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Wednesday, November 28, 2012

The Honourable NOËL A. KINSELLA
Speaker

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

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THE SENATE

Wednesday, November 28, 2012

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

Prayers.

SENATORS' STATEMENTS

VIOLENCE AGAINST WOMEN AND GIRLS

Hon. Yonah Martin: Honourable senators, November 28 is Day 4 of 16 Days of Activism Against Gender Violence. It is also the fifth anniversary of a motion, unanimously passed in the House of Commons, in support of World War II survivors of sexual enslavement, an estimated 150,000 to 250,000 women and girls as young as 13, of Korea, China, the Philippines, Taiwan, Burma, Indonesia, Holland and Australia.

Yesterday in Seoul, the last of the 90-some-odd-year-old survivors gathered outside the Japanese embassy on the one thousand fiftieth Wednesday of peaceful protest in memory of the women who suffered and endured the same nightmare.

[*Translation*]

Honourable senators, although I was born in the same country as those courageous women, I have always known peace. And as I rise to address the upper chamber here today, I know all too well that women around the world continue to suffer, despite the many sacrifices and gains their sisters have made in the past and continue to make today.

[*English*]

I am both pained and inspired by the resilience of the grandmothers who come, in spite of all weather conditions, to meet every Wednesday to peacefully protest, in witness to those watching, that so long as they have breath they will stand up to be noticed and speak up to be heard. I know that, because of their will to survive, women of Korean descent today have broken free of the chains that limited their potential in the past and are free to live and realize their dreams in every way.

At a recent gathering I met a survivor of domestic abuse, a poet and a program officer from Togo and Ghana at Crossroads International, by the name of Annie Kashamura Zawadi.

[*Translation*]

She told me that, in the Democratic Republic of Congo, some 4,000 women are raped every day. That is unthinkable, but Annie is on the front lines of advancing human rights for the women of Congo, and that is what she told me.

[*English*]

Last week, as one of the global leaders, Senator Ataullahjan visited the family of Malala Yousafzai, the 14-year-old Pakistani activist whose suffering reminds us that women and girls, past and present, are still fighting for their fundamental rights and freedoms.

As Annie Kashamura Zawadi writes in her recently published autobiographical anthology of poems entitled *I Can Testify: A Few Words from a Survivor*:

> Violence against women and girls is alive, normalized, tolerated and silenced . . .
>
> Get involved. If you don't condemn it, you condone it.
>
> If you don't denounce it, you reinforce it.

Honourable senators, we must be ever vigilant and never cease in our efforts. Today let us stand in solidarity with all women who deserve no less than our best effort.

[*Translation*]

LES FIDÈLES À RIEL

Hon. Maria Chaput: Honourable senators, on Sunday, November 25, 2012, a new book entitled *Les Fidèles à Riel* was launched in Saint Boniface, Manitoba. The author, Bernard Bocquel, presented his book in the form of a journalistic account. I think it is a wonderful contribution to Manitoban heritage.

This was also an historic moment for the Union nationale métisse, which is celebrating its 125th anniversary this year, because the book recounts the history of the Union nationale métisse Saint-Joseph du Manitoba since the 1880s. For the first time, the struggles of the French-Canadians Metis people who remained loyal to Louis Riel following the 1869-1870 Resistance and the 1884-1885 Resistance are explored based on archival materials from Metis organizations. As the author states:

> In these pages, you will learn about the struggles faced over generations by a handful of people who were passionate about justice and refused to abandon their identity.

Michel Lagacé, president of the Société historique de Saint-Boniface, addressed the 125 invited guests, emphasizing the bonds of friendship and cooperation that exist between his organization and the Union nationale, and I quote:

> I am honoured to pay tribute to Riel's heirs, who insisted on their right to be free and respected in their own country, and who have demonstrated the utmost loyalty to their remarkable heritage.

Honourable senators, as Manitobans we are concerned about the fate of Riel House, in Winnipeg, in light of the federal government's budget cuts, since we know that high-quality interpretation services are essential for teaching visitors about Riel's complicated history. We will continue to insist that both of Canada's official languages be heard at this site.

As the president of the St. Boniface Historical Society said:

> It would simply be unthinkable that in Manitoba — which has always been bilingual because of the French-Canadian Metis — Louis Riel would not be honoured in French and English . . .

— and even more in the case of Riel House in Winnipeg.

I am holding out hope that the federal government will recognize the need to continue to offer interpretation services at Riel House in both official languages.

[*English*]

MR. MARK CARNEY

CONGRATULATIONS ON APPOINTMENT AS GOVERNOR OF THE BANK OF ENGLAND

Hon. Donald H. Oliver: Honourable senators, Mark Carney is:

> . . . quite simply the best, most experienced and most qualified person in the world to be the next Governor of the Bank of England . . . and help steer Britain through these difficult economic times

Honourable senators, that is what Britain's finance minister said about Mark Carney, the Governor of the Bank of Canada, when he announced his appointment as the next Governor of the Bank of England.

The British finance minister went on to say:

> Mr Carney is unique amongst the potential candidates in combining long experience of central banking, huge international credibility in economics, deep expertise in financial regulation and a first-hand experience of private sector financial institutions.

Honourable senators, I rise today to pay tribute to Mr. Carney as one of Canada's leading financial experts and a man who helped steer Canada through one of the most difficult financial crises in history.

I have served on the Standing Senate Committee on Banking, Trade and Commerce for most of my 22 years in the Senate. Mr. Carney has appeared before us on many occasions during his four years as governor to address a number of monetary policy issues. He was one of the most impressive witnesses to appear before us. He always spoke with candour and clarity on the most difficult monetary issues. No matter what questions I posed, he always gave weighed, reasoned and perceptive responses.

I have also had the honour to have had private talks with him and I have always learned a lot. Before the announcement of his appointment to the Bank of England, he had invited me to a private lunch at the bank to discuss financial and monetary matters, which I am now looking forward to even more.

In addition to his new responsibilities in England, Mr. Carney will continue to serve as chairman of the Financial Stability Board, the worldwide financial regulatory body that monitors and makes recommendations about the global financial system. He will now be in a better position to enlarge and grow the board, which is based in Basel, Switzerland. That is good news for Canada.

As the BBC writes:

> . . . he brings with him the ability to seriously influence the future all-important global debate on making the banks safe, because he is the chair of the Financial Stability Board . . .

Honourable senators, the appointment of Mark Carney is bittersweet for Canada. He has done exceptional work here at home over the last four years and he will be missed. On the other hand, the Bank of England is fortunate to have one of the world's brightest and most experienced economists manage its central bank. His handling of the recession and leadership has won him the respect of the global community.

Mr. Carney was educated at both Oxford and Harvard Universities. He is also a man of great personal integrity and quiet confidence. In my opinion, Mark Carney is a brilliant banker who has the unique capacity to take enormous amounts of hugely complex data and material and weave it into a logical, clear and visionary view of the globe. We can understand what the British finance minister meant when he said that Mark Carney is acknowledged as "the outstanding central banker of his generation."

Honourable senators, please join me in congratulating Mr. Carney on his new post and a job well done here at home.

• (1340)

ROUTINE PROCEEDINGS

JOBS AND GROWTH BILL, 2012

FIFTH REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE ON SUBJECT MATTER TABLED

Hon. Richard Neufeld: Honourable senators, I have the honour to table, in both official languages, the fifth report of the Standing Senate Committee on Energy, the Environment and Natural Resources, which deals with the subject-matter of those elements contained in Divisions 4, 18 and 21 of Part 4 of Bill C-45, A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures, and, with leave of the Senate and notwithstanding the order of October 30, 2012, I move that the report, in addition to being referred to the National Finance Committee, also be placed on the Orders of the Day for consideration at the next sitting.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(On motion of Senator Neufeld, report placed on the Orders of the Day for consideration at the next sitting of the Senate. Pursuant to the order of October 30, 2012, the report is also deemed referred to the Standing Senate Committee on National Finance.)

FIRST NATIONS FINANCIAL TRANSPARENCY BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-27, An Act to enhance the financial accountability and transparency of First Nations.

(Bill read first time.)

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

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

[*Translation*]

CANADIAN NATO PARLIAMENTARY ASSOCIATION

SPRING SESSION, MAY 25-28, 2012—REPORT TABLED

Hon. Pierre Claude Nolin: Honourable senators, I have the honour to present, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association respecting its participation at the Spring Session, held in Tallinn, Estonia, from May 25 to 28, 2012.

[*English*]

MISSING AND MURDERED ABORIGINAL WOMEN

NOTICE OF INQUIRY

Hon. Sandra Lovelace Nicholas: Honourable senators, I give notice that, two days hence:

> I will call the attention of the Senate to the continuing tragedy of missing and murdered Aboriginal women.

Hon. Senators: Hear, hear.

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Bob Runciman: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

> That, for the purposes of its consideration of Bill S-12, An Act to amend the Statutory Instruments Act and to make consequential amendments to the Statutory Instruments Regulations and Bill C-36, an Act to amend the Criminal Code (elder abuse), the Standing Senate Committee on Legal and Constitutional Affairs be authorized to meet at 3:30 p.m. on Wednesday, December 5, 2012, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

QUESTION PERIOD

JUSTICE

PROTOCOL AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, THEIR PARTS AND COMPONENTS AND AMMUNITION

Hon. Joan Fraser: Honourable senators, my question is for the Leader of the Government in the Senate.

Earlier this month, following a meeting of the federal-provincial justice ministers, the official communiqué announced that the federal minister had said that there were no plans for Canada to ratify the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, which, as honourable senators know, supplements the United Nations Convention against Transnational Organized Crime, which Canada has also not ratified. Why not?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator. I actually cannot answer that question, so I will take it as notice.

Senator Fraser: The protocol is the only international instrument to try to control the illicit trafficking of small arms, so it is not an unimportant instrument in the fight against organized crime.

While the minister is at it, the same communiqué announced one more time that the government is pursuing its consultations on the issue of firearms marking. These consultations have been occurring since early in 2006, when the government took office, and now apparently they are to continue yet again until December of next year. This marking system is also considered a very important element in the fight against transnational organized crime. It has to do with trying to minimize firearms and small-arms smuggling.

Could the leader also find out how those consultations are going and what at this point we might expect the outcome to be?

Senator LeBreton: The honourable senator asks a serious question about a serious issue. I will be more than happy to provide as much information as there is available and answer the question. I thank the honourable senator for the question.

