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Tuesday, October 20, 2009

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Tuesday, October 20, 2009

The Senate met at 2:00 p.m., the Speaker in the chair.

Prayers.

[*Translation*]

SENATORS' STATEMENTS

TRIBUTES

THE LATE HONOURABLE SHEILA FINESTONE, P.C.

The Hon. the Speaker: Honourable senators, the Leader of the Government has requested, pursuant to rule 22(10), that the time provided for the consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Sheila Finestone, P.C., who died on June 8, 2009.

[*English*]

I remind honourable senators that, pursuant to the *Rules of the Senate*, each senator will be allowed three minutes and may speak only once and that the time for tributes shall not exceed 15 minutes.

Hon. Joan Fraser: Honourable senators, Sheila Finestone was born in Montreal and had deep roots in that city. She was the daughter of Monroe Abbey and Minnie Cummings Abbey, who were deeply involved in community service. Her father was once President of the Canadian Jewish Congress. She carried those values with her until the day she died.

She graduated from McGill University in 1947, got married that year and proceeded to have four sons, which normally would be considered a full-time career in its own right. It is written somewhere that the mothers of three sons have a special place in heaven. I cannot imagine how special the place must be for mothers of four sons. That, of course, was not enough to occupy Sheila Finestone.

Her community work was famous. Notably, from 1977 to 1980, she was President of the Fédération des femmes du Québec. It was in those years that she was one of the organizers of the famed Yvette rally, preceding that referendum on Quebec independence, which had such a profound influence on the course of that campaign.

She came to the House of Commons in 1984 and was re-elected in the following three elections. She came to represent the riding of Mount Royal, which is one of the most historic ridings imaginable. Her predecessor was the Right Honourable Pierre Trudeau and her successor was the Honourable Irwin Cotler. That might lead you to think that to be an MP from Mount Royal, one needed to be dedicated to human rights; and you would be right. Sheila Finestone was dedicated to every aspect of human rights, in particular women's rights as well as minority language rights, ethnic rights and humanitarian work, both here and abroad.

In the House of Commons, Sheila Finestone served as Secretary of State for Multiculturalism and the Status of Women. She led the Canadian delegation to the United Nations Fourth World Conference on Women held in Beijing in 1995. When she came to the Senate in 1999, she barely took a deep breath before she went right on running and served here as Deputy Chair of the Standing Senate Committee on Human Rights. She did enormous work in the Inter-Parliamentary Union, where she was an around-the-world renowned fighter against land mines and for the Ottawa Treaty and the International Criminal Court.

Those are dry facts, but those who knew her will tell you that Sheila Finestone was also one of the warmest, loveliest, and most energetic, indefatigable and caring people any of us will ever know. She was lovely. She was a world-class shopper and she was an absolutely devoted mother and grandmother. She wanted everyone else to be just as happy in their family as she was. She created happiness around her, and we owe her a great deal.

Hon. Michael Duffy: Honourable senators, I want to associate myself wholeheartedly with the words of Senator Fraser, who in a very short time summed up a remarkable human being and a great parliamentarian.

I first came to know Sheila Finestone when she was elected in 1984. As Senator Fraser has said, those of us who were following politics at the time were quite interested in knowing what kind of remarkable person would follow in the footsteps of a giant: The Right Honourable Pierre Trudeau. While Sheila Finestone was not a physical giant, she was a giant in everything she did. We have heard all about her various campaigns on behalf of the disadvantaged to eliminate land mines and so on.

In defence of that indefatigable quality, I remind honourable senators that very often she commuted daily by train from her home in Montreal to Ottawa and back. She used to spend an entire day on the Hill, which can be so tiring, and return home by train in the evening to make sure her family was well looked after. She was warm, caring and the epitome of all that is great about a parliamentarian. We will miss her dearly.

Hon. Catherine S. Callbeck: Honourable senators, I am pleased to rise today to participate in the tribute to Sheila Finestone, whom I considered a friend and colleague. During the 1984 election, many Liberal candidates were defeated, but in the riding of Mount Royal, Quebec, Sheila Finestone was elected for the first time, with an impressive majority.

Growing up in Montreal in the 1930s and 1940s, Sheila personally experienced racism and sexism, and because of those experiences, made it her goal in life to ensure that others would not face the same kinds of barriers. From her first days in Ottawa, Sheila made it known that her priority would be to give a voice to those who had no voice, be they women or people in cultural or

linguistic minority situations. She often said that her most important work was the all-party committee study to identify laws that needed updating to ensure that they were in line with section 15 of the Canadian Charter of Rights and Freedoms.

Sheila came to Ottawa with several careers already behind her. She was a wife and mother of four boys, each of whom is very successful today in his chosen career. She had answered many calls for volunteerism. She worked in youth protection in Quebec and as a member of the political staff of Claude Ryan, former Leader of the Liberal Party of Quebec. When Sheila was at a stage in her life when many would be thinking of slowing down, she opted for a new career as a member of Parliament and then as a senator.

I met Sheila when I was first elected in 1988. As a newcomer to Ottawa and to the House of Commons, I appreciated her ongoing friendship and advice. She had infinite energy. She was curious and had a great thirst for information and knowledge. Friendships were also important to Sheila. She had friends on all sides and worked with all parties.

• (1410)

I will close by relating a story from one of Sheila's campaigns. A young child saw her campaign sign and was struggling to pronounce her family name. It came out "Sheila Finest One." Honourable senators, I believe that sums up Sheila — the finest one.

[*Translation*]

Hon. Lucie Pépin: Honourable senators, today we are paying tribute to a woman who lived life to its fullest in service of others. With the passing of Sheila Finestone, we have lost a great Canadian and a dedicated and engaging woman.

I was elected to Parliament in 1984 at the same time as Sheila, but I had the honour of meeting her well before that. Not only did we both come from Montreal, but we also shared a passion for a number of causes.

Sheila was a woman of conviction, a born leader who spoke out against social injustice and fought against all injustice. She always cared a great deal about changing the daily lives of her fellow Canadians. Her actions made it clear that she had a passion to serve.

Becoming a member of Parliament, secretary of state and then a senator was Sheila's way to continue the fight for equality and justice. She always stayed true to her values, and never stopped fighting to protect the rights of every person, regardless of sex or race.

Sheila was heavily involved in the Canadian Jewish Congress, where she held various responsibilities, generally for social issues.

Canadian women have encountered many obstacles in their path and Sheila Finestone was one of the women who helped clear the way. In 1977, she was the first anglophone to lead the Fédération des femmes du Québec. She had a talent for bringing people together, and she built bridges between anglophone and francophone women's associations. Women's associations in Quebec were much more collegial in her day than they are now.

Sheila was an ardent federalist. She entered politics on the eve of the 1980 Quebec sovereignty referendum. Her work for the No side was noticed. During the campaign leading up to the referendum, she was among the organizers of the women's movement known as the Yvettes. I am sure that we all remember how that movement's success helped improve the federalists' standing in the polls.

Sheila's dedication to the Liberal Party of Canada was recognized and appreciated by all. When I spoke here on the occasion of her retirement in 2001, I reminded her about the chicken dinners and spaghetti suppers she organized winter and summer all across Quebec to benefit the party.

I am very proud to have known this amazing woman, and to have been her friend and colleague. Sheila is no longer with us, but we can be proud of her legacy. Above all, she inspired us to always be there for people in need.

Sheila, you will not be forgotten.

[*English*]

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to pay tribute to the late Honourable Sheila Finestone, a person who I always thought of as a special friend.

What I admired about Sheila was her courage to work on issues she truly believed in, even if she knew they were issues that needed convincing and persuasion. My best memory of her was when she would say:

> At my age, if you think I'm going to start shutting up, forget it.

As a member of the executive of the National Action Committee on the Status of Women from 1975 to 1980, she dedicated her time to change the lives of vulnerable women. As a director of youth protection for Jewish Family Services and a founder of Project Genesis, which provides legal and other services for those in need, Sheila demonstrated early on in her life how important the trials and tribulations of others were to her.

When Sheila assumed her role as a member of Parliament in 1984, she knew the footsteps left by Prime Minister Trudeau in Mount Royal required her to walk in big shoes. As those of us who had the privilege to work with her in this chamber know, she not only wore those shoes but made them her own.

Sheila continued the cause of women when first elected to the House of Commons, proclaiming in her first speech:

> The government risks the charge that its attention to the significant concerns of Canadian women is little more than tokenism, for it excludes them from the heart of policy-making.

Sheila Finestone knew the virtues and importance of bridging gaps between different groups of women and cultures. She understood that the critical importance involved in the idea of

democracy was to contribute to it, ensuring many different groups a place and a voice in society. I know she included us all in her deliberations.

As a member of Parliament, Sheila dispensed great energy in her multicultural, multilingual riding of Mount Royal. Her popularity among her constituents was no more evident than during her election campaign in 1993, when she retained her seat with a margin of 36,000 votes. After this election, Sheila continued to serve the causes of women and multiculturalism as the first Secretary of State, Status of Women, and Multiculturalism.

Upon her appointment to this chamber in 1999, she continued to campaign not only for a better Canada, but for a better world. A believer in the International Court and an active campaigner to ban the use of land mines, she echoed the sentiments of a waiting world hoping for peace.

Her position as Deputy Chair of the Standing Senate Committee on Human Rights afforded her the opportunity to steer the debate in a direction where a majority would benefit.

When Sheila left the Senate and us, she left a vacuum in this chamber. Now that she has gone to a better place, she has left a void in our lives.

[*Translation*]

QUESTION OF PRIVILEGE

NOTICE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, pursuant to rule 43(3) of the *Rules of the Senate*, I give notice that later today I intend to raise a question of privilege.

This question of privilege concerns a press release by Senator James Cowan, Leader of the Opposition, and various comments he subsequently made to the media concerning the Senate's handling of Bill C-25, on Thursday, October 8.

I shall also address the blog post made by Senator Grant Mitchell about this bill.

Pursuant to Rule 43(7), I am prepared to move a motion asking the Senate to refer the matter to the Standing Committee on Rules, Procedures and the Rights of Parliament, if His Honour finds that a prima facie case of privilege exists.

[*English*]

THE RIGHT HONOURABLE JEAN CHRÉTIEN, P.C., C.C., O.M.

CONGRATULATIONS ON RECEIVING ORDER OF MERIT

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, it is with pride that I rise today to pay respects to one of our most popular and respected prime ministers, Jean Chrétien, who today received an Order of Merit from Her Majesty the Queen.

The recognition by Her Majesty of this great Canadian is a tribute not only to him but to Canada, and is another manifestation of our historical link with the monarchy. Indeed, the honour takes on more significance when one considers that the Order of Merit is limited to 24 individuals.

Mr. Chrétien joins three other Canadian dignitaries who have received this award — neurosurgeon Wilder Penfield and former prime ministers, the Right Honourable William Lyon Mackenzie King and the Right Honourable Lester B. Pearson.

I trust that all members of this chamber will join me in paying tribute to Mr. Chrétien, who remains a strong presence throughout Canada and around the world.

COADY INTERNATIONAL INSTITUTE

FIFTIETH ANNIVERSARY

Hon. Michael L. MacDonald: Honourable senators, I rise today to pay tribute to a most inspiring Nova Scotia institution. The Coady International Institute at St. Francis Xavier University in Antigonish celebrates its fiftieth anniversary this month.

The institute was founded in 1959 and named after Father Moses Coady, a pioneer of adult education in Nova Scotia. The work of Father Coady and his cousin, Father Jimmy Tompkins, later became known as the "Antigonish movement," growing out of the Catholic values of the worth and dignity of all people and the strong democratic belief that social reform must come through education.

St. Francis Xavier University has long had an interest in the people of its constituency. Its founders and their successors were never satisfied that only a few could receive a higher education. The work of people like Father Coady, Father Tompkins, Father Michael Gillis, Rev. Hugh MacPherson, Father Angus B. MacDonald and their successors opened the doors of the university to the men and women of Nova Scotia's fishing, farming and mining communities.

The people in these communities had been failed by their educations. They may have had the skills to fish, farm or mine, but they knew little about planning, or the economic factors keeping so many of them in poverty.

• (1420)

Father Coady said to the people: "You are poor enough to want it and smart enough to get it." He encouraged people to examine their so-called lot in life. He encouraged them to think about ways to better their lives, to learn the skills they needed, and to understand the economic and technical concepts to help them make sense of their world.

Today, the Coady International Institute is a beacon of learning and hope for people around the world. Students from developing countries in Africa, Asia, Latin America and the Caribbean come to St. FX for a unique learning experience. They learn about microfinance, community development, education and health

care. More than that, they get to live and study in Nova Scotia, and can be inspired by how much of an impact the work of this institute and the founders of this movement have had in just a few generations.

To date, the more than 5,000 graduates and partners of the institute are working in more than 130 countries around the world, sharing their knowledge and the spirit of the Antigonish movement. Many Canadians continue to take advantage of the Coady Institute's programs as well, including the internship program which sends young people abroad for six months to work in developing countries, giving them useful work experience in helping to promote global citizenship.

Honourable senators, the Coady Institute is a shining example of what happens when people work together to better themselves, and of the values of the people of Nova Scotia and, indeed, of all of Canada.

THE HONOURABLE JAMES S. COWAN

CONGRATULATIONS ON RECEIVING HONORARY DOCTORATE

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, a few days ago, our colleague, Senator Cowan, returned to his alma mater, Dalhousie University. However, while that was not a particularly unusual event — he has returned there many times since his student days, serving on Dalhousie's board of governors for a phenomenal 36 years, including six years as its chair — this time was, indeed, different. This time, he returned to receive a Doctor of Laws, *honoris causa*.

Some Hon. Senators: Hear, hear.

Senator Tardif: I managed to obtain a copy of Dalhousie's citation for this award. It speaks at length of Senator Cowan's dedication to the university, beginning in his student days when he was instrumental in negotiations that led to the construction of the Student Union Building, and continuing throughout the years since. He led the board of governors through lean financial times and has been with them to celebrate the university's successes with enrolment growth, faculty renewal, financial stability and construction of new campus buildings.

According to Dalhousie: "This vitality stems, in no small part, from the exemplary leadership and vision displayed by James Cowan."

However, the award was given not only in gratitude for his work at Dalhousie University. The award also recognizes his many contributions — far too many for me to recite here, honourable senators — to his city of Halifax; his province of Nova Scotia; and his country. The citation reads:

> For epitomizing the tradition, and for a lifetime of generosity and leadership to Dalhousie, his community and his country.

Senator Cowan, I know that all honourable senators join me in extending to you our sincere congratulations on this very well-deserved honour.

Hon. Senators: Hear, hear!

2010 OLYMPIC AND PARALYMPIC GAMES

CULTURAL CONTRIBUTIONS OF FIRST NATIONS PEOPLE

Hon. Gerry St. Germain: Honourable senators, in less than four months, the eyes of the world will turn upon my great home province of British Columbia as the City of Vancouver hosts the 2010 Winter Olympic Games.

The Vancouver Organizing Committee for the 2010 Olylmpic and Paralympic Winter Games, VANOC, has worked tirelessly for the last seven years to put this world showcase together.

It is a complex venue to host and there are many elements of the Olympic Games that reach far beyond the competitive nature of sport.

For British Columbia and Canada, one of those elements is First Nations cultural and participation in the games. VANOC has done an excellent job in consulting with First Nations and showcasing their culture.

The Four Host First Nations Society, comprised of the Lil'wat, Squamish, Musqueam and Tsleil-Waututh First Nations, was established to ensure the cultures of the First Nations are respected and represented throughout the staging of the 2010 Olympic Games.

Last February I had the honour of representing the Government of Canada at the launch of the 2010 Aboriginal Pavilion, a project of the Four Host First Nations Society and VANOC.

It is important that the cultural significance of the 2010 games continues to be highlighted wherever appropriate in the period leading up to, during and following the Olympic and Paralympic Games.

Licensed clothing by VANOC and the Four Host First Nations is appropriately styled with First Nations art.

With its recent release of Canadian Olympic clothing, the Hudson's Bay Company has sparked the ire of the Cowichan First Nation on Vancouver Island by producing clothing apparel that shares a striking likeness to the Cowichan sweater. The Cowichan sweater is a culturally-significant trademark design of the Cowichan First Nation and, unlike other Aboriginal apparel licensed by VANOC, the Hudson's Bay sweaters make no reference to the cultural significance their resemblance signifies.

Corporate representatives at the Bay have refused to acknowledge the likeness of their product to that of the one produced by the Cowichan First Nation.

At a time when most Canadians are coming together to celebrate and showcase our country to the world, contentious issues surrounding displays of culture identity must not be in play.

The Bay, one of Canada's oldest operating corporations, owes a large part of its financial success in the early days of incorporation to First Nations citizens of Canada. Without the cooperation of the First Nations people with the fur traders, the Hudson's Bay Company most likely would not have survived, nor would it have evolved into what Canadians know it as today.

Honourable senators, let us encourage the Bay, the oldest notable corporate citizen in Canada, to recognize and reconsider their position concerning the Cowichan sweater. Let us also encourage the federal government to continue to support and recognize the cultural values of the First Nations people of this country during, and long after, the 2010 Olympics.

HALIFAX HERALD LIMITED

Hon. Terry M. Mercer: Honourable senators, Canada's Top 100 Employers is an annual competition that recognizes the best places to work in Canada. Its goal is to identify companies that are leaders of such things as employee benefits and morale. The winners are announced in special editorial supplements through *Maclean's* magazine and *The Globe and Mail*.

