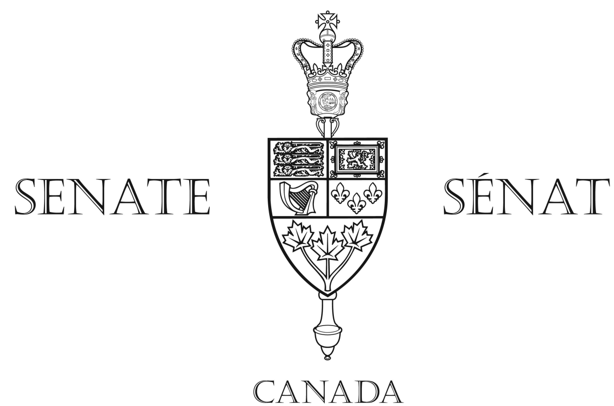

DEBATES OF THE SENATE

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OFFICIAL REPORT
(HANSARD)

Friday, December 16, 2011

The Honourable NOËL A. KINSELLA
Speaker

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

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THE SENATE

Friday, December 16, 2011

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

Prayers.

SENATORS' STATEMENTS

THE SENATE

THE LATE MR. DENIS BOILEAU

Hon. Jim Munson: Honourable senators, on Tuesday, our Senate family became a little smaller. Mr. Denis Boileau, the most kind and polite person you will ever meet, passed away suddenly that afternoon. As the Speaker knows, Denis was responsible for the printing department.

Earlier this week, Senator Tkachuk gave a statement about Denis. Following the remarks, we all rose in silent tribute to him, and today I also wish to take a moment to personally honour his life.

Denis contributed to our work in many ways. I was particularly touched by his work with the Friends of the Senate Program. As many know, I have a graduate of this program, Michael, who has Down's syndrome, working in my office.

Denis played a pivotal role in the design and production of the business cards and stationery we use each day. The quality of his work has an immensely positive impact on how we connect with those we meet. Denis not only made the process possible, he made it perfect.

Honourable senators may recall that the All-Party Party was held two weeks ago. It was Denis's work that ensured each and every one of you, in addition to some 4,500 others who also work on Parliament Hill, received their invitations by internal mail. This was no small undertaking.

If honourable senators talk to any of their assistants about Denis, they are sad today over his loss. He reflected the spirit of this place. Denis was more than happy to assist me and my assistants, Christian Dicks and Lisa Thibedeau. I did not have the opportunity to properly thank Denis for his efforts, but he deserves recognition for his enormous contribution, in addition to all of his other hard work.

As Senator Tkachuk stated, Denis is survived by his wife, his two sons, his daughters-in-law and two granddaughters. Honourable senators, they have a great person to be proud of in Denis's life and his work here at the Senate. Our thoughts and prayers are with them as we share in their grief.

MR. WILLIAM YOUNG

CONGRATULATIONS ON RETIREMENT

Hon. Marie-P. Poulin: Honourable senators, it is a pleasure for me to rise today to draw your attention to a major change that will affect all honourable senators, indeed everyone working here on Parliament Hill. Only days ago, Mr. William Young, the Parliamentary Librarian, retired after six years in that important position and almost a quarter century working in the Library of Parliament to support us as parliamentarians.

[*Translation*]

Honourable senators, Mr. Young is a historian by training, an academic and a researcher. He is the author of many works and was the seventh parliamentary librarian to follow in the footsteps of such respected individuals as Alpheus Todd and John Spicer. He had some very big shoes to fill, and he rose to the challenge. He helped an important institution face the challenges and developments in this new era of fast and immediate information, social networks, connectivity and the public's expectations to be able to participate regularly and meaningfully in the development of the polices that will affect them.

[*English*]

All honourable senators know that the Library of Parliament is vital in our work on behalf of our regions and all Canadians. Honourable senators on the Standing Joint Committee of the Library of Parliament, of which I am the co-chair, always appreciated the work of Mr. Young.

I am sure honourable senators will join me in thanking Bill Young for his dedication and wishing him all the best as he enters a new period in his life.

CANADIAN WAR MUSEUM

NEW BRUNSWICKERS IN WARTIME EXHIBIT

Hon. Joseph A. Day: Honourable senators, on Wednesday of this week, a Down East Kitchen Party marked the opening of the New Brunswickers in Wartime exhibit at the Canadian War Museum. The exhibit arrived in Ottawa as a result of cooperation between the New Brunswick Museum and the Canadian Museum of Civilization, of which the War Museum forms part. The display includes more than 300 artifacts and archival items from 45 different lenders in and about the New Brunswick region.

One feature of the exhibit of particular interest is the personal stories of New Brunswickers during wartime. The exhibit aims to show the visitor what life was like as ordinary New Brunswickers during the period of the First and Second World Wars, whether that time was spent in uniform or as part of the war effort back home.

The exhibit began in New Brunswick, honourable senators, as part of the Year of the Veteran in 2005, and was well received when it was displayed in Saint John, Moncton and Edmunston. Having now made its way to Ottawa, the exhibit can teach all Canadians, not just those from New Brunswick, of life during the First and Second World Wars.

One of the main attractions of the exhibit is how detailed the individual stories are and how well they convey the struggles, hardship and heroics of Canadians in wartime efforts. One unique feature is how the individual stories are followed up so that we can learn what happened to those individuals following the war. Although focused on New Brunswick, one can easily relate to veterans, citizens and communities anywhere in Canada.

The exhibit will be on display until April 2012 at the Canadian War Museum, and I hope all honourable senators will have the opportunity to visit this very fine exhibit known as New Brunswickers in Wartime.

[*Translation*]

ROUTINE PROCEEDINGS

GOVERNOR GENERAL

COMMISSIONS APPOINTING SUPREME COURT OF CANADA JUSTICES AND SECRETARY TO GOVERNOR GENERAL AS DEPUTIES— DOCUMENTS TABLED

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the reports from the commissions appointing the Honourable Andromahi Karakatsanis, the Honourable Michael J. Moldaver and Stephen Wallace as deputies of the Governor General.

• (0910)

[*English*]

QUESTION PERIOD

AUDITOR GENERAL OF CANADA

BILINGUAL CAPACITY

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. I do not expect her to answer it this morning, but I ask her to look into it.

Yesterday, the Deputy Leader of the Government filed a delayed answer to an oral question, and the same answer was given both to me and my colleague Senator Fraser. It arose first out of Question Period on October 26 when I asked Senator LeBreton about the language qualifications of the now Auditor General. She took the questions as notice.

During his appearance at the Committee of the Whole on November 1, we had an opportunity to ask questions of Mr. Ferguson, officials of the Treasury Board, and, I think, the Privy Council Office. We asked questions at that time about Mr. Ferguson's proficiency in both official languages. During the Committee of the Whole, we asked Mr. Ferguson and the officials what the results of the language tests were, and Mr. Ferguson said he could not remember but would look into it and get back to us.

The response to the questions by me and Senator Fraser that we received in the delayed answer filed by Senator Carignan was to the effect that on November 1 officials appeared and that we had an opportunity to ask questions and to listen to the answers. It goes on to say:

> These individuals responded respectfully and fully to all questions . . .
>
> Given the appearance by these individuals before the Committee, the Minister respectfully submits that the government has fully responded to the questions raised by the Honourable Senators.

Certainly, we had a good exchange with Mr. Ferguson and with the officials, but on that one issue we did not get the result. Would the minister look into that over the break and get back to us with the results of the test which Mr. Ferguson had taken? Those are the results which he could not recall and said he would look into and get back to us.

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I will take Senator Cowan's question as notice. I am not sure of the process that was followed. I was not party to it, so, to the degree it is possible to answer the honourable senator's question, I will certainly make every effort.

ENVIRONMENT

DANGEROUS GOODS AND SUBSTANCES

Hon. Elizabeth Hubley: Honourable senators, my question is for the Leader of the Government.

The federal Commissioner of the Environment and Sustainable Development, Scott Vaughan, released his annual report on Wednesday, which contained his findings on Environment Canada's monitoring of the transport of dangerous goods and substances. Mr. Vaughan found that the government failed to monitor and enforce its own regulations regarding the oversight of the transport of dangerous goods as well as the operation of gas pipelines, which, in some cases, are 40 to 60 years old.

He also warned Canadians that their public safety was increasingly at risk as a result of this ineffective enforcement and poor management. Mr. Vaughan said yesterday:

> Canadians would certainly be better protected if these regulations were enforced correctly. They are there for a reason. They are to protect Canadians from exposure to hazardous materials.

These findings are particularly troubling at a time when Environment Canada is very much aware that it could be facing deeper cuts in the months to come.

Can the leader assure us today that her government will immediately commit the resources necessary to ensure the proper enforcement of these regulations, starting today?

Hon. Marjory LeBreton (Leader of the Government): The officials in Transport Canada were very accepting of the recommendations of the Commissioner of the Environment and Sustainable Development and will address and take these points seriously. However, what I do not believe was acknowledged in the report was the aggressive implementation plan that is already under way in the management response and action plan and by which some of these things have already been addressed.

With regard to the pipelines, again, the commissioner did raise some concerns about check backs and incidents along the pipeline. Obviously, this country has many kilometres of pipeline, and the record in the country is very good, although that does not mean that careful attention should not be paid to some of the concerns in Mr. Vaughan's report. Of course, the government fully intends to follow up on each and every one of his recommendations.

Senator Hubley: Commissioner Vaughan noted in his report that every week there are two incidents involving the transport of dangerous substances and one pipeline incident, but with only 65 employees to oversee the entire national pipeline network, it is not hard to imagine that the National Energy Board is overstretched. These events lead to the contamination of our cherished natural habitats and our water systems.

As an example, and this is hard to believe, an inspection revealed that the wrong type of container made of aluminum was used by a company in the transport of sulphuric acid. The truck dissolved 10 kilometres down the road. Why does that type of incident happen at all? It is particularly disturbing, since the Environment Commissioner identified many of these weaknesses more than five years ago.

Senator LeBreton: I absolutely agree with the honourable senator, and I read the story about the sulphuric acid being put in a tanker truck that could not handle the product. It is important to point out that every day millions of products are transported back and forth and done so safely. That does not excuse incidents like this, though, and the government does take these concerns seriously and will work to address them. Any product that is dangerous to our citizens should be handled very carefully.

Senator Hubley: Honourable senators, I would like to do the math. On the transportation of dangerous goods and substances, since the last report over five years, there have been 520 incidents. When it comes to the pipeline incidents, there are 260.

I ask the leader again why nothing has been done over the last five years, and why her government is so careless when it comes to the safety of Canadians.

● (0920)

Senator LeBreton: I do not accept that at all. With all of the products that are being shipped and the use of the pipeline, to do the math, as the honourable senator says, makes the assumption that many other incidents may have been avoided because every year there are more and more products being shipped. I do not accept that leap. The fact is that the Commissioner of the Environment raised some very serious concerns. The government takes them very seriously and has accepted all of the recommendations of the Environment Commissioner and will work to address all of them.

THE SENATE

COMMITTEE PROCEDURES

Hon. Tommy Banks: Honourable senators, my question is to the Leader of the Government in the Senate.

Minister, we have learned that over the past couple of weeks in the other place motions have been presented in a number of committees that contain a blanket provision that committee business will, as a matter of course, be done in secret, in camera, rather than dealing with that question on a case-by-case basis.

Since that has been introduced within a short space of time in a number of committees, I am presuming it is either a remarkable coincidence or something that is the policy of Conservative chairs of committees in the other place.

Can the minister tell us whether it is a policy that her government is in favour of and whether, to her knowledge, such a motion to conduct committee business in committees of the Senate as a matter of course in camera and in secret would be introduced here?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question. Far be it from me as the Leader of the Government in the Senate to insert myself into the operations of the committee structure in the Senate or in the House of Commons. I am only aware of what the honourable senator asks as a result of reading about it in the newspaper. I do not think this falls within the purview of my responsibility as Leader of the Government in the Senate to answer, because I, and I am sure my colleagues in the other place — although I cannot speak for them — in no way intend to become involved in telling our committee chairs and steering committees how to run their own work.

While I am on my feet, this is Senator Banks' last day in the Senate. During the tributes to Senator Banks — and perhaps someone mentioned that — he and I did have an occasion before

he took a position as a Liberal senator to have some dealings. It was under the Conservative government of Brian Mulroney that Senator Banks was named to the Canada Council.

Senator Banks, I did not involve myself the other day in the tributes, but you have exemplified yourself as an outstanding parliamentarian. As I watched you walk up the Hill this morning, I felt rather sad to think that this is your last day in the Senate.

Senator Banks: Thank you very much, leader. I appreciate that. I also appreciate your assurance that committee business will be left to the committee. I am grateful to hear that. I thank you for your kind compliments.

Senator LeBreton: You are welcome, Senator Banks. Not only would I suffer the wrath of senators on that side but I can assure you that I would suffer the wrath of senators on this side as well if I were ever to attempt to do such a thing.

FOREIGN AFFAIRS

UNITED NATIONS—ACTION ON MISSING WOMEN

Hon. Mobina S. B. Jaffer: Honourable senators, my question is also to the Leader of the Government in the Senate. There has been some talk about the UN looking into the issue of missing women. May I ask if that is correct?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, we understand that there have been several organizations that have made that recommendation. As far as I know, to this point the United Nations has not acted upon those recommendations. At the moment there is no investigation but, of course, as the honourable senator knows, we have as a government taken this issue very seriously, but as of the moment we are not aware of any specific investigation.

PUBLIC SAFETY

MISSING AND MURDERED ABORIGINAL WOMEN AND GIRLS

Hon. Mobina S. B. Jaffer: Honourable senators, some time ago, I asked what is being done for missing women and the leader told me she would get back to me. I am still waiting for the answers. When may I receive those answers?

Hon. Marjory LeBreton (Leader of the Government): I will have to check. We try to respond as quickly as possible. I do not know, honourable senators. I will need to verify.

INTERNATIONAL COOPERATION

FOREIGN AID FOR MATERNAL AND INFANT HEALTH IN DEVELOPING COUNTRIES

Hon. Mobina S. B. Jaffer: Honourable senators, I have said that our government had made an amazing commitment to the women of the world on maternal health at G20. I had commended our government and I had asked the leader to find out for me exactly how much money we have spent, where we have spent it and what our continuing support is, and I am still waiting for the answer.

Hon. Marjory LeBreton (Leader of the Government): I had thought we answered that, but I will check on the status of that response as well, honourable senators.

ORDERS OF THE DAY

POINT OF ORDER

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, on Thursday, December 8, at the end of debate on second reading on Bill C-29, a supply bill, Senator Comeau raised a point of order. He requested a ruling to provide clarification on the process in the Senate for studying the Estimates and the adoption of the related supply bill, and the relationship between them.

I am prepared to give this ruling now.

[*Translation*]

Senator Comeau's point of order followed other second reading speeches on Bill C-29. Senator Gerstein had moved adoption of the bill, and Senator Day had then explained the differences in how the Senate and the House of Commons deal with supply.

[*English*]

Under its Standing Orders the House of Commons adopts the Estimates before the introduction of the supply bill. This reflects the fundamental role of the House of Commons in relation to financial measures. The Senate deals with supply in a different way. Here, there are two related but separate processes at play: the review of the Estimates and the adoption of the supply bill. The steps are related since the supply bill seeks approval of expenditures outlined in the Estimates, but they are separate since the introduction and the passage of the supply bill is, in the Senate, not contingent upon any action on the Estimates.

As Senator Day explained, the typical approach in the Senate is to deal with a report of the National Finance Committee on a set of Estimates before final disposition of the related supply bill. Senator Day characterized this as a convention. He acknowledged, however, that there have been divergences from this approach in the past.

[*Translation*]

In the Senate, the Estimates are tabled by the government. The National Finance Committee is then authorized to study most expenditures contained in the Estimates, although authorization may be given to other committees to study some expenditures. However, the Estimates themselves are never referred to the

committee for any formal approval. This is an important distinction. Because the Estimates themselves are not referred to the committee, it does not approve them or recommend approval, and, indeed, it does not have authority to do so. The committee only studies and reports on the expenditures as set out in the Estimates.

[*English*]

The committee's report contains an analysis of various issues related to expenditures in the Estimates, and is provided for the Senate's information. As such, it would be more in keeping with rule 97(3) for the report to be tabled in the Senate, although it is often presented. By tabling a report, the National Finance Committee fulfils its duty to examine and report on the Estimates. No further action is actually required, but, in accordance with established practice, a procedural motion is usually moved under rule 97(3) to consider the report at a subsequent sitting, which allows senators to debate and discuss the contents. If adopted by the Senate, this report becomes a Senate report, rather than just a committee report.

