CANADA

Debates of the Senate

2nd SESSION • 40th PARLIAMENT • VOLUME 146 • NUMBER 61

OFFICIAL REPORT
(HANSARD)

Wednesday, October 21, 2009

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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Publications Centre: David Reeves, Chambers Building, Room 969, Tel. 613-947-0609

Published by the Senate
Available from PWGSC – Publishing and Depository Services, Ottawa, Ontario K1A 0S5.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Wednesday, October 21, 2009

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

Prayers.

SENATORS' STATEMENTS

THE LATE PETER KENNEDY

Hon. George J. Furey: Honourable senators, at approximately noon on Monday, October 19, an explosion occurred in one of the boilers at the Cliff Central Heating and Cooling Plant. This plant is the main supply of heating and cooling for the Parliament Buildings as well as many other buildings within the downtown core. A total of 48 buildings' utilities were affected by this incident.

Public Works and Government Services Canada is currently working with all emergency services, including the Fire Department, Police Technical Standards and Safety Authority and Labour Canada in efforts to activate a new supply of steam to the affected buildings from the Canadian Government Printing Bureau.

Unfortunately, colleagues, some Public Works employees were injured during this most regrettable accident, and I am saddened today to inform you of the passing of Mr. Peter Kennedy.

Mr. Kennedy, a Public Works employee for 22 years, was an outstanding individual and admired by all those who worked with him. He was a dedicated and experienced engineer who was completing his work when this unfortunate incident occurred. Severely injured, Mr. Kennedy passed away yesterday morning surrounded by his family and loved ones.

On behalf of the Standing Committee on Internal Economy, Budgets and Administration, and on behalf of the Senate, I wish to extend our sincerest condolences to his wife, Terri, and their four children.

As well, we extend our thoughts and prayers to the Kennedy family and to the other employees who sustained injuries and those currently mourning the loss of a fellow colleague and friend during this most difficult time.

Hon. David Tkachuk: Honourable senators, I join my honourable friend Senator Furey in expressing my condolences to the family and friends of Peter Kennedy, the man who died early yesterday morning from the injuries he suffered in the boiler explosion at the Cliff Heating and Cooling Plant on Monday.

By all accounts, he was a good man, a good husband and a good father. You cannot ask more from anyone. Peter Kennedy was a public servant. He was admired and looked up to by his colleagues, who considered him a mentor, a highly qualified professional engineer who was just doing his job when we was killed. He was only 51.

After the accident, his colleagues, without fail, remarked on his kindness and his sense of humour, and who among us would not want to work beside, with or for such a man. On behalf of all our colleagues in the Senate, to Peter Kennedy's family, to his wife and children and to his friends, we extend our heartfelt condolences.

GLOBAL RELIEF OUTREACH FOUNDATION

Hon. Jane Cordy: Honourable senators, I take this opportunity to highlight the good work of Global Relief Outreach Foundation of Canada. Global Relief Outreach, or G.R.O. Canada, is a Toronto-based NGO, which is currently operating in Lesotho, South Africa.

G.R.O. Canada's goal is to provide assistance to projects that are already in existence but lack the necessary resources and support needed to succeed. In Lesotho, G.R.O. is supporting projects that were initiated by local groups working in collaboration with development workers already living in their communities.

G.R.O. has three major projects in Lesotho: The Family Scholarship Fund and two social enterprise projects, Artisan's Collective and the Grandmothers Support Group.

The Family Scholarship Fund provides academic support to orphaned and vulnerable high school students affected by HIV and creates environments that encourage collaborative support, strengthening students as young advocates to join together in supporting each other and their communities.

For the Artisans Collective project, the G.R.O. Foundation has provided start-up capital and supplies, facilitates handicraft training for women living with HIV, and has connected them with business opportunities locally and abroad. Over the past year, the collective has become completely self-sufficient, facilitating business growth with their profits.

The third major project, the Grandmothers Support Group, is an initiative that was created to help sustain a local HIV home care operation, run almost exclusively by grandmothers. G.R.O. has worked closely with the "grannies group" to build a small poultry production business where profits are invested in health care kits that allow the grandmothers to provide, and expand, home-based health care services throughout their community. As part of G.R.O.'s sustainable social-enterprise model, this project has also become entirely self-sustaining.

G.R.O. was created in 2006 by Canadian development worker James White and two American counterparts, Jean Margaritis and Greg Felsen, with start-up financial support provided by Toronto businesswoman Sharon Oatway. Two of G.R.O.'s founders continue to live in Lesotho and work closely with the project partners. G.R.O. Canada is now also governed by a volunteer board in Canada, including Dr. Megan Landes, Terry Aldebert, James White and by a volunteer executive team. The

Canada-based G.R.O. operations team acts as secondary advisers to local projects, primarily focusing on linking local groups with international resources and maintaining the trust of donors through project follow-up.

As G.R.O. continues its work in Lesotho, Canada, the United States and throughout the world, they continue to guarantee that 100 per cent of donated funds are sent directly to Lesotho for direct project support and to benefit the project partners of the communities they engage in. G.R.O. Canada seeks to extend its mandate and mission throughout the world's developing communities, committing to global development initiatives that respect cultural differences, provide direct and tangible support and link the people of Canada with projects making real difference in struggling communities everywhere.

Representatives of G.R.O. will be on the Hill this week. I look forward to meeting with them, and I encourage other interested senators to do the same.

MCGILL UNIVERSITY

Hon. Michael A. Meighen: Honourable senators, as a graduate of McGill University, I am proud to report that my alma mater and that of some other honourable colleagues is truly on a roll.

In the recently released *Times Higher Education* World University Rankings, McGill University placed eighteenth for the sixth consecutive year finding itself in the top 25 in the world and the highest-ranked Canadian university. In addition, McGill was judged North America's top publicly funded university.

Another recent accolade for McGill has come from *Maclean's* magazine, which ranked its faculty of law second among Canadian common law schools. In addition, McGill placed first for success at placing Supreme Court clerks, and second both for the number of graduates hired at elite firms and as professors at Canadian law schools.

• (1340)

[*Translation*]

The announcement of these exemplary rankings coincides with the announcement that two former McGill students have won Nobel Prizes. Willard Boyle is one of the recipients of the Nobel Prize in Physics, while Jack Szostak shares the Nobel Prize in Physiology or Medicine with two other researchers.

[*English*]

On the heels of these remarkable developments, McGill University has just concluded its inaugural Leadership Summit. Among other things, this marked the $500-million milestone, or the two-thirds point, of Campaign McGill's drive for $750 million. Perhaps the highlight of this two-day event was the conferring of an honorary doctorate on former U.S. president Bill Clinton.

In a riveting 45-minute speech, delivered basically without notes, the former president demonstrated why he is widely considered one of the top orators of our time. He lauded Canada for exhibiting a "communitarian consciousness" — a recognition of our mutual dependence on each other as manifested by a high level of concern and care for all of our citizens. He said that the United States and the world at large could benefit from adopting more of such an approach on issues as varied as health care and support for the less fortunate.

The former president also spoke of the role of universities:

> Canada and the United States built great, throbbing, vibrant countries, partly on the shoulders of a meritocracy — that's really what a great university is, isn't it? — you find a child, a young boy or girl without regard to their background and give them a chance to learn what they can learn, do what they dream of doing and then it all adds up to something great.

He also discussed Third World development, stating that the:

> . . . intelligence you see in the young people at McGill can be found anywhere in the world; intelligence is evenly distributed, and so are dreams, but structure, which gives predictability of consequence to action taken and investments in opportunity, are not. It's simply going to be impossible for us to build the world we need unless in the wealthy countries we are ruthlessly honest about where we are wasting money and hanging onto yesterday's way of doing things.

Thoughtful words, honourable senators. Thoughtful words indeed.

SISTERS IN SPIRIT

Hon. Lillian Eva Dyck: Honourable senators, this past October 4, Sisters In Spirit vigils were held nationwide across Canada to remember missing and murdered Aboriginal women and girls.

This is an important day to publicly call for action, accountability and justice for Aboriginal women. Specifically, it is a time for Canadians to take a stand and demand action in efforts to bring attention to the issue of violence against women. This year, an astonishing 72 vigils in 69 communities took place from coast to coast to coast.

According to the Native Women's Association of Canada, there have been an estimated 520 reported cases of missing and murdered Aboriginal women and girls in the last 30 years. However, there is no complete or accurate number of Aboriginal women and girls who have gone missing or been murdered. As a result, there is a strong possibility that many more cases have not been reported or officially documented.

At the core of this crisis, there is an epidemic that exists within Canadian society. It is an epidemic that targets Aboriginal women simply because they are Aboriginal. High rates of all forms of violence, particularly sexualized and racialized violence, is targeted at Aboriginal women. As a result, Aboriginal women are five times more likely than non-Aboriginal women to die of violence.

Honourable senators, there are many underlying factors that contribute to this problem. Take, for instance, the high prevalence of poverty facing many Aboriginal women. Far too often,

Aboriginal women and girls have no social supports or resources in place to help them make better choices in life. Instead, they are left vulnerable, with little or no guidance or direction in their lives. As a result, many are left hopeless, powerless and choiceless, with no vision forward of a healthier, safer life.

Not only is it alarming that more than half of the murders and disappearances of Aboriginal women and girls occurred in the last 10 years, it is also startling that the majority of them were under the age of 30. Nearly half of the cases remain unsolved, with no charges laid. This is worrisome. It sends a strong message that Aboriginal women are dispensable and unimportant.

Honourable senators, October 18 marked the eightieth anniversary of the Persons Case, where women were legally recognized as persons and, therefore, could become senators. The numbers of missing and murdered Aboriginal women make it clear that we have a long way to go before Aboriginal women are also valued and respected persons.

VISITOR TO THE SENATE

The Hon. the Speaker: Honourable senators, rule 18 requires that the Speaker is to maintain order in the house. I am sure that you would find me failing in that duty and consider it to be totally out of order if I was not to point out that below the bar is the longest serving Speaker of the other place.

Hon. Senators: Hear, hear!

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

CONGRATULATIONS ON RECEIVING ORDER OF MERIT

Hon. Mobina S. B. Jaffer: Honourable senators, today I rise to speak about an outstanding Canadian, a dedicated public servant and a respected world leader, the Right Honourable Jean Chrétien, and the great honour bestowed upon him. Yesterday, our former prime minister was officially decorated with the Order of Merit at Buckingham Palace in London by Queen Elizabeth II, making him the twenty-fourth member of the order. This is a special honour not only for him, but for all Canadians.

In 1902, King Edward VII established the Order of Merit to honour "those individuals of exceptional distinction in the arts, learning, the sciences and public service." Members of the Order of Merit are not appointed on the advice of any government or minister; rather, these appointments are made as the Queen's personal gift.

As an active member of the Liberal Party of Canada for many years, my relationship with Mr. Chrétien is very long. He opened up the Liberal Party to Canadians from all walks of life. He made it possible for my family and I to play many roles in the party, and yet he went further — with the help of Senator Mercer — to ensure that a diversity of people worked for the party and for Canadian institutions.