This year, Canada's Top 100 Employers' staff and editors reviewed more than 75,000 employers across Canada and invited 16,000 of these to apply. According to Canada's Top 100 Employers' website, employers are evaluated using eight criteria: physical workplace; work atmosphere and social atmosphere; health, financial and family benefits; vacation and time off; employee communications; performance management; training and skills development; and community involvement.

This year, The Halifax Herald Limited was chosen as one of Canada's top 100 employers. According to the Top 100 website, the Herald:

- gives employees a paid day off on their birthday
- encourages employees to continue their education by providing generous tuition subsidies
- offers employees a flexible health benefits plan that includes coverage when they retire
- gives new employees three weeks of paid vacation to start
- has an onsite daycare centre that is operated by an independent third-party operator
- donates its creative talents and over $2 million in advertising space to over 200 charities every year

Honourable senators, The Halifax Herald Limited has been publishing newspapers in Nova Scotia since 1875. The Dennis family has been running the newspapers since the first issue. Graham Dennis is the present owner of the company, as well as its chief executive officer. It is significant to note that Mr. Dennis has the longest record as a publisher in the Canadian daily newspaper industry.

I offer my congratulations to Mr. Dennis and the entire organization at The Halifax Herald Limited for their dedication to their employees and for being an integral part of the daily lives of the citizens from all communities in Nova Scotia.

• (1430)

PERSONS DAY

Hon. Ethel Cochrane: Honourable senators, I rise today in honour of Persons Day, which was celebrated on Sunday, October 18. It is the day when we, as Canadians, reflect on the landmark decision at the centre of the *Persons* Case.

Eighty years ago this week, in 1929, five courageous Albertan women — Henrietta Muir Edwards, Louise McKinney, Irene Parlby, Nellie McClung and Emily Murphy — successfully challenged the law on behalf of all Canadian women. As a result, women gained the right to be persons under the law.

Honourable senators, the victory of the Famous Five is one in which we all share. Their hard-fought efforts pushed open the door to greater participation for all Canadian women. I use the word "greater" because, of course, the work continues.

I am pleased that this date is recognized and celebrated. Earlier this month, for example, I attended a special event at Rideau Hall where the Governor General presented awards in commemoration of the *Persons* Case. These awards were presented to six remarkable women who, in the spirit of the Famous Five, have worked to bring about positive change in Canadian society.

In her speech, Governor General Michaëlle Jean spoke of the spirit of resistance and the resiliency that women have demonstrated throughout our history. She spoke to the tremendous impact that women's engagement and participation has had on the broader world. She said:

> When you empower women, humanity can only gain. Because when you give women power, you are giving power to the communities they belong to.

I am very pleased that honourable senators recently joined me in a motion to recognize the Famous Five as honorary senators. However, I am equally pleased that there was a lively and thoughtful debate on their legacy and the current challenges facing women today.

It is clear that the work towards women's equality did not end 80 years ago. Indeed, obstacles and challenges continue to exist and hard work remains. However, I am inspired by the strength of the women I see around me, by the leadership that exists, and by the younger generations that are continuing to push the envelope. I thank the Famous Five for their incredible legacy and for passing on the torch.

Hon. Senators: Hear, hear!

[*Translation*]

ROUTINE PROCEEDINGS

PUBLIC SAFETY

USE OF ELECTRONIC SURVEILLANCE—
2008 ANNUAL REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2008 annual report on the use of electronic surveillance, pursuant to section 195 of the Criminal Code.

RCMP'S USE OF LAW ENFORCEMENT JUSTIFICATION PROVISIONS—2008 ANNUAL REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2008 annual report on the RCMP's use of the law enforcement justification provisions.

NATIONAL DNA DATA BANK OF CANADA—
2008-09 ANNUAL REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2008-09 annual report of the National DNA Data Bank of Canada, pursuant to subsection 13.1(2) of the DNA Identification Act.

[*English*]

CANADIAN NATO PARLIAMENTARY ASSOCIATION

SPRING SESSION, MAY 22-26, 2009—REPORT TABLED

Hon. Jane Cordy: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association to the Spring Session 2009, held in Oslo, Norway from May 22 to 26, 2009.

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

CANADIAN/AMERICAN BORDER TRADE ALLIANCE,
MAY 3-5, 2009—REPORT TABLED

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States Inter-Parliamentary Group to the Canadian/American Border Trade Alliance to the spring meeting held in Ottawa, Ontario, Canada, from May 3 to 5, 2009.

ANNUAL MEETING OF WESTERN GOVERNORS'
ASSOCIATION, JUNE 14-16, 2009—REPORT TABLED

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States Inter-Parliamentary Group to the 2009 Annual Meeting of the Western Governors' Association, held in Park City, Utah, United States of America, from June 14 to 16, 2009.

ANNUAL MEETING
OF NATIONAL GOVERNORS' ASSOCIATION,
JULY 17-20, 2009—REPORT TABLED

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States Inter-Parliamentary Group to the 2009 Annual Meeting of the National Governors' Association, held in Biloxi, Mississippi, United States of America, from July 17 to 20, 2009.

THE SENATE

CANADIAN NORTHWEST PASSAGE—
NOTICE OF MOTION

Hon. Hector Daniel Lang: Honourable senators, I give notice that at the next sitting of the Senate, I will move:

> That in the opinion of the Senate, as the various waterways known as the "Northwest Passage" are historic internal waters of Canada, the government should endeavour to refer to these waterways as the "Canadian Northwest Passage."

QUESTION PERIOD

JUSTICE

NATIONAL SECURITIES REGULATOR—
SENATE TENURE—SUPREME COURT REFERENCE

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. We read in the newspapers on the weekend, and I quote:

> . . . the Harper government is asking the Supreme Court to rule on whether Ottawa has the power to create a national securities regulator.

Her colleague, Justice Minister Nicholson, was quoted as saying:

> "The government strongly believes that Parliament has the constitutional authority to enact a comprehensive federal securities act and is initiating preparatory steps in that direction," . . .

The article continues:

> "An opinion from the Supreme Court of Canada will provide legal certainty to all provinces and territories and market participants, and thus protect the integrity of a Canadian securities regulatory regime," . . .

Over two years ago, on June 12, 2007, the Standing Senate Committee on Legal and Constitutional Affairs reported to this chamber on its study of the government's bill to amend the Constitution of Canada to introduce certain reforms to the Senate of Canada. The committee recommended as follows:

> We are convinced that the only way to ensure that the approach that the Government has taken on Senate reform is indeed constitutional is for the Government to refer Bill S-4 as we have amended it to the Supreme Court of Canada on a constitutional reference.

That was over two years ago, yet this government has done nothing except to reintroduce essentially the same bill with no guidance from the Supreme Court. Without question, we could have received the Supreme Court's decision on the reference long ago and, by now, be far along the road to real Senate reform.

Can the Leader of the Government in the Senate explain the difference to this chamber? Why is the government referring this matter of a national securities regulator to the Supreme Court of Canada for a constitutional reference, but has refused for more than two years to do the same on the matter of amending the fundamental legal document of the country, the Constitution?

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): I thank the honourable senator for the question. First, with regard to the securities regulator, as the honourable senator knows and as has been stated by many, Canada is the only major industrialized country without a common or national securities regulator. Since 2006, we have made it clear as a government that we find this situation unacceptable.

This is a voluntary initiative that will respect regional expertise. Three-quarters of the provinces and territories have committed or are open to working toward a Canadian securities regulator. Therefore, the government will seek the opinion of the Supreme Court of Canada to provide legal certainty as to whether Parliament has the authority to enact and implement a federal securities regulatory regime. As part of this reference, the government will submit draft legislation to the Supreme Court, expected to be ready by spring 2010.

Second, with regard to Senator Cowan's question about the recommendation of the Standing Senate Committee on Legal and Constitutional Affairs, we believe, and we have had constitutional advice to this effect, that the Senate term limits bill is within Parliament's authority to amend the Constitution of Canada in relation to the executive, the Government of Canada, the Senate and the House of Commons, pursuant to section 44 of the Constitution Act, 1982.

Senator Cowan: The report of the Standing Senate Committee on Legal and Constitutional Affairs, to which the leader refers, was very clear on the need for a constitutional reference on the government Senate reform bill. I will quote from the report:

> The overwhelming weight of testimony that our Committee heard supported the conclusion that there are significant constitutional concerns if we proceed as proposed by the current federal Government and pass Bill S-4 pursuant to the amending powers set out in section 44 of the *Constitution Act, 1982*. Experts in Canadian constitutional law have cautioned that this is not a matter for unilateral federal amendment, but rather is one that requires the consent of the provinces. And indeed, several provincial governments have written to express their considered view that this is not a matter for unilateral federal action, but rather a constitutional amendment to which they must be party.

The committee continued:

> The stakes are high. This is not a situation where we can accede to the Government's wish for speedy Senate reform, and wait to find out later whether the Government was right, or whether in fact the many constitutional experts who expressed concern about the constitutionality of this bill were right.

• (1440)

I am having difficulty understanding why the government is choosing to take a reference on the issue of a national securities regulator — and I do not quarrel with that decision — but is refusing to do the same thing on the issue of constitutional reform. In both cases the government repeatedly asserts that it has the constitutional right to proceed as it proposes. The Justice Minister is on record as saying that his government strongly believes it has the power to act to establish a national securities regulator, but nevertheless, for greater certainty, he is sending this reference to the Supreme Court.

Can the Leader of the Government explain why the government is referring this matter to the Supreme Court but stonewalling a request for a reference on Senate reform?

Senator LeBreton: Honourable senators, I can read the Constitution as well as Senator Cowan. Section 42 of the Constitution Act, 1982 specifies which amendments to the Senate require provincial support including, "powers of the Senate and the method of selecting Senators" and "the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators."

Senate tenure is not one of the amendments specified in section 42 that would require provincial consent. It can therefore be accomplished by Parliament acting alone, as was the case with the 1965 amendment.

In the same fashion, in 1965, by virtue of then section 91 (1) of the Constitution Act, 1867, Parliament acting alone amended section 29 of the Constitution Act, 1867 to change the appointment of senators from life to mandatory retirement at the age of 75. That is the provision under which we moved on Senate tenure.

[*Translation*]

Hon. Jean-Claude Rivest: Honourable senators, with regard to the reference to the Supreme Court on the issue of the regulator, we know that the Government of Canada had already begun discussions with the Government of Quebec, obviously, and the Government of Alberta, which, I believe, strongly object to

the federal government's claims on this issue. Can the minister assure us that creating a national securities regulator will preserve the constitutional rights that Quebec and the provinces are guaranteed with regard to securities? Does this reference put an end to these discussions?

In addition, the federal government had already raised the possibility that certain provinces could opt out and keep their own institutions, if a national securities regulator were created. Is the federal government still considering this proposal?

[*English*]

Senator LeBreton: I thank the honourable senator for that question. He will recall that that suggestion was made by the government. I reiterate that this is a voluntary initiative that respects regional expertise. As I indicated in my answer to Senator Cowan, three quarters of the provinces and territories are committed or open to this proposal. We are well aware of the reservations of the Provinces of Quebec and Alberta, but the matter has been referred to the Supreme Court for decision. As well, as I said in response to Senator Cowan, we will provide the draft legislation.

I take some encouragement from the words of the former Quebec intergovernmental affairs minister, Benoît Pelletier, who is now a law professor. He told the Canadian Press on October 19:

> The fact that it decided to ask the court for an opinion in my view is something that is fair.

Senator Cowan: He said the same thing about the Senate.

Senator LeBreton: That is one reason it has been referred to the Supreme Court with the draft legislation.

In response to Senator Cowan's intervention, I clearly stated, and the Constitution clearly states, that there are certain provisions with regard to Senate reform that require reference to the court. Senate tenure, which does not affect regional representation or the size of the Senate, does not, in our view, fall within those provisions.

Hon. Tommy Banks: My question is directed to the Leader of the Government in the Senate. Since it is the case that the government is not referring the question of Senate term limits to the Supreme Court for greater certainty because it is certain that Parliament alone has the right to do that, it must also be the case that the government is referring the question of a national securities regulator to the Supreme Court because it is not certain that Parliament has the right to do that. Is that correct?

Senator LeBreton: I believe that Senator Grafstein currently has a bill dealing with a national securities regulator before the Senate. As Senator Banks and his colleagues know, this is an important matter with regard to the economic condition of the country. As I said in response to Senator Cowan, Canada is the only major industrialized country without a common or national securities regulator. We keep seeing stories in the news about situations people have gotten themselves into.

I will not prejudge what the court may say about the national securities regulator, but I will say categorically that we believe we are on solid ground by not referring the issue of Senate tenure to the Supreme Court.

[*Translation*]

Hon. Céline Hervieux-Payette: In the wake of the debacle on Wall Street and on the London stock market, both of which have a single securities commission, I would just like the Leader of the Government and the minister to explain how a single commission in Canada would prevent the financial disasters we have witnessed.

[*English*]

Senator LeBreton: As those incidents happened in other countries, I do not believe I am in a position to comment. It has often been expressed to the government that international groups that want to deal with Canada are inhibited by having to deal with 13 different securities regulators.

I will not comment on what such a regulator would have done with regard to what happened on Wall Street and in London, England.

FINANCE

ECONOMIC STIMULUS—GOVERNMENT CHEQUES

Hon. Terry M. Mercer: Honourable senators, last week I was in Nova Scotia, where I always love to be. I was reflecting on stories I have heard about the prowess of the great Conservative fundraising machine. Senator Gerstein's work on behalf of the Conservative Party is well known, and Senator Gerstein knows that I am an admirer of his. However, I did not know it had gone as far as it has.

While reading the morning paper in Nova Scotia, I almost spilled my tea when I saw a story from Chester, Nova Scotia. It reported on the member of Parliament for South Shore—St. Margaret's, Mr. Gerald Keddy, presenting a cheque to the good people of Chester for a new rink at Church Memorial Park. This is all good news. The cheque that Mr. Keddy presented to the good people of Chester was for $302,620.

• (1450)

That is absolutely fabulous. Then I had a closer look at the cheque that appeared in the Halifax paper. It depicts Mr. Keddy with his right hand grasping the cheque as he is presenting it to this wonderful volunteer in the community. What is his hand touching? The Conservative Party logo.

I then cast my mind back to Senator Gerstein's hard work on behalf of the Conservative Party and the hard work of the good Conservatives of South Shore—St. Margaret's. I look to the corner of the cheque, and whose signature is on it but Mr. Gerald Keddy, the local member of Parliament. Is that not wonderful?

My question to the Leader of the Government in the Senate is, since the Conservative Party of South Shore—St. Margaret's has been so generous in donating $302,620 to the rink in Chester, will

she intervene with the Minister of National Defence and the minister responsible for ACOA to see if he can find matching dollars for that donation?

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): I thank the honourable senator for the question. I think it was a question.

It has been made clear that the use of a party logo on a prop announcement is not acceptable and not something that we want to see happen again. By the way, these announcements on the stimulus package are being made by various members of Parliament all over the country, including Liberal members of Parliament. — Two or three weeks ago, the honourable senator was complaining to me that the money was not getting out. The honourable senator is now complaining that the money is getting out.

If the honourable senator wants to get into the subject of cheques, the day Senator Mercer tells me the Liberal Party of Canada is writing a $40-million cheque to the taxpayers of Canada I will start answering questions about cheques.

Senator Mercer: It seems that they say one thing one time and something else at another.

Here is a quote for honourable senators, who I know are interested in this matter — I can see senators on the edge of their seats with interest. This is what Mr. Gerry Nicholls told CBC's "The National" last night:

> When I worked with Stephen Harper at the National Citizens Coalition . . .

They are a great friend of the Liberal Party.

> . . . this kind of stuff used to drive him crazy, when governments would use public money for partisan purposes.

Are we to understand from this that the Prime Minister has changed his stripes and is going down the old road of the minister's good friend Brian Mulroney?

Senator LeBreton: I think we had better separate the wheat from the chaff here. The fact is it was inappropriate to use a party logo on a prop cheque to give money.

This is not abuse of public funds. This is stimulus money. It is all in the economic update, if the honourable senator would care to read it.

Let us put things in perspective here. This money has been distributed across the country to many ridings. Just the other day the Mayor of Toronto, David Miller — who I do not believe is a supporter of the Conservative Party — was congratulating the Prime Minister for spending half a billion dollars on projects in Toronto. The last time I looked I do not think there were any Conservative ridings in Toronto.

In contrast to the sponsorship program, there has never been a suggestion that work being invoiced is not being done. These announcements are for projects that are being done, unlike the sponsorship program. Nor is there any evidence that public funds are being diverted to the Conservative Party. That is not the case.

I think Senator Mercer had better quit while he is still ahead. The fact of the matter is we have put significant amounts of money into infrastructure in this country. There is ample proof.

I will quote one of the senator's own colleagues from the House of Commons, Mr. Rodger Cuzner, MP for Cape Breton—Canso. As honourable senators know, the whole stimulus program is spread over two years. Apparently he had a project in Glace Bay that did not make the cut first time around. The *Cape Breton Post* reports today:

> District 3 Coun. Lee McNeil said the funding will help residents of Wallaces Road where a new junior high school is being built:
>
> This work is going to enhance that area. For years that work was needed there. This is long overdue.
>
> Rodger Cuzner, MP for Cape Breton—Canso said it would have been easy to "have gone ballistic". . .

