CANADA

Debates of the Senate

3rd SESSION • 40th PARLIAMENT • VOLUME 147 • NUMBER 99

OFFICIAL REPORT
(HANSARD)

Friday, March 25, 2011

THE HONOURABLE DONALD H. OLIVER
SPEAKER *PRO TEMPORE*

CONTENTS

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

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

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

Friday, March 25, 2011

The Senate met at 9 a.m., the Speaker *pro tempore* in the chair.

Prayers.

SENATORS' STATEMENTS

GLOBAL DAY OF EPILEPSY AWARENESS

Hon. Jane Cordy: Honourable senators, recent weather reports for this coming Saturday, March 26, indicate that it may be slightly grey; me, I am forecasting purple.

Honourable senators, in 2008, a young girl from Nova Scotia by the name of Cassidy Megan founded, with the help of the Canadian Epilepsy Alliance and other groups around the world, Purple Day for Epilepsy. Cassidy's dream was to have one day each year designated for global epilepsy awareness. It is thanks to a school presentation given by the Epilepsy Association of Nova Scotia and her school principal, who set the date, that Cassidy's dream was put into action when the first Purple Day was held as a local initiative.

Since that time, the campaign has expanded and the challenge to stand up and show support for those living with this life-altering neurological disorder has been extended to people around the world. This initiative has garnered much support from politicians, celebrities, businesses and schools alike. It has spread to all continents, with the exception of Antarctica. Paul Shaffer of *The Late Show with David Letterman* was a supporter of the first Purple Day and the following year was the special guest at the launch of the campaign in the United States.

The disorder of epilepsy currently affects over 300,000 Canadians and 50 million people worldwide. Our participation by wearing purple on March 26 is just one small way in which we can promote understanding and show support for those with epilepsy.

Private member's Bill C-430, the Purple Day Act, introduced by the Honourable Geoff Regan, has just passed first reading in the other place and has been tabled in the House of Commons. Once passed, this bill will help the Canadian Epilepsy Alliance further the initiative to have this date endorsed by the World Health Organization and the United Nations. It is with this kind of awareness that 1 in 100 people who live with epilepsy, like Cassidy Megan, will know that they are not alone.

Education in this matter is imperative and will certainly help to save lives. Risks are that much lower when people are able to properly identify an epileptic seizure and know what to do in its instance.

I urge honourable senators to lend your support to this worthy cause by sporting your favourite shade of purple on Saturday. "Hue" will not regret it! Furthermore, it will be an active way of making our world a brighter place — despite the weather.

BRITISH COLUMBIA

RANCHING INDUSTRY

Hon. Nancy Greene Raine: Honourable senators, British Columbia is celebrated for its beauty and its natural bounty. No one knows this better than those who work closely with the land.

Take the Frolek family. For more than a century they have ranched the lands around Kamloops, raising high-quality cattle on what has grown to become one of the largest family-owned ranches in the province.

The ranching industry has never been easy. To flourish, ranchers have had to be creative and adaptive. The Froleks demonstrated their vision and flexibility when, in 2008, they partnered with the Nature Conservancy of Canada to conserve significant parts of their ranchland. This was accomplished by selling nearly 1,000 hectares of their land to the Nature Conservancy and by placing covenants on more than 2,000 hectares to permanently protect over 3,000 hectares of land for conservation.

Why would they do this? They did this because the resources ranches rely on — B.C.'s native grasslands — are in danger of being lost. Nestled into a handful of fertile river valleys, grasslands make up less than 1 per cent of the province's natural environment. This ecosystem, however, provides critical habitat for a vast number of rare and endangered species. It is one of the most threatened landscapes in the province due to the ease with which it can be developed. The conversion of native grasslands for housing, agriculture and industry contributes to the decline of this province's precious and limited native grasslands. Invasive weeds, encroaching forests and destructive recreational activities are also degrading this precious ecosystem.

Despite their small footprint, grasslands are home to a broad diversity of plants and animals. Dozens of species at risk need grasslands to survive. Burrowing owls, badgers, bighorn sheep and many more species will face an uncertain future if B.C.'s grasslands are eroded.

The Nature Conservancy of Canada is this country's leading land conservation organization, with a strong history of finding conservation solutions that include compatible land use. Their project with the Frolek family resulted in the protection of some of the most intact grasslands in the Thompson-Nicola Valley, while still allowing for ranching on the conservation lands.

This project was funded in part by the Government of Canada's Natural Areas Conservation Program, a $225 million investment that supports the conservation of ecologically sensitive lands, diverse ecosystems, wildlife and habitat. Since 2007, the Natural Areas Conservation Program has enabled the protection of more than 300,000 hectares at over 700 properties across

Canada. These lands provide habitat for more than 100 of Canada's species at risk and have been secured by matching every dollar of the government's contribution with more than one dollar in cash or land donations.

• (0910)

The work of the Nature Conservancy of Canada does not stop once the land has been protected. With an active, on-the-ground stewardship program, they monitor the ongoing health and condition of the grasslands. A portion of this project is now the Lac du Bois conservation area, and is open to low-impact recreation such as hiking, cross-country skiing and birdwatching, so that the local community can enjoy the natural splendour of their home region.

The Frolek family continues to run their cattle on these lands under a conservation-minded grazing schedule, gently using the grasslands to sustain their business and an important local industry. The Nature Conservancy of Canada works together with the Frolek family to ensure the grasslands stay healthy and vibrant for now and forever.

Honourable senators, please join me in respecting and honouring the vision of the Frolek family.

PARTICIPATION OF WOMEN IN PEACE PROCESSES

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to share with you the process of reconciliation by some brave and visionary women.

Over a year ago, Urgent Action Fund, a fund that empowers women, wanted to implement United Nations Resolution 1325, a resolution Canada can be very proud of as our official ambassador, David Angell, and others have worked hard to have the UN adopt this resolution. This resolution calls for participation of women in peace processes. Terry Greenbelt, Marcy Wells and Sanam Anderlini brought together Kenyan women from the north, the coast, the Rift Valley and the cities to form a coalition of women fighting for peace.

When we first met in Amman, Jordan, a year ago, Mary Kakuvi, Halima Shuria, Mildred Ngesa, Joy Mbaabu and Jessica Nkuuhe had to deal with a lot of pain and anger. Their relatives had been killed or maimed, their friends were lost, and their communities were destroyed.

While facilitating meetings in Amman, I was concerned that the women would never be able to heal and work together. Would there be a coalition?

On leaving Amman, the women decided to put their differences aside and resolved to work together. On March 8, 2011, the Kenyan women launched an organization called Udada, which is a Swahili word for sisterhood. Udada, which is a grassroots organization that the above five women have established, seeks to promote sisterhood and nurture sustainable peace. Udada has a mandate that will empower women at the grassroots level by giving them the tools they need to ensure that peace prevails in both their households and their communities, and especially to ensure that the next Kenyan election is violence-free.

At the launch, the chairman of the Commission to Implement the Constitution, Charle Nyachae, was the guest speaker. He spoke eloquently of the involvement of women in the Kenyan constitution and especially in enforcing the constitution. After the launch of Udada, we met to help implement the mandate of the coalition. Our Canadian High Commissioner, David Collins, worked with us and sent Richard Le Bars to also work with us and to organize the women, especially before the next election.

The Constitutional Commissioner said at the meeting that the constitution will only be fully implemented if the Kenyan people, and especially the greatest beneficiaries, the women of Kenya, remain vigilant.

Honourable senators, Kenya is a country that is home to 40 tribes. Unfortunately, tribalism has been a source of conflict and tension for the Kenyan people. However, Udada is an organization that wants to work past the differences that divide women and seeks to focus on the common ground or issues that bind them together.

I am confident that these five women, with the help of other women, will change the way elections are fought in Kenya. I salute Udada and admire their efforts to mobilise women, mitigate conflict, promote national values and nurture peaceful co-existence.

I ask honourable senators to join me in congratulating Mary, Halima, Mildred, Jessica, Joy, Terry, Marcy and Sanam, for advocating for Kenyan sisters and standing in solidarity with all the women of Kenya, regardless of their tribe, religion or creed, to bring peace in Kenya.

FOREIGN CRITICS OF CANADIAN POLICY

Hon. Nicole Eaton: Good morning, honourable senators. It is nice to be here with you at this hour of the day.

I wish to bring to your attention the continuous meddling into Canada's affairs by every self-proclaimed think-tank that has managed to attract heavy subsidies by private self-interests.

The latest salvo came in the form of a report released last week by the Pew Environment Group entitled: *A Forest of Blue: Canada's Boreal Forest, the World's Waterkeeper*. For the many who have never heard of them, the Pew Group operates under the Pew Charitable Trust, an organization established by the family of the late Sun Oil founder, Joseph N. Pew.

This U.S.-based group seems to have taken a shine to our Canadian boreal forests and determined that they are under threat from development related to mining, hydroelectricity, oil and gas extraction, and forestry.

Honourable senators, why, I ask, is another heavily-funded American group once again getting involved in Canadian domestic affairs? The list of interference is getting tedious — our seal hunt, our oil sands, our regulatory differences, even our treatment of zoo elephants, and now our boreal forests.

In each case, this interference is based on half-truths and blatant misinformation. This needs to stop. Canadians do not need uninformed advice from headline-seeking politicians, Hollywood types and movie producers, all with the goal of developing a reputation for trying to save the world.

Canadians know what is best for Canada and it is Canadians who should be deciding how we manage our seal hunts, operate our oil sands and protect our pristine national landscape.

Honourable senators, I am proud of the beauty of this great nation and of the strong resource-driven sectors we are so blessed to have in this country. It is high time that we remind armchair critics that Canada can and will take care of itself through the best means available and necessary.

Let us send a clear message that interference will not be tolerated.

[*Translation*]

CITY OF LA TUQUE, QUEBEC

CONGRATULATIONS ON ONE HUNDREDTH ANNIVERSARY

Hon. Lucie Pépin: Honourable senators, yesterday was a big day for the city of La Tuque, Quebec, which is located in my senatorial designation of Shawinegan. The city, which was founded on March 24, 1911, turned 100 yesterday.

The people of La Tuque plan on celebrating this 100th anniversary with great fanfare. Throughout the year, a number of commemorative events and gatherings will be held. The highlights of the centennial anniversary will be the reunion days from June 21 to July 3.

The city's centennial slogan is "one hundred years and more to come," which reflects the ambition of the people of La Tuque to turn this centennial into a window of opportunity. The celebrations will help awaken the pride of the people of La Tuque. They will also be a unique opportunity to highlight the region's heritage, cultural assets and tourist attractions.

With an area of nearly 30,000 square kilometres, greater La Tuque has no shortage of nature. I urge honourable senators to take this opportunity to discover the great outdoors in this region, which is a real paradise for hunters and fishers. You will find yourselves amazed by the region's many assets, which lend themselves to both summer and winter activities.

A number of people have been working hard for years to make this centennial a huge success. I would like to take this opportunity to congratulate the entire organizing committee. I would also like to congratulate the Société historique de La Tuque et du Haut-Saint-Maurice for producing the wonderful historical publications *La Tuque Un siècle d'histoire* and *La Tuque Histoires de familles*. In addition, I would like to extend my sincere congratulations to Yves Vachon, who won the competition to compose a centennial song.

Honourable senators, I invite you to come celebrate with us in La Tuque and to discover this beautiful part of the country.

[*English*]

MRS. BERTHA CAMPBELL

CONGRATULATIONS ON WINNING 2011 ROSEMARY DAVIS AWARD

Hon Elizabeth Hubley: Honourable senators, I rise today to recognize a great friend, businesswoman and volunteer who has just won the prestigious 2011 Farm Credit of Canada Rosemary Davis Award.

Bertha Campbell of Kensington, Prince Edward Island, will be heading to Boston at the end of April to accept her award and participate in an important leadership conference for women. I have known Bertha for a long time and can attest to her skill and commitment as a farmer and community leader.

• (0920)

The Rosemary Davis Award recognizes women who are active leaders in the Canadian agricultural sector. These are women who are not only successful in business but who also give back to their communities and are excellent role models for young women entering the field.

Bertha Campbell certainly fits this description and is well deserving of this honour. She has served as Vice-President of the ADAPT Council, Chair of the P.E.I. Agricultural Sector Council and currently sits on the P.E.I. government's Environmental Advisory Committee. She was also recently President of the P.E.I. Federation of Agriculture. In addition to her volunteer work with the agricultural community, she also runs her family's farm and is involved in neighbourhood hockey, figure skating and school advisory councils.

I congratulate Bertha on her outstanding achievements and wish her all the best for her trip to Boston. She is a wonderful role model not only for women involved in agriculture, but is an inspiration to anyone looking to achieve personal success while also giving back to the community.

FOREIGN CRITICS OF CANADIAN POLICY

Hon. Tommy Banks: Honourable senators, I concur entirely with the expressions by Senator Eaton of the offensive nature of one country trying to tell another country what to do. I hope we will all take those sentiments very much into account.

[*Translation*]

ROYAL ASSENT

The Hon. the Speaker *pro tempore* informed the Senate that the following communication had been received:

RIDEAU HALL

March 25, 2011

Mr. Speaker,

I have the honour to inform you that the Right Honourable David Johnston, Governor General of Canada, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 25th day of March, 2011, at 7:55 a.m.

Yours sincerely,

Stephen Wallace

The Honourable
The Speaker of the Senate
Ottawa

Bills Assented to Friday, March 25, 2011:

An Act to establish a National Holocaust Monument *(Bill C-442, Chapter 13, 2011)*

An Act to amend the Controlled Drugs and Substances Act (methamphetamine and ecstasy) *(Bill C-475, Chapter 14, 2011)*

[*English*]

QUESTION PERIOD

FINANCE

BUDGET 2011

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. In the budget on Tuesday, there was a line that allocated funding of $20.9 million to continue to waive firearms licence renewal fees for all classes of firearms. The cost of operating the firearms registry is estimated now to be about $4 million a year.

The Ontario Association of Chiefs of Police issued a press release yesterday, complaining that the government had somehow found millions of dollars — indeed, as I said, $20.9 million — to waive firearms licence registration fees, but no money to continue the federal Police Officers Recruitment Fund that was promised by the leader's government to hire 2,500 new police officers across the country. How does this make any sense?

Hon. Marjory LeBreton (Leader of the Government): The government, as the honourable senator knows, has a long-standing commitment to abolishing the long-gun registry. We do not believe, as we have said on many occasions, that law-abiding citizens should be subjected to the necessity of this long-gun registry. The honourable senator uses a figure that has been disputed, by the way.

With regard to the comments that the honourable senator read into the record from the police association, we have had many comments about the budget since it was introduced on Tuesday, March 22, most of them complimentary and laudatory, but obviously some groups are not happy with the budget. The honourable senator cited an example of one. That is their right in a free and democratic society.

Honourable senators, we stand by the budget that we presented. It is a good budget. It has been supported overwhelmingly by Canadians. I urge the official opposition and their coalition partners in the other place to come to their senses this afternoon and allow Parliament to continue working so that we can deal with all of these important matters.

Senator Cowan: Honourable senators, if the leader disputes the $4 million figure, that amount is confirmed in a February 2010 report produced by the Royal Canadian Mounted Police.

The fact is that the law of the land is that there is a gun registry, and the law requires that registration fees be paid. Surely the government has an obligation either to persuade a majority of members in the House of Commons, and perhaps in the Senate in due course, to remove that or to respect the law.

What kind of signal does it send to Canadians if the government itself ignores the provisions of the law of the land? Does that make any sense?

Senator LeBreton: Honourable senators, I reiterate that our government is committed to effective gun control that delivers results while reducing administrative burdens for law-abiding gun owners.

Currently, all legal firearms can be traced in Canada through the serial number located on the firearm. Of course, this has not and will not change. This is one of the mythologies that is promoted about this particular issue. In order to obtain a gun in this country, there is a rigorous process for licensing and ownership. In both cases, strong gun control legislation was introduced to this country by Conservative governments.

Canadians understand very well the government's position on this issue. We believe that the real issue is with regard to the illegal guns that are brought into this country and are connected to the drugs and gangs issue.

• (0930)

Senator Cowan: The government of which the leader is a member is strong on being tough on crime, respecting the law, and urging ever more serious and punitive sanctions for those who break the law, yet here the government itself is ignoring the law of the land.

The law of the land is the law of the land until it is changed. Parliament has spoken and has established a law. Surely the government has a responsibility to set an example for Canadians by respecting its own laws. If the government wants to change the law, it should bring in a bill that is supported by a majority of the members of the House of Commons, and proceed through the usual process. To ignore not only the established law but the will

of the House of Commons, the elected representatives of the people, and do by the back door what they could not do by the front door does not set a good example for Canadians.

Senator LeBreton: I expect that the long-gun registry will become an issue in the election that the coalition will apparently force upon us later today. We will see what Canadians think of the long-gun registry and the actions of our government to this point.

Senator Cowan: I certainly hope so.

Hon. Mobina S. B. Jaffer: Honourable senators, my question is directed to the Leader of the Government in the Senate. The government's citizenship booklet advises new immigrants that in our country we do not accept honour killings, female genital mutilation or forced marriage. I am happy that we are stressing our values.

What resources is the government setting aside to ensure that the women who suffer in our country are given help?

