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OFFICIAL REPORT
(HANSARD)

Tuesday, May 21, 2013

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

Tuesday, May 21, 2013

The Senate met at 6:00 p.m., the Speaker in the chair.

Prayers.

[Translation]

THE LATE HONOURABLE DOUG FINLEY

SILENT TRIBUTE

The Hon. the Speaker: Honourable senators, it was with great sadness that we learned of the death of the Honourable Senator Michael Douglas Finley on May 11, 2013.

I ask honourable senators to rise and observe one minute of silence in memory of our late colleague.

Honourable senators then stood in silent tribute.

[English]

SENATORS' STATEMENTS

TRIBUTES

THE LATE HONOURABLE DOUG FINLEY

The Hon. the Speaker: Honourable senators, I have received a notice from the Leader of the Government who requests that, pursuant to rule 4-3(1), the time provided for the consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Doug Finley, whose death occurred on May 11, 2013.

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

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, it is with an extremely heavy heart and much sadness that I rise today to pay tribute to the late Honourable Senator Doug Finley, whose vacant seat is behind me here. Doug's path through life has been one of tremendous achievement and success. He was a gifted political strategist, a student of history and an accomplished parliamentarian.

Born in Exeter, in the United Kingdom, on July 25, 1946, Doug grew up in Scotland after his parents moved him there in his early years. In the 1960s he immigrated to Canada and started his professional career at Rolls-Royce Canada in Montreal, where he quickly rose through the ranks to senior executive levels. He

moved on to serve as President of Standard Aero and Senior Vice-President of Avcorp Industries. Later in his career, he worked as General Manager and Chief Operating Officer of Fernlea Flowers in southwestern Ontario.

In 2003, Doug was appointed Director of Political Operations of the Canadian Alliance and then, after the merger of the two legacy parties, the Canadian Alliance and the Progressive Conservative Party of Canada, he worked on Prime Minister Stephen Harper's successful leadership campaign. He then went on to serve as the Director of Political Operations of the newly formed Conservative Party of Canada and secured our victories in the 2006 and 2008 general elections as National Campaign Director.

He was summoned to the Senate on August 27, 2009, and since his appointment he contributed greatly to the debates on numerous public policy issues, both in the Senate chamber and in committee. Doug also served as a member of numerous international boards and was the recipient of many honours, including being named an Honorary Lifetime Member of the Ferry Command.

In this long list of accomplishments, I cannot leave out the most important of all — the love he shared with his wife, the Honourable Diane Finley, during their 30 years of marriage. Doug and Diane hold a special record in Canada as being only the third couple in history to have one partner sitting in the Senate and one in the House of Commons. Doug best described the situation in his maiden speech in this place, when he said:

Between the two of us, we have both the red and the green chambers covered. Of course, I like the fact that I am the one who is called the "sober second thought" of the family or, as I call it, having the last word.

Does that not sound like Doug? It was Doug.

Doug has been struck down by cancer, but as we all watched him face this struggle, we actually caught the essence of the man. He never gave up, he displayed great courage, he never complained and he fought this disease to its very end. We saw proof of this tenacity in the week before his death, when he was present in the Senate for the vote to send Bill C-377, An Act to amend the Income Tax Act (Requirements for Labour Organizations) to committee and spoke on third reading of Bill C-383, the Transboundary Waters Protection Act, which now awaits Royal Assent. The description of a "fighting Scot" describes him perfectly. Think of it: He was in his place, speaking in the Senate, three days before he died — amazing.

Honourable senators, Doug was a friend, a colleague and a great Canadian. He was deeply passionate about his role here in the Senate, and the tireless hard work he did on behalf of Canadians will not soon be forgotten. I looked so forward to his arrival in this chamber and I am saddened that he has left us so soon. He will truly be missed.

On behalf of my colleagues in the Senate of Canada, I wish to extend my deepest and heartfelt sympathy to his loving wife, the Honourable Diane Finley, to Doug's daughter and grandchildren, and to his many, many friends.

• (1810)

[Translation]

Hon. Pierrette Ringuette: Honourable senators, I am normally very pleased to rise here to speak to you about the various issues that matter to me, but today, it is with a heavy heart that I rise to pay tribute to our former colleague, Senator Doug Finley, who left us far too soon.

[English]

Following Doug's appointment to the Senate in August 2009, he was assigned to the Standing Senate Committee on National Finance. Well, you can imagine that, starting in the fall committee meetings, Doug and I locked horns on most issues raised at the committee meetings. He would sit at the far left side of the table and I on the opposite right side. We would listen to each other's comments and we would rebut each other, much to the dismay of Senator Day, trying to keep us under control.

It was like that for an entire year. Then one day, during a change of panel at the committee, we both rushed outside for a smoke. After the first puff, we looked at each other and started to laugh and laugh. We were laughing at each other and at ourselves. We were finally in agreement — not about the issues, but that we had much in common as senators. We researched the issues and at the end of the day wanted answers that made sense.

Shortly after, I was told that Doug was operated on and undergoing cancer treatment. It was a shock. I sent him a note calling on his Scottish warrior spirit to fight back that demon because I was looking forward to continuing to butt heads at our Finance Committee, since without him, it lacked some sparks. To my great pleasure, Doug came back energized and ready for battle again.

In January 2012, Senator Finley, Senator Demers, Senator Baker, Senator Chaput and I were invited to observe the presidential election in Taiwan. The agenda was demanding, and we met with all three presidential campaigns. Doug was in his element, like a kid in a candy store, asking about polls, population in the region of each candidate, voter turnout, signs, fundraising, policy — everything!

The night before the election, my spouse Gary and I joined Doug for a smoke and Scotch on the patio. He seemed distant but not for long. Gary and Doug started to exchange skits of the Scottish comedian Billy Connolly. It went on for a few hours of jokes and laughter. One of the skits was Billy Connolly attending a public event with a woman's brooch on his lapel. I will spare you the rest since I do not believe it would be parliamentary language.

A month after our return, Doug told me that he had received a call from his doctor that night in Taipei, telling him the cancer was back and he had at most two years. I was speechless.

The week before last, he was talking about this 21-day cocktail that should help him through the summer without too much pain. How I wish that would have been the case.

Again, we were outside having a smoke and conversation while the bells were ringing for the vote on Bill C-377. I said, "Okay, Doug, I have to go to the ladies' room before we vote;" to which he replied: "Well, I cannot have a conversation with you in there." I could never get tired of his political spin and his sense of humour.

As uncompromising as he and I have been in our respective positions on issues, we shared an equally unfaltering mutual respect for each other's dedication to the work of Parliament. His dedication and passion for Canadian politics will be missed and his too-early passing is a loss for all of us.

Last night was an excellent celebration of his life, a farewell to an honourable warrior. To his wife, Diane, and family, Gary and I extend our deep and most heartfelt sympathy. I will greatly miss my Scottish buddy.

Hon. Donald Neil Plett: Honourable senators, I rise today to pay tribute to a great Conservative, a great Canadian and, most important, my friend and yours: Senator Doug Finley.

For those of you who were at the celebration last night — and it was a celebration — I ask for your indulgence as I repeat some of what I said there.

Senator Doug Finley and I go back 10 years, to the days of the Canadian Alliance Party. He was someone I considered one of my closest friends and mentors. Senator Finley and I spent more time together, travelled more miles together and drank more Scotch together than each of us cared to remember. We spent six years working together for the Conservative Party of Canada, Doug as the director of political operations and myself as the president. Doug and I were both strong-minded and opinionated people, and yet we always got along, having strong debates but, at the end, always agreeing, more often than not because I would give in.

One of the main reasons that Doug and I got along as well as we did was because we shared a common goal and a common passion. This, honourable senators, was to elect a strong, stable, national, Conservative majority government under the very capable leadership of Stephen Harper.

I learned more about politics from my friend Senator Finley in the 10 years that I knew him than all the years before. My friend Doug had a work ethic that knew no bounds, which is one of the large reasons why our party has been as successful as it has been.

Just two weeks ago, Senator Finley and Minister Diane Finley and a few very close friends got together for dinner. I will forever be grateful that I got to spend a few quality hours that evening with my friend Doug. I will forever remember this as "the last supper."

Of course, two days later, on Wednesday, Doug made his last speech right here in this chamber when he spoke on safe drinking water.

Being his seatmate, I was of course sitting beside him prior to and during his speech. As all of you know, there can be some long-winded speakers in this chamber, and I believe they are usually Liberals. However, on this particular day, it was one of ours who was going on and on and on. Doug leaned over to me and whispered that he had timed his trips to the washroom in such a way that he needed to be speaking very shortly. Just to lighten the mood and to add to Doug's frustrations, I took my glass of water and very slowly and deliberately drank every drop. I then reached over and held the empty glass under Doug's desk and said, "Doug, as a friend, I will always be there for you, and if you feel the need, please try to be accurate." I clearly saw more humour in this than Doug did.

I left for China the following day thinking I would see Doug when I returned. Diane called me in China on Saturday and told me Doug had passed away.

I have never quoted scripture in this chamber before, usually leaving that to my friend opposite, Senator D. Smith. However, I think it is appropriate that I do today, as I quote from the second book of Timothy, Chapter 4, verses 7 and 8, where the apostle Paul says:

I have fought a good fight, I have finished the race, and I have remained faithful. And now the prize awaits me — the crown of righteousness that the Lord, the righteous Judge, will give me on that great day of his return.

I will forever miss my friend and mentor, Doug Finley. May he rest in peace.

• (1820)

Hon. Salma Ataullahjan: Honourable senators, although I know many here will be speaking about Senator Finley today, I wanted to pay my respects to him, too.

I will never forget the day I met Doug. I had a meeting scheduled with the party's national campaign director, whom I had never met. As I walked into the reception area and into the elevator, I barely noticed the man behind me. I had no idea that the man who held the door open for me was the man I was supposed to meet.

As soon as Doug started speaking and I heard his Scottish accent, I knew I had met a kindred spirit. Anyone who knows history knows of the affinity between the Scots and the Pukhtuns. Beneath his gruff, Scottish exterior, I knew there was a gentle, like-minded soul.

Little did I know that that meeting with Doug would change my life. If it were not for him, I would not be where I am today. He saw something in me that I did not see in myself.

[Senator Plett]

During his memorial in Port Dover, I realized he was known for having this talent; Doug had a natural ability to recognize potential in others. He took a chance on me in the party, and for that I will be forever grateful. That is why, when I was called into the Senate, I chose Doug to walk beside me.

Farewell, Doug, and rest in peace, my dear friend.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, we will move to the Senators' Statements portion, where we will have 15 minutes. I will call upon the Honourable Senator Fortin-Duplessis.

First, however, I must interrupt. We have received two notices of questions of privilege, and I am obligated to call upon the two honourable senators. I will call first on Senator Harb and then on Senator Cowan. The rules provide that we deal with them sequentially based on the time they arrived.

QUESTIONS OF PRIVILEGE

NOTICE—TWENTY-FOURTH REPORT OF INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION COMMITTEE

Hon. Mac Harb: Honourable senators, earlier today, pursuant to rule 13-4, I gave written notice that I would raise a question of privilege later this day. I now give oral notice that I will raise a question of privilege regarding the requirement that parliamentary process follow basic principles of natural justice; that rules cannot be changed and applied retroactively, and that doing so has resulted in the unjust damaging of my reputation as a senator; and that I am ready to move a motion to send this matter to the Standing Committee on Rules, Procedures and the Rights of Parliament for investigation and report in accordance with rule 13-7, paragraph 1, if the chair decides there is a *prima facie* question of privilege that warrants study.

NOTICE—TWENTY-SECOND REPORT OF INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION COMMITTEE

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, pursuant to rule 13-4, I am giving oral notice of a question of privilege that I will raise later today concerning a matter that threatens the independence of the Senate. The independence of the two chambers of Parliament is at the heart of our system of democratic government. Events of recent days have led many Canadians to seriously question that independence.

Last week, Canadians learned that, as part of a larger deal, a sitting member of this chamber was given a secret gift of more than \$90,000 from the Chief of Staff of the Prime Minister in the middle of a forensic audit that had been ordered by our Standing Committee on Internal Economy, Budgets and Administration.

On Tuesday, May 14, CTV News reported that sources said “the deal involved Duffy reimbursing taxpayers in return for financial help and a promise from the government to go easy on him.”

Canadians who watched that newscast were left to wonder what was meant by a promise of the government going “easy” on Senator Duffy. The words were interpreted by many as meaning that the government was going to ensure that the Senate would go easy on him, because there was no evidence whatsoever that the government was doing anything but supporting Senator Duffy.

This allegation of interference in the internal proceedings of the Senate was reinforced by CTV News on Friday, May 17, when reporter Robert Fife claimed that the report of the Standing Committee on Internal Economy, Budgets and Administration regarding Senator Duffy had been changed by deleting its most critical elements. He said that in sharp contrast to the final report Canadians heard, the original audit report states that the living allowance rules are “very clear” and “unambiguous,” and Senator Duffy broke them.

Canadians who watched these newscasts could only conclude that there had been interference by the Prime Minister’s Office in the proceedings of one of the Senate’s committees and that the interference was part of something much larger, which included a secret payment of more than \$90,000.

Canadians heard reports that Senator Duffy had stopped cooperating with the auditors, refused to provide documents and refused to meet with them. His actions were lauded by the government as showing leadership. The resignation this past weekend of the Prime Minister’s Chief of Staff, Nigel Wright, only added to the suspicions of Canadians.

It is critical that Canadians have confidence in their public institutions. The public allegation of outside interference in the proceedings of the Senate must be thoroughly investigated, with all parties involved being given an opportunity to explain their respective roles.

If the Speaker should find that I have established a *prima facie* question of privilege later this day, I would be prepared to move a motion to refer the matter to our Standing Committee on Rules, Procedures and the Rights of Parliament in order to give everyone involved an opportunity to be heard.