• (1930)

[*Translation*]

A supply bill comes to the Senate through a separate process, completely different from the National Finance Committee's report to the Senate on the Estimates. The supply bill is received from the House of Commons by message, like any other bill originating in that House. By the time the Senate receives the supply bill it has an existence quite separate from the Estimates. Depending on proceedings in the House of Commons, the amounts in the supply bill could actually be lower than those indicated in the Estimates. After coming here, the Senate deals with the bill through the usual legislative process, with the notable exception that supply bills are very rarely referred to committee, although nothing in the Rules prevents a supply bill being referred to committee after second reading.

[*English*]

Some may find it helpful to draw a certain parallel between the Senate's work on Estimates and supply bills and the process for pre-study of a bill. A committee may be authorized to pre-study a bill that is in the House of Commons, but its work does not, indeed cannot, delay or hold up the progress of the bill itself when the Senate receives it. Likewise, the National Finance Committee studies Estimates, but that work, important as it is, does not affect the progress on the supply bill when it reaches the Senate.

In practice, the Senate often receives a report from the National Finance Committee on Estimates before dealing with a supply bill providing for the expenditures set out in those Estimates. The work of the National Finance Committee is important to the Senate as it informs senators about issues arising from the Estimates and so contributes to an understanding of government programs. As such, this sequence of proceedings is beneficial, and perhaps even desirable.

[*Translation*]

To repeat, the *Rules of the Senate* do not require that a report on the Estimates be received or adopted before the Senate approves supply bills. There have been a number of instances when a supply bill has been passed without adopting a report from the National Finance Committee on the Estimates. So, while the approach of a report followed by the Senate's decision on a supply bill, which Senator Day termed a convention, is usually followed, this is not always the case.

[*English*]

On this point, useful guidance can be found from a debate in the Senate on December 9, 2002. A point of order was raised in which a senator maintained that the Senate cannot proceed with the study of the supply bill until it has adopted the National Finance Committee's report on the Estimates. It was asserted that the committee's report is in effect a proposal to adopt the Estimates and that the Senate cannot proceed with the supply bill until it has adopted the committee report. The contrary view was that while it is certainly a useful practice in the Senate to debate the report of the committee on the Estimates, it is by no means a necessary step before the introduction and study of the supply bill. The premise of the counter argument was that neither the committee nor the Senate concurs in the Estimates. In his ruling, the Speaker stated that the National Finance Committee's report does not constitute concurrence in the Estimates. Instead, the report is a review of the Estimates with observations. He added that the Senate is only asked to adopt the supply bill which seeks approval of funds for the expenditures outlined in the Estimates.

[*Translation*]

To conclude, while it may be helpful to consider or adopt the report of the National Finance Committee related to the Estimates, neither our Rules nor our practice make it essential that the report be received or adopted before the Senate proceeds with a supply bill providing for the related expenditures. Indeed, the Senate can adopt the supply bill without any report. For a particular series of proceedings to be obligatory, it would, as Senator Comeau noted, be necessary to amend the *Rules of the Senate* to clearly reflect such a requirement.

[*English*]

BUSINESS OF THE SENATE

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, pursuant to rule 27(1) of the Rules of the Senate, I would like to inform the Senate that, as we proceed with government business, the Senate will address the items in the following order: Bill C-20, followed by the items of government business as they appear on the Order Paper.

[*Translation*]

CONSTITUTION ACT, 1867
ELECTORAL BOUNDARIES READJUSTMENT ACT
CANADA ELECTIONS ACT

BILL TO AMEND—THIRD READING

Hon. Claude Carignan (Deputy Leader of the Government) moved the third reading of Bill C-20, An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act.

He said: Honourable senators, I am pleased to rise today to take part in this debate on Bill C-20, the Fair Representation Act, at third reading.

I will be brief. I am convinced that most of the honourable senators support the objective of this bill, which is to ensure that the representation of each province in the House of Commons is more proportional to its population. I would like to thank the Standing Senate Committee on Legal and Constitutional Affairs for studying the bill.

[*English*]

The committee heard from the Minister of State for Democratic Reform, who reminded the committee of the government's objective to move the House of Commons towards fair representation. In particular, the minister outlined how the bill reflects the government's three distinct promises to provide fair representation by allocating an increased number of seats now and in the future to better reflect population growth in Ontario, British Columbia and Alberta; protecting the number of seats for smaller provinces; and protect the proportional representation of Quebec and other provinces according to their population.

[*Translation*]

It is now time for the Senate to support the representatives elected by the Canadian people and to approve Bill C-20.

The proposed amendments to the constitutional formula for allocating seats in the House of Commons will go into effect as soon as Bill C-20 receives Royal Assent.

As you know, the number of representatives in the House of Commons and provincial representation must be revised after each decennial census.

According to the Electoral Boundaries Readjustment Act, the readjustment begins once the Chief Statistician prepares and sends a certified return showing the population of Canada and of each of the provinces. Under this act, the Chief Electoral Officer must apply the constitutional formula upon receipt of the return.

Statistics Canada has announced that the Chief Statistician will publish the results of the 2011 census on February 8, 2012.

[*English*]

When the Chief Electoral Officer testified before the Standing Committee on Procedure and House Affairs of the House of Commons, he stressed the importance of seeing this bill passed before February 8.

• (0940)

[*Translation*]

After that date, the independent electoral boundaries commissions of the four largest provinces will have to start their work over again when the bill receives Royal Assent.

This could also cause confusion among Canadians because the commissions might have to consult them twice about two different scenarios, each offering a different number of seats and therefore different boundaries.

I want to remind you what the Chief Electoral Officer, a non-partisan officer if ever there was one, said:

> The best date, in our mind, would be before the commissions are set up in February. Otherwise, commissions will have to start their work, the legislation will come into place later on, and they will have to restart again. That may, of course, generate additional costs, but also quite a bit of confusion, depending on what time the legislation comes into place.

If the bill is passed by the Senate before the end of December, independent commissions could be set up before the results of the 2011 census come out. The commissions will use all the time they have before February 8 to set up their offices and do many other administrative tasks before undertaking those for which they were set up in the first place.

I feel, therefore, that it is in everyone's best interest to pass the Fair Representation Act as quickly as possible:

- the provinces that are currently under-represented will have the assurance that their representation in the House of Commons will better reflect their population;
- the members of the independent electoral boundaries commissions will know what to base their activities on;
- Canadians and parliamentarians will be consulted and will have the opportunity to share their opinion on the clear proposals prepared by the commissions; and
- Canadians in the under-represented regions will have new representatives in the House after the next general election.

[*English*]

I therefore call on all honourable senators to support this bill in order to restore fair representation in the House of Commons.

[*Translation*]

Hon. Dennis Dawson: Would the honourable senator take a question?

Senator Carignan: Yes.

Senator Dawson: A number of witnesses said that, for the 1974 and 1985 reforms, there were white papers. There was consultation. One comment that was made again and again was that we need not agree on a maximum of 308 ridings; there could be 338 ridings. But might the government be prepared to examine the possibility of setting a maximum number of parliamentarians?

In the United States, the number of seats is fixed at 435. In England, the number is being reduced from 650 to 600, and in France, Germany and Italy the number has also been frozen.

Would the government consider creating a committee to examine the possibility, in about 10 years or after the next census, of setting a maximum number that would be acceptable to Canadians?

Senator Carignan: I think that the law is clear with regard to the representation formula, the determination of the number of representatives in the House of Commons and the process that should be followed after each decennial census in order to determine the number of representatives in the House of Commons.

Clearly, after the speech I gave yesterday, you will understand that I do not want to make any commitments that would bind future parliaments. It will be up to the people who hold seats in government in the future to modify the formula, if they deem it necessary.

[*English*]

Hon. Joan Fraser: Honourable senators, as has been so often remarked, Canada is not an easy country to govern or to hold together. We are so big and so varied, and the strains on our cohesion are often so great, that it is extremely difficult to devise the best way for Canadians to be represented in their federal Parliament, in the House of Commons.

Historically, faced with the continuing move of population from east to west and the need to ensure that smaller provinces, and those provinces that have lost or may lose population, will continue to be properly represented in the House of Commons, the solution, and the way to square the circle, has been to add seats to the House of Commons and to add protective measures.

I think the oldest and probably the strongest of these is what is known as the senatorial clause in the Constitution, which says that no province shall have fewer seats in the House of Commons than it has seats in the Senate. This was originally devised about a century ago to protect Prince Edward Island, but it now also protects New Brunswick, and in the foreseeable future may well also protect some other provinces.

There was also added in law — not in the Constitution — in the 1980s a grandfather clause to the effect that no province could actually, in a redistribution, be given fewer seats than it had in the previous distribution of seats. This complicates the distribution of seats enormously, and that is one reason why historically we have coped with this difficulty by simply adding seats to the House of Commons.

All the expert witnesses, the learned academics whom the committee heard from — there were six of them — agreed that, as my colleague Senator Dawson has just suggested, you cannot go on doing this forever. You cannot just go on forever and ever and ever adding seats to the House of Commons. Physically, there is not room. Perhaps a building ought not to determine the quality of political representation, but the chamber has its own historic and emotional importance to many Canadians, and there is also the question of cost. There are various costs to this business of just going on and on and on adding seats. The most obvious and immediate one is, of course, in cold, hard dollars.

According to figures that your committee was given by the government, adding 30 MPs, which is what this bill will do, will cost the taxpayers of Canada $19.27 million a year. Over a four-year cycle, therefore, it will cost nearly $80 million, plus the cost of actually running elections for 30 more MPs, which is a bit over $15 million. We are up at about $95 million for the privilege of adding 30 MPs.

Given the size of our budgets, there are those who would say, echoing C.D. Howe, what is $100 million? However, I do not think the people of Canada would think that, particularly not at a time when everyone in this country is being asked to face cutbacks and austerity. For $95 million, how many Employment Insurance agents could we have kept on the payroll to serve the people who need their services? How many environment researchers or fisheries researchers could we have kept? We have decided not to do that, or at least the government has decided not to do that.

● (0950)

We had one witness, Professor Andrew Sancton from the University of Western Ontario, whose remarks reminded me of a position often taken by our former colleague Senator Lowell Murray. Senator Murray used to say that matters electoral were things where the Senate should not automatically defer to the House of Commons in, but on the contrary we should examine the proposals very closely because of the House of Commons' obvious self-interest in bills concerning matters electoral.

Professor Sancton said:

> Except for incumbent and aspiring MPs, the absolute number of seats in a particular province is quite irrelevant.

Then he went on:

> My main concern is simply this: Very few of us can solve our own difficult personal and employment problems by simply adding to our numbers and appropriating more resources, but this is exactly what the House of Commons is proposing to do.

In a way that is true, although perhaps rather a more harsh description of what the House of Commons is doing than I would actually have chosen. I think this bill was, in fact, designed to try to solve real problems in a manner that was appropriate. All of our witnesses said that this was an honest attempt to solve a difficult problem.

The fact remains that sooner or later we have to bite the bullet. We have to say it will not do simply to go on adding MPs. It seems to me that if we have to face that problem some day, why not now?

My party has proposed a formula in the house, and again in our committee here, that would keep the total number of MPs in the House of Commons at 308 but would redistribute the balance of those seats, while preserving the senatorial clause and the grandfather clause to protect small provinces, in a manner that would reflect population shifts. In this way, populations would continue to be represented proportionately, as they should be in the House of Commons, but we would not be engaged any more in this endless series of increases.

As Senator Dawson has just pointed out, in previous redistributions there was time for public debate. Options were presented and white papers were presented so that the people of Canada could consider the implications of whatever the final choice was going to be and have input in that final choice. That has not been done this time, but it will have to be done, if not now, probably fairly soon, so why not now?

Professor Sancton said — and I thought there was much logic in his argument — we should freeze the number of seats now and then have the debate on what the appropriate size of the House of Commons should be. Maybe it should be greater than 308, but think it through. Think through the principles upon which you are going to determine that size and then let the people of Canada have their say about it through public hearings and their politicians.

That was not done this time, but I hope it will be done soon so that we have plenty of time to consider, with a tranquil spirit, how we will approach the next redistribution.

Senator Lang pointed out in committee that Yukon may well face a significant increase in its population that would merit more than the current one seat. At the moment all the territories get one seat each and that is that, no one even thinks about it. We cannot go on like that forever if their populations shift. How will we handle it? We need to know.

I would like to leave honourable senators with one last thought about another cost of endless increases in the number of MPs. We can find money, we can find space, but we cannot find more time. The more MPs there are, the less time there is per MP for participation in debate and in the work of house, and indeed even for the work of the committees.

I have long believed that one reason we in the Senate can pride ourselves on what we consider to be more thorough, deeper debates, both in the chamber and in committee, is that there are fewer of us than there are MPs. Therefore, we can each claim a slightly greater share of the available time than is available to the average MP.

To take it to its logical extreme, I mentioned in committee that a few months ago I had the privilege of observing a session of the European Parliament. I do not know how many hundreds of members there are of the European Parliament, but I know that the chamber that has had to be built to accommodate them resembles a small football stadium. The result is that for major speeches, they have time limits of 30 seconds, one minute, or, if they are very lucky, two minutes. Two minutes to give a speech on the budget, for example. That is where we will end up if we go on growing and growing like Topsy.

Senator Carignan: Good idea.

Senator Fraser: The government may think it is a good idea. Wait, as my colleague says, until the positions are reversed.

We will not get there tomorrow or the day after tomorrow, but it is something else that I think we need to bear in mind. Therefore, I cannot support this bill as it is written.

I accept that it was honestly and appropriately drafted, and after several iterations everyone agrees that this version is better than the ones proposed by the government in the past, but I still think we could have done better.

[*Translation*]

Senator Carignan: Would Senator Fraser take a question?

Senator Fraser: Of course.

Senator Carignan: Earlier this week, during our debate on Bill C-13 on financing for political parties, Senator Joyal criticized the government for taking a piecemeal approach to adopting various election measures. He said that he did not necessarily see the link. I will make one today.

I do not see consistency from the opposition, particularly when it votes against Bill C-13, which over four years will save $108 million of public money that goes to finance political parties, and now today is saying that we should not spend about $93 million over four years to have better representation.

Does this mean that this week, in terms of electoral reform, the opposition would prefer to have $100 million in partisan public financing instead of investing to have elected representatives that provide effective representation for the Canadian public?

Senator Fraser: Most elected representatives are proposed and supported by political parties that are part of our institutions. They are even essential to the operation of our system. I have always thought that public financing was much better than financing from major private interests. That said, I noticed that you said that increasing the number of members of Parliament would provide better representation. That is where I completely disagree. The two are not closely connected.

For example, in committee we heard that the State of California, which has approximately the same population as Canada, has 80 members in the House of Representatives, the equivalent of our House of Commons.

• (1000)

The State of New Hampshire, which is very small and has a population of just over 1,000,000, has 400 members in its House of Representatives. One of the experts who testified at our committee, Professor Massicotte, made a comment that I found

to be very interesting. I am going back to the issue of finances, but this time I am referring to the budget for members of Parliament to do their work. In California, where there are only 80 representatives, they have very good budgets, can do research, hire staff and serve their constituents. Representatives in New Hampshire are practically volunteers. They are paid $200 a year and do not have a research budget. Who can better represent the constituents? I am betting on the elected representatives in California.

Senator Carignan: Although I do not wish to get Senator Fraser started again, I would still like to ask her this: which state has the larger deficit per capita, California or New Hampshire?

Senator Fraser: I have not checked. However, if I can borrow from our discussions of other bills, it seems that California's deficit is due for the most part to its growing prison population.

[*English*]

Hon. Mobina S.B. Jaffer: Honourable senators, this past Wednesday and Thursday, the Standing Senate Committee on Legal and Constitutional Affairs commenced its study on Bill C-20, An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act. Today I would like to address a number of issues that were raised in committee: the importance of ensuring that all Canadians receive fair representation, the costs that will be associated with this bill, and finally the fact that visible minority groups may continue to receive unequal representation even in the event that this bill is passed.

Honourable senators, our committee had the opportunity to hear from the Honourable Tim Uppal, Minister of State and Democratic Affairs. Minister Uppal explained the need for Bill C-20, saying as follows:

> Bill C-20 delivers on our government's long-standing commitment to move the House of Commons towards fair representation by allocating an increased number of seats now and in the future to better reflect population growth in Ontario, Alberta and British Columbia . . .