Today, honourable senators, we know the gender balance of the Senate is much improved because of the many women Mr. Chrétien appointed to this chamber. With the valuable support and advice of his wife Aline, he furthered the dreams of the Famous Five, who have recently been honoured by us.

Mr. Chrétien was also aware that there existed a common evil that haunted humanity equally. He believed that members of Parliament needed to possess these preoccupations in common in order to ensure the world would be a better place in the future. Today, he works in many countries around the world, including my country of origin, Uganda, to improve the lives of the people in these places.

Mr. Chrétien has great respect for this institution of Parliament and urged that its members respect each other the very same, despite their differences.

In his final speech to the House of Commons, he noted:

> We try too much to attach the personalities and so on about everything and small things. I urge all members of Parliament not to fall into the trap that sells newspapers, but destroys the institution.

Honourable senators, though I could stand before you today and recite all the milestones Mr. Chrétien has achieved throughout his career, I feel the best way to honour him is to celebrate his passion for the welfare of Canadians and the institution of Parliament.

Some Hon. Senators: Hear, hear.

TED HARRISON

Hon. Hector Daniel Lang: Honourable senators, I rise today to recognize a nationally and internationally renowned artist who has captured the magic of Canada's Yukon and presented it to the world. I speak of Yukon's one and only Ted Harrison.

This past week, Val and I were fortunate enough to accompany Ted and his biographer, Katherine Gibson, to a tea hosted by Ms. Harper to honour Ted and the hanging of his 12 original illustrations of Canada at 24 Sussex Drive.

Ted has donated this valuable collection to the Canadiana Fund and was thrilled to have them displayed in the foyer of the Prime Minister's residence. While there, Ted had the opportunity to meet Ms. Harper's daughter's grade 5 class who had been studying his work.

• (1350)

I also want to thank Harvey Slack and Paul LeBarge, who were in attendance and worked hard to make this event happen.

Later in the week, Ted had an exhibition and an eastern Canadian book launch of his biography, *Ted Harrison: Painting Paradise*, by Katherine Gibson. It is well done and I recommend that all senators consider acquiring a copy of this biography for their collection of Canada's works.

Over the years, Ted Harrison has been bestowed with numerous honours, including the Order of Canada. At 83 years of age, Ted continues to paint and his work is sought after by collectors and curators alike. Yet today, his works have not been included in our National Gallery of Canada. In fact, no one from Yukon is represented in the National Gallery.

I know that many of Ted's fans and admirers are asking why. It is my hope that this national prestigious recognition will come sooner than later.

QUESTION PERIOD

STATUS OF WOMEN

VIOLENCE AGAINST WOMEN

Hon. Catherine S. Callbeck: Honourable senators, my question is to the Leader of the Government in the Senate.

Last month, when the G8 had its first international conference on violence against women, the Government of Canada was not represented.

Some Hon. Senators: Shame.

Senator Callbeck: In fact, the only person from Canada in attendance was opposition MP Irwin Cotler, who was invited as a special speaker.

Does the federal government not recognize that violence against women is a serious issue in this country?

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

Of course, the government recognizes that violence against women is a serious issue. Anyone suggesting anything different is misrepresenting the facts.

As Honourable Senator Callbeck knows, our government has launched a massive campaign to deal with the issue of elder abuse. Many of the templates and rules follow along the same campaigns used in the past, not only by the federal government but also by provincial governments, on violence against women.

I do not think this issue has anything to do with partisanship; there is nothing partisan about this issue. Whether one is a Liberal, a Conservative, an NDP or whatever, the issue of violence against women is dealt with seriously.

I appreciate the honourable senator's question so that I can put on the record that violence against women, and violence against any member of society, is something that will not and cannot be tolerated.

Senator Callbeck: With all due respect, minister, actions speak louder than words. If the Canadian government considered violence against women to be a serious issue, why was the government invisible at this first G8 conference?

I find it embarrassing that Canada was not represented, as the other G8 countries were, by ministers or ambassadors. Why was the minister or her representative not in attendance at this G8 conference?

Senator LeBreton: I will specifically ask that question. Attending conferences is not the only method that the government or anyone uses in dealing with violence against women. As a government and as a society, we take many steps to provide conditions where women can advance in our society. Women — I have said this before — are throughout society. They are in lobbies like this one. More women are graduating from universities. More women are in law, health and all aspects of university, the sciences and technologies. There are even more women in the trades.

Violence against women, as I mentioned a moment ago, is a serious matter. It is not a political matter. Anyone who tries to make it a political matter is doing a great disservice not only to themselves but to women in general.

Senator Callbeck: I agree with the minister that the issue is serious. No, it is not a political matter.

However, if the government takes violence against women seriously, why was the minister or her representative not at that first G8 conference on violence against women?

Senator LeBreton: As I have already told honourable senators, I am not aware of any of the circumstances surrounding the reasons.

A person's participation at a conference, in and of itself, does not deal with the serious issue of violence against women, or violence against anyone in our society, for that matter. I do not know why. There are probably good and valid reasons. I will endeavour to ascertain what they might be.

To suggest that because a minister did not go to a conference, the government does not treat the issue of violence against women seriously, is insulting.

CONSERVATIVE PARTY PLATFORM

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, today the Liberal women's caucus released the third volume of its Pink Book, *An Action Plan for Canadian Women*.

Some Hon. Senators: Hear, hear.

Senator Tardif: The Liberal Party takes women's issues seriously, as these issues are also issues of concern to all Canadians.

On the other hand, this government has cancelled the Court Challenges Program providing women with a voice before the courts; it has shut 12 Status of Women offices across the country; it has cut funding for advocacy groups and research; it has denied real pay equity; and it has reneged on early learning and child care agreements that the previous Liberal government had signed with all provinces. Women in Canada deserve better.

My question is simple: When can Canadians expect the first volume of a Conservative pink book, or is slashing former support programs the only platform this government has to offer to Canadian women?

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): Honourable senators, I understand this book is the third volume of the Pink Book. I hope it is more successful than the two previous books.

We in the government, we on this side of the chamber and we in the Conservative Party do not have to put out a Pink Book to demonstrate our commitment to women's issues.

Some Hon. Senators: Hear, hear.

Senator LeBreton: As a matter of fact, our political party gave women the vote and our political party had the first woman cabinet minister.

We have this age-old argument in this chamber that the programs in place under the honourable senator's government should have been carried forward automatically by this government. When we came into office, we were elected on our own platform.

• (1400)

To quote a famous woman in the Liberal Party, when she talked about the Liberal child care program, she said it was a cash cow for government. That was Sheila Copps.

We believe in the full participation of women in Canada's economic, social and democratic life. I am proud that we have the highest proportion of women appointed to cabinet in the history of the country. In this past election, our party showed its commitment to the political engagement of women by electing the most of all parties, 23, representing 37 per cent of Conservative female candidates nominated.

There is this mythology that somehow or other we cut funding to the Status of Women. We did not; we increased funding. Typical Liberal policy was to have several people sitting in offices talking to each other. We put money in the communities to help women where they work and live. That is what we did.

As honourable senators know, the Minister of State for the Status of Women is working on developing an Action Plan for Women. As a woman, I am quite insulted that Senator Tardif would think that, somehow or other, the Liberal Party has a corner on the women's market. It does not.

Senator Milne is shaking her head because she does not like what I am saying.

During her statement, I heard Senator Jaffer talking about all the things Jean Chrétien did for women. I was once in a position to do something for women, and it involved appointments. In the prior Liberal government, less than 15 per cent of appointees were women, and they held all the stereotypical positions — various health boards, Employment Insurance, and the like.

When we came into government, we named women to the head of the Export Development Corporation, the Civil Aviation Tribunal and the Veterans Review and Appeal Board. We raised the number of women in major positions from less than 15 per cent to 33 per cent. By the way, one of the appointments that we made as a government was none other than Mobina Jaffer.

Senator Tardif: Honourable senators, it is obvious that this issue is a very sensitive one for the government.

[*Translation*]

It is also obvious, honourable senators, that the Conservative government does not see things through rose-coloured glasses. Under this government, the word "equality" was erased from the Status of Women Canada mandate. But equal rights are a fundamental value of Canadian society.

When will the government stop silencing organizations that fight for women's equality? When can women expect to see the Court Challenges Program reinstated?

[*English*]

Senator LeBreton: Honourable senators may think I am a little emotional about this issue. I am emotional, because I am sick and tired of the mythology and this idea that only Liberals can speak for women. That is simply not the case.

In terms of equality, our government actually increased the budget of programs under Status of Women Canada by 42 per cent. That is 42 per cent more than was spent on the Women's Program under the previous government.

I get emotional about this issue because I know what I am speaking about. I was involved in advancing and promoting women for many years in the Conservative Party, and I am extremely proud of Prime Minister Stephen Harper, of the women we have in our cabinet and of the commitment we have to women in this country.

FINANCE

ECONOMIC STIMULUS—DISTRIBUTION OF FUNDS

Hon. Jane Cordy: Honourable senators, my question is directed to the Leader of the Government in the Senate.

We learned on Sunday that the Conservative government's presentation of the second report on the progress of its widely publicized Economic Action Plan came at a cost of $108,000 to Canadians. Not included in the tab was the cost of bringing the Challenger jet to the event. The best guess of that cost would be $22,000, leading to a total of at least $130,000.

The photo op that took place in Cambridge on June 11 could and should have taken place in the House of Commons, at little or no cost. Instead, the Harper government carefully crafted a closed, Conservative-only event. Again, it seems apparent that this government is simply unable to draw the line between tax dollars and the Conservative Party coffers when it comes to promoting itself.

At a time when Canadians are losing their jobs and having a hard time paying their bills, did this Prime Minister believe it was good management that the government spend over $130,000 of taxpayers' money to stage this photo op?

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): Honourable senators, that is really rich, Liberals worrying about taxpayers' dollars.

The fact is that the government brought in an Economic Action Plan in January. At the insistence of the opposition, it was decided that there would be regular reporting of the progress of the stimulus packages and the Economic Action Plan.

We have been clear on this from the beginning. We believe that the country is bigger than Ottawa. We do not apologize whatsoever for the Prime Minister travelling around the country, whether to Saint John, New Brunswick, or Cambridge, or wherever, to promote the government.

Furthermore, instead of relying on newspapers for her research, if the honourable senator had delved into this issue, she would have realized that over $50,000 of that money was spent on printing, in both official languages, the update on the Economic Action Plan.

Senator Comeau: Requested by the Grits.

Senator Cordy: None of us — no senator, no Prime Minister, no MP — should ever apologize for travelling around and meeting Canadians, but what we should apologize for is using taxpayers' hard-earned dollars for partisan reasons.

These events were Conservative-only events where no media questions were permitted. Indeed, during the event in Saint John, New Brunswick, a New Brunswick member of Parliament, Brian Murphy, was refused admittance not once but three times.