The Hon. the Speaker: Honourable senators, we will deal with these two questions at the end of Orders of the Day or at 8 p.m., whichever comes first. That is because we began our sitting at 6 p.m.

Let us now proceed with Senators’ Statements.

[*Translation*]

TRIBUTES

THE LATE HONOURABLE DOUG FINLEY

Hon. Suzanne Fortin-Duplessis: Honourable senators, it is with great emotion that I speak today in this chamber to pay tribute to our dear colleague, the Honourable Doug Finley, a passionate man whose courage and tenacity were just as great as his unwavering love for Canada, his adopted country.

With his acute political sense, extraordinary organizational skills and exemplary professionalism, Doug Finley played a key role as an adviser and strategist for the Prime Minister. There is no question that he leaves an indelible mark and a great legacy that will continue to guide our party for a long time to come.

I got to know my honourable colleague better when we travelled together on a reconnaissance mission to Brazil as part of our duties as members of the Standing Senate Committee on Foreign Affairs and International Trade. I discovered an affable, generous and empathetic man who was always willing to share his knowledge and sense of humour.

We frequently talked about his unfortunate illness. He knew that I understood how he was feeling since I had cancer myself a few years ago.

I salute and pay tribute to the fighting spirit of this great Canadian who spoke for the last time in this chamber on May 8, just a few days before his death.

I will truly miss you, my dear colleague.

[*English*]

Hon. David P. Smith: Honourable senators, I, too, am rising to pay tribute to Senator Finley. He and I became friends within the last few years. I think all here would understand that we were never political allies, but to me it is always the individual that matters, not the category. During the last couple of days he was here, on three or four occasions we waved at each other, and I was intending to go over because I could see he did not look too strong. At one point, when I was clear and went to go, I realized he had already left.

We had a trip to Brazil with the Foreign Affairs Committee a couple years ago when we really connected. We both had strong Scottish roots. My father’s name was Campbell Bannerman Smith, and Senator Finley loved that; he just loved it. He was known to enjoy a single malt on more than rare occasions. I think I could say that. There would be a twinkle in his eye. We need good people in all the parties to make democracy work. We do.

• (1830)

I never have hesitated having friendships, regardless of people's political connections.

He was also a great fan of the Celtics, which is the Catholic team in Glasgow. The Protestant team is the Rangers. When one goes to a Celtic-Ranger game — there is usually only one a year — there are 100,000 fans in the stadium, with barbed wire dividing it half and half. You have not seen anything unless you have been there. I remember 40 years ago I was doing a legal case in London and they were playing on the weekend, so I went up. I have to abbreviate this a bit, but their favourite song — I could sing all the songs, and he would love it when I would sing them — was in reference to William of Orange, the great Protestant King: King Billy fell at the gates of Hell and begged for Holy water, and over the dike came a pail of piss, and hit him in the napper.

They would sing that song 50,000 strong and then the Ranger fans would sing something just as rough.

That was Doug. He was fun to be with, a real character. To Diane and all his family, I convey my sincere sympathy.

It was too soon.

Hon. Yonah Martin: Honourable senators, it is with a heavy heart that I rise today to also pay tribute to our colleague, the late Honourable Senator Michael Douglas Finley.

Doug was a Scotsman to the core. He inspired the foundation of the Scottish Society of Ottawa and fittingly, on October 24, 2012, the society held a tribute dinner to honour Doug and his achievements. I had never heard so many sheep jokes in one night than I did that evening, nor had I had the privilege to hear such words of deep admiration for Doug from a wide range of people.

We have all heard or read about Doug's life as an immigrant to Canada in the late 1960s and his career that followed, which included becoming a senior executive at Rolls-Royce in Montreal where he met the love of his life, Diane, followed by a term as President of Standard Aero, to then becoming Senior Vice-President of Avcorp Industries.

Doug was also a proud Canadian to the core, but it was in politics that he made his mark and his political achievements are legendary. He was a true mentor to his fellow Conservatives of all ages, including me, and was a strong, determined man who never backed down from a fight. There is certainly no shortage of war stories with General Doug Finley at the helm.

When people ask me about my sudden leap into politics, they want to know how I did it. How did I go from the classroom into federal politics? In other words, what in the world possessed me to think that I could challenge a formidable incumbent without any prior political experience? The answer is this: I believed I could.

As other mentees and protégés have accredited to Doug, the courage I found in myself had also been inspired in part by Doug. I was one of his candidates in the 2008 federal election, and I had the good fortune of knowing that Doug Finley and his incredibly

dedicated team were on my side, in my corner, ready to help in whatever way I needed, be it media training or answering questions via teleconference or in other ways. I knew he was a call or email away.

Thank you, Doug, for telling me straight up at our first face-to-face meeting, "I will not lie to you, Yonah, politics is not for the faint-hearted. There will be great challenges, but the rewards will be even greater and if you win, you will be at the decision making table to make a difference for our country."

I lost by 3 per cent in that election, but what an honour to have had the opportunity to serve as his colleague in the Senate of Canada. I thank our Prime Minister Stephen Harper for such a privilege to serve alongside Doug, one of the greatest political strategists of our modern era.

Doug Finley was a strong and courageous man who has never been known to stand down from a fight. Even after being diagnosed with terminal cancer, Doug stood strong and faced his biggest challenge with dignity and courage. Until his final days, Doug was still here in the Senate chamber honouring his responsibility to Canadians.

When Doug spoke last Wednesday, I did not think it would be the last time I would hear him speak.

Honourable senators, let us take comfort in knowing that Doug is in a better place and that his legacy will forever live on. My deepest condolences also go to Diane and the family.

[Translation]

Hon. Jacques Demers: Honourable senators, I am very pleased to rise here today to pay tribute to Senator Finley, a man who was a mentor for me.

When I first entered politics, I knew nothing, and I still have a lot to learn. Senator Finley was my neighbour, and I can assure you, he helped me a great deal.

[English]

Last Saturday I was in Port Dover with many other senators and dignitaries to honour Senator Finley. He was a man that the opposition disliked — hated at times — but respected, and that is more important than anything else. I can understand when a man is disliked and maybe at times disrespected because he is a fighter, and Senator Finley was a fighter. That is what I appreciated most.

When I talked to him about hockey, he had no clue. When he talked to me about soccer, I had absolutely no clue. There were times after Senator Ringuette and her husband had a few pops, and I joined in later on with him and had a few pops with him. However, we all know the heavy accent he had, and as we were drinking a few pops, I could not understand what the hell he was saying. However, that was Doug Finley.

When Senator LeBreton called me and told me that Doug had passed away, I went downstairs and told my wife I just lost a friend. It was very hard to accept. I know he has many friends

[Senator Smith]

here of many years who have been together and shared a lot more dramatic situations than I have, but when you respect someone, you respect someone.

Mrs. Finley, her daughter and family, not only Conservatives but all people in government in Canada, have lost a great man — a man who was honest and had integrity, a man who respected the Senate and all the other avenues he went through. He was not smooth. He was rough at times, but in my life and in the other job I did, I never met winners who were always saying yes and smiling. Winners are rough, winners compete and winners fight for everything.

Senator Finley, you are on my right today. I do not think how long it would be in the Senate, but we are two together here.

I am honoured and thank you very much for the opportunity to speak about a good friend.

COMMANDER CHRIS HADFIELD, O.ONT.

Hon. Roméo Antonius Dallaire: Honourable senators, I too would like to express my respects to Senator Doug Finley. However, as senators have just indicated, we must also continue to look to the future. I wish today to rise in order to congratulate Colonel Chris Hadfield for being the first Canadian to command the International Space Station. He did so with gusto, with initiative, with zeal and with imagination.

He was spirit of the universe out there and absolutely wanted everyone to know that he was up there. He took all possible means of our modern technology to bring space back to earth and to make us realize for today and into the future that we must remain in space, the final frontier. He did it with stories, interesting activities, pictures and he also did it with song, but I must say I am not particularly keen on his voice.

Chris Hadfield was born in Sarnia and had an interest in flight from an early age. He first dreamed of becoming an astronaut when he watched the moon landing at age 9. Colonel Hadfield joined the Canadian Armed Forces after high school and took honours and the overall top graduate of the basic jet training at CFB Moose Jaw.

In June 1992, he became one of four new Canadian astronauts. He was assigned by the Canadian Space Agency to NASA's Johnson Space Center in Houston, Texas.

• (1840)

Colonel Hadfield first went to space in 1995. In 2001, he became the first Canadian to ever leave a spacecraft and float freely in space, and during his most recent space flight he became the first Canadian commander of the International Space Station, our advance post in moving into that final frontier.

Colonel Hadfield has flown over 70 different types of aircraft, served 25 years in the Royal Canadian Air Force, and been on three space flights. He was the first Canadian mission specialist, the first Canadian to walk in space, and the first Canadian, of course, to command a spaceship.

Colonel Hadfield is a remarkable Canadian. Over the past five months, people all over the world have been watching Colonel Hadfield. I was in Florida near the space centre, and the people

there spoke only of him in all sorts of venues as he was bringing us to space and space to us.

He will perhaps be best remembered for his pitch-perfect cover of David Bowie's "Space Oddity." On Monday, May 13, Colonel Hadfield came back to Earth — I am not sure if he came down to earth, but he came back to Earth. Even with his feet on the ground again, he will continue to be the face of space exploration for many Canadians, especially the young people who might now be dreaming of going to space themselves.

Today, as we celebrate the career of Colonel Chris Hadfield, we must remember to reflect on the importance of science, of research and of space exploration. The future of humanity, yes, has a place in space, and we have a leading place in that space walk in that space future. We should not shun or bow away or cut our resources; we should take on that leadership role.

SPEECH AND HEARING MONTH

Hon. Terry M. Mercer: Honourable senators, during the month of May, the Canadian Association of Speech-Language Pathologists and Audiologists aims to raise awareness and educate people about speech, language and hearing disorders in Canada.

The association is a national body that supports and represents the professional needs of speech-language pathologists. Many of us may take being able to speak, hear and be heard for granted, but there are many people who do not have the ability to communicate as easily as others.

With over 6,000 supporting members, the association stresses the importance of early detection and provides professional help for those dealing with communications disorders. Sixteen per cent of Canadians struggle with speech, language or hearing issues. That is one sixth of Canadians. This number is anticipated to increase. By 2041, one quarter of Canada's population will suffer from some type of speech, language or hearing disorder.

A big part of Speech and Hearing Month is about helpful tips for those who need to hear better and those who need to get their message across better for those who have trouble hearing. Many of us in this chamber, including myself, wear hearing aids. It is important to recognize this because hearing, speaking and being heard is critical to what we do here in Parliament.

The Canadian Association of Speech-Language Pathologists and Audiologists offers some helpful talking tips for politicians. These tips include using visual clues by facing or looking at the speaker; considering how you speak — this could mean slowing down, not shouting — and I have trouble with that one — and speaking in a natural tone. When there is a large group of people, such as we have in the room tonight, it is critical to avoid interrupting, to take turns speaking and to make it clear when there is a change of topic.

I suggest we all take these tips into consideration. I encourage all senators to recognize the month of May as Speech and Hearing Month.

[Translation]

ROUTINE PROCEEDINGS

THE ESTIMATES, 2013-14

SUPPLEMENTARY ESTIMATES (A) TABLED

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Supplementary Estimates (A) for the fiscal year ending March 31, 2014.

PUBLIC SAFETY

RCMP'S USE OF THE LAW ENFORCEMENT JUSTIFICATION PROVISIONS—2012 ANNUAL REPORT TABLED

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2012 Annual Report on the RCMP's Use of the Law Enforcement Justification Provisions, pursuant to section 25.3 of the Criminal Code.

[English]

COMMITTEE OF SELECTION

THIRD REPORT OF COMMITTEE PRESENTED

Hon. Elizabeth (Beth) Marshall, Chair of the Committee of Selection, presented the following report:

Tuesday, May 21, 2013

The Committee of Selection has the honour to present its

THIRD REPORT

Your committee recommends a change of membership to the following committees:

Standing Senate Committee on Agriculture and Forestry

The Honourable Senator Carignan replaces the Honourable Senator Duffy as a member of the Standing Senate Committee on Agriculture and Forestry.

Standing Committee on Rules, Procedures and the Rights of Parliament

The Honourable Senator Carignan replaces the Honourable Senator Duffy as a member of the Standing Committee on Rules, Procedures and the Rights of Parliament.

Respectfully submitted,

ELIZABETH MARSHALL
Chair

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

Senator Marshall: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(f), I move that the report be adopted now.

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.

(Motion agreed to and report adopted.)

[Translation]

THE ESTIMATES, 2013-14

NOTICE OF MOTION TO AUTHORIZE NATIONAL FINANCE COMMITTEE TO STUDY SUPPLEMENTARY ESTIMATES (A)

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I give notice that at the next sitting of the Senate, I will move:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2014.

NATIONAL SECURITY AND DEFENCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF SERVICES AND BENEFITS FOR MEMBERS AND VETERANS OF ARMED FORCES AND CURRENT AND FORMER MEMBERS OF THE RCMP

Hon. Roméo Antonius Dallaire: Honourable senators, I give notice that at the next sitting of the Senate, I will move:

That, notwithstanding the orders of the Senate adopted on Wednesday, June 22, 2011, and on Thursday, June 14, 2012, the date for the final report of the Standing Senate Committee on National Security and Defence in relation to its study on the services and benefits provided to members of

the Canadian Forces, to veterans, and to members and former members of the Royal Canadian Mounted Police and their families, be extended from June 28, 2013, to June 27, 2014.

[English]

QUESTION PERIOD

PRIME MINISTER'S OFFICE

PAYMENT OF FUNDS—TWENTY-SECOND REPORT OF INTERNAL ECONOMY COMMITTEE

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my questions are for the Leader of the Government in the Senate, Senator LeBreton.