He then went on to explain:

> The readjustment formula in Bill C-20 is designed to address problems created by the existing 1985 formula, in particular, the representation gap that has developed between the faster-growing provinces of Ontario, British Columbia and Alberta and the slower-growing provinces. While the 1985 formula has been successful in limiting the size of the House of Commons, it has prevented the faster-growing provinces from receiving a share of seats that is more in line with their relative share of the population.

He then went on to address the gross under-representation of visible minorities.

Honourable senators, I am very familiar with the challenges that my province of British Columbia is currently facing with regard to fair and equal representation. I too believe that we must ensure that all of our citizens are equally represented and they each are provided with a voice. The Fair Representation Act is a step in the right direction but, as with other things, there are still matters that need to be addressed.

For example, previous incarnations of this bill included a provision that enabled the commissioners to look at the projected rate of increase of the population when creating boundaries. This has now been removed. I believe that we need to reinstate the provision to allow the provincial commissioners to take the projected rate of increase in population into account when setting our electoral boundaries.

The more concerning issue for me is the concept of deviation. When the commissioners divide the provinces as per the average population, they are allowed to deviate by 25 per cent. When I asked Minister Uppal about how he would ensure that all citizens receive fair representation, he explained that the commissioners have been set up to take the number of seats that they have received for the province and then divide them based on population. He further explained that the goal was to have each riding consist of roughly 111,000 people, keeping in mind that special consideration would have to be made for ridings in more rural regions.

Minister Uppal then went on to provide an example of a riding that needs to be divided because of sheer size. He explained that the riding of Brampton West consists of 200,000 people. This bill would mean that the 200,000 people would be represented by two or perhaps even three different members of Parliament, depending on how the riding gets divided.

However, since commissioners are allowed to deviate by 25 per cent, my fear is that urban populations will continue to face the same challenges that this bill seeks to address. Many of these ridings have large numbers of visible minorities. In many countries, including the United Kingdom, the deviation rate is 5 per cent. I believe we need to impress upon the commissioners that they very sparingly use the deviation rate of 25 per cent.

Honourable senators, although I firmly believe that every Canadian's vote should be weighted equally regardless of where they reside in the country, I do not believe this bill is the correct remedy to ensure that in this case, as long as we continue to give the commissioners the power of 25 per cent deviation when they deem necessary.

Another point of concern is the costs that will be associated with adding 30 additional seats to the House of Commons. Prior to yesterday evening, I was under the impression that this would cost $14.8 million per year. When I questioned this sum further, however, I learned that the cost associated with adding an additional 30 seats to the House of Commons would in fact be $19.3 million. In addition to the $19.3 million, we will also see an addition of $8.6 million in the additional costs of elections.

Other issues I find to be incredibly troubling are those surrounding community of identity and community of interest groups. Our committee had the opportunity to hear from Mr. Marc Mayrand, who is Election Canada's Chief Electoral

Officer. Mr. Mayrand explained to the committee that Elections Canada planned to organize a panel of Canadian experts to discuss the concepts of community interests and community identity with the commissioners. Mr. Mayrand went on to explain why community of interest and community of identity groups were relevant to the piece of legislation before us, stating:

> In order to determine, effective representation, you need to consider the communities in the district you are trying to define. The Supreme Court gave an open-ended list of factors to consider, such as demography, geography, minority representation. There is a series of factors, and the court was careful to say this is only a list; there may be other factors, such as economic ones, that emerge as the public consultations take place before the commission.

Honourable senators, I am well aware of the importance of taking into consideration the interests of community and identity groups. I too am in agreement that the distribution process should reflect the Canadian mosaic, which is comprised of people from all linguistic, religious and cultural backgrounds. That is why I was incredibly disappointed to later learn that the commission members would be unable to reflect upon the interests of communities and identity groups because they would no longer have access to the information required for this to be the case.

This year, the mandatory long form census form was eliminated. From now onward, every five years, Canadians will instead have to fill out a short form census, which will provide information regarding age, sex, marital status and official language characteristics. The census will no longer provide data regarding characteristics such as ethnic origin, race or religion. Although I would point out that this information could be provided from the National Household Survey, it is important to remember this is completely a voluntary survey, unlike the long form census, which was mandatory.

• (1010)

When I asked Professor Sancton about the challenges that would accompany the future lack of data, he stated:

> . . . the fastest growing areas where you most want to have that information and that information would be, I guess, out of date. I found the Statistics Canada material that they had on their laptop computers, where they could tell us how many people of certain minority groups were living in a few blocks area, was absolutely invaluable. I really do not know how a commission could do its job properly if it did not have up-to-date information of that kind.

Honourable senators, witness after witness stated that visible minorities were particularly under-represented as a group. The question we need to ask is how long we will allow this to continue. It is irrefutable that visible minorities at the present time are under-represented. When holding public hearings, I urge the commissioners to be proactive in ensuring that visible minorities are fairly represented.

Our committee has heard time and again that this bill is about fair representation. However, after learning that identity and community groups will be unable to receive the consideration they are entitled to as Canadians, I am afraid they will continue to receive unequal representation, even in the event that this bill is passed.

Before I conclude, I would also like to mention that I was given an opportunity to ask Mr. Mayrand, the Chief Electoral Officer, whether Muslim women would be required to remove their niqab when voting. He stated that since ballots were accepted by mail, there was no need for a voter to show their face while voting. Therefore, Muslim women who choose to wear the niqab will not have to remove their headdress when casting their vote.

Honourable senators, I understand there is a perceived urgency to pass this bill, as the redistribution process is scheduled to take place in the near future. However, yesterday, while hearing testimony from Professor Andrew Sancton, I learned that this was in fact not the case. A one-page piece of legislation could suspend this process, thus giving us the time we need to properly study and debate this bill. This has been done on numerous occasions in the past.

The Senate of Canada has an important role to play, especially with respect to this particular piece of legislation. It is often said that it is the job of the Senate to provide sober second thought, thus I urge all my honourable colleagues to take the time required to do this.

In conclusion, honourable senators, the time has come for fair representation for all Canadians, especially for visible minorities.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I too want to add a few words to our discussion of this bill.

The principle of representation by population, which underlies the composition of the other place, is fundamental to a bicameral Parliament such as ours. As other speakers have noted, Parliament has some leeway in the application of that basic principle, but it is circumscribed by several constitutional and conventional requirements such as the so-called senatorial floor and the issue of appropriate representation for the Province of Quebec.

Bill C-20 is the government's third attempt at this rebalancing act. I appreciate that the task is difficult and complex, but I do have a concern that the government has taken the easy way out. Rather than redistributing the existing 308 seats, as we know, this bill will add a further 30 seats. No other Western democracy deals with the issue of representation by population and the periodic redistribution or rebalancing of parliamentary membership by simply adding seats.

Honourable senators, I do not believe that Canadians want or need more elected politicians. As my colleague the Honourable Stéphane Dion said in the other place, "Only politicians want more politicians." I suspect many Canadians seeing the dysfunction of Parliament these days are asking whether we really need more MPs or whether it would be better to ensure the existing MPs are allowed to do the work Canadians expect them to do. Canadians see this government imposing time allocation to limit debate on bill after bill, they see committee hearings

circumscribed and parliamentarians cut off from asking serious questions of witnesses. Questions asked in Question Period are dismissed, and attempts to hold the government to account and especially to control the public purse are met with stonewalling. I could go on.

The bottom line is that parliamentarians today are more restricted in their role than ever before in our history. Do we need more MPs, or do we need to change the way Parliament is working to ensure that those parliamentarians already here are able to do an effective job for Canadians?

The Liberal opposition in the other place proposed what I thought was a very commendable and workable amendment that would redistribute the existing 308 seats rather than add a further 30 seats, as is proposed in this bill. I would remind honourable senators that in 1994, now Prime Minister Harper wanted to decrease the size of the House of Commons to 273. Now that he is in power, his government has reversed that position and presents this plan to increase the number of members to 338. Where is the consistency in that position? Why does the Prime Minister now believe the House of Commons needs 65 more members than he thought was sufficient 17 years ago?

Mr. Dion has pointed out if we effected a redistribution of seats rather than an increase, Canadians "would enjoy a more equitable, more representative House of Commons with the same number of MPs as today."

This bill will bring about the largest seat increase in Canadian history at a time when the government is cutting everywhere else. Where is the logic in that? Where will it all end? As Senator Fraser said a few moments ago, if we do not bite the bullet this time, when will we? Is the House of Commons to be a body of perpetual growth?

I quote again from Mr. Dion:

> The Minister of Democratic Reform himself admits that under his formula, according to current population projections, the House will increase from 338 seats in 2011 to 349 seats in 2021 and 354 seats in 2031. However, it may grow even faster than that. If we take the Statistics Canada high-growth scenario, the formula in Bill C-20 would impose on Canadians a 357 seat House in 2021 and a mammoth House of 392 seats in 2031, yet according to a 1996 study quoted by the minister, the current House of Commons can only accommodate 374 members of Parliament.
>
> It is time to put an end to this obligation to always add MPs decade after decade. It is time to halt the perpetual expansion of the House of Commons.

This government ran in the past election promising to run a fiscally responsible and prudent government. It is now in the process of reducing the size of government budgets and of the public service itself. For example, it is cutting $226 million from Veterans Affairs support services, 700 scientists from Environment Canada, 600 Employment Insurance processing staff from Service Canada, 92 auditors from Audit Services Canada and 725 people from Statistics Canada. There are drastic cuts to Environment Canada's ozone monitoring network and to the Canadian Environmental Assessment Agency. This is only a partial list of the cuts that have been announced, and we know there are more to come.

Honourable senators, do we really believe that Canadians would prefer to have fewer scientists, auditors and public servants to help our veterans and more politicians? Yet this government is choosing instead to increase the size of the other place. What is the sense in that?

Honourable senators, while one can argue that the composition and even the size of the House of Commons is a matter for that place, I did feel compelled to add a few words of caution before we give third reading to this bill.

Hon. Sandra Lovelace Nicholas: Would Senator Cowan take a question?

Senator Cowan: Yes.

Senator Lovelace Nicholas: Honourable senators, my concern is that since Aboriginal people are the fastest growing population in Canada, will they be equally represented in this bill?

Senator Cowan: That is a good question. I do not think there is any assurance at all that will be the case. That is the difficulty. By simply adding more people, I do not think there is any assurance that under-representation, which will increase because of the rapidly growing Aboriginal population, will be the case.

• (1020)

Senator Lovelace Nicholas: Does the honourable senator think it should be included in the bill?

Senator Cowan: Honourable senators, there are a number of issues, as I understand it. I did not attend the committee hearings where a number of issues were raised. Senator Fraser and Senator Jaffer have alluded to some others, and the honourable senator has raised one now. Those are the very kinds of issues that require time to study, and I think that would be appropriate. It would be better if there were a greater opportunity for the public to weigh in on the issues, and for interested groups, such as Aboriginal Canadians, to have an opportunity to be heard.

Senator Dawson referred the other day to the work being done in Great Britain, where they are proposing a reduction in the size of their House of Commons. A white paper is issued, and there is ample opportunity for citizens to comment on it. I think that is a preferable way to go, and I think the result would be a better bill, if that approach were taken.

Hon. John D. Wallace: The proposal Mr. Dion has presented that the honourable senator and Senator Fraser described, instead of following the path of Bill C-20, would cap the number of members in the House of Commons at 308, the existing number. From the evidence we heard in committee, the consequence of redistributing or reallocating the existing 308 seats to some of the faster growing provinces would be to take two seats from the

Province of Saskatchewan; two seats from the Province of Manitoba; three seats from the Province of Quebec; one seat from the Province of Newfoundland and Labrador; and one seat from the Province of Nova Scotia. They would lose those seats from what they have today.

Senator Cowan: Yes, that is correct. From my point of view, Nova Scotia, by moving from 11 seats to 10 seats, would be better represented with 10 seats out of 308 than with 11 seats out of 338. If I can be parochial for a moment, I think that we would be better represented. It is slightly different from the other provinces mentioned, but for my part, as a Nova Scotian, if I were looking at the relative strength of my province in a 308-seat house, I would rather have 10 seats in a 308-seat house than 11 seats in a 338-seat house.

I am not an expert, and I did not want to debate particularly the relative merits of other plans, but it is my understanding that Mr. Dion's plan would preserve the relativity of the proportions and the standings in the House. There might be slight alterations, but there was no major adverse change with respect to any particular province.

Senator Wallace: Some of the witnesses we heard in committee expressed a concern that, 10 years out, when the next census would be completed and this redistribution issue would arise again, there would be, in all likelihood, a further increase in the population of the faster growing provinces and areas, and a lesser population growth in the smaller provinces.

If the 308-cap formula were put in place, 10 years from now this issue of redistributing more seats to the faster growing provinces would come up again, and the seats would have to come from somewhere. They would continue to come from the slower growing provinces, and one of them would be the Province of Quebec.

When one extends that forward, what do we end up with as a country? We end up with the seats — not percentages — but members of Parliament who represent people concentrated in the faster growing provinces. What kind of a country do we end up with if that is the formula, with no counterbalance to provide proper representation in terms of the number of people and the number of members of Parliament that will represent those regions?

If we continue to have this erosion in the number of members of Parliament in the slower growing provinces offset against the large geographic areas in the country, we would have huge areas being represented by one member of Parliament. It could well become impossible to represent properly the interests of the constituents.

To my way of thinking, it is not simply a matter of statisticians and percentages. We have to look at what it takes to represent properly, in reality, the issues of constituents in this country, and that takes people. I would suggest to the honourable senator that the number of members of Parliament representing each province is extremely important, and I would suggest to him that his proposal to cap the number will do nothing other than to erode seriously the ability of the slower growing provinces to be properly represented in the House of Commons.

What is his comment?

Senator Cowan: The questions the honourable senator raises are good ones. I am not at all saying we should cap the size of the House of Commons at 308. I am raising red flags; I am raising caution. I wonder whether what we need right now is 30 more seats in the House of Commons.

I appreciate the point the honourable senator makes, and there should be that kind of debate. We need to have a discussion about how we govern such a vast country like this with such an uneven distribution of population across the country. It is a very difficult and complex issue. I do not have the answer. I am not saying the answer is Stéphane Dion's proposal to redistribute the 308 seats. I said that there needs to be a discussion about that for all the reasons Senator Fraser, Senator Jaffer and Senator Lovelace Nicholas referred to. There are complexities that need to be taken into account, and we need to have that national discussion. I do not believe that that national discussion has taken place. That is my point.

I wonder, if, at this time, we are right simply to do what appears to me to be the easy way out, which is just add 30 seats at a cost of roughly $100 million over the next four years. That seems to me to be an extraordinary way to address the issue. I would rather have the debate and discuss the issues that the honourable senator quite properly raises before we proceed with this kind of bill, rather than having the deadline imposed on us, that we have to have it all done by February 1. I realize there are other implications if it is not settled by February, and those may be compelling.

I am just raising some concerns. Many of us will not be here in 10 years time. However, if in 10 years, we have another discussion and go up to 350, as Mr. Uppal suggested, will our successors in this house say, "Well, all right. It is too difficult; we will add another 30 seats?" Where does it stop? We need to have precisely the debate that the honourable senator talks about so that we can ask: How do we govern this country? What is the appropriate way to recognize that we will have large metropolitan centres with dense populations and large areas with sparse populations? How should they be properly represented?

I do not have the answer to those questions.

• (1030)

Hon. Joseph A. Day: I have a question for Senator Cowan. To look at another possible approach to representation, and it is extremely important, a microcosm of Canada is New Brunswick, where the Progressive Conservative government is considering reducing the number of representatives by five. Is the honourable senator aware of that?

Senator Cowan: Yes, I am aware. I also am aware that the province of Ontario, maybe 10 years ago, reduced the number of seats from perhaps 117 to 108.

Senator Runciman: It was 130 to 106.

Senator Cowan: It was 130 to 106. Senator Runciman would have been part of that process. It is possible to do.

Leaving the political stripe of the government aside or the relative political stripe, I wonder whether any Ontarian would say that Ontario is less well governed today because of the number of politicians — probably not. Some might argue that it is either less or better governed because of the political affiliation or political stripe of the government. However, I am not aware of any significant body of opinion in the province of Ontario that suggests that that was a wrong decision and that there should be an increase in number of seats in the province.