Some Hon. Senators: Shame!

Senator Cordy: Recent investigations by the *Ottawa Citizen* and the Halifax *Chronicle-Herald* reveal that a disproportionate amount of the stimulus package contained in the Economic Action Plan is being distributed to Conservative-held ridings, while the rest of Canadians, including my riding in Dartmouth, wait for their fair share of stimulus money.

On the other hand, the Parliamentary Budget Officer's report issued last week highlighted the fact that the details are so scarce that it is impossible to confirm whether the measures have had an impact at all.

Some Hon. Senators: Question.

Senator Cordy: In Oakville last month, after a Tory candidate said that a project was killed because the riding was Liberal, the Prime Minister said that he could provide a list of announcements made across the country.

• (1410)

Three weeks later, when Stephen Maher, a reporter for the Halifax *Chronicle-Herald*, made repeated requests for the list the Prime Minister's Office told him to stop bothering them. They suggested he click on 6,000 individual links on a government website and make his own list.

I ask the government leader: Is this the government's idea of openness and accountability?

Senator LeBreton: Honourable senators, as I said, they rely on Stephen Maher and Glen McGregor for their research and, of course, their in-house reporter Joan Bryden.

It is interesting that now these individuals are saying they cannot find out where the money has been spent. The last two days they have been accusing us of spending the money. It is the old saying: "You can't suck and blow at the same time."

Honourable senators, the fact is the so-called study of Stephen Maher and Glen McGregor chose arbitrary measurements of $1 million plus. I will list some of the biggest projects. These are just the ones in Toronto, where there has been a half a billion dollars allocated and there is not a Tory seat there. As well, the Mayor of Toronto thanked the Prime Minister for all the effort by this government.

When Stephen Maher and Glen McGregor get together with Gerard Kennedy, you can be sure it will be pretty lousy research.

I will go through some of the biggest projects. These are the ones Stephen Maher, Glen McGregor and Gerard Kennedy did not bother to mention. There are some worth hundreds of millions of dollars, such as the Evergreen Transit Line; the Toronto-York Spadina Subway Line; the Sheppard Subway Line; and the Ottawa Convention Centre, which are all located primarily in opposition ridings.

If senators look at the electoral map for the last election, the majority of the land mass in this country is represented by Conservative candidates. However, we do not follow riding boundaries. We work in consultation with the municipalities and the provincial governments, and certain members of Parliament have had a certain amount of money ascribed to them. Why? It is because the Trans-Canada Highway runs through their riding. Of course, that is supposedly infrastructure in their ridings.

Stephen Maher and Glen McGregor were at it again today on the Recreational Infrastructure Canada program. I will give more examples.

In Ontario, of the 57 maximum $1-million projects, 28 were allocated to government ridings and 29 were allocated to opposition ridings.

Some Hon. Senators: Oh, oh.

Senator LeBreton: The article falsely states that the Conservative-held riding of Kenora received more projects than any other riding. The NDP-held riding of Trinity-Spadina has the most projects in Ontario, receiving 67 of 766 projects, totalling $13 million.

In Atlantic Canada, out of a total of 130 Recreational Infrastructure Canada projects, approximately 85 have gone to opposition ridings.

In Alberta, there is only one opposition-held riding — we cannot help that — yet our government invested $1 million toward a local facility in that opposition-held riding.

In Saskatchewan, there is only one opposition-held riding — we know who that is — yet our government has invested in four Recreational Infrastructure Canada projects in that riding alone.

In the province of Quebec, the Quebec government is the prime contractor for infrastructure and as such it is they who prioritize the projects, not the federal government. Thus far, only one project under this program is in a Conservative-held riding.

I would suggest that Senator Cordy call her good friend, Stephen Maher, and maybe get her other friend, Joan Bryden, to write a true story next time.

CITIZENSHIP, IMMIGRATION AND MULTICULTURALISM

LOST CITIZENSHIP

Hon. Lorna Milne: Honourable senators, whenever I can hear myself speak I will carry on with my question, if I may.

My question is to the Leader of the Government in the Senate. I am sure she will be astounded to realize that.

This week marks Citizenship Week. It is an event to encourage all Canadians to reflect on the value of citizenship, what it means to be a Canadian, and the rights, privileges and responsibilities of citizenship. However, for the 81 remaining lost Canadians who are still being denied citizenship due to oversights in the current legislation, this week is a reminder to them that their rights, privileges and responsibilities are still out of their reach.

What is this government doing to ensure that these 81 people are able to either gain or regain their citizenship as soon as possible?

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): Honourable senators, I thank Senator Milne for the question. As you know, Minister Kenney and the government have initiated many changes with regard to so-called lost citizens. I do realize there are still 81. I do not have a specific answer, but I will be happy to take that question as notice.

Senator Milne: I thank the minister for that. These people appreciate very much what Minister Kenney did for them, but still there are the 81 left.

There has been promise after promise that they would be looked after. Why can the government not expedite matters for just 81 people? Many of these people served in World War II in the Canadian Forces and deserve to be recognized as Canadians. I hope the minister can spur some action on this matter.

Senator LeBreton: I thank the honourable senator for the question. At one time Senator Milne and I sat on the same committee where we actually dealt with this issue. I believe the Speaker was involved as well. As I said in my answer to the previous question, I will certainly take the question as notice and report back as soon as possible.

HUMAN RESOURCES AND SKILLS DEVELOPMENT

EMPLOYMENT FOR WOMEN

Hon. Jerahmiel S. Grafstein: Honourable senators, I have a question for the Leader of the Government in the Senate. I wish to return to the same topic I have been raising here for several days and that is the jobless recovery. Today I feel it is appropriate that we focus on the jobless recovery, especially as it affects women.

It seems in recent statistics that joblessness has affected women more than men. We all believe in equality and therefore it appears to be unequal in terms of even the few jobs that are being created.

It seems that single working mothers, female students, older single working women, and women below the poverty line are all feeling a larger detrimental effect from the jobless recovery. Could the Leader of the Government provide us with statistics to affirm this information?

Much of this information comes from newspapers, and I would appreciate it if the government could give us precise numbers in all those categories.

Assuming I am correct, does the government have an additional plan B to deal with this situation?

Also, if the leader provides us with the statistics, would it not be useful for us to convene, if she would agree, a Committee of the Whole so that all honourable senators on both sides could contribute to this debate to help working women and women in the workforce who are not able to get jobs?

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): I thank the honourable senator for the question. As he stated, there much misinformation out there about the profiles of people who are unemployed. Recently I happened to be reading or watching something where it showed that a disproportionate number of people who have lost their jobs are men and that many women are in jobs in education and health care, which have not been as affected by the worldwide economic downturn.

With regard to low income workers and immigrant women, I do not have statistics before me. I will certainly find out if there is such data. I believe there must be; I just do not have it. I will take the question as notice.

• (1420)

As I have said to Senator Grafstein before, decisions of the Senate to have committee meetings are not within the purview of the Leader of the Government in the Senate.

Senator Grafstein: I appreciate that answer. I saw that report as well with respect to professional working women. I think there was some information to indicate that professional working women are being less detrimentally affected than men at that particular segment and that niche.

My question is much broader than that, and I hope the leader will differentiate her response to the other sectors I have raised, all of which is based on anecdotal information. Up-to-date statistics are not available, other than through the Department of Finance and the Bank of Canada.

Senator LeBreton: I thank the honourable senator for that. I will certainly try to get the information.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of the participants of the Seventh Canadian Parliamentary Seminar.

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

Hon. Senators: Hear, hear!

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. John D. Wallace moved third reading of Bill C-25, An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody).

He said: Honourable senators, it is my pleasure to speak at third reading to Bill C-25, a proposal to restrict the amount of credit awarded for time an accused person spends in pre-sentence custody. The proposed legislation responds to the government's commitment to tackle crime and make our streets safer by limiting the credit for time served by an accused remanded because of their criminal record or for having violated bail.

Bill C-25 will provide the courts with guidance in sentencing by limiting the amount of credit that courts may grant to convicted criminals for the time they serve in pre-sentence custody. That is sometimes referred to as remand.

Courts have traditionally granted a two-to-one credit for pre-sentence custody to account for certain factors such as overcrowding in remand centres, lack of rehabilitative programs more commonly available in sentenced custody, and the fact that time spent in remand does not count towards parole eligibility.

In some instances, courts have awarded credit at a higher ratio than two to one where the conditions of detention were very poor, for example, because of extreme overcrowding.

Enhanced credit has contributed to the growth of the remand population; that is, those accused in custody awaiting trial and sentencing. That is now greater than the population found in sentenced custody in Canada's provincial and territorial jails.

The latest data indicates that remand represents 54 per cent of admissions to provincial and territorial facilities. This is why provincial attorneys general and correctional ministers encouraged the Minister of Justice at their meetings in 2006 and 2007, and again in September of 2008, to limit credit for pre-sentence custody as a way to help reduce the growth of their remand population.

This support was confirmed with the appearance of two western ministers of justice and attorneys general before the Standing Senate Committee on Legal and Constitutional Affairs on October 1, 2009.

The Honourable Alison Redford from Alberta and the Honourable Dave Chomiak from Manitoba voiced their unequivocal support for Bill C-25 as an effective approach to deal with the increase in the remand population.

There are several reasons why credit for pre-sentence custody has contributed to the increase in the remand population. Some contend that awarding enhanced credit for pre-sentence custody may create an incentive for the accused to deliberately choose to stay in remand custody in hope of getting a shorter term of imprisonment once they have been awarded credit for time served. Evidence of such an incentive is more than anecdotal.

In *R. v. Sooch*, the Alberta Court of Appeal had to determine whether the offender, sentenced for aggravated assault and who failed to apply for bail in order to accumulate time spent in remand, should be given more than one day for every day spent in remand.

The court stated that enhanced credit for time spent in pre-sentence custody should not be awarded where the offender deliberately chose not to apply for bail where bail is a viable possibility.

Moreover, across the country court cases are becoming more complex and therefore longer. Many criminal cases now involve numerous court appearances. The result is that offenders spend less time in sentenced custody because they spend too long in remand.

For example, in 1994-5, about one third, or 35 per cent, of those in remand were being held for more than one week. Ten years later, 2004-5, those held for more than one week had grown to almost one half, 45 per cent, of the remand population. It is important to note that there are currently other initiatives underway to streamline the administration of justice. Bill C-25 is an important contribution to this overall objective.

The practice of awarding more than one day for every day spent in remand creates the impression that the sentence imposed is shorter than it should be and does not properly reflect the gravity of the offence and the degree of the responsibility of the offender. Canadians have said, loudly and clearly, that they would like to see more truth in sentencing by bringing the practice of giving double time credit for pre-trial custody to an end.