Do you believe that it was appropriate for the Prime Minister's Chief of Staff, Nigel Wright, to make a payment of more than \$90,000 to Senator Duffy while his expenses were the subject of an ongoing forensic audit to enable him to repay his inappropriate expense claims?

Hon. Marjory LeBreton (Leader of the Government): Very clearly, Senator Cowan, Nigel Wright in his statement indicated that the actions he took were not the proper actions, and he submitted his resignation and the Prime Minister accepted it.

Senator Cowan: Senator LeBreton, I draw to your attention the provisions of section 17 of the Conflict of Interest Code for Senators. It reads as follows:

Neither a Senator, nor a family member, shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that could reasonably be considered to relate to the Senator's position.

• (1850)

Section 16 of the Parliament of Canada Act provides that it is an indictable offence to either receive or pay monies to a senator. Do you agree that the payment that was made by Mr. Wright and received by Senator Duffy almost certainly contravened the provisions of the code and the Parliament of Canada Act?

Senator LeBreton: I certainly support the Parliament of Canada Act and the code of ethics. I believe that that is being looked at by the Senate Ethics Officer as well as the ethics officer in the House of Commons who, of course, is also responsible for other public office-holders.

Senator Cowan: A week ago you indicated that you considered the Duffy case closed. Do you still believe that?

Senator LeBreton: Actually, I am very glad you asked me this question. On May 9 I stood in this place and in front of the national media. I felt very comfortable then, and I still feel very

comfortable, that the process we set up in the Senate to address these issues was appropriate, and I believe we followed the process we set up to the letter of our agreement.

I remind you, Senator Cowan, that you and I co-signed a letter to the Chair and Deputy Chair of the Internal Economy Committee making the point that any senator who inappropriately or mistakenly claimed funds should pay them back in full with interest. That was step number one.

Step number two was that you and I also agreed, as did the members of the Internal Economy Committee, after looking at the individual senators in question, that the matters were serious enough that they should be referred to outside auditors. That was done.

We also agreed that the external audits would be reported in the Senate chamber. That was done.

We also agreed that the Internal Economy Committee would report on those audits. That was done.

We also agreed that we would table a report in the Senate with regard to what the Senate might do going forward as a result of the audit. All of those things were done.

We co-signed the letter. The auditors' reports were filed here in their entirety under the name of Deloitte. The reports of the Senate accompanied them, and we have a report suggesting some very strong rules. That was on May 9.

When I stood here on May 9, I was dealing with information that I had at that point in time. That is all I could do. You and others are now asking me to respond to events that I was not aware of on May 9.

Senator Cowan, I do believe that the Senate followed the proper procedures. As you also know, when further information became known about Senator Duffy with regard to campaign expense claims, I immediately issued a statement saying that in view of this new information, we were going to move an amendment to the report on Senator Duffy, referring it back to Internal Economy.

I am absolutely and solidly confident that I conducted myself, as did you, in an appropriate manner. That was then. Many things have happened since then, including the subject of your first question. Those are issues we will now have to deal with going forward.

Senator Cowan: I well remember the letter; I drafted it.

What conversations did you have with the Prime Minister or Nigel Wright about what might or might not be in the Internal Economy Committee report with respect to Senator Duffy's expense claims?

Senator LeBreton: I had no conversations with either the Prime Minister or Nigel Wright about what might be in the report of the Internal Economy Committee.

Senator Cowan: Are you aware of any such conversations between the Prime Minister or Nigel Wright and Senator Tkachuk?

Senator LeBreton: I am not aware of any conversations. I think it has been made very clear with regard to the story that broke last Tuesday on Nigel Wright that the Prime Minister heard about it when everyone else heard about it, as a result of a newscast last Tuesday night.

Senator Cowan: The Prime Minister's statement, or Mr. Wright's statement, more precisely, said that he was not aware of the means by which Senator Duffy made that payment. Does that mean he was not aware of the fact of the repayment or the means by which the funds were provided to make the repayment?

Senator LeBreton: I have read it and I have it here in front of me. The fact is that it was well known in the media and in this place that Senator Duffy had submitted to the Clerk of the Senate a cheque made out to the Receiver General of Canada. I did not participate in any of the discussions about this, but I think Mr. Wright's statement is very clear. This became known on Tuesday night, following our work here in the Senate on Thursday, May 9, and was another event of which none of us were aware.

Senator Cowan: When Mr. Wright issued his statement, he said:

I did not advise the Prime Minister of the means by which Senator Duffy's expenses were repaid, either before or after the fact.

It begs the question about whether he had advised the Prime Minister about the fact of the repayment. Do you know whether there is a difference between the phrase "the means by which Senator Duffy's expenses were repaid" and the fact of that repayment?

Senator LeBreton: Let me be absolutely clear once again, Senator Cowan. The Prime Minister was not aware of this payment until media reports surfaced last week.

I know there are conspiracy theorists running all around the place. I know that you do not like my answer, but my answer happens to be the truth. The Prime Minister was unaware.

Senator Cowan: When did you become aware that the repayment of Senator Duffy's expense claims, amounting to more than \$90,000, was with funds provided by Nigel Wright?

Senator LeBreton: I just answered that, Senator Cowan. I became aware when we all became aware; when it was reported by Bob Fife on CTV National News last Tuesday night.

Senator Cowan: At the time that Senator Duffy made his repayment in March 2013, did you believe he was doing so with his own funds?

Senator LeBreton: I absolutely did. As a matter of fact, Senator Duffy, in other comments, said he paid back the funds by securing a loan with the Royal Bank of Canada. That is what I believed. That is what I believed on May 9; that is what I believed right up until last Tuesday night.

Senator Cowan: Did you play any role in arranging for Senator Duffy to obtain the funds necessary to make the repayment?

Senator LeBreton: Absolutely not. That is just ridiculous. I never discussed this with Senator Duffy. You may be very surprised. I never involved myself with Senator Duffy and whatever amount of money he was — I did not even know the amount of money he actually paid back until it was made public by Internal Economy.

Senator Cowan: Have you seen or have you asked to see the letter of understanding that apparently exists with respect to the arrangements between Senator Duffy and Nigel Wright?

Senator LeBreton: I saw that news report as well, but it is my understanding that no such document exists.

Senator Cowan: Did you have any conversations with your colleagues on the Internal Economy Committee, specifically Senator Tkachuk, as to what would or would not be in the report that he tabled on May 9 with respect to the three senators concerned?

• (1900)

Senator LeBreton: Internal Economy — and I think this is a very important point to make, Senator Cowan — is a very important committee of the Senate. It is made up of members of the Conservative and the Liberal sides. As you know, I am an ex officio member of Internal Economy, as you are. I did not attend any Internal Economy meetings and other than being briefed — and obviously you were involved in some of these discussions yourself — because we were concerned about staying on the time line and living up to our commitment that we were going to make these reports all public and available. That was the extent of my interest in the work of the Internal Economy Committee.

Senator Cowan: Did you have any conversations with or issue any instructions to Senator Tkachuk as to whether or not Senator Duffy's claim would be dealt with by Senator Marshall's subcommittee or by the steering committee, which Senator Tkachuk chaired?

Senator LeBreton: No, I did not. Those obviously were decisions made by Internal Economy. I had no such discussion.

Senator Cowan: I assume that you had an opportunity, as I have had, to read or reread the three reports signed by Senator Tkachuk and presented by him on behalf of the Internal Economy Committee on May 9 with respect to the expense claims of Senators Brazeau, Duffy and Harb. As you know, those reports dealt with the primary residence and secondary residence declarations that senators are asked to file. They are the same forms and the same declarations that apply to all of us.

Can you explain why the committee considered in the cases of Senators Brazeau and Harb, but not in the case of Senator Duffy, that the form was amply clear, as is the purpose and intent of the guidelines to reimburse living expenses and, further, that the language used in that form in those guidelines was, in the words of Senator Tkachuk's reports, "unambiguous?"

Senator LeBreton: I was not a member of Internal Economy. Obviously, the reports were tabled in this place on May 9. They are the property of the Internal Economy Committee. They reported their findings as a committee to the Senate, represented by both sides of the chamber.

My understanding in the case of Senators Harb and Brazeau, which was handled by the subcommittee chaired by Senator Marshall, is that there was language used to facilitate the repayment of monies owed to the taxpayer. In the case of Senator Duffy, since the money had been paid, I understand that the case was made before Internal Economy.

Again, this is Internal Economy; they are going to have to answer to this. They were the ones. I understand the case was made that since the money from Senator Duffy had been repaid, I believe there was a debate in Internal Economy that there was different wording used. I was not party to the wording.

Senator Cowan: What possible effect could whether the money had been paid or not been repaid have on whether the language was unambiguous and the form clear? What is the connection?

Senator LeBreton: Again, this is a report that was tabled in the Senate by the Chair of Internal Economy. Internal Economy is made up of senators from both sides of the chamber. Obviously, the report came from the committee. I was not in the committee. I did not write the reports. The fact is, the audits were tabled under the name of Deloitte and are here for all to see. There was a subcommittee, so I understand, that dealt with Senator Harb and Senator Brazeau. The steering committee dealt with Senator Duffy.

In Internal Economy, there was a discussion about the wording of the reports. The wording for Senators Harb and Brazeau was there to facilitate the payment of monies that we wanted to get them to return. In the case of Senator Duffy, my understanding is that there was a debate in Internal Economy. I was not there. You will have to go back and check the records of Internal Economy. My understanding was that since the money had been repaid by Senator Duffy, we found later that it was not repaid in the way we thought it was; but that is another issue. That was a discussion in Internal Economy and Internal Economy tabled the reports in the Senate. I actually cannot answer that.

Senator Cowan: Senator LeBreton, you will recall that I suggested here in our conversations and also when I spoke to the media following the tabling of the reports that I assumed that Senator Tkachuk, as chair of the committee and signatory to these reports, would be available to answer the questions that the media had then and have even more of now with respect to those reports. Why has Senator Tkachuk made himself unavailable ever since he tabled those reports?

Senator Tardif: Good question.

Senator LeBreton: Well, actually, Senator Cowan, as we had committed to at the very beginning, you spoke on behalf of the opposition and I spoke on behalf of the Conservative side — the government side of the chamber. We followed a process. We cooperated. We actually got some credit for cooperating. It was

never intended for Senator Tkachuk — you assume that, but you should not make assumptions because you should not aspire to other people what you want them to do. The fact of the matter is, Senator Tkachuk is not here because of a personal health issue.

Senator Cowan: I understand why he is not here today. My question was why he was not available to explain the reports that he had signed when he tabled them on Thursday, May 9. You asked what I assumed. I expected he would do that. If I were presenting a report to the Senate, I would make myself available to explain it. Why he would not, I think, is a perfectly legitimate question for us to ask and, I suggest, for you to answer.

Senator LeBreton: I would suggest to you, Senator Cowan, that Senator Tkachuk did exactly what Senator Tkachuk should do. As the chair of the committee, he tabled the reports. The reports are now the property — within the purview of the Senate. As I indicated a few moments ago, specifically with regard to the report on Senator Duffy, we will be moving an amendment to return that to Internal Economy.

Senator Tkachuk acted properly in his capacity as Chair of Internal Economy. The reports were tabled. There are members of Internal Economy on both sides. The reports are now the property of the Senate. I would argue strongly that this is the place now to deal with these issues. What you assumed or wished is something that I frankly cannot answer for, Senator Cowan.

Senator Cowan: Well, I will leave it to others to judge my assumption that he would make himself available to answer questions on a document he signed, or your assumption that that was unreasonable. We will see what people have to say about that.

Getting back to these forms and guidelines, we have three reports, two that deal with exactly the same form, guidelines, policy and issue — the issue of primary residence and secondary residence. In two of the reports, Senator Tkachuk says that the committee finds that the form is amply clear and that the language of the guidelines is unambiguous. In the other, that finding is absent. What is your view?

Senator LeBreton: First of all, Senator Cowan, you can have your own assumptions, but do not aspire assumptions to me.

The fact of the matter is that Senator Tkachuk is the Chair of the Internal Economy Committee. He tabled the reports in this place on behalf of the Internal Economy Committee, which is made up of senators from both sides of the chamber. They are now on the floor of the Senate. We will debate these reports. That is the proper form, and that is what we will do.

Senator Cowan: On May 20, former Senate Ethics Officer Jean Fournier said:

Given the various issues involved, the government should ask someone with the intelligence and experience of the Honourable Frank Iacobucci to inquire into and report on matters regarding Senator Duffy's expenses.

Do you consider that to be an appropriate course of action?

• (1910)

Senator LeBreton: As I indicated, we are going to move an amendment on Senator Duffy's report. It will go back to Internal Economy, and I am quite sure that members of Internal Economy, on both sides, will be very happy to have advice from the former ethics officer, Jean Fournier, or anyone else. I am sure they will be very happy to take into consideration all advice that may be forthcoming as we move forward to resolve these issues.

Hon. Wilfred P. Moore: Honourable senators, it is clear that the chair of the committee, Senator Tkachuk, tipped off Senator Duffy in advance, in keeping with the go-easy deal between Duffy and Wright. Do you think it is appropriate for him to continue in that role?

Senator LeBreton: That is sort of typical of Senator Moore's questions. This is a matter to be dealt with by the Internal Economy Committee of the Senate. I point out again, it is made up of senators on both sides, so I am quite sure that when the report on Senator Duffy is returned to Internal Economy, and in view of the new information that is available and all of the information that has been forthcoming since May 9 and also in view of the public concern, although I cannot speak for them, I would be very surprised if they did not take into account all of these issues that have been raised since May 9. We will let the committee do their work. I am quite confident they will do it properly.

Hon. Joan Fraser: Honourable senators, my question is for the Leader of the Government in the Senate. A few moments ago, you assured Senator Cowan, at least twice, I think, that the reasons for not including the language about unambiguous forms and whatnot had been discussed in the Internal Economy Committee. It was an in camera meeting, but I was there that morning. How shall I say, I was surprised by your assertion. Could you give us the grounds for making it, please?