Senator LeBreton: As I have said on the record here many times, the government has expended considerable funds, not only to welcome new immigrants to our country but also to make clear that we will not tolerate barbaric actions such as female genital mutilation. I have stated on the record many times the amounts of money that we have spent through the Department of Justice, Status of Women Canada and the Department of Indian and Northern Affairs on the issue of violence against women.

The record of our government is solid on this front. When we face the electorate, as it appears that we will be forced to do as the result of a non-confidence motion supported by the coalition this afternoon, Canadians will have a chance to assess whether they think we have done enough on this front.

Senator Jaffer: My specific question to the leader was: How much money has been set aside specifically to educate women in our country on the fact that we do not accept honour killings, female genital mutilation or forced marriage in our country? Exactly what resources are set aside to help women receive this education?

Senator LeBreton: I will repeat the answer I have given many times. Ending violence against women, both those born and raised in Canada and those who have come to our shores, is a cornerstone of our government policy, especially of our tough on crime policy. We have almost doubled funding for projects to end violence against women. We have acted to bring in new laws to ensure that women are safe from rapists and murderers. We are protecting vulnerable women from human trafficking. We have a bill on human trafficking that, unfortunately, we will not be able to proceed with because of the unnecessary forthcoming election.

As Senator Jaffer said in her question to me, we have launched a citizenship guide that clearly articulates the Canadian principles of equal and fair treatment of all women and girls.

I obviously will not be able to table a written response because of the actions of the coalition in the other place, but I will be happy to provide Senator Jaffer, later today, with the exact amount that we spend in this area.

NATIONAL DEFENCE

MISSION IN AFGHANISTAN

Hon. Roméo Antonius Dallaire: Honourable senators, in our prayer we say, "peace and justice in our land and throughout the world." We pray that we take decisions in that regard.

Twenty years ago, we were moving troops into the advance positions of the first Gulf War. It is interesting that the veterans of that war are still fighting the Canadian bureaucracy for recognition of the injuries they sustained in it. That situation does not encourage others, or their families, to commit to war zones when they know they will have to fight, potentially for decades afterwards, to be able to live decently as veterans.

My question is more specifically on the current operation and its impact. A few days ago, the commander of our forces in Afghanistan made it clear in an interview that we went in there with far too few capabilities, as we tend to when we creep into these complex missions. It is interesting that in the Libya operation we did exactly what we did in Korea. First we sent in a couple of ships, which is not too risky; then we sent in planes, which again is not too risky. Potentially, as in Korea, there may be a United Nations demand for troops.

The commander in Afghanistan said that because we did not deploy the appropriate level of forces over the last years, we were never able to hold ground. Therefore, we had to go over the same ground time and again, rebuilding infrastructure and re-establishing an atmosphere of security, taking casualties every time. The commander said that only now does he have a brigade that is able to make massive advancements in that cause, and now we are pulling out.

I will not debate why we are pulling out. However, I think it is irresponsible of the government to commit to a long-term mission and then pull out because it is cute, because we cannot handle the 154 casualties. That number is erroneous, by the way, because it does not take into account those who have come back psychologically injured and those who have committed suicide since. Considering those deaths, we are probably at about 190.

We know that we went in without sufficient resources. We are finally getting a grip on the situation because we were reinforced by the Americans, and we are pulling out. We are pulling out of our original mission and replacing it with a training mission. It is interesting that the training mission will be located not only in the capital but wherever the Afghans have troops to be trained, which is throughout the country. We will deploy 950 members.

What is the reason for deploying 950 personnel for training the Afghan military and police? A staff check reveals that there will be more non-commissioned officers and junior officers engaged in that mission than are currently engaged in the combat mission, and what is curtailing the forces from absorbing new recruits and continuing the enhancement of the forces is the burnout and loss of those same sergeants and NCOs.

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I am disappointed that the honourable senator would undermine the great successes of our Canadian Forces in Afghanistan. He is correct that we went into

Afghanistan ill equipped. Our personnel did not even have the proper coloured uniforms, and then we were committed to the most dangerous part of Afghanistan.

However, as even General Petraeus of the United States has indicated, the Canadian efforts in the most dangerous part of Afghanistan, Kandahar, have resulted in holding that area and making it relatively secure.

• (0940)

With regard to the decision, as the honourable senator is aware, in 2008, the government outlined a series of benchmarks for its whole-of-government engagement in response to the excellent report on Afghanistan from the panel headed up by the Honourable John Manley and our colleague Senator Wallin. Three years later, we are now on track to achieve the benchmarks that we set out for Kandahar province. Going forward, the people of Kandahar will continue to benefit from Canadian assistance through national programs in health, education and humanitarian assistance.

Honourable senators, with regard to the situation today, the government has been clear that the combat mission will end in the summer of 2011, and Canadian Forces personnel will be deployed to continue training Afghan national security forces in a non-combat role until March 2014. National Defence has worked diligently with the Department of Foreign Affairs and other non-government organizations in Afghanistan to continue to develop the best deployment plan possible in response to changing circumstances.

The honourable senator's statement that the government took actions as a direct result of the unfortunate deaths of over 150 of our men and women who served in the Armed Forces is not a fitting comment, especially from a person with his military background.

Senator Dallaire: Honourable senators, if anyone can talk about casualties and the impact of casualties, it is me, and not, I will say bluntly, the leader.

Senator LeBreton: I agree.

Senator Dallaire: Honourable senators, beyond the newsreels and the newspapers, I can raise concerns about the use of our forces. I can raise concerns about how effective our troops have been on the ground by looking at the analyses, listening to the commanders in the field and performing appropriate personal assessments.

The fact that we did not send enough troops in the first place does not attack the value of the troops. On the contrary, our troops did extraordinary work. However, it did not mean we achieved the aim or the mission. It just means we were there and we were grappling to achieve our goal. The problem concerning the poor uniforms was in 2002; by 2006, we sorted out that problem. That is significant because it was a new theatre of operations, after 45 years of operating in Europe.

Honourable senators, I return to my point: How did they arrive at the number of 950 personnel? What concept of demand was analyzed to ensure that we would help? Now that we are pulling out, I believe we should move to a strategic level to provide depth to the Afghan forces by building up their staffers, their commanders and so forth. I have no problem with moving to that now because we have decided on that and not because I believe that was the route to take.

Honourable senators, with the numbers, the impact and sustaining the mission for three years, we are already deficient in NCOs and officers to handle the veterans coming back and their integration within the forces. There are over 12,000 recruits who have never been deployed or have never received the proper training because there are not enough NCOs and officers to put them through training. They are sitting in CFB Borden and CFB Gagetown and so on, picking their noses while, hopefully, a sergeant might appear some day. We launched a mission that is dominated by NCOs and officers, and we will continue the attrition of those who already have five missions under their belt.

There is not an NCO in my regiment who does not have five missions under his or her belt. They are the ones going back, and they are the ones we need to re-establish, lick the wounds and help to rebuild the forces.

Why did we choose that number, and what sort of analysis was done? I am not asking the leader to give me that answer. I am asking the leader to query those who offered that option to Canadians.

Senator LeBreton: The senator is quite right. Senator Dallaire would know more than I do about the operations of the Department of National Defence, the Chief of Defence Staff and the numbers.

The numbers came about as a result of consultations and recommendations with people in the field working in National Defence. The numbers were, obviously, the recommendation of our National Defence officials who have assessed all the issues in terms of recruitment that the honourable senator states.

The government did what good governments do: We listened to the sound advice of our military personnel and followed it.

Senator Dallaire: Honourable senators, the Armed Forces Council is the council where the three-star generals and the Chief of Defence Staff meet regularly to take decisions that are specific to the Armed Forces. During these meetings, they take guidance and orders that are given within the Armed Forces. They met in Halifax with the Minister of National Defence. All of a sudden, Thursday afternoon, the Prime Minister's Office announced that we were deploying 950 people to train the Afghan forces.

Honourable senators, guess who was the most surprised about the number: The whole damn group of them sitting in Halifax. There was no staff check. Somebody pulled that number out of the air. We knew what NATO required and it required more than that number of personnel. I have the structure of what NATO wanted, and we did staff checks. Nowhere above 600 could we sustain the mission for three years. Remember, this is not 950 personnel for six months; this is for three years.

Honourable senators, I will go beyond that. There has been no analysis. It was a decision taken by the political leadership of the nation, and the military are still scrambling to figure out how to implement it properly in the field while minimizing the impact on the rest of the forces.

Honourable senators, as the combat mission ebbs, we will begin to see more and more casualties. We will see the casualties of those who have been at a high tempo of operational readiness. That tempo will now go down because the demand will not be there, and the psychological impacts of those operations and the impact on their families and careers will start to appear. It is time to reinforce the quality of life, the family support structures and the medical support capabilities for handling this new generation of injured veterans to integrate them with the non-veterans in stabilizing the forces. That situation is even more complex with the reserve units.

Why is it that even in this fiscal year — let alone in the new budget, which will drop $1 billion per year — the resources and abilities of family support centres, quality of life structures, capabilities of the joint troop and living capability reinforcement units, although we have created five new ones, are being flatlined? They will have to absorb the cost of living and of letting people go when we should be reinforcing them.

Could the leader look into why we are targeting those soft targets, when the demand on them will increase significantly over the next couple of years?

Senator LeBreton: Honourable senators, the senator's comments about how the decision was made are flat out false and completely inaccurate.

• (0950)

The honourable senator must understand, as I am sure those on the other side do who have participated in cabinet discussions and our style of cabinet government, that the decision on numbers in Afghanistan based on a political decision without consultation with Armed Forces personnel is bizarre, to say the least.

There is no doubt, honourable senators, that the government is very cognizant of our soldiers returning with serious physical and mental injuries. That is why the Minister of Veterans Affairs and the Minister of National Defence made the announcement to enhance the government's services in these areas.

Senator Dallaire: Honourable senators, I was a three-star general when Canada was engaged in a number of theatres of operation. Unless this government is very different from other governments, military advice is not what carries the day, if it is asked for.

Certainly, during those theatres of operations, we found political decisions on numbers to dominate the operational concepts that we utilized. The Prime Minister said 1,200. Although we needed 1,600, he said 1,200, so that is it, we had to go with that. As the deputy commander of the army, I had such direction on two occasions. There was no logic. It was, "We don't like the number 1,600, but we'll go with 1,200 because that is saleable." They are not different. That 950 exercise is right down that track in getting the order from significant senior leaders.

Yes, creating five new joint support units is essential. In fact, it is very helpful. However, I ask the leader to go back to the figures of this fiscal year, which ends next week, and look at the projections for the next fiscal year. The leader will see that the funds in medical and family supports, even though we have created more units to help them, have been restrained and even curtailed. I ask the leader to go back to those figures.

If the troops that will soon be returning injured find there are less services available for them and their families that would help them reintegrate into the community and want to continue serving, then we will lose them. If we lose that incredible investment, that has to be one of the most deficient decisions for saving a few dollars. We will lose zillions of dollars of experience, and I do not think this is a time to lose that. We should be building on the experience of past years of operations.

Senator LeBreton: Honourable senators, I will not debate decisions made in the past when the honourable senator was a three-star general. I want to reiterate that the Canadian Forces and the Department of National Defence have made great strides in the area of treating injured soldiers. Today, the Canadian Forces have over 378 full-time mental health professionals and are working very hard to seek out and hire more.

In addition, the Canadian Forces and the Department of Veterans Affairs are working together to ensure that current and former military personnel receive continuity of care. The two departments are now linked together so there is continuity of care. We have announced that we will have 24 integrated personnel support units to provide one-stop service for members, veterans and their families to access service from the Canadian Forces and from Veterans Affairs. We have established the Legacy of Care Program for seriously injured military personnel and their families and pledged $52.5 million over five years in additional support. We have also announced $140 million to create a Canadian Forces Health Information System, which will enable health care professionals to securely share information and coordinate patient care.

Honourable senators, obviously, the government seeks to continue working in this area, but we have made strides in the services we provide to our veterans and soldiers who serve and have served our country so valiantly.

INDUSTRY

DRUGS FOR INTERNATIONAL HUMANITARIAN PURPOSES

Hon. Don Meredith: Honourable senators, Bill C-393, a piece of legislation vital to the flow of HIV/AIDS drugs to children in African nations, came to us too late to be debated and amended. Many honourable senators on both sides of this chamber, including myself, were desirous of supporting this bill, especially in light of the fact that the Prime Minister has demonstrated strong leadership in maternal health and child care.

My question is to the Leader of the Government in the Senate. What can we do in this chamber to see that Bill C-393 is resurrected, properly debated and moved forward into law as early as possible so that the children's lives that are affected in the nations of the world can actually be saved?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I believe Senator Meredith is asking his first question since being called to the Senate.

An Hon. Senator: And a good one.

Some Hon. Senators: Hear, hear.

Senator LeBreton: Yes, honourable senators, Senator Meredith has asked a good question. Obviously, the spirit of Bill C-393 has support, as the honourable senator indicated, on both sides of this chamber, as was the case in the House of Commons. This bill was in the House of Commons for over a year, and then it came here. The government position, as has been stated, is not in support of the bill.

Honourable senators, as I indicated to many of my colleagues when we first received this bill, it was our hope and intent that the bill would receive full debate in the Senate, then be referred to committee to hear witnesses on both sides of the issue and then come back. As was the case in the House of Commons, people were free to vote on this measure as they wished.

Unfortunately, honourable senators, the plans to deal properly with this bill in this place will of course be stopped dead in its tracks this afternoon when the opposition coalition in the other place defeats the government and all legislation dies on the Order Paper.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I want to say to Senator Meredith that I appreciated his question. I thought it was an excellent one and I thank him for that.

However, as we all know, our questions cannot anticipate anything that is on the Order Paper, and Bill C-393 is on the Order Paper. That is according to rule 22(4) of the *Rules of the Senate*.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—THIRD READING—DEFERRED VOTE

Hon. Bob Runciman moved third reading of Bill C-54, An Act to amend the Criminal Code (sexual offences against children).

He said: Honourable senators, I spoke at length on the details of Bill C-54 a few days ago, so I will not cover that ground again.

I know senators on both sides would prefer to have full committee hearings on this legislation prior to third reading passage. I certainly feel that way. However, as all honourable senators know, we are in a time bind created by the opposition coalition's decision to bring down the government later today and cause an unnecessary election. Given that reality, I understand an offer was made to hold an accelerated hearing yesterday, which is not a perfect solution but helpful nonetheless, given the circumstances that the opposition coalition has placed us all in.

Honourable senators, despite any process concerns we might have, we cannot lose sight of the fact that Bill C-54 is very important legislation.

• (1000)

This is legislation that provides protections for children who are or could become victims of sexual crimes. It is legislation that had the support of all four parties in the other place.

Honourable senators, in good conscience, we cannot let this bill die.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, it is with a good deal of regret that I rise to speak on third reading of Bill C-54 today. That regret is due solely to the fact that debate at third reading of this bill is grossly premature.

We only received Bill C-54 in the Senate on Monday, March 21. Two days later, in accordance with our rules and practice, we heard from the sponsor of the bill, Senator Runciman, who moved second reading. Yesterday we heard from our critic, Senator Campbell, who raised a number of concerns that he wished to have debated and discussed at committee.

Following Senator Campbell's speech, we expected that this bill would receive second reading and then be referred to our Standing Senate Committee on Legal and Constitutional Affairs for study, again in accordance with our rules and our practice.

In fact, on Wednesday, when Senator Fraser asked Senator Runciman about some of the details of the bill, Senator Runciman replied:

> That is an interesting question and I am sure we will pursue it at committee.

After Senator Campbell's speech yesterday, we did indeed give second reading to this bill, and that was a step supported by all of us. Unfortunately, at that point, the Deputy Leader of the Government in the Senate, Senator Comeau, moved a motion to proceed immediately to third reading. That is not in accordance with our rules and our practice. The motion by Senator Comeau means that there will be no committee stage, notwithstanding the assurances and the expectations of Senator Runciman, and there will be no opportunity to pursue Senator Fraser's question in committee or to address the serious questions raised by Senator Campbell.

For the first time in my experience, a government has wielded its majority in this chamber to bypass a vital stage in the legislative process. Frankly, it should come as no surprise to any of us that the stage of the legislative process they have chosen to eliminate is one that provides an opportunity for parliamentarians to hear from Canadians — that is, the committee stage.

What happened simply underscores this government's undemocratic approach to the workings of Parliament. It knows best what Canadians need and has no interest in wasting any time in finding out what Canadians have to say.

On occasions in the past, if there has been a great urgency about a bill, the Senate has agreed to abridge notice periods and sometimes to skip the normal committee stage or to replace it with a truncated Committee of the Whole process, but that is only done by unanimous consent. It was only done after the government in the past had convinced everyone, or at least most senators in the chamber, of the urgency of the situation and the necessity of dealing with it quickly and abridging the normal legislative process.

To my knowledge, never has a government used its majority in this chamber in such a ham-fisted manner — to eliminate the normal committee stage against the objections of opposition members.

However, perhaps it is fitting that this new ground is being broken in this way by the government in this chamber today because in the other chamber, as we speak — and we heard some noise a few moments ago which may indicate what happened — for the first time in Canadian parliamentary history, this government is being found in contempt of Parliament.

What is taking place today is quite an achievement for a government that promised Canadians that it would bring transparency, openness and respect to Parliament. Instead of openness, transparency and respect, it has brought contempt.