This is exactly what Bill C-25 does. It proposes a general rule of limiting credit for pre-sentence custody to one to one in all cases. However, it gives courts the discretion to grant up to one and

a half days for every day spent in pre-sentence custody where that is warranted. Severe overcrowding could be one of those circumstances justifying granting more than one day for every day spent in pre-sentence custody.

Where accused are remanded for having violated bail or because of their criminal record, the credit must be limited to one day for every day spent in pre-sentence custody in all cases.

Courts have already recognized that those held in custody due to their bail violations or criminal record warrant less than two to one credit for pre-sentence custody. These reforms reflect accepted practices.

Extra credit should not be allowed for repeat offenders and for those who have violated their bail conditions.

Bill C-25 also proposes to address the lack of clarity with the current practice of awarding credit for pre-sentence custody. It is not rare that only the resulting term of post-sentence custody is reported and no statement of the consideration of pre-sentence custody is communicated in the reasons for sentencing. This, of course, deprives the public of information about why time spent in pre-sentence custody results in a convicted criminal receiving a lower custodial sentence than the court would have otherwise imposed.

This, in turn, negatively affects the confidence in the administration of justice.

This bill will require courts to note on the record the offence, the amount of time spent in custody, the sentence that would have been imposed without credit, the amount of credit awarded, and the sentence imposed. Courts would also be required to record reasons for any credit granted.

These requirements will result in greater certainty and consistency in the sentencing process, and will improve public confidence in the administration of justice.

• (1430)

This bill will result in an increased number of offenders serving a federal sentence, which is two years or more, and an increased number of federal offenders that will spend a longer time in federal custody.

Concerns have been voiced about the impact on the capacity of our federal prisons, but the Minister of Justice has confirmed that he is confident that there is such capacity. This additional time in the federal system may present the opportunity for longer programming that may have a positive impact on the offender.

I appreciate the support of the provinces and territories for this legislative amendment to provide greater truth in sentencing, and I urge honourable senators to support expeditious passage of this bill.

Hon. Serge Joyal: Honourable senators, this issue of Bill C-25 is a serious one. Surrounding this bill there has been a lot of — I will use a word that I do not like to use on the Senate floor — "politicking," which is essentially concentrating attention on political slogans instead of looking at the merits of the bill. My intention this afternoon, in reply to Senator Wallace, is to concentrate on the merits of the bill and avoid any politicking or political slogans.

The problems I have with this bill are threefold. The first one relates to the Charter. This bill has three serious Charter implications. I am not inventing them for honourable senators this afternoon; I draw those conclusions from the testimony of five experts that we heard. I will quote from them later in my intervention this afternoon.

Second, this bill will have a serious impact on the condition prevailing in the prisons for the inmate population and the staff that is there to maintain order and serve them.

Third, this bill will affect drastically the most vulnerable in the prison system, namely, people suffering from mental disorders, Aboriginal people and women. As an aside on the bill's impact, we heard from the president of the Canadian Association of Crown Counsel that it will clog the bail courts. That is not the impact that is wanted by those who drafted the bill. I totally recognize the objectivity of their intentions, but that impact is what we heard from the expert witnesses.

Let me return to my first point: This bill will have serious impact on the Charter and will be open to challenge in the courts.

As senators, it is one of our duties, when we are called upon to support the bill, to question its implications for the Charter. In the respected intervention of our esteemed colleague, Senator Wallace, neither yesterday nor today did he answer those issues that were raised by the witnesses, which the honourable senator well knows — as do Senator Nolin, Senator Angus and Senator Carignan, who sat during the long hours that we spent studying this bill.

Honourable senators, let me report what we heard from those experts. First, we heard from Michael Spratt of the Criminal Lawyers' Association that:

> Bill C-25, if passed, will result in constitutional litigation. Bill C-25 offends the Charter. It will have the real effect of doing something that we do not seek to do in sentencing. In sentencing, we seek to treat like offenders who commit like offences in similar ways.
>
> One can imagine a number of scenarios where like offenders who commit like offences and who have like personal circumstances are punished differently. One of those punishments is spending an inordinate amount of time in remand facilities with no programming and harsh conditions, much like the individuals who did not get their bail hearing today. They are not receiving programming. . . .
>
> Pre-sentence detention is not lenient, it is cruel.

The impact of this bill is that it will treat people who are in remand differently than people who will be sentenced, having been freed once the charge is laid. That is one side effect of the bill as it is drafted.

Mark Lapowich, from the Canadian Council of Criminal Defence Lawyers, stated:

> I do not think there will be any doubt . . . that there will be Charter challenges. In terms of specific challenges, we can envision challenges under section 7, deprivation of, life, liberty . . .; and a challenge under section 11(*b*), undue delay. We can see stay applications being brought; and, as was mentioned previously, for cruel and unusual, in terms of your specific point that you raised with respect to how horribly we have done in the past 50 years in relation to upholding treaties that we may be part of.

In other words, there will be Charter challenges on the basis that the sentence applied to one accused will be different from the one applied to another accused with exactly similar circumstances but in a totally different context. That situation offends the natural justice principle that people who are guilty of the same offence under the same circumstances should be given the same sentences and should bear the same consequences.

Let me quote, honourable senators, from another of those representatives from the objective groups that we normally hear from. The secretary of the national criminal justice section of the Canadian Bar Association, Eric Gottardi, said:

> I think the prospects of constitutional challenges to the legislation are quite high. I think they could be many and varied. . . . I think the likelihood is quite high that that there will be constitutional challenges of different kinds.

That view is from the Canadian Bar Association.

We then heard testimony from the president of the Canadian Association of Elizabeth Fry Societies, Lucie Joncas, who said:

[*Translation*]

> I am also concerned about whether such a practice would be considered constitutional. Given that, in 2000, the Supreme Court recognized that it was perfectly justified, and given that detention conditions at provincial level have deteriorated significantly, I do not see how the practice can be said to be no longer justified.

[*English*]

What are the court decisions that those experts refer to? They are essentially the unanimous court decisions of at least four appeal courts of provinces: the Court of Appeal of Quebec — from which I will quote immediately; the Court of Appeal of Alberta; the Court of Appeal of British Columbia; and the Supreme Court of Canada.

What does the Supreme Court of Canada rule on that principle of one for one — one day in pre-sentence custody versus one day once an offender is sentenced in regular prison?

I quote from the decision of *R. v. Wust*, a unanimous decision in 2000, at paragraph 45, which states:

> In the past, many judges have given more or less two months credit for each month spent in pre-sentencing detention. . . . The often applied ratio of 2:1 reflects not only the harshness of the detention due to the absence of programs, which may be more severe in some cases than in others, but reflects also the fact that none of the remission mechanisms contained in the *Corrections and Conditional Release Act* apply to that period of detention. "Dead time" is "real" time.

In lay terms, what does that paragraph mean? It means that when someone is in remand custody, that person has no access to rehabilitation programs. The time that person is kept in pre-sentence custody cannot be counted as time toward conditional release — parole release. The person does not benefit from any of those programs that exist once an offender is in prison serving a sentence. The person experiences harsher conditions in pre-sentence custody than if that person is in jail once the sentence has been imposed by the judge. This is an important element and one that the Canadian Bar Association, under the signature of its chair, responded to on September 15, indicating that unjustified disparity in sentencing could result from the passage of Bill C-25.

• (1440)

The Canadian courts have upheld the principle that judges must take into account the different time and the quality of that time when prisoners are held under pre-sentence conditions as opposed to being held in jail. Let me quote the decision of the Court of Appeal of Quebec of 2005, a decision for which appeal was sought in the Supreme Court of Canada, which appeal was denied. In other words, that decision of the Court of Appeal is seen by the Supreme Court of Canada as being definitive. I quote from paragraph 40.

> Thus, there are two primary reasons for this practice: the harsher conditions of interim detention and the impossibility of being granted parole during this time. That is why interim detention has become known as "dead time."

One of the most eloquent conclusions of that decision is found at paragraph 42.

> Furthermore, the 2 to 1 ratio cannot be considered an advantage for the accused.

This is very important. Some people have the perception that the two-for-one or the one-for-one-and-a-half is a benefit, a premium. With that option comes the perception that it can be stretched, but this is not what the court has ruled. The British Columbia Court of Appeal ruled on a similar matter last year with regard to a decision in August 2008 on the case of *R. v. Orr*. I quote from paragraph 20 of the decision.

> A lesser credit, generally in the ratio amount of one and a half-to-one seems more appropriate where the offender has been held for the pre-sentence period in an institution where post-sentence type programs are available. A refusal by a sentencing judge to allow any credits seems to me an erroneous approach having regard to the majority of existing authorities in Canadian appellate courts and the Supreme Court of Canada.

That is the most recent decision.

In other words, it has been established quite clearly that you have to maintain a balance between the time served in pre-sentence custody and the time served in prison. This bill

equates the one-to-one challenges that form the fundamental principle of Canadian courts — the Supreme Court of Canada and all the provincial appellate courts — to rulings to maintain a relationship to the one-for-one principle.

It is easy for public opinion to support the one-for-one principle, but it violates one essential principle: Those in pre-sentence custody do not have the benefit of programs available for rehabilitation to reintroduce them into society. We want released prisoners on the streets to behave like good Canadian citizens.

Honourable senators, that is my first point. There are two other sections of the bill for which the constitutionality has been raised. One was raised by Senator Baker yesterday, the proposed section of the bill that allows the judge, in imposing that kind of sentence, to withhold the reasons. We all know that a sentence is appealable. It is a fundamental principle just as you can appeal the principle that you are found guilty. Those are the fundamental principles of our common-law criminal system. This bill takes away the obligation of judges to justify and explain the reasons for the sentence. That would go against that fundamental principle of our system, and there is no doubt that could be challenged in the court. I will not elaborate by quoting cases in the Supreme Court of Canada because the jurisprudence is clear.

There is another aspect of the bill that could be open to a court challenge, and that is a point Senator Nolin raised with one of the expert witnesses, namely, the arguments as to why a person should be detained in pre-sentence custody. The testimony we received from Mr. Munson on this is clear. If it was interpreted differently than what we were told it could be interpreted as, that could be open to challenge.

There are at least three aspects of this bill that raise important fundamental constitutional issues. That is my first point.

My second point, honourable senators, is that this bill will create more dangerous conditions in Canadian prisons, endangering the health and life of the inmate population as much as the personnel charged with the responsibility of operating the prisons. I am not inventing this situation. We had the benefit of hearing from the Canadian prison ombudsman, a person who is neutral and is there to look into the prison system, receive complaints, evaluate the context into which the prisons operate and make recommendations.

We heard from Mr. Howard Sapers, the Correctional Investigator of Canada, on September 30. Here is what Mr. Sapers testified during the study of this bill. He said:

> . . . Bill C-25 will likely lead to a significant increase in the offender population managed by the Correctional Service of Canada.

I underline "a significant increase in the offender." He continues:

> A significant increase in the federal inmate population will affect the safety and security of that population, as well as individual inmates' ability to receive programs and services that will assist their timely and safe reintegration into their home communities.

