provisions not yet in force that were assented to nine years or more before December 31 of the previous calendar year.

This is the second year of the implementation of this act. The first annual report was tabled on February 3, 2011, and listed a total of 45 pieces of legislation involving 19 departments and agencies. The second annual report was tabled on February 1 and 2, 2012, and listed a total of 20 pieces of legislation involving 10 departments and agencies.

Section 3 of the Statutes Repeal Act provides that the act and provisions listed in the second annual report will be repealed on December 31, 2012, unless, before that date, they are brought into force or one of the houses of Parliament adopts a resolution exempting them from repeal.

I am speaking today in support of the motion that this chamber adopt a resolution before December 31 of this year, exempting the one act and provisions in 13 other acts that are listed in the second annual report from being repealed on December 31, 2012.

• (2110)

The purpose of the Statutes Repeal Act is to encourage the government to give active consideration to the coming into force of acts and provisions that have not been brought into force within 10 years of being assented to.

In keeping with this purpose and the intention to ensure, as much as possible, that the will of Parliament is respected, deferrals are being requested only in the following circumstances: first, when there is an operational need; second, when there is a need to await the occurrence of some event that is out of the government's control; third, when there could be federal-provincial implications; or four, when there could be international implications.

Eight ministers have requested the deferral of the repeal of the act and the provisions in 13 other acts identified in the second annual report. They are the Ministers of Aboriginal Affairs and Northern Development, Agriculture and Agri-Food, Finance, Foreign Affairs, Justice, Public Safety and Transport, as well as the President of the Treasury Board. I will now set out the reasons for the requested deferrals by each of these ministers.

The Minister of Aboriginal Affairs and Northern Development is requesting deferrals concerning provisions in the Yukon Act, S.C. 2002, c. 7. Sections 70 to 75 of the Yukon Act provide for the Yukon government to appoint its own Auditor General. The provisions were the subject of much discussion between Canada and Yukon, and it is anticipated that these provisions may be brought into force in the foreseeable future.

The rest of the provisions of the Yukon Act are expected to be brought into force when the Yukon legislature enacts surface rights legislation to replace the current federal Yukon Surface Rights Board Act. The provisions are intended to deal with amendments to federal legislation that will be required when the federal Yukon Surface Rights Board Act is repealed once section 283 of the Yukon Act is brought into force.

The Minister of Agriculture and Agri-Food is requesting deferrals concerning provisions in three acts. The provisions in the following two acts should be considered together: An Act to amend the Canada Grain Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act and to repeal the Grain Futures Act, S.C. 1998, c. 22 and the Canada Grain Act, R.S., c. G-10. The government has indicated its intention to modernize the Canada Grain Act. Deferral of the repeal of provisions in these acts is being sought so that these reforms can be made comprehensively through government bills.

The third act for which the Minister of Agriculture and Agri-Food is requesting a deferral is the Agricultural Marketing Programs Act, S.C. 1997, c. 20. The not-in-force provisions of that act will, when brought into force, repeal certain obsolete statutes that that act replaced. When all debts under these obsolete statutes have been paid off, it will be possible to bring the provisions of the Agricultural Marketing Programs Act into force.

The Minister of Finance is requesting deferrals concerning provisions in two acts. First, there is the Budget Implementation Act 1998, S.C. 1998, c. 21. Sections 131 and 132 of the act modify section 1 of Article XV of Schedule I to the Bretton Woods and Related Agreements Act and add a Schedule "M" to Schedule 1 to that act. The deferral is necessary because Canada ratified the International Monetary Fund decision, and when the United States finally agreed, triggering the threshold number of votes, the decision came into force at the international level in 2009. Canada will likely want to take steps to bring this into force to reflect our international commitment.

The second deferral concerns an Act to Implement the Agreement on Internal Trade, S.C. 1996, c. 17. The amendments that are not yet in force provide for a regulation-making authority in the context of legislation related to the Agreement on Internal Trade. Deferral from automatic repeal of these provisions is required as these and other provisions of the Agreement on Internal Trade will be revisited in the near future.