In the other place, elected members of Parliament asked for documents. They were refused by the Harper government. In this chamber, we have asked that witnesses be permitted to present their views on this government bill, and this request has been refused by the supporters of the very government that introduced the legislation.

Honourable senators, we are members of the Senate of Canada. We pride ourselves on being a chamber of sober second thought, and to refuse to hear ordinary Canadians before we pass laws that will apply to them from coast to coast to coast is the antithesis of our constitutionally mandated role. Canadians have a right to be heard by those who govern them. That is why the committee stage is so critical to our proceedings.

I am dismayed at our colleagues on the other side, many of whom were, at one stage in their careers, esteemed members of the "Fifth Estate" and were not hesitant then in taking the government to task on a whole wide range of real or perceived failings. However, when it comes to the fundamental rights of Canadians to be heard on the laws that are passed by those who govern them, they remain silent and faithfully toe the party line.

Honourable senators, is there any justification for what the government is doing today? Is there an urgent situation that we are facing?

I am speaking at third reading of Bill C-54, but I have limited capacity to speak to the details or the merits of the legislation because there has been no study and no recommendations to us by any of our committees. There is no testimony for me to examine. To be expected to speak in such circumstances would normally require some measure of urgency.

Is there an urgency? Has the Harper government conveyed to Canadians the message that Bill C-54 is a priority? Let us look for a minute at the legislative history of this bill.

Bill C-54 was introduced in the other place on November 4, 2010. Was it given priority? Was it dealt with expeditiously in the other place? One way to answer that question is to look at the legislation that has been sent to us from the other place since early November.

The fact of the matter is that 11 other government bills have arrived in the Senate since Bill C-54 was first introduced in the House of Commons. Those 11 other bills had priority over this bill, the intent of which is to protect children from sexual predators.

Among those 11 bills was Bill C-61, which was introduced in the other place on March 3, given third reading a week later on March 10, and arrived here. That bill is entitled "An Act to provide for the taking of restrictive measures in respect of the property of officials and former officials of foreign states and of their family members." The government rushed this bill, dealing with the property of foreign officials, to the front of the line and through the House of Commons, while it put its bill on protecting children from sexual predators on the back burner. Bill C-54 was placed on hold at report stage while the Harper government ensured that the Senate received the bill dealing with the property of foreign officials in plenty of time to deal with it prior to any possible confidence vote on the budget.

However, when it came to Bill C-54, it was an afterthought. It arrived in the Senate only this week, on Monday, just a few days ago. This was only a day before the government introduced a budget so regressive and out of touch with reality that it was virtually guaranteed to be opposed by all opposition parties in the House of Commons and lead to a dissolution of Parliament.

Now, suddenly, the government is claiming that Bill C-54 is of such priority that it must receive Royal Assent today, even if that means that not a single Canadian will be allowed to express their views to us. Nothing could be more important. What hypocrisy.

Remember, honourable senators, in the other place it is the government that sets the legislative agenda and decides which bills are to be debated and in what order.

Honourable senators, we should not sacrifice our reputation for carefully reviewing legislation that comes before us because of the inability of the government to properly manage its affairs in the other place.

Some Hon. Senators: Hear, hear!

Senator Cowan: Honourable senators, I would like to be able to give a traditional third-reading speech on Bill C-54, much as I did on another justice-related bill earlier this week, Bill C-59. With Bill C-59, I had an opportunity to read the testimony that was provided by witnesses before our committee, to reflect on that and to participate in the debate. However, I cannot make such a judgment on the merits of this bill and I cannot give such a

speech, because there is no committee record for me to examine. There is no recommendation from the committee for me to consider. To make an informed judgment at third reading, all of us need the information that only a committee stage can provide.

• (1010)

MOTION IN AMENDMENT

Hon. James S. Cowan (Leader of the Opposition): Therefore, honourable senators, I move:

> That the bill be not now read a third time, but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I will not respond to all the comments made by my honourable colleague on the other side, but I do want to indicate how much I appreciate the work that the Standing Senate Committee on Legal and Constitutional Affairs has done over the past number of months. We have asked them to go way beyond the call of duty. They have put in extremely long hours, way above and beyond the call of duty, on both sides, all senators. The comments I hear, at least from my side, indicate that the committee works extremely well.

At this point, I should note that the chair of that committee has been doing yeoman's work. I had the pleasure of working with Senator Fraser when she was the deputy leader on the other side and I always found her to be extremely professional. Never once did I sense that there was a level of approach to her work that was not for the benefit of all Canadians. I say this publicly — I have told her this privately before — that I have always appreciated the manner in which she handles her duties.

Hon. Senators: Hear, hear.

Senator Comeau: I do not want our deputy chair to feel that I do not appreciate his work as well. As a fairly new member of this chamber, he has taken on some extremely important duties and he has handled them in the finest tradition of this chamber. I appreciate that as well.

Hon. Senators: Hear, hear.

Senator Comeau: I will turn now to the conundrum in which we find ourselves today. Senator Cowan referred to the rules. He is absolutely right that we dealt with this bill yesterday. I did ask the other side whether we could refer this bill to committee. We realized, with the great amount of work that this committee has been putting out at this time, that this would put an extra burden on them. We realized that and we accepted it. We wanted to put on one more burden and give it one last shot. Given the kind of work that they have been doing up to now, I am positive they would have done it, and they would have done a great job, as far as I am concerned.

However, we were faced with a situation whereby, under the rules, the committee did not have the right to sit yesterday. We needed to have the committee be able to sit yesterday and today and, for that, we needed a mandate from this chamber. We needed unanimous consent from the chamber. We asked if we could get unanimous consent to empower that committee to sit yesterday and today in order to be able to deal with this bill. We would have provided every opportunity possible for witnesses to appear. We would have pulled out all the stops. Given the importance of this bill, we were willing to give it the best we could at committee. The answer yesterday morning was no. I tried again yesterday afternoon, and the answer again was no.

I mentioned yesterday afternoon that the effect of this was that, if the coalition party manages to defeat the government on their contempt motion, then it would kill this bill.

On this side, we were attempting to give this bill at least one final effort to be able to make it. If it did not happen, it did not happen, but at least we would have given it a chance at committee. We had all of yesterday and all of today until four o'clock. On both occasions, that was absolutely refused.

The Leader of the Opposition on the other side basically said that we were bending the rules. We are not bending the rules at all. We did ask for unanimous consent, but the rules said that we could not have the committee meet.

I do want to get to another point, honourable senators. Senator Cowan referred to the issue of the government not having sent this bill here earlier. I think Senator Cowan is playing with words on this. He neglected to mention that in the House of Commons, the other place, there is a minority government against the coalition. The other place is made up of a government in a minority situation. It faces a combined coalition of the Liberals, the NDP and the Bloc. It does not control every bit of the agenda in that house. The majority in the other place can put roadblocks all the way to legislation. Obviously, had we been a majority, the 11 bills to which Senator Cowan referred would have come here in a much more expeditious and orderly manner. However, the combined weight of the coalition reduced that. It basically stopped it. This bill could have come here much earlier.

I cannot resist this, because Senator Cowan referred to the contempt motion that was placed in the other place. This contempt motion was passed by a kangaroo court. All one has to do is look at the numbers and the majority in the committee. Review the tapes and review some of the media comments made by a fellow by the name of Pat Martin, who wanted to string up some of our own side in the nearest tree. This is what was happening on this contempt motion. It was absolutely a kangaroo court.

I will come back to my point. We offered. We did everything we possibly could to give due process to committee stage. This was refused. The opposition side hid behind *The Rules of the Senate*, which would have effectively killed the bill. They would have then turned around and said, as Senator Cowan said a while ago, that the government does not know how to manage its business.

Today, by going to third reading, we are giving this bill a fair chance at being able to become the law of the land. That is all we are doing, and we are doing it on behalf of the children in Canada, protecting them from sexual predators.

• (1020)

Honourable senators, I support this bill. I hope the other side does the right thing by passing this bill now and rejecting the attempt by Senator Cowan to send this off to committee again. The committee would meet only after the election, which would mean there would be no committee and no hearing. He knows entirely what he is doing. Sending it to committee would effectively kill the bill.

We will reject this amendment. We will continue to encourage the other side not to send this bill to a committee, which would kill it, but to deal with it today.

The Hon. the Speaker *pro tempore*: Will the Honourable Senator Comeau accept a question?

Senator Comeau: Yes.

Hon. Anne C. Cools: Honourable senators, I understood Senator Comeau to say that he had wanted this house to refer Bill C-54 to the Standing Senate Committee on Legal and Constitutional Affairs yesterday. That is what I understood him to say. I also understood the honourable senator to say that there were conversations between him and the leaders of the opposition. I also understood him to say that he would have needed unanimous consent and that such consent would not have been forthcoming. However, I did not hear any unanimous consent asked for on the floor of this house yesterday, so the honourable senator must have been referring to statements that were made in private conversations.

Could this house have clarification? I found the whole situation yesterday unusual. The Senate should know and understand, and I would like to know myself.

Senator Comeau: I would have to go back to the record yesterday to know exactly how it happened on the floor — whether I referred to unanimous consent or not. However, I can say that yesterday morning I asked whether the other side would accept, with unanimous consent, that the committee be empowered to sit. The response was no. That was yesterday morning.

Again, yesterday afternoon, at the time of the vote to refer the bill to third reading today, during the division bells, I called the other side to ask if we could consider that this bill was referred to committee prior to the vote and whether they would be willing to accept sending this bill off to committee and avoid sending it to third reading. To this request, again, I was told no. However, I would have to reread the record exactly prior to the vote to determine whether we mentioned the words "unanimous consent" or not. I do not recall.

Senator Cools: Honourable senators, I would like to have clarification whether there was a stated will by the opposition against having the bill referred to committee yesterday. I understand the Honourable Senator Comeau to be saying that is the case. I understand the honourable senator to be saying that if he had not moved the bill to third reading yesterday, the bill would have fallen off the Order Paper. I understand the honourable senator to be saying that he was compelled into that action because he asked the leaders of the opposition to agree to refer the bill to the committee and that agreement was denied or refused.

Honourable senators, this point is important to me, and not only on procedural propriety. It is important to me because I am an independent senator who takes more than a little interest in some of these questions. I always have this sense, this terrible sense, that the recognized parties and their leaders ignore independents. I must tell honourable senators that it is tiresome. It seems to me that if such an important matter was being discussed between the leaders of the government and the leaders of the opposition, someone should have been dispatched to consult the independent senators to find out what they thought. I have many thoughts on this matter. As I said before, I keep telling senators that when they want my support, they must talk to me. I hope I am making this point clear.

I wonder if the Honourable Senator Comeau could be crystal clear, because I understood him to say that this bill could have gone to either the Standing Senate Committee on Legal and Constitutional Affairs yesterday or even Committee of the Whole yesterday.

Senator Comeau: Let me be as crystal clear as I possibly can. Our intention yesterday was to ask this chamber to send the bill to committee. That was our intention. However, sending the bill to committee, without the committee having the right to sit yesterday and today, effectively would kill the bill if the election is called, which we presume it will be.

Sending the bill to committee — I repeat — would kill the bill. Our request yesterday was to ask the opposition if they would consider giving the Standing Senate Committee on Legal and Constitutional Affairs the power to sit.

May I have five more minutes?

The Hon. the Speaker *pro tempore*: Is leave granted for an additional five minutes, honourable senators?

Hon. Senators: Agreed.

Senator Comeau: Effectively, we were asking that we have unanimous consent for the committee to meet; in other words, the committee would have the right to meet. We needed unanimous consent to meet. I did not receive it. Had I been given the go-ahead from the opposition side, our side would have agreed; immediately, as I almost always do — or as often as I possibly can — I call Senator Cools, Senator Murray, Senator McCoy and Senator Rivest and ask: Would this be agreeable?

There is no need to call honourable senators if I have been told there is no agreement, and the phone calls to the honourable senators' offices would not be necessary because I have already been told no. We never reached that point. However, had I been given an indication that either side was receptive to meeting either today or yesterday, in Committee of the Whole or possibly another committee, obviously I would have called the honourable senators' offices and asked if that meeting would be agreeable to them, which is generally my modus operandi. I generally call them.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I would like to respond to some of the comments that have been made by my honourable colleague, Senator Comeau, and give some context.

It is true that my honourable colleague and I meet every morning to discuss the business of the chamber. It is true that Senator Comeau indicated that there was a desire to deal with Bill C-54, which arrived on Monday and was being discussed for the first time on Wednesday, and then yesterday by our critic, Senator Campbell.

At that time, the Standing Senate Committee on Legal and Constitutional Affairs was dealing with Bill C-475. That committee has put in many hours dealing with five government bills over the last three weeks. They have put in overtime. They heard from 70 expert witnesses, which would inform the opinions that honourable senators have with regard to the legislation that is before us.

With Bill C-475, there were difficulties thought to be associated with the bill at first. There was a question of an amendment perhaps being necessary for Bill C-475, because it was connected with another bill, and complications were possible.

• (1030)

When I met with Senator Comeau yesterday at 10:00, I thought that Bill C-475 would be dealt with for the whole day. I had no idea it would be completed by the time we came in at 1:30. When Senator Comeau asked me if I would be willing, I said that the committee was already dealing with a bill. They have put in overtime. I would not be inclined to do that because there would be no time for the proper study of Bill C-54.

The important thing to remember is that what was being requested is that the bill not only be referred to committee but that it be referred to committee and then brought back here at 11 o'clock this morning. The committee could not conduct a proper study of a bill when it is already dealing with another bill. At 4:30 yesterday afternoon, Senator Comeau asked me, "Would you consider referring it to committee and bringing the bill back to the chamber by 11 o'clock? We could give the committee until 11 this morning." It was 4:30 in the afternoon; we were in the middle of a call for a vote.

We have to take our role as senators seriously. We cannot simply bring in a bill and then rubber-stamp it. The bill has to receive proper study. Section 17 of the Constitution Act, 1867, gives us our responsibilities as senators and states that we have to give proper advice and then finally consent to legislation. To give proper advice, we need to hear expert witnesses and the opinions of concerned Canadians.

Honourable senators, we have to do our constitutional duty. As Senator Cowan has indicated, the government has not put this bill on its priority list. It cannot simply say, all of a sudden, that it wants this bill. It cannot say, "We need this bill immediately; omit proper committee study."

It is in that context, honourable senators, that we said it is not possible.

Senator Banks: Can I ask a question of order? Are we now debating Senator Cowan's motion in amendment?

An Hon. Senator: Yes.

Senator Banks: Thank you.

Hon. Joan Fraser: Before I begin my remarks, I would like to thank Senator Comeau for his kind remarks a few moments ago.

Senator Comeau: I meant every word.

Senator Fraser: I do remember the time we spent working as counterparts and I, too, found him always to be very professional and straightforward in his dealings. I always appreciated that.

I would like to piggyback on his remarks to pay my own tribute to the members of the Legal and Constitutional Affairs Committee. Always, but particularly this month, they have been truly an ornament to the Senate.

Honourable senators, any of you who have a few spare hours some day, come along and listen to the way they work. It is something of which we can all be proud.

On Monday of this week we had a marathon sitting. We began at 10 o'clock in the morning and finished at 9 o'clock at night. Quite a number of members of the public, other witnesses, sat all through those hours to hear our proceedings, partly because they cared about the bill that we were considering, but partly, as several of them told me explicitly, because they found the proceedings were of such high calibre. One of them, who has appeared before many committees of Parliament, both in the other place and here, said, "That was the best day I have spent on the Hill in years." It is because of the work of members of the committee, so I want to thank profoundly all of them on both sides.

I want to speak in favour of Senator Cowan's motion, not because it is what such motions often are, not because it is a hoist motion. It is not. It is a motion designed to have us do what we are supposed to do.

I suggested yesterday that the committee would need to explore many questions about this bill. This is a 30-clause bill, making many amendments to the Criminal Code of Canada. Let me stress that I am not — not — suggesting that we should, in any way, try to weaken or avoid protecting our children from sexual predators. Nobody in the chamber wants that. If there is a group of people that the legislators of Canada should be vigilant about, it is those who prey on our children. We all know that and we all want that.

We have also learned that there is no such thing as a simple amendment to the Criminal Code. We thought we had one in the methamphetamine and ecstasy bill. It turned out there were lots of questions about that.

Let me give you examples of the things the committee would need to explore in order to do a proper study of this bill. For starters, since this bill imposes a raft of new mandatory minimums, it is only six years since we put in the last round of mandatory minimums for sexual offences. We would have wanted

to hear what the verifiable effect of them has been. Are they turning out to be a useful tool to avoid sexual predators or predations?

Another question: As it happens, all of these new mandatory minimums involve sentences of less than two years, meaning that they will be served in provincial institutions. What will the impact of that be on provincial governments?

Money should not be the determining factor when we make decisions about justice, but the fact is that in the provinces, as in the federal government, money is a finite resource. Every dollar spent on prisons, on jails, is a dollar that cannot be spent on rehabilitative programs.

Do the provinces think that dramatically increasing, in many cases, mandatory minimum sentences is the best way to tackle the scourge that sexual predators represent? They are the ones who will be handling the consequences of this bill.