He must have been thinking of Senator Mercer.

> ". . . and made a big political show" after the Glace Bay area was short-changed during the last round of infrastructure funding announcements. "However, I approached the ministers responsible and I appreciate their help on the outcome," he said.

Senator Mercer: As I stated at the beginning, I am grateful for the money being spent. With regard to the situation of the school in Glace Bay, while I do not have the details, I would not be surprised if your old friend former premier Rodney MacDonald was in the way. Now that he is out of the way we can get moving in Nova Scotia, even if we have to work with the New Democrats on that issue.

It is all unclear to the Canadian public. It appears that Mr. Keddy and other members of the Conservative caucus — 55 photos on various web sites — do not understand. Tomorrow is the national caucus meeting, and perhaps the leader and her colleagues could raise this point to drive it home to Mr. Keddy and others that this is not Mr. Keddy's money and this is not Conservative Party money. This money belongs to Canadians, which the Government of Canada has been entrusted with and is spreading around in stimulus money for needed projects across the country. The money belongs to Canadians, not to the Conservative Party nor to Conservative members of Parliament.

Senator LeBreton: Honourable senators, we are aware that these are Canadian taxpayers' dollars being spent on the stimulus program. We are also very well aware that members of Parliament, no matter what their political stripe, represent their constituents and, therefore, are often part of the announcements of stimulus funding within their ridings. It is clear that it is taxpayers' money and not Conservative Party money— unlike the Liberals who, under the sponsorship program, took taxpayers' dollars, put it in brown envelopes and handed it out to their party.

Some Hon. Senators: Oh, oh!

Senator LeBreton: As I said, the day the Liberal Party —

Some Hon. Senators: Oh, oh!

Senator LeBreton: The day the Liberal Party writes a cheque to the Canadian taxpayers for $40 million in still-unrecovered funding, that is the day —

The Hon. the Speaker: Order. Order.

HUMAN RESOURCES AND SKILLS DEVELOPMENT

EMPLOYMENT

Hon. Jerahmiel S. Grafstein: Honourable senators, I have a question for the Leader of the Government in the Senate relating to the question of joblessness, the lack of jobs and employment in Canada.

On Monday of this week, a distinguished Canadian who moved to the United States and is now chief of the *U.S. News & World Report*, Mr. Mort Zuckerman, formerly of Montreal, wrote an article for the *Financial Times* on page 9 referring to the American situation.

Let me give honourable senators some pertinent quotes from the article:

> We knew the skies had darkened but now we learn the unemployment figures are worse than previously thought. This is the only recession since the Great Depression to wipe out all job growth from the previous business cycle. The broader measure of unemployment, the "household index" encompassing people who are unemployed and underemployed, has reached a record 17 per cent. The household survey revealed staggering job losses of 785,000 for September. It includes about 571,000 people who dropped out of the workforce last month, presumably because they despaired of finding work.

He goes on to say that the job loss in the United States for the first three months alone was three million and that the job loss for 21 months in a row is the longest losing streak since the publication started in 1939.

• (1500)

Also in this article is something even more frightening, and that is with respect to younger workers. He points out that younger workers have not escaped; a quarter of teenagers — 1.6 million youths — are without work. The unemployment rate for young Americans has exploded to 52 per cent, a post-war high.

I would ask the honourable senator to carefully look at this article and hopefully report to the Senate, quickly, on the current status of joblessness in Canada.

With regard to anecdotal evidence from Toronto — which the minister contested the last time we had an exchange — it is my sense, based on an analysis of the numbers that are not complete, that joblessness in Toronto is somewhere between 15 and 20 per cent, the highest in my lifetime.

I take this as a serious issue, not just for Toronto, which I represent so proudly, but for every region across the country. We know last summer that youth could not get a job in Toronto. Hopefully, the leader will, at the earliest opportunity, look at this article and give us up-to-date statistics, region by region, so we might have a thoughtful debate about what to do now.

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): I thank the honourable senator for the question. There is no question that the jobless situation in the United States is of great concern. Even though the latest employment figures in this country, according to Statistics Canada, show, I believe, that 30,000 full-time, permanent jobs were created and that the unemployment rate fell to 8.4 per cent, many of those jobs were for younger people. There is no question that while those figures were encouraging, the worldwide economic downturn has had serious consequences for the labour market. There are indeed jobs that were lost that are never coming back. The government is mindful of that fact.

This recovery is still fragile. As we enter the winter months, the unemployment numbers are of concern. That is why the government has Bill C-50 before the other place in order to extend the employment insurance coverage period, which is being pre-studied in the Senate. That is why we have spent $1.5 billion in new job training for people, so that they can take advantage of the emerging jobs when the economy recovers.

There is no question that, as most economists have pointed out, the jobless numbers will be lagging behind the general recovery. The economic recovery will lead, and job creation will lag behind.

The fact of the matter is that we, as a government, have taken many measures, whether it is job retraining or investing in trade schools. There was a major announcement last week in Ottawa about building a trade school at Algonquin College. There is also a strong indication that once the economy recovers, many parts of the country will suffer labour shortages. This is a complex and diverse problem.

While we were encouraged by the number of permanent jobs that were created, according to the last report of Statistics Canada, we remain concerned about the situation in the United States, given they are our major trading partner.

Senator Grafstein: I have a brief response. I hope the leader can give us statistics following this article because the numbers we received last time were based on employment insurance and welfare, and they were not correct.

Would the honourable senator also indicate whether or not the government has a Plan B if the Plan A action plan does not work, as it appears not to be doing so far?

Senator LeBreton: I would be happy to refer the honourable senator's inquiry to my colleague, Minister Finley.

The government is working hard. As a matter of fact, a considerable amount of the money being expended now is going to employment insurance and into trying to help Canadian workers who, through no fault of their own, have lost their jobs.

I believe that all of us, no matter what political stripe, must do everything possible to support the measures that the government has put forward. I am hopeful that Bill C-50 will receive support in the other place because these initiatives will help people who are presently unemployed.

At the moment, our unemployment rate stands at 8.4 per cent, and it is a serious situation for anyone who is out of a job. The fact is that throughout the entire 1990s, the unemployment rate fell below 9 per cent for only one year. There is much work to be done, but it is not all doom and gloom. There are good things happening out there, and hopefully the situation in the United States will recover to such an extent that it will not impact adversely on Canada.

[*Translation*]

ANSWER TO ORDER PAPER QUESTION TABLED

FISHERIES AND OCEANS—MONITORING OF CANADIAN AND FOREIGN FISHERIES

Hon. Gerald J. Comeau (Deputy Leader of the Government) tabled the answer to Question No. 29 on the Order Paper—by Senator Rompkey.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to present answers to four questions raised in the Senate. The first was raised by Senator Fraser on September 15, 2009, concerning Veterans Affairs, Ste-Anne's Hospital; the second, by Senator Dallaire on September 16, 2009, concerning Foreign Affairs, kidnapping of Canadian UN officials; the third, by Senator Hubley on September 30, 2009, concerning Fisheries and Oceans, shellfish harvesting; and the fourth by Senator Munson on October 1, 2009, concerning Human Resources and Skills Development, former Nortel Networks employees.

VETERANS AFFAIRS

STE. ANNE'S HOSPITAL

(Response to question raised by Hon. Joan Fraser on September 15, 2009)

Waiting lists at Ste. Anne's Hospital and veteran subsidies:

Veterans Affairs Canada has not changed its policies or cut subsidies to Veterans. Veterans Affairs Canada's national policy for long-term care has always been about ensuring that Veterans get the full care they've earned and deserve.

We prefer to see Veterans in provincially licensed long-term care facilities, where we can be confident they are getting the care they need.

Nevertheless, we also use our Veterans Independence Program to help support Veterans when they choose accommodation outside a provincial long term care system.

In addition, we are always reviewing our programs and policies to ensure that they are in line with changes in the provinces and that we are able to continue to support Veterans in the variety of settings where they live.

Ste. Anne's Hospital — provincial jurisdiction:

The future of Ste. Anne's Hospital is important.

It has been a long-standing policy of the Government of Canada to transfer federal hospitals to provinces. The Government of Canada is having preliminary discussions with the Province of Quebec about a potential transfer of the Hospital to the province.

The first priority of the Government of Canada is ensuring that our Veterans at Ste. Anne's Hospital continue to receive the exceptional care they have earned and deserve.

There is currently a declining demand for long-term care beds for traditional Veterans at the Hospital and a potential transfer of Ste. Anne's Hospital would provide long-term benefits to Veterans, Hospital staff and Quebec residents alike -0 and recognize provincial responsibility for health care.

Any future transfer agreement will ensure that Veterans continue to have priority access to exceptional quality of care and services, that the interests of Hospital employees are protected and official languages are respected, as was the case in the federal government's 17 prior successful transfers.

Veterans Affairs Canada has provided for the care of Veterans since 1915 when military hospitals were first established to address the care needs of the Veterans returning from war. By 1955, Veterans Affairs Canada was operating 18 facilities, but as the delivery of health care became a provincial responsibility and with the pending inauguration of universal hospital insurance, the 1963 Glassco Commission recommended the transfer of VAC's remaining facilities to the provinces. Veterans Affairs Canada successfully transferred 17 of its facilities, with Ste. Anne's Hospital in Montréal being the only remaining federal government facility.

A key provision in each transfer agreement is that a fixed number of beds, deemed contract beds, would be reserved in each facility for which War Service Veterans would have priority access. The completed transfers were deemed successful due to a number of factors including provisions for priority access to Veterans in a designated number of quality care beds in each province or facility. The success the transferred facilities have experienced over the past decades is evidenced by the high quality of care offered to Veterans and the expanded range of services the facilities offer to the broader population. The legacy of Veterans' care continues today in these facilities.

FOREIGN AFFAIRS

COMMENTS OF MINISTER—STATUS OF OMAR KHADR

(Response to question raised by Hon. Roméo Antonius Dallaire on September 16, 2009)

The Government of Canada is of the view that the perpetrators of kidnappings, such as that involving Messrs. Fowler and Guay along with the UN driver, should be brought to justice. The Minister of Foreign Affairs has not addressed publicly the issue of best means of ensuring this outcome in the particular case of Messrs. Fowler, Guay and their UN driver, who were kidnapped in Niger on December 14, 2008.

The RCMP has indicated in response to a media enquiry that Canadian authorities are not in a position to confirm or deny whether there are or are not investigations ongoing which might eventuate in prosecution of the perpetrators of this kidnapping in Canada or any other jurisdiction.

FISHERIES AND OCEANS

SHELLFISH HARVESTING

(Response to question raised by Hon. Elizabeth Hubley on September 30, 2009)

The large scale precautionary shoreline closures in New Brunswick, Prince Edward Island and Nova Scotia were the direct result of extremely heavy rainfalls associated with tropical storms that could result in surface run-offs and unreported sewage overflows, potentially affecting food safety. The closures were implemented under the *Protocol for Emergency Closure of any Shellfish Growing Area* of the manual of the Canadian Shellfish Sanitation Program (CSSP).

All contacts on available distribution lists were notified immediately following the issuance of prohibition orders. Initial testing indicated that the actions taken were warranted. Following the closures, federal CSSP partners worked quickly to complete testing to facilitate the re-opening of harvest areas when results indicated it was safe to do so. Almost all areas were re-opened within a week of the initial closure. The implementation of these precautionary closures is an indication of the increased responsiveness of the CSSP partners to a potential health issue, demonstrating our commitment to food safety.

The CSSP is a food safety program, designed to protect the health of consumers. This cannot be compromised or subject to consultation when required. However, in the case of precautionary closures efforts have been redoubled to ensure more timely notification when it is possible. The timing and necessity of emergency closure decisions will always put health and safety of consumers first.

Generally, shellfish closures are localized in nature and the local DFO offices are equipped with the best source of up to date information. However, in the event of large-scale closures, we recognize that communication difficulties may occur and we are working with our CSSP partners (Environment Canada and the Canadian Food Inspection Agency), provinces and industry to improve communications. In addition to improving communications, CSSP partners are also undertaking a review of the Protocol for Emergency Closures to determine what if any changes are required.

Compensation issues do not fall within the CSSP mandate.

HUMAN RESOURCES AND SKILLS DEVELOPMENT

ASSISTANCE FOR FORMER NORTEL WORKERS

(Response to question raised by Hon. Jim Munson on October 1, 2009)

The government is obviously concerned about the impact of the current economic reality on employees in Canada and their families, including those from Nortel Networks (Nortel).

Nortel commenced proceedings under the *Companies' Creditors Arrangement Act* (CCAA) on January 15th, 2009. Under Canada's insolvency laws, all creditors — lenders, suppliers, employees, and foreigners — are treated equally. Furthermore, under the CCAA each creditor is entitled to vote whether to accept a proposed plan of arrangement that would determine each creditor's recovery.

Under the *Bankruptcy and Insolvency Act* (BIA), should Nortel become bankrupt, creditors are paid based on their priority. The priority of employee claims, however, has been amended recently, for example, the Wage Earner Protection Program ensures payment of up to $3,250 for unpaid wages, including severance and termination pay, and the BIA grants a special priority for outstanding pension contributions such that those amounts will be paid to the pension fund ahead of even secured creditors.

As announced in Budget 2009, Canada's Economic Action Plan will provide $46.5 billion in federal support to the economy over the next two years to provide economic stimulus and job creation. Also, as part of the *Canadian Skills and Transition Strategy*, the government is providing $8.3 billion for a number of initiatives to assist Canadians during these uncertain times, including enhancements to Employment Insurance and more funding for skills and training development to help Canadians get better jobs, while giving Canada a more flexible, knowledgeable workforce and a competitive edge in the global economy.

The Government of Canada wishes to see the Information and Communications Technologies (ICT) sector and all other sectors of the Canadian economy prosper. We are putting in place the conditions for ideas and for companies to thrive. We recognize the important role that the ICT sector and research excellence plays in furthering innovation and competitiveness, as well as creating well paying jobs for Canadians. This is why our first three budgets had more than $7 billion invested in new Science and Technology funding, and more than $5.1 billion in Budget 2009 alone, one of the largest investments in Science and Technology in Canada's history.

Furthermore, the Government of Canada sees the ICT sector as an important part of Canada's overall digital economy, and is making significant investments through the Economic Action Plan, including:

- 100 percent capital cost allowance rate for computer hardware and systems software acquired between January 27, 2009 and February 1, 2011
- $500 million provision to help fund Canada Health Infoway and its goal of enabling 50 per cent of Canadians to access their electronic health record by 2010
- $225 million allocation over three years to develop and implement a strategy on extending broadband coverage to un-served communities
- $200 million over two years for the National Research Council's Industrial Research Assistance Program, to allow the program to double its contributions to emerging knowledge-based companies
- Renewed commitments to public investment in research by expanding the Canada Graduate Scholarships Program and funding for the national granting councils. Waterloo's Institute for Quantum Computing received a $50 million allocation for the construction of its new facility
- Continued efforts to reduce the general level of corporate income tax

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[*English*]

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—ELEVENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE NEGATIVED

The Senate proceeded to consideration of the eleventh report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-25, An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody), with amendments), presented in the Senate on October 8, 2009.

Hon. Joan Fraser moved the adoption of the report.

She said: Honourable senators, rule 99 requires that when a committee has amended a bill, the person who presents the committee report shall explain the amendments to the Senate. As chair of the Standing Senate Committee on Legal and Constitutional Affairs, I presented the committee's report on Bill C-25.

The long title of Bill C-25, I would draw to your attention, is: An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody), and that is indeed pertinent to the discussion of the amendments.

Let me take the amendments presented in our eleventh report in order. I should probably note that all of these amendments were adopted on division.

The first amendment is to clause 2 of the bill, and it has to do with a reporting requirement that the bill as referred to committee sets out. In order to explain this, I have to tell you a little bit about the way the Criminal Code treats provisions for the granting of bail. The general rule — there are always many complications written into the Criminal Code — but the general rule is that there are three grounds for the granting of bail.

• (1510)

Clause 2 of this bill reads that if the judge denied bail "primarily because of a previous conviction of the accused," the judge had to put that reason on the record in writing. The reason for requiring this report to be made was because it would affect the available sentence in a further section of the bill.

The committee was reminded by at least one learned witness that a previous conviction of the accused is not now set out in the Criminal Code as one of the grounds for withholding bail. Previous convictions and criminal records are taken into account by judges, but they are not specifically listed.

The committee added an amendment to make it clear that Bill C-25 is not amending indirectly the Criminal Code's provisions for the granting of bail. That is why the amendment says that if the judge "orders that the accused be detained in custody on the basis of one or more grounds set out in subsection (10), it is to be written." Subsection 10 is the general conditions for the granting of bail that I was talking about, primarily because of evidence of a previous conviction. That may sound a little complicated, but what it says is, if the judge is doing what judges have always done but is making a written report as required by this bill, we are not, in fact, changing the rules upon which bail is granted; we are saying only that they have to write it down.

That amendment is designed to achieve clarity, always appropriate in the criminal justice system.

I come now to the amendments to this bill that have received the most public attention, the amendments that the committee made to clause 3. As many senators will recall, the fundamental purpose of this bill is to set limits on the discretion a judge can exercise when the judge is sentencing someone who has been convicted, and the judge is giving credit for the amount of time that person has already served in pre-sentencing custody, if that person has served time in pre-sentencing custody.