Listen to this aspect of his testimony.

> . . . the current level of tension and violence within Canada's penitentiaries is already excessive. For example, for the first quarter of this fiscal year, the most recent data available, the correctional service reported a staggering total of 2231 security incidents and 577 reported physical injuries to inmates. During this three-month period, the security incidents included assaults on inmates, disciplinary issues, inmate fights, medical emergencies, self-inflicted injuries and three deaths.

That was in three months. Multiply that by four and you will have at least 12 deaths, at least 10,000 security incidents and at least 2,000 reported physical injuries to inmates. Why? Because this bill, when it is implemented, will bring, according to the statistics we received from Statistics Canada justice division, 10 to 12 per cent more inmates into the prison population.

Again, I refer you to the testimony of the ombudsman. "A significant increase in the federal inmate population will affect the safety and security of that population, as well as individual inmates' ability. . . ."

I questioned Mr. Don Head, the Commissioner of the Correctional Service. I have his testimony here. I tried to get from him the percentage of the so-called increase in the Correctional Service of Canada budget that will be devoted to dealing with that influx of 10 per cent more inmates and the consequences that it will have on the safety and the health of inmates and personnel. Here is what I got. Mr. Head answered:

> In terms of disclosing the numbers, at this point I cannot disclose them because they are considered to be cabinet confidence.

• (1450)

In other words, honourable senators, we were told that this information was out of our reach in order to determine if this bill would have a severe impact on the health and life of the inmate population, with the proper balance of budgetary investment to maintain the current level of safety, which is critical according to the ombudsman who reported to us.

This is important because it deals with the kind of approach we should have regarding the inmate population. It would be easy, honourable senators, to mount public opinion against the inmate population. "Let us keep them in prison. Let us lock them somewhere and we do not want to hear about it." However, we need to try to understand who those people are. Are they all the Clifford Olsons of this world? Are they all criminals who are beyond the reach of rehabilitation or are there different kinds of citizens among them who are victims themselves, in a way, as a result of the circumstances of family, education, birth and so on?

I want to draw to honourable senators' attention that this bill will have a disproportionately severe effect on the vulnerable populations in the prisons. Who are they? It will be surprising for you, honourable senators, to understand that it will be the offenders suffering from mental disorders.

The population of our prisons is composed mainly of Aboriginal people. About 20 per cent of Canadian inmates are of Aboriginal origin. They form 3 per cent of the Canadian population and yet they form 20 per cent of the inmate population. In Saskatchewan, it is as high as 80 per cent and above 50 per in Manitoba.

In other words, we are dealing with offenders with significant social backgrounds. One cannot just say, "We will lock them up and forget the key and, when they get out, everything will be fine."

Again, I quote from Mr. Sapers, the ombudsman, who reported that:

> This is of importance to the study of Bill C-25 because offenders with mental illnesses and cognitive difficulties are often held in pre-trial custody. We know that the prevalence of offenders with significant mental health issues upon admission has doubled in the past five years.

In fact, another witness stated that the ". . . Aboriginal adults admitted to remand custody increased by 23 per cent compared to a 14 per cent increase in the total remand admission rate over that same period."

In other words, we are putting more Aboriginal population in prison and remand. This is a serious problem, honourable senators, if we add that to the people suffering with mental disorders. The problem with people who are affected by mental disorders is that, as Mr. Sapers stated, "Federal prisons are now housing the largest psychiatric population in the country. . . ." It has doubled in the past five years. If one was to ask where are the majority of the Canadians who suffer from psychiatric problems, the answer would be that they are in prisons. They are not in psychiatric institutions or under the kind of care that one would like to have if someone in their family suffered from a psychiatric disorder.

Mr. Sapers also stated:

> . . . despite the need, the capacity of the federal correctional system to respond to and treat mental illness is largely reserved for the most acute or seriously chronic cases — those receiving psychiatric treatment in one of the five regional treatment centres. Most other mental health problems receive limited clinical attention, at best.

This means that, when those people have served their time, they are released onto the street with no real capacity to reintegrate into a normal course of life. It is so much so that the accessibility to rehabilitation has been severely cut by the lack of funds.

Let me quote from Mr. Zinger, the Executive Director and General Counsel of the Office of the Correctional Investigator. He testified at the committee:

> The Correctional Service allocates only two per cent, under $41 million of a $2.1 billion total annual budget, to offender programming.

> For now, offenders have to contend with long waiting lists for programs and with cancelled programs because of insufficient funding or lack of trained facilitators.
>
> They also have to deal with delayed conditional release because of the service's inability to provide the timely programs they require.
>
> They must therefore serve longer time before parole consideration.

In other words, there is not enough capacity to offer the programs that would help those inmates to reintegrate into normal life.

Honourable senators, you will understand those aspects of Bill C-25, outside the hoopla of the political game of name-calling and trying to address emotion rather than the substance of this bill, is very serious.

I will conclude by referring to another witness whom we hear from very rarely at the Standing Senate Committee on Legal and Constitutional Affairs. I have been serving on that committee for 12 years now and we have never heard a representative of the Crown counsel. Why? Of course, the Crown counsel is the Department of Justice, either provincial or federal. It is the government. This time, we heard from the President of the Canadian Association of Crown Counsel, Mr. Jamie Chaffe. It was extraordinary to have him testify. He said that, from his association's perspective, it was certain that there would be an increase in the workload in the bail system. That could only be reasonably expected since part of the sentencing process would be imported into the bail hearing itself, which would likely be fully litigated by defence counsel and the Crown. In other words, by trying to alleviate the condition in the remand centre, we will be clogging the bail court.

Mr. Chaffe was questioned by all of us around the table because it was such an important element to consider before supporting this bill. We thought this information had to be shared with all senators in this chamber before voting on this bill.

I do not doubt that the intention of the government to try to frame the discretion of the judges is a legitimate objective.

However, when it is framed in a way that there are unintended consequences in the system, either in the courts by clogging the bail courts or in the prisons by creating more dangerous conditions, and by putting the weight on those who are the most vulnerable, the result might not be the one contemplated at the beginning. There has to be the proper commitment of budget and human resources, and the proper capacity of monitoring such that this initiative will be sound, humane and will serve the objective, which, as Senator Wallace has said, is to increase safety and security in Canada.

Honourable senators, that might be a different tone than what you have heard in the hoopla surrounding the debate on this bill. However, those are the serious considerations that I thought were useful to bring to your consideration before you vote on this bill later today or this week.

• (1500)

Hon. Jerahmiel S. Grafstein: Honourable senators, if Senator Watt is to enter the debate, I want to ask some questions.

Thank you, Senator Joyal for that presentation. This topic is not new to this chamber or the committee.

In 1994, the Minister of Justice Allan Rock — I see a senator on the other side nodding in agreement — who came from Toronto, raised the issue for the first time because of the overcrowding of the court system in terms of bail, remands and prisons. The rationale for that decision taken by the Minister of Justice was that the court system and jails in Toronto were overcrowded. It was going from bad to worse. There was agreement on both sides at the time that this bill needed remediation.

Having said that, it is my understanding that the court system in Ontario — the province I represent — is worse today than it was then. I look at other members from Ontario. They should take a look at this question before they opine on this bill. I think they will come to the same conclusion. The court system in Ontario is worse today in terms of clogging the courts, reasonable remands and bail. Prisons are also more crowded today than they were 14 years ago.

Did this evidence come forward to the committee as to whether there were budgets available at the provincial, municipal and federal levels to expand space availability in prisons that will be required if this bill goes into effect?

Senator Joyal: Honourable senators, I will quote Ken Crawford, corrections staff representative from the *Winnipeg Free Press* on the sixth of this month:

> All provincial jails within this province are presently overcrowded. . . . Our institutions are at the breaking point.

The honourable senator was talking of Ontario; this article is from Manitoba. The newspaper was reporting about a mutiny in the correctional centre in Brandon. The article continued:

> They'd like to see trailers to house at least 200 people in order to ease overcrowding. The trailers can house 20 to 60 people, said the union

The article goes on to quote Peter Olfert, Manitoba Government and General Employees Union president:

> (The province) are looking as moving as quickly as they can to provide portable units.

In other words, this problem is not peculiar to Ontario. It is the same in Manitoba, according to what I read. I would say it is the same in Quebec.

If I remember correctly, in June, a front page article in *La Presse* described conditions in the provincial prisons. Although some provinces might have announced budgetary initiatives, construction will not keep up with the increase of population we will experience by adopting minimum sentences, or by the fact that remand population will increase. This increase is not because people want to stay in prisons, but because cases are more complex. That is the witness testimony we heard. Cases are more complex, hearings are longer and personnel in the courts are not always available. A clogging of the court system exists generally, and it needs a massive injection of funds.

We have to take into account that element of reality with all the bills we are requested to vote on. We continue to add to a system that is already cracking all over the place. At a point in time, we must understand that what we do may have an unintended adverse effect because we are creating additional pressure in the whole system.

Senator Grafstein: Honourable senators, I have another question relating to Toronto and my province of Ontario. It is my understanding that the urban Aboriginal population in Toronto is the largest in Canada in absolute numbers. While there is a problem in Regina, Winnipeg and other places in the West, the largest problem in quantitative terms is in Toronto.

Senators from Toronto will know the statistics well when we talk about the homeless. At least two thirds of the homeless on the streets in Toronto are Aboriginal. Of the Aboriginal community on the streets, about two thirds of them — maybe more — are on the streets because of psychiatric or emotional problems. This information is confirmed in a report.

Again, we have a more intense problem in Toronto. I assume the committee sorted this problem out as well. When we come to the question of bail, remand or incarceration, Toronto now has probably the largest proportion of Aboriginals convicted in Canada without any remediation.

Did this issue arise in the committee study? Have you any comments about that issue?

Senator Joyal: We did not hear any witnesses from the Aboriginal community. I want to put that information on the record. We did not hear representatives of the Assembly of First Nations, other national groups that represent Aboriginal people or provincial groups like the Cree or Innu of Quebec.

The issue came to us as a side issue. As I mentioned earlier, we will create additional pressure on the system. Our colleague, Senator Watt, who intends to speak this afternoon on this issue, is a member of the committee. He has raised this issue regularly with the witnesses. At a point in time, that problem must be addressed. It cannot be ignored. It is the major problem of the Canadian inmate population.

At this stage, we could not study more than the purpose of this bill and the reference we received from the Senate, which was to study the scope of the legislation.

Senator Grafstein: Finally, we have been confronted in the past — I look at new senators in regard to this problem — with a situation in the criminal justice system and other places where a bill is not in sync with the economic reality. I suspect and assume this bill is not.

Did the committee — all members of the committee — give any consideration to suggesting an amendment that will allow the bill not to come into effect if it is passed until such time as

Her Majesty the Queen and cabinet can be satisfied that there are adequate facilities both at the court level and in the prison system to accommodate the increase in prisoners incarcerated?

Senator Joyal: The answer is no, honourable senators.