There are other questions. This bill, as has been explained by Senator Runciman, creates a couple of new offences. One of them is making sexually explicit material available to a child. Who can argue that that ought not to be an offence? However, the devil may lie in the details. For example, no close-in-age exemption applies to this new offence. A close-in-age exemption basically says it is not an offence if they are two young people whose ages lie close to each other.

There are close-in-age exemptions for quite a lot of sexual offences in the Criminal Code. Parenthetically, as I suggested in my question to Senator Runciman the other day, we would have wanted to hear from the experts as to which clauses in the bill are covered by the close-in-age exemption. However, it is clear that this new offence of making sexually explicit material available to a child is not covered by the close-in-age exemption.

We have all heard of the relatively new phenomenon known as "sexting." If an 18-year-old "sexts" something to his 16-year-old girlfriend, under this bill he will face a mandatory minimum time in prison — mandatory; no discretion for the judge.

Another thing that disturbs me — well, it does not disturb me, but I want to know about it — is that in the past, this kind of offence was captured in the Criminal Code by communication of sexually explicit material on computer systems. Now we are not using the phrase "computer system"; we are using the word "telecommunications."

Telecommunications, presumably — I am guessing — was devised to capture the Internet in case a "computer system" did not seem to capture the Internet. Does it intentionally or otherwise exclude other means of communicating sexually explicit material to children?

• (1040)

If someone sent, for example, a CD through the mail, would that communication still be covered? I do not know. It does not sound like telecommunication to me. Maybe it is covered. Maybe there are sections in the Criminal Code, which is this thick, that cover that particular question, but I do not know. I would like to hear from lawyers and from computer experts on that particular topic.

The same questions arise in connection to the other new offence that is created in this bill. It has to do with luring: making an agreement or an arrangement to commit a sexual offence against a child. Again, in lay terms, luring is a heinous act. We do not want it to happen and we want it to be punished if it does happen. However, will this bill, as drafted, do the job we all want to have done? I am not sure.

Another point I would like to make concerns the earlier offence I talked about, namely, making sexually explicit material available to a child that is created in clause 13 of the bill. In clauses 22 and 23 of the bill, offenders who commit that act become liable to have their DNA included in the DNA data bank and to be included in the sex offender registry.

That is probably a good thing in many cases, but what about that case I talked about, namely, the teenager sexting to his girlfriend? Should the teenager be liable to have his DNA recorded forever in a police data bank? Should that teenager be on the sex offender registry forever? These questions are serious and affect the real lives of real citizens of Canada, and only proper committee study can answer them.

Another point goes, again, back to one of the questions I put to Senator Runciman the other day. The new mandatory minimum for sexual assault, if the victim is under 16, is one year, if it is proceeded with by way of an indictment; and 90 days for a summary conviction.

Sexual assault, I remind honourable senators, is a term that in law covers an enormous array of conduct. Some of the conduct is horrible. Some of it is what we think of instinctively when we hear the phrase "sexual assault." Some of it is not. Some of it is stealing a kiss when someone is drunk maybe at a grad, or patting someone inappropriately. These behaviours are offensive, but should a 17-year-old or 18-year-old boy or girl have to go to jail for them? It seems to me those questions need exploration.

Despite my best efforts and the best efforts of my wonderful staff, I have not been able to do all the examination of all the cross-references and changes involved in this bill because it is complex. For example, a clause appears to apply to invasion of privacy. I have not been able to wrap my mind around the provision, but privacy, goodness knows, is an important matter. There are then two pages of the kind of amendments, the kind of clauses that I talked about yesterday, the "after you Alphonse" clauses. That is, if another bill passes before this one or comes into force before this one, this one is amended in such a way. However, if this bill comes into force before the other bill, then the other bill is amended in such and such a way. There are two pages of those clauses. I have not had time to figure out the cross-references to all of those clauses.

Obviously, a proper committee study would hear from the minister and from the officials of various departments, the justice department, the corrections department and probably the health department. We know those people would be available on call because they are at the beck and call of the government. Other

people are not. We would need to hear from the provincial governments, from Crown attorneys, from the public prosecution service, from Statistics Canada, from experts on sex offenders and victims — everyone from social workers to academic analysts. We would need to hear from young people. We would need to hear from Aboriginal peoples, because sadly we know that this area has particular ramifications for many of our Aboriginal peoples. We would need to hear, as I suggested, from computer experts.

Honourable senators, all these people cannot drop everything, catch a plane, come to Ottawa and be here in time to testify by, let us say, midnight last night so that the committee could report at 11 o'clock this morning. It would have been, in my view, even more of a travesty to pretend to have done a proper committee study of this bill than not to study it at all. I believe that this bill is an important bill. I believe that what I think it is trying to do is probably worth trying to do in many cases.

Let me open a parenthesis there: The mandatory minimums raise questions — all mandatory minimums raise questions. In some cases, I would agree that mandatory minimums are probably appropriate. The new offences, as I suggested, I do think are probably appropriate. However, we could not possibly have completed such a study by 11 o'clock this morning. We could do such a study if the bill were referred to committee. The record of this committee this month suggests to me that its members can do serious work in a remarkably effective time. We cannot, however, do the impossible.

It is suggested that because we know the government will fall today, that is irrelevant. I am not sure we do know that. We will not know that until the votes are counted. We have all seen surprises before now.

May I have five more minutes?

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

Some Hon. Senators: Agreed.

Senator Fraser: Even if the government does fall, when we are dealing with bills covering matters this serious, I believe it is absolutely vital that we know what we are doing.

It is not as if sexual predators were not now the targets of the Criminal Code. They are in great detail and with remarkable severity. It is not as if we were saying, "Let child abusers run free." We are not saying that. We are saying only, "Should we adjust the way we handle them or not?" The only way we can possibly know that is by listening to the people who understand the vast ramifications of this topic.

That, honourable senators, is why I support Senator Cowan's motion.

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

Hon. Tommy Banks: Honourable senators, in speaking to Senator Cowan's motion, I will make myself unpopular here. I apologize upfront for the fact that I have the temerity to say the things I will say. I understand that I am doing that going in, so I apologize in advance. I hope that I will not sound hectoring or lecturing. These things are only my opinion and no one else's, necessarily.

I think it is not merely unwise, but wrong for us to conduct business in this place in anticipation of something that is, at the least, uncertain. In fact, I am taking bets, and I will tell you that there will not be an election. To use the vernacular that is going on, the opposition cannot call an election. Oppositions cannot do that. Prime ministers can do that. Oppositions can defeat the government, but it is my prediction that this will not happen today. Even if it were to happen, it is not appropriate, and in fact I think it is wrong, as I said, for us to conduct business in this place because we think something might happen, however imminent we think it might be.

• (1050)

As Senator Fraser pointed out, we cannot discuss with any certainty the substance of the bill before us because we do not know about this bill. We received this bill this week, and we do not know anything about it.

I do not know if honourable senators have had a chance to look at it. This is a complicated bill, as Senator Fraser has said. I concur with everything that she has said about the inability of a committee, even that committee — and Senator Comeau's compliments to it were appropriate and well deserved — to properly study this bill, for the reasons that Senator Fraser has enumerated, which is what we are here for. That is why we are here; that is why this place exists. I am sorry to be this presumptuous, but that is why this place is here; it is what we are supposed to do. We are, to use John A. Macdonald's words, to give sober second thought, and no such thing could happen in the time that was allowed.

We cannot talk about the bill very much because we do not know anything about it, and that is the point. The problem is the process that Senator Comeau has proposed, that is to say, that we should deal with this bill at third reading today.

I have only been here for 11 years, and I have asked everyone that I know of who has been here longer than I whether anything like this has ever been done before.

Senator Cools: You did not ask me.

Senator Banks: Yes, I did.

An Hon. Senator: Ask her.

Senator Banks: I have asked Senator Cools, Senator Murray and others who are no longer here. The information I received from everyone I asked is that, with the exception of uncontroversial legislative matters in which agreement was obtained by both sides, regardless of who the government was, no bill of substance in this place has ever, to anyone's recollection, gone to third reading without first having had committee hearings.

Senator Comeau has said here more than once, and he is exactly right, that among the most important — if not the most important — things that we do in this place are carried out in our committee meetings. That is where the heavy lifting in this place is done.

Senator Comeau said today that the committee ought to be satisfied to do the best that it can in the circumstances. There is an old joke about finding the Canadian equivalent of "as American as apple pie" and "as British as a stiff upper lip." The answer is "as Canadian as possible in the circumstances."

"As possible in the circumstances" is not good enough when considering a 30-clause bill that would amend the Criminal Code in many ways, as Senator Fraser has described. The best we can do in the circumstances is not good enough, and we should never accept it as being good enough.

I will now get into very dangerous territory, and I apologize for my temerity, honourable senators. I am speaking to all of us, but, most important, to those on the other side.

Some senators opposite seem to have the impression that, and operate as though, government bills that come here — not Commons bills, but government bills — are on tablets of stone and have been brought down from some mountain and are inviolable, perfect and not in need of any scrutiny or questioning, let alone, God forbid, amendment. That is not so, senators, and there have been examples of that here in the last couple of weeks. One example is Bill S-11 and the things that Senator Fraser referred to today. Government bills are not perfect. It is up to us. Justice Willard Estey told a Senate committee that it is our duty to scrutinize these things and to make them better, if not perfect. We have done that; we used to do it.

My point, honourable senators, is that the most important thing about you is that they cannot get rid of us; they cannot kick us out of here. You do not have to agree with everything that someone over there says. There are no consequences of which I am aware.

Senator Cools: I could tell you about many consequences, Senator Banks.

Senator Banks: Senator Cools will regale us on this subject at another time.

However, I can tell you that in my personal experience there have been no consequences, and I have often done what I am now talking about.

I took the trouble, honourable senators, to be able to tell you today that between 2000 and 2006 this place made 197 amendments to government bills, and during most of that time there was a very large Liberal majority in the other place and an overwhelming Liberal majority in this place. We made 197 amendments to government bills and sent them back there.

They did not like that, but we are still sitting here. I still have the same office that I had, and I still get to go on trips to Washington occasionally.

Senator Cools: I never got the office I was promised 20 years ago.

Senator Banks: Senator Cools will regale us later. Senator Cools is clearly an exception to the rule in every respect.

Senator Cools: I am always the exception.

Senator Banks: That is a mortal fact, honourable senators. We made 197 amendments.

Within weeks of when I arrived here, the clarity bill was introduced. I was a naïf and did not know what I was talking about, but I thought that I did, and I devised an amendment to the clarity bill. The clarity bill was Prime Minister Chrétien's favourite baby, and thank God he did it. It was written by Stéphane Dion, for all intents and purposes.

Senator Cools: I voted against it.

Senator Banks: I know that Senator Cools voted against it, and so did I.

I devised an amendment to the Clarity Act. The people down the hall were apoplectic. How dare I? I did not know what I was doing and I understood that they could not kick me out of here, so I moved an amendment to the Clarity Act, and it was defeated by 17 votes. That means that a lot of Liberals voted in favour of my amendment. All the Conservatives did, as did Senator Cools.

My amendment was not passed, so it is not on this list of the 197 times that we amended government bills during that time. There were no consequences for me. I was frowned upon, but I was not scolded. I did not lose my office and I did not lose my seat on any committees. I understood that that is what we are here to do. We are here to correct.

• (1100)

We are the quality control department of Parliament. We are to take out the dents and the scratches, to make sure that the bills we pass into law do what they say they will do, achieve the ends they purport to achieve, and do not step on other people's toes. That is our job, and I hope we will all do it.

To do our job, in respect of the bill that is before us, it must be studied, as Senator Fraser has said properly, by a committee, and it was not possible to study the bill by the time of this anticipated event this afternoon.

However, we should not be guided by that timing. This bill should be sent to committee for study, and that committee will sit, I promise you, next Tuesday.

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

Hon. Lillian Eva Dyck: Honourable senators, originally I did not think I would speak to this motion, but having listened to my colleagues on this side, I feel that I must.

As some honourable senators know, when I first arrived in the chamber, I was an NDP senator. Essentially, I sat as an independent for many years, and then decided to join the Liberal side.

Some Hon. Senators: Hear, hear.

Senator Dyck: I have been the deputy chair of the Standing Senate Committee on Aboriginal Peoples for the last year and a bit. Senator Banks brought up Bill S-11, which was sent to the

Aboriginal Peoples Committee. Of any bill, it shows how our process works so well. That bill was referred to the Aboriginal Peoples Committee for study. It was a government bill, introduced into the Senate, and we started studying it, I think, the first week in February. We studied the bill for about five or six weeks. We heard from witnesses from coast to coast to coast. We heard from national Aboriginal leaders, from regional Aboriginal leaders and from the Indigenous Bar Association. We heard from the Institute on Governance. We heard from Aboriginal and non-Aboriginal witnesses, all of whom said the bill is not good: it should be withdrawn; it should be reworked; and the government had been too hasty. The bill was a good idea because First Nations deserve safe drinking water; however, the bill would do more harm than good.

Finally, within the last two weeks, the two sides worked together on the committee, and we agreed that the minister would take the bill back. The minister would instruct the department to work collaboratively with First Nations leaders to improve the bill, and we shared amendments from this side. We saw the government amendments and the amendments that came from Senator Banks, Senator Dallaire and Senator Sibbeston, who all had great amendments. We said we would share those with the minister.

That process worked beautifully, and it shows that, to do our job, we must go through the process that is meant to be gone through, and in this case, it showed that a government bill was seriously in need of repair. At the end of that process, it was clear to the minister and to the departments involved that they must step back and have another look at the bill. That is what they are doing now.

The same situation applies here. We have not had a chance here to study that bill. I know that this bill has gone through a process like that in the House of Commons, but we have not had a chance in the chamber to study it. If there is one thing I have learned in six years — it will be six years next April that some of us were appointed — it is that within this chamber, on both sides, we have tremendous minds. We have great diversity. We cannot just sit on our butts, say nothing and allow this bill to proceed without giving it sober second thought.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Grant Mitchell: Honourable senators, I am pleased to have the opportunity to take part in this debate.

[*English*]

There are two levels on which we join this debate today. One is, of course, the substance of a bill that is probably poorly thought out, designed far too quickly and based upon ideology rather than scientific thought about what we should do to reduce crime and make Canadians truly safer.

Unfortunately, that debate will not have the opportunity to be explored in the depth in which it should be because we simply will not have the opportunity to have a committee. However, that situation raises another issue — not to diminish the importance of the issue that this bill addresses — but a much broader and more significant issue about freedoms, safety and security, the essential quality of our democratic system and the importance of our reflecting, defending and sustaining the institutions that are so significant in sustaining and defending the very freedoms that would and should allow us to have had the debate in committee that we will now be denied the opportunity to have.

Of course, I am talking about the role that this institution, the other place, the judiciary and less formalized institutions like caucuses and political parties, for example, in our parliamentary process, which are fundamental bedrocks to the freedoms that we enjoy in this country, and which this government talks about so much, sometimes, unfortunately, in an almost jingoistic way.

I remember recently the Prime Minister giving an impassioned presentation in announcing that we would send troops, equipment, materiel and planes to Libya to defend freedom. Of course, those words were inspirational, and he made quite a flourish with them. I am sure he was absolutely committed in his heart to what they meant and how important they are to us.

However, it seems to me that what the Prime Minister and his government do not understand, and what the behaviour of many facets of his government reflects a lack of understanding about, is that these institutions that we stand in today need to be defended, because they are essential in the maintenance and defence of the freedoms that those pilots and other personnel over Libya and in Afghanistan are defending on our behalf.

People take government institutions like our Parliament and our judiciary absolutely for granted. I think it is not a coincidence that about 30 years ago, we saw an emergence of often irrational attacks from the right wing on government, politicians and everything that government is about and that places like the Senate try to do.

I can remember taking part in a debate in the early 1990s or the late 1980s with John Williams, who later became a member of Parliament. He was running to be a member of Parliament. He was standing beside me criticizing politicians. I turned to him and said, "What do you think you are, John? You are a politician. Why would you put yourself down?"

Why would we put ourselves down, and why would we put these tremendous, beautiful, wonderful, remarkable institutions down?

When we receive a bill on Monday and are expected to pass it in four days, and when we are criticized for stepping back a little bit to say, no we think we should have more time than two hours or an hour and a half to study and pass a bill of this nature, and of this importance to, as Senator Fraser indicated, many young people's lives — young people who might make a mistake that would be misconstrued under the kinds of rigours this bill will implement — if we ask for a few moments to study that bill, we are attacked for somehow being unreasonable. The bigger issue here is what is reasonable for these institutions.

• (1110)

What the government is driving us to do today is really a reflection of a long-term process of perhaps consciously, or perhaps more perniciously, unconsciously, undermining the very

institutions that protect, defend, bolster our symbols of freedom, among many other things, and the very freedoms that Canadians are risking their lives to defend around the world.

Honourable senators, one of the real issues, when one thinks about trying to establish democracy in Iraq, Afghanistan or Libya, is that these countries do not have structural, concrete institutions or even virtual institutions of democracy. The people in these countries do not have anything on which to hang their aspirations for freedom and democracy. They are starting from below ground zero.

Honourable senators, our institutions, even if they process almost nothing, reflect democracy, and they are what we hang our freedoms on and they need to be nurtured and protected in everything that we do.