At the moment, there is no limit in law to the discretion a judge may exercise. Courts across the land, up to the Supreme Court of Canada, have ruled that it is appropriate for a judge to give credit of more than one day for each day served in pre-sentencing custody when the sentence is handed down.

This bill, as sent to the committee, said that as a general rule the maximum credit would be one day for one day and that in special circumstances, the maximum would be one and one half days.

Your committee heard a great deal of evidence from a wide range of witnesses to the effect that, A, this provision would not be in conformity with what courts have been ruling, including the Supreme Court of Canada; and, B, it could end up creating unfairness in our judicial system. There are a number of reasons for that conclusion, some of them complicated, but let me give honourable senators a couple.

The first reason is that when people who have been convicted and are serving time in prison seek parole, the parole system does not take into account the amount of time they may have served in remand; in pre-sentencing custody. We heard statistical evidence to this effect. Two people who committed the identical offence, in identical circumstances, and to whom the judge wished to give identical total custody, may not receive identical treatment if credit for time served is a straight one-for-one credit because the parole system may not take into account that previous time spent in custody behind bars by the one who did not receive bail compared to the one who did receive bail.

I do not know if I am making this point clear, but it is an important one. A fundamental fact is that a rigid, mathematical formula, while designed to achieve fairness, may create unfairness, in part because of the way the parole system works.

The second reason we heard in testimony was that conditions in remand vary widely across the country. In some places, the conditions in remand — in pre-sentencing custody — have improved greatly in recent years; in other places, they have not. A number of the witnesses who appeared before us said that an arbitrary formula designed to achieve fairness might again create unfairness because of the variation in conditions across this broad land for people who are serving in remand. That is why a significant number of the witnesses who appeared before the committee suggested that it was appropriate to retain discretion for judges.

Your committee did not believe that it was appropriate to leave the current system of total discretion in the hands of the judges. After all, not only the House of Commons but also this chamber, at second reading, had approved the principle of the bill, which, as I said at the outset, limits credit for time spent in pre-sentencing custody. However, your committee concluded that it was appropriate to increase slightly the amount of discretion available to judges so that the ultimate object of fairness might be achieved.

For these reasons, your committee amended this bill to say that the general credit should be one and one half days off one's sentence for each day served in pre-sentencing custody, with a maximum of two days where special circumstances exist. I remind honourable senators that of course, where circumstances warrant, a judge remains free to give less credit than the general rule, if that seems the appropriate way to go.

A third amendment, which again may seem a little technical, goes to a principle. Subclause 3.3 and subclause 3.4 of clause 3 deal with reporting requirements of one sort or another. Subsection 3.2 says:

> The court shall give reasons for any credit granted and shall cause those reasons to be stated in the record.

In other words, the court shall explain why the sentence being handed down is what it is.

Subclause 3.3 is substantially more bureaucratic in nature. It says:

> The court shall cause to be stated in the record and on the warrant of committal the offence, the amount of time spent in custody, the term of imprisonment that would have been imposed before any credit was granted, the amount of time credited, if any, and the sentence imposed.

Statistics Canada, among other people, likes that provision because it will provide a whole lot of information that the department cannot now gather. However, the bill goes on to say:

> Failure to comply with subsection (3.2) or (3.3) does not affect the validity of the sentence. . . .

Your committee agreed that the validity of a sentence should not be affected if some element of all the paperwork that will be so lovely for Statistics Canada is inadvertently filled out incorrectly. However, your committee did not believe that it was appropriate to say a sentence is valid even if the court has not given a full explanation of why it has been granted. For this reason the committee removed the safety net, if you will, that would affect sentences handed down without reasons being given for any credit granted. Your committee said the court must explain the sentences, but if the court does not have its Statistics Canada-type paperwork perfect, that situation will not affect the validity of the sentence.

• (1520)

I hope that explanation is clear to honourable senators. I have tried to summarize technical and complex issues in as short a period as possible, but I look forward to the debate on this report.

Hon. John D. Wallace: Honourable senators, I certainly want to speak to the committee's report. I am the sponsor of this bill in the Senate. I am a member of the Standing Senate Committee on Legal and Constitutional Affairs, and I heard all the discussion that went on in that committee.

I begin by pointing out — and Senator Fraser has mentioned this point — the recommendation to include the amendments to Bill C-25 was not unanimously supported. The members on this side of the chamber did not support any of the amendments; rather, they felt the bill should be passed in the form in which it was introduced to this chamber and was originally examined by the committee.

The reason I find myself and others not able to support the amendments is that they will effectively undercut and negate the purpose and objectives that underlie Bill C-25, and I will explain why.

The purpose and objectives of Bill C-25 are relatively straightforward. They are based on a premise — and I am sure all senators will agree — that we want to do everything we can to enhance the security and safety of the public. My feeling is that Bill C-25, without the amendments, will accomplish that goal, but the goal will be jeopardized with the approval of these amendments.

The basis of Bill C-25 — the straightforward, uncomplicated basis — is that convicted criminals should serve a sentence that reflects the severity of their crimes. I believe that principle is easily understood and I think few would argue that point.

Convicted criminals should be held accountable for their actions. The purpose of Bill C-25 also was to bring greater certainty and clarity to the sentencing process that does not exist today.

Finally, the basis of Bill C-25 was to provide our courts with sentencing guidelines and specific limits for granting credit for time served in pre-sentence custody.

As was pointed out by the Honourable Senator Fraser, at this point, without Bill C-25, there are no restrictions on how these pre-sentence credits should be dealt with. The courts have adopted a practice of granting two-, three-, or even, at times, four-to-one credit for that pre-sentence time served. Again, that pre-sentence time served would be matched against or deducted from whatever the final sentence happens to be.

At present, the courts are not required to give reasons why they feel they had to grant, or should grant, these additional credits, whether they are two-, three-, or four-to-one. In fairness, the norm has been more of a two-to-one ratio than a three- or four-to-one ratio, but on occasion a three- or four-to-one credit has been given.

Bill C-25, without amendment, brings this issue of credits back to a one-to-one base. Effectively, Bill C-25 says that a day served, whether in pre-sentence remand or after sentence, should be the same, one-to-one. I think few would argue that base is a reasonable place from which to start.

However, the bill also provides discretion for a judge to grant a credit of up to one-and-a-half-to-one if the judge feels circumstances justify that credit. For example, as pointed out by Senator Fraser, there can be issues around the conditions that exist in remand, and there can be concern about the lack of rehabilitation services that are available in remand. In those cases, a judge can grant a credit of one-and-a-half-to-one. As well, Bill C-25 requires judges to state on the record the reasons that justified the extension of that additional credit.

I also point out, looking at other jurisdictions, such as the United States, England, Wales, New Zealand and most Australian states, these jurisdictions work from this one-to-one basis.

The proposed amendments that the majority of members of the Standing Senate Committee on Legal and Constitutional Affairs passed, and that the committee recommends be approved by this chamber, are based upon what appears to be a cap of one-and-a-half-to-one credit; then, if the judge feels circumstances exist to justify it, the credit can go to two to one. As I mentioned earlier, the practice of the courts has been to adopt a two-to-one ratio. That practice is exactly what these amendments will result in, which is codifying what exists today. The bill will change nothing. It will codify two-to-one credit for all pre-sentence time.

Furthermore, one of the amendments will call into question the validity of a sentence if, for example, a judge does not state the reasons on the record. Bill C-25 requires that statement on the record, but if for some reason a judge does not do that, then the validity of a sentence can be called into question.

I do not understand why we would support that change. I do not know why we would suggest that technicalities should rule over the safety of our citizens. The sentencing issue is to keep convicted criminals off the streets. Technicalities should not allow them to be on the streets.

All the provinces and territories have advocated strongly for Bill C-25 in the form in which it was presented to this chamber. I debated how to present this information to honourable senators because I believe this issue is so important. I was planning to paraphrase it, but instead I will read it to you. Honourable senators, rather than hearing my words, I will let you hear the words of the ministers of justice of various provinces in this country and their views on Bill C-25. It may be somewhat longer than if I were to paraphrase, but with me paraphrasing, it may not be.

I refer honourable senators first to a submission received in September from the ministers of justice for the provinces of Manitoba, Saskatchewan and Alberta. Minister Alison Redford from Alberta and Minister Dave Chomiak from Manitoba came to present evidence to our committee, and that evidence was most helpful. In addition to that evidence, they submitted this written position. An excerpt from that written submission is dated September 2009. It states:

> As recently as September 18, 2009, all Western Attorneys General and Solicitors General issued a press release calling for the quick passage of Bill C-25 to deal with credit for time served. Western Attorneys General and Solicitors General strongly support Bill C-25 and recognize this legislation as an appropriate response to the concerns previously articulated by all Ministers of Justice."

They then went on to say, on page 8:

> Bill C-25 is an important initiative that will address longstanding concerns of Federal-Provincial-Territorial Ministers responsible for Justice about the adverse effects of the current practice of granting sentence reduction credits for time served in remand pre-trial custody of 2 for 1 or higher.

• (1530)

> Currently, offenders are generally seeking double credit for time served and sometimes higher credits. That excessive credit not only undermines public confidence in the justice system, but also distorts the sentencing process, frustrates transparency in the sentencing process and provides an incentive for inmates to remain in remand custody to get reduced a sentence and thereby contributes to overcrowding in provincial remand facilities.
>
> The reforms of Bill C-25 are necessary to ensure that there is a proper sentencing process that reflects the severity of the crime, to maintain public confidence in the justice system and to reduce the incentive to remain in remand custody, which contribute to overcrowding in provincial remand facilities. We strongly support Bill C-25 and

encourage the Federal Government, Members of Parliament and Members of the Senate to ensure that it is passed and implemented as quickly as possible.

I next refer you to a letter that we received from Minister de Jong, Attorney General for British Columbia, dated September 30, 2009. In that letter he states:

> British Columbia supports quick passage and proclamation of the credit for time served Bill (C-25). For several years, Provincial and Territorial Attorneys General and Solicitors General have called for a cap on credit for time served prior to sentencing. It is our view that excessive credit for time served distorts the sentencing process, as an accused held on remand may be sentenced differently than a co-accused who is not remanded. This undermines public confidence in the justice system.

Minister Horn, Minister of Justice from Yukon:

> At the same time, I want to express my support for Bill C-25. . . .
>
> The proposed amendments will bring greater consistency and certainty to sentencing. They will make sentencing clearer to the public, which should help increase confidence in the justice system overall. At the same time, some discretion will remain with the judiciary where circumstances justify it, accompanied by an explanation.
>
> The matter has been raised repeatedly by federal, provincial and territorial Ministers of Justice. Provincial and territorial colleagues have called for federal action to bring clarity to sentencing and to help address the high number of remand inmates. This legislation supports that call for action and as such, it is welcome.

The next comment I would provide you is from the Honourable Chris Bentley, the Attorney General for the Province of Ontario.

> As I think the Committee knows, in recent years, Ontario along with all of the Ministers responsible for Justice in the other Provinces and Territories asked the Federal government to amend the *Criminal Code* to limit the discretion of sentencing judges to award enhanced credit for pre-sentence detention. We asked that the credit be capped at a ratio of 1.5-for-1. I was therefore pleased when the Minister of Justice introduced Bill C-25, and I am supportive of its quick passage.
>
> The current situation, where offenders are routinely given 2-for-1 credit, and sometimes more, for time spent in pre-trial detention, distorts the sentence and the sentencing process. This can ultimately affect offender rehabilitation . . . which can in turn affect public safety. It also affects confidence in the administration of justice . . . What Bill C-25 does is maintain discretion but keep it within more appropriate parameters.

He concludes by saying:

> I look forward to continuing to work with my federal, provincial and territorial colleagues to find legislative and other responses to our challenges. Bill C-25 is an important part of that response.

Next is Thomas W. Marshall, Minister of Justice for the Province of Newfoundland and Labrador. He says:

> The unanimity of support for Bill C-25 as shown by all federal/provincial/territorial Ministers Responsible for Justice in 2007 speaks to the broad general support of this initiative. . . In this regard, I respectfully submit the department's position on Bill C-25, which is in agreement with the spirit and intent of Bill C-25.

He concludes by saying:

> These amendments will bring greater consistency and certainty to sentencing, and help address administrative and justice issues related to the growing number of persons being held in custody prior to sentencing.

Next is Justice Minister Michael Murphy, from the Province of New Brunswick. Minister Murphy says:

> I am pleased to have this opportunity to speak in support of Bill C-25, as it represents an important step forward in helping restore public confidence in the criminal justice system and public safety generally.
>
> This Bill reflects a consensus at the Provincial and Territorial level, and Attorneys General have been pushing for its passage for some time. In New Brunswick the general tendency has been to award double credit (2 to 1 ratio) towards sentence. This type of enhanced credit for time served is a significant contributing factor to defence-related delays. By extending the time spent in pre trial detention on the promise of enhanced credit for time served in pre-trial, the overall result for the accused is for less time served. Eliminating the enhanced credit removes the incentive to delay. I believe that the bill's provisions will shorten the time between the initial appearance and the eventual trial date or guilty plea.

Last, but by no means least, is the Attorney General from the Province of Nova Scotia, Ross Landry, in his letter of September 30. Minister Landry says:

> A fair and transparent sentencing process, where those found guilty of crimes are held accountable for their actions, reflects society's concerns and promotes respect for the justice system. However, when the sentencing process does not properly reflect society's values, or is confusing for the public, respect for the administration of justice is greatly diminished.

The Hon. the Speaker *pro tempore*: I am sorry to interrupt, but I must advise that the honourable senator's time has expired.

Are you asking for more time?

Senator Wallace: Could I have five minutes?

The Hon. the Speaker *pro tempore*: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Mercer: We would like to think about it.

Senator Wallace: This is about Nova Scotia.

The minister went on:

> In Nova Scotia, it is almost automatic that upon sentence a person is given 2-for-1 credit for remand time. Indeed, in other parts of Canada, credit is sometimes as high as 3 or 4 to 1. It is believed frequently, therefore, accused will consent to their remand, delay trial, and then seek to be sentenced to take advantage of the additional credit. Thus, not only do our facilities contain a majority of inmates on pre-trial detention, cases do not proceed through courts as quickly, clogging dockets and leading to frustration for victims. Bill C-25 will remove this incentive, and encourage accused persons to avoid delaying the outcome of their cases.

He concludes by saying:

> Nova Scotia believes Bill C-25 is an effective tool to address these issues and supports this legislation.

In my rather brief time here, but I suspect in the time of those who have been here much longer, I can scarcely recall when the ministers of justice from all the provinces and territories would line up behind a bill being put forward by and proposed by our federal justice department.

In conclusion, I would strongly encourage this chamber not to support the amendments that have been recommended by the Standing Senate Committee on Legal and Constitutional Affairs to Bill C-25.

The Hon. the Speaker *pro tempore***:** Continuing debate?

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak on Bill C-25 and, more particularly, on judicial discretion in sentencing.

I am not a member of the committee but have been following the committee's work on this bill. Bill C-25 seeks to limit the ability of the courts to adjust sentences to account for the differences between time spent in pre-trial custody and served following conviction.

Hon. Anne C. Cools: Honourable senators, on a point of order: When the honourable senator rose, I had risen because I wanted to put a question to Senator Wallace. I think Senator Jaffer is the next speaker in debate. I also saw other senators over here rise. Could we have a chance to put a question or two to Senator Wallace?

The Hon. the Speaker *pro tempore***:** Senator Wallace's time had expired. He asked for five extra minutes and they had expired also.

Senator Cools: He could ask for another five minutes and I am sure he would get them.

The Hon. the Speaker *pro tempore***:** Will the chamber grant five more minutes?

Senator Cools: Senator Wallace has to ask.

The Hon. the Speaker *pro tempore***:** Senator Wallace, do you want extra time? Would you accept questions?

• (1540)

Senator Wallace: Certainly. It is an important bill. If there are legitimate questions to be asked, I will certainly entertain them.

Senator Cools: I would like to thank Senator Wallace. It seems to me that if these things are important, then we would welcome the opportunity to debate them. Had he asked for it, I would have happily given him 20 minutes to do so.

I was listening carefully to Senator Wallace. What I heard from his response to Senator Fraser's statements on the report was, essentially, a recitation of the various provincial ministers' appeals to the Senate to pass this bill. However, I did not hear much in respect of a response to the amendments themselves. I heard an appeal that the house should reject them, but I did not hear much argument on that.

What I did hear — and this is what my question is about — was repeated references to the lack of a proper sentencing process and the statement that Bill C-25 will now create a proper sentencing process.

My first question is this: Am I to understand that, for the last many years in this country, we have not had a proper sentencing process and that many people may have been wrongly sentenced? The honourable senator's statement is quite an indictment or condemnation of the sentencing process.

My second question is in respect of the time line on this bill. I looked up the record, because the ministers keep asking for speedy passage and Senator Wallace keeps asking for speedy passage. However, when I looked at the timetable of this bill, the committee only received the reference on September 15, or thereabouts, and was ready with a report on October 8. By my reckoning, that is lightning speed. By my perception and in my approach on life, it is bordering on irresponsibility to give such a mighty issue as sentencing — and sentencing is a serious matter in our system — such swift review.