HUMAN RESOURCES AND SKILL DEVELOPMENT

JOB LOSSES IN ATLANTIC CANADA

Hon. Elizabeth Hubley: Honourable senators, my question is also for the Leader of the Government in the Senate. A recent study by the Canadian Centre for Policy Alternatives confirms that Atlantic Canada is suffering a disproportionate blow compared to other regions when it comes to federal government job cuts. So far, over 1,000 jobs have been lost in the Atlantic region, with over 3,000 more to come. These job losses represent a major loss of good, well-paying jobs for a region that already faces high rates of unemployment, lower wages, seasonal work and out-migration. The government's cuts will only worsen these inequities.

Why does the government choose to cut jobs in a region that is less able to absorb those cuts?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators know my views on the Canadian Centre for Policy Alternatives, and once again their report is erroneous.

Our government has been very clear when we have been dealing with the jobs of Canadians who work for the federal government. Every region of the country will retain its proportion of federal jobs. No one region of the country has been singled out to take disproportionate cuts among government employees.

Senator Hubley: Supplementary. With an already high level of centralized government in Canada, 42 per cent compared to just 15 per cent in the U.S. and 16 per cent in the U.K., the significant job losses in Atlantic Canada will only increase this level while taking away important programs and services throughout the Atlantic region.

How does the government explain cutting public services throughout Atlantic Canada while maintaining them elsewhere? For instance, the loss of the district Veterans Affairs office in Charlottetown will have a significant impact on veterans across Prince Edward Island.

Senator LeBreton: The honourable senator is using figures that are not correct. The fact of the matter is that in terms of the public service, no one area of the country is disproportionately affected by these job cuts. I would say to the honourable senator that the government embarks on many endeavours with the private sector, including shipbuilding.

• (1350)

Changes have been made in other areas to ensure that good paying jobs are available to all Canadians, including Atlantic Canadians, and that government jobs or public service jobs will not be affected in Atlantic Canada any more than they will be affected anywhere else in the country.

Senator Hubley: First, I would like to ask a question about shipbuilding. The leader mentioned that and it has been the answer to many questions when it comes to job losses in the Atlantic region. Could the leader clarify for me that the number of jobs being lost in the Atlantic region exceeds the jobs that will be created from the shipbuilding industry in Halifax?

Senator LeBreton: Jobs that are created in the private sector are jobs that any Canadian would be happy to have. I do not think it is an either/or situation. I am simply saying that government jobs in Atlantic Canada will not be disproportionately affected, but the government is embarking on many other initiatives to ensure there is more diversity, more job opportunities for Canadians across the country and this is as true in Atlantic Canada as it is anywhere else.

Senator Hubley: As the minister disagrees with the numbers that I have used today in both of my questions, both on the large number of job losses that the Atlantic region will sustain and also on the centralized government issue at 42 per cent for Canada, I wonder if the leader would be able to provide and table the figures that she is referring to for the Senate.

Senator LeBreton: Honourable senators, anyone that looked at the report — and I did not read it in depth because, as I already indicated, I tend to discount reports from the Canadian Centre for Policy Alternatives — knows the CCPA specifically excluded the National Capital Region, which proportionately has had a much higher number of jobs percentage wise than any other region of the country. The premise of the report is false.

I believe, although I will have to verify, that we have already tabled some of the information that the honourable senator has requested in a written answer, but if not, I will be happy to take it as notice and get the information that she requires.

JUSTICE

LINGUISTIC DUALITY

Hon. Marie-P. Charette-Poulin: Honourable senators, my question is for the Leader of the Government in the Senate. Last week, the Government of Ontario announced that, in response to the report entitled "Access to justice in French," it would be:

> . . . making it easier for Francophones to access the justice system in the official language of their choice.

On the heels of that announcement, a memorandum of understanding was signed this week between Canada's Commissioner of Official Languages, Graham Fraser, and Ontario's French Language Services Commissioner, François Boileau, to allow them to work together to "better protect Canadians' language rights."

In light of these very positive initiatives, would the leader please tell this chamber how the federal government intends to step up, to show real leadership in enhancing such an important Canadian value as linguistic duality in our judicial system?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I can answer for the federal government; I cannot and I will not comment on various announcements made by provincial governments. I can tell the honourable senator, and she knows this full well, that our government's support for official languages is unprecedented in our Roadmap for Canada's Linguistic Duality. As the honourable senator knows, we have outlined a $1.1 billion investment. In his report, the Commissioner of Official Languages said:

> The Roadmap for Canada's Linguistic Duality . . . recognizes the importance of increasing the level of bilingualism among young Canadians and sets out federal investments. . . . These programs are working.

I simply put that on the record as evidence that this government — as we have done since the day we were sworn into government — places a great deal of emphasis and support in recognition of Canada's linguistic duality. Fortunately, the Commissioner of Official Languages, Mr. Graham Fraser, agrees with that.

Senator Charette-Poulin: The Supreme Court of Canada, the highest court in the country, should be setting the standard for bilingualism. Does the minister agree that the time has come to amend the Supreme Court of Canada Act to include the comprehension of both official languages as a mandatory criterion for the appointment of Supreme Court judges?

Senator LeBreton: I think the government and the Minister of Justice have been very clear. The Supreme Court of Canada is a unique organization. That provision was specifically left out of the Official Languages Act by the honourable senator's great hero, Pierre Elliott Trudeau, and all appointments to the Supreme Court of Canada must be based on merit.

[*Translation*]

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I have a supplementary question. While the Government of Ontario has committed to improving access to justice in French, the federal government is just treading water. Why is the government once again dismissing out of hand the idea that all Canadians deserve to be treated equally by the Supreme Court and have their arguments heard and understood in either of the country's two official languages?

[*English*]

Senator LeBreton: As I pointed out in answer to Senator Chaput, the Supreme Court of Canada, for reasons at the time that were valid and are as valid today as they were then, was not included in the Official Languages Act. I would recommend the honourable senator review the *Debates of the Senate* and read a speech by my colleague Senator Carignan on this subject. The Supreme Court of Canada is unique and, of course, people who appear before the Supreme Court of Canada are heard in their own official language. The court's facilities absolutely allow this and the position with regard to the Supreme Court of Canada, being a unique organization under this government, is the same as under previous governments.

[*Translation*]

Senator Tardif: Honourable senators, translation and interpretation are not good substitutes. What value does the government place on fair access to justice?

[*English*]

Senator LeBreton: I believe that we have an outstanding justice system in this country. The people who serve on the Supreme Court of Canada and in other judicial positions are of the highest calibre. I do not think there is justification in this country, as opposed to perhaps other countries, for people to question our system of justice, which I would argue is one of the best in the world.

[*Translation*]

NATIONAL DEFENCE

USE OF MILITARY PERSONNEL AT POLITICAL EVENTS

Hon. Roméo Antonius Dallaire: Honourable senators, my question is for the Leader of the Government in the Senate. Almost two weeks ago, on November 16, the Prime Minister paid a surprise visit to Quebec City. I say "surprise" because no one was supposed to know he was coming. Nevertheless, a regiment was still mobilized on that occasion, the Voltigeurs de Québec, a regiment that my father-in-law commanded during the Second World War and in which my son is currently serving.

As a Quebec City senator, I feel that the fact that I was not invited to the announcement of the new armoury shows somewhat of a lack of respect for our institution. I suppose it is a matter of politics.

However, if this is a matter of politics and if we look at the picture of the Prime Minister that was taken at this event, which appears in the news release, we see that almost the entire regiment is standing behind him in the background. In my opinion, this is an American way of doing things on the Prime Minister's part, and I have already talked about this before.

I think it is wrong for soldiers in uniform to be used as pawns in political and partisan activities. I would like to draw you attention to what Prime Minister Harper said:

> I can say that our priority, for the population of Quebec and the rest of Canada, is the economy, and I think that is the real priority of Quebeckers, not these old quarrels.

Quarrels about flags, if you will remember. He then added:

> I have no intention of participating in . . . quarrels.

Here is the rub. At the end of these remarks, the journalist wrote:

> The military personnel present warmly applauded.

• (1400)

When have we ever directly involved the military in a political activity, especially a quarrel about flags? When have we ever done this? This has never happened in the history of the Canadian army, which was established in 1867. Why is the Prime Minister using members of the military as political pawns?

Senator Carignan: Did they applaud because they agree with him?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, with all due respect, while we can check the record, I think the honourable senator was on his feet many times asking me when the Prime Minister and the government were going to Quebec City to make an announcement with regard to the armoury and the tragic fire that burned it down. The Prime Minister did not go there unannounced; the visit was announced and publicized. He was there. Some of the honourable senators in this place were there.

The last time I looked, there are soldiers around armouries. The soldiers were very happy that the armoury will be rebuilt. Honourable senators, the soldiers were there, and the Prime Minister was there making an announcement that was important not only to Quebec but also to the country and our military.

I do not for one moment buy the honourable senator's logic that somehow or other this is unprecedented and has never happened before. I remember a famous photo of Jean Chrétien, surrounded by a bunch of army people, with his helmet on backwards.

Senator Dallaire: I did not catch the last words that were said. Surrounded by what?

In 1970, previous governments spent $350-odd million building Valcartier base — 5,000 troops — and none of the pictures had any troops standing in front of the potential bulldozers that were to build the infrastructure. I was there. In 1993-94, for over $250 million, we built CFB Edmonton, where we moved about 4,000 troops. There was extensive construction. Since I was Deputy Commander of the Army at the time, I do not remember anyone ever asking the military to be backdrops to the Prime Minister to make an announcement there. It is not in our tradition to put the military in an exercise where potentially they can find themselves having to or involuntarily expressing their political views, which happened in Quebec City at that occasion.

By the by, if the Prime Minister announced that he was coming, the provincial government did not know about it until the last minute. I was at the Garrison Club the day before and I was told secretly, "Do not tell anyone, but the Prime Minister is coming to make an announcement tomorrow."

Does the leader not agree that it is inappropriate to put our military — people in uniform — in the middle of whatever political debate might be going on and using them as props for a political decision?

Senator LeBreton: First, the people in our armed forces, who have been very well served by this government, were not used as props. The honourable senator talks about not having soldiers in front of bulldozers. If I were a soldier, I would not stand in front of a bulldozer, either.

The honourable senator is absolutely wrong. The Prime Minister was there making an important announcement. I do not know who told Senator Dallaire that the Prime Minister would secretly be there, but obviously it was not secret if they were informing him of this. The announcement was made that the Prime Minister would be there. He was there. He made a very important announcement — one that was on a topic that the honourable senator has been asking me quite regularly when we were going to do something about it. Now that we are doing something about it, somehow or other he finds a reason to criticize it. I do not accept the premise at all.