Honourable senators, let me begin to list some of the indications that these institutions have been eroded and that they are being attacked. The one I find very pernicious is the judge-made law attack. All that is is a cynical, spinning, deep right-wing put-down of the best judicial system on the face of the earth. Our system is respected and envied by people all over the world for its fairness, justice, quality and the freedom and rule of law it supports. We have a Prime Minister and a government that continually refers to judge-made law in a derisive, dismissive, diminishing way that fundamentally hurts our institutions and our freedoms.

Another example is Ms. Oda, a minister of the Crown, who misled Parliament. I cannot use the L-word because I know I inappropriately used it the other day, for which I apologize. Minister Oda, consciously and repeatedly, misled Parliament. The minister has actually admitted doing so.

Honourable senators, what does that do to the quality and the integrity of that institution? What does that do to Canadians' appreciation, the world's appreciation of that institution? If people can see that people in authority and significance can erode it, they begin to see that it is not as important as it absolutely has to be if we are to sustain our freedoms, justice and the rule of law embodied in our Parliament.

I remember the 200-page committee binder that the government put together with the sole purpose of hamstringing the committee process in the House of Commons. This is a strong word, and it may sound maudlin to some, but these places are "sacred" places for freedom and democracy. In the cynical spinning, political manoeuvring and manipulation that was captured in that binder, we see that instead of having a government that is working in a place that it should be defending and building and sustaining, we have a government that actually hates the place in which it is working. We see a government that wants to diminish it and is in fact on the way to diminishing significantly its influence and its impact.

Honourable senators, look at what is happening in committees in the House of Commons where ministers are not allowed to answer questions. Instead, they have a pit bull that gets up and answers the bulk of the questions. Accountability is essential to sustaining the freedom, power and integrity of these institutions, but they will not allow most ministers to answer questions and be held accountable in front of the people of Canada. That is an affront to these wonderful institutions and it diminishes and erodes them. At the same time, the government is doing that and allowing that to happen, they are asking our Armed Forces to go across the world and fight for the very freedoms they are allowing to be eroded here at home.

Honourable senators, look at what is happening on the Standing Senate Committee on National Security and Defence. I have been criticized for being rude to the minister who came before us this week. My first reaction to that is, so what? So what if I was rude to a minister? It happens that I was not rude; I disagreed with the minister. I implied that disagreement in some questions. Is that not part of some reasonable debate? Somehow, a senator being rude to a cabinet minister would be an implicit criticism of what we were doing. I hope we would question cabinet ministers and disagree with them when they came here, and I certainly hope that the members and the chair of the committee would not consider that being rude to a cabinet minister would in any way, shape or form be an implicit criticism of what we are doing. So what? Great! Bring it on!

Asking a question that implies a disagreement or a criticism of what that minister was doing does not show a lack of respect for the minister. In fact, honourable senators, there is implicit respect that one would question a minister in a rigorous way. There is implicit respect for the intelligence and the motivation of that minister to want to do as well as possible, and implicit respect for the very institution that honourable senators need to sustain, develop and maintain every time we stand up and speak in this institution. We have a role, and if honourable senators doubt its credibility, honourable senators only undermine their own purpose and reason for being in this chamber.

This institution has a fundamental intrinsic constitutional credibility, and a role and a responsibility to fulfill. Remember honourable senators, there are many people in this government who are appointed, who give advice to government at very high levels. I want to point out that Mr. Carson would be one of them. The difference is that we of course give advice to government. Yes, we are appointed, but we give our advice in public.

Honourable senators, I want it on the record, how the Defence Committee was eroded in its ability to do its work. I was most pleased to be a member of the Defence Committee, and now it is not. Honourable senators, when the Defence Committee was in Washington I tried to ask questions of security officials about what they thought of buying oil sands oil rather than Saudi Arabian oil in order to defend and enhance the security of the United States of America. I believed that was a reasonable question from a senator from Alberta, trying to defend the interests of the important oil sands industry in Alberta. I asked the question within the context of security in discussions with U.S. security officials who would benefit from such a transaction. I got the question out once.

The next meeting, several meetings later, I tried to ask that question again, and the chair of that committee cut me off. The chair said that my question was not appropriate. I swear, she said it was "not appropriate."

Senator Cordy: Shame.

Senator Mitchell: Honourable senators, I asked the question anyway, because I cannot imagine how it can be any more appropriate than for an Alberta senator to ask a question about secure oil from his province that would help one of our best neighbours, best allies, to be more secure in the context of a meeting about security.

Senator Dallaire: You were discussing ethical oil.

Senator Mitchell: Yes, honourable senators, we were discussing ethical oil, but the chair cut me off. This is evidence of what is happening under this regime, this slow, subtle, sometimes not so subtle erosion of these institutions. There are consequences, and the consequences are that they cannot reflect the kinds of credibility that defend, support, maintain, and inspire Canadians and others to freedom in our country.

Honourable senators, Senator Comeau stood up and said in a dismissive way that we had lots of time and we would able to pass this bill in four hours. The minister of the Crown wrote to us and blamed us for delaying Bill C-55 for four days. The government has had that bill for seven months. The government has had it for five years. During that time, the government could have actually done much of what that bill supposedly does.

When Senator Comeau stands up and does that, he is directly affronting these wonderful, remarkable, beautiful institutions that are envied and admired by people all over the world. Senator Comeau is abusing them in a way that is unseemly, unsightly, and unacceptable and beneath contempt, in my estimation.

Honourable senators, I think they should step back and allow this chamber to perform its proper function. We have a duty to make sure we pass legislation properly. We must explore the bill properly and fully in the context of institutions that are allowed to flourish and defend the very freedoms that we have people fighting for all over the world.

Senator Cools: Will the honourable senator take a question?

Senator Mitchell: Yes.

Senator Cools: I must say, honourable senators, that anyone who is surprised at the pressure that is on us at a time like this, obviously did not serve here between 1993 and 2006. Let me tell you, honourable senators have never seen people press bills out of us like the government did between 1993 and 2006.

An Hon. Senator: Bravo.

Senator Cools: I know, because when it came to the supply bills, I was heavily involved in pressing those out of senators, so I know a little about that.

• (1120)

Let us talk about this very end of March week some years ago, honourable senators, when I worked on three bills: two big supply bills and also the difficult bill organizing the Canadian Air Transport Security Authority, Bill C-49. Let me tell you, I know about bills being rushed through this place. If any senator has ever tried to lead on two supply bills and another large bill like that, I will tell you, it is difficult.

My question is about our parliamentary institutions. I am pleased that Senator Mitchell has raised concerns about them. I wonder if anyone has noticed that —

The Hon. the Speaker *pro tempore***:** Senator Cools, I believe you have spoken —

Senator Tardif: Five minutes.

An Hon. Senator: She is asking a question.

The Hon. the Speaker *pro tempore***:** Senator Mitchell's time is up. Senator Mitchell, are you asking the chamber for more time?

Senator Mitchell: Yes, I am asking for more time.

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

Hon. Senators: Agreed.

Senator Cools: Honourable senators, in respect of the unusual things that are happening, and there are so many that it is hard to respond to them, few seem to have observed — except perhaps Senator Day and Senator Comeau — that we are going into an election now without having passed supply bills, at a critical time in the supply cycle, which is March and April. We have a situation where this house will not be able to pass the supply bill because of the timing of these various votes in the other place.

We have to understand what that means for a government. That means that the government will be compelled to resort to what we call Governor General's Special Warrants to withdraw billions of dollars from the Consolidated Revenue Fund, which, to my mind, we should not allow.

Some Hon. Senators: Hear, hear.

Senator Cools: The government has been put into that position.

I wonder if Senator Mitchell has any views on that unusual situation that has been created with the supply bills and supply process. Never mind not getting to study this bill; how about not getting to study the supply bills as well?

Senator Mitchell: First, honourable senators, with respect to what happened in a previous government, I would, of course, say that if we believe what the senator has said, then clearly the implication would be — because it was an implied criticism — that she would want to see it done better now. She should be exceptionally critical of what this government is doing.

This government has the experience to have observed something that was done inappropriately, but they have not learned from that. In fact, they simply exploit that to explain and spin their inadequacies.

I would also say — and this should be interesting to the honourable senator in many ways because she defends rights so articulately, consistently and well — that it may be that there were certain pressures during that period. I do not know. I do know that what came out of that period was real progress on human rights. Gay rights and gay marriage were excellent achievements for human rights, as well as women's rights and women's choice. They were all defended consistently and in a long-term and significant way.

When one considers the kinds of encroachment on rights that I see here, such as votes on private members' bills, those are the kind of changes that were brought to that institution so it could be opened up more before it is shut down by this government. These are all great accomplishments that, I think, push back on the implied criticism.

However, this idea that there might be a day or two, or a period of time, during the process of Parliament where democracy would be suspended, where there would be a reason why people could not have the right to vote, is difficult to —

Senator Cools: Supply.

Senator Mitchell: Okay, supply. If there is a supply issue, we will not have the right to vote. Elections are off. Maybe we should start a list. Maybe we could start a list of times when we could not have elections. Supply would be one. Can we think of others? Maybe we could not have elections when we are at war.

Senator Cools: Yes, but —

Senator Mitchell: I am speaking, am I not? If anyone respects this institution, it is Senator Cools. She should allow me to speak.

Let us add to the list. So we could not have it when there is supply or budget debate, maybe, because that is pretty important. We could not have it when we are at war. Can we begin to list all the times when we might exclude the possibility of having an election?

Why is it that an election in any way, shape or form would be an affront somehow to this institution that is an essential element of democracy? Elections are democracy.

By the way, honourable senators, there are many ways that governments are sustained during elections and there are many ways that funds can be allocated. Because we have a history of institutions with checks and balances, we are able to have elections in periods of time when supply has not necessarily been voted.

However, how does the honourable senator know that we are not going to get to vote on supply today? We may well get to vote on supply today. There is no guarantee that will not occur.

[*Translation*]

Hon. Roméo Antonius Dallaire: Honourable senators, I am pleased to take part in this debate at third reading of Bill C-54. There is a methodology in place that should, in my opinion, be among the first of the reforms.

The process is affecting the content of the bill. The Leader of the Government in the Senate is a minister and part of the cabinet. Accordingly, she should certainly have some influence and be able to manage, with government authorities, the progress of the various bills. She should have sufficient influence to ensure that the Senate Chamber does not find itself in such an irresponsible and ridiculous situation as the one in which it finds itself right now. Ethically speaking, we are not fulfilling our duty. We are not acting ethically if we try to skip some steps in a process that is already complex, simply in order to push through a bill.

[*English*]

Let me give an example with regard to the absolute haste of Bill C-54 and the willingness to burn each step or every obstacle in order to get it through, when there is another bill that, in my opinion, should have gotten more attention and will sit and probably die.

I will refer back to two points, if I may. First, I refer to where I stand as an individual senator. Yesterday was my sixth anniversary as a senator. Hopefully, my apprenticeship is ebbing, but I am not sure when we continue to see the sneaking-in of new methodologies.

When I was called to the Senate, the Prime Minister told me I could sit as either a Liberal or independent senator. At the same time, that same Prime Minister nominated Conservative senators — they may have been Progressive Conservative at the time — and even NDP senators.

This Prime Minister had a vision of this institution being able to have a level of independence to provide the sober second thought. In the military, we call that an independent double-check.

I am here and I have the flexibility to look at bills coming from the Liberals — which I did when we were in power — and now from the Conservatives, and decide individually whether I am for or against them. I can explain myself, and that is it. My loyalty is to the people of Canada in doing my duty as a senator and not as being part of a process that emasculates my ability to act independently, even though I am allowed to do so as a member of a party.

Some Hon. Senators: Hear, hear.

Senator Dallaire: That exercise was lost with the new recruits who have joined us. I have yet to see a new recruit on the other side even consider voting against a bill, or a report even, that they present in this chamber.

Either the rules have changed with the new Prime Minister — and that is a reform that did not get to our side — or they are getting suckered into something that is not on the books and should not be followed if they are doing their true duty to this nation and this chamber.

• (1130)

I come to my specific point in regard to Bill C-54, which is a bill to protect our children, the children of this nation. I come back to our morning prayer, because I find it extraordinary. This is one of

the rare places in this country that still has a prayer before sessions, and I am very glad that it exists. I was going to say, "Thank God for that." The prayer says, ". . . peace and justice throughout our land and the world." It recognizes a responsibility in our land and in the world.

Bill C-54 concerns, yes, predators and the abuse of our children that will affect them for the rest of their lives, and I agree with it. I cannot agree with all the wording because I am nowhere near a lawyer. I have just gone through the bill, and it would be impossible for me, if I were on the committee, to digest all of this in a matter of hours.

However, we have another bill that is much more simple, and that is Bill C-393. What would that do? Bill C-393, which we were hoping to pass, would save hundreds of thousands of children from dying. This bill would ultimately save, if passed, millions of children from being sick. It would prevent nations from falling into disarray as their future generations are dying in front of them.

However, honourable senators, we cannot move forward on Bill C-393. There is a serious ethical problem in regard to prioritization. We have not heard why Bill C-393 is so offensive. The other side does not want to debate it. They are adjourning debate all the time. Bill C-393, to me, holds a far more onerous and evil spell over this chamber than does Bill C-54. We know that we have the capability to prevent the deaths of hundreds of thousands of children, and millions from getting sick. We know we can do that, yet we are throwing this bill away because someone does not like it. There is no explanation as to why, yet every effort is made to curtail due process in this chamber to take care of our own children.

Maybe it is because our children are more human than the children in those countries, and, because of that, of course our children should be taken care of first and we should do everything we can for them, including fiddling with fundamental processes and perhaps placing adults ultimately at risk of civil rights abuse by ramming through a bill that really needs significant help.

I do not know how colleagues can sit there and hold a position of that nature with such a two-headed perspective of ethics, of moral standing, which they use all the time. They also hold a legal responsibility to the people of Canada and not to their party or to mine.

Hon. Terry Mercer: Would Senator Dallaire take a question?

Senator Dallaire: Indubitably.

Senator Mercer: The honourable senator made reference to the new recruits across the way. I could not help but think, as a former member in Her Majesty's service myself, that Senator Dallaire and Senator Day, as graduates of the Royal Military College, could put on a boot camp to train these people and tell them what their responsibilities might be. Would my honourable friend be willing do that after the election?

Senator Dallaire: I am afraid that I am not sure all of them would pass.

Hon. Joseph A. Day: Honourable senators, I have a few words to add on this particular matter. In terms of the senators here, I am approaching middle age. I look about the Senate, at Senators Baker, Nolin, Comeau and Tkachuk, and, on our side, Senators Kenny, Cools, Joyal, Pépin and Rompkey.

The Hon. the Speaker *pro tempore***:** Senator Day, would you mind if I interrupted your presentation to ask if Senator Dallaire, who was speaking previously, would accept a question from Senator Segal? I did not see Senator Segal's hand go up.

Senator Day: I think it is quite important that Senator Segal have an opportunity to ask a question of Senator Dallaire, and therefore I yield my time.

Hon. Hugh Segal: Would Senator Dallaire accept a question?

Senator Dallaire: I find it difficult to refuse.

Senator Segal: I listened carefully to the nature of the case that the honourable senator made both for the bill in question and for the independent comportment that is, in his perspective and in mine, deemed desirable for members of this place.

My question relates to a procedural matter. The honourable senator and I did not enter this place at the same time. He is senior to me. However, many who sit on both sides are better versed in the rules, shall we say, than either of us.

I have had the privilege of putting forward several motions and bills that have died on the Order Paper through what I would call the unlimited and unrestrained capacity to adjourn, without any constraint whatsoever, for any period of time. I raise the proposition and ask whether the honourable senator would be supportive at some future date of working on a change to *The Rules of the Senate* that would limit the limitless capacity to adjourn that has been used by individual senators on all sides to keep ideas with which they disagree, not from being addressed, because they have the right to address it, but from even being discussed. It strikes me that this procedure diminishes the capacity of this place to both exercise sober second thought and to contribute creative ideas to the public policy process.

Senator Dallaire: We have not exchanged notes on this question. This reminds me of when I was acquiring the skills to go in front of cabinet or defence committees with slides to present projects. I was educated to always have with me a bunch of "what if" slides: What if they ask me this question? I should have a response. I thank the honourable senator for that question, because I have a response.

A year and a half ago, I went to the chair because I was frustrated by this continual process of not being able to hold people accountable for a specific time frame or methodology. We would drag on, preventing debate from continuing in a timely fashion and disrupting the momentum of debate. A point could be raised, and it could sit there for six or seven months. Momentum — the ocean, the human side — is part of the process.

The answer I received was that if I wished do that, it may not be to the advantage of our side either; that is to say, it is a tactic that is used. If you are in power, maybe it is a tactic you want to use to

be able to delay these things. I asked if I am the only one who had raised this issue, and I was told that it was up to me to think about it, which I have been doing.

Honourable senators, I think it is high time we talk about reform in this regard. I am looking for a change. I completely agree with introducing a methodology to bring these things to fruition in a timely fashion in an effort to keep the adrenaline going and the debate alive. Take a decision instead of constantly fiddling, delaying and ultimately causing great ideas to die. Production is very limited, as I see it.

• (1140)

Thank you enormously for that question.

Senator Day: Honourable senators, I thank His Honour for allowing the matter to revert to me after I had yielded. I appreciate that attention.