Honourable senators, if I were serving on that committee, I would have tried to use my time to get the committee to go more deeply into the principles of sentencing, judicial discretion, remission and also the parole board. My second question is why this quick and hasty pace?

Maybe the honourable senator should adjust his thinking, because I rue the day that these bills will fly through here faster and faster. God knows, they are passing far too fast now. We are not serving the public in doing that.

The honourable senator is used to taking many questions in a row. He has had a lot of experience and is used to this, so I do not feel that I have to ask them one at a time. I will now ask a third question.

The honourable senator's statements are a staggering condemnation of judicial discretion. If I were to listen to him, I would have to come to a conclusion that the judges in all these cases have not been doing a good job. Is this so? If all these ministers of justice are so concerned that the judges have not been doing a good job and that they need this bill so that Canadians can have confidence in the system, and their security, perhaps these ministers of justice should have talks with these judges. Something is very wrong here.

I have always been trained that discretion exists in the system; it is just a question where you move it, from whom to whom. Moving it from judges means giving it to the prosecutors. It goes round and round in a circle. However, we must take a thoughtful approach to the whole phenomenon of judicial discretion. I think we owe it to the system. It is a mighty system and we are making light of it by all this talk of being tough on crime and not being tough on crime.

The weightiest instrument in the entire system is the blunt instrument of the Criminal Code, when the entire power of the state prowess is put up against a single individual. We should treat that with reverence and respect.

Senator Wallace: First, there was absolutely no accusation that judges are not doing a good job. If there was any accusation, it is that we have not done a good job by not giving them clear definition of what they are to consider in sentencing. They have done the best they can with it. The responsibility to create definition is ours. Judges interpret our intention, but they cannot determine it unless we lay it out. That is what this bill does. It is critical of the Criminal Code today, but certainly not the judges; they have had to work with what we gave them.

Second, was the time in committee too short? I do not know from where that thought came. I sat on the committee. It was thoughtful. We heard from numerous witnesses. There was not a rush. It is absolutely not the case that I was insinuating that the committee was not thoughtful and did not do a thorough job. If the honourable senator took that from what I said, I am not sure how she could do so.

Finally, if the honourable senator took what I said to be a condemnation of the entire sentencing process, then that is absolutely not the case. My comments were directed to Bill C-25. It is a condemnation of two-to-one and three-to-one credit, and it is an acknowledgment and condemnation of not requiring the judges to give reasons why they grant credit.

My comments were directed to Bill C-25. I am not trying to change it and I am not directing comments to the whole sentencing process in this country.

Senator Cools: I heard the Honourable Senator Wallace clearly talk about creating proper sentencing processes.

An Hon. Senator: Order.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak on Bill C-25, and, more particularly, on judicial discretion in sentencing. I was not a member of the committee but I have been following the committee's working on the bill.

Bill C-25 seeks to limit the ability of the courts to adjust sentences to account for the differences between time spent in pre-trial custody and time served following conviction. There seems to be a considerable amount of misunderstanding as to why and how courts have felt it necessary to differentiate as they do, usually by crediting time spent on remand on a two-for-one basis.

To begin with, it is important to remember that persons on remand have not been convicted. Honourable senators, these people are entitled to the presumption of innocence. They are held in custody either because of the nature of the charges against them or because circumstances in their backgrounds or prior history suggest that they should be detained until their cases can be heard or, sadly, they do not have resources to make bail.

The decisions to keep them in custody are made by the same judges who later adjust their sentences, if and when they are convicted. That is a significant "if." Persons who have been held on remand and are eventually acquitted experience the hardest form of incarceration of all and with no recourse or compensation. No one ever seems to mention the unfairness of that particular situation. The widely reported but anecdotal and greatly exaggerated phenomenon of criminals walking out the prison door, having served only half their sentences on remand, should be balanced by a consideration of the numbers of accused persons who walk out the prison door, having served "a sentence for which they were never convicted." They have been acquitted of the charges after having spent time in remand. The usual credit of two days for one day spent in remand is widely and erroneously criticized as a failure to hold criminals accountable, or as an indication that the judiciary exercises its discretion in a way that is soft on crime.

• (1550)

Honourable senators, these are not the reasons the credit is given. It is given because it is fair. For example, imagine a person convicted of a serious crime for which that person is sentenced to 15 years. Under the present parole system, which I understand will not change, this person is eligible for parole after serving one third of the sentence, or 5 years. Generally speaking, the person is entitled to mandatory supervised release at two thirds of the sentence, or 10 years.

Honourable senators, assume that the same person has served 2 years in pre-trial detention. That person then stands trial and is convicted of the same offence and is given a 15-year sentence. Under Bill C-25, the judge is precluded legislatively from giving additional credit for time spent in remand. This person will be given a credit of only two years for time served plus an additional 13 years in jail. That person will be eligible for parole after one third of the sentence of 13 years, or 4 years and 4 months. Similarly, that person will be eligible for mandatory release under supervision at two thirds of the sentence, or 8 years and 8 months. We must then include the two years of dead time while on remand. Thus, the person who was granted bail will be eligible after 5 and 10 years respectively of a 15-year sentence while the person who was not granted bail will serve 6 years and 4 months, and 10 years and 8 months respectively. Unless credit is given for pre-trial custody, a similar sentence for a similar crime will result in significant and clearly unfair disparities.

All honourable senators know the differences between conditions of incarceration on remand and conditions in jail after sentence. Remand conditions are universally acknowledged to be worse. Those who say that the supposedly widespread practice of maxing out the two-for-one credit by staying in remand and creating huge backlogs have not done the math as it applies to serious crimes.

I stand before honourable senators today to ask that this dilemma be considered carefully. How can it be suggested that remanded individuals would rather serve one half of their sentence than one third of their sentence? Those who suggest that confidence in the administration of justice is eroded by the practice misunderstand the reason for the two-for-one credit. In this chamber of sober second thought, honourable senators do not want to impose unfairness, which can result from Bill C-25.

Honourable senators, let us again look at the difference between remand and post-conviction sentence. Many who should know better suggest that people in remand are violent or repeat offenders, or the worst of the worst. Persons who are charged with serious offences might be denied bail because their past records suggest they might reoffend, that they might not attend trial or that it is in the public interest that they be held pending trial. It is sad to realize that many persons are remanded to custody because they are poor and simply cannot afford to make bail, which has nothing to do with the court application of rules laid down by Parliament in respect of such situations. It also has nothing to do with the presumption of innocence, to which I have already alluded. It is most important to remember this distinction: Pre-trial incarceration is regrettably necessary at times but it is never so obviously regrettable as when the accused is ultimately acquitted and released.

The remedy for this problem is to move matters to trial as quickly as possible. Some suggest the problem is that prisoners remanded to custody are happy to stay there. Even if that situation were true, and the math is against that theory, it would not be possible if sufficient resources were allocated to the courts to move cases forward more effectively. The rationale behind the two-for-one credit adjustment at sentencing would be less cogent if sufficient resources were allocated to improve conditions in remand. Bill C-25 proposes to remove a useful tool from judges that ensures fairness, and judges are obliged to ensure fair, not popular, results. Honourable senators, we too are obliged to provide fair, not popular, results. If conditions in remand do not improve and the courts cannot compensate for this unfairness, as they do now with the two-for-one credit, that situation might influence the number of people placed in remand. If pre-trial credit in remand is refused, then the courts might be obliged to adjust the length of sentences to achieve fair and just results. Without a commitment to fundamental and comprehensive change to improve the system through the provision of significantly more resources, the removal of one of the tools that allows judges to mitigate the effects of this lack of commitment is pointless and, ultimately, futile.

Bill C-25 implies, inappropriately, that the problem is the judiciary, which simply tries to achieve the fundamental principle of sentencing whereby similar matters are dealt with similarly, and result in similar outcomes. Parliament has placed this requirement explicitly in the Criminal Code. The two-for-one credit on remand is a judicial attempt to fulfill the mandate that the judiciary has been given. Honourable senators, if that discretion is removed, judges will have to find other ways to achieve fairness.

Hon. George Baker: Honourable senators have a most important question before them for which there are arguments on both sides. All members of the House of Commons supported Bill C-25 unanimously. I remind honourable senators that a little less than one year ago, all members in the other place supported a bill, which this place did not pass, that would have taken away a tax credit for the Canadian film industry. I remind honourable senators that the House of Commons unanimously passed a bill that would have released everyone's date of birth, but this place amended it.

It is true that the provincial ministers of justice support this proposed legislation, but they suggest a credit of one and a half for one, not a credit of one-for-one, as this bill proposes. Each witness heard before the Standing Senate Committee on Legal and constitutional Affairs testified that this bill is a bad one. Those witnesses included professors of law, authors of law, lawyers for the defence and Crown attorneys. Senator Andreychuk would know the significance of that — that Crown attorneys said this is a bad bill.

• (1600)

Balancing that, we have members of the committee of the Senate who voted against the amendments. Famous Senator Nolin voted against the amendments. I was looking at the transcript from the House of Commons committee a couple of days ago when the committee was discussing the Controlled Drugs and Substances Act amendments. At several points, the witnesses — professors — were telling the members of the House of Commons committee to go back to the Nolin report.

I suppose the MPs were thinking, "Oh, no, not the Senate again!"

Senator Wallace voted against these amendments — a famous lawyer from New Brunswick. Everyone respects the man.

Senator Carignan voted against these amendments. Here is a young man — I suppose he is about half my age; he is no more than 45. However, Senator Carignan does everything in a hurry. He got out of law school in 1988 and in 1989 he was before the Quebec Superior Court on three occasions. He has found a home recently before the Court of Appeal of Quebec, at this young age. I can only imagine what his future will be at age 65.

Of course, Senator Angus voted against the amendments.

An Hon. Senator: He's famous.

Senator Baker: Yes. There is a scholarship awarded every year to the lawyer who is in their first year of articling and it is called the W. David Angus Award.

I know my time is short, but I must admit to honourable senators, before I get to the point, that this is the problem with not doing notes for a speech. I had intended to do notes. I did them, but I left them at the place where I had lunch.

Some Hon. Senators: Oh, oh.

Senator Baker: I must say this about Senator Angus. Honourable senators, we do not know fellow senators very well sometimes, and Senator Angus is perhaps someone we do not know very well.

Back in 1965, I was the Law Clerk in the provincial legislature of Newfoundland when the premier of the day came in and made an announcement.

He said that the great company of Furness Withy, a shipping company of British location and a stevedoring company in Canada, was in very serious trouble. "However," he said, "I am pleased to report that we have a bright, brilliant young man in Exchequer Court, where the case was heard." Then he looked at his paper and said: "No, it is not Stikeman. W. David Angus is representing the company. If he does not win here, he will go to the Supreme Court of Canada, that brilliant young man."

An Hon. Senator: And?

Senator Baker: If Joey were alive today and if he were aware of Senator Angus's connection with the Conservative Party, he probably would take back his words.

Senator Angus then went on to the Supreme Court of Canada with that case. I checked it the other day. There was a bifurcation, and he won the major part. That is why Joey came in. Joey came in and gave him that recognition, and that was way back in the mid-1960s. However, that is a digression and I do not know how much time I have left.

Honourable senators, let me say a few words on the amendment. There is such a thing as institutional memory. For me, this issue dates back to 1994. I will read one sentence to you, from the Supreme Court of Canada decision in *R. v. Gladue*. The sentence is at paragraph 52, where it states:

> Canada is a world leader in many fields, particularly in the areas of progressive social policy and human rights. Unfortunately, our country is also distinguished as being a world leader in putting people in prison. Although the United States has by far the highest rate of incarceration among industrialized democracies, at over 600 inmates per 100,000 population, Canada's rate of approximately 130 inmates per 100,000 population places it second or third highest:

I remember, in 1994, when the Minister of Justice came in to the House of Commons with the intent of bringing down the number of people in prison. We passed Part XXIII of the Criminal Code. If I remember it well, it states that a judge in passing sentence must consider alternative forms of punishment other than imprisonment and that special consideration will be given to Aboriginal people.

That is there because, at that time, 70 per cent of the inmates in the Province of Saskatchewan were Aboriginal people and it was 60 per cent in the Province of Manitoba.

Honourable senators, where are we today, after passing a law back in 1994 that came into effect January 1, 1996? The prison population has gone up in Canada. The evidence we heard before the committee was absolutely shocking concerning the number of Aboriginal people: 81 per cent of the people in prison in Saskatchewan are Aboriginal people; and over 70 per cent of the people in prison in Manitoba are on remand.

Perhaps I should not use this quote, but I have to do it. This is from the same decision of the Supreme Court of Canada. The Chief Justice states:

> As this Court recently noted in *R. v. Williams*, [1998] 1 S.C.R. 1128, at para. 58, there is widespread bias against aboriginal people within Canada, and "[t]here is evidence that this widespread racism has translated into systemic discrimination in the criminal justice system".

That was the Supreme Court of Canada. We passed this new law in the Criminal Code, and it has had no effect. In fact, the numbers have gone up.

The point is that the provincial ministers of justice have a problem because everyone on remand waiting for trial is in a provincial institution. One is supposed to be innocent until proven guilty, but there are large numbers incarcerated, waiting for trial. They are in provincial institutions, not federal institutions. For sentences of less than two years, someone is in a provincial institution; but if they are waiting for trial, they are also in a provincial institution.

Judge after judge after judge has come out in statements saying that the provinces are not doing their job. There are two and three people to a bunk. People are sleeping on the floor. Because the Criminal Code says judges may take into consideration time spent on remand in passing sentence, judges have given these people a two-for-one credit.

• (1610)

Senator Wallace is absolutely correct. There were cases of three-for-one and four-for-one credits. The Crown attorney who was before the committee learned something. Do honourable senators remember that? I cited the case that he was the Crown attorney who gave three-to-one credit, and he heads the Crown attorneys' association. He was not aware. We taught him something in the committee.

The amendment made to the bill, though, does not allow three-for-one or four-for-one credit. It says a credit of one and a half but it can go up to two.

I know I am short on time, but I have to take Senator Wallace up on one remark that he made in rebuttal, and it is this: He called the amendment, which I proposed, by the way, trivial — he said it is a technicality; that a judge does not have to give reasons.

I can quote from every province in Canada and from every Supreme Court. Here is one from Alberta. The Supreme Court of Canada in *R. v. Shepherd*, confirmed and explained why, in criminal cases, trial judges must give reasons. In British Columbia, trial judges must give reasons. It is thus an error in law where a trial judge fails to provide reasons that are sufficient to permit appellate review of the correctness of that decision. Judges have a duty to give reasons, particularly in criminal cases, so that persons who are accused of crimes are able to understand the reasons for judicial decisions.

I can go on. I could quote Newfoundland, which is an even better quote, but I will not.

The point is, one cannot put someone in jail and, in a piece of legislation, say: If the judge forgets to give reasons, that is okay.

The person is in jail. Honourable senators will recall the old maxim — Senator Nolin will recall it — that says, "It is better to let nine guilty persons go free than to convict one innocent person."

I have lost my train of thought. The point is this: We cannot have someone in jail that does not know the reason why that person is there. We cannot have someone in jail, add one or two years to their sentence and tell them they cannot appeal it because the judge did not give any reasons, and the Criminal Code says the judge does not have to give reasons.

That is what is in this bill. The judge does not have to give reasons.

Some people call it technicalities. I call it a serious matter. There are two sides to every story. We will leave it, of course, in the hands of the Senate, and we abide by the decision of the Senate — as always, a wise decision.

The Hon. the Speaker *pro tempore***:** Is there continuing debate?

Hon. Jerahmiel S. Grafstein: I did not intend to participate in this debate until I heard the eloquent comments by Senator Baker. I think it is incumbent upon the government to demonstrate, beyond a reasonable doubt, that the Chief Justice of Canada is not correct; that there is systemic racism within the judicial system based on this narrow question of remands.

I may be wrong but is the Aboriginal community in this country not the most incarcerated group per capita in the world? If I am wrong, perhaps the government representative can comment on that point. However, if the statement is true, one is led to the conclusion that there is systemic racism within our system. I agree with Senator Baker that this bill compounds that felony.

The Hon. the Speaker *pro tempore***:** Is there time left for Senator Baker? No, I see there is not.

Are you asking for more time, Senator Baker?

Senator Baker: Yes, honourable senators.

The Hon. the Speaker *pro tempore***:** Senator Baker is granted five more minutes.

Senator Baker: In answer to the honourable senator's question, yes, that statistic is from a unanimous decision of the Supreme Court of Canada. Senator Nolin pointed out that decision was made in 1999. Also, honourable senators should realize that the decision to keep someone on remand is that of the Crown and Crown attorney.

Our Criminal Code says that if a person is arrested, that person must appear before a judge within 24 hours. Our Criminal Code also suggests that the bail hearing will be within three days. The Criminal Code says simply: "The judge shall order that the accused be released. . . ." Then there is a condition "except for offences listed under section 469." Section 469 offences are intimidating a senator, disturbing the Queen, mutiny or high treason. That person must be released, unless that was one of the charges.

The point is that people say that people are on remand because they want to be there. That is not the way the system works. The system works in such a way that the person is brought before a judge and the judge shall release that person unless the Crown points out that, under the three sections of 515.10(2) of the Criminal Code, that person should not be released; the person may not show up for court; the person will commit a further offence; or releasing that person will bring the administration of justice into disrepute.