Senator LeBreton: I was not there. I understand that this matter was discussed. I was not there. I have not seen any minutes. I have not had any reports.

I understand, as a result of the reports being tabled and the questions, that this was discussed and debated at Internal Economy, so I cannot answer for Internal Economy. Obviously, in the case of Senator Duffy this report is going back to Internal Economy, so there will be ample opportunity for senators on both sides to address all of the issues that they feel should have been addressed or that were part of the committee. I can only surmise that they discussed these things. This is what I understood. I was not there, but Internal Economy will have ample opportunity to address these issues once we are successful in getting the amendment passed to return Senator Duffy's report back to Internal Economy. I have full confidence in the members of Internal Economy on both sides. We have people on both sides who will obviously take this very seriously.

We know, and I think Senator Tkachuk said when these reports were tabled, this is a crisis. There is no doubt about it. I think his exact words were, "This was a crisis pure and simple." I have every confidence that the Internal Economy Committee, once this report is referred back to it, will be seized absolutely by the task at hand.

Hon. Percy E. Downe: As I understand your answer Senator LeBreton, you heard about the payment from the Prime Minister's Office to Senator Duffy on the TV news. Since you heard that, as you know, there are four senators under various stages of review. Have you inquired if any of those other senators received any financial assistance from anyone in the government?

Senator LeBreton: I was like everyone else. I watch, God forbid, the news sometimes, and sometimes I wish I would not watch the news. As a matter of fact, lately, I have been watching CNN a little more than I normally do.

Actually, this is a serious matter. Obviously, we have the statement of Nigel Wright, and we have the statement of the Prime Minister. Obviously, we did not know about this. You ask a question about whether other cheques or money have been paid. There has been no money repaid by either Senators Harb or Brazeau, so the question is actually not relevant.

Senator Downe: With all respect, Senator LeBreton, you are not like everyone else. You sit in the cabinet. You are head of various cabinet committees. You are on the inside of the government. You are supposed to know what is going on. I accept your answer that you heard on the news, for the first time, that Senator Duffy received a financial payment from the chief of staff to the Prime Minister. Were you at all curious if any of the other three who were also under some stage of review — you named two of them. You left one out. Have any of them received any financial reimbursement from anyone in the Government of Canada? I am surprised you are not curious to find out that answer.

Senator LeBreton: Senator Downe, you are bordering on a fishing expedition. You really are. This is very irresponsible. It is extremely irresponsible.

Obviously, as was reported on the news last Tuesday night, Nigel Wright took — and I am quite sure that, in hindsight, he very much regrets his mistake. The fact of the matter is, it is what it is. Nigel Wright told the truth when he said he made this payment to Senator Duffy. I accept that as the truth. His statement speaks for itself.

It would be no surprise to Senator Downe that when we sit around the cabinet table, we are dealing with legislative matters. This is not an issue that the government would be discussing around the cabinet table because the Senate is a legislative body of Parliament. The only time the Senate is ever discussed at the cabinet table is when we are discussing legislation to reform the Senate.

Hon. Jim Munson: There are some who may believe there has been a coverup. What do you think has happened?

Senator LeBreton: I hate to disappoint you, Senator Munson. When the story broke last Tuesday night, that is the first any of us heard of it. I know you would like another answer, but that is the truth. Nigel Wright did the right thing. He immediately told the truth about the circumstances of his dealings with Senator Duffy. Those are the facts of the matter, Senator Munson. I know you are hoping that there is some coverup. That is not the case.

What I have said today is fact. I know you are a journalist. I know you run around promoting conspiracy theories, but there was no conspiracy theory. There was no coverup, and neither the Prime Minister nor I knew anything about it.

- (1920)

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the answer to the oral question asked by the Honourable Senator Hubley on March 21, 2013, concerning veterans.

[Translation]

Honourable senators, I have the honour to table the answer to the oral question asked by the Honourable Senator Tardif on February 28, 2013, concerning fisheries and oceans.

[English]

Honourable senators, I have the honour to table, in both official languages, the answer to the oral question asked by the Honourable Senator Hubley on February 12, 2013, concerning fisheries and oceans.

[Translation]

Honourable senators, I also have the honour to table the answer to the oral question asked by the Honourable Senator Hubley on April 25, 2013, concerning fisheries and oceans.

[English]

VETERANS AFFAIRS

VETERANS INDEPENDENCE PROGRAM

(Response to question raised by Hon. Elizabeth Hubley on March 21, 2013)

The Veterans Independence Program was introduced as the Aging Veterans Program in 1981. At the time, eligibility was confined to war disability pensioners.

The program is intended to assist Veterans to remain independent in their homes longer. Over the years the program has been adapted to respond to the needs of other Veteran groups as well as their survivors. In the case of survivors, their eligibility stems from that of the Veteran.

The plight of a group of primary caregivers of low-income or disabled Second World War and Korean War Veterans was also recognized. These elderly primary caregivers who were also low-income or disabled were in need of support and had cared for their disabled/low-income Veteran spouse without the benefit of Veterans Independence Program services. The Veteran would have been eligible if they had applied. As a result, the Government in 2008 responded compassionately and provided Veterans Independence Program housekeeping and/or grounds maintenance services to these primary caregivers.

The program has evolved over its more than 30 year history; however, it remains a program focused on Veterans. Survivors and primary caregivers have been provided some benefits which stem from the eligibility of the Veteran. The program design for primary caregivers maintains those services to which they have become accustomed. The program design recognizes their specific needs and their own sacrifices as primary caregivers of Second World War and the Korean War Veterans who were low-income or disabled. The Veterans Independence Program services were extended to assist them with the challenges of remaining at home in their senior years.

SCIENCE AND TECHNOLOGY

SUPPORT FOR RESEARCH AND DEVELOPMENT

(Response to question raised by Hon. Claudette Tardif on February 28, 2013)

Media has recently reported on two separate incidents: one concerning changes to the publication procedures in the Central and Arctic region, and the other, concerning a confidentiality clause included in a draft collaborative agreement.

Both cases stem from the Department's Policy for the Management of Intellectual Property (2009) which was developed pursuant to an Auditor General of Canada's review of practices in managing intellectual property. The essence of the policy (as required by the *Copyright Act*) is that any intellectual property (patent or a copyright) that potentially belongs to the Crown must be identified, and, confidentiality must be applied to ensure that the potential is not lost, until a determination is made regarding patents or copyright.

Publishing and communicating scientific work is a crucial element of what we do, and our record is solid. Our objective is to get good peer-reviewed science into the public domain. Every year, Fisheries and Oceans Canada publicly issues more than 300 science reports documenting our research on Canada's fisheries and oceans and even more to our scientists' own contributions to science journals, books, and other publications. The Department also responded to over 1500 science-based media enquiries between 2010 and today and our scientists continue to give interactive lectures all over the world promoting their work.

The requirements for approval of the release of science articles are long standing, and take place within the Science Sector. Recently, one of Fisheries and Oceans Canada's operating regions (Central and Arctic Region) made minor modifications to its publication procedures. The modifications eliminate duplicative peer reviews and ensure government intellectual property rights are respected in third-party publications.

Each of Fisheries and Oceans Canada's six (6) operating regions reviews publication procedures specific to its region to ensure that they are aligned with copyright laws and the

intellectual property policy, which has been updated to respond to recommendations by the Auditor General of Canada (2009).

The Auditor General and other experts have clearly articulated that the government has an obligation to protect and respect intellectual property rights. Fisheries and Oceans Canada has policies on intellectual property and the publication of work in order to respect government intellectual property, and these have not changed.

FISHERIES AND OCEANS

INCREASE IN ALLOWABLE SIZE OF LOBSTER CARAPACE

(Response to question raised by Hon. Elizabeth Hubley on February 12, 2013)

Harvesters in Lobster Fishing Area 25 put forth a proposal as part of the Atlantic Lobster Sustainability Measures Program that included the commitment to increase carapace size for lobster in this area from 71mm to 72mm. Department of Fisheries and Oceans Science has confirmed that 72mm is the size at which 50 per cent of the female lobster will have spawned at least once, and is the accepted conservation standard for this Lobster Fishing Area. This increase will occur in 2013.

The Departmental Working Group and the Lobster Fishing Area 25 Advisory Committee continue to convene and discuss recommendations in this fishery. New Brunswick harvesters tabled a formal request to the Advisory Committee (January 23, 2013) seeking to increase the lobster carapace size in this Area to 77mm by 2015. This was not a proposal put forth by the Department. Prince Edward Island harvesters remain opposed to any increase beyond 72mm as they provide smaller sized lobster to market.

The Department is considering options aimed at improving quality control measures for the lobster fishery and also at implementing an industry-driven pilot project to answer key biological questions on the spatial distribution, movement of lobster and timing of the Lobster Fishing Area 25 fishery.

The Government encourages all involved in Lobster Fishing Area 25 to bring forward solutions that are fair to both sides of the Northumberland Strait.

BRITISH COLUMBIA—WILD SALMON

(Response to question raised by Hon. Elizabeth Hubley on April 25, 2013)

The Department of Fisheries and Oceans Canada is committed to providing sound science advice to support sustainable fisheries management. The scientific advisory report in question, which has been made available to DFO's

fisheries managers, will be published. In fact, every year Fisheries and Oceans Canada publically issues more than 300 science reports documenting our research in Canada's fisheries and oceans.

With respect to Canada's Policy for the Conservation of Wild Pacific Salmon, the report was released in May 2005 and can be found at the following link on the Department's web site at www.pac.dfo-mpo.gc.ca/publications/pdfs/wsp-eng.pdf

Regarding the Department's response to Justice Cohen, by establishing the Cohen Commission in 2009, the Government indicated its long term support for the salmon fishery in British Columbia and that we, like all British Columbians, wanted to get to the bottom of the decreasing salmon stocks.

Fisheries and Oceans Canada is reviewing Justice Cohen's findings and recommendations very carefully.

ANSWERS TO ORDER PAPER QUESTIONS TABLED

MINISTER OF VETERAN AFFAIRS AND MINISTER FOR LA FRANCOPHONIE—ONE HUNDREDTH ANNIVERSARY OF THE BATTLE OF ARRAS AND CAPTURE OF VIMY RIDGE

Hon. Claude Carignan (Deputy Leader of the Government) tabled the answer to Question No. 53 on the Order Paper by Senator Dallaire.

MINISTER OF CANADIAN HERITAGE AND OFFICIAL LANGUAGES—FINES ISSUED FOR VIOLATIONS OF THE DO NOT CALL LIST

Hon. Claude Carignan (Deputy Leader of the Government) tabled the answer to Question No. 63 on the Order Paper by Senator Downe.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—THIRD READING— DEBATE ADJOURNED

Hon. Vernon White moved third reading of Bill S-16, An Act to amend the Criminal Code (trafficking in contraband tobacco).

He said: Honourable senators, I am pleased to speak in favour of Bill S-16, An Act to amend the Criminal Code (trafficking in contraband tobacco). This enactment proposes amendments to the Criminal Code to create a new offence of trafficking in contraband tobacco and to provide minimum penalties of imprisonment for persons who are convicted of this offence for a second or subsequent time.

The Standing Senate Committee on Legal and Constitutional Affairs examined the bill and made the following observation:

The committee heard that provincial police forces do not have the authority to search a vehicle under the *Excise Act, 2001* or the *Customs Act*, unless they are involved in a joint effort with Royal Canadian Mounted Police. Consequently, the committee believes that it may be of assistance to law enforcement for the government to consider:

a) amending the definition of an “officer” in section 2 of the *Customs Act* as follows:

i) “Officer” means a person employed in the administration or enforcement of this Act...and includes any member of the Royal Canadian Mounted Police or any provincial police force.

b) designating all provincial police forces for the purposes of enforcement of the *Excise Act* under section 10 of that Act.

Honourable senators, the Government of Canada recognizes that contraband tobacco smuggling has become a serious problem in the last several years. Canadians want to be protected from offenders involved in these contraband tobacco smuggling operations that threaten their safety and that of their families, as well as the health of our youth.

Canadians want a justice system that has clear and strong laws that denounce and deter serious crimes, including illicit activities involving contraband tobacco. They want laws that impose penalties that adequately reflect the serious nature of these crimes. This bill achieves that. I am hoping for your support on this important bill.

(On motion of Senator Baker, debate adjourned.)

NORTHERN JOBS AND GROWTH BILL

THIRD READING—DEBATE ADJOURNED

Hon. Dennis Glen Patterson moved third reading of Bill C-47, An Act to enact the Nunavut Planning and Project Assessment Act and the Northwest Territories Surface Rights Board Act and to make related and consequential amendments to other Acts.

He said: Honourable senators, I am pleased to have this opportunity to lead off our debate at third reading of Bill C-47, the proposed northern jobs and growth act.

[Translation]

For my territory of Nunavut, Bill C-47 is the most important piece of legislation to come before this chamber since I became a senator. No act will have a greater or more direct impact on the long-term prosperity of Nunavut — of all three territories, actually — than the proposed northern jobs and growth act. Like

my honourable colleagues, I know that it is people, and not governments or legislation, who create jobs and stimulate growth in Canada’s North. Business people and the companies they set up are what truly drive job creation and economic growth.

[English]

Governments and legislation, of course, play a vital role in the success of business people, their companies and entire industries in the North. Public institutions do so by helping set out the right economic conditions and laying down wise rules through which business owners, entrepreneurs and investors can flourish. Ministers and officials of the current government have worked hard to get those conditions right by lowering taxes, keeping a lid on spending and equipping workers with relevant skills and knowledge. Yet, as I said, that is only one half of the equation.

Fair, clear, consistent rules, along with processes that flow from these rules, are urgently needed if northerners are to realize the full economic potential of resource development in the territories. The framework of these rules is set out in northern land claims agreements. Bill C-47 adds further detail, clarity and certainty to these rules.