Honourable senators, I was talking about those senior senators on both sides of this chamber who provide us with guidance and the wisdom of years past. Some of these issues keep coming up. I want to recognize those senators whom I had mentioned, and others who are not here now — and Senator De Bané has just arrived — who do provide us with guidance that is critical for us to continue the history, the procedures and the practices that are not in writing but are critically important to this institution and the committees functioning in the manner in which they have historically functioned.

Honourable senators, my preliminary remark here is that it is a shame we cannot and could not find a way to deal with this particular matter, other than by wasting our time. This is a colossal waste of talent for dealing with a matter on which we should have been able to follow our normal process of having a committee study a bill.

Unfortunately, that is not the case. Therefore I want to go on record as indicating my support for this motion, because it is an affront to honourable senators and to this institution to not have the opportunity to understand what we are expected to vote on. It has always been my concern here that so much is voted on and so much is passed without at least some of us — and we all cannot understand everything that is going forward — being assured that the process has been followed and that some of our colleagues have had the opportunity to study in depth and to explain to us at third reading what is in the particular document. I believe that is a critical part of the process here.

Honourable senators, the best way I can explain my position in my humble way, which could never be nearly as eloquent as the speakers who have gone before me, is to talk about "The Tale of Two Bills." Those two bills are Bill C-2 and Bill C-54. I can borrow the first line of the book from which I stole the title of this talk and say that they were the best of times and they were the worst of times.

Senator Comeau: That is very creative.

Senator Day: I acknowledged that I stole the line.

Senator Comeau: Oh, I see.

Senator Day: Perhaps the honourable senator did not get that it was Charles Dickens. It is a wonderful book and I would highly recommend it to him.

Senator Comeau: I thoroughly enjoy it every time I read it.

Senator Day: Honourable senators, I want to talk about these two bills and put them beside one another, in juxtaposition, so that we can see how this chamber can function.

Honourable senators who were not here when the government changed in 2006 might be interested in knowing about the very first piece of legislation that was introduced by Mr. Harper's new government in 2006. It was Bill C-2, the Accountability Act. That bill went before the same committee that we have given accolades to for dealing with all of these bills over the past while with respect to the Criminal Code.

Bill C-2 was referred to the Standing Senate Committee on Legal and Constitutional Affairs. There are a good number of senators here who were involved with me on the committee that dealt with Bill C-2, including the chair of the committee at the time, who is the Speaker *pro tempore* here today. Since I was the critic of the bill, he and I had many interesting discussions — interesting in some people's jargon. However, I can say we were still speaking to one another after the bill ultimately passed.

Honourable senators, we took the time to study that bill, in spite of the protestations by John Baird. He can be very aggressive in his protests. In spite of that, we took the time to deal with Bill C-2 in the manner in which we, as senators, felt it should be dealt. We called all the witnesses we felt we should call. We said we could not get our work done by the summer of 2006, but we promised that we would get the job done by the end of October. In fact, it was prior to that when we finished our study on the bill. We met with all the witnesses. We provided a substantial report and 180 amendments to a bill that we were told had been "gone through with a fine-tooth comb." We were told that there was no need for the Senate to take a look at it.

As time went on, even the Honourable Minister John Baird began to recognize the good job the Senate was capable of. As a result, 90 of those amendments were negotiated between John Baird and I, and the government accepted those amendments because of the good work done by the Senate. However, we had to put up with many slings and arrows — that is another one, from Shakespeare — of outrageous fortune. We had to put up with that before we could finally get on with our job. We did put up with it, we did the job, and we received many accolades afterwards.

Now we have Bill C-54. We are getting the same pressures. It is like Bill C-55 which I talked about the other day and the charade of a hearing that took place with regard to that, with virtually no witnesses and certainly no balance of witnesses. We had the same pressures we have now. Contrast what we did with respect to Bill C-2 and what we are doing now with respect to Bill C-54. It is for that reason that I cannot accept the avoidance of the committee process. I cannot accept this and I must support Senator Cowan's motion in that regard.

Honourable senators, how do we feel our role should be performed here? I am sure we all ask that question from time to time. Is it a political role all the time? Is it an independent role most of the time, sometimes being influenced by the politics? I submit that there is a pendulum back and forth.

There are items, such as supply, that we recognize as fundamental to government. We seldom, if ever, would propose to hold up supply or to amend supply, because it is fundamental. We recognize that there is a political aspect to certain bills. We were ready with the supply bills.

The politics go on in the other place. For the majority of our time here, we have another role to play that is not political. We put on our spectacles to look at the legislation from the perspective of something other than the politics that is applied in the other place. It is a decision each of us must reach as to how we do that.

• (1150)

Do we come here to support a particular minority group? Do we come here to work particularly for our region, in conjunction with other honourable senators that may be on the other side of the chamber?

Those are some of the questions, honourable senators, that need to be determined by each of us. In my particular case, I try to draw that pendulum as fairly and with as much balance as I possibly can, having in mind that because there are three times as many members of Parliament sitting in the other place applying the politics, we can leave the politics to them and do the job here that the people of Canada expect us to do. That job is to make sure the legislation does not pass through here with the gaps and blemishes that have to be corrected sometime in the future by a judge. Maybe five or ten years down the line, they correct something that results in all the people who had relied on that legislation during that five or ten years being hurt by this decision when it was not necessary.

I have one other point, honourable senators. I believe there is a role for each of us to play, and in particular those who are in leadership positions, and I include in those positions the sponsors and critics of bills.

It is not our role to accept a speech written by the government department, deliver it and say: "There, I have done my job with respect to a piece of legislation; because I am the sponsor, that is all I have to do."

It is our job, as sponsors and critics, to work together to understand the legislation and to make sure that our respective party leadership in the other place knows what is realistic, what can be done and what cannot be done. If we do not inform the House of Commons and the leadership there as to what is possible and what is not possible in the Senate, then they will continue to assume that once legislation is passed in the other place, it is passed. It is passed by Parliament.

Those in the other place totally ignore the role we have in the Senate, because we are not telling them about the role we have. With respect to Bill C-35, we hear the Minister of Health saying the Senate is holding things up, and we hear Mr. Blackburn say the Senate is holding things up. With respect to the Minister of Health's bill, we had not even received the legislation yet and we were holding it up. With respect to the Minister of Veterans Affairs' bill, we had received it two days before.

Senator Banks: It was one day.

Senator Day: One day, I will give you that. We have a responsibility to tell those who ask us to squire their legislation through the Senate what is possible and what we have to do in this particular place.

Honourable senators, referring a bill to committee is an important part of our process. That part has been skipped on this particular matter because someone has agreed that this legislation is more important than the traditional role of the Senate. It is time for us here to stand up and say that the role of the Senate is more important to you, sir, and you must let us do our job. We will do the job, we will do it properly, and you will have legislation of which we can all be proud.

Senator Mercer: I am pleased with the honourable senator's recognition of my intervention.

I can only say to Senator Day's speech: amen.

I want to go back to Senator Comeau's intervention earlier in the debate where he made references to the committee in the other place that reviewed this bill, and his words, not mine, were a "kangaroo court," which prompted me to retrieve the ninth edition of the *Concise Oxford Dictionary* from the table. I wanted to make sure I was not saying things about Senator Comeau's intervention that were not correct.

That dictionary says "kangaroo court" is a noun; it says it is an improperly constituted or illegal court held by strikers, et cetera. I thought that perhaps the committee in the other place was probably properly constituted.

I then thought that maybe that definition was not enough, so I went to Wikipedia, that famous site we all go to now:

> A kangaroo court or kangaroo trial is a colloquial term for a sham legal proceeding or court. The outcome of a trial by kangaroo court is essentially determined in advance, usually for the purpose of ensuring conviction, either by going through the motions of manipulated procedure or by allowing no defense at all.
>
> A kangaroo court's proceedings deny due process rights in the name of expediency . . .

An Hon. Senator: That sounds familiar.

Senator Mercer: Maybe that is what is happening here and Senator Comeau was quick to accuse the committee in the other place.

He is also quick, by the way, honourable senators, to accuse the people in the other place of acting in coalition — indeed, 75 or so of my friends in the other place.

I want to read this letter into the record. This letter is addressed to the Governor General:

> Excellency,
>
> As leaders of the opposition parties, we are well aware that, given the minority government, you could be asked by the Prime Minister to dissolve the 38th Parliament at any time should the House of Commons fail to support some part of the government's program.
>
> We respectfully point out that the opposition parties, who together constitute a majority in the House, have been in close consultation.

Close consultation, honourable senators; that is what the author of this letter says.

> We believe that, should a request for dissolution arise this should give you cause, as constitutional practice has determined, to consult the opposition leaders and consider all of your options before exercising your constitutional authority.
>
> Your attention to this matter is appreciated.
>
> Sincerely,

The letter is signed by Jack Layton, Member of Parliament, the Leader of the New Democrat Party; Gilles Duceppe, Member of Parliament and Leader of the Bloc Québécois; and Stephen Harper, Member of Parliament, Leader of the Opposition. The letter is dated September 9, 2004. The coalition proposer is right here.

If they talk about a "coalition" in the campaign, honourable senators be prepared that in every bus stop and every doorstep across this country, we will read this letter to Canadians because the words "coalition" in the modern terms of this Parliament were Stephen Harper's words, not the first words coming out of the Liberal Party. Stephen Harper said it. He started the whole thing. I know Senator Cordy is shocked, but it is true. That is where it all started.

The other thing that Senator Comeau talked about was those people over there controlling things. Sixty-five per cent of Canadians did not vote for those people. Sixty-five per cent of Canadians voted for someone else, so the majority of people voted for a party other than the Conservative Party. I am proud to say I was one of them. I am proud to say I walked into the polling station in Mount Uniacke, Nova Scotia, and although it was a secret ballot I will tell honourable senators I put my "X" beside the name of Scott Brison, Liberal candidate. Thank you very much. I was happy to do that.

• (1200)

I see this denying of due process to send Bill C-54 to committee as an attack on democracy, on the centuries-old history of the Westminster system of government and on Canadians' tradition, but I also wonder about some honourable senators on the opposite side who are much more learned in the law than I am.

I think of my friend Senator Raynell Andreychuk, who graduated from the University of Saskatchewan. I wonder what her colleagues in the class of 1967 would say about the process that is happening today and whether due process is being honoured. What about Senator Angus, who graduated from McGill law school in 1962? Would his classmates think that due process is being followed? What about Senator Carignan, who was admitted in the Quebec bar in 1988? Would his classmates feel the same way? What about my good friend Senator Dickson? I am sorry he is not here today because he is an awfully good man. What would his colleagues from Dalhousie University in 1962 say about whether due process is being allowed to happen? What about Senator Meighen, who graduated from McGill law school and was a professor of law? What about His Honour, a graduate of that fine institution of Acadia University and then on to Dalhousie? I wanted to commend His Honour for winning the Sir James Dunn Scholarship in law; congratulations for that. What would His Honour's classmates from the class of 1964 say as to whether due process is happening here? What about Senator Smith from Quebec? What would his classmates from McGill, in 1976, say about whether due process is being allowed to take place here? What about my friend and neighbour in the East Block, Senator Wallace, who graduated in law from the University of New Brunswick in 1973?

Honourable senators, I am concerned about those people in particular. I left out my friend Senator Nolin, who is learned in the law. I do not want him to feel left out. I had it all written down here. What would his classmates from the class of 1976 at the University of Ottawa think about this whole process?

I was concerned about these senators in particular because they are lawyers and they are supposed to be learned in the law and understand what is happening. Then I looked at the rest of my colleagues and thought: What about those two other famous people Mr. Harper appointed to this place, the ones with high profiles? What would Senator Duffy and Senator Wallin say if they were not members of this place and they were sitting up there in the press gallery, where they used to sit on occasion?

Senator Munson: I know what I would say!

Senator Mercer: Or when they were in the back room of the press gallery up there? We have all seen it. Our friend Senator Munson knows what I am talking about.

What would they be saying about what is going on here today? I suggest that Senator Duffy would have invited several senators to be on his show yesterday, today — probably a couple of days ago. There would be senators appearing 24/7 on the Duffy show because he would have been outraged at what is happening.

Senator Wallin, on the other hand, would have embarked on some great documentary process about how this travesty could have happened to the good people of Canada.

Senator Cordy: Not anymore.

Senator Mercer: Not anymore because Senator Duffy and Senator Wallin are sitting over there.

Senator Harb is interested in protecting seals. There is a whole whack right here, Senator Harb; do not worry.

The essence of this matter is that this is a complicated, important piece of legislation. The intent is to do something very important. However, there are 30 clauses to this bill. How are those of us who are not learned in the law supposed to absorb all of the details?

I have had the privilege of sitting on the Standing Senate Committee on Legal and Constitutional Affairs from time to time. When I am on that committee, I go to try to learn. I am always impressed by the quality of the witnesses. As a non-lawyer, I ask: "What does this really mean to the good people I represent in Nova Scotia? What does it mean to my friends with whom I grew up in the north end of Halifax? How does it affect those men, women, boys and girls? How does it affect the community?"

Honourable senators, when I go back to the province this week to knock on a few doors and they ask me about how Bill C-54 affects them, I will not be able to tell them. His Honour will not be able to tell the good people in the South Shore when he goes home, either. We have not had the opportunity to study the bill in committee so we can ask about the details. We want to know.

Senator Campbell wants to be able to explain to the people of British Columbia what this legislation will do. Senator Cordy wants to be able to tell the good people of Dartmouth the same. Senator Munson wants to tell the people along the Rideau Canal what this means. Senator Tardif cannot wait to get back to Edmonton to tell people what Bill C-54 will do. Senator Plett wants to go to Landmark, Manitoba, and tell those people, but he does not know what is in the bill because it has not gone to committee.

The issue, honourable senators, is about process and respect. It is the respect not only of the institution but also of the people and the regions that we are sent here to represent. How do we go back to our people next week and explain to them that we have no idea what the bill really means or what it will do because we have not had the opportunity to ask the experts? As Senator Banks said, maybe a whole lot of amendments would have come out of such a study. He said that there were 197 amendments in those years, which is important.

When we were in power, I voted against our government once or twice here in the Senate. I will do it again when I think it is appropriate.

You have to stand up over there, honourable senators. You have to stand up and ask, "What am I thinking?" It is important. We need to talk about that.

The process is such that the bills come here and we take our time in carefully examining them. We do not drag our feet. We ask witnesses to come in. We are good at identifying better witnesses than they are in the other place. We have seen time and time again, bill after bill, where we have thought of witnesses that they have not. Those witnesses have given us insight that has helped us improve a bill, or, if some of us were objecting to a bill, have given us the insight to say: "Now I get it. I understand what you are trying to do. I will buy it."

Honourable senators, I do not know whether "I buy it" because I have not had the opportunity. Senator Peterson has not had the opportunity. He will go back to Saskatchewan this weekend and people will say, "Senator Peterson, what is in Bill C-54 and how does it affect the people of Saskatchewan?" He does not have the answer.

It is not fair, honourable senators, that due process is being denied. Of course, it is being denied by the people opposite, by the people who are the big proponents of coalitions when it is to their advantage and are against coalitions when the coalitions are working against them.

I also wanted to talk a bit more about the tradition here. The Senate, as Senator Banks mentioned, is a very important place. When the debates on Confederation took place, Sir John A. Macdonald, who was a terrific Prime Minister — and you will not hear me say that often about someone from that political party — put a lot of thought into the formation of this place. That was very important. It was not done casually. It was done with a lot of forethought. This is the exact kind of moment that Sir John A. Macdonald thought about. When someone brought forward legislation and others wanted to avoid due process, Sir John A. said, "We need something to do a double-check on this." That, honourable senators, is the Senate.

The Hon. the Speaker *pro tempore*: I regret to advise the honourable senator that his time is up. Are you asking for more time?

Senator Mercer: Five more minutes.

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

Hon. Senators: Agreed.

• (1210)

Senator Mercer: Thank you, honourable senators. I am sure that I will not need the full five minutes because I have nearly concluded my remarks.

I appeal to honourable senators opposite; I appeal to their sense of justice, fair play and common decency. Where is the kangaroo court, honourable senators? Is it in the House of Commons, where the majority have clearly spoken, or here, where we are not being allowed to follow due process as established clearly in our *Rules of the Senate*, in our tradition and in our deep history of the Westminster system?

Senator Dallaire: Senator Mercer, will you accept a question?

Senator Mercer: Yes.

Senator Dallaire: Honourable senators, when the words spoken here go out of these buildings, they go out with a gyro, that is to say, a spin, a significant spin.

The Conservative Party has decided to block Bill C-393, which would help hundreds of thousands of children. We are currently speaking to Bill C-54, trying to stop it from leaping ahead without due process.

What kind of spin does the honourable senator think will result from that sort of exercise?

Senator Mercer: I thank the honourable senator for the question.

If we acted on Senator Segal's long-standing suggestion to televise the proceedings of this place, this would not be happening today. They could not stand the scrutiny of the bright lights.

On Bill C-393, my advice to those wonderful women, known colloquially as the "grannies," who were in the gallery is: Do not forget this on May 2. Do not forget this as you talk to your friends and neighbours across the country between now and May 2. We need to remind groups such as theirs of this between now and May 2. It is not spin, honourable senators. It is the fact; it is the truth; it is the gospel. We need to get it out to the people, and quickly.