It is possible to do it, as Senator Day has noted, and as Senator Runciman would be aware, and as Prime Minister Harper proposed some years ago.

I am not suggesting that that should be the thing to do. Senator Wallace has raised a number of good issues, but we need to have a discussion about this and we have not had that discussion.

Hon. Maria Chaput: I have a question for Senator Cowan. I have listened to the interventions on this subject and have had the opportunity to reflect. We have on the one side the elected House of Commons, one person, one vote, and then we have an appointed Senate. Would the senator not say that the appointed Senate has a role in balancing this inequality when we elect representatives? As Senator Jaffer was saying, we could balance the gaps in the representation of minorities and Aboriginals. Could there not be a balance so that we have a fair representation of all Canadians?

Senator Cowan: I thank the senator for the question. We all recognize that under the Constitution, we, as the Senate, have a role to represent minorities and our regions and provinces. We have a different perspective from that of the House of Commons because of the way in which we come to this place and the way in which they come to that place.

We do have a bicameral system and we do have a balance between the two houses. That is the concept that the Fathers of Confederation set up and that is what we try to do. I agree.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Carignan, seconded by the Honourable Senator Rivard, that this bill be read the third time.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Hon. the Speaker: Carried, on division.

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

FINANCIAL SYSTEM REVIEW ACT

BILL TO AMEND—THIRD READING

Hon. Stephen Greene moved third reading of Bill S-5, An Act to amend the law governing financial institutions and to provide for related and consequential matters.

He said: Thank you, senators, for the opportunity to speak briefly to Bill S-5, the financial system review bill, at third reading.

As senators will recall from previous debate on this bill, the government reviews all legislation governing federally regulated financial institutions every five years to ensure the stability of the Canadian financial services industry, with the latest review completed in 2007.

The current five-year review began with an open and public consultation that started in September 2010, inviting the views of all Canadians on how to improve our financial system.

Before continuing my speech today, I would like to recognize and thank the members of the Banking, Trade and Commerce Committee for their review and support of today's legislation.

During the committee's consideration of this bill, we heard from the Minister of Finance and his officials, along with representatives of groups ranging from the Credit Union Central of Canada, the Canadian Life and Health Insurance Association, the Financial Consumer Agency of Canada, the Office of the Superintendent of Financial Institutions, the Canadian Bankers Association and the Canadian Payments Association. We thank all the witnesses for taking their time to appear before the committee and share their thoughts on the financial system review bill.

Witness after the witness stressed the importance of this legislation and the need to keep Canada's financial system safe and secure. As we all know, Canada's financial system has been a model for countries around the world, especially during the recent global economic turbulence. In fact, for the fourth consecutive year, Canada was ranked number one for having the soundest banks in the world by the World Economic Forum. Our safe and secure financial system is envied around the world.

As recently reported in *The Toronto Star*, a new report from the United States Congressional Research Service underlined how well Canada's system is regarded. Quoting from that report:

> . . . Canada's supervisory system and regulatory structure have proven less susceptible to the bank failures that have loomed in the United States and Europe and may offer insight for U.S. policymakers.

Today's legislation will continue to ensure that Canada's financial system will continue to be secure for Canadians and a fundamental source of strength for our economy.

Today's legislation is significant because it will affect one of the most important drivers of our economy — the financial services industry. On a broader scale, this sector plays an important role in ensuring financial stability, safeguarding savings and fuelling the growth that is essential to the success of the Canadian economy.

Moreover, the financial services sector plays a significant part in the daily lives of Canadians. Beyond those of us who use their services, the financial services industry employs over 750,000 Canadians in good, well-paying jobs. Moreover, it represents about 7 per cent of Canada's GDP.

The financial system review bill takes into account the feedback from consumer groups, industry groups and other Canadians to make targeted — many largely technical — alterations to strengthen Canada's regulatory framework.

The bill will make changes to update legislation to promote financial stability and ensure that Canada's financial institutions continue to operate in a competitive, efficient and stable environment, including enhancing the powers of the Financial Consumer Agency of Canada to protect Canadian consumers, and improve efficiency by reducing the red tape and burden on financial institutions.

In summary, senators, the measures in the financial system review bill will provide for a framework that will benefit all participants in the financial services sector, financial institutions as well as Canadians. It maintains the long-standing practice of ensuring regular reviews of the regulatory framework for financial institutions — a unique practice that sets Canada apart from almost every other country in the world.

Indeed, our government recognizes that it must continually consider what regulatory changes are needed to foster competitiveness and ensure safety and soundness for the benefit of all Canadians. We have done just that with the measures in today's legislation.

Again, I would like to thank the Banking, Trade and Commerce Committee for their consideration and support of today's bill and would like to ask senators to consider showing the same support.

[*Translation*]

Hon. Céline Hervieux-Payette: Honourable senators, as the Deputy Chair of the Senate Committee on Banking, Trade and Commerce, I would like to add a few comments and recognize the cooperation of all those who participated in the committee's work.

The government has called this bill technical, but I would like to remind the honourable senators that there has not been any consultation with the general public since 1995.

• (1040)

The Senate Committee on Banking, Trade and Commerce produced a report that led to the 1995 reform. This resulted in unprecedented economic stability in Canada, stability that my colleagues are very pleased to mention on a regular basis. At that time, we toured Canada. It has therefore now been 15 years since a public consultation was held.

I would like to remind those who were not here and who did not follow the debate at that time that the Committee on Banking, Trade and Commerce travelled across Canada, held public hearings and listened to Canadians and special interest groups, who made recommendations after participating in the debate or discussion. Thus, all Canadians participated in the review. Although this legislation was passed under a Liberal government, I would like to remind the honourable senators that the legislation was in the interest of all Canadians and that both Liberals and Conservatives participated in the reform.

Unfortunately, for 15 years, we have not had this type of indepth reform of the legislation. Although the government has said this bill is technical, it is not technical to note that the cost of enforcing some provisions will increase from $8 billion to $12 billion. This is a funding issue. There have not been any indepth discussions. Perhaps we need $20 billion instead of $12 billion. It was in the bill.

The bill was introduced as follows. In September 2010, the Department of Finance published a working document on its website and 30 special interest groups in the field of finance responded. Of these 30 groups, 27 responded anonymously and three identified themselves.

As a member of the Committee on Banking, Trade and Commerce, I have no knowledge of the 27 financial groups in Canada that provided suggestions to the government. We do not know if these people got what they wanted. We do not know who made the suggestions.

We did meet with certain groups, it is true. We heard from certain witnesses who told us that the government ignored more than one of their recommendations, but we did not have the opportunity to discuss the matter further.

All that is to say, honourable senators, that I hope we will not wait another 10 years for any reforms. In 2016, it will be 20 years since the legal review of the Bank Act, which affects all financial institutions, was carried out with the participation of all Canadians. It is a fundamental pillar of our economy.

I think that everyone realized that the work done the last time was in depth, with the participation of everyone, including consumers, which was not the case this time.

I remind honourable senators that Mr. Carney's report would perhaps be a little rosier and we would be in a little less debt if there had been a different position on some sections in this act, if the interest rate had been examined carefully and if there had truly been some thought given to whether this served the interests of Canadians.

Earlier I mentioned that I received one of the last credit cards from a Canadian company with an interest rate of 29.9 per cent. I think that all senators here probably pay off the balance on their cards at the end of the month. People who have several payments to make do not always manage to pay off their balance and if they have excessive interest rates of 29.9 per cent, with the balance every month, often the amount of purchases and the interest will be almost the same, so the consumer could end up paying about 100 per cent interest, even though that is in violation of our Criminal Code.

We need a much more in-depth review to deal with the challenges Canada might face. It is true that Mr. Flaherty sometimes says that we may run into some problems. However, Mr. Carney recently said that Canada is heading toward some very serious economic problems, that the global situation will affect us eventually, and that if the interest rate is increased, a number of people will have difficulties paying their bills.

Honourable senators, even though we are supporting Bill S-5, which does not provide comprehensive reform, I want my colleagues to know that this bill is simply a draft to allow us to study the problem more thoroughly and that we should be looking far more closely at reforming the Bank Act.

Honourable senators, I want to reiterate that this affects trusts, insurance, cooperatives, large and small banks and foreign banks. This sector needs to be reviewed in depth. We have not finished determining what measures will have to be taken so that Canada, which has a large deficit that grows larger every year, does not end up in the same situation as Europe and is not required to cut very important programs such as health insurance and can have a stable economy that allows us to go back to having a balanced budget.

We will support this bill even though it does not go far enough.

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

Hon. Senators: Question!

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

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

[*English*]

SAFE STREETS AND COMMUNITIES BILL

SECOND READING—DEBATE SUSPENDED

On the Order:

> Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Stewart Olsen, for the second reading of Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts.

Hon. Joseph A. Day: Honourable senators, I would like to say a few words about Bill C-10 that is before us. It is important that we understand where in the process this is. We are at second reading of this bill.

It is, as honourable senators know, a rather extensive bill. In fact, in order to prepare myself for this presentation and to understand what was in this bill, I obtained a copy of the legislative summary prepared by the Library of Parliament to help honourable senators understand what is in the bill. Honourable senators, this legislative summary of Bill C-10 is 150 pages long. That is an indication of just what is involved in this bill.

For your recollection, let me just list some of the bills that appear here. Bill C-10 is described as "An Act to enact the Justice of Victims of Terrorism Act." It creates one new piece of legislation. Normally, we would have a bill that creates the statute, but in this instance it goes on to say, "and to amend the State Immunity Act, to amend the Criminal Code, to amend the Controlled Drugs and Substances Act, to amend the Corrections and Correctional Release Act, to amend the Youth Criminal Justice Act, to amend the Immigration and Refugee Protection Act" and, honourable senators, it goes on to say, "and other Acts."

• (1050)

I started to make a list of the other acts, and then I thought that perhaps at second reading, since we are dealing in principle on this matter, it would probably suffice for honourable senators to understand the enormity of what is being dealt with here and the enormity of the work that the committee to which this bill is ultimately referred will have to do.

Honourable senators, it is tempting to try to touch on some of the issues. We heard from various honourable senators with regard to many issues, such as conditional sentences being eliminated in certain instances, the two-for-one credit for pre-sentencing custody that is being eliminated, the mandatory minimum sentences, and the rather significant increase with respect to youth crime and youth justice.

Honourable senators, all the comments that have been made by honourable senators on both sides make it clear that this is an extensive bill to deal with.

At this time, at second reading, I will resist the temptation to deal with some of those issues. There will be opportunities to do that later on. I will restrict my comments today to two issues that I believe fit into this discussion at second reading, which is, according to rule 75 of the *Rules of the Senate*, intended to be the stage at which we deal with the principles of the bill.

The two issues I would like to talk about are the overall costs, the cost issue in general, since that is an important part of any of this legislation that we are passing, and the omnibus character of the legislation. Honourable senators will know that those two issues are related, so I can deal with them both, in large part, as I am speaking on these matters.

In relation to the omnibus nature of this legislation, my view is the same as it has been with respect to the many omnibus bills we have seen in the past. "Omnibus" means a lot of different ideas and concepts all thrown into the same basket, and then we are expected to deal with them all together and deal with them effectively, reasonably and logically, which is not always the case.

The cynic would say this is an attempt to get through a whole lot of elements of the bill without a thorough review. I am not suggesting that is the only reason, but I do suggest that a much better job would have been done by Parliament if we had dealt with these pieces of legislation the way we were dealing with them before the last election — as separate pieces of legislation.

With respect to the cost issue, honourable senators, we seem to be all over the place, in part because we are dealing with many different pieces of legislation. For example, with regard to providing mandatory minimum sentences for drug-related crimes and child sex offenders, the estimated cost of this initiative is $2.3 billion. That is just one piece — I do not want to say a small piece — of the legislation that we have to deal with.

Honourable senators heard the debate yesterday between Honourable Senator Boisvenu and Honourable Senator Dyck. Senator Dyck delivered a focused presentation with respect to this legislation on Aboriginal youth. During the question and discussion following, the Honourable Senator Dyck said it would cost $17 billion to implement Bill C-10. Senator Boisvenu asked the following question:

> Could the senator tell us where she got that figure? If she got it from the analysis carried out by the IRIS research institute, which I believe is in Quebec, could she tell us whether she read this analysis?

Senator Dyck replied:

> I believe I said this could cost anywhere from $9 billion to $19 billion, although $17 billion falls in the middle. I do not have my references in front of me, but I can get the honourable senator the source later.

Then Senator Boisvenu goes on to say, in his usual succinct manner:

> I would very much appreciate that. The honourable senator will understand that an amount that high is misleading.

He did not say "unsettling," which it certainly is, $17 billion to $19 billion, but he said "misleading."

He continued, "I would appreciate having the document in question," and Senator Dyck goes on to say that she would be pleased to try to find that.

We have numbers, honourable senators, that are described as being misleading by certain senators in this chamber, and that makes it difficult for us to understand where we are in relation to this particular issue that is before us.

Again, honourable senators, the issue that is before us is the change to criminal legislation that impacts tremendously on the future of our country. To the youth of our country, this is a very important piece of legislation that we must study carefully.

Honourable senators, the provinces are concerned about this legislation as well. Let me read some of the statements and facts with respect to the provinces and what they are saying in relation to the costs and, in one case, the substance.

Ottawa has kept the provinces in the dark with respect to costs in relation to this legislation, Bill C-10, notwithstanding the order of the former Speaker, Peter Milliken, to ask the government to produce costs and cost figures so that honourable senators and honourable members of the House of Commons could vote on these pieces of legislation clearly.

The government has released partial estimates as to what they think the costs might be.

A mid-range projection, for example, on changes to the Youth Criminal Justice Act, which will result in a lot more youth spending time in prison than in the past, is that there will be 33 per cent more youth in prison than in the past. One third more youth will be spending time in prison than in the past.

Honourable senators can imagine the costs, which we have discussed during the debate we have had in relation to this particular matter already. There is the cost of repairing the facilities. As Senator Tkachuk pointed out, a lot of repair has to be done. However, repair in itself is not enough; we have to make more space. Either we put bunks in these prison cells to accommodate more or we build bigger facilities. That is just the beginning. Over the long term, there is the cost of uniforms, food, rehabilitation, support and guards. All those items have to be taken into consideration.

The Ontario Minister of Community Safety and Correctional Services, Madeleine Meilleur, has argued that the legislation will require "significant" new spending, spending that the province has not budgeted for and has no source to obtain it from.

In a letter to Public Safety Minister Vic Toews, Minister Meilleur wrote:

> In our view, it is not appropriate for one level of government to create financial burdens for another without discussion and an appropriate financial offset.

In other words, we expect to get some funds from the federal government in order to do this, and that is notwithstanding the constitutional requirements between the federal and provincial government.

A report released by the Quebec Institute for Socio-economic Research and Information — and this is where the figure of $19 billion comes from — says that it will cost Canadians $19 billion to build prisons and to incarcerate prisoners for the extended period of time that will be required under this legislation. According to this study, the provinces are expected to take the brunt of the cost. Approximately $14 billion of the $19 billion is expected to be covered by the provinces, and the federal ministers have already said they expect the provinces to cover these costs.

Senator Mitchell: But there is only one taxpayer.

• (1100)

Senator Day: It is estimated that ending the practice in which judges can give offenders two-for-one credit for presentencing, which compensates the incarcerated person for the time they have spent in custody before they, in fact, have been found guilty, and keeping them for that extended period of time, will cost somewhere in the range of $16.5 billion for the country. Of this amount, the provinces would be expected to absorb $12.6 billion. That is the kind of money we are talking about.

New Brunswick Premier David Alward has remarked that Ottawa would be responsible for any additional costs that the Government of New Brunswick is expected to incur by the bringing into force of Bill C-10.

Senator Mitchell: Who said that?

Senator Day: The Premier of New Brunswick.

Quebec has already indicated that it will refuse to pay the costs because it disagrees with the new legislation with respect to young offenders. In Quebec they like what their legislation is doing with respect to young offenders and believe they are getting results, and that the implementation of Bill C-10 will hinder rehabilitation.

Honourable senators, Justice Minister Rob Nicholson indicated that he did not have a breakdown of the costs associated with the legislation for each province. He said he does not know what it will cost each province.