Senator Dallaire: I have a supplementary question.

The Hon. the Speaker: I will recognize the Honourable Senator Verner for a supplementary question.

[*Translation*]

Hon. Josée Verner: My question is for the Leader of the Government in the Senate.

I remember very well when I announced the plans and the schedule for the reconstruction of the Armoury, a monument that is very important to the people of Quebec City, the province of Quebec and Canada's history. The Voltigeurs were involved in the public consultations and submitted a plan for the reconstruction of the Armoury. In light of the fact that this armoury is known as the Voltigeurs du Québec Armoury, do you not think that it was quite appropriate for these soldiers to be present at this event on November 16?

[*English*]

Senator LeBreton: I thank the honourable senator for the question. Absolutely it was very appropriate. In the honourable senator's role as a minister of the cabinet before becoming a senator, she was one of the major drivers behind putting together the proposals for ensuring, on behalf of the people of Quebec, the people of Quebec City and the citizens of Canada, that this rebuilding project would be front and centre and followed-through on. Allow me to congratulate the honourable senator for her great work.

She is absolutely right. When one goes to an armoury and there are people at the event, they are obviously soldiers. If one goes to a dairy farm and makes an announcement, there will be farmers and cows. If one goes to an auto plant, one will be in front of a bunch of auto workers building auto parts.

Therefore, I actually do not see the logic of the Honourable Senator Dallaire's question.

Senator Dallaire: I have a supplemental.

When I was an officer cadet in Shilo, I was paraded in front of this chief instructor in gunnery and I was told, "Young man, you are flippant." I did not know what the hell it meant, but anyway I accepted it. I walked back and someone defined it for me. I will not say that comment here to the leader's responses.

However, first of all, soldiers do not stand in front of bulldozers. They stand in front of bullets. I did not say "in front of," I said "beside." Second, to correct the comments, none of the Voltigeurs de Québec — serving members, who served and demonstrated loyalty to the Crown and had to pledge loyalty to the Crown — submitted any pieces of paper for the armoury. It was the armouries, the association or the museum staff. None of the reservists had the right or allowance to submit any documents.

Third, is the argument we are going for: Yes, farmers are there when dairy farms are opened and auto workers are there in auto works, but they are not under the employ of the Department of National Defence or under the National Defence Act, which precludes them from any engagement in any political process whatsoever. They should be expressing themselves and I hope they do, but that is not the case with the military. Therefore I am asking whether the Prime Minister can forgo using military personnel in political announcements, although I agree that we needed the armoury. Using the military for political processes is inappropriate. Does the leader not agree and will she speak to the Prime Minister about that?

• (1410)

Senator LeBreton: Honourable senators, this is an announcement the Prime Minister made as a prime minister on behalf of the Government of Canada. This is an important announcement and I would not for a moment suggest that any of those cadets or people who are associated with the armoury would not be very happy with this announcement by the government. I fail to accept Senator Dallaire's logic.

Prime Minister Harper is the Prime Minister of Canada. He is the head of the Government of Canada, and he was there making a very significant announcement about something demanded by the honourable senator, among others, and supported by the government. He was making a very important announcement on behalf of the Government of Canada.

Senator Dallaire: Honourable senators, it is most appropriate for the Commander-in-Chief, the Governor General, to have troops there with him. The Governor General does not make political expressions, apart from when he is here delivering the Speech from the Throne. However, the Prime Minister is not the President of the United States, who is their commander-in-chief. More and more, the impression I am left with is that there is the sense that maybe the military should be responding to the Prime Minister in that similar fashion and that we do not connect in the logic of seeing the military in a very politically charged occasion. Yes, we announced the reconstruction of the armoury, but we knew there was a fight with the provincial government on the flags. It was all over the place.

Putting the military in a scenario where they would react in a political process reminds me of the October Crisis of 1970, when we had troops who would have to use lethal force against family members who were separatists. Those troops were working for the federal government. One does not put troops in an ethical dilemma of that sort. I am requesting that the Prime Minister consider that in the future when he is with the troops; yes, they really were backdrops.

Senator LeBreton: Again, the Prime Minister was making an important announcement — a government announcement and not a political announcement.

With regard to the question about the flag, I am glad to see the results of a poll today about how Quebecers feel about the Canadian flag.

However, I will be very happy to make note that the honourable senator has officially put on record his disapproval of the former prime minister, Pierre Elliott Trudeau, using troops against ordinary citizens when he invoked the War Measures Act.

Some Hon. Senators: Oh, oh.

Senator Dallaire: Wait a minute. Let us watch how far the leader is going with this. Never did I ever say anything of that nature. I am simply stating that we were in that position, and we lived with it and with its consequences.

Honourable senators, I had to decide whether I would open fire on my sister. The government imposed that upon us and those were the rules of engagement. We respected them, we loyally applied them, and we would have used force if required.

Do not ever put that condition as me against Mr. Trudeau or the decision to invoke the War Measures Act. I am simply stating that one does not put the military in such an ethical situation when they are committed to serving the government of the people of this country.

Senator LeBreton: I hate to admit this, but I was actually here during the War Measures Act and I had to step over a soldier to get into my office because soldiers were guarding Parliament Hill.

Honourable senators, my statement stands. Senator Dallaire obviously had difficulty with that decision, but we are now way off track from the intent of the original question. The honourable senator was making accusations against the Prime Minister that happen not to be factual.

ORDERS OF THE DAY

PROHIBITING CLUSTER MUNITIONS BILL

THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Fortin-Duplessis, seconded by the Honourable Senator Nolin, for the third reading of Bill S-10, An Act to implement the Convention on Cluster Munitions.

Hon. Elizabeth Hubley: Honourable senators, I rise today to speak at third reading of Bill S-10, an Act to Implement the Convention on Cluster Munitions. The Convention on Cluster Munitions seeks to ban the use of these indiscriminate weapons and prevent the human suffering they cause.

Canada signed the Convention in December 2008 and has now brought forward the necessary ratification legislation in the form of Bill S-10. The Standing Senate Committee on Foreign Affairs and International Trade studied Bill S-10 for four weeks. We heard from almost thirty witnesses, including the Minister of Foreign Affairs and International Trade, department officials from DFAIT, DND, Justice Canada, NGOs, independent legal experts, and individuals involved with the negotiation of the convention.

By and large, the witnesses all agreed on these main points: cluster munitions are terrible weapons that harm civilians; the Convention on Cluster Munitions is an important international treaty; Canada supports the convention and international efforts to discourage the use of cluster munitions and support victims; Canada has never itself produced or used cluster munitions; Canada has no intention of ever using cluster munitions in the future; and, finally, Canada strives to be a world leader in the humanitarian protection of civilians.

Where they differed was in their interpretation of Bill S-10 and whether or not they felt that it adequately reflects Canada's professed values and intentions when it comes to cluster munitions and the convention. In other words, does the bill do what we want it to? Is it good enough as is or can it be improved?

The Minister of Foreign Affairs and International Trade, the Honourable John Baird, made the government's position clear when he said, "we deal in the art of the possible, not the art of perfection." The government believes the bill is good enough.

Honourable senators, I disagree and so do the many legal experts, NGOs and individuals who testified before the Standing Senate Committee on Foreign Affairs and International Trade. I think we can do better and we must do better. If ever a piece of legislation were to demand perfection, then this is it. While Article 21 of the Convention on Cluster Munitions is controversial and presents countries looking to ratify the convention with a challenge, this does not mean we must settle for good enough.

Frustratingly, the drafters of this bill approached the topic of military interoperability with a paint roller when they should have used a fine brush. Consequently, we now have a clause 11 that presents exceptions to the prohibitions outlined in clause 6 that are so broad and far-reaching that many have labelled them loopholes.

Honourable senators, this is unacceptable but, fortunately, it is also fixable. The witnesses who testified at committee, many of whom have years of experience behind them and are leaders in the field of international law and the Convention on Cluster Munitions, presented us with suggestions on how to improve the bill. I would like to take the time now to review these suggestions and offer some of my own. I will explain how we can meet our obligations under the convention without sacrificing the ability of our military to engage meaningfully with our allies who have not signed the convention; how we can strengthen the legislation and include measures to improve accountability and transparency; and how we can show the world that Canada is once again a leader with high standards of humanitarian protection.

• (1420)

The general consensus is that the problematic portion of Bill S-10 is clause 11. Clause 11 deals with military interoperability between states parties to the convention and states not party. It lists exceptions to prohibited acts for members of the Canadian Forces while engaged in a combined military operation. Although military interoperability is allowed under Article 21 of the convention, it is not a blanket exception. Article 21 does not allow states parties to violate Article 1 of the convention. As Bonnie Docherty, of Human Rights Watch and Harvard Law School's International Human Rights Clinic explained when she testified before the Standing Senate Committee on Foreign Affairs and International Trade:

> Article 1 prohibits assistance to anyone with any ban activity, under any circumstances, which should encompass joint military operations. Article 21 should be understood as a clarification that the article allows mere participation in joint military operations instead of as a qualification that creates exceptions during such operations.

This is to say that Canadian Forces engaged in a combined operation with the forces of a state not party to the convention are not allowed to themselves use cluster munitions or assist anyone else to use them. Nevertheless, as it now stands in Bill S-10, clause 11.(3)(*a*) would specifically allow a Canadian to aid, abet, or counsel another person to use, acquire, possess, or transport a cluster munition. Clause 11.(1)(*b*) would allow a Canadian to expressly request the use of a cluster munition and clause 11.(2) would allow Canadian Forces to transport cluster munitions. Furthermore, clause 11.(1)(*c*) also goes so far as to allow Canadian Forces on attachment, exchange or secondment full licence to use, acquire, possess and transport cluster munitions.

These broad and blanket exceptions were highlighted over and over again as a significant problem by the many witnesses who testified before the committee. For example, Dr. Ken Rutherford, Director of the Center for International Stabilization and Recovery, said:

> I think the exceptions that are outlined in Bill S-10 detract from the purpose of the convention, which is to put an end for all time the use of cluster munitions that cause unnecessary suffering and casualties. It is an indiscriminate and immoral weapon, and I think the majority of the world has agreed to that.
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> By carving out exceptions, I think the overall threat to the treaty is that other governments will make unilateral decisions to carve out their own exceptions. Therefore, the spirit of the treaty is really in the heart of Article 1, which is to end for all time the use of cluster munitions.