Those sections of the Criminal Code apply to people who are on remand. The suggestion that people are on remand because they want to be there does not jibe with the provisions of the Criminal Code.

The Hon. the Speaker: Is there continuing debate?

Hon. Anne C. Cools: Senator Comeau told me that he would probably seek leave to move the bill to third reading. I was thinking of taking the adjournment, but I will be prepared to give leave. I want to make two comments within the debate on this report.

Honourable senators, I invite all honourable senators, particularly the new senators, to take their roles here seriously, particularly in respect of certain kinds of bills like the one before us; essentially, amendments to the Criminal Code. I already said that the Criminal Code is a mighty instrument and a mighty blunt instrument at that.

I throw out to honourable senators the fact that, for some years, many years ago, I served on the National Parole Board of Canada. The National Parole Board of Canada, as honourable senators know, is the tribunal that looks after paroling for federal inmates — not provincial inmates but federal ones. When one sits on those tribunals — and they are quasi-judicial; actually, they are judicial — one becomes aware of the mishaps, mistakes, miscarriages, wrongs and whatever else that inherently go on in the system. The nature of human beings is to make mistakes. I am not speaking on the side of the offenders right now but on the side of systems.

Honourable senators would be amazed at the number of things that go wrong naturally, only on the strength of human error, in the administration of criminal justice. For example, inmates who end up staying in prison a little longer because the paperwork was not processed on time, and so on. Examples are endless.

• (1620)

In those years, I learned to appreciate the magnitude of the criminal justice system as these individuals are pitted against these mighty powers. Lest I be accused of being soft on crime, I am a firm believer that those who do wrong should face the full weight of the law. However, I think the onus is always on those of us who make the law to protect against mistakes, errors and miscarriages of justice. This is particularly true when we try to translate good

intentions into law. In my years here, I have seen the best intentions turn to dross. The best declarations of good intention, when they hit the ground, quite often become the opposite of what was intended. I wanted to make that point.

Senator Wallace is extremely well-intentioned and sincere. I would also say he is quite experienced. He has had some experience, I believe, in these matters.

Honourable senators, you do not understand how mighty these criminal justice systems are until you go close to them. People in those institutions quickly become names and numbers kept behind bullet-proof doors. It is difficult to sit on the parole board with all the information before you, to do justice and to be fair to those individuals.

Quite frankly, some of them are very bad. You have a psychopathic group with bad tendencies. However, the majority are plain unfortunates who began life, quite often, with many insufficiencies that gave many no chance.

If you want to hear someone who was eloquent on that, you should have heard Ramsey Clark, former Attorney General of the United States of America. Some Canadians do not have the acumen and quickness of wit to sort out the system. It is a massive task simply to work through the papers and authorities and this or that warrant. It takes a lot of doing.

I want to urge honourable senators that these kinds of bills are no laughing matter. These are serious questions and we should take them very seriously.

I want to go on to the question of judicial discretion. In my time here, I have seen several bills pass with the specific intention to limit or control judicial discretion. I am a great believer in judicial discretion. If I have to choose between trusting the enforcement and prosecutorial side or the judicial discretion and mercy side, I will take the latter.

We should look at this matter sometime in a committee. These bills limiting judicial discretion are coming forward all the time. One I did a lot of work on many years ago was the so-called child support guidelines. Honourable senators will remember the child support guidelines under section 26 of the Divorce Act, I think it was. I have not looked at it for a while. Senator Murray chaired the committee that examined those guidelines. Regulations were employed, but were called guidelines, essentially, to set judicial decisions and to create uniformity, as they say, in child support awards. It was a huge limit on judicial discretion and it bothered me. At the time, I said the minister was in search, not of a uniform child support awards, but in search of a uniform child.

In our gusto to be loyal to our various sides — something I no longer have to worry about — we should understand that when we are dealing with the Criminal Code, we are dealing with people's lives. What Senator Baker said about the number of native peoples incarcerated has bothered me for a long time. You see it when you go into correctional institutions.

I learned some years ago that in the United States of America, apparently one in three Black men go to prison. I would have thought that would be a national crisis.

At some time in point maybe out of some of these discussions, perhaps lead by Senator Fraser or Senator Wallace, we could undertake a study on some of these large questions regarding criminal justice. It has been years since we looked at the plea bargaining process, the penitentiary or parole board systems or parole authorities, et cetera. We really should take a look.

I get nervous every time I hear a hint of limiting judicial discretion. If you know these systems and work in them, you see that sometimes there is a bit of flow, as one part of the system tries to correct some injustice that happened to an inmate in another part of the system. At the parole board, we did not have to deal with innocence or guilt. We only had to deal with whether they were fit and ready to be released; paroled to the outer world.

That brings me to my point, which is the need at every stage in the system to be alive and alert to injustice, whether it is too long in a remand centre or sometimes even too short. It all depends.

All of those powers bring me to the real majesty of the criminal justice system at the end of the day. I do not want to shock honourable senators but the real majesty of the entire criminal justice system is mercy. We must remember that we have to leave room in all of these systems for those individuals — law enforcement, police, prosecutors, Crown attorneys, Crown prosecutors, judges, parole board members, et cetera — where they can correct a wrong that they have seen when only that official may be in a position to make that correction.

I offer you that, honourable senators. The majesty of mercy does not only operate at the level of the Royal Prerogative of mercy or in the remission system. It is supposed to be ever-present in every single part of the system. That is why, for the most part, we usually have a range of sentences in our system. That is why this wading into minimum sentences has caused me a lot of distress.

The point has been well-made and I am prepared to give leave to go on to third reading. Honourable senators, this bill has been rushed and it is far too important to move it along so quickly.

Hon. Tommy Banks: Honourable senators, I am about to make myself late for a meeting. I think we are coming to a point of decision on this bill. I want to put on the record my thoughts, which are purely personal. I apologize for my naivety if my thoughts are naive.

I did not have the privilege of being a member of the committee that considered the bill. I have no expertise in this area whatever. However, I had the privilege and honour of serving on a committee under Senator Nolin that looked seriously at the questions of incarceration and punishment for a crime and its effect.

If I am wrong in this, then my remarks are null. I take it that the intent and effect of the bill before us will be to increase the length of prison sentences in one way or another. I asked some members of the committee and the chair that studied this bill whether anyone presented or adduced any evidence to the effect that longer prison terms result in a reduction of crime. The study we undertook under Senator Nolin's leadership lasted about a year and a half. We heard from penologists and criminal law experts

from all over the world — Europe, the United States and across Canada from many provinces. Senator Nolin, I hope you will correct me if my recollection is incorrect. Not one of them suggested in answer to our questions that longer prison sentences, or prison sentences at all, had the effect of reducing crime in anyone's experience.

• (1630)

I would be interested in hearing what the purpose of it is, as we are about to vote on a bill which, if enacted, will have the effect of lengthening prison sentences. What is the purpose of it?

I cannot help my mind from going to an image of a "B" western in 1950, black and white, where the crowd comes out of the saloon with torches and marches down the street to get the guy out of jail that the sheriff is trying to protect because they want to hang him from the nearest tree, and that is popular. Let us do it right now; let us string him up or build a place and put him in there and throw away the key. However, that does not work, honourable senators. We in this place are supposed to give consideration to what will actually work. We are supposed to give consideration to bills proposed before us. Will it achieve the desired result? I am operating on the assumption that the desired result is to reduce crime.

We had a cautionary tale very close to us, honourable senators, to which we can refer. The United States went through exactly the same process not many years ago. At the time that Senator Baker was talking about, the approximate proportion per 100,000 in prison in the United States was close to three or four times greater than what it was in Canada. The United States decided a few years ago that they would string them up. They would build houses and throw away the key and make longer sentences, and surely that would fix the problem. Presently the incarceration rate per 100,000 in the United States is eight times greater than in Canada. That is the effect of their decision.

Another interesting thing is that statistics show that in the United States — I cannot talk about in Canada — the longer the prison sentence, the higher the percentage of recidivism. In other words, the longer you are in prison, the more likely you are to recommit a crime and end up in prison again. Prisons are crime factories and everyone here knows that.

Why are we about to consider passing law the intent of which is to reduce crime when we know, based on an experiment conducted by our American cousins that is very close to what we are about to consider doing, has had exactly the opposite result? For that reason, I will be voting for the proposed amendments in this bill and, should they fail, against the bill.

Some Hon. Senators: Hear, hear.

Hon. Lillian Eva Dyck: I would like to make a few comments with respect to this bill. I come from Saskatchewan, and I think Senator Baker was right on. The Saskatchewan prisons are full of Aboriginal people, men and women. I believe this bill will have a disproportionate effect upon them. I do not believe, as has been pointed out earlier, that keeping people in prison longer will reduce crime. It will not do that.

In Saskatchewan, even though sentencing circles for Aboriginal peoples can be found within the criminal justice system, justice has not been delivered to Aboriginal peoples. There is systemic discrimination. There are cultural differences. We know that the Aboriginal population is overrepresented in prisons. We know that the Aboriginal peoples suffer from poverty, and the social factors drive many of our people into the prison system. I do not believe this bill will change the situation, so I am in favour of the amendments.

The Hon. the Speaker: Are honourable senators ready for the question? It is moved by the Honourable Senator Fraser, seconded by the Honourable Senator Milne, that the report be adopted.

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

Some Hon. Senators: Yea.

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do the whips have advice as to the length of the bell?

Hon. Terry Stratton: Thirty minutes.

Hon. Jim Munson: Thirty minutes is appropriate.

The Hon. the Speaker: It will be a 30-minute bell, so the vote will take place at five after the hour.

Do I have permission to leave the chair?

Hon. Senators: Agreed.

• (1700)

Motion negatived on the following division:

THE HONOURABLE SENATORS
YEAS

Baker	Kenny
Banks	Lovelace Nicholas
Campbell	Massicotte
Chaput	Mercer
Cordy	Milne
Cowan	Moore
Day	Munson
Dyck	Peterson
Eggleton	Poulin
Fraser	Poy
Grafstein	Ringuette
Hervieux-Payette	Robichaud
Hubley	Tardif
Jaffer	Watt
Joyal	Zimmer—30

THE HONOURABLE SENATORS
NAYS

Andreychuk	LeBreton
Angus	MacDonald
Brazeau	Manning
Brown	Martin
Carignan	Meighen
Champagne	Mockler
Cochrane	Murray
Comeau	Neufeld
Demers	Nolin
Di Nino	Ogilvie
Dickson	Patterson
Duffy	Plett
Eaton	Raine
Finley	Rivard
Fortin-Duplessis	Segal
Frum	Seidman
Gerstein	St. Germain
Greene	Stewart Olsen
Housakos	Stratton
Johnson	Tkachuk
Keon	Wallace
Lang	Wallin—44

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (1710)

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

Senator Wallace: Now.

Some Hon. Senators: No.

The Hon. the Speaker: It requires leave.

Some Hon. Senators: No.

The Hon. the Speaker: There is no leave. Shall it be adjourned to the next sitting?

Senator Wallace: Yes; at the next sitting.

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

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

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-4, to amend the Criminal Code (identity theft and related misconduct), acquainting the Senate that they had passed this bill without amendment.

BANK OF CANADA ACT

BILL TO AMEND—SECOND READING—
ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Pépin, for the second reading of Bill S-230, An Act to amend the Bank of Canada Act (credit rating agency).

Hon. Jerahmiel S. Grafstein: Honourable senators, I notice that the adjournment of this item is in the name of the Honourable Senator Greene. Can he indicate when he might speak to this measure since the government is committed to do something before the end of the year?

Hon. Gerald J. Comeau (Deputy Leader of the Government): I will speak to my colleague and we will get back to the honourable senator with a response tomorrow.

(Order stands).

LIBRARY AND ARCHIVES OF CANADA ACT

BILL TO AMEND—SECOND READING—
ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Pépin, for the second reading of Bill S-201, An Act to amend the Library and Archives of Canada Act (National Portrait Gallery).

Hon. Jerahmiel S. Grafstein: Honourable senators, might I ask the Honourable Senator Tkachuk when he intends to speak on this measure? It has been before the Senate for lo these many years.

Hon. David Tkachuk: Honourable senators, I just adjourned this debate last week. I will be speaking on it reasonably quickly.

(Order stands).

STUDY ON ISSUES RELATING TO FEDERAL GOVERNMENT'S CURRENT AND EVOLVING POLICY FRAMEWORK FOR MANAGING FISHERIES AND OCEANS

FIFTH REPORT OF FISHERIES AND OCEANS
COMMITTEE AND REQUEST FOR GOVERNMENT
RESPONSE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Munson, that the fifth report of the Standing Senate Committee on Fisheries and Oceans, entitled *Crisis in*

the Lobster Fishery, tabled in the Senate on June 9, 2009, be adopted and that, pursuant to rule 131(2), the Senate request a complete and detailed response from the government, with the Minister of Fisheries and Oceans and the Minister of Human Resources and Skills Development being identified as ministers responsible for responding to the report.

Hon. Fernand Robichaud: Question.

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

(Motion agreed to and report adopted).

NATIONAL SECURITY AND DEFENCE

BUDGET—STUDY ON NATIONAL SECURITY POLICY—
SIXTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on National Security and Defence (budget—release of additional funds (study on the national security policy)), presented in the Senate on October 8, 2009.

Hon. Colin Kenny moved the adoption of the report.

(Motion agreed to and report adopted).

CONFERENCE ON COMBATING ANTISEMITISM

MOTION TO SUPPORT LONDON DECLARATION—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Fairbairn, P.C.:

That the Senate endorse the following Declaration, adopted by the Conference on Combating Antisemitism, held at London, United Kingdom, from February 15 to 17, 2009:

THE LONDON DECLARATION
ON COMBATING ANTISEMITISM

Preamble

We, Representatives of our respective Parliaments from across the world, convening in London for the founding Conference and Summit of the Inter-parliamentary Coalition for Combating Antisemitism, draw the democratic world's attention to the resurgence of antisemitism as a potent force in politics, international affairs and society.

We note the dramatic increase in recorded antisemitic hate crimes and attacks targeting Jewish persons and property, and Jewish religious, educational and communal institutions.

We are alarmed at the resurrection of the old language of prejudice and its modern manifestations — in rhetoric and political action — against Jews, Jewish belief and practice and the State of Israel.

We are alarmed by Government-backed antisemitism in general, and state-backed genocidal antisemitism, in particular.

We, as Parliamentarians, affirm our commitment to a comprehensive programme of action to meet this challenge.

We call upon national governments, parliaments, international institutions, political and civic leaders, NGOs, and civil society to affirm democratic and human values, build societies based on respect and citizenship and combat any manifestations of antisemitism and discrimination.

We today in London resolve that;

Challenging Antisemitism

1. **Parliamentarians** shall expose, challenge, and isolate political actors who engage in hate against Jews and target the State of Israel as a Jewish collectivity;

2. **Parliamentarians** should speak out against antisemitism and discrimination directed against any minority, and guard against equivocation, hesitation and justification in the face of expressions of hatred;

3. **Governments** must challenge any foreign leader, politician or public figure who denies, denigrates or trivialises the Holocaust and must encourage civil society to be vigilant to this phenomenon and to openly condemn it;

4. **Parliamentarians** should campaign for their Government to uphold international commitments on combating antisemitism — including the OSCE Berlin Declaration and its eight main principles;

5. **The UN** should reaffirm its call for every member state to commit itself to the principles laid out in the Holocaust Remembrance initiative including specific and targeted policies to eradicate Holocaust denial and trivialisation;

6. **Governments and the UN** should resolve that never again will the institutions of the international community and the dialogue of nation states be abused to try to establish any legitimacy for antisemitism, including the singling out of Israel for discriminatory treatment in the international arena, and we will never witness — or be party to — another gathering like Durban in 2001;

7. **The OSCE** should encourage its member states to fulfil their commitments under the 2004 Berlin Declaration and to fully utilise programmes to combat antisemitism including the Law Enforcement programme LEOP;

8. **The European Union,** inter-state institutions and multilateral fora and religious communities must make a concerted effort to combat antisemitism and lead their member states to adopt proven and best practice methods of countering antisemitism;

9. **Leaders of all religious faiths** should be called upon to use all the means possible to combat antisemitism and all types of discriminatory hostilities among believers and society at large;

10. **The EU Council of Ministers** should convene a session on combating antisemitism relying on the outcomes of the London Conference on Combating Antisemitism and using the London Declaration as a basis.

Prohibitions

11. **Governments** should take appropriate and necessary action to prevent the broadcast of explicitly antisemitic programmes on satellite television channels, and to apply pressure on the host broadcast nation to take action to prevent the transmission of explicitly antisemitic programmes;

12. **Governments** should fully reaffirm and actively uphold the Genocide Convention, recognising that where there is incitement to genocide signatories automatically have an obligation to act. This may include sanctions against countries involved in or threatening to commit genocide or referral of the matter to the UN Security Council or initiate an inter-state complaint at the International Court of Justice;

13. **Parliamentarians** should legislate effective Hate Crime legislation recognising "hate aggravated crimes" and, where consistent with local legal standards, "incitement to hatred" offences and empower law enforcement agencies to convict;

14. **Governments** that are signatories to the Hate Speech Protocol of the Council of Europe 'Convention on Cybercrime' (and the 'Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems') should enact domestic enabling legislation;

Identifying the threat

15. **Parliamentarians** should return to their legislature, Parliament or Assembly and establish inquiry scrutiny panels that are tasked with determining the existing nature and state of antisemitism in their countries and developing recommendations for government and civil society action;

16. **Parliamentarians** should engage with their governments in order to measure the effectiveness of existing policies and mechanisms in place and to recommend proven and best practice methods of countering antisemitism;

17. **Governments** should ensure they have publicly accessible incident reporting systems, and that statistics collected on antisemitism should be the subject of regular review and action by government and state prosecutors and that an adequate legislative framework is in place to tackle hate crime.