Hon. Pierre De Bané: Honourable senators, Senator Mercer named all the prominent legal scholars on the other side. I want to point out that the honourable senator's researcher mistakenly listed our colleague Senator Michael Meighen as a graduate of McGill. Actually, he and I were classmates at Laval.

Does the honourable senator agree that one of the main characteristics of the British parliamentary system, if not the main characteristic, is the central role of the official opposition?

Senator Mercer: Honourable senators, I misread my note. My researchers did do a good job. The note says that Senator Meighen is a graduate of McGill but his law degree is from Laval. I do stand corrected. In my haste, I read it incorrectly.

Senator De Bané is absolutely correct. One of the great principles of the Westminster system is that we have an opposition, that we can stand up and oppose, and that we can ask questions of those opposite. In particular, we can quiz any minister of the Crown who happens to be a member of our chamber, and we do daily question Senator LeBreton. I entirely agree with Senator De Bané.

[*Translation*]

Hon. Maria Chaput: Honourable senators, I support Senator Cowan's motion to refer Bill C-54 to the Standing Senate Committee on Legal and Constitutional Affairs.

In my opinion, this bill must be sent to committee for debate, study and consideration. The bill has two aspects: its content and its consequences. By content, I mean the intent or perception of the bill. Clearly, this bill's intent to protect our children is commendable. We all want to protect children. They are the most precious things in our lives. The perception of the bill is the manner in which we can protect children. The impact of the bill is how it will actually protect our children. It is very important for the Standing Senate Committee on Legal and Constitutional Affairs to consider this.

What is the actual impact of the bill? Will it protect our children? Is it another tool that will allow us to better protect our children from predators, from abusers or even from themselves? Is it a real, applicable tool? These are the things committees debate. The witnesses who are called to appear help us to better understand what a bill is and the impact that it will have.

As I said earlier, we all want to protect our children. We want more tools to help us protect them better. However, will this bill really help to afford them additional protection? In order to determine whether such is the case, the bill must be debated in committee. This debate also involves consultation with Canadians. In my opinion, holding consultations with Canadians is something we must do, and this consideration is part of who we are in the Senate of Canada.

I have always had reservations when it comes to not holding consultations with Canadians, and these reservations have only grown with time. Some honourable senators are talking about skipping steps in the democratic process. They are ignoring the consultation stage for a bill that affects the lives of Canadians and our children, their children, on an issue that affects them directly and very closely. We are talking about not holding consultations with the public. We are talking about making a decision, in this chamber, without having heard what Canadians have to say about this bill. I find this unacceptable.

The consultation process must be respected. It is part of our responsibilities and obligations; it is part of the consideration process. It is indicative of the respect that we must show Canadians and the respect that we must have for this honourable institution and for the integrity of the process.

For these reasons, honourable senators, I support Senator Cowan's motion.

Hon. Marie-P. Poulin: Honourable senators, I would also like to support the motion moved by Senator Cowan, the Leader of the Opposition in the Senate, to send Bill C-54 to the Standing Senate Committee on Legal and Constitutional Affairs.

Earlier, Senator Banks called the Senate the "quality control department of Parliament". We have always referred to the Senate as the chamber of sober second thought. Although Senator Banks' description brings a smile to our faces, it is quite apt.

The task conferred by the Fathers of Confederation on our honourable institution as the upper chamber, in keeping with the long-established British parliamentary system, places on our individual and collective shoulders a great responsibility with respect to the legislation brought before us. The bill before us affects the most important people in the country, people who have no voice in the Senate.

• (1220)

We have a duty to speak for all these children to ensure that they are better protected. Honourable senators, it is striking that all senators unanimously acknowledge the importance of this legislation introduced in the Senate this week.

I took the time to review our history. I found a study written by Brian O'Neal in June 1994 on the role and effectiveness of Senate committees. I found it interesting to revisit a study released in 1994. A number of us have pointed this out. The study says:

> There is . . . one aspect of the Senate and its work that most critics do not mention and of which many Canadians are unaware. While the chamber itself suffers from declining prestige, its committees have received recognition — from close observers of the institution — for their valuable contribution to the public life of this country. Yet, as C.E.S. Franks admits, "Senate committees. . .have a far better record than is generally appreciated."(5)
>
> Nevertheless, those familiar with the work of Senate committees have been generous in their approval. Senators serving on committees have been praised for their diligence and their ability to apply their knowledge and experience to the issues before them.
>
> In his 1965 landmark study of the Canadian Senate, Professor F.A. Kunz provided one of the few descriptions of the tasks that committees of the Upper House ought to perform. According to Kunz, there are three principal roles for Senate committees:
>
> - to legislate; Kunz states that this is perhaps their primary and most obvious role. The committees' job is to give "a skilled and leisurely consideration to the technical provisions of a bill. . ."(11)

I repeat, give "leisurely consideration". Obviously, Professor Kunz is referring to our second responsibility to scrutinize public accounts and our third responsibility to inquire. Nonetheless, getting back to our primary role, we are dealing with Bill C-54. Professor Kunz reminds us that our primary responsibility as senators is to give a skilled and "leisurely" consideration to the technical provisions of a bill.

A number of honourable senators have spoken eloquently about what consideration of a bill requires. These studies require us to listen to Canadian experts, representatives and those directly affected by the legislation and to work with experts from across the country and outside the country.

Honourable senators, I ask that you support the motion of Senator Cowan.

[*English*]

Hon. George Baker: Honourable senators, I have a few words on this bill. I will start by referencing the comments of Senator Banks, Senator Fraser and Senator Cowan by asking the question: Where is the Tackling Violent Crime Act today under consideration for its constitutionality? It is in the Supreme Court of Canada, in a case called *R. v. Dineley*; permission granted to appeal was back in 2010, 2010 CarswellOnt 8210. It is there, honourable senators, because both the House of Commons and the Senate forgot to ask the minister, when he was before the committee, whether the bill would apply retrospectively or prospectively. The issue is rather serious because the Tackling Violent Crime Act has been tied up in litigation ever since its passage. It has finally gotten to the Supreme Court of Canada, section 258(1).

Regarding decisions of superior courts, His Honour has appeared before the superior court in British Columbia giving testimony. He was called as a witness because he is an expert on a particular subject that he was the chair of before a committee in this place, so he knows whereof I speak.

In the case of 2008 CarswellOnt 7794, before a superior court, at paragraph 43 of the decision, the heading is "Parliament's Silence on Retrospectivity." It goes on to say the following at paragraph 43:

> The Crown cites the *Hansard* debates surrounding Bill C-2 as evidence that Parliament intended it to be retrospective.

Bill C-2 was the tackling violent crimes legislation that passed this place in 2008. The decision continues to quote speeches and so forth that were made before the committee. Then at paragraph 44, the superior court says the following:

> This is a problematic argument for the Crown to advance for two reasons.

Then it goes on for disposition. In this case, it says at paragraphs 46 and 47:

> For these reasons, the applicant shall be entitled to have "his evidence to the contrary" defence . . .

At paragraph 47, it says:

> Pending the outcome of this trial, both the Crown and counsel for the applicant have agreed that this ruling shall not be published by the local or regional press . . .

That is, until it is finally disposed of.

Then, honourable senators, there are other cases, such as 2008 CarswellOnt 7794, with the heading, "Retrospective or prospective application: procedural or substantive changes?" The judge says the following:

> As expected, the *Tackling Violent Crime Act* does not provide any insight at all as to its possibly retrospective application, nor does it provide any guidance as to its potentially transitional scope. . . .

Then the judge goes on to say:

> In considering the potentially retrospective application of Bill C-2, courts have turned to an examination of the *nature* of the change effected by the amendments.

I could go on quoting from cases, all of them citing case after case after case. Here is another one, 2008 CarswellOnt 6407, with the heading, "Is C-2 retrospective?" It is another superior court, and it states the following at paragraph 10:

> Since July 2 there has been an avalanche of thoroughly researched and well reasoned decisions on the retrospectivity point.

Honourable senators, the point is that we all forgot to ask that simple question, and the Department of Justice forgot to say whether it would be applicable to those persons who had committed an offence, and, between the commission of the offence and the passing of sentence, whether or not the new act would apply. That was an omission of just asking a simple question.

• (1230)

The other part of the Tackling Violent Crime Act is stuck in our provincial courts and in our superior courts right across this nation as it pertains to subsection 254(2) of the Criminal Code. Why is it stuck? It is stuck because — and here is the shame of it all — guilty people are getting away free, with the passage of that particular change, in many court decisions. If the change had not taken effect, they would have been convicted.

The change that we made under the Tackling Violent Crime Act to subsection 254(2) is this, and some honourable senators know this provision well. Subsection 254(2) is directed towards impaired driving. If someone is stopped by a police officer because they are weaving all over the road, for example, the police officer will come up to the window and say, "Could I see your driver's licence, registration and insurance?" He does that under the authority of the Highway Traffic Act of the respective province.

Then the police officer might detect, because the window is down, a smell of something in the car, such as an alcoholic beverage or something, and he may ask a simple question: "Have you been drinking, sir or madam?" If the person says, "Well, I only had a bottle of beer earlier on today," or "I had a drink this morning," or something such as that, section 254(2) says if a police officer suspects a person has alcohol in their body, then the roadside instrument forthwith shall be demanded of them. If the person admits they had a taste of alcohol, it gives the police officer the authority to make that demand, if there is a smell of alcohol together with the other indicia of drinking and driving.

What change did we make under the Tackling Violent Crime Act passed in 2008? We changed it so that it now reads such that when a police officer suspects someone who has driven a vehicle or has care or control of a vehicle — if one is sitting in the driver's seat, even if it is parked, one is in care or control of a vehicle and that also applies to airplanes, boats and any other vehicle — then the police officer can make the demand forthwith. We changed it so that if the officer suspects that the person has alcohol in their body and if they have driven in the previous three hours, the demand can be made forthwith. That was the change.

The intention of the change was good. We had good intentions. They wanted to cover when somebody tips off the police to the fact that someone has been driving in the previous three hours that the roadside demand can be made, which led to some absurdities.

For example, with respect to a civil servant on the 15th floor of an office building, when a tip came in that that person had gone to work in the morning but was impaired, or suspected of being impaired, the law said that a demand shall be made forthwith because the person had been drinking or there was a tip the person was impaired in the previous three hours. The person would be demanded on the 15th floor of a Kent Street office building to forthwith give a sample of his breath. It led to a case where a gentleman was at work in a very public place two hours after drinking and the demand being made forthwith.

The contest in the courts is if one has been driving in the previous three hours, whether or not the forthwith demand is at play any longer. The meaning of the word "forthwith" is immediate, and one does not tie it in with the other, the previous three hours and forthwith.

As honourable senators know, the scheme of the act is that everything has to flow. One does not have rights to counsel for that first demand at roadside and that has been judged to be a violation of rights under the Charter, but justified under section 1 because it is reasonable that a person not be given rights to counsel. When we changed it to include the previous three hours, then rights to counsel are violated. That is what is in the courts, bouncing back and forth, and the cases are numerous; in each province it is being litigated.

That is the point that one can make quite logically. All of these bills that are hurriedly put together by the Justice Department and rushed through Parliament are sometimes defective. The only way that one can find out if they are defective is to ask questions of the officials and the minister.

The other day at the committee hearing, the minister was asked the question, "When does the application of this bill apply? Is it retrospective?" The minister replied, "The Senate seems to be preoccupied with the words 'retrospective' and 'retroactive'."

There is good reason for that, because the crimes bill that was recently passed is tied up in the courts all because of the question and answer given to that bill.

Senator Fraser brought up the question of telecommunication. I did a fast job of looking it up, because it struck me that the word "telecommunication" is not considered to be a computer system. The bill that we are looking at now changes the law in that "computer system" is no longer present in the law with the change in this bill. It is replaced by "telecommunication." There is no definition of "telecommunication" in the bill, as Senator Fraser pointed out. It was brought up in the committee, and the department said, "Well, there is a definition of telecommunication in the Criminal Code and in the Interpretation Act." I did a fast check on that and I discovered there is a definition in the Criminal Code, at subsection 326(2). It says in this section and section 327:

> . . . "telecommunication" means any transmission, emission or reception of signs, signals, writing, images or sounds of intelligence of any nature by wire, radio, visual or other electromagnetic system.

The point is that definition was adjudicated by the Supreme Court of Canada in *R. v. McLaughlin* in 1980. What did the Supreme Court of Canada say? Referring to section 287, as it was at that time, the court said:

> . . . telecommunication . . . connotes a sender and receiver. A computer, being a computing device, contemplates the participation of one entity only, namely, the operator. . . . and hence it stretches the language beyond reality to conclude that a person using a computer is thereby using a telecommunication facility . . .

The definition in the Interpretation Act is exactly the same.

A simple question was put in the committee of the House of Commons to that question that Senator Fraser then probably raised in this house because she knew the question was asked and that there is no definition for it. The House of Commons accepted the fact that it is defined in the Criminal Code and in section 35 of the Interpretation Act. They said "okay" without looking at what it said and without checking and finding out that the Supreme Court of Canada had struck it down as it applies to a computer.

Hon. Pierre Claude Nolin (The Hon. the Acting Speaker): Is Senator Baker asking for more time?

Senator Baker: For two minutes.

The Hon. the Acting Speaker: Five minutes, Senator Baker.

• (1240)

Senator Baker: Honourable senators, as I have said many times here in this chamber, if you look at the case law you see that the Senate proceedings are constantly referenced. The Senate proceedings are constantly referenced because those questions would be asked, and that is the importance.

Honourable senators, I stood up one day and praised two members of the other side for asking questions during a meeting of the Standing Senate Committee on Legal and Constitutional Affairs, and one of them mistook it and thought I was being facetious. I was not, because when you ask the question, you get an answer, and it is clarification of the law as it is intended to be, and it heads off challenges like this in which guilty people are set free.

If that change is made with the word "telecommunications" — there is not a mention of "computer" — could it result, as it did in the tackling violent crimes bill, of guilty people escaping conviction? Absolutely, if that is the case.

Honourable senators, this bill spent 127 days in the other place. It spent two days here. That is my point. Thank you.

The Hon. the Acting Speaker: Senator Fraser, you have a question.

Senator Fraser: If Senator Baker were not a senator, he would be an expert witness, so I will put a couple of questions to him.

As I read the definition of "telecommunication" in section 326, it applies to sections 326 and 327, and 327 goes on for quite a bit. Has the honourable senator figured out whether it would apply to sexual offences, or is that something we would have been required to check with expert witnesses before the committee?

Second, as you look at this bill, have you found — I have not, but you are more expert than I — any discussion of whether it is retrospective or not? Would it create the same kind of legal void that we created with Bill C-2?

Senator Baker: In answer to Senator Fraser's question, I think it would create the same type of a problem.

The change with the word "telecommunication" is throughout the bill, as it applies to 172.2 of the Criminal Code, but also 172.1. What replaces "computer," as far as I can see, is where it says, "using the Internet or other digital network. . ." without defining a digital network.

Honourable senators, there is quite a difference in the meaning of "Internet" with a capital "I" and a small "i" in the law, as the chair is aware.

The need for clarification of these sections is certainly of great importance.

An Hon. Senator: Question!

The Hon. the Acting Speaker: It was moved by Senator Cowan, seconded by Senator Tardif, that Bill C-54 be not now read a third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

All those in favour of the motion, will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Acting Speaker: All those opposed to the motion please say "nay."

In my opinion, the nays have it.

And two honourable senators having risen:

Hon. Jim Munson: Honourable senators, pursuant to rules 67(1) and 67(2), I request this vote be deferred until Monday at 5:30.

The Hon. the Acting Speaker: The vote will be deferred until Monday.

STUDY ON MATTERS RELATING TO ANTI-TERRORISM

THIRD REPORT OF SPECIAL COMMITTEE ON ANTI-TERRORISM—DEBATE ADJOURNED

The Senate proceeded to consideration of the third report (interim) of the Special Senate Committee on Anti-terrorism entitled: *Security, Freedom and the Complex Terrorist Threat: Positive Steps Ahead*, tabled in the Senate on March 23, 2011.

Hon. Hugh Segal: Honourable senators, I wonder if might speak to the committee report under Item No. 1. I have spoken with Senator Joyal, and he has agreed that I could speak on the matter under his name.

Honourable senators, I want to put on the record a little bit of the content of the report which is now on the Order Paper for consideration at some future date. In so doing, I want to express my profound appreciation to my colleague, Senator Joyal, who acted as deputy chair, and to other colleagues on both sides of this chamber, Senators Furey, Jaffer, Marshall, Nolin, Smith (Cobourg), Tkachuk and Wallin, who also worked hard through the hearings and on the preparation of the report now before you.

I would be remiss if I did not express my appreciation for the very hard work of the parliamentary research officers, Dominique Valiquet and Cynthia Kirkby, and of course our remarkable clerk, Barbara Reynolds, who never took "no" for an answer and was able to facilitate all our meetings, plus teleconferences with witnesses from across the world, in the most constructive and helpful way.

As those who have been in this chamber longer than I will know, this committee was originally constituted to deal with special legislation that was brought in by the Chrétien administration after the events of 9/11.