Stephen Goose, Director, Arms Division, Human Rights Watch, also felt that clause 11 of Bill S-10 was seriously flawed. He said:

> Our view is that this legislation is contrary to the Convention on Cluster Munitions and could well undermine the integrity and long-term success of the convention. This view is shared by many key state parties to the convention, such as Norway, as well as by the International Committee of the Red Cross and UN agencies, as we heard at the recent third meeting of states parties to the convention, where the dangers of this draft bill were the hottest topic of conversation, both in the hallways and in the plenaries.

Furthermore, Dr. Walter Dorn, Chair, Department of Security and International Affairs, Canadian Forces College, said that clause 11 is:

> . . . clearly in contravention of the treaty, even under the widest possible interpretation of the treaty in Article 21. That Article allows parties to engage in combined operations with non-parties — perfectly natural — but it does not allow a state party to assist or cooperate in using cluster munitions. Canadians in a U.S. chain of command, or fighting alongside, cannot legally, under this treaty, use cluster munitions or assist other nations to do so.

Paul Hannon, Executive Director, Mines Action Canada, echoed the comments of Dr. Rutherford, Mr. Goose and Dr. Dorn, when he said:

> As the legislation is currently drafted, the defences and loopholes in clause 11 present a danger to the treaty. It undermines the prohibition on assistance with large loopholes rather than narrowing the language to ensure that the clarity needed for the standard of Canadian civil law is met. If Canada ratifies the convention with this legislation, it will become much more difficult to convince other states to join.

Honourable senators, the message from these witnesses and others was overwhelmingly clear: We should reject clause 11 as it is currently written. They did not feel that clause 11 was appropriate or in keeping with the spirit of the treaty. They feared it would undermine the goal of a complete ban on cluster munitions and could encourage other states contemplating ratification to also allow broad exceptions for their militaries to use cluster munitions while participating in combined operations. Though they admitted that Article 21 was written in a vague and somewhat confusing way, they did not believe its intent was ever to override the prohibitions listed in Article 1, nor should it be interpreted that way.

That said, it is also important to note that the majority of these witnesses understood, respected, and supported Canada's right and need to participate in combined military operations with states not party to the convention. Let me also make absolutely clear that that, too, is my position and the position of my Liberal colleagues. Canada is fortunate to have a strong relationship with the United States and NATO. Our security depends on these relationships, and they must be allowed to move forward and flourish, but I do not believe that in ratifying the Convention on Cluster Munitions that we must choose between adhering to the treaty and maintaining our military alliances. This is not an either/or scenario. We can do both, and we can do it in a way that does not devalue the ideals of the convention.

Many witnesses suggested that one way of doing this would be for Canada to adopt the same or similar language that New Zealand uses in its ratification legislation. New Zealand keeps its interoperability provisions very simple. Their legislation states that "A member of the Armed Forces does not commit an offence against section 10(1) merely by engaging, in the course of his or her duties, in operations, exercises, or other military activities with the Armed Forces of a State that is not a party to the Convention and that has the capability to engage in conduct prohibited by section 10(1)." It is New Zealand's position that this clause is sufficient to allow their military to engage in combined operations while also ensuring that they are not complicit in the use of cluster munitions.

Though I respect New Zealand's choice of wording and would be happy to see Canada adopt something similar, I do not believe it would be sufficient. We do need to acknowledge that our engagement with American and NATO forces is different from New Zealand's and therefore the needs of our military are also different. I therefore believe that we must be a little more specific and, in addition to allowing our military to simply engage with the forces of a non-state party, we should also take into consideration the needs of our commanders who may be in charge of those forces. Nevertheless, I do not believe that we should go as far as allowing our commanders to ever specifically request the use of cluster munitions, even if the decision about which weapons to use is not exclusively Canada's.

• (1430)

Canadian commanders should instead use their position and influence to discourage the use of cluster munitions. As Canada has already signed the convention and declared that cluster munitions are never an appropriate weapon and must never be used, then there should be no reason for a Canadian commander to specifically request the use of a cluster munition.

If, on the other hand, a Canadian commander is in a position to authorize an attack or an activity and he has no knowledge of or control over which weapons American troops may choose to use, then that Canadian commander should in no way be held responsible or liable if those American troops choose to use cluster munitions.

While I think the New Zealand model would cover those situations, I think it would also be prudent to ensure that clause 11 is rewritten in such a way as to make it absolutely clear that a Canadian commander is permitted to authorize and order an activity that may involve the use of cluster munitions when the use is out of his control.

The main point here is that a distinction must be made between actions that are within Canada's control and those that are not. We cannot be responsible or accountable for what other countries may do. We can only be responsible for ourselves

In fact, according to the officials from DFAIT and DND who testified before the Standing Senate Committee on Foreign Affairs and International Trade, that is exactly how they approach this issue. As Major-General Jonathan Vance, Director of Staff, Strategic and Joint Staff, testified:

> To be able to operate to pursue Canadian national interests in a coalition where there may be non-state parties at play, we want to ensure that even though we would rather not have our people in this situation, if they find themselves in that situation, they will not be held criminally liable for something beyond their control.

Honourable senators, it seems clear to me that this is how we must approach clause 11 and military interoperability. We must make it clear to our Canadian Forces that while they can absolutely participate in combined military operations with states not party to the convention, they may not themselves actively use or help others to use cluster munitions.

Think of it this way: Let us say you prohibited your child from hitting another child. Would you allow your child to hit another child just because they happened to be at a friend's house? Of course not. We expect our Canadian Forces to uphold Canadian laws and values wherever they are in the world and regardless of who they are working with. However, just as you would not hold your child responsible for the actions of his friend, we would not hold our Canadian Forces responsible for the actions of foreign militaries.

Once again, from the testimony at committee, it seems as though the Departments of National Defence and Foreign Affairs agree with this. Colonel Gleeson told the committee:

> I will simply reinforce the notion that Canadian Forces members deployed anywhere in the world are subject to the Code of Service Discipline and Canadian laws and values through that code, regardless of who they are operating with, in what part of the world.

Despite some of the comments made during the committee hearings by the Honourable John Baird suggesting that as the United States does Canada a favour by allowing our commanders to work with them, we should not place restrictions on those commanders, it seems from other witnesses that this is not how military interoperability works.

Major-General Vance clarified that:

> By being involved in the operations in the first place, in positions of high command, staff or independent command inside of a coalition, we retain, throughout, full command of the Canadian Forces and full command of their actions. It has been my experience that it is never one nation's way or the highway. It is always a cooperative effort.

In other words, Canadian Forces operate under Canadian law at all times and negotiate with their foreign partners as equals.

Moreover, I must also acknowledge the importance of ensuring that the burden of compliance with the convention and with Bill S-10 must fall to the Government of Canada and the senior leadership within the Department of Foreign Affairs and International Trade and the Department of National Defence. It would be unfair to place individual soldiers in a position where they would have to defy orders or otherwise take on an individual moral burden in being complicit in the use of cluster munitions. This is why I believe it is essential that the Minister of National Defence negotiate the terms for any agreement with a state not party to the convention for the attachment, exchange or secondment of Canadian soldiers. We must be clear with our allies about our obligations under the convention and what our soldiers will be permitted to do and what they will not be permitted to do. I believe these types of negotiations already take place, so it should not be something out of the ordinary for our military or our allies.

Although the government has said that policies will be put in place to do precisely this, I do not believe policies are sufficient. Mr. Earl Turcotte, who was Canada's former chief negotiator with DFAIT on the Convention on Cluster Munitions, explained to the committee why policy prohibitions are not enough. He said:

> My response to that is that unless something is prohibited in Canadian law, it is not prohibited as far as the convention is concerned. A policy prohibition is meaningless. Policies can be changed at the stroke of a pen. There is no due diligence. There is no involvement of Parliament in changing of policy. A CDS directive can be changed by the Chief of the Defence Staff, presumably, with the agreement of the Minister of Defence, possibly even with the Minister of Foreign Affairs.
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> There is a requirement in the convention that legal penalties be attached to prohibited acts. Therefore, if the government is serious about prohibiting something, then embed it in the legislation. Make it transparent and make it very clear that it is prohibited. If it is to be amended in the future, then there is a very formal process that will have to be carried out for that to happen.

Honourable senators, in addition to changes to clause 11, the Senate Foreign Affairs Committee also received suggestions about other ways to improve the bill. One suggestion we heard repeatedly was to include a reference in the bill to the positive obligations contained in the convention. Specifically, witnesses suggested incorporating the positive obligations from Article 21. Article 21 has four parts. While it permits military interoperability, it also tempers that permission with a responsibility on behalf of states party to discourage others from using cluster munitions, to inform allies of its obligations under the convention and to make best efforts to encourage states not party to join the convention.

Mr. Titus Peachey, Director of Peace Education at the Mennonite Central Committee, testified that he thought that:

> Explicitly including these positive obligations would set clear and binding roles that would ensure Canada will continue to fulfil its treaty obligations with excellence going forward.

Stephen Goose and Bonnie Docherty also shared their thoughts on including the positive obligations in Bill S-10. Mr. Goose said:

> In general, we think that Canada's legislation, and the legislation of others to implement this convention, should include these positive obligations to promote universality of the convention, to discourage use and to destroy stockpiles.

Ms. Docherty testified:

> We would certainly agree 100 per cent that there should be some statement in the law that articulates the positive obligations expressed under Article 21(2) to notify your allies to discourage use.

• (1440)

I agree and I believe that especially in light of the exceptions listed in clause 11 for military interoperability, we should include a reference to these positive obligations. More specifically, a clause requiring annual reporting by the relevant ministers would help to ensure Canada fulfills these obligations and is seen to fulfill these obligations.

In her third reading speech, Senator Fortin-Duplessis suggested that annual reporting would not be practical. Honourable senators, what she means here is that it would place a burden on the ministers responsible to both fulfill their obligations under the convention and inform Parliament of their activities. This is not an unreasonable burden. Again, if we are going to place such importance on Article 21 and military interoperability, then we should embrace Article 21 in its entirety. With the privilege of interoperability comes the responsibility of ensuring we meet our positive obligations. Annual reporting is the only mechanism we have to hold our elected officials to account on these important obligations.

In addition to annual reporting, I think we need to seriously consider adding a clause on extraterritoriality. This would mean that the bill and all of its prohibitions on the use, possession, transport, import and export of cluster munitions would apply to Canadian citizens wherever they are in the world. As Senator Fortin-Duplessis highlighted, this is not specifically required under the convention, so the government did not bother including it in the legislation. Once again, it seems the government is interested only in doing what is good enough. I think we should do all that we can to prevent suffering caused by cluster munitions. This includes prohibiting Canadians from being involved in the manufacture, use or trade of cluster munitions abroad. We already have extraterritoriality provisions in place when it comes to criminal law involving nuclear material and chemical weapons. Cluster munitions should be no different.