I mentioned earlier, Don Head, Commissioner of the Correctional Service of Canada appeared as a witness. He is the "big boss" of the prison system in Canada. We tried to obtain the figures and statistics on how much of the budget will go for bricks and mortar and how much will go to rehabilitation programs, training, personnel, et cetera. We could not obtain proper detail on those figures. Mr. Head told us those figures were deemed confidential documents. To answer your question, yes, the figures exist somewhere, but they were not made available to us.

Hon. A. Raynell Andreychuk: I have heard Senator Joyal on this bill and other bills. I think the issues he raises are worthy of discussion constantly, whether they were 30 years ago when I was in the court system or now.

The issue is the treatment of inmates and whether it serves society and the individual. The Aboriginal issue is not a new one. It is one we have struggled with, particularly in Saskatchewan, for decades. It may not be getting better, but I see hopeful signs in the Aboriginal community in their efforts to deal with their problems in conjunction with broader society.

I have difficulty in that the senator has raised issues about the entire process of incarceration, rehabilitation and the need to protect society. However, when I looked at this bill, it talked about one issue. The issue was not why and how we hold people in jail. That issue has been the subject of other bills and should be the subject of other new bills.

• (1510)

Our judges do not lightly take freedom away from Canadian citizens. Specific issues in bail hearings must be addressed. When we hold someone in remand, we deprive them of one of the most fundamental human rights: the freedom to be mobile in society. Judges do not take that right lightly. There is room to look at the issues of when and how we hold people in detention. For example, we used to hold people when they could not put up recognizance, which prejudiced those in Aboriginal communities who did not have resources, so we looked to other conditional releases.

However, Bill C-25 is not about that. Rather, this bill proposes that the time an individual spends in remand will be taken into account after sentencing. It does not deal with those who might have been held too long and, therefore, acquitted. That is an entirely different justice matter that perhaps we should deal with some day. The bill proposes that one day of deprivation of freedom is one day. Why would we put it in the hands of judges to determine who receives two-for-one credit or a one-and-a-half-for-one credit? Do we not say that an hour is an hour is an hour?

It is fundamental to our justice system that one hour of deprivation is one hour. Should it make a difference? Should a judge be able to say: You are in this place so you will get 1.2 or 1.5 or 2 for 1? Should we not value every hour of incarceration in the same way? That is the fundamental issue in this bill, and it does not detract from all other issues raised. Those issues should be considered in this place at another time because they are not the subject matter of Bill C-25.

Perhaps the unfairness of long remands should be the subject of a Charter application and the subject of scrutiny in due process in court, but not a calculation based on a mathematical scheme?

Senator Joyal: If I may, Senator Andreychuk's participation at the Standing Senate Committee on Legal and Constitutional Affairs is missed. I have been a faithful attendee of the Legal Committee as has Senator Andreychuk. Her experience is always valued and listened to carefully.

I humbly submit that there is a difference on one point. One day spent in remand is not equivalent to one day spent in post-sentencing custody. Certainly, an individual is deprived of his or her freedom of mobility in both cases, but an individual serving a sentence in prison has access to reintegration and rehabilitation programs not available to those in remand. As well, an individual serving a sentence in prison is able to count the number of days to early release under specific conditions, et cetera. One day served in prison is not the same as one day spent in remand. Professor Julian Roberts, from the University of Oxford's Centre of Criminology, told the committee that one dollar is equivalent to one dollar, or one day in jail is equivalent to one day in prison. However, he also said that one day in jail is worth 80 cents and one day in prison is worth one dollar. That is why the bill retains judge's discretion to adjust the principle that some jail time is much harsher than other jail time because of access or lack thereof to programs that reintegrate and rehabilitate. One cannot compare in absolute terms the 24 hours spent in remand to the 24 hours spent in prison. That is the difference. The Supreme Court and all appellate courts have identified that difference and the bill maintains that in principle with its discretion for judges.

As honourable senators know, clause 3 of the bill provides that discretion to judges and puts a limit of one-and-a-half-days credit for one day in special circumstances. Perhaps in some circumstances, as the Supreme Court has said, one-for-one is equal and fair because both facilities have equal access to programs and services. The Supreme Court has said that. One-for-one could exist but we must retain the principle that judges' discretion is required to rebalance the freedom lost.

The Hon. the Speaker *pro tempore***:** Honourable senators, Senator Joyal's time has expired. Is the honourable senator asking for time to continue?

Senator Joyal: Honourable senators, I will take one more question.

Senator Andreychuk: Honourable senators, I support some judicial discretion because it serves as the pressure valve that helps the system to work. However, I recall a system that provided rehabilitation in remand. The closer we come to saying a day is a day, the closer we will come to addressing the issues surrounding the proper holding of people and the expectations pre-trial and post-trial, which was the original intent of the system. Would not Senator Joyal agree?

Senator Joyal: It was the original intent of the system. Over the years, conditions changed so drastically that there is no longer any balance between one and the other. There is one that is less

than one, and that is why judges' discretion was introduced in the Criminal Code and retained in Bill C-25. Discretion is left to the judge to appreciate the special conditions that might exist in remand so that individual's are treated fairly. Lack of fair treatment will result in a constitutional challenge on the basis of sections 1 and 7 of the Charter. The committee heard that repeatedly from all witnesses who appeared in respect of Bill C-25.

The honourable senator has raised an important point. At first it was supposed to be one-day credit for one day spent in remand, but it is no longer at par. There has to be a balance in the system. Part of the objective of Bill C-25 is to maintain some discretion but to cap it. All honourable senators on this side agree with the capping of the discretion of judges. However, we want to maintain the capacity to establish that principle of balance, without which there will be Charter challenges.

Hon. Charlie Watt:

[*The honourable senator spoke in his native language, Inuktitut*]

Honourable senators, before I comment on Bill C-25, I must apologize to the Inuit community. I am not able to speak Inuktitut today because the Senate requires more notice to arrange proper translation.

I speak today about the issue of Inuit people in the Canadian justice system. As one of two Inuit parliamentarians, I carry heavy responsibility for my people in this place. That responsibility must be first and foremost in my mind as I review legislation. It is expected of me.

• (1520)

I speak to honourable senators today about Bill C-25. I want to make it absolutely clear that I am not against punishing people for crimes they have committed. However, the time spent in the prison system must be balanced with rehabilitation. I stress that point again — it must be balanced with rehabilitation.

Inuit are not receiving clinical treatment. Inuit, First Nations and Metis offenders eventually return to their communities, having served longer sentences compared to the others, and they continue to offend because they do not receive the proper treatment they need.

The incarceration rate for Aboriginal people is nine times higher than that of non-Aboriginals. This fact is verified by the Canadian Human Rights Commission, which said that the situation is the number one human rights issue facing Canada.

It is critical for this government to conduct a thorough review of our present system to focus on Inuit, First Nations and Metis offenders. We need to ensure that they are provided with access to clinical assessments, culturally appropriate rehabilitation and fair sentencing.

Bill C-25 amends the Criminal Code to limit the time taken off a sentence to the time spent in custody while waiting for trial, commonly called "credit for time served." Credit for time served is used to compensate individuals for the long time spent waiting for trial and the poor conditions in remand centres.

Pre-trial custody conditions are particularly rough for the Inuit, a complaint I have heard on a regular basis. In addition to facing overcrowded conditions and a shortage of adequate facilities, they are far removed from their communities and cope with a language issue, as well as cultural differences.

Inuit, First Nations and Metis are easier to prosecute, easier to catch and easier to incarcerate. They are less able to advocate for themselves and have problems of literacy and challenges of various kinds, which make them more vulnerable in our criminal justice system. They are also more likely to plead guilty, even if they are innocent.

Honourable senators, I will take you through some of the most compelling statements made at the Standing Senate Committee on Legal and Constitutional Affairs regarding circumstances for the First Nations, Inuit and Metis people in the justice system. The committee heard the following, from Howard Sapers, from the Office of the Correctional Investigator:

> This bill will have a differential impact on Aboriginal people, and this impact should be examined carefully and mitigated.

His colleague, Ivan Zinger, said:

> With respect to programs, what we see in penitentiaries is that the Correctional Service of Canada does have some very good programming for Aboriginal people. Unfortunately, many of those programs are delivered at minimum security institutions and many Aboriginals find themselves, upon admission, to be incarcerated at maximum security institutions. In those institutions, programs are very limited, in general. . . . Those programs, by the way, are required by law.

From Craig Jones, of the John Howard Society of Canada, we heard:

> . . . Bill C-25 will do nothing to enhance "truth in sentencing." Rather, it will contribute to greater delays, exacerbate already existing injustices and further erode judicial discretion. . . .

Of Aboriginal People, he said:

> These people are easier to prosecute and easier to catch and easier to incarcerate. Generally speaking, they are less able to advocate for themselves and they have multiple problems of literacy and challenges of various types that make them more vulnerable to the criminal justice system.

In a letter to the committee dated October 6, 2009, Ms. Deborah Hatch, the President of the Criminal Trial Lawyers' Association of Alberta said:

> . . . those detained in pretrial custody were more likely to plead guilty, less likely to have their charges withdrawn and were more likely to receive harsher sentences than those who were not detained, even when controlling for relevant factors such as offence type and criminal history.

Honourable senators, given the testimony, I must propose an amendment to Bill C-25. The amendment will exempt the First Nations, Inuit and Metis from this new law. They will continue to fall under the current system, where the judge has the discretion and the ability to award credit for time served. This discretion is important as the circumstances for the Inuit, in particular, are harsher than most. There are language issues and cultural barriers that are not present with others in custody.

My proposed amendment does not better the circumstances or correct the duration of the remand, but it does encourage the government to conduct proper due diligence and study the impact to the Aboriginal people, who will be disproportionately affected by this legislation.

After proper study and consultation has been undertaken, the government can then introduce legislation responsibly to better the circumstances for the communities and Aboriginal offenders in the criminal justice system.

MOTION IN AMENDMENT

Hon. Charlie Watt: Honourable senators, in the amendment, I move:

That Bill C-25 be not now read a third time but that it be amended in clause 3,

(*a*) on page 1, by replacing line 23 with the following:

"(3.1) Despite subsection (3),

(*a*) if the circum"; and

(*b*) on page 2, by replacing line 3 with the following:

"under subsection 524(4) or (8); and

(*b*) if the offender is an aboriginal person, the maximums referred to in subsection (3) and paragraph (*a*) do not apply.".

Honourable senators, we have heard from the other senators that there is also a possibility — I think it is certain from what I heard from Senator Joyal — that there is a Charter concern. I also think this bill violates our constitutional rights, which are under section 35.

This issue is not an easy one to deal with. I think we need to have this matter carefully looked at, examined and mitigated.

• (1530)

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

On the motion in amendment, Senator Murray.

Hon. Lowell Murray: Honourable senators, having voted against the amendments yesterday afternoon, I presume it goes without saying that I would vote for an unamended bill today, which necessarily involves my voting against the amendment that has just been placed before you by Senator Watt.