In Nunavut, honourable senators, Deputy Justice Minister Janet Slaughter has said that her counterparts are expecting a 15 per cent increase in prisoners in that territory. However, Nunavut can expect even more than some of the other provinces, which are expecting 15 per cent more prisoners. We have already seen that with respect to youth it will be 33 per cent.

The territory already has roughly 60 people incarcerated in jails outside the territory because they cannot hold them in the prison space they have currently.

Nunavut's Conservative member of Parliament, in her usual insightful manner, stated:

> When you talk to a person who has been the victim of a crime, there is no cost associated with that.

That is a quote from Minister Aglukkaq.

Senator Tkachuk more pointedly stated on Tuesday during the debate that defending the rights of victims is the overriding theme throughout this legislation.

Honourable senators, I would like my colleague to know, and for all of us to know, that there is no one senator in this chamber who does not support the rights of victims in instances of crime. Not one of us.

Some Hon. Senators: Hear, hear.

Senator Day: The argument that those who attempt to make amendments and improve the legislation — like our honourable colleague in the other place, Mr. Irwin Cotler, who was demonized for presenting amendments, and then the government comes along and tries to bring in those same amendments — are somehow soft on crime or unsympathetic to the victim is disingenuous, at best.

Honourable senators, Steve Sullivan, Executive Director of Ottawa Victim Services and former Federal Ombudsman for Victims of Crime, commented that the Conservative government should be paying more attention to evidence about what works and what does not in terms of protecting public safety and victims. I could not agree more with respect to that statement.

Many different figures have been thrown around, so to get an understanding of where we are with respect to costs, I called the Parliamentary Budget Officer, Kevin Page, who we fought hard to have available to us when we passed Bill C-2, the Federal Accountability Act. His office told me that on November 11 they requested information from the government in order to come up with a definitive figure in relation to the costs if the crime bill, Bill C-10, is implemented. The federal government should have all of the documentation; they present the legislation.

He asked for that particular methodology and the background information in order to confirm the figures. All he has received so far is a request for more time for the government to provide him with the information. He said that is a clear indication that there is no specific knowledge by the government as to what this bill will cost. That should not surprise honourable senators because we have been dealing with Bill C-18 on the Wheat Board. In doing away with the Wheat Board there was no analysis of the impact on the marketing scheme in the West or the impact on the farmers who will lose their rights under that legislation. There was a refusal to allow the farmers to make their own decision on what type of system they would like to have.

My honourable colleague has indicated there is a pattern. Indeed there is a pattern developing here that is unsettling and not one we like to see.

The gun registry, honourable senators, is another example. I hesitate to refer to recent crimes, but four people were just killed yesterday in Alberta. It was a very serious situation. The gun registry is something that we should be looking at very carefully before we proceed with that legislation in the spring.

We also have the increase in the number of politicians, the cost of which we have just heard Senator Fraser tell us will be upwards of $100 million more.

Honourable senators, this is a government that is predicting a $30 billion deficit at the end of this year. We are passing legislation and are being asked to agree to legislation for which we have no idea of the cost.

Honourable senators, I do hope that when this bill goes to committee for study that these items will be looked into very thoroughly and in detail. It is important for the future of this country.

Hon. Bob Runciman: I have a question for the Honourable Senator Day.

I want to ask the senator if he was aware of a couple of things. I will not go into every area that he touched on in his speech.

My honourable friend mentioned a letter from Ontario's Minister of Community Safety and Correctional Services, Minister Meilleur, who is criticizing the government for not consulting with respect to these changes. Hopefully the senator knows that these changes have been discussed at federal-provincial-territorial conferences over a number of years. I do not think that any government was unaware of the fact that these changes were coming forward.

• (1110)

With respect to downloading of costs, I would use an old saying with respect to Minister Meilleur, that she has more nerve than a canal horse. One example is recently the Ontario government negotiated with the Ontario Provincial Police a 13 per cent pay increase. The impact on municipalities policed by the OPP in the province of Ontario will be significant. Many have very limited tax bases, and certainly there was no consultation. For Madeleine Meilleur to make that assertion is beyond the pale, to say the least.

I have one other issue with respect to young offenders.

The Hon. the Speaker *pro tempore***:** Before the honourable senator goes to his next issue, I must advise Senator Day that his 15 minutes for speaking and responding to questions has expired. Is he prepared to ask the chamber for more time?

Senator Day: I would be pleased to ask the indulgence of the chamber to allow the honourable senator to finish his question and perhaps allow me to reply.

Hon. Senators: Agreed.

Senator Runciman: Thank you, honourable senators. I will be brief.

With respect to the young offender element about which the honourable senator expressed concern, the increase in incarceration, this is really an increase in judicial discretion. Judges have been, I think it is fair to say, handcuffed in the past. When a young offender has appeared before them who they feel poses a real threat to public safety, they have been unable to detain that individual in a provincial institution. I have a situation in my former riding where a judge had no choice under the YCGA but to release an individual. He subsequently beat a young girl to death in a schoolyard. Those are the examples that this government is trying to address with this legislation by increasing judicial discretion. That is what they are doing to get dangerous people off the streets. Is the honourable senator aware of that?

Senator Day: Senator Runciman raises some interesting points. The information I have with respect to Madeleine Meilleur is somewhat different from the honourable senator's take on it. Fortunately, we are at second reading on this matter. It is going to committee. That issue, and many others on which we have heard conflicting views, can be dealt with, and I hope they will be, in committee.

With respect to the other item the honourable senator raises, my view is different from his. This is something that should be dealt with at committee stage in more detail. What I see as the downside of this legislation is that discretion is being taken away from the judge who is there and can see the people before him. He knows about the victim. He knows about the alleged perpetrator of the crime. He can make a decision based on first-hand knowledge, as opposed to trying to have a rule that applies in all cases when the judge has no discretion. The judge's discretion to deal with situations at the point of the trial is, in my view, something that we should all be striving for.

Hon. Donald Neil Plett: Would the honourable senator accept one more question?

Senator Day: Assuming there is still time within the five minutes.

Senator Plett: I have two questions actually. First, the honourable senator mentioned in his remarks the horrific killing and death of a couple of people in Alberta. I read that this morning. Does the honourable senator have any information that the gun used in that terrible crime was either registered or not registered? He seems to think that it would have made a difference to these young men if they had been killed by a registered gun or an unregistered gun.

Second, I will read two paragraphs from today's *Winnipeg Sun*:

> Sonny Cook once said his only regret about raping two women in 1996 was that he got caught.
>
> Back in custody for sexually assaulting two more women, justice officials are fighting to keep him there indefinitely, possibly for the rest of his life.

Would the honourable senator not agree that maybe the judge made a bit of an error in 1996, when he sentenced Sunny Cook, so that he was again allowed out in order to rape and assault two more women?

Senator Day: I do not have further information with respect to the four people who died south of Calgary. My understanding is that two of them were from Prince Edward Island and were

working in Calgary and that there is a young lady in the hospital. My prayers go to her in the hopes that she will recover, irrespective of what particular firearm was used in committing that particular horrendous act.

With respect to the *Winnipeg Sun*, I would prefer to get a better source of evidence before I comment on that particular matter.

Hon. George Baker: Honourable senators, I will be brief.

The Hon. the Speaker *pro tempore***:** Would you mind if I hear from the Deputy Leader of the Government?

Hon. Senators: Agreed.

(Debate suspended.)

[*Translation*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That the Standing Committee on Internal Economy, Budgets and Administration have power to sit today, even though the Senate may be sitting, with the application of rule 95(4) being suspended in relation thereto.

It is a question of a small technical and financial matter for the Internal Economy Committee. It needs to meet before we adjourn for the holiday season, and must do so while the Senate is sitting. I am told it will be a short meeting concerning housekeeping matters.

[*English*]

The Hon. the Speaker *pro tempore***:** Honourable senators, this is a request to revert on the agenda to Motions.

Hon. Tommy Banks: Honourable senators, do I not understand correctly that the Committee on Internal Economy is one of the committees that has the power to sit after the Senate adjourns and when the Senate is adjourned and for any length of time the Senate is adjourned? Therefore, I wonder why the permission requested is necessary.

[*Translation*]

Senator Carignan: Honourable senators, we spoke with the Deputy Leader of the Opposition and that was also one of her concerns, and we agreed that when the Senate adjourns today, it will probably adjourn for the holiday season. We believe that the committee should be allowed to sit for five minutes while the Senate is sitting.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, our position remains the same: that it is not a good idea for committees to sit while the Senate is sitting. That remains an important principle that we must respect in this Chamber. However, in the spirit of Christmas and in the spirit of cooperation, we will agree to it this time.

[*English*]

The Hon. the Speaker *pro tempore***:** Are honourable senators ready for the question? Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

SAFE STREETS AND COMMUNITIES BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Stewart Olsen, for the second reading of Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts.

Hon. George Baker: Honourable senators, I will be brief so we can get on with the second reading of this bill.

Before that, I would like to say to Senator Banks that he is absolutely correct in his little argument with Senator Lang. I will just read a couple of sentences regarding the use of Atasol 30 for example. This is in a case called *R v. Manuel*, Newfoundland, and at paragraph 31 of the transcript it says that. In relation to the prescription for Atasol 30, even though the accused was unaware of the fact that codeine was a narcotic, such lack of knowledge clearly is a mistake of law and is not a valid defence.

• (1120)

From the case of *R. v. Leduc* in the Provincial Court of Alberta, at paragraph 28, in response to the second argument as to the knowledge of the accused that Tylenol 4 contains a controlled substance, the Crown stated that the accused knew that he did not have a prescription in his own name, and that if he needs medication, he must obtain it from a doctor. Further, the Crown argued, the fact the accused thought he was okay because he had a prescription for Tylenol 4 that had run out may constitute a mistake of belief, but that does not constitute a defence in the case. Both accused were convicted of possession of narcotics when they exchanged a Tylenol 4 and an Atasol 30.

There have been several cases of Ritalin, for example, with children. Here is a case of the *Attorney General v. D. (J.J.)*, a school child, from the Court of Queen's Bench in Saskatchewan, where the youngster, who had been prescribed Ritalin, had distributed it to some of his friends in school. I quote from paragraphs 3 and 4:

> . . . The six young Crown witnesses differed somewhat on who had handed the substance to whom, and whether it was given out by the accused as opposed to being taken or grabbed by one or more of them. . . .

> . . . The Crown's summation was that there was evidence establishing beyond a reasonable doubt that the accused gave Ritalin to all six young people and he was therefore guilty of trafficking in Ritalin.

I dug this out of my drawer because we had addressed this before, at paragraph 1 of *R. v. Chu* from the Provincial Court of British Columbia:

> The accused is charged with one count of trafficking in ecstasy. Admissions were put before me which established that the accused committed this offence. . . . when he gave one ecstasy pill to an undercover officer. . . .

— he was convicted of trafficking in a narcotic.

The honourable senator is absolutely correct in his argument with Senator Lang. Senator Lang knows the difference and was just trying to entrap a Liberal senator.

Getting on to the bill before us, as Senator Day suggested, there is only one new provision in this bill. There is one new substance in this bill. Some of the previous speakers — in fact, one of them on the government side — had given credit as to who originated the substance in this bill, who originated the bill called the Justice for Victims of Terrorism Act and to amend the State Immunity Act. There is only one senator in this place, and it happens to be a senator on the government side, who is responsible for originating this bill. Do not take my word for it. I will quote from the very document from the Library of Parliament that Senator Day raised.

Here is the sentence that gives credit where credit is due: "The first proposed bill was introduced in 2005 by Senator David Tkachuk." He was the person who originated this bill that we are now seeing in government legislation. That was in 2005.

Also in 2005, the inimitable Senator Segal was appointed to the Senate and eventually became a part of the Special Senate Committee on Anti-terrorism, which took over that bill. I wish to give credit to Senator Dallaire, Senator Jaffer, Senator Joyal — the deputy chair — Senator D. Smith, Senator LeBreton, Senator Marshall, Senator Nolin, Senator Tkachuk and Senator Wallin, who all sat on that committee. They then perfected the bill.

It is interesting to note, it has been referenced, that changes were attempted to be made to the bill. Let me for a moment reference what our committee in the Senate had suggested and what was done by the government. I am referencing now the several hundred page document from the Library of Parliament at page 12. It says this:

> It appears that the cause of action does not cover situations where a state was involved directly.

That was a point made by the committee. Then it goes on the same page to say:

> The Senate Special Committee on Anti-terrorism reported observations to Bill S-7 back to the Senate suggesting that the government consider amending the bill to state that Canadian citizenship or permanent residence would be enough to demonstrate such a connection.

Then they go on:

> In its observations, the Special Senate Committee on Anti-terrorism said that an amendment to the bill might be necessary to ensure that this cause would not impede litigation.

Then a further suggestion made by the committee was this:

> The Senate also suggested a new section 6.13 of the State Immunity Act, requiring the government to establish the list within six months from the day that the section comes into force.

That amendment is in this bill, as suggested by the Senate. The Senate committee also recommended that it would require that the two-year review include consideration of whether new countries could be added to the list and to clarify that a review does not affect the validity of the list. That amendment is in this bill.

If one adds up all of the suggested amendments, three of the amendments suggested are in this bill. The government tried to introduce these amendments in the House of Commons at the report stage. They asked for unanimous consent. The NDP refused unanimous consent to introduce these necessary amendments for the Justice for Victims of Terrorism Act. It is rather remarkable that someone would deny those necessary amendments that were suggested by the Senate committee and that were needed in the bill. Hopefully, if not in this particular legislation when it goes to committee, then in a future bill those amendments will be included as recommended by the Senate committee.

Honourable senators, I have two other short matters to raise. The first involves the Senate committees that have been in court judgments in the last six months. There have been a number of court judgments that have referenced reports from Senate committees. I will talk about one before I get to the main judgment pertaining to this bill.

Your Honour would be interested in this. The Court of Appeal of Ontario, the highest court in this province, took a report from a Senate committee, of which I will tell you who sat on the committee: Senator Chaput, Senator Fraser — who was the chair

at the time — Senator Joyal, Senator Watt, Senator Angus, Senator Boisvenu, Senator Carignan, Senator Lang, Senator Runciman, Senator Wallace and Senator Rivest.

The Senate committee visited the DNA centre of the RCMP facility in Ottawa and they examined the operation. One of the things they were concerned about was judgments being made by the courts that a section 8 Charter violation was being committed in the presentation of evidence at trial concerning the DNA. This is the Ontario Court of Appeal six months ago. This was after several cases had been judged that the DNA used by the RCMP was an unconstitutional violation of section 8 because of certain problems at the DNA centre.

• (1130)

Here is what the Court of Appeal says:

> Following the release of her constitutional ruling, the Standing Senate Committee on Legal and Constitutional Affairs received an Order of Reference from the Senate to study the provisions and operations of the *DNAIA*. See *Debates of the Senate*, 40th Parl., 2nd Sess., Vol. 146, No. 13 (26 February 2009) at p. 285. One task undertaken by the Standing Committee was to look into the retention and destruction of young offenders' DNA samples and profiles stored at the NDDB.

Then it continues, "At p. 45 of the resulting report, the Committee explained," and it explains what the committee said. The key words were those of the Senate committee. I sit on that committee. I was missing that day when the words were put in, but it was fairly strong wording, and I am quoting now what the Court of Appeal said from the standing committee in the Senate:

> If the courts that had expressed concerns about retention of DNA samples and profiles at the Data Bank had had this information, it might well have influenced their decisions . . . This should help to avoid any future confusion, by the courts or by Parliament, regarding how the Data Bank is implementing its records retention and destruction policies.

That is quite a statement for a standing committee of the Senate to make, but they made it in a much quoted report.

Then the Court of Appeal of Ontario concluded as follows:

> In sum, I am respectfully of the view that because of the erroneous factual findings regarding record retention practices, the sentencing judge failed to properly consider in the s. 8 analysis the important legislative safeguards protecting the privacy interests of young offenders under the DNA data bank regime and significantly overstated the degree of impact that DNA sampling has on the privacy interests of young persons.

It overturned the judgment, and set law now firmly in Canada that the DNA bank was operating properly, struck down those cases that had judged a section 8 Charter argument and set the accused free.

I do not know if there is any case in Canadian history where this has ever happened, where a Senate standing committee had made a report that caused an appeal to be made of a superior court judgment and the superior court judgment was struck down by the Court of Appeal, but I would like to put that on the record.

I might remark in passing that there is no committee in the House of Commons that is in court judgments at all, but that is not to depreciate the value of a very political institution called the House of Commons.