18. **Governments** must expand the use of the EUMC 'working definition' of antisemitism to inform policy of national and international organisations and as a basis for training material for use by Criminal Justice Agencies;

19. **Police services** should record allegations of hate crimes and incidents — including antisemitism — as routine part of reporting crimes;

20. **The OSCE** should work with member states to seek consistent data collection systems for antisemitism and hate crime.

Education, awareness and training

21. **Governments** should train Police, prosecutors and judges comprehensively. The training is essential if perpetrators of antisemitic hate crime are to be successfully apprehended, prosecuted, convicted and sentenced. The OSCE's Law enforcement Programme LEOP is a model initiative consisting of an international cadre of expert police officers training police in several countries;

22. **Governments** should develop teaching materials on the subjects of the Holocaust, racism, antisemitism and discrimination which are incorporated into the national school curriculum. All teaching materials ought to be based on values of comprehensiveness, inclusiveness, acceptance and respect and should be designed to assist students to recognise and counter antisemitism and all forms of hate speech;

23. **The OSCE** should encourage their member states to fulfill their commitments under the 2004 Berlin Declaration and to fully utilise programmes to combat antisemitism including the Law Enforcement programme LEOP;

24. **Governments** should include a comprehensive training programme across the Criminal Justice System using programmes such as the LEOP programme;

25. **Education Authorities** should ensure that freedom of speech is upheld within the law and to protect students and staff from illegal antisemitic discourse and a hostile environment in whatever form it takes including calls for boycotts;

Community Support

26. **The Criminal Justice System** should publicly notify local communities when antisemitic hate crimes are prosecuted by the courts to build community confidence in reporting and pursuing convictions through the Criminal Justice system;

27. **Parliamentarians** should engage with civil society institutions and leading NGOs to create partnerships that bring about change locally, domestically and globally, and support efforts that encourage Holocaust education, inter-religious dialogue and cultural exchange;

Media and the Internet

28. **Governments** should acknowledge the challenge and opportunity of the growing new forms of communication;

29. **Media Regulatory Bodies** should utilise the EUMC 'Working Definition of antisemitism' to inform media standards;

30. **Governments** should take appropriate and necessary action to prevent the broadcast of antisemitic programmes on satellite television channels, and to apply pressure on the host broadcast nation to take action to prevent the transmission of antisemitic programmes;

31. **The OSCE** should seek ways to coordinate the response of member states to combat the use of the internet to promote incitement to hatred;

32. **Law enforcement authorities** should use domestic "hate crime", "incitement to hatred" and other legislation as well as other means to mitigate and, where permissible, to prosecute "Hate on the Internet" where racist and antisemitic content is hosted, published and written;

33. **An international task force** of Internet specialists comprised of parliamentarians and experts should be established to create common metrics to measure antisemitism and other manifestations of hate online and to develop policy recommendations and practical instruments for Governments and international frameworks to tackle these problems.

Inter-parliamentary Coalition for Combating Antisemitism

34. **Participants** will endeavour to maintain contact with fellow delegates through working group framework; communicating successes or requesting further support where required;

35. **Delegates** should reconvene for the next ICCA Conference in Canada in 2010, become an active member of the Inter-parliamentary Coalition and promote and prioritise the London Declaration on Combating Antisemitism.

Hon. Jerahmiel S. Grafstein: Honourable senators, I hope to be able to address this resolution in the foreseeable future. There is movement afoot in the other place to establish a committee to report on the resolution and other issues relating to this motion. I do not want to take up all my time, but I ask for this matter to be adjourned in my name.

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

(On motion of Senator Grafstein, debate adjourned).

• (1720)

QUESTION OF PRIVILEGE

SPEAKER'S RULING RESERVED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, pursuant to written notice given earlier this day, I rise on a question of privilege regarding a press release of the Leader of the Opposition in the Senate, Senator James S. Cowan, various comments he made to the media and the blog posted by Senator Grant Mitchell, which all concerned the Senate's handling of Bill C-25. A press release was issued by the Leader of the Opposition in the Senate on the evening of Thursday, October 8, 2009, a few hours after senators had agreed unanimously to adjourn the Senate for the Thanksgiving break. I also raise matters related to a press interview given by the Leader of the Opposition on October 12 and a blog posting by Senator Mitchell on October 16. In my opinion, all three instances misrepresent decisions taken by this house on Thursday October 8 and, therefore, constitute contempt against the Senate and all honourable senators.

At page 225, *Maingot* states:

> Contempt is more aptly described as an offence against the authority or dignity of the House.

At page 248, *Maingot* states:

> . . . the House of Commons of Canada remains prepared to entertain legitimate questions of privilege where false, partial, or perverted reports of debates or proceedings are published.

By extension, the same principle applies to the Senate.

Erskine May Parliamentary Practice, Twenty-third edition, takes the principle one step further. At page 142, it states:

> Other acts besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly by bringing such House into odium, contempt or ridicule or by lowering its authority, may constitute contempts.

It is on that basis that I raise the question of privilege today. If the chamber is prepared to grant me leave, I will table the press release for the benefit of senators so that I might draw attention to two sentences in particular.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Comeau: Honourable senators, the first sentence of the press release states:

> Senator James S. Cowan, Leader of the Opposition in the Senate, was surprised and disappointed that the Conservative senators rejected a proposal from the Liberals which would have seen the government's crime bill (Bill C-25) considered and voted on this afternoon in the Senate.

Honourable senators, the proposal that I made to the chamber on the date in question was that the Senate consider and vote on Bill C-25. The Leader of the Opposition proposed only that the Senate consider the report from the committee dealing with the proposed amendments to the bill. In effect, the report was dealt with this afternoon. It is clear from the debate that the opposition was not prepared to consider the bill on that date; as happened today, it was not prepared to consider the bill.

At page 1519 of the *Debates of the Senate*, the Leader of the Opposition in the Senate said:

> The position which I put forward on behalf of the opposition was that we would deal today with report stage, the amendments that are reported back from the committee, and that we would agree to have third reading, including a vote at third reading, when we return for the next sitting of the house.

Later that same day, he said:

> I felt that as far as I could go was to say that, on behalf of my caucus, we would agree to have complete third reading at the next sitting of the house.

It is clear from the *Debates of the Senate* that there was no proposal from the Liberals to deal with Bill C-25 on that day. The Liberal proposal was to deal only with the committee report and to hold third reading at the next sitting of the Senate. I contend that the first sentence of the press release is a perverted report of the *Debates of the Senate*. In a posting to the website, Liberal Senate Forum, Senator Mitchell repeats the misrepresentation and also commits an offence against the house. At www.liberalsenatereform.ca/blog, Senator Mitchell wrote:

> So, the very next day, after the amendments in committee, the Chair of the Committee, Senator Joan Fraser, presented the report of the amendments for consideration by the Senate. It was clear that the full contingent of Liberal Senators in the Senate would defeat the amendments and pass the bill.
>
> Senator Joan Fraser asked for unanimous consent so this could be done that very day.

We were given a good idea this afternoon of the Liberal intent in dealing with the amendments. I suppose Senator Mitchell's information was not up to date at the time.

Honourable senators, the record is clear. There was no desire on the part of the opposition to pass the bill on Thursday, October 8. I draw the attention of honourable senators to the third paragraph of Senator Cowan's press release:

> Instead of moving quickly on this bill, the Conservatives decided to adjourn the Senate until October 20th even though the Rules provide that the Senate should have met on Friday at 9:00 a.m. Had the governmental allowed the Senate to meet tomorrow, it could have completed its consideration of the bill before Parliament adjourned for the October break week.

This account too is a perverted report of that day's *Debates of the Senate*. It is not within the power of the Conservatives or the government to adjourn the Senate to a particular day or time. To suggest otherwise demeans the role of the Senate and constitutes a contempt of all senators.

The decision on the adjournment for longer than one business day can be taken only by the Senate by a majority of votes. I note that the majority in the house still happens to be the Liberals.

The *Journals of the Senate*, October 8, 2009, clearly demonstrates the process by which the Senate adjourned until Tuesday, October 20, 2009. Allow me to outline this process to honourable senators. At page 1337, it states:

> *With leave,*
> *The Senate reverted to* ***Government Notices of Motions.***

With leave of the Senate, meaning unanimous consent, I moved that when the Senate adjourned on October 8, it stand adjourned until October 20. If the Leader of the Opposition and his caucus were so concerned with dealing with Bill C-25 on that day, why did no one object when leave was requested? Only one "no" vote was needed to result in the Senate sitting on Friday, as was suggested in the press release by the Leader of the Opposition. "No" was not said, and unanimous consent was given.

Senator Milne: Your side can say no.

Senator Comeau: Absolutely. There were no objections from the other side. Pages 1337 and 1338 of the *Journals of the Senate* indicate that the two motions to adjourn the Senate to Tuesday, October 20, 2009, were adopted without a single dissenting voice. To state that the Conservatives or the government decided to adjourn to October 20 is entirely misleading and false. At page 132 of the 23rd edition, Erskine May in reference to the House, which means the Senate as well, states:

> The Commons may treat the making of a deliberately misleading statement as contempt.

The Leader of the Opposition repeated this misrepresentation in an interview with Dave Rutherford on CHRQ at 770 AM radio in Calgary on October 12, 2009.

In a discussion regarding the adjournment Thursday, October 8, the Leader of the Opposition stated in that interview:

> One second now, it's the government that decides the sitting days for the Senate.

Again, honourable senators, that is simply not the case.

• (1730)

In circulating his press release and by repeating the misrepresentation in the media, the Leader of the Opposition spread false information regarding the actions taken by this chamber. In misrepresenting the decisions taken by the Senate, he has committed an offence against the authority and dignity of this house and of all senators who serve.

I can only presume that the misinformation contained in the press release of the Leader of the Opposition led to the false assertions made in a *Canadian Press* story written by Joan Bryden, which was published in several papers on the morning of October 9. That story claimed:

> Conservatives rejected a bill yesterday to expedite a key piece of their tough-on-crime agenda. . . .

Let me repeat this. This is in the newspaper. This is picking up from what the Leader of the Opposition indicates is how the Senate works:

> Conservatives rejected a bill yesterday to expedite a key piece of their tough-on-crime agenda. . . .

While the press can hardly be blamed for offering stories that help sell newspapers — and some do not let the facts get in the way of a good story — the fact that the Leader of the Opposition's statements directly led to a skewed understanding of my role as a member of the government caucus, as the Deputy Leader of the Government and as a senator, is contemptuous.

In April 1993, the Speaker found a prima facie case existed on a question of privilege regarding the public reflection of a member of the Senate. In that ruling, the Speaker cited several parliamentary authorities, as well as speakers in the other place, finding in essence that the publishing of misleading or libellous statements that interfere with the ability of senators to fulfill their constitutional duties is in contempt of Parliament.

That is exactly what the Leader of the Opposition has done. By publishing his press release, which is a perversion of the official record of this place, he has also placed on me extra duties and power that I do not hold and that I have not asked for.

As mentioned earlier, the government does not control the adjournment of this place. More specifically, nor do I. However, the press release issued by the Leader of the Opposition led members of the press to believe that the government — and specifically I — had such power. In fact, the *Canadian Press* article reported the falsehood.

I did ask the member of the press to correct the record, and she said "no." After all, why let the facts get in the way of a good story?

Senator LeBreton: She would not want to let her Liberal friends down.

Senator Comeau: This may lead the public to believe that I have stalled an important piece of legislation by adjourning the Senate. I will repeat: That I, the Deputy Leader of the Government in the Senate, have stalled an important piece of legislation by adjourning the Senate, as if I had the power.

In fact, nothing could be further from the truth, honourable senators. The record clearly shows that I and members on this side wanted to dispose of Bill C-25 at third reading on Thursday, October 8, 2009, and Senator Cowan said he could not do it.

An Hon. Senator: Who?

Senator Comeau: Senator Cowan, the Leader of the Opposition.

I would ask the Speaker to find a prima facie case of privilege in this matter. To define a prima facie case, I would be prepared to move the appropriate motion to refer the matter to the Standing Committee on Rules, Procedures and the Rights of Parliament.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators will understand how deeply distressed I am that I apparently offended the tender sensibilities of Senator Comeau. However, facts are facts, and sometimes the truth hurts.

As an aside, I am delighted that Senator Comeau is reading our press releases and that he has given this free plug for Senator Mitchell's website. We are delighted that he is doing that.

Honourable senators, the notice I received late this morning informed me that Senator Comeau took offence at my press release of October 8, and at some of the comments I made to the media at that time in various interviews I gave. Senator Comeau also claimed to be offended by the blog post of our colleague, Senator Mitchell. I will let Senator Mitchell speak for himself in a few moments.

For my part, I am replying to Senator Comeau by way of this text I obviously prepared before I had an opportunity to hear the details of his complaint. I hope that by carefully detailing in this way what occurred on Thursday, October 8, most of the issues my friend has raised will be addressed.

I would like to begin by noting that in rising on a question of privilege, Senator Comeau is claiming that my behaviour, in the words of Beauchesne, "interfered with his rights as a member to discharge his duties."

Let us look at how my press release interfered with those rights. For the benefit of honourable senators, I intend to dissect that release, line by line, in order to discover where I may have hindered Senator Comeau in the discharge of his duties in this chamber.

The first line of the press release began:

> Senator James S. Cowan, Leader of the Opposition in the Senate, was surprised and disappointed. . . .

I do not see any cause for complaint in those words. My official position is accurately described and my surprise and disappointment at what occurred was genuine. If anything, these words underestimated it because of the fact that I was very surprised and very disappointed at what occurred.

Why was I surprised and disappointed? The press release explains that it was because

> . . . Conservative Senators rejected a proposal from the Liberals that would have seen the government's crime bill (Bill C-25) considered and voted on this afternoon in the Senate.

Senator Fraser and I did the proposing and we are Liberals, while Senator Comeau did the rejecting and he has self-identified as a Conservative, so no inaccuracy there.

What was the proposal? The press release said it was to have the bill

> . . . considered and voted on this afternoon in the Senate.

When Senator Fraser asked for leave to consider the committee report stage of the bill later that afternoon, I am on record, at page 1515 of the *Debates of the Senate* as saying:

> We want to consider that report today.

When the press release, in its first paragraphs, said that we offered to consider the bill that day, it is simply repeating the very word I used in the Senate chamber in my offer to Senator Comeau.

With respect to having the bill voted on that day, on page 1519 of the *Debates of the Senate*, I am recorded as saying,

> . . . we would deal today with the report stage, the amendments that are reported back from committee, and that we would agree to have third reading, including a vote at third reading, when we return for the next sitting of the house.

Clearly, one could not get to third reading at the next sitting without first disposing of the report stage that day.

At page 81 of the authoritative work, the *Canadian House of Commons*, by our former colleague Senator John B. Stewart, it says this:

> A bill is carried forward through the stages of the legislative process by a long chain of standardized motions. All these motions must be carried.

My offer was clearly to have one of those stages of the bill, the report stage, considered and voted on during the Thursday sitting of the Senate; then, on having the next stage, the third-reading stage, considered and voted at the next sitting of the Senate. Therefore, when the press release stated that the Liberal proposal was to have Bill C-25 "voted on this afternoon in the Senate," that is an entirely accurate statement.

Our offer was to have a vote on the report stage of the bill, and everyone here knows that to be true. I am on record in the *Debates of the Senate* as making that proposal.

The first clause of the first sentence of the next paragraph of the press release states:

> Following today's tabling of a Report on Bill C-25 by the Legal and Constitutional Affairs Committee . . .

The official record shows that the chair of the committee, Senator Fraser, did indeed present the committee report to the Senate.

The second clause of that sentence in the press release says:

> . . . Liberals asked that the Senate move quickly on the bill by immediately studying the Committee's Report and voting on it today . . .

At page 1506 of our *Debates of the Senate*, when our Speaker asked "when shall this report be taken into consideration," Senator Fraser asked:

> With leave of the Senate, later this day.

That certainly appears to be a proposal to move quickly. As I have already noted, later that day I also offered, on behalf of my colleagues on this side of the chamber, to have a vote at report stage that same afternoon. Therefore, clause 2 of that sentence is quite accurate.

• (1740)

The last clause of that first sentence in paragraph 2 of my press release states: ". . . as opposed to waiting until the next scheduled sitting of the Senate, as the Rules stipulate."

Rule 58(1)(g) states:

> 58.(1) One day's notice shall be given of any of the following motions:
>
> (g) for the adoption of a report from any standing or standing joint committee;

Therefore, that clause is accurate. In fact, after Senator Comeau refused to give leave, Senator Fraser was forced to move that this report be taken into consideration at the next sitting of the Senate. That motion can be found at page 1515 of the *Debates of the Senate*.

The second sentence of paragraph 2 of my press release states:

> The Senate could then have proceeded to third reading of the bill as early as tomorrow.