I listened with great respect, as I always do, to our friends Senator Joyal and Senator Watt. With regard to the Charter implications — and I am not in a position to give an expert opinion on these matters — it occurs to me that if this bill is seriously deficient from a Charter point of view, the amendments that we defeated yesterday and the amendment that is being presented today would be unlikely to make it Charter-proof.

Further, I have to observe, again as a layman, that the citations that Senator Joyal placed on the record from the courts earlier today represent the attempts by judges to articulate certain principles in the absence of a formula. Once Parliament has, if we do, legislated a formula, then I think it becomes a somewhat different context and we will have to see what happens. I say that even while conceding, as Senator Joyal has implicitly pointed out, that some of the judgments and principles expressed by the various judges and by the various courts seem to be in opposition to what this bill proposes.

Honourable senators, the reason why I support this bill unamended is not because I am a great fan of the general approach of the present government to justice and correctional matters — far from it. However, I have read carefully the debates in the House of Commons and I have followed the debates here and, as much as I could, the discussion in our committee. I am more than impressed by — I am persuaded by the arguments put forward not only by the Minister of Justice but by the spokesmen for the three opposition parties with regard to this matter. Their position — and they put it forward in almost identical terms — was that the absence of a formula in the code and the result of that in terms of the exercise of judicial discretion is something that ordinary people do not understand. That has caused a great deal of concern which, as elected members of the House of Commons, they are feeling. They believe that the absence of a formula and the exercise of judicial discretion in these matters erodes public confidence in the system. Frankly, I think we must take those kinds of arguments from our elected brethren very seriously.

Forgive me, but I will inflict upon you a concern that has been on my mind for a good long time. That is how imprudent, counterproductive and self-defeating it is for politicians to act in the absence of some kind of consensus on the part of public opinion and to take the position that the need for various liberal and progressive reforms is so self-evident and the weight of expert and legal opinion so overwhelming that we should go full speed ahead, and public opinion will simply have to catch up. That is the kind of thing that creates backlash and has done so in the past. It is to prevent that kind of backlash, I think, from gathering force that the government and certainly the three opposition parties in the House of Commons are supporting this bill.

I have no expertise in this field and no legal training or background, but the first job I had in this city 48 years ago this fall — can you believe it — was as a young political assistant to the Minister of Justice in the Diefenbaker government. During that period, the National Parole Board was created and the Penitentiary Act was overhauled. Young offenders were set aside in institutions especially created for them to get special attention.

Senator Mercer: That was the Progressive Conservative government.

Senator Murray: It was a Progressive Conservative government, and Mr. Diefenbaker was a famous defence attorney and argued for these reforms eloquently. Mr. Fulton was a brilliant advocate and was able to put them forward on a principled basis. The point is that they went out and got public and parliamentary opinion with them and there was no backlash to any of it.

During that period, as a young assistant, I visited most if not all of the federal penitentiaries in Canada. While visiting, especially in the region from which I come, I came across people that I knew, that I had grown up with in Cape Breton. The experience will always leave me with a strong sentiment of "there but for the grace of God go I."

That has informed my approach to these matters. As I look at them, I think about such matters as capital punishment. It took years to abolish capital punishment in this country. Prime Minister Diefenbaker started when he took office by getting his then Solicitor General, the Honourable W.J. Brown of Newfoundland, to recommend the commutation of death sentences imposed by the courts as often as he could. He then moved with a bill to restrict the application of capital punishment by defining capital and non-capital murder. Then the Pearson government came along, and they restricted capital punishment further, and finally the Trudeau government came along and abolished it. As late as the 1980s, Mr. Mulroney thought it was a sufficiently important political issue that he promised to have a free vote in the House of Commons on the matter, and he did. He entered the debate himself, which is not something I think leaders should do when there is a free vote, but he did it because he was so concerned about the way the debate was going. In the event, the House of Commons voted against the resolution on capital punishment. I do not know how the Progressive Conservative caucus broke down, but one thing I do recall is that Mr. Mulroney voted one way and his seatmate, the Deputy Prime Minister, voted another way.

Many of these matters involving criminal law and correctional reform are terribly emotional and divisive within a political party, controversial and contentious and one must, I think, proceed with some caution.

The criminal law reforms that were undertaken in the late 1960s and early 1970s, in the late days of the Pearson government when Mr. Trudeau was Minister of Justice and then followed through by the Trudeau government with Mr. Turner as Minister of Justice, I recall very well. They were dealing with matters such as abortion, sexual relations between consenting adults; a bit later on in the 1970s, gun control.

Senator Cools: Capital punishment.

Senator Murray: Capital punishment my friend points out. One of the reasons why they had to be so cautious on the capital punishment issue is that, during a good period of that time, between 60 per cent and 70 per cent of the Canadian people wanted capital punishment retained, so it behooved elected politicians to proceed with due caution.

• (1540)

I remember these criminal reforms going through in the Trudeau years. Every amendment to the Criminal Code — and there were hundreds of them, I think — went through Committee of the Whole in the House of Commons. They were debated and agonized over; the most painstaking attention was given. There were compromises; the government compromised and, eventually, some kind of consensus emerged and we had a bill.

I come to gun control, also. Previous parliaments passed gun control legislation long before Allan Rock discovered the issue in 1993.

Some Hon. Senators: Hear, hear!

Senator Murray: Those reforms stood the test of time. When Parliament had spoken, you did not hear Mr. Trudeau or Mr. Turner on the government side, or Mr. Stanfield, Mr. Douglas and Mr. Lewis on the opposition side, out beating their chests and congratulating each other on their fine work. What they said was — and I am paraphrasing, of course, but I think I am doing it quite accurately — "We know we have gone too far for some Canadians. We know that we have not gone far enough for some Canadians. However, we have done the best we can with a difficult issue."

When you come to these kinds of issues, I think a good deal of humility is in order. These reforms have stood the test of time. It was for later generations of politicians to take a more incautious, exclusive, dogmatic stand to treat other opinions as if they were, if not illegitimate at least somehow "beyond the pale," and they polarized opinion. To the extent that opinion was polarized by those, if I may put it this way, on the left, it provoked an equal and opposite reaction from those on the right — wedge issues. Then we come to a situation in which one group of politicians is pointing a finger and saying, "They are soft on crime" with another group saying, "These fellows are hangers and floggers."

It is lunacy. If one hears people saying those things in Parliament, in Canadian politics, about each other, you know you are listening to lunatics. There is no other way of putting it. It is nuts.

Some Hon. Senators: Hear, hear!

Senator Murray: I come back to the only point I really wanted to make. I am usually quite suspicious when the House of Commons passes something unanimously. If they do, I think we have to stop, especially when it has to do with something like elections law or redistribution; to mix metaphors, "the grinding of axes and the scratching of backs can be heard throughout the building."

The minister, then Mr. LeBlanc for the Liberals, Mr. Ménard for the Bloc, and Mr. Comartin who raised some of the Charter issues for the NDP, all took the position that public opinion was in such a state that we had to correct misapprehensions, misunderstandings and serious reservations that are held out there.

If this bill passes unamended, Parliament will have acknowledged that a problem exists and we will have taken reasonable corrective measures. We may have helped slow down a backlash before it has gathered such force as to sweep away the good with the bad.

When it comes to the conditions in our prisons and, indeed, to the appalling disproportion of Aboriginals in the prison system today, I must say I do not think that tweaking this bill or any other bill will make much difference. These situations will need to be attacked not circuitously but directly, and they will be attacked directly, in my humble opinion — which no one has asked for but which I will give anyway — when we find a way to make a radical change, which is to put restorative justice at the centre of our justice system. That will not be done by this government, nor perhaps by any other government in the very near future, but I think it is something that we have to get on with and it is something that will take an awful lot of work on public opinion to achieve.

Senator Segal: Hear, hear!

Hon. Joan Fraser: Would the Honourable Senator Murray take a question?

Senator Murray: Yes.

Senator Fraser: I not only respect, but share, the honourable senator's view that we must act with a decent respect for the opinions of mankind. I certainly cannot claim anything like his awareness of the parole system.

Would the honourable senator comment on what was to me some of the most interesting and arresting testimony that the committee heard; to wit that, thanks to the way the Canadian parole system works, it is a virtual certainty that any rigid arithmetic formula will end up creating instances of unfairness as between sentences accorded to people who have committed identical offences in identical circumstances, but one of whom got bail and one of whom did not? Perhaps the one who did not get it could not raise the money.

The mathematical testimony was presented by Professors Doob and Webster. Then they provided more information to the committee at our request afterwards. It comes back to the fact that, in Canada, the parole system does not take into account pre-sentencing custody. It only takes into account the actual sentence, so that whatever rigid formula is adopted, depending on the circumstance of the amount of time served in remand or the amount of time involved in the sentence — whatever the formula — one size will not fit all.

Other countries that we have heard of that have one-for-one systems have different parole systems —

The Hon. the Speaker: Order. As Senator Murray's 15 minutes have expired, he is asking for an extra five minutes.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Fraser: Is this a case where, despite our decent respects for the opinions of legitimately-concerned Canadians, we need to allow a bit more flexibility, because it is our job as a Senate sometimes to say, "Canadians do not quite get the fine detail," or is this a case where we say, "Even if we know that we are legislating unfairness, that is what the people want?"

Senator Murray: I am glad to have the opportunity to respond. With regard to my friend's last observation, I do not accept, for a moment, the argument that has been advanced by some spokesmen for the government to the effect that the Senate has no right to amend the bill, for example, and that we should confine ourselves as a revising chamber to changing drafting errors or technical changes. If it is the view of my friends that the bill ought to be amended, then amend it and send it to the House of Commons and they will have to consider it and decide what to do with it.

With regard to the parole system, I have just two observations. I am borrowing now from Mr. Comartin, the NDP spokesman in the House of Commons. First, the absence of a formula is a real problem. Second, he has said — not quite in these words but I will paraphrase, again — that there is less to this bill than meets the eye; there still is in this bill room for judicial discretion, and the judge is required, as I understand it, to explain when he exercises that discretion in a certain way.

Here is another beef. I have less than two years to go here and I have to get some of these things off my chest.

Senator Cools: Good. Go ahead.

• (1550)

Senator Murray: It is unfair to call it a bureaucratic instinct, but it may be a political instinct, to try to deal with things indirectly or circuitously. It reminds me of the bills that the Chrétien government brought in a few years ago against which Senator Bolduc and I led the charge.

They were taking thousands of employees of Revenue Canada and the parks system and putting them at a greater remove from ministerial and parliamentary influence. When we got into it, we discovered that the reason they were doing it was they found existing public service labour legislation too hard to bear. Senator Bolduc and I took the position that if there was something wrong with the labour legislation, then they should change the labour legislation. They did not need to start removing great gobs of the public service from ministerial direction.