The Minister of Foreign Affairs is also requesting deferrals concerning provisions in two acts. The first request concerns the Comprehensive Nuclear Test-Ban Treaty Implementation Act, S.C. 1998, c. 32. This act is the only entire act for which deferral is being sought. This act will be brought into force as soon as the Comprehensive Nuclear Test-Ban Treaty itself comes into force. However, there is no real expectation that the treaty will enter into force in the next few years. It is vital that the act not be repealed so that the treaty can be implemented in Canada when it enters into force and, in the meantime, Canada can continue to demonstrate a commitment to its implementation.

The second deferral concerns the Preclearance Act, S.C. 1999, c. 20. Section 37 of the Preclearance Act must be saved from repeal. This provision may be useful and necessary in the future to meet Canada's border needs. It is important to note that the preclearance officers referred to in section 37 are persons authorized by the United States to preclear in Canada and that the Preclearance Act is the result of a bilateral treaty with the United States. Under Article X of the Agreement between the Government of Canada and the Government of the United States of America on Air Transport Preclearance, a preclearance officer shall enjoy immunity from the civil and administrative jurisdiction of the host party with respect to acts performed or omitted to be performed in the course of his or her official duties.

The Minister of Justice is requesting the deferral of provisions in two acts. The first of these acts is the Contraventions Act, S.C. 1992, c. 47, in respect of which the Minister of Justice has entered into agreements with several provinces to implement the federal contraventions regime by incorporating the existing procedural provincial schemes in conformity. The department is still in negotiations with three provinces, which have not yet signed an agreement. Even though the Department of Justice remains determined to implement the regime throughout the country, it may need the listed provisions to implement an autonomous federal ticketing scheme in those provinces with which it would not have successfully signed an agreement.

The second act is the Modernization of Benefits and Obligations Act, S.C. 2000, c. 12, which is a comprehensive act amending some 68 federal statutes to ensure equal treatment of married and common-law relationships in federal law regarding both benefits and obligations. Several provisions in the act were brought into force early in 2012, and work is continuing to bring into force the remaining five provisions. These five provisions are needed to achieve consistency throughout federal legislation.

The Minister of Public Safety is requesting deferrals concerning provisions in one act, the Firearms Act, S.C. 1995, c. 39. Given the government's ongoing review of the current firearms legislative framework, the Minister of Public Safety has requested that the repeal of those provisions be deferred to allow the government sufficient time to examine the potential impacts of that repeal.

The Minister of Transport is requesting deferrals concerning provisions in two acts. The first act is the Marine Liability Act, S.C. 2001, c. 6. Section 45 will give effect to the Hamburg Rules, which is an international convention on the carriage of goods by sea adopted by the UN in 1978, if it comes into force. The Marine

Liability Act contains a provision to bring into force the Hamburg Rules when a sufficient number of Canada's trading partners have ratified them. Therefore, section 45 of the Marine Liability Act should not be repealed at this time.

Next is the Canada Marine Act, S.C. 1998, c. 10. There are many reasons for not repealing the four listed provisions of that act.

Section 140 of the Canada Marine Act enables Canada to enter into agreements with any person to ensure ferry service between North Sydney, Nova Scotia, and Port-aux-Basques, Newfoundland and Labrador, in accordance with section 32 of the Terms of Union of Newfoundland with Canada, a constitutional obligation of Canada vis-à-vis Newfoundland.

• (2120)

The minister would retain the existing legislative option provided by section 178 to create Jacques Cartier and Champlain Bridges Incorporated, JCCBI, a Crown parent corporation, with an order of the Governor-in-Council. Section 185 of the Canada Marine Act amends Schedule III to the Municipal Grants Act, replaced with the Payments in Lieu of Taxes Act in 2000, by adding JCCBI to Schedule III, thereby exempting JCCBI from the payment of real property taxes.