The proposed northern jobs and growth act is really made up of three parts. It includes the proposed Nunavut Planning and Project Assessment Act, the proposed Northwest Territories Surface Rights Board Act, and related amendments to the Yukon Surface Rights Board Act. I would like to go through these parts briefly, starting with Yukon.

Bill C-47 amends the Yukon Surface Rights Board Act. This five-person board has served the people of Yukon for 20 years. It resolves access disputes between those owning or having interest in surface and subsurface lands and those who have access rights to these lands. Rights holders are usually members of Yukon First Nations.

[Translation]

The bill we are examining today makes three significant amendments to the Surface Rights Board Act. First, it provides immunity from prosecution for board members and employees for decisions that were made in good faith.

Second, it allows members whose term has expired to make a decision in a matter for which a hearing is held.

Third, it replaces the requirement of an annual audit by the Auditor General of Canada with an annual independent audit.

These three amendments will harmonize the practices of the board in Yukon, which runs smoothly, with those of similar institutions in Nunavut and the Northwest Territories.

[English]

In the Northwest Territories a similar institution will be put in place by Bill C-47, which will complete the regulatory regime in that territory. The proposed northern jobs and growth act sets up the Northwest Territories surface rights board. This board will act

as a last resort to resolve disputes between holders of surface or subsurface rights and the owners or occupants of surface lands when agreements on terms and conditions and compensation for access cannot be reached by these parties.

By setting up the surface rights board, we replace interim arbitration provisions related to access in individual land claim agreements. These agreements include the Gwich'in Comprehensive Land Claim Agreement and the Sahtu Dene and Metis Comprehensive Land Claim Agreement, both of which refer specifically to the need for a surface rights board. The makeup and powers of the new board are also consistent with the two other comprehensive land claims and self-government agreements in the territory: the Tlicho final agreement and the Inuvialuit Final Agreement.

• (1930)

The remaining part of Bill C-47 deals with my home territory, Nunavut. The bill clearly defines the roles and authorities of the two bodies that guide resource development in the territory, the Nunavut Planning Commission and the Nunavut Impact Review Board, which have operated under the Nunavut Land Claims Agreement since 1996.

Under a new single-entry process, the Nunavut Planning Commission will first scrutinize all resource development projects. The commission's primary duty is to judge whether projects conform to relevant land-use plans. The commission must complete its work for each project within 45 days.

The commission sends the project to the Nunavut Impact Review Board for screening. The board has up to 45 days to conduct its screening of each project. Once the screening has been completed, it may recommend the project can proceed or it may decide it needs further review by the board or a federal panel.

Once a project has been reviewed the responsible minister or ministers will consider the recommendations of the board or the panel and decide if the project should proceed and the terms and conditions that will apply. The review board then prepares a project certificate that sets out terms and conditions for development. Territorial and federal regulators are responsible for making sure these terms and conditions are reflected in permits and licences.

In Nunavut, Bill C-47 honours the federal government's obligation to develop legislation under the Nunavut Land Claims Agreement, which led to the creation of the territory in 1999.

Honourable senators, those are the main provisions of the three legislative initiatives that make up Bill C-47. What impresses me most about the bill is its cumulative effect on resource development in the North. Bill C-47 gives northerners the kind of resource development review process they have been asking for: a review process that is clear and certain; a process that features a one-window, one-assessment approach; a process that speeds up approvals without sacrificing environmental oversight;

[Senator Patterson]

a process that requires the federal government to act on environmental assessment reports in a timely fashion; a process that enables disputes between developers and rights holders to be resolved in a manner that is clear, balanced and fair to all; a process that encourages thriving partnerships among businesses, communities and governments; and, finally, a process that equips northerners to take full advantage of the resource riches of the region to create more jobs for themselves and their families and greater economic growth for their communities, region and country.

[Translation]

Honourable senators, I am not the only one singing the praises of Bill C-47. Many key witnesses who appeared before the Standing Senate Committee on Energy, the Environment and Natural Resources saw the wisdom in the approach described in the bill.

Nunavut's economic development minister, the Honourable Peter Taptuna, said that Bill C-47 is a solid legislative measure that will strengthen the territory's regulatory regime and allow the people of Nunavut to gain more independence.

[English]

N.W.T.'s Deputy Minister of Industry, Tourism and Investment, Peter Vician, said that the bill will create a regulatory system that is effective and efficient and that it will foster sustainable economic development for the benefit of all northerners.

Representatives of Canada's mining industry and petroleum producers call Bill C-47 a "positive step in regulatory reform that will aid northern development" and a bill that will put in place a "regulatory framework that will provide industry with the certainty it needs to move projects forward."

On behalf of all honourable senators, I want to thank the witnesses who appeared before the committee for sharing their views on Bill C-47 and the practical values it offers northerners and all of Canada, for that matter.

I also want to salute my committee colleagues and, in particular, Senators Lang and Sibbeston for the constructive roles they played in spurring ahead a bill that means so much to our region and its people.

[Translation]

Honourable senators, let us keep up the momentum.

Let us establish wise rules that will allow business owners, entrepreneurs, investors and everyone in the North to prosper.

Let us realize the full economic potential of resource development in the territories.

[English]

Let us do our part to create more jobs and greater economic growth in the North. I urge honourable senators to move forward in support of jobs and opportunities in Canada's North by adopting Bill C-47.

The Hon. the Speaker *pro tempore*: Questions; further debate?

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

(On motion of Senator Hubley, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons returning Bill S-9, An Act to amend the Criminal Code, and acquainting the Senate that they had passed this bill without amendment.

NATIONAL DEFENCE ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator White, seconded by the Honourable Senator Demers, for the second reading of Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts.

Hon. Roméo Antonius Dallaire: Honourable senators, I rise to speak at second reading about Bill C-15, an act that seeks to modernize Canada's military justice system. While the goal of modernization is essential, the bill has some problems and I cannot support it in its current form.

This bill has gone through so many exercises that it is in fact long overdue. It is based on a number of recommendations not only from the Somalia report or the post-Somalia report of 1998, but also the 2003 report of Antonio Lamer, former Chief Justice of the Supreme Court. I will get to that in a few moments.

All the while, the justice system of the Canadian Forces is not meeting the criteria of fairness and, ultimately, of being equal to the task of a new, modern force within a whole new conceptual framework of operational theatres.

[Translation]

There is no doubt that many of the proposed changes in Bill C-15 would benefit Canadian Forces members. Allow me to provide a few examples. On the recommendation that the Standing Senate Committee on Legal and Constitutional Affairs made regarding the original bill in 2009, an accused could not be tried for a summary conviction offence if the charge was laid more than six months after the offence was committed. That was an excellent recommendation.

Another change in this bill would give the Chief of the Defence Staff the authority to cancel the release of a Canadian Forces member if that member had been improperly released. This authority would ensure that a member did not have to re-enlist and start the process all over again. On the contrary, his career would resume from the moment he was released by mistake, whether that mistake was administrative or not.

This change would also be very useful when veterans are released for medical conditions.

• (1940)

That interpretation could be harsh at times, and the problem could be rectified without harming the individual's career or financial situation.

As you know, these are long-awaited reforms. Clearly, the Somalia inquiry resulted in a number of recommendations, changes and amendments to Canada's military justice system.

Over the years, many of these recommendations appeared in studies and reports, sometimes repeatedly. I am talking decades, here. I am pleased to see that the government has finally decided to follow up on nearly 75 of the 89 recommendations set out in the Dickson Report, which is the result of an analysis of the Somalia inquiry report. This 1998 report contained 89 recommendations, 75 of which still needed to be addressed, and this bill attempts to do just that. However, this bill does have some flaws.

[English]

As some honourable senators might be aware, a number of the current principles of Canada's military justice system were introduced or dramatically changed following that Somalia affair — or the 1993 catastrophe that happened in Somalia — and for which a rogue regiment was dismantled and struck off strength.

Some very significant work was done to make changes to the military justice system. Minister Douglas Young, then-Minister of National Defence — and I am speaking now of 1997 — worked along with a special advisory group chaired by former Chief Justice Brian Dickson and also former Army Commander Lieutenant-General Charles Belzile, a Korean veteran.

They produced a lengthy report that made a number of these recommendations. They called for a more clearly defined separation between the chain of command and the function of prosecution. The chain of command is the almighty authority of life and death for troops as they are committed to operations, as well as the whole system of functional prosecution, where the judicial system must be fair, expedient and respected.

A number of these recommendations were attempted to be implemented, but many of them required legislation that, for one reason or another — prorogation or simply the defeat of the original bills — simply never made it through the whole process.

We have seen through the 1990s that a requirement to reform the military justice systems was well defined and essential. Even at that, there was a requirement to have a periodic review to ensure that these reforms were not only implemented, but that the military judicial system was keeping pace with the very rapid changes in operational contexts and the legal processes within our country.

The original requirement of the original bill in 1998 made it essential that the whole judicial process would be reviewed every five years and that the military police procedures and authorities be reviewed, as such.

In 2003 — and I see an honourable senator in front of me who was very much involved — we had the report of Antonio Lamer. Lamer was also a former Chief Justice of the Supreme Court and an ex-artillery captain. If I may say, at one point, out of the nine justices of the Supreme Court, seven were ex-artillery officers. Those were the good old days.

Since the Dickson Report and Lamer Report, we have now before us an incomplete piece of legislation that tries to cover all the bases. To the contrary, there are elements within it that will still put at risk some of the procedures and the transparency of the military judicial system, not only to the outside world, but also to its members, which is absolutely essential to rebuild the confidence in the system.

[Translation]

There is a problem with the amendment whereby an individual with certain summary convictions would have a criminal record. The changes proposed in the bill are designed to address the law's remaining shortcomings. Currently, military personnel with summary convictions have a criminal record, which can do serious harm to their reputation.

[English]

Their offence is not searchable in police databases; it is held purely within the military judicial system. However, these military personnel, if they wish to be truthful about whether they have ever been charged under a statute, must answer that question in the affirmative under the procedures right now wherein summary trial detention is considered an offence that requires reporting. Unless they have had a pardon, they are then held accountable with a judicial "casier," or police record.

In response, right now, there is no requirement for the civilian world to be aware of the military summary trial detention capabilities, except if people wish to be truthful and, in accordance with the law, must report it. Therefore, they bring it forward to the civilian world, and that puts their opportunities of employment heavily at risk.

What of this summary trial and detention? A word, if I may.

Bill C-15 does still require that summary convictions carrying a penalty of detention must also carry a criminal record. For those who may not know, detention is an alternative to imprisonment. It was intended to be rehabilitative in nature and was to be given to those personnel who are to be retained in the Armed Forces. It

is essentially a brief period in a service detention barracks where a member is subjected to a rigorous routine. It is a way to retrain and rehabilitate members who have had discipline problems but who are not yet a lost cause. On the contrary, it has been an extraordinarily successful procedure and we have seen over 98 per cent non-recidivism by those who go through this process.

This is why detention should never be equated with imprisonment. Detention is a way to save people's careers, to put them back on the right path. If this punishment carries with it the threat of a criminal record, this could be a problematic situation indeed. Commanding officers might become reluctant to use the option of detention as it would now carry an added punishment of creating a permanent record. Commanding officers of regiments are authorized to give up to 30 days of detention in the military institutions that respond to that requirement under the police and in the security environment.

[Translation]

Summary trials mean that justice can be administered immediately, without affecting operations or testing loyalty. Certain actions can have immediate consequences, allowing everyone to return to work promptly. For example, in Somalia, there were 26 instances where soldiers, in cleaning or moving their weapons, accidentally fired a shot. In those situations, summary charges provided for a \$1,000 fine. Given that the problem persisted, the commander had the authority to use a much more effective tool, detention, which took the individual out of the theatre of operations and put him in a very negative situation within his regiment.

• (1950)

If Bill C-15 passes, it will only exacerbate the situation. Of course, there will always be immediate consequences of the acts committed, but there will also be long-term consequences. Military personnel sentenced to detention will always have a very hard time regarding this as rehabilitation, given that they will wind up with a criminal record that could affect them for the rest of their lives.

[English]

This will potentially take away an essential, immediate instrument for ensuring discipline in operational units, in particular, and even in the administrative environment of garrison duty where expeditious actions to rectify a problem of discipline are essential to ensure good order and conduct within the forces.

A second issue with this bill relates to the grievance process. The bill currently states that the CDS shall provide reasons for his or her decision in respect of a grievance if the decision defers from that of the grievance committee or if the grievance was submitted by a military judge. This is what I wish to get at. This amendment is intended to increase the efficiency of dealing with grievances. Previously, the CDS had to respond to every recommendation

[Senator Dallaire]

made by the grievance committee, whether the CDS agreed with the recommendation or not. The CDS would have to provide a report stating why he or she agreed or disagreed with the committee's decision. The onerous task was incalculable. This amendment changes the requirements so that if the CDS agrees with the committee's findings, he or she does not need to issue a report with the reasons for agreeing. Only if the CDS decides not to act on the committee's findings does he or she have to provide the reasons why, except in the case of military judges.

The problem with the way the bill is currently written is that it requires the CDS to report on the reasons for agreeing or disagreeing with any grievance committee findings relating to the grievances submitted by military judges.

By singling out military judges, the bill effectively creates two classes of grievors. If we truly want to maintain the independence of the military judges from the chain of command, it may be unwise to give military judges special status in the way the CDS responds to them. At the very least, the reasoning behind this clause of the bill must be explored far more fully to ensure that all are treated equally.

The third issue I have with the bill is, in my opinion, more serious and has a direct impact on the independence of the military justice system. Bill C-15 contains a clause that would allow the Vice Chief of the Defence Staff — the vice chief is number two, the chief of staff of all of the forces and National Defence Headquarters — to “issue instructions or guidelines... in respect of a particular investigation.”