I feel the same way about this. If there is a problem of that kind in the parole system, then change the parole system. Give them more or different authorities.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I seek leave that the house order that the Senate adjourn at four o'clock be suspended only for today; that we proceed as a normal sitting day as would happen on Tuesdays and Thursdays; that we continue that normal sitting day; and that committees scheduled to meet at four o'clock will be allowed to meet.

I have spoken to the other side about this and I am sure they would be agreeable. I have talked to the non-aligned as well.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Hon. Jerahmiel S. Grafstein: May I revert to a question to Senator Murray?

Senator Comeau: Time is up. He only had a five-minute extension.

Senator Grafstein: Is time up?

The Hon. the Speaker: Two more minutes. Please proceed.

Senator Grafstein: I would like to address a question to Senator Murray. I listened to him with great interest. He is getting things off his chest. I will get some things off my chest as well in the next week or two.

I did not follow the honourable senator's argument. His argument was that if there is public opinion formed against a particular aspect of the criminal law, and when it was unanimously approved in the other place, this house should not substitute its opinion. That was his argument.

Let me give some examples where the honourable senator went the other way.

The extradition bill was approved swiftly in the other place. Public opinion was in favour of it. Effectively, it allowed the Minister of Justice to extradite without being concerned about the capital punishment prohibition in Canada. I recall at the time that we held up that matter for several months. Those who opposed the bill lost, but the arguments made in the Senate were argued in the Supreme Court of Canada. Ultimately, the Supreme Court of Canada followed the opinion of those who were opposed to that bill. There was a lengthy debate here that did exactly what Sir John A. Macdonald suggested, namely, to put hot tea in a saucer and allow public opinion to cool.

Clearly, I think everyone here finds this bill defective. Clearly, I agree that public opinion is with this type of bill without precise knowledge of it.

My question for the honourable senator is this: Have we given public opinion an opportunity to cool off so that we can indicate an alternative proposal to the public on this narrow measure?

Senator Murray: Honourable senators, I had thought the moment had passed. I thought I used my five minutes when Senator Comeau intervened on a matter of process. I suppose I am prepared to comment on my honourable friend's comments, but I thought the moment had passed.

The Hon. the Speaker: Honourable senators, may Senator Murray have leave to respond to Senator Grafstein's question?

Some Hon. Senators: Agreed.

Senator Murray: I am glad Senator Meighen is not here at the moment in his seat. I used to hear Eugene Forsey say that he was the worst judge of public opinion since poor Arthur Meighen died.

Be that as it may, it is not for me to say. I think there is probably not much comparison between the public interest and public opinion on the matter of the extradition legislation and that regarding sentencing in the criminal system. Whether it would be a good idea to put the tea in a saucer and let it cool for a while, I am not sure. My friends have the opportunity to amend the bill if they wish and send it back to the House of Commons to see what they have to say about it.

If I am in my seat at the time, I will vote against the amendment and in favour of an unamended bill, as I indicated.

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

Hon. Pierre Claude Nolin: Honourable senators, I have one point. I will vote against the amendment and I will explain why.

The Criminal Code — even if we accept this bill which I will support — already has a section that deals specifically with what is being contemplated. Senator Baker mentioned it yesterday in his remarks. I will read it for you:

> 718.2 A court that imposes a sentence shall also take into consideration the following principles:
>
> (*e*) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

I think that takes care of the honourable senator's concern, which I respect. However, I will vote against the honourable senator's amendment.

Hon. John D. Wallace: Honourable senators, I rise to speak in opposition to the amendment that has been proposed by Senator Watt. I certainly understand the passion, conviction and heartfelt desire that he has to do everything possible to represent properly the interests of our Aboriginal people. I can assure the honourable senator that he is not alone with those concerns. They are shared, I am sure, by all of us in this chamber.

However, with regard to the honourable senator's proposed amendment, there are a couple of points that I would like to make.

First, there is no question that Aboriginal persons are dramatically overrepresented in Canada's prisons and penitentiaries, including as remand inmates in pre-sentence custody. However, with all due respect, I must say to the honourable senator that his proposed amendment to this bill will not address this concern.

Bill C-25 proposes to limit the amount of credit courts award for time spent in pre-sentence custody. It does not aim to change the reasons why an accused is remanded in pre-sentence custody. I believe that is the actual issue at the heart of the concern that the honourable senator was raising. Therefore, this bill will not decrease the admission of Aboriginal people or, for that matter, anyone else in pre-sentence custody.

My second point is exactly the same as that raised by Senator Nolin in relation to section 718 of the Criminal Code, and I will not repeat it. I agree completely with his comments.

There is no question that part of the complexity of addressing Aboriginal justice is that many of the issues are cross-jurisdictional involving the federal, provincial and territorial governments.

• (1600)

As a result of that, I am sure we all agree and would encourage our federal, provincial and territorial partners to continue to work together in partnership with Aboriginal communities to develop strategies to address the overrepresentation of our Aboriginal peoples within the criminal justice system.

We heard, as did Senator Watt, in the hearings of the Standing Senate Committee on Legal and Constitutional Affairs — that the provinces, territories and federal government are well aware of the need to continue to work together to not simply come up with one solution for one issue, but to take a completely integrated approach to drafting amendments to the Criminal Code that produce greater equity in our criminal justice system.

During its hearings, the committee heard that federal, provincial and territorial ministers were meeting as far back as 2004 to develop a series of strategies to deal with these issues in the Criminal Code. One result of that consultation is Bill C-25. In my comments yesterday in this chamber, I referred to the fact that the federal government and all of the provinces and territories are in support of Bill C-25. The provinces and territories that have the largest representation of Aboriginal peoples are well aware of the concerns of Aboriginals and of the need to address them. As we heard directly from Minister Chomiak of Manitoba, there is an awareness that the concerns of Aboriginal peoples must be recognized. He provided examples to the committee of the considerable improvements made to facilities and to rehabilitative treatment to deal directly with the interests and concerns of Aboriginal peoples.

The final point I would make, and Senator Watt alluded to it in his comments, is that this issue comes down to a question of the quality of the facilities and services available throughout this country. It is recognized — and the Legal and Constitutional Affairs Committee heard it from Minister Nicholson, Minister Redford, Minister Chomiak and read it in all the written presentations received by the committee — that additional funding will be required.

Senator Joyal referred to the evidence that the committee received from the Commissioner of the Correctional Service of Canada, Don Head. I recall clearly that Commissioner Head, in responding to a question about how our correctional facilities would handle and deal with the implications of Bill C-25, felt confident that Correctional Service Canada could do that. He also pointed out that Correctional Service Canada received an additional $14 million in the 2009 Budget. For the next three years, that amount will increase by an additional $48 million. In his words, those increases are unprecedented in his experience. All of that funding is directed toward the reality of improving the quality of our penal facilities and the treatment within those facilities.

As Senator Joyal alluded to in his comments, Commissioner Head indicated that in addition to those increased amounts, he has submitted an application for additional funding to deal specifically with Bill C-25 and its implications. As he told committee members, he is unable to provide us with the details because the application has been submitted to cabinet. Given that it is a cabinet document, he is not able to provide further disclosure. With respect to the insinuation or suggestion that these numbers were kept from our committee for whatever purpose, he had no choice. Minister Nicholson had no choice. That matter is before cabinet. Honourable senators will recall the Commissioner Head was very confident that those amounts would be approved, and I feel confident they will be as well.

In conclusion, none of us should leave here thinking that this is the final word on issues involving penal conditions and treatment. As I said earlier, we should encourage provincial, territorial and federal ministers to continue to work together to bring forward a comprehensive, integrated approach to amendments affecting criminal justice in this country.

Hon. Hugh Segal: Honourable senators, I wish to speak briefly against the motion in amendment, not because I think the purpose, spirit, sensitivity and compassion reflected in it is not something with which we would all want to associate, but because I think the problem is not First Nations and Aboriginals being overrepresented in our prisons. The problem is that poor Canadians are being wildly overrepresented in our prisons, whether they be First Nations or not. While we all have a broad range of concerns about how poverty affects the lives of people, enhances criminal activity in a negative way and leads to substance abuse, bad health outcomes, bad educational outcomes and bad productivity outcomes, this bill, which I support, does nothing to make that situation worse. If we want to have a broad debate about those larger issues, and our colleague could contribute to it immensely, we should do that as an upper house. However, this bill does not contribute negatively to that pathology. In fact, it does all the things Senator Murray said it does, which is why I am glad to oppose the amendment and support the bill itself.

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

Hon. Senators: Question.

The Hon. the Speaker: Honourable senators, we have before us the motion in amendment moved by Senator Watt, seconded by Senator Baker, P.C.:

> That Bill C-25 be not now read a third time but that it be amended in clause 3,
>
> (*a*) on page 1, by replacing line 23 with the following:
>
> "(3.1) Despite subsection (3),
>
> (*a*) if the circum"; and
>
> (*b*) on page 2, by replacing line 3 with the following:
>
> "under subsection 524(4) or (8); and
>
> (*b*) if the offender is an aboriginal person, the maximums referred to in subsection (3) and paragraph (*a*) do not apply.".

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

Some Hon. Senators: Yea.

Some Hon. Senators: Nay.

The Hon. the Speaker: I will put the question to the house more formally.

Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do the whips have advice for the chair?

Hon. Terry Stratton: A 30-minute bell.

The Hon. the Speaker: The bells will ring for a vote at what time?

Hon. Jim Munson: Honourable senators, on a point of clarification, committees are currently sitting.

Senator Stratton: The committees will suspend as soon as the bells start to ring.

The Hon. the Speaker: Honourable senators, the vote will take place at 4:39 p.m.

Do I have permission to leave the chair?

Hon. Senators: Agreed.

The Hon. the Speaker: Call in the senators.

• (1640)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker	Jaffer
Banks	Joyal
Callbeck	Lovelace Nicholas
Chaput	Mercer
Cools	Milne
Cordy	Mitchell
Cowan	Moore
Dawson	Munson
Day	Pépin
Dyck	Peterson
Fairbairn	Robichaud
Fraser	Stollery
Grafstein	Tardif
Harb	Watt—29
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NAYS
THE HONOURABLE SENATORS

Andreychuk	Lang
Angus	LeBreton
Brazeau	MacDonald
Brown	Manning
Carignan	Martin
Champagne	Meighen
Cochrane	Mockler
Comeau	Neufeld
Demers	Nolin
Di Nino	Ogilvie
Dickson	Patterson
Duffy	Plett
Eaton	Raine
Finley	Rivard
Fortin-Duplessis	Segal
Frum	Seidman
Gerstein	Stewart Olsen
Greene	Stratton
Housakos	Tkachuk
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Eggleton	Ringuette—2

The Hon. the Speaker: The question now before the house is the main motion. Are honourable senators ready for the question?

Some Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Wallace, seconded by the Honourable Senator Carignan, that Bill C-25 be read the third time now.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

An Hon. Senator: On division.

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

(The Senate adjourned until Thursday, October 22, 2009, at 1:30 p.m.)

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