Section 201 of the Canada Marine Act would repeal the Harbour Commissions Act, which is the governing legislation for the Canadian harbour commissions. Since the Oshawa Harbour Commission continues to be governed by the Harbour Commissions Act and the Oshawa Harbor Commission By-laws made under that act, until such time as it becomes a port authority, the Harbour Commissions Act should not be repealed under section 201 of the Canada Marine Act. Therefore, section 201 of that act should not be repealed.

The President of Treasury Board is requesting deferrals concerning provisions in one act: the Public Sector Pension Investment Board Act, S. C. 1999, c. 34. The provisions concern pension and related benefits for the Canadian Forces. They amend definitions and repeal provisions of the Canadian Forces Superannuation Act. Regulations are required to set out the many substantive pension benefit provisions. Any pension amendments for the Canadian Forces must take into account the pension arrangements for the public service under the Public Service Superannuation Act. Extensive consultation between the Canadian Forces and Treasury Board is required. While that consultation is under way, a deferral from automatic repeal will allow the departments time to complete the work and make arrangements to have the provisions come into force if that is the ultimate decision.

The Statutes Repeal Act provides that any deferrals would be temporary. As a result, any act and provisions for which deferral of repeal is obtained by December 31 of this year will appear again in next year's annual report. They will be repealed on December 31, 2013, unless they are brought into force or exempted again for another year by that date.

It is important that the resolution be adopted before December 31, 2012. Otherwise, the act and provisions listed in the motion will be repealed automatically on December 31, 2012, along with all other provisions mentioned in the second annual report that have not come into force or otherwise been repealed.

The repeal of the act and the provisions listed in the motion could lead to inconsistency in federal legislation. The repeal of certain provisions could even result in federal-provincial stresses. The repeal of other provisions could create challenges under the Canadian Charter of Rights and Freedoms, and the repeal of yet others could blemish Canada's international reputation.

If a resolution is not adopted by December 31, 2012, federal departments would need to address the resulting legislative gaps by introducing new bills. Those bills would have to proceed through the entire legislative process from policy formulation to Royal Assent, which would be costly and time-consuming.

In conclusion, I urge honourable senators to support the motion and vote in favour of a resolution that the act and provisions listed in the motion not be automatically repealed on December 31 of this year.

Hon. Joan Fraser: Would Senator Wallace accept a couple of questions?

Senator Wallace: Yes.

Senator Fraser: I betray my ignorance. The honourable senator has referred to deferrals. Would adoption of this motion give permanent deferral or a one-year deferral only?

Senator Wallace: Honourable senators, it would be a one-year deferral. When the list reappears next year, those dealt with through the year would be removed. Any for which we would be granting deferrals now would reappear and have to be dealt with in one year's time if they are still on the list.

Senator Fraser: Honourable senators, I have been frantically scanning Item No. 9, the Firearms Act, thanks to the Internet, to figure out what is happening. I am truly confused. I do not quite understand why some of these things are not in force. I am unsure, but it looks to me as if perhaps one or two of the things not now in force will be allowed to lapse. Could the honourable senator explain in a little more detail what is happening with the Firearms Act?

For example, section 53 refers to the importation of prohibited firearms for the purpose of re-export. For the life of me, I cannot understand why that would not be in force and what the implications would be of continuing to have it on the books but not in force. That is one example of how I am royally confused about the Firearms Act requirements.

Senator Wallace: Honourable senators, as I mentioned, four different criteria could apply to why the deferral is being requested. The Firearms Act arises because of an operational need, and a number of issues are being dealt with in respect of the Firearms Act. I can say only that in integrating all of those and determining how they will work together, operational issues are still being worked out, so they cannot proceed with them. I cannot give honourable senators an indication of when that might change, but it is being worked on.

Senator Fraser: Honourable senators, if no one else wishes to speak, I will take the adjournment.

Hon. Joseph A. Day: Honourable senators, I have one question for Senator Wallace in relation to his comments on the Canada Marine Act.

Preliminary to that, my recollection is that Senator Banks was a proponent of the Statutes Repeal Act. I presume that quite a list of statutes will be repealed and that the ones in the motion were selected by various government departments to not be repealed automatically. Is that correct?