Another committee has been in the news for the last eight months of this Senate, and here are the sitting members of that committee: Senator Tommy Banks — this is the way it is in the committee report — Senator Noël A. Kinsella; Senator Pierre Claude Nolin, Chair; Senator Fernand Robichaud, and those are the only senators who are here with us today who are on this committee.

What has happened is a continuation of what has been happening for the past three years.

My 15 minutes are up already. I ask for another five minutes to conclude.

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

Hon. Senators: Agreed.

Senator Baker: It concerns a decision of the Ontario Superior Court of Justice on. This present round started on April 11, and is called *R. v. Mernagh*, 2011, Carswell Ontario, 2441. The head notes say:

> Legislative scheme that delegated responsibility to profession . . .

— that is the medical profession —

> . . . that refused to accept it and lacked training to manage it, was fundamentally flawed — Barriers to access to medicinal marijuana and widespread exposure to risk of criminal prosecution of doctors under the MMAR were direct result of legislation.

It struck down the medical access regulations, and in this court case, witnesses were heard who had terminal illnesses — cancer, AIDS in advanced stages. Several of the witnesses had MS, and several of the witnesses were medical doctors. The court ruled that on April 11 of this year that the regulations were unconstitutional and that section 4 and 7 of the Controlled Drugs and Substances Act were unconstitutional — struck them down.

Since that time, we have had several judgments where Senator Nolin and his committee report were quoted, and it pointed out that that decision said that for three months, they would put off the unconstitutionality. Now the Court of Appeal has it seized, but if we go back even a year prior to that, Senator Nolin, in his position as chair, was called to appear as a witness before the Supreme Court of British Columbia on the same matter. The

committee report had said there will be constitutional challenges to this if what is in the regulations is wrong. That was in 2002. The Liberal governments did not do anything and the Conservative governments did not do anything to correct it, and that is what these judgments say.

A chair of a committee will be subpoenaed. It is one thing to have the Crown and the defence agree to table the committee report, but if they do not agree, then you know who is subpoenaed, it is Senator Nolin. To read these court judgments in which he has been a witness and cross-examined, and recently, where his report has been examined in graphic detail and pronouncements made of unconstitutionality of regulations, I think we owe a debt of gratitude to Senator Nolin, for what must be an incredible amount of pressure. I would not want to be in a position of having chaired a committee of which at any time I could be subpoenaed to be cross-examined in the courts in this country. I would not want to be. That would take away from a lot of my freedom; I know.

I would say that we should get on with second reading. I think that Senator Nolin should speak to this bill, if he so desires. I simply point out to him, honourable senators, the provisions of the Criminal Code that say at section 118, under "Definitions":

> "judicial proceeding" means a proceeding
>
> (*a*) in or under the authority of a court of justice
>
> (*b*) before the Senate or House of Commons or a committee of the Senate . . .

This is a judicial proceeding. Then you go over to what it means if you do not tell the truth before a judicial proceeding:

> Every one who, being a witness in a judicial proceeding, gives evidence with respect to any matter of fact or knowledge and who subsequently, in a judicial proceeding, gives evidence that is contrary to his previous evidence is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years . . .

With that caution, honourable senators, I would give the floor, hopefully, to Senator Nolin for his address.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, I have fifteen minutes in which to comment on this bill. Therefore, I will focus on a few points that I have chosen to raise.

First of all, honourable senators, I wish to inform you that I am opposed to this bill.

• (1140)

I have already informed my Conservative colleagues of my intention. It is not a surprise to them. I would like to share with you some of my reasons for this decision.

The honourable Senator Baker and others spoke about the Controlled Drugs and Substances Act, which is something we have studied in depth. I have concerns about clauses 39 to 46, which would amend that act, and I would like to refer to the act by its initials, CDS in French and CDSA in English.

The other aspect of the bill that concerns me and that I will comment on, deals more generally with the Youth Criminal Justice Act.

First of all, some colleagues may recall that I had expressed my opinion about the use of mandatory minimum sentences when I was a member of the Standing Committee on Legal and Constitutional Affairs. Although the Supreme Court has accepted the constitutionality of mandatory minimum sentences, the fact remains that I believe they show a lack of trust in the Canadian judicial system. I think that judges must ultimately be responsible for assessing the evidence and arriving at a decision based on the facts.

[*English*]

I have specific concerns about trafficking and production of cannabis. They are included in clauses 39 and 41 of the bill.

For the production of cannabis for medical purposes, it needs to be understood that the reality of the medicinal use of cannabis has been known to the Canadian courts since the mid-1990s. I refer to the *Parker* decision of the Appeal Court of Ontario, which is probably the most renowned decision. The justices ordered the federal government to change CDSA within a year. They did not do it. Instead of changing the act, they decided to introduce the MMAR that Senator Baker just referred to. It was much easier to do that than to introduce amendments to the CDSA in Parliament.

Mr. Parker, an epileptic who had been using prescribed medicine almost all his life to control his seizures, one day discovered cannabis, marijuana, and the effect on him was quite good. What was not supposed to happen happened; he was arrested and charged for cultivating his own cannabis. He won in the Superior Court. By the way, in Ontario, depending on the year, you have to refer to the court as either the Supreme Court of Ontario or the Superior Court. I think at that time it was the Supreme Court of Ontario. It was appealed by the Crown to the appeal court and Mr. Parker won.

Since then in Canada we have had access to marijuana for medical purposes, through a regulation, but that is not the entire reality. We — and I am looking at my colleague Senator Banks, who will depart this august chamber in a few hours — discovered that the reality of medical use of cannabis was quite large in Canada. At that time, 10 years ago, roughly half a million Canadians were already using cannabis for medical purposes. The average age of those Canadians was in the mid-40s. It needs to be known that an important portion of those Canadians is women and they are using cannabis for pain relief. This number of Canadians in the last 10 years has grown to more than 1 million. Only 10,000 are registered under the MMAR. The flaws of the MMAR are evident because the doctors are controlling the access and the department is controlling the access. That is why the

courts have decided that the MMAR is unconstitutional. On many occasions they have been asked to rule on it. The government has changed the rule; now the government has introduced a discussion paper to change the scheme of the regulation, and the future will tell.

Where does Bill C-10 comes in vis-à-vis the medical use of cannabis? Those million Canadians must have access to the substance. It is illegal. Some of them are producing their own cannabis. By the way, you need to know that medical users of cannabis want the pure organic substance. They do not want a substance that is adulterated by chemicals. The main chemical used by cannabis producers is ammonia; they do not want that. They are in need of the pure organic substance.

They grow it themselves; they go through a compassion club; they collectively charge one amongst them to cultivate for the others; or they rely on the black market. That is the criminal world. They are using cannabis almost daily.

If Bill C-10 becomes law — and I hope not — and we amend the CDSA, they will probably refrain from cultivating for themselves because they will face a jail sentence as they all have more than five plants. Five plants is not a large number. Forget the idea of smoking leaves. They do not smoke leaves. They smoke the fruit and use only female plants, what we call the buds of the plant. Five plants is not a large number.

They will rely on the criminal world to get access to their substance. Bill C-10 will achieve exactly the reverse of its intent. By the way, the criminal world is already laughing all the way, I would not say to the bank, but to the coffers because definitely the amendments to CDSA in Bill C-10 will provoke a bigger market for them, because of the risk factor. I am sick; I want to alleviate my pain; instead of growing it myself, because I do not want to be caught, I will buy it from a friend of a friend of a friend. Is that what we want? I do not want that. That is one of my preoccupations.

This grey zone is almost accepted by the courts and is recognized by the population. If you look at the polls, more than 90 per cent of Canadians agree with the medical use of cannabis.

My other concerns are for the adolescents. The picture of that cohort of Canadians is quite important, when you try to understand the pattern of use of cannabis. I am only talking about cannabis. Again, when the special committee was digging for information, we discovered that 70 per cent of all young Canadians between the ages of 12 and 17 had used cannabis at least once in their life. There is nothing to indicate that that 70 per cent has changed. What does that mean? In this chamber, we all have adolescents in our families. About 70 per cent of those adolescents have used cannabis at least once in their lives.

An Hon. Senator: Yes, and maybe twice.

Senator Nolin: Sometimes twice.

• (1150)

If you take clauses of Bill C-10 on the CDSA, plus the amendments to the youth justice system and add them together, cultivation of cannabis will now be an indictable offence under Bill C-10. By the use of those two sections, 70 per cent of your adolescents will be caught. I will tell you how they will be caught.

Honourable senators, if your adolescents are studying in a university or in a college outside of your town of residence, they probably live in a university or college residence. Guess what — marijuana is grown in those residences. It is not supposed to be, but it is grown there. Five plants is not a lot. Do we want to provoke the system and criminalize those young Canadians, your 70 per cent of adolescents? I definitely do not want that.

Again, if you look at the clauses amending the CDSA, there are "aggravating factors." I do not have the time to read those clauses, but take my word. If they are in a rented building and there are people under the age of 18, it is not six months — cultivation is a year for more than 5 plants and less than 201. If it is trafficking — we understood Senator Baker, and this is the reality — even giving it for free is trafficking.

An Hon. Senator: What about offering?

Senator Nolin: Offering is trafficking. That is one year minimum sentence. Is that what we want? No.

I have one general concern. I do not want to get into all the recommendations and conclusions of the special report, but prohibition of cannabis causes more harm than the substance itself. I repeat: Prohibition of the substance is more harmful than the substance itself. If you do not want to take my word for that, then take the word of a group of ex-heads of states — 15 of them.

By the way, I made a declaration in this chamber last May. What was the finding of that group? Exactly the same as what Senator Banks and I found 10 years ago. The problem associated with prohibition of the substance is so big that tens of thousands of individuals are dying in Mexico, not because they are using the substance, but because they are trading the substance and they are making money out of the trade of the substance. It is the gang wars and the fight for the lucrative drug market in the U.S. They are dying. Those ex-heads of states unanimously recommended to the UN Secretary-General to introduce a motion in the assembly to start the process of changing and amending the treaties that force Canada and other countries to have laws like the CDSA.

Honourable senators, there is only one long-term solution: Get rid of prohibition.

Some Hon. Senators: Hear, hear!

Senator Nolin: I would ask for another five minutes.

The Hon. the Speaker: Is it agreed?

Hon. Senators: Agreed.

Senator Nolin: There is only one long-term solution, and that is to get rid of the prohibition, but that is not what we will do with Bill C-10. At least use the short-term solution; do not touch it. Keep the status quo. Do not amend the CDSA. The CDSA is not good, but at least it is there. We have not figured out what we will

do. That is the long-term solution, but for the moment, do not touch it. The courts and the police already have the tools to face the major problem of trafficking and the gangs. Do not get into the business of changing the CDSA; it is bad. The idea of prohibition is not good; it does not work. It will create more problems than anything else.

I do not have a lot of time remaining, so I will now say few words on the youth justice system.

[*Translation*]

A number of you were not members of the Senate in 2002 when the Parliament of Canada was invited to study a fundamental reform of the youth justice system. Many members of the Senate Committee on Legal and Constitutional Affairs are still here. We inherited a bill from the House of Commons that had been heavily amended as a result of political games. Senator Baker was a member of the House of Commons at that time. He did not join us until several months later. We had to go back to the drawing board.

I must say that we did a very good job since we succeeded — I, as a Quebecer, and several senators from other provinces — in having the reality of enforcing these rules recognized in the amendments to the youth justice system. The reality of young offenders in some other provinces is very different from the reality in Quebec, but we were able to reach a compromise that was so good that the Government of Quebec filed a reference with the Quebec Court of Appeal, seeking the opinion of the court with respect to the legality of what we had done, namely, whether the Parliament of Canada's actions were ultra vires.

I hope that the committee will thoroughly examine this decision. I would like to quote an excerpt from what I believe is the best summary of this decision, which I found in the 2010 edition of *Martin's*.

[*English*]

> The Quebec Court of Appeal considered a comprehensive challenge to the act. The court held that the act was neither ultra vires the federal government nor was it inconsistent with Canada's international obligation pursuant to the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. The new sentencing regime set out in the act generally did not violate sections 7, 11 and 15 of the Charter, with two exceptions: the presumption of the imposition of adult sentences contained in sections 61 to 72 of the act were held to violate section 7 of the Charter. The court held that the state should bear the burden of proving factors sufficient to justify the imposition of valid sentences. Furthermore, your exception to the principle of confidentiality in sections 75(4) and 110(2) violates section 7 of the Charter.

The Court of Appeal for Ontario came to the same conclusion in 2006.

[*Translation*]

As a result, you have before you clear proof of a job well done by a Senate committee. You mentioned it earlier.

• (1200)

The amendment to Bill C-10 might affect the work that has been done since 2002. I say might because I am not yet prepared to make a more definite statement. However, Bill C-10 definitely affects the determination made by the Quebec Court of Appeal.

I will close by saying that I will not vote in favour of this bill. If the bill passes, which it likely will, I hope the Standing Committee on Legal and Constitutional Affairs will strongly support the arguments I have made today against this bill. Thank you very much.

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

Hon. Senators: Question!

The Hon. the Speaker: Honourable senators, it is moved by the Honourable Senator Runciman, seconded by the Honourable Senator Olsen, that Bill C-10 be read the second time.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

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

REFERRED TO COMMITTEE

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

(On motion of Senator Carignan, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

[*English*]

POINT OF ORDER

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, on December 14, 2011, after Question Period, a point of order was raised respecting a senator's statement earlier in the day. The statement at issue had commented on a ruling by the Speaker of the other place. A similar issue arose the day before, when a point of order was raised regarding the use of the word "mendacity" during debate.

[*Translation*]

Honourable senators, normal parliamentary practice holds that "[d]isrespectful reflections on Parliament as a whole, or on the House [of Commons] and the Senate individually are not permitted."

This is found at page 614 of the second edition of *House of Commons Procedure and Practice*, and Erskine May also makes similar points. The need for care when referring to the House of Commons is manifested by the widespread — although neither universal nor obligatory — practice of referring to that house as "the other place."

[*English*]

More precisely, *Beauchesne*, in the Sixth Edition, at citation 71(1), is quite specific in saying that "The Speaker should be protected against reflections on his or her actions."

Likewise, *House of Commons Procedure and Practice*, at page 615, states that "Reflections must not be cast in debate on the conduct of the Speaker or other presiding officers."

More generally, rule 51 prohibits all "personal, sharp or taxing" language as unparliamentary. There is no definitive list of such words or expressions in the Senate. Determination of what constitutes unparliamentary language is left primarily to the judgment of the Speaker and the sense of the Senate.

The circumstances and tone of the debate in question play important roles in this determination. In the *House of Commons Procedure and Practice*, at page 619, it is, however, noted that:

> Expressions which are considered unparliamentary when applied to an individual Member have not always been considered so when applied "in a generic sense" or to a party.

[*Translation*]

All honourable senators are encouraged to be mindful of these restrictions, and to avoid making reflections on the houses of Parliament and their proceedings or deliberations.

[*English*]

BOARDS OF DIRECTORS MODERNIZATION BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Cowan, for the second reading of Bill S-203, An Act to modernize the composition of the boards of directors of certain corporations, financial institutions and parent Crown corporations, and in particular to ensure the balanced representation of women and men on those boards.

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

Some Hon. Senators: Question!

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

REFERRED TO COMMITTEE

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

(On motion of Senator Tardif, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.)

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

SECOND REPORT OF COMMITTEE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Braley, seconded by the Honourable Senator Ataullahjan, for the adoption of the second report of the Standing Committee on Rules, Procedures and the Rights of Parliament, (*Amendment to the* Rules of the Senate*, relating to leaves of absence and suspensions*), presented in the Senate on November 29, 2011.

Hon. Anne C. Cools: Honourable senators, I rise to speak to this second report. I would just like to begin by thanking honourable senators for granting me the adjournment last night so that I could speak. However, I must admit, honourable senators, that I still do not understand what the rush is, or what the urgency is. I do not understand why this debate has been truncated. If there is an urgency to this debate, we should all have been notified so that we could be attentive to it.

Honourable senators, I would like to put out a thematic structure, like the Goddess of Justice, Themis, who is portrayed as blindfolded because justice is blind. Quite often it involves treating people who have done bad things in an honourable and decent way. I just want to put that before honourable senators.

Honourable senators, it is indeed unfortunate that many senators have not paid attention to the subject matter of this report, which is the Second Report of the Rules Committee. The report has been before us for a very few days. I perhaps would like to encourage senators to understand that, contrary to the statements that these are simple, little changes, the proposed changes in this report are of some enormity. All senators should truly examine them carefully.