That is, it would allow the vice chief to give instructions on an investigation that is being carried out by the military police through the Provost Marshal, overseen by that Provost Marshal in his or her responsibilities.

This clause of the bill simply cannot be allowed to stand. It is counter to everything that was recommended in the aftermath of Somalia. It puts power over the investigation and prosecution back into the hands of the chain of command. It could potentially allow the vice chief to interfere with an ongoing investigation, which is downright dangerous.

[Translation]

When my colleagues in the other place raised the issue, government members tried to show that that provision was absolutely crucial. I completely disagree. I cannot imagine any scenario in which the Canadian Forces Provost Marshal would be unable to conduct an analysis on the ground in order to investigate appropriately.

Furthermore, if the vice chief interferes in the investigation, essential information could be lost, tampered with or altered. This would lead to exactly the same results as with the Somalia inquiry, when the chain of command was accused of influencing the investigation process, which in the end led to many legal problems for the Canadian Forces. Furthermore, it put the entire military justice system at risk by undermining the confidence of the troops, who began to question whether the system would be able to respond to their needs.

[English]

There are many possible solutions for ensuring that the chain of command does not have undue influence over military police investigations, which right now it has extensively. For instance, the Minister of National Defence could be empowered to issue and give directives or guidelines on particular investigations. This was deemed to be an absolutely essential caveat in case of a very particular operational scenario that would require this and would be by exception — but Somalia was an exception and look at the mess that ended up in. The minister is publicly accountable. That gives a level of transparency and could act as a bridge between the chain of command and the Provost Marshal, ensuring that the vice chief does not give the appearance of interfering improperly with the investigations, remembering that the vice chief is the second most senior person within the chain of command.

Such transparency and accountability would help to further restore faith in the impartiality of the military justice system, both to those serving and also to the Canadian people. It took years, if not over a decade, to re-establish the confidence of the Canadian people in the military chain of command and its justice system. Yet, we have not even implemented all the recommendations from the Somalia report, and particularly from the Antonio Lamer report of 2003. There is little doubt that Canada's military justice system must be modernized to meet the more and ever-increasing ethical, moral, and most significant in this case, legal dilemmas that commanders in the field and troops under the command are facing in these very complex and ambiguous theatres.

We must recognize that times are changing, technology is changing and global conflicts are changing, and that is certainly not an understatement.

I commend the government on their goal but not necessarily on the completeness of the methodology within Bill C-15. I do not believe that it brings to our military justice system the full extent of the modernization that it could if it realized the recommendations that came from both the Dickson and the Lamer reports, and in advance of the next level of reports that were finished in 2012 and will be the subject of another review over the next three to five years.

[Translation]

Those are the major flaws I see in Bill C-15. There are others still that require a thorough study of the implementation of the recommendations in order to put to rest the whole Somalia affair, which has been haunting us since the 1990s.

I am concerned that we are not distinguishing between the civilian and military justice systems and that we are not emphasizing the need for military justice.

• (2000)

The government is making changes that, in my opinion, will not be the best way of ensuring that this institution meets the operational needs of the Canadian Armed Forces — and not just of garrisons — and allows commanders to enforce the discipline that is essential for successfully dealing with the enemy.

In its current form, Bill C-15 requires a study and major changes. I look forward to discussing these changes more during review in committee. I must say that in its current form, I would have a hard time voting in favour of this bill, because even though it contains many positive elements, it also contains some negative ones that I feel detract from its ultimate purpose of differentiating and providing space and transparency between the chain of command and the Canadian Armed Forces' system of investigation and justice.

[English]

The Hon. the Speaker: It was moved by the Honourable Senator White, seconded by the Honourable Senator Demers, that Bill C-15 be read the second time.

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 White, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

BUSINESS OF THE SENATE

The Hon. the Speaker: It being eight o'clock, honourable senators, we call on Senator Harb.

QUESTIONS OF PRIVILEGE

TWENTY-FOURTH REPORT OF INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION COMMITTEE— SPEAKER'S RULING RESERVED

Hon. Mac Harb: Honourable senators, I rise today on a question of privilege concerning the respect of Senate procedure and the resulting unjust damage to my reputation.

The matter I raise relates to the Twenty-fourth Report of the Standing Committee on Internal Economy, Budgets and Administration, which recommends that I be ordered to repay certain living allowance expenses.

A prima facie question of privilege must satisfy the four criteria listed in paragraph 1 of rule 13-3. First, I raise this matter at the earliest opportunity given that the Committee on Internal Economy presented its report on May 9 to the Senate with consideration of the report to occur today. The second criterion is that the matter must directly concern the privileges of the Senate, any of its committees or any senator. The third is that the

question of privilege is "raised to correct a grave and serious breach" of the privileges of this House. For the fourth criteria, paragraph 1 of rule 13-3 says that the question of privilege must "be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available."

In explaining the facts that give rise to this question of privilege, I wish to highlight two distinct points, one dealing with process and the other dealing with substance.

With regard to process, following the referral of my expense claims to an independent auditor, I was confident that a thorough, fair and transparent process would clear up this issue once and for all. I cooperated fully with the independent auditors, providing all documents requested and answering all questions to the best of my knowledge. I was given full opportunity to explain my circumstances and I was afforded the opportunity to participate in a thorough discussion with the assistance of my legal counsel. I am satisfied that the process with the forensic auditors was fair, and I accept their findings without reservation.

The auditors concluded that my expenses were in order and were in full compliance with the existing Senate rules and procedures. Except for a minor discrepancy of approximately \$600, which was subject to interpretation, the audit found that my explanations for time spent in Ottawa and at my designated primary residence and elsewhere were justified.

The auditors could not give an opinion on what constituted "designated primary residence." They could not give an opinion on that issue because they recognized there were no criteria in the regulations or other directives of the Senate to be applied, and it was clearly pointed out that there existed variations in terms and in definitions applied in different situations and in the courts.

The report of the independent auditors was considered by a Senate subcommittee, which produced its own very short report. The subcommittee and the main committee contradicted the findings of the independent auditors. They decided on their own that there was no ambiguity in the definition of "designated primary residence." According to the committee, everyone should understand it as being the place where you spend the majority of your time. They further decided that their finding should apply retroactively. It is my view that if these criteria are applied retroactively, many members of the Senate would not qualify for the primary residency requirements.

In response to a question in the other place on May 9, the Prime Minister himself commented that the definition is unclear. Allow me to quote:

Mr. Speaker, external auditors and experts examined all these expenditures and said that the rules were not clear.

The Committee on Internal Economy had asked for a legal opinion regarding the inquiry into expenditures, which was an indication the committee acknowledged, agreed and understood that there was uncertainty. Paradoxically, they decided the issue before receiving that opinion. Equally peculiar is the fact on

May 9, while addressing the media after tabling this report, the Leader of the Government in the Senate commented that the definition was unclear while insisting that sanctions nevertheless must be imposed.

My counsel produced a number of quotations from court decisions demonstrating the inconsistency in criteria applied to the definition of primary residence, but he was prevented from presenting them. The committee said it had considered other factors related to lifestyle to determine where my primary residence was. However, it is important to note that I was never questioned in writing or orally by the committee about those factors or anything else in relation to the time spent at my primary residence or elsewhere.

I received notice of the committee meeting at five o'clock on May 8 and that the subcommittee would present its report to the Committee on Internal Economy at 6:30 p.m. — one and a half hours' notice, the same day. I was not given a copy of the report of the subcommittee nor a list of issues to be addressed. I was told my counsel could accompany me but could not represent me by presenting arguments or asking questions. The next day the committee presented its report in the Senate.

I understand that parliamentary privilege applies to disciplinary matters and that in this specific case committees can set their own procedures subject to Senate directives. Insofar as I have been made aware, the subcommittee and committee did not adopt any specific standard procedures to follow, nor did they follow established norms and procedures that respect natural justice during their proceedings.

According to *Senate Administrative Rules*, administrative policy and practice in the Senate shall respect the principles of integrity, accountability, honesty and transparency. I have been fully cooperative and have responded to every request from the internal Senate administrative body and the external independent auditors openly, expeditiously and transparently.

In return, what I received was a report that lacks transparency and accountability. I was told it was prepared in advance. It is a report that does not reflect the independent auditor's report and in fact contradicts the independent auditor's findings.

I have to ask the question, honourable senators: Why commission a report from independent auditors if you are just going to ignore their findings? Why do that?

What is before the Senate now is a committee report that is so flawed that, if adopted, it will call the fairness of the Senate into question. I firmly believe that this process flies in the face of the principles of accountability and transparency the Senate should adhere to. How can a Senate committee approve the adoption of new administrative policies and retroactively apply them, when doing so results in unjust and undeserved damage to a senator's reputation?

• (2010)

I also hold to the view that there is no such thing as absolute discretion and strongly believe there is necessity for all decision makers to respect the principles of natural justice. There has been a breach of natural justice in my case and I ask that this house not

condone such conduct. A house of Parliament must at all times proceed fairly. Natural justice must guide all our deliberations.

Turning to the substantive issue, honourable senators, my home in the countryside is my primary residence and this is a choice I made very openly. At the time of my appointment to the Senate, I met and consulted with the Clerk of the Senate at that time, Mr. Paul Bélisle. I explained that I was renting an apartment in Ottawa and asked if there was a problem in designating my new home outside of Ottawa as my principal residence. Mr. Bélisle responded that this did not present a problem and that there were precedents. I believe I have the right to rely on what was told to me by the Clerk of the Senate. I further believe that the advice given to me then cannot be ignored today.

The rules have not changed. The subcommittee and committee ignored the fact that a person can decide on his primary residence. All expense accounts were presented openly by me on that basis.

Financial officers, who are required to pay allowable expenses under Senate rules and regulations, approved my accounts. They were, therefore, obviously aware of time spent in each place, given my claims. Given their actions, the financial officers of the Senate were evidently not aware that the number of days spent in each location was a criterion for the determination of allowable expenses, yet they were responsible for deciding what was allowable. I was never questioned on the appropriateness of my claims or made aware of any additional criteria I would have to satisfy.

We are all now faced with a redefinition of the notion of "primary residence" with retroactive effect. Such a precedent could apply to any member of the Senate at any given time and is an obvious and glaring breach of natural justice.

I want to reassert here formally that at all times my claims were consistent with the Senate rules and regulations. Nothing was ever hidden. No questions were asked to suggest there was a problem. There were, I repeat, no specific criteria in the definition of "primary residence." There still are no clear criteria.

The illustration of this is the fact that the Committee on Internal Economy recommends in its twenty-fifth report presented on May 9 that specific criteria be adopted to guide senators in their declaration of primary residence. How can they then apply these criteria retroactively?

I remain convinced that my understanding of the rules was based on a common-sense approach. I received clear direction that I was free to declare the property I chose as my principal residence. I did not ignore or refuse to follow any guidelines. According to the independent auditors' report, I spent more non-working days at my declared primary residence, or outside Ottawa, than in Ottawa.

I consider my declared primary residence my home and I treat it as such in fact. The percentage of time each senator spends at his or her primary residence is in no way an appropriate or fair method to determine a person's primary residence.

If I had an ailing parent or child, and spent non-Senate days tending to them in a different location, would that mean that my home would no longer be my home? Surely common sense must apply.

The Supreme Court of Canada has found that, without clear criteria, defining what is a primary residence is fluid. In its decision *Thomson v. Minster of National Revenue*, the court wrote that the term “residing” is:

... highly flexible, and its many shades of meaning vary not only in the contexts of different matters, but also in different aspects of the same matter. In one case it is satisfied by certain elements, in another by others, some common, some new.

The report of the subcommittee and its adoption by the committee has affected my reputation immensely.

As the second edition of *House of Commons Procedure and Practice*, at Chapter 3 under the heading “Rights and Immunities of Individual Members” makes clear, an unjust damaging of a reputation can constitute an impediment to a senator’s performance of his parliamentary functions and consequently raise a prima facie question of privilege.

Now my reputation and that of the Senate collectively is under attack.

Adopting a report that treats one member differently from other members is both unfair and unjust and goes against everything we stand for as senators and Canadians.

As I noted earlier, the fourth criteria for a question of privilege, Rule 13-3(1), is that the question of privilege “be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available.” I believe this criterion is satisfied as I am prepared to move a motion to send this matter to the Standing Committee on Rules, Procedures and the Rights of Parliament for investigation and report in accordance with rule 13-7(1), if the Speaker decides that there is a prima facie question of privilege that warrants study.

[Translation]

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I would like to say a few words about the question of privilege raised by the Honourable Senator Harb.

First, I would urge the Honourable Senator Cowan and all the honourable senators who speak on this issue, particularly with regard to the committee proceedings, to be careful about what they say, since the committee decided to proceed in camera. Disclosing the content of those proceedings therefore constitutes a breach of privilege. We must not deal with one question of privilege in a way that would raise another.

Second, I would like to address the public record. Senator Harb said that he had ample opportunity to present his arguments to the auditors. They questioned him, and he answered all of their questions with the assistance of his lawyer. He provided all of the documents that he wanted to or could provide. He even indicated that he felt he was able to present all of his arguments.

[Senator Harb]

That being said, the rules of natural justice must still apply to the situation. Clearly, the concept of the rules of natural justice is fairly fluid. We must first decide whether they apply. If so, we must then determine their scope.

Let us now talk about the public record. Senator Harb attended the committee meeting on the assumption that the rules would apply. He was given notice to appear and so he attended the meeting accompanied by his lawyer, a former Justice of the Supreme Court. Senator Harb was in the room during the proceedings, and I will be careful about my choice of words here, given the warning I gave earlier. Senator Harb was in the room in the presence of his lawyer when the proceedings took place.

At first glance, the rules of natural justice were followed and then some. Ordinarily, the individual in question would never participate in the proceedings with the person making the decision. Participating in the decision constitutes the highest level of natural justice. The person in question is not simply presenting his point of view; he is participating in the decision, which is a rare occurrence. I therefore fail to see how anyone can argue that the rules of natural justice were violated here.