Had the report stage been disposed of on Thursday, as we offered, rule 58(1)(b) provides that one day's notice shall be given for the third reading of the bill. One day's notice would have taken us to Friday, exactly as described in the press release.

The second paragraph of the press release concluded with this sentence:

> Unfortunately, Senator Comeau, the Deputy Leader of the Government in the Senate, refused to accept this proposal to expedite the process.

This is an accurate statement.

Although, on page 1512 of the *Debates of the Senate*, the honourable senator stated: "I am still in the process of pondering and reflecting", he ultimately concluded that it was in the best interest of the Senate for him to refuse that proposal to move quickly with this important crime legislation. This is all on the record. Of course, I would be interested to learn how this process of "pondering and reflecting" led to his surprising conclusion.

In any event, the third paragraph of my press release then states:

> Instead of moving quickly on this bill, the Conservatives decided to adjourn the Senate until October 20th even though the Rules provide that the Senate should have met again on Friday at 9:00 am.

Is this sentence accurate? Rule 5(1)(b) provides:

> 5.(1) Unless otherwise previously ordered,
>
> (b) on a Friday, the Senate shall meet for the transaction of business at 9:00 o'clock in the forenoon.

We did not reconvene on Friday, October 9, as is provided for in rule 5(1)(b) because, before he moved the adjournment motion, Senator Comeau, on behalf of the government, moved and passed the following motion:

> That when the Senate adjourn today, it do stand adjourned until Tuesday, October 20, 2009, at 2 p.m.

That is today.

I fail to understand how Senator Comeau could have any complaints about a press release that so accurately describes what he did to ensure that the Senate adjourn for 12 days instead of returning on Friday, October 9, to deal with this self-described important crime bill.

The last sentence of that third paragraph reads: "Had the Government allowed the Senate to meet tomorrow" — that would have been Friday — "it could have completed its consideration of the bill before Parliament adjourned for the October break week."

Although I have already dealt with this point earlier in my remarks, let me repeat myself. On page 1519 of the *Debates of the Senate*, I am on record as saying:

> . . . we would deal today with the report stage, the amendments that are reported back from the committee, and that we would agree to have third reading, including a vote on third reading, when we return for the next sitting of the house.

I also noted, at that time, the government sets the date for the next sitting. The government did set the date, and it was 12 days later. The press release then, in the normal tradition of press releases, contains quotations from the individual under whose name it is released. Consequently, I am quoted as saying:

> Following the Committee's thorough study and report on the bill, Liberal Senators offered to deal with the legislation immediately. We offered to do so this afternoon, but Conservative Senators refused. . . . I can only conclude that the Conservative government is more interested in the politics of this bill than in addressing crime in this country.

When I reread my press release today, I thought perhaps this was what agitated Senator Comeau. In all fairness, what else could I be left with to conclude by his puzzling behaviour? I noted in the last sentence of my press release:

> This puzzling behaviour by the Conservative Caucus in the Senate contradicts the repeated demands by Justice Minister Rob Nicholson for the Senate to quickly adopt this legislation.

Honourable senators, puzzling behaviour by the members of the government leadership in the Senate is a concern for all of us, but it is not a legitimate ground for a question of privilege by the government, itself. Although that behaviour may have impaired the ability of honourable senators opposite to manage effectively the flow of government legislation in the Senate, it was an impediment of their own making.

My description of events, both in the press release and in my press interviews, was not merely fair comment; it was absolutely accurate. Frankly, when I heard that a question of privilege was being raised about the events of Thursday, October 8, I initially thought it was arising out of a statement made by the Deputy Leader of the Government in the Senate, when he said:

> If we are prepared to deal with this report this afternoon, and to deal with the bill unamended, then we are prepared to deal with it this afternoon.

That is found at page 1515 of the *Debates of the Senate*.

"Deal with the bill unamended" is what he was requesting from me as opposition leader. This is while the Senate had before it a report recommending amendments to the bill. In my view, to suggest that the leadership on either side of the chamber could bind their members to publicly guarantee the outcome of a vote before it was held, at any stage of the bill, is more than simply a questionable procedure. I know that a number of my colleagues found this to be a surprising and objectionable suggestion.

In any event, honourable senators, what we have before us is not a legitimate question of privilege. What we have is a complaint, in my view, that a carefully prepared communication strategy developed by the PMO, designed to blame the Senate and particularly Liberal senators for delaying an important crime bill, was short-circuited by this very accurate press release that was sent to almost 3,000 media outlets across the country.

Some Hon. Senators: Hear, hear.

Hon. David Tkachuk: Honourable senators, that was a fine speech, clarifying Senator Cowan's position, but it had nothing to do with his distortion of the facts of our position.

I would like to read into the record from the *Debates of the Senate* of October 8, 2009, on page 1519, an exchange between Senator Cowan and Senator Comeau. Senator Comeau's question of privilege today is not about what the Liberal position was, but the Liberal distortion of Senator Comeau's position.

Honourable senators, in the *Debates of the Senate* on October 8, Senator Cowan states:

> The position which I put forward on behalf of the opposition was that we would deal today with report stage, the amendments that are reported back from the committee, and that we would agree to have the third reading, including a vote at third reading, when we return for the next sitting of the house.
>
> I felt that was a reasonable proposal.

Senator Comeau, as part of the debate, makes clear the government's position:

> Honourable senators, I did indicate earlier today that we would be prepared to deal with all stages of this bill this afternoon. The honourable Leader of the Opposition indicated that it was not within his authority to go to the next level, which would be to deal with the bill itself. My suggestion would be that if he does have the authority to deal with the report stage, which needs the unanimous consent of the house, including the non-aligned, why would he not have the authority to deal with the bill? My understanding was that the bill was supported massively by his colleagues in the House of Commons. I understand that it got all-party support in the House of Commons without amendments.
>
> Therefore, I would suggest that the authority that he has to have his side to deal with the report stage this afternoon would also extend to the authority to deal with the bill itself. I cannot see that part of his argument.

• (1750)

Hon. Grant Mitchell: Honourable senators, I appreciate the chance to answer this charge in some sense. I am disappointed. Try as I might and listen as I have, I simply cannot see how the Deputy Leader of the Government could possibly construe this debate — within the Senate ten days ago and in the media, blogs and the ether — as a question of privilege in any way, shape or form.

First, my reaction upon receiving the notice this afternoon was that I was absolutely thrilled people were actually reading my blog. Then I had a fleeting sense of admiration for Senator Comeau that at his age, — which is close to my age, he was able to find a blog on this mystical 21st century electronic forum.

Senator Comeau: Do not say I cannot read a blog, for crying out loud.

Senator Mitchell: If he is searching the Internet, could he please check on my Twitter. I am trying to build up my followers on Twitter and I would appreciate the attention.

Second, when I saw this notice, I thought: Could Senator Comeau, who I know to be a serious senator who works hard, provides leadership to his caucus and is tough on the issues, be serious about this purported question of privilege?

I have spent 16 or 17 years in two legislatures now — this one and the Alberta legislature. I have observed and been involved in a number of discussions on questions of privilege. Ninety-nine point nine-nine per cent of them are not questions of privilege. They become a good vehicle for making a point over and over again, as the honourable senator is doing today.

To be a question of privilege, whatever has occurred needs to be an impediment to a member's ability to do his or her job. I read what I said and I wracked my brains. The only way this could have been an impediment to him doing his job was if he printed it out, dropped it on the floor and slipped on it on the way to the Senate chamber.

It is not a question of privilege. It is a debate on things that he might think are right or wrong, are opinion or fact, or do or do not follow a certain protocol. That is simply debate. It is not a form of impediment to the honourable senator doing his job unless he is saying that in the democratic process, he thinks open, public debate is an impediment to him doing his job.

I know he is not saying that, but imagine if that is the implication of what he is saying. We are allowed to debate. The honourable senator may not like it or agree with it. It might be offensive to him or, to some extent, embarrass him in front of his members because he stood and was not ready to do what he should have done that day. He is fighting against some credibility; he was not quite quick enough on his feet. The fact is that it did not impede him doing his job one little bit.

What I heard from Senator Comeau's argument ultimately was that some of the things that I had said, if not all of them are wrong. If all of the things that senators and House of Commons members said that were wrong were questions of privilege, how would we ever get anything done? Is the honourable senator correct every time he stands up? I do not think so. Every time he stands up and makes a statement that is wrong, we could theoretically — based on this precedent, say it is a question of privilege.

This is not a question of privilege. It is not a question of contempt of the house. I will tell honourable senators what is contempt of the house. We have been distracted now, once again, by a political ploy — a spin effort — from the real issues facing the people of this country.

I will sit down so maybe we can debate what we should be debating, instead of wasting time on this intervention, which is purely frivolous and vexatious.

Senator Comeau: I have two brief points. I think I have made my case.

Hon. Anne C. Cools: Honourable senators, if Senator Comeau speaks now, does it have the effect of closing the debate?

The Hon. the Speaker: No. We should hear from Senator Cools and then Senator Comeau.

Senator Cools has the floor.

Senator Cools: Honourable senators, I thought there would have been more debate and that, perhaps, more senators on both sides would have taken part in the debate.

I would like to support His Honour enormously to find that there is no prima facie case here whatsoever. There is not a case at all at first blush.

Honourable senators, I have been listening to the debate with some interest. A few points need to be clarified. First is the meaning of the word "proposal" and second is the meaning of the words "unanimous consent."

Perhaps, we should consider "unanimous consent" first. Unanimous consent is not a vote of this house on a motion. Neither is it a formal mode of measuring the opinion of this house on any subject. Unanimous consent means the whole house — every single senator with no dissenting voice — is giving permission to suspend a rule for a time — suspension, waving of a rule only.

Therefore, you need unanimous consent, for example, as on Thursday, October 8, to go through the several stages of the bill in one day. You are waiving in that case the rules that require definite notices and times between the different stages of a bill. Honourable senators, the rules anticipate that we do not pull surprises on senators. The rules clearly say if first reading is today so many days later there may be second reading. When the report comes back from the committee, so much time must elapse before the report can be considered — usually a day. After the report stage, another day is required before third reading.

Honourable senators, I give that example to explain what we mean by unanimous consent. When senators speak of unanimous consent around certain motions, we have to be crystal clear what we mean. The consent is the permission to move the motion without the usual notice.

Second, I wish to speak to the notion of a "proposal." The proposals the two leaders may make to each other are not a matter of concern for the Senate.. The Senate can take no notice of private discussions or agreements between the leaders.

We have heard much talk about proposals. There is only a proposal before the Senate when a senator makes a motion. Other than that, discussions between leaders have no binding effect or no effect whatsoever on senators or the house.

Let us understand that no real proposals were ever put before this house whatsoever on the business of the disposition of Bill C-25. The only proposal to the Senate was Senator Fraser's attempt to move a motion to consider the report later that day, October 8. Senator Cowan made no proposals to this house and neither did Senator Comeau. Proposals to this house must take the form of motions. This is how the system works.

We are dealing with discussions between leaders where, somehow or other, some individuals are trying to bind all of us.

• (1800)

If we look at *Debates of the Senate*, October 8, page 1515, Senator Comeau rises and says:

> I wish to advise the other side that we would be ready to deal with third reading of Bill C-25 today, without amendment. My understanding is that the other side would want to go this way. However, our side would be prepared to go this route, provided we deal with third reading of Bill C-25 this afternoon.

Honourable senators, all of this debate is strictly out of order and should have been called out of order on Thursday, October 8.

The Hon. the Speaker: It now being six o'clock, we have an opportunity to act upon Senator Cools' first point. The rule provides that we must rise and I must leave the chair at six, but if unanimous consent is given, then that rule is not in force and does not apply. What is the will of the house? Do we not see the clock?

Hon. Senators: Agreed.

The Hon. the Speaker: Unanimous consent has been given, and so therefore it is an order of the house that we not see the clock.

Senator Cools: I thank the Speaker for that opportune moment because there was no motion put before the house because we are suspending a rule for a period of time, which is different from a motion expressing an opinion.

Coming back to Senator Comeau's statement of October 8 advising the other side that his senators here were "ready to deal with third reading of Bill C-25 today, without amendment." Honourable senators, this statement should have been declared out of order on many fronts.

To the Senate there is no such thing as a private deal. Any proposal that Senator Comeau wished to make to the entire house must be made by moving motions to that effect. On October 8, he was speaking here about some magical situation that does not exist and that should have been roundly condemned. He proposed that somehow the committee report can be sprung into action; that honourable senators can spring the committee's amendments out of the report somehow and, on top of that, the report minus the amendment, would spring right on to third reading. Honourable senators, I would never give agreement to suspend the notice requirement for report consideration and also for third reading unless the item is extremely urgent.

I do not know if honourable senators understand the implications of this particular paragraph but perhaps they should look at it. One cannot jump up every moment to raise a point of order. Sometimes we rely on good faith and good intention, but that matter should have been dealt with immediately. When the two leaders asked for a suspension, if honourable senators recall — I was on the other side — the word adjournment was being used. I kept whispering not to use the word "adjournment," but to use the word "suspend." I was following the debate, but thought the situation would work itself out and it did not.

Senator Comeau was out of order in making this so-called statement. It is no big thing but it is not a right or proper thing. He cannot now proceed from his position, stating that because his proposal or his idea did not proceed as he would have wanted it, to say now that the others are in contempt, because it did not unfold this way.

Honourable senators, I want to go to the position now of governments and adjournments of the debate and so on. At the time, I thought we were talking about the situation of the leaders trying to avoid the Senate having to sit on Friday. That is why I was so supportive.

Honourable senators, some misunderstanding has arisen from the situation of October 8. No motions were put on the floor of this house on any of these points, neither Senator Cowan's nor Senator Comeau's proposals, because one cannot put a motion on the grounds they described. The only real proposal that came before the house was that of Senator Fraser. That was the only proposal we have to deal with, and that matters because it is the only proposal that took a parliamentary form, a motion. Somewhere along the line, there is a misunderstanding. Perhaps Senator Comeau understood one thing, Senator Cowan rejected his understanding and Senator Cowan is placing in his press release what his understanding was. He is rightfully condemning the government because it seemed so odd and so awfully strange.

Having said that, honourable senators, I want to make it clear to all here concerned that when either leader stands and says, we are agreeable to do this and we are agreeable to do that, let them understand clearly that they do not speak for the Senate but only for the few senators over whom they have influence as leaders.

I want to register strongly today that perhaps both leaders should speak more clearly, loudly and strongly to the so-called non-aligned so that the record shows clearly that the non-aligned have an opinion on waiving the rules and suspending the rules that is as valid as any other opinion and that neither of the two leaders speak for those individuals. Senator Comeau, to his credit, runs down here often to ask me about unanimous consent. Honourable senators, that was the reason I indicated earlier today that I was prepared to give consent for us to go to third reading today because I never would have given consent to deal with both the report and third reading on October 8.

On a different note, I was disappointed that this question of privilege was raised, and I will ask Senator Comeau to consider withdrawing it on the grounds that the point has been made and has been registered. I do not think it is good thing for leaders of the Senate to accuse each other of contempt of this house. I do not think it is good for the institution; I do not think it is good for the leaders; and I do not think it is good for the public.

The most neglected area of law is this law that we are talking about now called the law of Parliament. Your Honour, perhaps one of these days in our various discussions on privilege, we should begin to invite senators to point to the privilege that is being breached or broken. Which one is it? Is it freedom of speech? Is it right of representation? Which point of privilege is it so that we can focus our minds? I can see no breach nor first blush of evidence of a breach of any of the great privileges of the Senate — not the right of representation and not the right of free speech, article 9 of the Bill of Rights of 1889. None have been breached, but what has been breached is a grand old tradition that leaders and gentlemen can disagree but at the end they should be able to shake hands.

• (1810)

Senator Comeau: Honourable senators, I will not be long. I stand by my comments. I invite everyone to carefully reread the issues I raised this afternoon. None of the three previous intervenors addressed the issues I raised regarding who has the power to adjourn the Senate and when it will be adjourned to. These issues were not addressed at all. The three intervenors spent a great deal of time speaking to the supposed deal on the floor. I spent very little time on that point, and mentioned it only in passing, as a matter of fact.

Unlike Senator Cowan, I deliberately tried to keep away from a personal attack on these two individuals and I will continue along that same line.

However, I cannot resist the blog of Senator Mitchell. It was clear that the full contingent of Liberal senators in the Senate would defeat the amendment and pass the bill. In fact, I would like to see the blues. I am not sure whether Senator Mitchell was in the chamber when the actual vote took place, but it goes to show that if Senator Mitchell is going to blog about his colleagues in the Senate, he should at least wait until he knows what the facts will be. Stick with the facts. Stay away from personal attacks.

Stick with the facts and you will always get it right.

The Hon. the Speaker: I thank honourable senators for their contribution to this debate. I will take the matter under consideration.

INDUSTRIAL HEMP INDUSTRY

INQUIRY—DEBATE ADJOURNED

Hon. Lorna Milne rose pursuant to notice of May 28, 2009:

> That she will call the attention of the Senate to recent developments concerning the Canadian industrial hemp industry.

She said: Honourable senators, I have intended to speak to this inquiry for some time. I am still collecting information on this year's hemp crop, so I will continue my remarks for the remainder of my time as soon as I possibly can.

(On motion of Senator Milne, debate adjourned.)

(The Senate adjourned until Wednesday, October 21, 2009, at 1:30 p.m.)

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