I repeat that I do not understand what the urgency is. Honourable senators, I say again and again, pay attention to issues and matters that are quite often described as "simple little

things" or "just a little bit of housekeeping," because if you scratch the surface, you will find that they are indeed very difficult and very complex.

Honourable senators, the subject matter of the report, it would seem, is to make changes to rules 139 and 140 of our rule book, which relate to the phenomenon of coerced or compelled leaves of absence and suspensions for senators. I say "compelled leaves of absence," honourable senators, because leaves of absence from either house used to be by application from the individual member to the house, and were usually resolved by a motion. In this way, a senator or a member of the House of Commons could rise and ask for a leave of absence, state the reasons and the house would grant it. These leaves were granted individually.

• (1210)

What we have in this report is a different regime. What we have here is a generic creation of a leave of absence by Senate rules. One can even question whether, in point of fact, they are really leaves of absence.

Perhaps we can begin on that point. I am not telling any tales, colleagues, when I say to you that when the initial changes to these rules were first introduced, I questioned them in the Liberal caucus at the time. I thought that they were woefully insufficient. At the time I sincerely believed that they were attempts to amend, to curtail and to limit the privileges of senators, particularly senators who found themselves in the most terrible circumstances of being charged with an offence.

Honourable senators, I want to let you know that I believe in fairness at all times, and balance and equilibrium as well. I have done not a little reading on the whole phenomenon of wrongful and false accusations that have resulted in many charges of criminal offences.

I believe honourable senators will know that I did a large amount of work, particularly in the area of divorce. For a period of time the fast track to sole custody for a woman was to use what some judges described as the weapons of choice, that is, to charge the father or husband falsely, wrongly, with abuse of his children. I have read hundreds of those cases.

In addition, I have been mindful of the plethora of wrongful convictions that we have had in this country in the last 20 years or so. I come to this with my concern that justice should be pure and that we should be fair at all times. I am not proposing at any time that the delinquency of miscreants is to be excused. I want to make that quite clear.

What we have here, honourable senators, is a set of rules that have grown out of really nowhere in the last many years. Perhaps we can start at the beginning.

These rules run roughly from rule 136, right through 137, 138, 139 and 140. What they seem to be attempting to do is to spare senators or to relieve senators of the duty of investigating, as a body, delinquency in senators or charges of delinquency.

First, let me turn to two documents that senators should know about. I do not know if honourable senators have the report before them, but the first of these amendments speaks to the phenomenon of a suspension of allowances. It is amendment to rule 139 and adds section 2.1:

> Where a finding of guilt is made against a Senator who has been charged with a criminal offence that was prosecuted by indictment, the Standing Committee on Internal Economy, Budgets and Administration may order the withholding of the payable portion of the sessional allowance of the Senator. . . .

That is forfeiture. Hold that in your minds.

Honourable senators, I want to understand that one word: forfeiture. Forfeiture as a consequence of certain kinds of crimes was abandoned some time ago.

The next one, rule 140, states the following, and I am only quoting a part of it:

> That rule 140 be amended:
>
> (a) by replacing subsection (1) with the following:
>
> "Notice of charge
>
> 140. (1) As soon as practicable after a Senator is charged with a criminal offence for which the Senator may be prosecuted by indictment, either:
>
> (a) the Senator shall notify the Senate at the first possible opportunity, in a writing signed by the Senator, delivered to the Clerk of the Senate and laid by the Clerk upon the Table; or
>
> (b) the Speaker shall lay upon the Table such proof of the charge as the court may provide."

Honourable senators, the Speaker should not even be mentioned in this new rule. I do not know if the Speaker was consulted, but I will urge again and again that the Speaker of the Senate is not like the Speaker of the House of Commons. He is not the house's person or man; he is the Queen's man like a vice regal. He should not even be noted in such proceedings. I think to do so is degrading to the high precedence of the Speaker.

It gets interesting here. The report goes on again to add to the same section 140, a new subsection 2.1 as follows:

> Senate resources in case of leave of absence
>
> (2.1) If a Senator is granted a leave of absence under subsection (2), the Standing Committee on Internal Economy, Budgets and Administration may, as it considers appropriate in the circumstances, suspend that Senator's right to the use of some or all of the Senate resources otherwise made available for the carrying out of the Senator's parliamentary functions, including funds, goods, services, premises, moving, transportation, travel and telecommunications expenses.

Again, these are punishments that are being imposed in this report by rules.

Honourable senators, the problem I have with these proposals, as I did before, is not that we should be unconcerned with miscreant senators. My concern has always been that matters of miscreant senators should be conducted within our legal and constitutional framework. At all times, when rule changes are proposed, the proponents should point to the exact constitutional and parliamentary law upon which those changes rely.

Honourable senators, we heard two senators speak, but neither of them pointed to the law on which they or the committee relied upon to make these proposals. I have to conclude, then, that someone thought it was a good idea or wanted it, but my natural instinct is always to ask, "What is the law on which this rule change is based?"

Honourable senators, I may as well let it be known to you that this particular committee has a penchant for operating in camera. In most instances, when they bring reports to us for consideration, there is no record we can read which shows us the thinking of the committee or how the committee arrived at its recommendations to the Senate. I have raised this in the Rules Committee consistently, but to no avail.

When committees bring forth reports to us, and ask us to adopt them, it is very important that we can go to a record and to see the thinking of the members of the committee, how it developed and how the ideas and proposals crystallized. We are unable to do that in this instance.

I would submit to you, honourable senators, that we should look at why this particular committee constantly prefers to work in camera. The rule of the Senate clearly is that committee meetings should take place in public, except on two occasions. I speak now about rule 92(1), which tells us that committees must meet in public and with notice. They should also keep a record of their proceedings for those of us who read.

Rule 92(2) explains carefully when a committee may meet in camera. Rule 92(2)(e) tells us that a committee may meet in camera to consider a draft agenda, and rule 92(2)(f) allows the committee to meet in camera to consider a draft report. If you look at the committee notices, it appears that this committee is permanently considering a draft agenda or a draft report. I have raised this countless times in the committee. As I said, I have not been successful.

• (1220)

Honourable senators, it is difficult to form opinions on reports that are before us for adoption with neither the law nor the constitutional basis explained, and in addition, with no evidence on which the new rules are based. The Senate should not adopt new rules without the committee providing good and sound reasons why the Senate should adopt them other than that one or two people have said that the changes are simple and are very easy and are very, very good for us. Well, honourable senators, they are not simple, and they are not easy, and they are very, very bad.

Senators should be acquainted and should know the law on which all decisions on rules are made. In other words, the first lesson in any constitutional system is to know the ground that the rules are built on, the legal ground, especially when we deal with rules of such unpleasant and unfortunate areas of human activity.

I say this, honourable senators, in the hope that the Rules Committee may hear my plea. I was a member of that committee for a few years but, as honourable senators know, I am now a member of no committee, and no senator will tell me why I cannot be a member of any committee. That is something the Rules Committee should study. Why is it that some can decide that independent senators simply cannot serve on committees? I have a lot of problems with that, but that is for another day. It is a disgrace. It is an outrage, really. I can offer senators no law or reason as to why we have gone down this road.

Honourable senators, I want to put some law on the record and to say why I have concerns and urge caution. I belong to that group of people who watched Conrad Black be destroyed in a judicial proceeding that I thought left a lot to be desired. I quite frankly believe the man was badly treated. I really do.

The Hon. the Speaker: Would you like to ask for five minutes?

Senator Cools: Yes, please, Your Honour.

Hon. Senators: Agreed.

Senator Cools: This is the whole point, honourable senators. These issues are too complex to be dealt with in 15 minutes. In any event, we will leave that for another case, but we do not want kangaroo justice.

Honourable senators, I wanted to put to you two things. One is our commissions of appointment by our letters patent wherein Her Majesty commands our attendance. This is referred to in Senate rule 136. I quote our letters patent, "Every Senator shall comply with the command of the Sovereign to attend to the Senate":

> AND WE do command you, that all difficulties and excuses whatsoever laying aside, you be and appear for the purposes aforesaid, in the Senate of Canada at all times whensoever and wheresoever Our Parliament may be in Canada convoked and holden, and this you are in no wise to omit.

Honourable senators, there is no rule of the Senate that can amend Her Majesty's letters patent. Let us understand that. Senators' leaves of absence and suspension should operate by individual motions of the Senate confronting individual circumstances of the individual senator, not this sort of generic motion as in this report, because some senators are too delicate or too embarrassed to carry the responsibility of making judgments in each individual case.

I want to mention this business of the punishments and forfeiture. In the Senate, we are all equal. No senator has lordship over the other senator. One cannot say and no rule can give

Internal Economy the power to make decisions about senators in these particular cases. There is no over-lordship among senators.

Remember, these proposed rules disqualify and disable senators who are charged with offences, though they have not yet been tried. In fact, they may end up acquitted at appeal. These rules disqualify and disable senators from exercising their full rights and privileges. Now, there are times the Senate may want that, and there are times I would submit the Senate will want that, but those decisions should be made at the time by the Senate as a body, with full consideration of the individual circumstances and charges in the individual case.

Honourable senators, I offer this to you: I have in my files hundreds of cases of men wrongly and falsely accused of abuse. We do not have a handle or even knowledge of the number of men who have been imprisoned in those circumstances in the last many years. I am not defending any wrongdoing. I just say that we should be honourable, and treat it and deal with these problems in an honourable way, which is what the Senate is supposed to do.

The other thing I wish to put to honourable senators is that our appointments are life appointments, and they are the highest appointments in the land. They are higher appointments than judges themselves. You will find that a major concern of appointments or commissions of this high nature is that their treatment in the instances of their offences should follow high practices. That is why, honourable senators, a judge's removal involves votes of the House of Commons and the Senate. That has been in our Constitution for a long time.

That is why, honourable senators, in section 31 of The Constitution Act, 1867, it describes clearly the reasons why places — we do not say seats of the Senate, but Senate places — shall become vacant, and there are several. There are five reasons, and the fourth is the only one that speaks to crime. It says:

> The Place of a Senator shall become vacant in any of the following Cases:
>
> (4) If he is attainted of Treason or convicted of Felony or of any infamous Crime;

Honourable senators, let us understand that treason and felony are high crimes. That is one of the reasons why the term "felony" no longer has current usage in Canada. We now say indictable offences because "felony" strictly speaking was a serious crime. It always included an element of treason, because it meant a violation of allegiance.

The Hon. the Speaker: I regret to advise the honourable senator that her 15 minutes plus the five minutes extra have now expired.

Senator Cools: Honourable senators, can I just complete a few words?

Honourable senators, I think I have proven the point that these are very large issues. Jowitt's *The Dictionary of English Law* states on page 793:

> "Felony," strictly speaking, includes treason . . . although the terms are generally used as opposed to one another. Instances of felony in the more usual sense . . . are: piracy, murder, manslaughter, rape, larceny, robbery, burglary, arson . . .

Honourable senators, let us pay more attention to these so-called "simple matters." I would like to close with a Bible quotation from Philippians. This is one of the themes. For that which is honourable, just and true. The test of greatness, honourable senators, is to treat the dishonourable with honour. Any court justice can tell you that. Honourable senators, I leave that with you.

The Hon. the Speaker: I wish to thank the honourable senator for her intervention.

Is there further debate? If there is no further debate, are honourable senators ready for the question?

• (1230)

Hon. Senators: Question.

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

Hon. Senators: Agreed.

Senator Cools: On division.

(Motion agreed to and report adopted, on division.)

[*Translation*]

ROYAL ASSENT

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

RIDEAU HALL

December 16, 2011

Sir,

I have the honour to inform you that the Honourable Marie Deschamps, Puisne Judge of the Supreme Court of Canada, in her capacity as Deputy of the Governor General, signified royal assent by written declaration to the bill listed in the Schedule to this letter on the 16th day of December, 2011, at 12:09 p.m.

Yours sincerely,

Stephen Wallace
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bill assented to Friday, December 16, 2011:

An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act (*Bill C-20, Chapter 26, 2011*)

[*English*]

STUDY ON NATIONAL SECURITY AND DEFENCE POLICIES, PRACTICES, CIRCUMSTANCES AND CAPABILITIES

FOURTH REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the fourth report (interim) of the Standing Senate Committee on National Security and Defence, entitled: *Answering the Call: The Future role of Canada's Primary Reserve*, tabled in the Senate on December 15, 2011.

Hon. Pamela Wallin: Honourable senators, this is a very important report that we have just completed at the Standing Senate Committee on National Security and Defence. We touched on many very important matters. We heard from witnesses about how the Department of National Defence and the Canadian Forces are moving forward to protect and enhance the role of the reserves. We have looked at their contribution to citizenship, their sense of duty and their leadership, and I think we have put forward some very important recommendations.

I want to talk about that at much greater length at a time when both the public and this chamber and government itself are much more focused on this issue because of the importance thereof. Therefore, I would like to adjourn this debate in my name.

The Hon. the Speaker: It was moved by the Honourable Senator Wallin, seconded by the Honourable Senator Gerstein, that further debate on this matter be continued at the next sitting of the Senate for the time remaining to Senator Wallin.

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

Hon. Roméo Antonius Dallaire: Honourable senators, I wish to speak on this subject today, Your Honour.

Some Hon. Senators: No.

Senator Wallin: No. Sorry.

Senator Mercer: The usual cooperation from that senator, as always.

The Hon. the Speaker: Honourable senators, we do have a practice that when a senator indicates that they would like to speak on an item that is on the Orders of the Day and another honourable senator has indicated that they wish to move the adjournment, the practice has been to yield to the senator who wishes to speak during the current sitting, and then the Speaker turns to the senator who has indicated they wish to move the adjournment motion. That has been our tradition, and I would recommend that, in the spirit of the season, we give the floor to the Honourable Senator Dallaire.

[*Translation*]

Senator Dallaire: Honourable senators, I am fully aware that the chair of the Standing Senate Committee on National Security and Defence did not take the opportunity to give her opinion on the report, but I still think it is essential for the deputy chair of the committee to share his view on how the report evolved. I would also like to say that I support this report.

[*English*]

I rise today to speak on the fourth report of the Standing Senate Committee on National Security and Defence on the Canadian Forces primary reserve entitled *Answering the Call: The Future Role of Canada's Primary Reserve*.

I would also like to acknowledge and salute the reservists and their families for their tireless commitment to defending Canada and Canadian interests, as well as the sacrifices incurred and still incurred by those injured in the line of duty.

We have relied upon these reservists heavily over the last two decades. Essentially, over the last five years they have been mobilized, and we are now in a process of enormous complexity with their demobilization into the next phase of the use of the forces and reservists into the future.

Reservists have served in every mission since the Gulf War, both at home and abroad, including the lesser known missions in Sudan, the Congo and Sierra Leone, where my own son has served as a reservist, of which mission is totally reservist-based in retraining the new army of the Sierra Leone defence forces.

I should like, if I may, to emphasize a point on their commitment.

[*Translation*]

They have fought and been wounded, and some have lost their lives. They have shown that they are brave, courageous and up to the task. They remain essential to the Canadian Forces and deserve to be treated with just as much care.

[*English*]

I wish to thank the staff for their patience and loyalty in working in possibly less than favourable conditions and direction in the evolution of this good report — not great report, not excellent report, and not a report that had unanimous agreement by all members of the committee.

I do wish to single out Senator Lang from the steering committee for his stellar efforts, as well as Senator Nolin.

[*Translation*]

He worked very hard on the French portion of this report.

[*English*]

The crux of my speech, however, honourable senators, is not about the content of the report but how it came to be. I will touch upon the history, the procedure and the challenges this committee's work has faced over the past two sessions.

When I suggested over a year ago that the Defence Committee study the reserves, I furnished a substantial list of witnesses who would provide us with a wide range of perspectives in order that we might produce an in-depth report on a subject that has been long overlooked.

The chair and I, however, fundamentally disagree on this report. My honourable colleague prefers a more punchy report, which can be picked up rapidly and, yes, would be timely. However, timely is also a judgmental dimension when one considers the importance of the subject when we are speaking of individuals who have committed their lives and families to a mission.

The reason I raise this point comes from a recent publication called *Let Sleeping Dogs Lie* by Douglas Bland of Queen's University Strategic Studies Institute. I wish to read the following.