The authoritative decision will be made by the Senate. The Senate will decide to accept the report before it, which will be debated tonight, amend it, reject it or follow its recommendation.

• (2020)

Senator Harb is a senator; he is here in this chamber. He largely expressed his point of view when he raised his question of privilege, and he will have the opportunity, like every senator, to debate the question and to present his point of view.

As is the rule for debates in this chamber, we may ask him questions to allow him to flesh out his thoughts and arguments. Therefore, he will have every opportunity to influence the members of this chamber so that the decision is rejected or made in his favour, as he believes it should be made.

In order for a prima facie question of privilege to be established, no other remedies must be available. However, I would obviously submit that in light of the fact that Senator Harb will have the opportunity to fully express his point of view, present all his observations and perhaps cite other cases of former colleagues who, it seems, may have used this practice, the Senate will then be in a position to duly and properly decide to accept or reject the report and will subsequently make the appropriate decision.

For these reasons, it is obvious to me that there is no prima facie question of privilege with regard to the rules of natural justice or possible remedies that currently exist here.

[English]

Hon. George J. Furey: Honourable senators, I wonder if the Honourable Senator Harb will take a few questions.

Senator Harb: I am not prepared for questions. I just made my point. At any given time, I am quite prepared to answer questions when the report is before the Senate.

Senator Furey: Honourable senators, on the substantive issue, Senator Harb raised a number of questions that I would like some clarification on. Would he be prepared to answer questions on that?

Senator Harb: Yes.

Senator Furey: When the honourable senator fills out his form declaring where his primary residence is on an annual basis, is there anything in that form that he finds unclear or confusing? Does he have any problems filling that out and indicating that Westmeath is his primary residence?

Senator Harb: No. There are three components to the claim. On residency, first you have to reside in the province in which you are appointed. That is the first issue of residency. The second issue is in what province your designated primary residence is. That is a separate issue from the other question asked. Confusion sometimes arises when we mix the issue of residency as it relates to provincial residency. Say I am from Quebec, I have to be a resident of Quebec; but I am from Ontario so I am automatically a resident of Ontario and my home is also in Ontario. Those are two completely different components. Sometimes confusion arises when the primary residence of a senator is the exact same place as his provincial residency. In my case, 80 per cent of the time I am in Ontario. I am a resident of Ontario. All the time I am in Ontario. If one asks me about my level of attendance in Ontario being 51 per cent of the time, the answer is yes. I live in Ontario more than 80 per cent of the time. Is my principal residence in Ontario? Yes, it is. Is it in Westmeath? Yes, it is. Is it more than 100 kilometres from Ottawa? Yes, it is. Is that clear? Of course it is clear.

Senator Furey: For the purpose of collecting the housing allowance and per diems, when the honourable senator ticks the box that says his primary residence is 100 kilometres plus from the NCR, in this case Westmeath, he says he does not see anything problematic or unclear in that. If this is to be considered a possible question of privilege, this question must be asked: How does the honourable senator respond to the subcommittee that says basically the rule is 100 plus kilometres, and the report tabled in the Senate says that the honourable senator spends approximately 21 per cent of his time at Westmeath? The travel pattern is Ottawa, Westmeath, Ottawa. Therefore, they feel that the time spent by the honourable senator in Westmeath does not constitute what an ordinary person would deem a primary residence.

What evidence could the honourable senator give us to counter that to help determine whether this is a question of privilege?

Senator Harb: That is absolutely an excellent question. The honourable senator will have a chance before he goes to sleep tonight to read the report. In the section on the assessment of Senator Harb's primary residency, it says that based on the documentation provided, it appears that Senator Harb spent approximately 62 per cent of his time in Ottawa. That means 40 per cent of the time I did not spend in Ottawa. My lifestyle is such

that I spend a certain percentage of time at my primary residence, but I also have other work. I do other things. I travel outside the country when I am not in Ottawa. It is very hard to turn around. I know some media reports were out with the spin that I am outside Ottawa only 21 per cent of the time. That is not true. Close to 40 per cent of the time I am not in Ottawa. Of course I am in Ottawa because my business is in Ottawa and the Senate is in Ottawa; and I may do an event in Ottawa. Many senators are in the same boat.

However, the challenge is, if you are to turn around and apply those rules that you are trying to apply to me, watch out, because you have to examine each senator here to ensure that they meet the same standard I meet — the 40 per cent that I meet. Short of that, it is unfair to say that this is the percentage.

Tell me what percentage you want me to stay at my primary residence. The next thing I can see is each senator with a GPS and an electronic device wrapped around his or her ankle in order to measure where they are and where they go. We still live in a democracy. I am an Ontario senator. If I am not billing the Senate for my time off, it is no one's business where I am. No one has decided what percentage of time a senator has to be where. Tell me what the rules are and I am happy to abide by them. Do not make the rules on the run and turn around and tell me, "Harb, we do not think you stay enough in your principal residence." I have to lock myself up now 50 plus 1 per cent of the time in my primary residence to be able to say, "Yes, that is my primary residence." I am sorry; it will not work that way. This is a democracy. This is Canada.

Senator Furey: Senator Harb has made it clear that the rule is not complicated and that he had no problem indicating that Westmeath is his primary residence. I go back to the question raised by the subcommittee that he spends 21 per cent of his time in Westmeath, which he declared as his primary residence. His travel pattern was not Westmeath, Ottawa, Westmeath, which one would ordinarily think was the travel pattern of someone going from primary residence to work to primary residence. The committee also said that his level of presence at the declared primary residence does not support his declaration. It is contrary to the meaning of the word "primary" and to the purpose and intent of the provision of the living allowance in the NCR. Help us to explain that, please.

Senator Harb: That is another excellent question. For Ottawa, Westmeath, Ottawa, my staff fill out the forms. If I were to tell my staff that I am going on Friday and coming back on Saturday, my staff has to fill out the per diem. If I leave in the morning, they have to fill out the breakfast; if I leave at noon, they fill out the lunch; and the same in the evening, along with incidentals. When I come back, it is the same thing in reverse. I told my assistant, "Why do you not phone finance and tell them we could just put one date, and then I do not have to claim the allowance and I will be saving the Senate the money?" As a result, we will solve this hurdle about what time I left and what time I came back. That is the only reason it is there.

You asked me why I went from here to there and back rather than the other way around. I did not do that. My staff did that with finance.

• (2030)

I am not the one who really said that this is okay. Finance has okayed that all along. They are the ones who said, "That is fine; go ahead and do it." If you tell me that, from here on, you want it any other way, tell me, and that is the other way it will be done.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I think that we should get back to the question before us, which is very simple.

The question you must ask yourself is the following: are the facts that are being presented well founded and do they raise a question of privilege? That is the only question you have to ask yourself. Over the past 10 minutes or so, I think we have been digressing about the facts regarding the report presented by our colleagues on the Internal Economy Committee.

I submit that Senator Harb did not show that the situation he described, which I find rather curious, violates a right that is, and I quote:

...absolutely necessary for the due execution of [the Senate's] powers.

I want to quote some references, and I will show you why you should focus on that statement, that the rights identified are not rights that are absolutely necessary for the due execution of the Senate's powers.

That is the question you must ask yourself.

I want to share Erskine May's definition of parliamentary privilege, which is quoted in the 2000 edition of Marleau and Montpetit:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law.

A bit further down, still from Erskine May:

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights, which are "absolutely necessary for the due execution of its powers".

The operative word here, honourable senators, is "absolutely." We have heard about the right to be heard when our rights may be infringed upon, and we have heard Senator Carignan's arguments, which to my mind almost completely negate Senator Harb's arguments. But that is not the issue at hand.

Are the rights that he claims have been breached absolutely necessary for the due execution of the Senate's powers? No, they are not.

[Senator Harb]

For that reason, honourable senators, I would suggest that the question of privilege raised by Senator Harb is not well founded.

[English]

Hon. Joan Fraser: First of all, honourable senators, let me say that I entirely endorse Senator Nolin's comments about the precise nature of privilege. He made some very important points. There were just a couple of things that I wanted to say, and the first is as much to get it on the record as anything else. Senator Harb spoke several times about the impact that this very unhappy situation for him has had, he believes, on his reputation, but if you look at the report that came from the Internal Economy Committee, nowhere does it cast aspersions on Senator Harb's character or anything else. It does not say that he made the claims in bad faith, let alone anything more serious. It simply says that the claims should not have been made.

Who among us has not had the experience of having somebody come back and say, "No, you should not have made that claim"? I have had that experience with the Senate financial administration, and I have had it elsewhere. Lots of people have it with the tax authorities. They come back and say, "Sorry, even if we did give you the refund, we have done a reassessment, and you have to give us the money back." That is one of the more irritating circumstances imaginable.

With all deference to Senator Harb's emotional distress — and I sympathize with that very greatly — I think that that is what we have here. What we have here is not a matter of privilege that goes to the heart of anyone's parliamentary functions. What we have here is a case of expenses being, so to speak, reassessed. That is entirely, in my view, within the purview of the Internal Economy Committee, just as it is within the purview of the Internal Economy Committee to say, "We actually do not agree with Deloitte's views on the nature of the forms that we fill out about residency." I myself find those forms clear, as I believe most senators do. In any case, that is not a matter of privilege either. That is a matter of administration for the purposes of expense. None of this detracts from my sympathy for the situation in which Senator Harb now finds himself, but I do not believe, Your Honour, that you have a question of privilege before you.

Hon. Hugh Segal: Honourable senators, I want to associate myself with what other colleagues who have spoken in this matter have said with respect to the *prima facie* case of privilege not being before us, but I would hope in making the judgment with respect to this, Your Honour, that you would look at the issue of form as well as substance. I accept the house leader's view that, in the debates before us on the report that will be coming up shortly and what may or may not conspire before committee, our colleague Senator Harb will have ample opportunity to present his views and his side of the story and do so, I am sure, with great intensity, competence and sincerity. The notion that a committee of this house, engaged in a retroactive analysis of whether someone has filed their expenses appropriately or not, would, as a matter of its own privilege, decide to deny someone who is being assessed the chance to express their view at the time of that committee meeting is a matter that Your Honour might want to give some consideration. It not only relates to the core question of

natural justice but also to the way in which this body constitutionally operates with respect to its own operations and its own expenditures, financial management and the due diligence that is applied to that process.

I would hope that what we learn from this unpleasantness is that there might be a burden too far, a step too far, that we have been imposing on the Internal Economy Committee, the members of which have been doing their very best in a difficult circumstance, and that, at some point, we in this chamber might want to consider inviting the Auditor General of Canada to do a regular, comprehensive financial audit of this place so that the public can be reassured that we are subjected to the same standards as other parts of government.

Hon. Anne C. Cools: Honourable senators, I wish to add a few words to this debate on Senator Harb's question of privilege. I begin by noting, Your Honour, that, for 150 years, senators and members of Parliament journeyed from all over Canada to come to Ottawa to do business, Senate business and House of Commons business. At no time in that 150 years has their time in Ottawa ever been treated as residency in Ottawa.

If you go back a few years — and I have been here a while — what we used to get years ago for living expenses was one fixed amount that every single member received. It did not matter how lavishly or poorly one lived. Our accommodation and stay in Ottawa was never described as residency in Ottawa. There was no concept of primary residence. There was no secondary residence.

• (2040)

I would like to submit to honourable senators the possibility that the terms “primary residence” and “secondary residence” are artificial constructs that were created at the time of the preoccupation with the words transparency and accountability; and that in actual fact those words do not reflect and apply to the conditions that members of Parliament and senators find themselves in. I have a huge problem with some individual or another counting the number of nights that a senator or a member sleeps in one place versus the other. There is something inherently wrong with that. I can assure honourable senators that there were prime ministers of Canada who lived in the Château Laurier for three or four months at a time and never treated that time, and neither did anyone ever treat that time, as their residency in Ottawa.

Being in Ottawa to do Senate business was never in competition with being a resident in the province of one's appointment. I would like to put that out for consideration.

I would like to say to honourable senators that when these recent systems were introduced many years ago — and in those days I sat as a member of the Liberal caucus — I voiced much concern about these new systems then created. I believed, and I saw then that they would, at the end of the day, create great confusion and pain.

Honourable senators, human beings are not made of wood. Human beings are sensitive, feeling beings. There is no way that anyone can possibly believe that those senators who have found themselves in these unfortunate circumstances have not been

going through torment. I want to make this clear: I condone no wrongdoing. I never have and I never will. However, I think we should take note that human beings in this chamber have been made to suffer in most inordinate ways. If we underestimate that for one second, I think we are deluding ourselves and being unfair to other human beings. I, for one, will never partake in the persecution of any person here for any reason whatsoever. Maybe that is my Christian background. However, there it is. I have seen in this place, over the last many months, activities that I can only describe as persecution. Senator Brazeau was suspended from this place by a motion moved by rule 15-2(1) without a single speech, without a single debate, no explanation. When that rule was created many years ago, I voiced great opposition to it because any person against whom any charge of any kind is brought has a right to be able to offer their full defence and to fully answer. I do not believe that this is the case in these circumstances.

Honourable senators, that these matters before us have been so distasteful as to be shocking and offensive to our entire public, who have no comprehension or understanding of the constitutional issues at risk. Honourable senators, I think we have paid a disservice to many senators and Canadians. Honourable senators, I think that we can do better than this. I really believe that we should.

Honourable senators, I come now to the question that Senator Segal raised, namely the question of natural justice. I am not without an understanding that there are many senators here who see these events perhaps as opportunities to force other senators to resign, to quit, to leave, to chase them out. Let us not kid ourselves for a moment. I do not approve of that sort of thing. If you have charges to make, bring them; let the person answer. If they are of a forensic or of a criminal nature, bring your charges. You cannot have this constant calumny and innuendo and the ruination of reputations. To those colleagues who say there is no privilege here, I would like to say that a human being, a senator, is not inseparable from his reputation.