Honourable senators, various changes had to be addressed when that legislation elapsed, in terms of its five-year time frame. Recommendations were made by prior committees, based also on decisions by the Supreme Court with respect to some of the guarantees that were offered by officials during the time of the original legislation, that the legislation was, in fact, Charter proof. In fact, the courts determined that in some significant respects, it was not. Changes were recommended by this committee and the government of the day acted to make those changes. Then, by virtue of elections, prorogations and the continued existence of Bill C-17 in the other place that has yet to come to this place, we have not completed that cycle.

In the interim, we received, last year, an order of reference from this place to look at anti-terrorism matters, writ large, and to perform an analysis of Canada's preparedness, the information sharing between our security agencies, and what might be done, where appropriate, to strengthen those operations.

The 15 recommendations, which I will not go through in great detail, deal with a range of issues, which I will reflect on for just for a moment.

Most importantly, in the initial part of the report, there is an extensive examination of the transition that we have seen in the phenomenon of home-grown terrorism, both in the United Kingdom, United States and Canada, from simple radicalization of disaffected young people to the use and planning of violent activities against the rest of Canadian society.

• (1250)

We are all aware of the arrest of the so-called Toronto 17 and the cooperation of different police and intelligence forces for the purpose of gathering up the information necessary for those charges to be laid and the due process that followed. We may not have been aware that that was the third network that was under surveillance by security and police forces in this country. Two others had existed but were disrupted through lawful means before they could get to the point of providing any meaningful danger. Their activities led police forces to be concerned about the risk that might ensue, and we can be grateful that our police and security forces acted in a prophylactic and lawful way to keep bad things from happening, which of course is the best possible result.

Canada does not do a lot of research into this transition from simple radicalization to violence. Other countries — the United States and the United Kingdom — have done more. We heard evidence about the work being done there, and this report calls on the government to invest more heavily in that kind of research. It is behavioural. It is cultural. It relates to economic and social issues. It also relates to the relationship of the Internet and to the availability of materials which invite to violence.

While this report takes a strong position against censorship, this report also says that we might want to learn from some of the activities pursued by our police forces in terms of child pornography where ISPs, the actual suppliers of the digital signal, take some responsibility for the content in those broad nets and act in a fashion that is prophylactic and constructive.

There was also a strong set of recommendations about increasing representation in our police and security forces. We were delighted to see that we were not far off in terms of the make-up of those forces from the make-up of our population, but there is a gap. We are encouraging our police and security forces to try to close that gap as quickly as possible, but we did not recommend the use of quotas in that respect.

I want to deal with one other aspect of the report before I surrender the floor, and that is the issue of legislative oversight. I want to do so in a fashion that I hope will evoke interest from all of our colleagues.

Canada is the only G8 country that lacks legislative oversight of its security services. I am not talking about the great work that is done by SIRC, which is comprised of distinguished Canadians who have security clearance and, on a post factum basis, analyze complaints that may come up with respect to CSIS. I am talking about the British example of the parliamentary Security and Intelligence Committee chaired by Sir Malcolm Rifkind, a former Foreign Secretary and Defence Secretary, and made up of members of all the parties in the House of Commons and the House of Lords. They do not receive a formal security clearance in the sense that we would understand it. Senator Eggleton will understand this in terms of the Department of Defence and the security clearances that are required for senior officers of the Crown in those roles. They are appointed by the Prime Minister of Great Britain in consultation with the opposition leaders.

We held an informal meeting with that group here in Canada. Our entire committee had lunch with them at the British High Commission. We had a very frank parliamentarian-to-parliamentarian discussion about how they have operated. That oversight group, which looks at plans, budgets, operations, priorities and senior personnel for every single one of the British security agencies, has been in operation since 1994 — 17 years — and there has not been one single breach of national security in that period of time.

Many of the agencies and heads who appear before that British committee have said that they have found that process extremely helpful because when, on occasion, the media or, God knows, even a member of the opposition, makes an allegation about what may or may not have happened within the security services, the members of that parliamentary committee are in the position to say: "The allegation is both unfair and untrue. There was a full and broad discussion of those issues in our committee. We understand precisely what the security agencies were trying to do and why that was a rational reflection of the public interest as it might be best understood at that time."

Honourable senators, the recommendation that we move to the British model is one of the recommendations in the report before you. I believe it is one that in the spirit of the bipartisanship of the committee may survive whatever events transpire over the next five to six weeks, so that the government of the day that comes into office as a result of our democratic process may be well disposed to reflect on that content and think about moving ahead.

Interestingly enough, that committee reports to the Prime Minister, but the Prime Minister is, by statute, required to make the report public within a limited period of time. If there are matters in that report that he, in his wisdom, decides is not in the public interest to disclose, he is free not to do so, but he must indicate that he has, in fact, excised something from the report so the public and parliamentarians generically are aware of the fact that that took place.

That legislative accountability is important not because parliamentarians, certainly not on our committee and I am sure it is true for the broader community, have any interest in immersing themselves in the operational day-to-day decisions of security forces. They have to make those decisions based on the law, on the chain of command, and on the judgment and discretion the law gives them in the defence of all of our national security and individual safety in our society. There is the notion that there be no parliamentary review at all, no frank discussion of priorities, plans, direction, budgets and efficiency, and no discussion of whether the activities are responsive to the Charter of Rights of Freedoms. Officials often say that this piece of legislation or that piece of legislation is Charter-proof, and we later find out through due process in the courts that it is not so Charter-proof. The notion, as is the case before all of our committees in both houses now, that a head of CSIS or RCMP anti-terrorism is prevented by the secrets act, prevented by the law, from making full disclosure to parliamentarians does not reflect on their integrity or ours. It reflects on the absence of a statutory bridge so they can tell the truth as they often want to do but are prevented from doing by virtue of the act as it now exists.

Honourable senators, this proposal would allow us to make progress in that respect, and therefore I commend it with the other proposals in this report to your positive consideration.

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

Senator Segal: I would be delighted.

Hon. Lowell Murray: Honourable senators, I must confess that I have not yet got around to reading the report of the committee, but I shall do so with considerable interest. I thank the honourable senator for an interesting and thorough overview of what it contains.

Let me say, by way of preface, that I agree totally with the honourable senator on the question of legislative oversight. I well recall the day that our colleague Senator Fraser, acting for the Chrétien government, brought in new measures, post-9/11. While I suppose at my advanced age there is a tendency to repeat oneself, I remember thinking, and I think I said, that I for one, and I think many of us, would be prepared to cut the security services a lot of slack provided there was real legislative oversight. I think a lot of people, including many Canadians, might feel more reassured if my friend's recommendations were implemented.

My question, however, has to do with ministerial oversight. I do not know whether the committee dealt with that subject, but it is of considerable interest to me.

• (1300)

Ministers are not ciphers and ministers, of course, should not be dabbling in the middle of security operations any more than the rest of us. However, I believe it is of the utmost importance that proper political direction, as I think the honourable senator and I would understand it — and most of us would — is given to the security services.

Again, I delve back into my anecdotal life, but I remember being somewhat scandalized some years ago when the then Minister of Justice, the Honourable Anne McLellan, who was, as we know, a highly educated and capable minister, told the media that she had not been advised of the raid by the RCMP and security services on the private residence of a member of the Parliamentary Press Gallery, and that moreover she should not have been told.

I took an entirely different view and I think most of us would. It was a matter that involved national security, our international relations and freedom of the press, as we all know. Of course, the security services should have consulted her and, of course, she should have been willing to say, "I forbid you to do that," provided she is willing one day to stand up and take responsibility for her actions.

I do not know whether the committee dealt with this important issue. The first line of defence is proper political ministerial supervision. I do not know whether my friend's committee dealt with that issue, or indeed, whether he has any observations to offer on it, but I would be interested to hear about it.

The Hon. the Speaker *pro tempore***:** Before Senator Segal continues, I wish to advise him that his time is up. Would the honourable senator like to ask for more time?

Senator Segal: Five minutes.

The Hon. the Speaker *pro tempore***:** Is more time granted, honourable senators?

Hon. Senators: Agreed.

Senator Segal: I thank Senator Murray for that question. As we did not have any formal legislation to consider in the preparation of this report, we did not summon or invite a minister of the Crown to be present for the discussions so we did not explore that specific line of inquiry. I believe it would be inaccurate for me to suggest that there was any detailed debate within the committee about the exercise of ministerial accountability.

I believe it is fair to say, though — and I have colleagues in the chamber on both sides who served on the committee — that the consensus around legislative oversight was that ministerial accountability, in terms of the direct chain of command, is insufficient in a parliamentary democracy; that the premise of a parliamentary democracy is that while operational decisions have to be made on occasion in secret, and the people who have direct responsibility at the ministerial level, and the appropriate clearance, have to be aware of those decisions, and I would argue as the honourable senator does, that responsibility should not be a post-factum reality, but ministers have the right to be aware in advance and to exercise ministerial responsibility in that respect. We took the view that in a parliamentary democracy. That reality may be, whatever measure of discretion might be employed by a minister of the Crown in the discharge of that obligation, there was a broader responsibility in a democracy that the elements and agents of national security have an accountability to the parliamentary process. That is because the definition of national security in this report is acting to protect Canadians, their institutions, their freedoms and their rights from intimidation, terrorist activity or violence from those who want to achieve political ends through violent purposes.

Therefore, the accountability to Parliament is one of the elements that our national security agencies seek to protect, and therefore they themselves should not be outside the same realm of accountability as other aspects of Her Majesty's government. However, we respect the need for confidence, discretion and a secure context within which the statute would allow them to testify in that circumstance.

Hon. Joan Fraser: I am not a member of the committee. As I listened to Senator Segal, I found myself thinking: This sounds like a wonderful report and I would endorse the concept of legislative oversight. I strongly agree that oversight would be a tremendous addition to the Canadian system. However, I did want to address the question raised by Senator Murray.

He, with his extraordinary institutional memory, may recall that a few years ago the Standing Senate Committee on Transport and Communications uttered a report on federal policy vis-à-vis the news media in Canada. In that report, we recommended that ministerial authorization be required for any search warrant or comparable exercise against a member of the media — home, newsrooms or whatever — for the kinds of reasons that I think the honourable senator is outlining, and our reasoning was similar to Senator Murray's. The government in its wisdom did not accept that explanation, but I still think it was a good one.

Hon. Tommy Banks: I wanted ask a question of Senator Segal, but his time is so close to expiring and my preamble to the question would be so long that I will simply speak on the debate on the report. I apologize that I have been distracted otherwise and have not read the report, but I did take note of the fact that it made recommendations with respect to parliamentary oversight.

I am sure I am not informing honourable senators of anything they do not know, but it might be useful for all of us to know that Prime Minister Chrétien recognized that, as Senator Segal has said, Canada is the only nation among all our close allies, not only the "four eyes" or "five eyes" but all of our close allies, that does not have some form of parliamentary review or oversight of security and intelligence questions. In that respect, Prime Minister Chrétien empanelled an all-party committee of both houses of Parliament, which was chaired by Derek Lee and included Michael Forrestall, Colin Kenny, Serge Ménard, who was Minister of Public Safety for the Province of Quebec, Peter MacKay, Joe Comartin from the NDP and me. I believe that was the extent of the committee.

We went to London, Washington and Canberra, and corresponded otherwise with people to learn what we should do in that respect. It was the determination of the then government that we ought to connect with these people.

We made a report, which is, I suspect, in many ways concomitant with the report that the honourable senator made because we arrived at the same conclusion: There has to be parliamentary oversight because ministerial oversight, while it is important, is not enough.

It is not enough in either house of Parliament that someone should say, "There seems to be a problem in Lithuania," and the minister stands up and says: "Everything is okay; we have looked after it;" or "There seems to be a leak here," and the minister says, "We have looked after it." That is not good enough. Someone else has to stand up and assure their colleagues that the problem is being looked at. That is oversimplified, but that is how it boils down.

The question that exists, though, is how does one do this? Do we have oversight in the normal sense of that word, which implies a degree of direction, or do we have review, as in the case, for example, of the Security Intelligence Review Committee? Do we direct what is going on, oversee what is going on, or do we review what went on after the fact and determine whether it was okay? That is an important question. We did not make a determination on that respect. We recommended something in the middle.

One of the things that we talked about, though, was the access to which the honourable senator referred. For a member of Parliament to be able to stand up and assure either of our houses, and his or her colleagues, that a matter is being looked after properly, that person would need access at approximately the level of a privy councillor, which is the case with the people who oversee the Canadian Security Intelligence Service. They are privy councillors. There are advantages to that and there are disadvantages to that. Some members of that committee that I describe had differing opinions about whether the members of such a committee, a parliamentary oversight committee, ought to be made privy councillors or be given access to the highest levels of security questions by a means otherwise. We determined that it should be otherwise and that they should sign and undertake a very special oath, which would allow them access to those highest levels of security.

• (1310)

I hope that when we are considering the report that Senator Segal has described, honourable senators, that we will also take into account the report that was made by the committee that I have described, because there may be synergies between them. They may scratch each other's backs and the results may be even more fortuitous.

However, I am delighted to hear that a committee that the honourable senator described has recommended that. The report the committee made to government which I was talking about was not acted upon, partly because of inertia and partly because of changes in government. I am delighted that the honourable senator's committee has raised it again and I am proud of what he said.

Hon. Roméo Antonius Dallaire: Honourable senators, when I joined this place, it confirmed what I knew from the years of serving, even as a general officer who came before committees, that the parliamentarians were often raising points that were essentially out of sync with the intelligence information and with the data that we had that was classified but which we could not use in front of the committee. One example would be the Defence Committee and, I would suggest, even the Special Senate Committee on Anti-terrorism, although I have just joined it and I have not seen a lot.

That absolutely made no sense to us, the generals. We have the minister and the executive, but parliamentarians in committee had, in fact, such an incredible limitation. I am trying to ruminate on what was agreed, that that special committee of senators and MPs would have access to all sources of information and intelligence in the nation in order to be able to provide the advice and the oversight to the Prime Minister.

Am I correct that that is how we wrote it?

I said that I wanted to ask a question.

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

Senator Dallaire: I thought I was limited by time. I was going to pursue debate.

I do not want to adjourn this because I want to see this thing through, so I will terminate my point of debate at this point.

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

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, there have been discussions with my counterpart on the other side and I would ask the Senate to move to item 84 under "Other." I did, in fact, consult with the independents in the chamber, as I always try to do.

[Senator Banks]

THE SENATE

MOTION TO CALL UPON CHINESE GOVERNMENT TO RELEASE LIU XIAOBO FROM PRISON— MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Di Nino, seconded by the Honourable Senator Stewart Olsen:
>
> That the Senate of Canada call upon the Chinese Government to release from prison, Liu Xiaobo, the 2010 Nobel Peace Prize Winner;
>
> And, on the motion in amendment of the Honourable Senator Day, seconded by the Honourable Senator Banks, that the motion be amended by replacing all the words after "call upon" with the words:
>
> "the Government of Canada to discuss with the Chinese Government the welfare of Mr. Liu Xiaobo.".

Hon. Consiglio Di Nino: Honourable senators, I will not keep you very long. I will only take a couple of minutes to put something on the record.

On this issue, honourable senators, I am not at all impressed with Senator Day's amendment or his arguments. His amendment would weaken my motion to the point of rendering it irrelevant. Maybe that is his intention.

On Senator Banks' suggestion that on these issues we should defer to the government, I remind him that we are the Upper House of the Parliament of Canada, with constitutional powers to deal with these matters.

Honourable senators, I strongly believe we must not give up our powers or independence and further weaken the role of this chamber in the governance of our nation. This may be a good subject for a Senate inquiry in the future.

Last night, honourable senators, Senator Jaffer stood alone to vote differently from the rest of her caucus colleagues. That was not an easy thing to do. I had a similar experience three or four years ago. I applaud Senator Jaffer. I know what it feels like.

I would like to say a few words about the motion.

For me, it is a simple matter of defending fundamental rights. Liu Xiaobo's sin was to express an opinion — something I believe guaranteed by the constitution of China — an opinion the communist regime did not like. For this sin, he was sentenced to 11 years in prison, where he languishes with little or no contact with family and friends. Most of the rest of the world has condemned China for prosecuting and, indeed, for persecuting Liu Xiaobo, a Chinese citizen who dared question the governance of his country.

My motion does not condemn China, nor is it offensive, precisely because of the sensitivities of the bilateral relations between Canada and China. It simply expresses an opinion about a matter we deem important, which regularly occurs between and among participants of all relationships.

The motion also gives voice to someone who has been denied his rights. It gives hope to all who are oppressed and unable to speak for themselves. Mr. Elie Wiesel said, and I paraphrase: When injustices take place, to silently stand by the sidelines makes us culpable.

I agree with him. When confronted with injustices and abuses of fundamental rights, silence makes us accomplices.

Honourable senators, by rejecting Senator Day's amendment, I am clearly and loudly announcing where I stand.

(On motion of Senator Di Nino, debate adjourned.)

(The Senate adjourned until Monday, March 28, 2011, at 2 p.m.)

The Fortieth Parliament was dissolved by Proclamation of His Excellency the Governor General on Saturday, March 26, 2011.

CONTENTS

Friday, March 25, 2011

PAGE

SENATORS' STATEMENTS

QUESTION PERIOD

PAGE

ORDERS OF THE DAY

Available from PWGSC – Publishing and Depository Services
Ottawa, Ontario K1A 0S5