[*Translation*]

This study found that the government in general and the Department of National Defence in particular do not take into account any reports published by non-governmental or even governmental academic authorities. Reports by the Senate and Commons committees, even when those committees are dominated by members of the party in power, have no influence on the department's policies.

The study is on the period from 2000 to 2006. Instead of heeding the recommendations, senior public servants prefer to tell the minister what he wants to hear instead of putting themselves on the line. The procedure is that the status quo is maintained and the proposed improvements are never applied directly. There is not much chance of this situation changing these days.

• (1240)

The book concludes with five recommendations for the members of the Standing Senate Committee on National Security and Defence, of which I am Deputy Chair.

The recommendations are as follows: take steps to preclude contemptuous treatment by ministers and government officials; direct the drafting of reports to focus on specific rather than general problems, in order to prevent the government from being able to accidentally avoid important points; identify in advance the subjects to be examined in reports, in order to hear from all relevant witnesses on the matter, and direct the questions intended for the witnesses so that reports can achieve their objectives; always ask the government to provide a rapid response once the report is tabled; and conduct follow-up hearings after reports are published, calling back witnesses if necessary, to determine whether the government has applied the recommendations.

In short, these final recommendations are meant to try to prevent the government from simply maintaining the status quo, which is often a natural reaction, and instead to allow reports to have a direct impact on government policies, which is definitely not the case at the present time.

[*English*]

I remind all senators that the information and analysis of the two-year, over 400-page Kirby report, *Out of the Shadows at Last*, and its 118 recommendations have had a profound positive impact on mental health in Canadian society and have greatly added to Senator Kirby's renown as an individual. Matters of great importance merit such reflection. Considering the wear and tear our reservists have been through most recently, particularly with Afghanistan, where they often completed multiple tours of duty, and the inequality they have faced in terms of institutional support and services makes our reservists a great matter of importance that should be considered in-depth and, of course, in a timely fashion, as we move to a new phase of their evolution in this demobilization situation and with the onslaught of potentially grievous budgetary cuts.

For a point of illustration, and not direct comparison, over two years and three sessions of Parliament, the Kirby report heard over 400 witnesses. Over one year of study and two sessions of Parliament, the fourth defence committee study on reservists heard 21 witnesses in seven hearings only, also not using at all times all the time made available to it.

I am not saying that I wish *Answering the Call*, this report, to be 400 pages in length. I am, however, saying that certain dimensions require more study, more witnesses and more analysis. I do hope that this is the beginning or phase one of the Defence Committee's attention to reserves, as I believe there is much more that can be said and done, particularly as so much is evolving within National Defence and in which we should be providing input and assistance and gaining clarity on the evolution of the dossier of reservists, their mission and the cost to them, their families and the Government of Canada in accomplishing those missions.

Our allies have recently completed in-depth studies on the reserve forces and have applied new policies to make their reservists more effective and, in fact, carry a greater weight in the reliance on security and defence both at home and overseas.

A number of academic and institutional reports have recently been published. Consideration of these valuable perspectives has largely been left out of the committee's fourth report.

Sir John A. Macdonald said that the Senate was created as Parliament's chamber of sober second thought. To me, honourable senators, that means that we are to work in earnest to produce serious, rigorous work to the benefit of Canadians by providing advice to the Canadian government. A cursory review of a subject prevents us from being able to provide thoughtful analysis and meaningful considerations. A story without meaning is not worth a headline for sure.

It can be said that the Senate of Canada is Canada's original think tank. The essence and traditions of this institution are such that we take our time to consider issues carefully, thoughtfully

and thoroughly. Much of this sage examination is structured to occur in committee, where deliberate time and space have been created for learning and analysis. An intentional emphasis is placed on committee work by establishing our practice in such a way that committees are not meant to sit at the same time as the chamber, except, of course, in exceptional circumstances. This allows us to focus on the task at hand and to concentrate on what is important rather than to chase the story of the day.

The way the Defence Committee has recently operated goes, in my opinion, against that institutional purpose. The committee's order of reference lists eight topics of study. This is not a long-term plan, honourable senators. This is an array of ideas that allows the chair to pick, often with little notice and consultation from the other members, what the area of interest is for that time. While the Senate as a whole approved the order of reference, we need to ensure that more rigorous and deliberate consideration is introduced in the work plan of this committee.

Honourable senators have recognized the trouble with this ad hoc method of work. In committee budget considerations, senators from both sides of the chamber remarked that the committee is not sufficiently focused in its mandate and said, "At some point, we are going to have to bring this committee under control."

This lack of focus is a hindrance to the committee's quality of work, in my opinion. For example, there is no work plan for this committee in-depth, no deliberate study of week-to-week utilization, often, in fact, with little advance notice of what is to come about. This means that the Library of Parliament and committee staff are unable to plan ahead and are obligated to rush their work. While we are fortunate to have such intelligent people working in our service, their loyalty and abilities should not be limited by such time constraints. It is to the detriment of us all.

Senators are given little time to brief themselves or have continuity in their questioning. Time between hearings on a given topic and consideration of others means that some of the details or nuances of testimony may be forgotten. It is more difficult to follow up on a particular idea. Valuable information could be lost. Some of us age more quickly than others, and a focus may facilitate our faculties.

Witnesses themselves are also constrained in their time and ability to prepare. While they may be experts in their field, appearances before the committees are to be taken seriously and prepared accordingly. How can we ask witnesses to take our considerations seriously if we are prevented from doing so ourselves?

[*Translation*]

Making the most of the contributions by unexpected witnesses in order to enhance what we can learn about a given topic would certainly be advantageous. That is definitely not how things are done at the moment.

[*English*]

There have been small concessions on the steering committee but occasionally listening to others' ideas and experiences hardly constitutes collaboration.

It is best to refocus our consideration on the topic at hand, however, and that is the committee's reserve report.

While some decisions and deliberations were in camera or in steering and thus protected, I will not go into those areas. What I am able to say is that good committee work requires a mix of teamwork, cooperation, consideration and openness to others, but parliamentary procedure, duty and respect should not be sacrificed at any point.

May I have five minutes to conclude?

The Hon. the Speaker: Is it agreed?

Hon. Senators: Agreed.

• (1250)

[*Translation*]

Senator Dallaire: Honourable senators, I would like to raise three other points. The first has to do with the partisan way the committee operates. The second has to do with the linguistic rights that guide our work as senators. The third has to do with the recommendations.

First and foremost, I wish to make it clear that I understand that committees are the masters of their own affairs. I would like to reiterate that this should not, however, be at the expense of the spirit of the *Rules of the Senate*.

The administrative aspect of committees is managed by the Committees Directorate, and the clerks are part of that directorate. The clerks look after the technical aspects of the meetings and travel, invite witnesses, take care of the transcriptions and manage the finances. They oversee the production of reports and distribute documents. This last point worries me more and more. I think that relieving the staff of the task of producing reports and revising drafts in order to finalize them within the required timeframe, in order to allow a thorough examination, is not the best way to go about this, and that was the case for this report produced under the direction of the chair of the committee.

Management and distribution by the clerk protects the confidentiality of drafts and ensures that all committee members are treated equally and that no member receives special privileges.

If the chair distributes documents or drafts to the members of the chair's party and asks the deputy chair to do the same for the members of that party, the committee will lose control over the integrity of the report and will risk abusing parliamentary procedure. And I am not even talking about the independent members of this chamber.

More specifically, honourable senators, the committee almost violated members' parliamentary rights. Since the committee was aware of how long it would take for the document to be translated, it was proposed that the draft of the report be distributed to the members in only one language to speed up the study process. The process was interrupted after a formal complaint was lodged.

Subsection 17(1) of the Canadian Charter of Right and Freedoms states that everyone has the right to use English or French in any debates and other proceedings of Parliament.

I would like to read the words of the Honourable Senator Comeau:

> In other words, the Canadian Charter of Rights and Freedoms confers upon all honourable senators the right of parliamentary privilege in order to fulfil their duties as senators in Parliament in either official language.

Committee members must not be asked to consider a document in just one language. We have the right to work in our language of choice — anglophone or francophone, bilingual or unilingual.

The potential limitation of our duties as a result of language is unconscionable and cannot be used as an excuse for failing to submit a report in time and as needed. This must be taken into account throughout the process. In the Parliament of Canada, a document is complete when both versions — French and English — are available.

As a result, in order to fulfil our parliamentary duties, we must schedule time for translation in order to ensure the quality of the document. This was not the case. The quality of the French version, which was requested as a rush job and was deplorable initially, caused delays and friction, which prevented the committee from seeing the whole text before approving it. As a result, the committee did not unanimously approve this report, which was good, if not excellent.

Who are these reports for? Why are they produced? Who are our readers? The reservists? Will we write in the language of the reservist? For the media? Should we produce them for the media? Should we produce them for the Department of National Defence so it knows what we are talking about? Should we produce them for chiefs of staff, for the general public or for the government and its senior officials, who are experts on the matter, so that they can take appropriate action and achieve the desired objectives?

The Hon. the Speaker: I regret to inform the honourable senator that his 15 minutes and his five additional minutes have expired.

Do honourable senators wish to continue the debate?

[*English*]

Hon. Daniel Lang: Honourable senators, I rise with some surprise. I had no intention of speaking today. I know that Christmas is here and people would like to get on with their lives as we move ahead towards the new year. However, I am quite surprised at what was said today. As a member of the steering committee, I take exception to much of what has been said and I think it cannot go unsaid over the course of our recess until we reconvene.

At the outset, honourable senators, we were asked to do a study of the reserves because, in part, of the transformation taking place within the Department of National Defence and also because of the reorganization in view of the fact that we were leaving the Afghanistan theatre. It was made very clear and it was agreed by all members of our committee that time was not our friend and that decisions were going to be made in very short order by those in charge of making those decisions. We consciously made a decision that within the committee and within a given time frame we would have to come forward with recommendations if they were going to be heard and read and, hopefully, have an influence on those making the decisions.

Yes, we did hear 21 witnesses. We heard 21 very good witnesses in respect of all aspects of the reserves. It was conducted, I think, in a very free and open manner. We all had the opportunity as members of the committee to ask questions, to query those witnesses and come to conclusions.

The report before you is a very good one. It is a report — and I have to take my colleague Senator Dallaire to task — that was a consensus by all members of the committee. Through hard work and compromise, we came out with a number of solid, well-thought-out recommendations for the Department of National Defence to consider in the decisions that they will be making in the next number of months.

I resent the inference that there was no consensus and no compromise made within the steering committee or within the committee. If you go to the "blues" of the committee you will see that authority was given by all committee members, from all political parties, to the steering committee to bring forward a report with the understanding that the recommendations and the principles we had agreed to in committee would be incorporated and that we would draft the report accordingly. Honourable senators, we did that.

To Senator Dallaire, I take exception to this attack on the committee structure and attack on the chair in this house.

Some Hon. Senators: Hear, hear.

Senator Lang: You may disagree with our chair, but I want to say that our chair worked night and day with her staff and your staff to come forward so that we could have this today; yet you bring forward such allegations about our committee within the scope of the house here, without even talking to us about it.

Honourable senators, I have played a lot of hockey and I know when I have been blindsided. I do not appreciate it, especially at Christmastime. The report that has been tabled here, and I believe all members will agree, is well thought out and well placed. I just want to say that, from my perspective, if our committee is going

to function, it has to function as a two-way street. When I listened to Senator Dallaire and what was said today, honourable senators, I really have to wonder if anyone wants to do a report or if it is just a case of going to a meeting.

I want to, at this stage, honourable senators, adjourn the debate in my name for the remainder of my time.

The Hon. the Speaker: Is it agreeable to the Honourable Senator Wallin, who had earlier moved the motion to yield?

Senator Wallin: I would prefer to have it adjourned in my name as earlier indicated.

• (1300)

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

Hon. Senators: Agreed.

(On motion of Senator Wallin, debate adjourned.)

[*Translation*]

THE SENATE

MOTION TO RECOGNIZE DECEMBER 10 OF EACH YEAR AS HUMAN RIGHTS DAY ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator Chaput,
>
> That the Senate of Canada recognize the 10th of December of each year as Human Rights Day as has been established by the United Nations General Assembly on the 4th of December, 1950.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I support Senator Jaffer's motion that the Senate of Canada recognize the 10th of December of each year as Human Rights Day as established by the United Nations General Assembly on the 4th of December, 1950.

The purpose of this day is to pay tribute to all those around the world who defend the basic rights and freedoms belonging to every human being. The Universal Declaration of Human Rights has been translated into 360 different languages, which is a testament to the universal values it symbolizes; values that transcend every culture and tradition and serve as an affirmation of our common aspirations.

This is a day to encourage everyone to become involved in the global movement for human rights in order for the declaration to go from being a simple aspiration to becoming a reality for millions of people who are still not being fully granted the rights embodied in the Universal Declaration.

Honourable senators, I invite you to support this motion.

Hon. Senators: Question!

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

Hon. Senators: Agreed.

(Motion agreed to.)

MOTION TO URGE GOVERNMENT TO OFFICIALLY APOLOGIZE TO THE SOUTH ASIAN COMMUNITY AND TO THE INDIVIDUALS IMPACTED IN THE KOMAGATA MARU INCIDENT—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator Munson:
>
> That the Government of Canada officially apologize in Parliament to the South Asian community and to the individuals impacted in the 1914 Komagata Maru incident.

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I am not prepared to speak to this matter today and, therefore, I move adjournment of the debate. I also request that the clock be reset.

(Order stands.)

[*English*]

VOLUNTEERISM IN CANADA

INQUIRY—DEBATE ADJOURNED

Hon. Terry M. Mercer rose pursuant to notice of June 22, 2011:

> That he will call the attention of the Senate to Canada's current level of volunteerism, the impact it has on society, and the future of volunteerism in Canada.

He said: Honourable senators, in the spirit of the season, I do not think I will torture everyone with a long speech today. I will now move the adjournment of the debate.

Some Hon. Senators: Hear, hear!

(On motion of Senator Mercer, debate adjourned.)

SENTENCING AND RECIDIVISM

INQUIRY WITHDRAWN

On Inquiries, Order No. 21, by the Honourable Senator Banks:

> That he will call the attention of the Senate to questions of sentencing under the *Criminal Code*, and its effect upon recidivism.

Hon. Tommy Banks: Honourable senators, I ask that this item be struck from the Order Paper.

The Hon. the Speaker: Is it agreed, honourable senators, that the item be withdrawn from the Order Paper?

Hon. Senators: Agreed.

(Inquiry withdrawn.)

[*Translation*]

BUSINESS OF THE SENATE

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I would like take advantage of having the last word to wish all Senate staff, senators, and of course you, Your Honour, a very merry Christmas and a happy new year.

I would also like to take this opportunity to thank my colleagues, the clerks and the opposition members for putting up with and supporting me, sometimes unhappily. However, I believe that we learn best in difficult times.

Honourable senators, Senator LeBreton was unable to be here today and she asked me to extend her best wishes for the coming year and for Christmas.

I would like to personally thank her for her support. I must admit that working with her every day has made me aware of her exceptional qualities.

• (1310)

[*English*]

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I would like to associate myself with the comments of my friend Senator Carignan and wish all members of the Senate family, and their families, the very best for the season. I hope we will all come back in a good frame of mind, refreshed and restored, at the end of January, as we set about doing the business of the nation.

This is a remarkable place. We are very fortunate to be here, and we are very fortunate to have around us truly outstanding support from the table, the staff, the security forces, and all the others around this Hill. They should know how much we appreciate all they do for us and how, without them, it would be much more difficult for us to do what we do.

Merry Christmas and Happy New Year to everybody, and we will see you in January.

The Hon. the Speaker: Honourable senators, notwithstanding the rule that there is no debate on adjournment motions, I have yet to put the adjournment question. Therefore, we are not debating it.

Let me, without having to leave this seat to take my seat, simply associate myself with what the Leader of the Opposition and the Deputy Leader of the Government have said. Each and every member of this very special and very honourable house brings great dignity to the Parliament of Canada. Every day, as I listen to the debates, I say to myself what a great honour you give me to have me as your Speaker. Each and every member of this house is reflective of the greatness of our land.

[*Translation*]

I would like to wish all members of the Senate of Canada a very merry Christmas.

ADJOURNMENT

MOTION ADOPTED

Leave having been given to revert to Government Notices of Motions:

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

> That when the Senate adjourns today, it do stand adjourned until Tuesday, January 31, 2012, at 2 p.m.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Tuesday, January 31, 2012, at 2 p.m.)

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