During clause-by-clause consideration of Bill S-10, I brought up further amendments for consideration. These had to do with tightening up the definition of "transfer" to include both physical movement and transfer of title and control; adding a prohibition against stockpiling; and a specific prohibition against investment. These would be small changes that would provide additional clarity on important issues. Many witnesses testified that specifically referring to stockpiling and investment would be a good idea and a way of improving the bill. I will not go into further detail about these amendments now, but I think they should be given further study and consideration as this legislation makes its way to the other place.

Honourable senators, I believe strongly in the Convention on Cluster Munitions. This is an important international treaty, and it is imperative that Canada adhere to it fully and not just according to the minimum standard legally required. From all of the witness testimony, it is clear that everyone wants Canada to be a leader in ridding the world of cluster munitions. We all want strong legislation that will prohibit Canadians from being complicit in the use of these horrible weapons. The problem is that there are many people who do not think Bill S-10, as it currently reads, is the right legislation to do this. The exceptions in clause 11 are just too broad and would allow Canadian Forces on combined military operations too much leeway to be involved in the use of cluster munitions and to help others to use them.

We need to fix this bill. In order to do so, we must tighten up clause 11. It must be clear that Canadians may participate in combined military operations with states not party to the convention without fear of persecution over actions taken by that state not party. Canadian commanders must be able to authorize or order activities that may involve the use of cluster munitions by states not party, but they must never be able to specifically request the use of cluster munitions. Canadian Forces on exchange, secondment or attachment must be prohibited from using, transporting, possessing, importing or exporting, or aiding and abetting the use of cluster munitions. Finally, Canadian Forces in general should also be prohibited from aiding or abetting others to use cluster munitions.

MOTION IN AMENDMENT

Hon. Elizabeth Hubley: To this end, honourable senators, I move:

> That Bill S-10 be not now read a third time but that it be amended
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> (*a*) in clause 11,
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> (i) on page 6,
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> (A) by replacing lines 24 to 32 with the following:
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> "over it, if the person does not expressly request that a cluster munition, explosive submunition or explosive bomblet be involved in the carrying out of the activity;
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> (*b*) requesting the carrying out of an activity that may involve the use of a cluster munition, explosive submunition or explosive bomblet by the armed forces of that state, if the person does not expressly request that a cluster munition, explosive submunition or explosive bomblet be used and the choice of munitions used is not within the exclusive control of the Canadian Forces; or
>
> (*c*) moving a cluster munition, explosive submunition or explosive bomblet from a", and
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> (B) by replacing lines 43 and 44 with the following:
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> "engaging in an activity related to the transport — other than the actual transport — of a cluster munition, explosive", and

(ii) on page 7,

(A) by replacing lines 4 to 14 with the following:

"that is not a party to the Convention, from receiving, comforting or assisting another", and

(B) by adding after line 21 the following:

"(4) No person contravenes section 6 by reason only that the person engages in military cooperation or combined military operations involving Canada and a state that is not a party to the Convention that might engage in activities prohibited under section 6.

(5) A person who is subject to the Code of Service Discipline under any of paragraphs 60(1)(*a*) to (*g*) and (*j*) of the *National Defence Act*, or who is an employee as defined in subsection 2(1) of the *Public Service Employment Act*, and who is directing or authorizing activities in the course of engaging in military cooperation or combined military operations involving Canada and a state that is not a party to the Convention must make their best efforts to discourage the armed forces of that state from using, or planning to use, cluster munitions, explosive submunitions or explosive bomblets, and must provide those armed forces with advice respecting the availability of alternative and effective conventional munitions.";

(*b*) on page 8, by adding after line 28 the following:

"INTERNATIONAL RELATIONS

16.1 (1) The Minister of National Defence must advise the government of any state that is not a party to the Convention, and with which Canada is engaged in military cooperation or combined military operations, of Canada's obligations under the Convention.

(2) Any agreement between Canada and a state that is not a party to the Convention pursuant to which a person referred to in subsection 11(1) is on attachment, exchange or secondment, or serving under similar arrangement, with the armed forces of that state, must provide that the person will not be ordered by, and will not be required to follow any order issued by, a member of those armed forces to perform an act that is prohibited by this Act.";

(*c*) on page 9, by adding after line 8 the following:

"**17.1** (1) Every person who commits, outside Canada, an act or omission that would, if committed in Canada, be an offence under this Act, is, if the person is a Canadian citizen, a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, or a corporation incorporated under the laws of Canada or a province, deemed to have committed that act or omission in Canada.

(2) For greater certainty, section 130 of the *National Defence Act* applies in relation to this Act."; and

(*d*) on page 10, by adding after line 17 the following:

"ANNUAL REPORT

23.1 (1) Within four months of the end of each fiscal year, the Minister of Foreign Affairs, the Minister of National Defence and the Attorney General of Canada must jointly prepare a report on the implementation of the Convention and the enforcement of this Act, and the Minister of Foreign Affairs must cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is completed.

(2) The annual report must include a description of the progress made by the Government of Canada in relation to the following:

(*a*) the promotion of the norms established by the Convention;

(*b*) the encouragement of states that are not parties to the Convention to ratify, accept, approve or accede to the Convention;

(*c*) the notification of states with which Canada is engaged in military cooperation or combined military operations, but which are not parties to the Convention, of Canada's obligations under the Convention;

(*d*) the discouragement of states with which Canada is engaged in military cooperation or combined military operations, but which are not parties to the Convention, from using cluster munitions, explosive submunitions or explosive bomblets; and

(*e*) the deactivation, disposal and destruction of all cluster munitions, explosive submunitions or explosive bomblets possessed by Her Majesty in Right of Canada in a manner that protects the environment and human health.".

• (1450)

Some Hon. Senators: Hear, hear.

Hon. Pierre Claude Nolin: Will the honourable senator entertain a few questions?

Senator Hubley: I will.

Senator Nolin: First, let me deal with the question of stockpiling. Does the honourable senator think that the word "possess" in clause 6, paragraph (b) in the phrase "develop, make, acquire or possess, a cluster munition," includes stockpile?

Senator Hubley: On which page?

Senator Nolin: On page 4.

Senator Hubley: Are we in Bill S-10 or the convention itself?

Senator Nolin: In Bill S-10.

Senator Hubley: I have page 4 now. Will Senator Nolin direct me again?

Senator Nolin: It is at line 10.

To stockpile one needs to possess and possessing is prohibited under that paragraph, so that is why I asked my question. If one cannot possess, one cannot stockpile. Does the honourable senator agree with me?

Senator Hubley: I understand what the honourable senator is saying. I do not fully agree with him. Certainly, in that particular clause, we would have liked to have seen the world "sale" put in to clarify. There are stockpiles in countries that may not belong to the country they are sitting on. It is not the case in Canada. I would like to see the word "stockpile" used as well.

Senator Nolin: I have another question and it deals with clause 11 and clause 21 of Bill S-10.

To be more precise, on page 6, line 25, it is clause 11(1)(*b*) and that is the request to use. Then go to the treaty, at Article 21, paragraph 4(d) on the last page of the bill, page 29.

The honourable senator can correct me if I am wrong, but there is no problem between the two, just a difference between the two. What is not permitted under the treaty is to expressly request the use of a cluster munition in the case where the choice of munitions used is within its exclusive control. That is in the treaty, so I think "exclusive control" are the two critical words.

If one goes to clause 11 of the bill, we are not talking about the exclusive control of Canada. We are basically saying the contrary. We are saying "not within the exclusive control of the Canadian Forces." Therefore, when the honourable senator says that clause 11 contradicts paragraph 4 of Article 21, where is that contradiction between the two?

Senator Hubley: I am having some time trying to put the two together.

Perhaps I will clarify how we can categorize both clauses 6 and 11 of Bill S-10.

Clause 6 of Bill S-10 describes the prohibitions. Clause 11 has the exceptions and it is within that clause that we have the difficulty.

I believe the honourable senator asked me to look at line 25 in clause 11 and if it in fact contradicts something within —

Senator Nolin: I am saying there is no contradiction, contrary to what the honourable mentioned in her speech. They are not talking about the same thing. In the treaty they are talking about the express and exclusive control of Canada. There would be no exceptions if the cluster munitions are in Canadian exclusive control. The exception in the bill in clause 11 refers to cluster munitions not within the exclusive control of the Canadian Forces, so there is no contradiction.

Senator Hubley: I am having some difficulty. The only thing I might explain is that when we go to the amendments, we were trying to take clause 11 and put more focus on it to tighten it up a little bit — perhaps a lot.

I probably have a different bill than the honourable senator has, but I am on article 12. Is that where the honourable senator is?

Senator Nolin: I am on page 6, lines 25 to 29.

• (1500)

Senator Hubley: I have that, senator. It was the convention itself that I was talking about.

Senator Nolin: I am referring to the bill. I am referring to page 29 of the bill, where they refer to Article 21, paragraph 4.

Senator Hubley: Page 29?

Senator Nolin: Page 29, the last page of the bill.

Senator Hubley: We obviously have different —

Senator Nolin: Look at the entire Article 21, which deals with interoperability.

Senator Hubley: Yes.

Senator Nolin: Go to paragraph 4 of Article 21.

Senator Hubley: Yes.

Senator Nolin: Then go to (d).

Senator Hubley: I have 4(d).

Senator Nolin: Read those two lines.

Senator Hubley: I have, yes.

Senator Nolin: They are referring to something that does not exist under clause 11 of the bill.

Senator Hubley: It does not refer to anything within the bill?

Senator Nolin: No, they are not talking about the same thing.

Senator Hubley: Thank you, honourable senator. I would have to take a moment to reflect on that, but I feel that the amendments were absolutely necessary. I will take some time and look at that again, but I am glad the honourable senator did refer to Article 21, because it is those four paragraphs or those four lines that are really the crux of all the rest of both clauses 6 and 11.

I am only suggesting there may be some overlap, but the honourable senator says he was referring to two different things. I disagree, but I would need to have a strong look at that in order to explain them to him.

The Hon. the Speaker: Continuing debate?

Hon. A. Raynell Andreychuk: I do not know if Senator Hubley has any time that she can extend.

The Hon. the Speaker: She does not.

Senator Andreychuk: Then I cannot ask questions.

The Hon. the Speaker: Is there further debate? Senator Hubley is requesting an extra five minutes. Do honourable senators agree?

Hon. Senators: Agreed.