Senator Wallace: Yes, but it is not that they were selected. Honourable senators may recall from when we went through the same exercise last year that it is simply a listing of any acts that have received Royal Assent but have not been brought into force. It is a case of looking at them and listing the ones that fall into that category. Any that fall between the ninth year following Royal Assent and the tenth year automatically appear on this list. Last year we had 45 on the list, and it was reduced to 20. Action was taken on a number of them. Once they come into force, they just drop off the list. There is no discretionary factor determining what is on and what is off. It is simply whether they fall between the ninth and tenth year that they have received Royal Assent but have not been brought into force.

• (2130)

Senator Day: There would be quite a group of those that the government does not want to put on this list — and this is a sort of double negative — but not repealed, otherwise they would be repealed.

The one I am concerned about is No. 6, Canada Marine Act, and the honourable senator is saying "please do not repeal section 140." I understood his explanation was that dealt with giving the government authority to enter into arrangements with any companies or individuals in relation to transportation links between the Maritimes and Newfoundland. Why would that section not have been put in force and effect giving the government authority, from time to time, to enter into any arrangements that they deem to be appropriate?

Senator Wallace: Honourable senators, I understand the reason for it. Again, it comes back to the fact that we have these four criteria that can apply to the request for the repeal. There is an operational need and there are details to be worked out that would relate to that ferry service and they are not at a point where they feel it can be brought into force at this point. It is continuing, but it is just not at that point right now. It is because of operational needs.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, as I understand the effect of Senator Banks' bill, which we adopted, it was that providing 10 years went by and the government did not ask for this exemption, then the bill would cease to be on the books. Is that correct?

Senator Wallace: Yes, that is correct.

Senator Cowan: My next question relates to where I thought Senator Day was going. Are there any bills that have fallen off the books as a result of having passed the 10-year mark, or are approaching the 10-year mark, that the government does not want to keep on the books to which any of the four criteria apply? Are there any other bills?

Senator Day: Yes, there are quite a few of those.

Senator Cowan: Have any bills fallen off the books as a result of not being included in this list and not having been brought into force in the past year?

Senator Wallace: No, I do not believe so, honourable senators.

Senator Cowan: Thank you.

(On motion of Senator Fraser, debate adjourned.)

[*Translation*]

BUDGET 2012

INQUIRY WITHDRAWN

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Carignan calling the attention of the Senate to the budget entitled, *Economic Action Plan 2012: Jobs, Growth, and Long-Term Prosperity*, tabled in the House of Commons on March 29, 2012, by the Minister of Finance, the Honourable James M. Flaherty, P.C., M.P., and in the Senate on April 2, 2012.

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, because we are currently studying Bill C-45, this inquiry should no longer be on the Order Paper. I therefore request that this inquiry be withdrawn from the Order Paper.

[*English*]

The Hon. the Speaker: Honourable senators, I assume that no other senator will have to speak. I must advise the house that if Senator Carignan chooses to speak, it has the effect of closing the debate.

The Honourable Senator Carignan was asking that the matter be withdrawn.

Honourable senators, is it agreed?

Hon. Senators: Agreed.

(Inquiry withdrawn.)

DIVERSITY IN THE SENATE

INQUIRY—DEBATE ADJOURNED

Hon. Donald H. Oliver rose pursuant to notice of November 8, 2012:

> That he will call the attention of the Senate to the state of diversity in the Senate of Canada and its administration and, in particular, to how we can address the barriers facing the advancement of visible minorities in the Senate workforce and increase their representation by focusing on hiring, retention and promotion.

He said: Honourable senators, I had intended to speak tonight and, indeed, have been ready to speak for more than three weeks. In view of the hour, I would like to say only one thing.

This is December 10 and it commemorates the day in 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights. Article 7 is one of the things that I would like to talk about and it states:

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

With those opening remarks, honourable senators, I would like to adjourn further debate for the rest of my time at a future sitting.

(On motion of Senator Oliver, debate adjourned.)

(The Senate adjourned until Tuesday, December 11, 2012, at 2 p.m.)

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