Senator Andreychuk: Perhaps I can ask a more general question. The honourable senator put forward an amendment that will put onuses on soldiers, whereas in the convention the onus is on the state and then the state conducts the need to ensure that they do not use cluster munitions. I am glad she said that Canada has never intended to use them and is not using them, and I think that is a very fair statement, both for previous governments and for the present government.

However, by the amendment, she is putting extra onuses on soldiers and military personnel in the field of operation when they are in a military operation — the interoperability. She is saying they have to use "best efforts." Whose tests would "best efforts" be — theirs, subjectively, or theirs, objectively? The senator does not clarify in the amendment.

My concern is that we will send our soldiers into theatres of operation where we are not command and control and they will be just one of a larger body. The honourable senator is asking them to exercise best efforts to implement the convention, which is a state responsibility. Why does she think that is an appropriate interpretation of the convention?

Senator Hubley: I disagree with Senator Andreychuk's assessment of it, to begin with. We are trying and I think we have succeeded in not putting the onus on our troops. We are trying to bring in amendments that would in fact very specifically set out the type of action that has to be taken right from the beginning of a secondment, shall we say.

That just does not happen; we would not have a few soldiers just out there. They would have to be under control; they would be under some command. I think it was very clear in my speeches that if they are Canadian soldiers, they are always under the command of our Canadian commanders. They are always under Canadian control.

We now have set out in our amendments to establish a protocol so that, yes, there have to be rules of engagement. If we are signatories to the Convention on Cluster Munitions, that has to be part of that. I am quite sure everyone will know that Canada will be a signatory to that, and then it goes without saying.

However, there is a responsibility there for our commanders to inform the parties that our soldiers are going to — the other military entities — that we are party to that convention. It does not stop there. That means that our soldiers will not be required or ordered to use cluster munitions or to transport them. That completely sets them aside because they are members.

There is also a responsibility under the positive obligations that we go further, because this weapon is something that we want to really see taken off the face of the Earth. The military, then, has a responsibility to go further and to say, "Not only will we not allow our soldiers to participate in any activity that includes cluster munitions but we will also use our best judgment and influences to influence other militaries not to use them and to also encourage them to become states parties to the convention itself."

Senator Andreychuk: The honourable senator is saying the soldiers will have extra responsibilities. I get the point and I disagree.

Could I ask about the annual reports? There is a reporting mechanism about the convention inside the convention, and it is specific as to our state's responsibility in filing those reports. The honourable senator is now asking for another report to Parliament where the government will have to document all of its diplomatic activity in attempting to persuade other countries to sign on.

Although I will look into it, I am not certain whether the honourable senator's amendment violates other conventions that we are part of. Has the honourable senator considered that?

Senator Hubley: Yes, I certainly have considered all of those things. I would like to say here that if it were not for clause 11, the reporting perhaps would be done in a more general way; it would perhaps happen in the course of the military work.

However, because of the many exceptions we are facing now and because our military has been given such leeway regarding using cluster munitions, it is incumbent upon us, if this is what our law will be, that we very strongly ask our government to come back to us with annual reporting just to let us know what will happen and what is happening to our commanders and our soldiers in the field.

Hon. Roméo Antonius Dallaire: Honourable senators, the Convention on Cluster Munitions is a very wise document and falls very much within the intent of this nation — and certainly the government has demonstrated this — to limit the use of weapons that are considered inappropriate in their use in operation and that cause undue harm, beyond the needs of a military operation, to civilian populations.

For that, moving this legislation so that we actually implement a convention that we signed is most appropriate and timely.

However, the question in front of us with this convention and with the amendments as presented by Senator Hubley is that there seems to be a fundamental disconnect within the legislation with the spirit and the obligations called for in the convention. The disconnect within the legislation is to the extent that expert witnesses, both military and civilian, have come to us and indicated that this legislation goes beyond the spirit of the ultimate convention. The legislation creates a situation in which those who have to apply the convention in the field — not just the political decision makers who are deploying the forces and giving mandates, of course, but the actual people in the field — are finding themselves in an untenable ethical dilemma.

• (1510)

The untenable ethical dilemma comes from our desire to have our personnel legally — and against criminal law of course — deployed in the field. They find themselves accountable and potentially open to prosecution under criminal law if they go against this convention. We are trying to cover the fact that we will have personnel who will be engaged in joint and combined operations and who will be engaged in such operations with nations that do potentially use cluster munitions.

In 2006, I was asked to be part of the Human Rights Commission's three-man party to investigate the Gaza operation and determine whether crimes against humanity might have been caused. I ultimately refused because we were looking only at the Israeli side and not at Hamas, but the Israeli forces used cluster munitions in urban areas.

We have seen, very recently in fact, that Syria, which is turning out to be quite rogue, has used cluster munitions in a school area, a built-up civilian area. Therefore we have enough proof that these weapons are causing problems that we are totally uncomfortable with, including problems for our allies. The vast majority of our allies have signed on to this convention; in fact, the ones we are most engaged with, such as the British and the French, have signed, although the Americans have not.

Honourable senators, when you are involved in an operation with a country that may use cluster munitions, you can; by Article 21 of the convention and the way we are attempting to write clause 11 here, we are saying you can operate with them. That is one thing. However, the other side is where individuals who are seconded to these countries, under the command of these forces, find themselves in a scenario where they could be going right against the convention and ultimately directly against our legislation, except that we have given them the loophole where they can use cluster munitions. While they are on secondment, they can order the use of cluster munitions, they can move them around, and they can direct that these cluster munitions be used, and they will not be held criminally accountable.

Honourable senators, there is a real disconnect because the state says it does not want to do it. In fact, and it is really interesting, clause 6 says:

> . . . it is prohibited for any person to
>
> (*a*) use a cluster munition, explosive submunition or explosive bomblet . . .

Yet clause 11(1) says:

> Section 6 does not prohibit a person who is subject to the Code of Service Discipline . . . from
>
> (*a*) directing or authorizing an activity that may involve the use, acquisition, possession . . .

Then we go down to clause 6(*f*), which says we prohibit any person to "aid, abet or counsel . . ." Then, when you go back again to clause 11(3)(*a*), we are saying that if you are seconded you can actually do that.

Clause 6(*g*) says "conspire" for the use — you are prohibited from conspiring. Go back to clause 11(1)(*b*) and it says "expressly requesting the use of a cluster munition"; you are not prohibited from doing that. Then clause 6(*h*) says "receive, comfort or assist" is prohibited, and then we can go back to clause 11(1)(*c*), where it says "using, acquiring or possessing," and you are not prohibited.

Now, there is a problem here because on one hand we absolutely do not want anything to do with them. Our doctrine, our training, our whole development of those military personnel says, "You see cluster munitions, you are not authorized to use them. It is out of your military jargon; it is out of your military inventory to use." Then we are saying, "If you are seconded to someone who does use them, then you are allowed to do it."

You are allowed to do it because this other guy who did not sign the treaty is using them, so you are allowed now actually to use them, acquire them, fire them, employ them, and you should be quite comfortable by the fact that you will not be held criminally responsible, but ethically and morally we really do not care. The state is prohibiting their use, but the state has also said, "By the by, if you are seconded, you can use them."

The ethics of this, the moral references of this, are absolutely absurd. How can you educate and train and develop an ethos within an officer corps, an example, to absolutely abhor that capability and then say that should you be employed by these guys, you can do it; you can actually command their use and employ them. You can do that because you are seconded and you are not being held criminally responsible.

The onus, by this sort of legislation, is being pushed on the local commander who is being seconded into the field. What is being pushed on him is not the fact that he will go to jail; it is the fact that by the by we want you to go against everything you have just learned — that it is wrong to use these weapons, that it is absolutely abhorrent that you consider using these weapons, that

you are conscious that 98 per cent of the victims of these weapons are civilians and you know that you will be killing civilians and that this weapon is an ineffective weapon in this era of conflict resolution against the types of threats we have. Yet we are comfortable with that because it is legally acceptable.

We are legally protecting individuals, but we are imposing on them an ethical and moral dilemma that they will live with for the rest of their lives because they are the ones ordering that and they are the ones who will see those bodies afterwards as they have been blown up and continue to be blown up by the cluster munitions that they have ordered.

Honourable senators, there is something wrong with that. I cannot accept that because it is legal, it is automatically ethical and moral. Two weeks ago I spoke in front of 300 judges of the Quebec Superior Court, and we debated exactly that point. The judges said there are times when they are responding to the legality dimension of it and they are constrained by that. In their gut, however, they know it is ethically wrong. They know even morally it is wrong, but legally it was right.

We have to find ourselves means by which we are not imposing upon those in the field, who are ultimately living with the decisions, because it is that commander in the field who ordered those cluster munitions. It is the commander in the field who will be seeing the bodies and who will be held accountable. The journalists will put the microphone in his face and say, "By the by, you know you did this." There is something fundamentally wrong where we are putting the onus on him or her while here, back home, we are sitting on Parliament Hill and we say, "No, no, it's okay because it's legal; he's protected." We will not throw him in jail but we will destroy him morally and we will destroy him ethically, but we will protect him legally.

I could have used that argument with 30,000 Rwandans when I was ordered to abandon Rwanda. I got a legal order from the Secretary-General to abandon Rwanda. I refused that legal order because that legal order was immoral. If we had abandoned that mission, the 30,000 Rwandans under our protection would have been slaughtered within hours. One country had already done that. They pulled out and 4,000 people were killed in less than three hours.

• (1520)

I cannot understand why we are saying that we are trying to avoid the pressure and the complexity of applying a convention like this. We are trying to take it away from the field troops by having the state say that we are not a player but, at the same time, that same state is saying, "Oh, by the by, should you go there, you can use it and feel comfortable with that."

The argument that has been used is that we needed this because of when we are seconded, and particularly seconded with the Americans because that is where most of the secondments are. If we are seconded with the British and French, they have already said they will not use them, but the Americans still have them in their inventory. So the argument has been that, if we are seconded with the Americans, we do not want to put at risk our interoperability and that is total bull.

Interoperability is not even the debate here. It is whether or not we can provide personnel from our country to their country in operations in secondment. We have had officers in Iraq. We did not go to Iraq, but we had officers in Iraq. We have officers deployed in Afghanistan with the Americans in special forces and the like. If one seconds someone, there is nothing that precludes one in that secondment from saying, "By the by, the rules of our engagement with this secondment are that, should they be deployed in operations, they will not order the use of cluster munitions." That in no way, shape or form affects interoperability. It does put forward a caveat and, yes, the Americans could say, "Well, because we really want to use cluster munitions as a primary weapon, we cannot use this guy."

The problem is that with the Syrian exercise two days ago, the Americans had gone beside themselves in saying, "We do not want to use this. Syria is evil. Look at the barbaric use of cluster munitions." The same people we are trying to cosy up to are actually telling us, "By the by, we are not going to use them."

Will this really be an interoperability problem? First of all, it is not and, second, the people we want to protect and work with and have secondments with are saying to us they will not use them, or very likely will not use them.

Why scuttle the spirit and the objective of this convention, which is outstanding and which we led? We actually led the movement on this convention. We nearly wrote the whole damned convention and now, when we are trying to apply it, we are literally undermining our position. We are literally coming out as an outfit that talks out both sides of its mouth. We are saying, "No, we will not use them but, by the by, if we do have people involved, we will let them use them." Is that supposed to give us the warm, fuzzy feeling that we are applying the spirit — not just the letter, but the spirit — of the convention?

I would argue that the amendments that were proposed by Senator Hubley cover your six o'clock. They do not, in any way, shape or form, put any of our interoperability at risk.

May I ask for five more minutes, please?

The Hon. the Speaker: Is it agreed?

Hon. Senators: Agreed.

Senator Dallaire: Thank you.

There is no problem of interoperability. It is a fake argument. There is, however, a problem of us and our stature internationally if we do not put these amendments in, because we will be seen merely as a country that cannot really implement for its own people a convention that we are writing and saying we believe in. We are quite prepared to put our own people at risk.

In order to maybe *in extremis* accept these clause 11 dichotomies and absolute disconnects between clause 6 and clause 11 and the whole spirit of the convention, the idea was germinated that maybe we will add a paragraph. The paragraph we are adding, if honourable senators remember what we are saying, is at page 7(*ii*)(5), where it talks about a person who is engaged in military cooperation or combined military operations.

What we are talking about is commanders. We are talking about General Bouchard. They were asking for General Leslie to command in the Congo. We see these requests continually. We had a navy two-star who was deputy commander of RIMPAC. They want our capabilities.

Therefore, we are saying, "By the by, if we have a general officer who is involved in this, they cannot stop one of the non-state signatories from using these munitions. They are not authorized to do that. However, we want them, in the spirit of the convention and our belief in the continuity of the logic and ethical and moral framework in which we have educated them and trained them, to do their best efforts."

In military parlance, when a commander hears the words "best efforts," he or she knows what that means. It goes right up to "except commanding," so one can continuously harp at, harass and harangue those who are under one's command and say, "There is another option and there are other weapons." One can reinforce the argument that they should be considering other options. One can do all that. "Best efforts" is very clear in military parlance. It is not commanding; it is influencing.

In order to cover our six o'clock a bit, should we accept clause 11, we added this paragraph to at least let the commanders who will hold the ultimate responsibility feel that they are still sustaining the philosophy of our doctrine that says that cluster munitions are evil and that they will never condone or accept their use. However, in this condition, he or she is not authorized to command that they do not use them. Thank you very much.

(On motion of Senator Fortin-Duplessis, debate adjourned.)

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO STUDY CURRENT STATE OF SAFETY ELEMENTS OF BULK TRANSPORT OF HYDROCARBON PRODUCTS

Leave having been given to proceed to Motions, Order No. 123:

Hon. Richard Neufeld, pursuant to notice of November 27, 2012, moved:

> That the Standing Senate Committee on Energy, the Environment and Natural Resources be authorized to examine and report on the current state of the safety elements of the bulk transport of hydrocarbon products in Canada. In particular, the committee shall be authorized to:
>
> Examine the life cycle of hydrocarbon transmission pipelines across Canada, including but not limited to pipeline design, construction, operation, spill response and abandonment;
>
> Examine the federal and provincial/territorial roles in hydrocarbon transmission pipeline oversight, including but not limited to legislation and regulations, standards, integrity management systems, monitoring, compliance and verification activities and incident response plans;
>
> Examine the federal and provincial/territorial roles in ensuring the safety of the movement of hydrocarbon products via marine tanker vessels, including but not limited to legislation and regulations, standards, inspection and enforcement measures, risk management systems and incident response plans;
>
> Examine the federal and provincial/territorial roles in ensuring the safety of rail transportation of hydrocarbon products, including but not limited to legislation and regulations, standards, inspection and enforcement measures, risk managements systems and incident response plans;
>
> Examine and compare domestic and international regulatory regimes, standards, and best practices relating to the safe transport of hydrocarbons by transmission pipelines, marine tanker vessels and railcars;
>
> Recommend specific measures to enhance the safety elements of the bulk transport of hydrocarbon products in Canada; and
>
> That the committee submit its final report no later than June 30, 2013 and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (1530)

CANADA LABOUR CODE EMPLOYMENT INSURANCE ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Nicole Eaton moved second reading of Bill C-44, An Act to amend the Canada Labour Code and the Employment Insurance Act and to make consequential amendments to the Income Tax Act and the Income Tax Regulations.

She said: Honourable senators, it is an honour to rise to speak to the helping families in need act to help guide this bill through the honourable chamber.

This bill represents our government's latest initiative to help Canadian workers and their families. This is achieved by way of three main amendments: the creation of a new EI special benefit for parents of sick and injured children, enhanced access to sickness benefits for parents, and Canada Labour Code job protection that aligns with the new and existing EI benefits.

[*Translation*]

This bill fulfills our 2011 election promise to provide income support to Canadian families of workers when they need it most.

[*English*]

We can all sympathize with a mother or father who is stricken with illness while caring for their baby, and most of us can only imagine what it is like to be the parent of a child who is critically ill or to cope with incredible anguish and grief over a son or daughter who is murdered or goes missing.

Our hearts go out to all of these parents.

[*Translation*]

As a mother myself, I know that no matter what job we do or title we hold, when tragedy strikes, our first and only priority is always to take care of our family. Nothing else is as important.

[*English*]

That is why our government makes the well-being of families a priority. The first aspect of the helping families in need act aims to improve the accessibility of Employment Insurance sickness benefits to parents.

[*Translation*]

Currently, to qualify for employment insurance sickness benefits, an individual must be available for work. A parent receiving parental benefits cannot work while receiving those benefits. So if a parent falls ill while receiving parental benefits, he is not eligible for sickness benefits.

[*English*]

Under the new rules, if parents fall ill they are able to put their parental benefit on hold and claim up to 15 weeks of EI sickness benefits. Once the sickness has passed or the benefit expires, they are able to resume their parental benefit.

Let me provide a concrete example. Alice is a single mother. She has given birth to a beautiful healthy baby boy. She takes her 15 weeks of maternal benefits followed by her 35 weeks of parental benefits.

During the thirty-third week of her parental claim, Alice comes down with meningitis, a very severe illness, and requires several weeks to recover. Our current rules say that since she is currently collecting parental benefits and thus is not available to work, Alice does not qualify for sickness benefits. We think this is unfair, and that is why we are changing and amending the rules so that people like Alice will be eligible for EI sickness benefits. With the proposed changes, Alice could pause her parental benefits, claim her sickness benefits for up to 15 weeks, and subsequently resume her remaining two weeks of parental benefits.

[*Translation*]

I will now turn to a terrible situation that no parent should ever have to face: a child becomes critically ill or is seriously injured.

[*English*]

For many Canadian families, this is one of the most difficult circumstances they will ever have to face. Our government is taking action to help make life just a little bit easier during a challenging time. In the second part of Bill C-44, with the introduction of the new EI special benefit, we are stepping up to support the families of children with critical illnesses or injuries to ensure that parents in these situations do not suffer undue financial hardship at such a time.

[*Translation*]

This new employment insurance benefit provides temporary income support for up to 35 weeks for eligible parents, who can share the benefit. This is in addition to the six weeks of compassionate care benefit that parents may also be eligible for should a critical illness appear likely to result in the death of their child.

[*English*]

Someone who could have benefited from the changes is Sharon Ruth. Sharon's daughter Colleen was six years old when she was diagnosed with cancer. The disease did not threaten Colleen's life in the immediate future, so the Ruth family did not even qualify for the compassionate care benefit.

The Ruths did not get the help they so desperately needed. With this new EI benefit, families like the Ruths will now be able to apply for 35 weeks of income support. This measure will help parents to support their children and be with them full-time while they are seriously ill or injured.

Fortunately, Colleen won her fight and is living cancer-free as a young woman, but her family could have used the support we are proposing in this bill.

Colleen's mother Sharon spoke passionately about the need to quickly pass this legislation so that other families will not have to struggle as they did in order to support their critically ill child.

Children with life-threatening medical conditions need more than just round-the-clock medical care to get better. They need the love, comfort and support of their parents.

[*Translation*]

This new benefit will help to reduce some of the financial pressure that parents experience when they take time away from work to care for their families.

[*English*]

The third provision of this bill relates to another horror that parents in Canada face: the death or disappearance of their child as a result of a probable criminal act. The amendments build on an announcement made by Prime Minister Harper in April of 2012, when he instituted a new grant to provide the parents of children gone missing or murdered as a result of a probable Criminal Code offence, with 35 weeks of income support during their time of need. We chose to implement this income support by way of a grant instead of through the conventional EI system. This was done to ensure that the small population of individuals this program is targeted to help will receive expedient support when they need it most.

[*Translation*]

I know that many of us in this chamber are aware of the hard work our colleague Senator Boisvenu has done on this file and of the very personal nature of this subject matter to him. I believe that he is in a much better position than I am to explain how it feels to go through such a tragedy.

[*English*]

I would simply note that we are intentional in our wording when we say a "probable" Criminal Code offence. This will prevent potential confusion that would result from having to determine whether an actual Criminal Code offence took place.

Families that are coping with incredible stress and grief over the illness or loss of a child should not be burdened with worrying about the security of their jobs while they care or mourn for their child.

[*Translation*]

The third provision of the bill also benefits parents by amending the Canada Labour Code to protect jobs for people working in federally-regulated industries.

[*English*]

The Canada Labour Code covers about 128,000 workplaces and over a million Canadians across the country working in transportation, communications, banking and Crown corporations. The helping families in need act amends Part III of the Labour Code to protect the jobs of these workers during an unpaid leave if they find themselves in certain conditions.

Specifically, the jobs of parents of a critically ill child will be protected for up to 37 weeks. As for events resulting from probable criminal offences, the parents of a missing child can count on 52 weeks of job protection, while the parents of a murdered child will have their jobs protected for up to 104 weeks.

• (1540)

These job protection measures are similar but separate from the EI benefits mentioned earlier. Both systems are designed to work in harmony with and complement one another.

[*Translation*]

Honourable senators, with these measures, our government is fulfilling its promises. We are determined to improve the quality of life for the families of workers in Canada.

[*English*]

As Dan Demers of the Canadian Cancer Society said:

> These programs will strengthen Canadian families and provide them the flexibility and the security they need to help keep their lives as normal as possible through a very, very difficult time.

These measures are yet more evidence that our government is helping Canadian parents balance their work and family responsibilities.

[Senator Eaton]

[*Translation*]

Honourable senators, I strongly recommend that you support this bill. Thank you.

(On motion of Senator Cordy, debate adjourned.)

[*English*]

COASTAL FISHERIES PROTECTION ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator MacDonald, seconded by the Honourable Senator Segal, for the second reading of Bill S-13, An Act to amend the Coastal Fisheries Protection Act.

Hon. George Baker: Honourable senators, I had hoped to hear from Senator Runciman today but it looks as though we will not get to that point in the proceedings regarding the gambling bill, for which I would wish to take the adjournment of the debate when that debate takes place.

This present matter, though, can be proceeded with and should be proceeded with on an urgent basis. I am speaking of Bill S-13, an Act to amend the Coastal Fisheries Protection Act. The committee wishes to have the minister before the committee on Tuesday, and they would like to have this matter referred to the Standing Senate Committee on Fisheries and Oceans.

Senator Michael L. MacDonald gave an excellent speech in moving the second reading of this bill. It is necessary, honourable senators, that this measure be dealt with urgently. It allows Canada to finally punish illegal, unreported and unregulated foreign fishing activity on Canada's coast. It is a very important piece of legislation, so I will speak to it briefly.

I had a look at the bill a moment ago, and there is one thing I think that must be corrected. I noticed throughout the bill that the power to seize vessels, sell fish, seize fish, and put people in jail who are operating foreign fishing vessels illegally off Canada's coast requires a warrant.

Let me read subclause 7.4(2) of the bill:

> On *ex parte* application, a justice —

Justice is defined under section 2 of the Criminal Code. As honourable senators know, a justice as defined there means a justice of the peace or a provincial court judge.

That is throughout this necessary piece of legislation, except in one part. I will read the part that should really be corrected. I think it is an error by the Department of Justice Canada. Perhaps they received incomplete advice when it was drafted. Regardless, I will read subclause 7.4(2):

> On *ex parte* application, a justice of the peace may issue a warrant authorizing a protection officer to enter a dwelling place. . . .

As honourable senators know, we do not allow warrants to enter people's homes unless they go through a judicial proceeding; that is by a judge who looks at what is in the sworn information to obtain the warrant, based on reasonable grounds to believe. A man's home is his castle. You cannot have warrants being issued by persons not trained in the law.

I bring that up because this bill authorizes a justice of the peace only. One cannot go to a provincial court judge or a superior court judge, but a Fisheries officer will go to a justice of the peace. That might be all right in the province of Nova Scotia where some justices of the peace have legal training. There are three divisions, and each province has a justice of the peace act.

In Newfoundland and Labrador, which covers most of this coastline, a justice of the peace need not be trained legally at all. Somebody makes application and if they are of good character, and have no criminal record, then they could be considered and appointed as a justice of the peace.

I am not saying that they would not be good people to judge whether somebody's home should be raided in the middle of the night to collect documents. However, the problem with that is that increasingly we find that if a justice of the peace issues a warrant, and the warrant does not have the requisite grounds of "reasonable grounds to believe," anything that is seized will then be excluded at trial and the charges will be dropped. That will happen because the warrant was issued with insufficient grounds, or perhaps the justice of the peace in a particular case does not understand the law regarding times that warrants can be executed to raid a person's home. If a mistake is made, then whatever is collected is then thrown out at trial.

I strongly suggest that this provision in the bill — to allow the raids on people's homes in Canada to collect information relating to a foreign fishing vessel that has broken the law — should be changed to meet the requirements of the rest of the bill that say that it will be a justice as defined by section 2 of the Criminal Code, which means a provincial court judge. That is the only thing that I think is important to be amended.

Honourable senators, the bill is very important. It is important because we have billions of dollars worth of fish being illegally taken off our coast — billions of dollars. We export 85 per cent of what we catch off the East Coast of Canada, and what we export is worth $3.5 billion. Yet at any given moment there are 20 to 30 factory ships fishing off the East Coast of Canada.

A Newfoundlander or Labradorian is not allowed to go out today and catch a cod fish for his or her consumption. That is against the law; it is a criminal offence. However, somebody from Japan, Korea, Norway, the Russian Federation, the Ukraine, the European Union, Denmark or Cuba can do it because they have quotas.

When the committee receives this bill, I would like it to summarize the quotas. It does not matter what government is in power, whether it is Liberal, PC or NDP. This has been going on for as long as I can remember. When we declared the 200-mile zone in 1977, I was the Parliamentary Secretary. I had the job of informing the Soviet Union, as it was at that time. That was the start of some sort of management, but we are the only place in the world where we allow foreign fleets to have a share of our fish on our coastline.

Let me provide an example. We do not have a quota for cod in Newfoundland and Labrador today because of the moratorium. Yet the moratorium has been lifted for the foreign fleets.

• (1550)

Let me read for honourable senators the quota for 3M cod, for example, and this is the Flemish Cap, an area on our continental shelf: Canada, 113 tonnes; Cuba, 522 tonnes; Denmark 3,154 tonnes; European Union, 8,049 tonnes; Norway, 1,305 tonnes; Russian Federation, 913 tonnes. That is a total of 14,113 tonnes. What percentage does Canada get of the total allowable catch? It is 0.8 per cent, not even 1 per cent.

I could go on to red fish, which we eat as ocean perch. At least we get 42 per cent of that quota along the east coast of Newfoundland in 3LNO.

We have yellowtail flounder, which is sole. I notice, and committee members should ask about this in committee, that for sole, yellowtale flounder, it says here in the quota table that at the request of the U.S.A., Canada will transfer 1,000 tonnes of its 3LNO yellowtail quota to the U.S.A. I went back and discovered this has been done every year since 2010.

The same happens with white hake, which looks like a cod fish. We get 294 tonnes of 1,000 tonnes. For skate, these beautiful fish in the ocean, we get 1,167 tonnes out of a total quota of 7,000. For Greenland halibut, we get 1,700 out of 11,000 tonnes. There is squid and shrimp, and the list goes on.

The point is that we have these massive numbers of vessels representing all of these foreign nations right on the border of the 200-mile zone but, because we are so nice here in Canada, we agree with these foreign nations to manage the stocks inside and outside the 200-mile zone. So, they fish on the nose and tail of the Grand Banks and the Flemish Cap, and we agree with these quotas every year, and we see violations. This bill that the government has decided to introduce will bring in strict penalties, as Senator MacDonald pointed out in his excellent address to us.

I strongly recommend passage of this bill by everyone. When it hits the House of Commons, I strongly recommend its passage. I congratulate the government on introducing it and correct the corrections that need to be made with the legislation that I pointed out.

Thank you very much.

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

An Hon. Senator: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator MacDonald, bill referred to the Standing Senate Committee on Fisheries and Oceans.)

NATIONAL STRATEGY FOR CHRONIC CEREBROSPINAL VENOUS INSUFFICIENCY (CCSVI) BILL

FIFTEENTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE—DEBATE

The Senate proceeded to consideration of the fifteenth report of Standing Senate Committee on Social Affairs, Science and Technology (Bill S-204, An Act to establish a national strategy for chronic cerebrospinal venous insufficiency (CCSVI), with a recommendation), presented in the Senate on November 22, 2012.

Hon. Kelvin Kenneth Ogilvie moved the adoption of the report.

He said: Honourable senators, supporters of Bill S-204 appear to have been implying that the passage of this bill will provide immediate access to CCSVI surgery in Canada. It does no such thing. Rather, the bill identifies correctly the need for a clinical trial of the CCSVI surgery, guided by an expert panel and carried out in Canada. Honourable senators, this has already been approved and is under way in Canada as directed by the CIHR and the Minister of Health.

The bill further identifies a need for a national strategy to proved advice regarding the use of the CCSVI surgery for MS patients. Such a strategy can only be developed once we have the results of a true, science-based clinical trial that has been carried out. Such a clinical trial is already under way.

Why, honourable senators, is the clinical trial key to advising Canadians on this procedure? To date, no one knows whether the surgery either addresses an identifiable medical condition known as CCSVI that is independent of MS; whether it is a causative factor in MS itself; whether it has a major placebo effect; or whether its impact arises through some other consequence of the surgery. The answer to these questions and the determination of the value and safety of the procedure must be known before any national strategy can be determined and before MS or other patients can be advised on the likely outcomes of the surgery for them.

Finally, expertise developed during the clinical trial will advise Canadian physicians on how best to treat those who have gone abroad for the procedure and have returned to Canada with surgery-related problems.

I can cite a number of publications that raise serious concerns about the CCSVI surgery, but let me choose one in particular. The FDA has recently published an alert and called for rigorous clinical trials. They state that because there is no reliable evidence from the trials to date that this procedure is effective in treating MS, the FDA encourages rigorously conducted, properly targeted research to evaluate the relationship between the therapy and MS. Canada and other countries are proceeding with rigorous clinical trials.

Honourable senators, for these reasons, the Senate should not proceed with this bill. It has been superseded by the logical steps set in motion by the CIHR and the Minister of Health.

Hon. Jane Cordy: The honourable senator said that the trials were under way. When was patient recruitment started?

Senator Ogilvie: Honourable senators, the Minister of Health and CIHR launched an effort during 2012 to set in motion the choice of a proposal to carry out clinical trials in Canada, the proposal to be evaluated by an international panel of experts to advise Canada with regard to the best proposal coming forward to carry out the trials. Such proposals were received and evaluated by the committee. The chosen trial centre is now going through the steps to conduct that trial.

Honourable senators should know that this is a surgical procedure that is on trial. One needs to have surgeons trained in the technology to carry out the trial. Right at the moment, my understanding is that the trial centre is having the surgeons trained in the procedure and then moving to the next step to continue with the trial process that has been set in motion.

Senator Cordy: The head of the clinical trials, Dr. Traboulsee, has already stated that the trials were supposed —

The Hon. the Speaker: I apologize, honourable senators, but it being four o'clock, pursuant to the order adopted by the Senate on October 18, 2011, I declare the Senate continued until Thursday, November 29, 2012, at 1:30 p.m.

(The Senate adjourned until Thursday, November 29, 2012, at 1:30 p.m.)

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