I would like to record for us here a statement made by Sir William Blackstone in Blackstone's *Commentaries on the Laws of England*. This is the edition edited by George Sharswood, who, as we know, was the Chief Justice of Pennsylvania. In the chapter on the rights of persons, Blackstone says the following:

I. The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.

Then Mr. Blackstone treats each one of those separately. When we come to the phenomenon of reputation, at page 132, he says following:

5. The security of his reputation or good name from the arts of detraction and slander, are rights to which every man is entitled by reason and natural justice; since, without these, it is impossible to have the perfect enjoyment of any other advantage or right.

This means our privileges. I would submit, honourable senators, that the pressures these afflicted senators have been under have been colossal. I defend no wrong. I just say that we should always grant due process to all. My British upbringing

taught me this, as had my common law upbringing, that every human being is entitled to make full answer and full defence to accusations. I do not think that has happened in this instance and, in addition, the extreme public way, the constant leaks to the press and the constant innuendo and suggestion and calumny, I do not think have done the institution very well at all, and it bothers me very deeply. Accusations are not findings.

Honourable senators, in closing, I would ask Speaker Kinsella to consider, as Senator Segal has, the whole question of natural justice, which as we know includes all those common law rights: the right to offer full defence, full answer, to any accusation, to any suspicion of wrongdoing for any reason whatsoever because to deny natural justice is to deny all principles of fairness and equity.

I think the Standing Senate Committee on Internal Economy, Budgets and Administration may have intended to do well, and maybe it is within its power to do what it has done. I am not convinced of that. I have said on this floor many times that there can be no power to hurt others. There is no right ever to do wrong. I sincerely believe that. All I say to His Honour is to consider that perhaps we could handle these situations a lot better without imposing so much distress and uncertainty. At the end of the day, I think it is unfair to fellow human beings, to colleagues, but most important of all, it is unfair to this institution. It denigrates all senators and it denigrates the Senate. This is an institution that has played a forthright and a bold role in the history of Canada. I would submit, honourable senators, that this institution, the Senate, is the institution that represents the federation of Canada.

I ask His Honour to put those thoughts and those words into his kitty and to remember, because I heard a lot of calls today that this or that senator should quit. Let us understand that the business of vacating Senate positions is not a simple one at all, and is intended to be extremely difficult to remove a senator once appointed. It is supposed to be a very difficult process.

• (2050)

However, there is no more cruel or ruthless way to act than to use innuendo and suspicion on a daily basis against a senator. There has been a lot of this. I want His Honour to know that I object very strongly. I hope that I have contributed in some way. We could do and could have done a lot better than we have.

The Hon. the Speaker: Honourable senators, I wish to thank the Honourable Senator Harb for raising his question of privilege and thank all honourable senators who participated in sharing their views on it. I shall take the matter under advisement and report back to the Senate as soon as possible.

TWENTY-SECOND REPORT OF INTERNAL ECONOMY,
BUDGETS AND ADMINISTRATION COMMITTEE—
SPEAKER'S RULING RESERVED

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, to better understand my question of privilege, I think it is important to take a few moments to review how we got here.

What is now called the "Senate Expenses Scandal" began six months ago on November 20, 2012, when CTV News reported that then-Conservative Senator Brazeau was claiming a housing allowance for having his primary residence in Maniwaki while actually living just across the river from here in Gatineau.

The next day, the Leader of the Government in the Senate, Senator LeBreton, held a media scrum in which she called on the Standing Committee on Internal Economy, Budgets and Administration to investigate whether Senator Brazeau's expenditures were inappropriate. As reported in the press, Senator LeBreton said at the time:

I have to find out first how it was handled administratively and after I've determined that I will then decide what to do. But as I've indicated... anyone that knows me knows well that inappropriate spending by any parliamentarian I do not condone nor will I tolerate it.

The day after that, on November 22, 2012, the Internal Economy Committee issued a news release in which it announced that it had "struck a bipartisan subcommittee of three members to review allegations raised in media reports with respect to Senator Brazeau's living allowance." This is the so-called Marshall subcommittee, chaired by the Honourable Senator Marshall.

Barely a week and a half later, on December 3, Glen McGregor of the *Ottawa Citizen* published a story stating:

Conservative Senator Mike Duffy has claimed more than \$33,000 in living allowances intended to defray senators' costs of maintaining a second home in the National Capital Region, even though he is a long-time Ottawa resident.

The next day, on December 4, Mr. McGregor published another story, this time reporting on questionable living expense claims by Senator Harb.

Two days later, on December 6, the Standing Senate Committee on Internal Economy, Budgets and Administration issued another news release. It announced, first, that it had instructed the Senate administration to conduct an audit to assess whether all senators' declarations of primary and secondary residences are supported by sufficient documentation; and, second, that the Marshall subcommittee, struck to review the allegations with respect to Senator Brazeau, had also been "directed to review allegations raised with respect to Senator Harb."

At this point, there were investigations by this special subcommittee of Senator Brazeau and Senator Harb but no direction to the subcommittee to review the allegations with respect to Senator Duffy.

The audit of documentation from all senators required production of a health card from the province of primary residence, a driver's licence from that province and a copy of each senator's tax return, or at least the portion of that tax return that identified where the taxpayer had self-declared his or her primary residence as of December 31 of the reporting year. Notice of this went out on December 12 of last year, with the deadline for providing the documentation set at January 31, 2013.

In early February — February 4 to be precise — CBC reported that the health minister for Prince Edward Island had confirmed reports that, just before December 25, Senator Duffy had requested a health card from that province. The next day, February 5, CBC reported that provincial tax records showed that Senator Duffy and his wife were identified as non-resident homeowners of their home — cottage, really — in Prince Edward Island.

Three days later, on February 8, 2013, the Committee on Internal Economy issued another press release. I will read this one in full, honourable senators. It is very brief:

Senator David Tkachuk, Chair of the Standing Senate Committee on Internal Economy, Budgets and Administration, announced today that the appropriate subcommittees of the Internal Economy Committee have referred the residency declarations and related expenses of the following three senators to external auditors at Deloitte for review and report: Senator Brazeau, Senator Harb and Senator Duffy.

As well, the Chair and Deputy Chair (Senator Furey) of the committee are seeking legal advice on the question of Senator Duffy's residency.

There were two subcommittees investigating allegations of improper claims for living and housing allowances: the Marshall subcommittee, investigating allegations relating to Senator Brazeau and Senator Harb, and the steering committee of the Internal Economy Committee chaired by Senator Tkachuk, which was itself investigating the allegations related to Senator Duffy.

In retrospect, one may wonder why this came to be; why set up a special subcommittee and send it allegations that arose on November 20 and December 4 but not the one that arose on December 3? Whatever the reason, that is what occurred.

Honourable senators, it was at this point in the chronology — three months ago, last February — that it appears that events transpired that were, so far as I have been able to discern, virtually unprecedented in the history of the Senate. Last week, we learned that sometime in February, discussions took place between Senator Duffy and Nigel Wright, the Chief of Staff to the Prime Minister, which culminated in Mr. Wright giving more than \$90,000 to Senator Duffy — reportedly, we are told, as a gift. According to the CTV News report from yesterday, an agreement was reached:

... that called for Duffy to publicly declare that he would repay the money. In return, sources say, Wright would give a personal cheque to Duffy to cover the \$90,000. Sources say the agreement also stipulated that a Senate investigation into expense claims would go easy on Duffy.

The Prime Minister's Office insists that neither Perrin —

— who is a lawyer, I think, in the Privy Council Office or the Prime Minister's Office, who was somehow involved in this interest —

— nor Wright told Harper about the payout to Duffy or about any aspects of the secret arrangement.

Honourable senators, please note that the Prime Minister's Office was not denying the existence of the secret arrangement, just as it was not denying the payout to Senator Duffy. In fact, last Wednesday, the Prime Minister's Office confirmed that "Mr. Wright therefore wrote a cheque from his personal account for the full amount owing so that Mr. Duffy could repay the outstanding amount."

Earlier today, when Prime Minister Harper gave a televised address to his Conservative caucus, he too did not deny the existence of this secret arrangement. Surely, honourable senators, if he could have denied it, he would have. Instead, he scrupulously avoided any mention of it.

Again, the reports were that the agreement called for Senator Duffy to publicly declare that he would repay the money. In return, Mr. Wright would give Mr. Duffy a personal cheque to cover the \$90,000, and then, "Sources say the agreement also stipulated that a Senate investigation into expense claims would go easy on Duffy."

What happened next? On February 22, Senator Duffy issued a statement saying:

Rather than let this issue drag on, my wife and I have decided that the allowance associated with my house in Ottawa will be repaid. I want there to be no doubt that I'm serving Islanders first.

Therefore, the first reported element was done. Senator Duffy publicly declared that he would repay the money.

• (2100)

We know from the Prime Minister's Office's statement last week that, yes, Nigel Wright, the Prime Minister's Chief of Staff, gave Senator Duffy "a cheque from his personal bank account for the full amount owing so that Mr. Duffy could repay the outstanding amount." The second element of the reported agreement was done.

When news of this secret cheque broke, when Canadians learned that in fact Senator Duffy had not personally repaid the money but instead had paid it back with a cheque from a rich friend — a rich friend who happened to be the most powerful person in the country next to his own boss, the Prime Minister of Canada — Canadians were justifiably incensed. They publicly complained that ordinary Canadians who take money or property to which they are not entitled do not have the option of simply returning it when caught. Members of this chamber, indeed joined by Senator Duffy himself, have passed numerous laws imposing mandatory minimum penalties for ordinary Canadians who take property that does not belong to them.

The media has reported that, as soon as Senator Duffy received those funds from Mr. Wright, he stopped cooperating with the auditors brought in by the Senate to investigate the allegations of his improper expense claims. We learned last week that Senator Duffy's refusal to cooperate with the auditors was apparently not his own decision. In an email, Senator Duffy reportedly wrote:

I stayed silent on the orders of the PMO.

Honourable senators, this brings us to the third element of the agreement that we are told was reached between Mr. Wright and Senator Duffy. Sources say the agreement also stipulated that a Senate investigation into expense claims would go easy on Senator Duffy. The rules governing secondary residence apply to all of us equally.

Two weeks ago, Canadians learned that our Committee on Internal Economy decided that the form regulating the declaration of one's primary residence "... is amply clear, as is the purpose and the intent of the guidelines" and that the language used is "unambiguous."

However, in their report on Senator Duffy, the committee did not come to that conclusion. This is the same committee, the same reports, signed by the same chair, Senator Tkachuk. Instead, the report on Senator Duffy said:

... criteria for determining primary residence are lacking and this is being addressed by your Committee.

In retrospect, honourable senators, Canadians could only conclude that the reported promise by the Prime Minister's Office to go easy on Senator Duffy had been kept, but somehow it had been kept by the Senate. With revelations last week about the secret \$90,000-payment and an agreement between lawyers representing Senator Duffy and the Prime Minister, the impression has certainly been left with Canadians that some members of the Standing Committee on Internal Economy, Budgets and Administration were acting on orders of the Prime Minister's Office when they made their findings concerning Senator Duffy in their twenty-second report.

The fourth edition of *Bourinot's Parliamentary Procedure*, at page 52, states:

Scandalous imputations against members of the committees of the house are equivalent to libellous charges against the house itself.

The media has left Canadians with the clear impression that pursuant to a secret deal between an honourable senator and the office of the Prime Minister where there was an exchange of more than \$90,000, certain unnamed members of our Committee on Internal Economy were persuaded by the Prime Minister's Office to modify their report on Senator Duffy, in the words of the media, "to go easy on him."

If, in the words of Bourinot, these are not "scandalous imputations against members" of our Committee on Internal Economy, I do not know what would be. These scandalous imputations, as Bourinot explains, are a charge against the Senate itself. How can such a serious charge not affect the privileges of each and every one of us?

When veteran reporters like Andrew Coyne use words like "hush money" in relation to the \$90,000-gift and the events that followed in the Senate, can we remain silent and simply ignore the storm that is raging all around us? I do not think we can. I do not think the Senate can.

[Senator Cowan]

Erskine May's Parliamentary Practice tells us:

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

In our case, actual words are being used and, in the present circumstances, who would argue that "odium, contempt or ridicule" do not accurately reflect what the feelings of ordinary Canadians are about the Senate today? I will not read into the record the language Canadians have been using publicly to express what they think of the Senate and of us as senators. We have all heard them, through the media and personally. We cannot ignore them.

It is critically important to re-establish the confidence of Canadians in their public institutions. The public allegation of outside interference in the proceedings of the Senate needs to be thoroughly investigated, with all parties involved being given an opportunity to explain their respective roles.

If the Speaker should find that I have established a *prima facie* question of privilege, I would be prepared to move a motion to refer the matter to our Standing Committee on Rules, Procedures and the Rights of Parliament in order to give everyone an opportunity to be heard.

[Translation]

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I believe it is important to stick to the facts here, not what is coming out of the media, which may subsequently be corrected by real witnesses. There was a fine example today of a lawyer who had allegedly been consulted, having contributed to the so-called drafting of an agreement, but he formally denied those allegations. We must stick more specifically to the facts that are before us.

The audit process was established jointly. Senator Cowan gave some background on this process. The two parties that make up this chamber participated in the development of the process and agreed on how it would work.

A new development prompted Senator Cowan to raise a question of privilege. It was an allegation that Senator Duffy received a \$90,000 donation in the form of a cheque from Nigel Wright. This is a serious allegation that resulted in Mr. Wright resigning from his position and Senator Duffy resigning from the Conservative caucus.

During Question Period, Senator Cowan referred specifically to section 17 of the Conflict of Interest Code for Senators. I think it is important to come back to this code. When a question of privilege is raised, we must determine whether it constitutes the appropriate remedy.

• (2110)

I would suggest to you today that the appropriate remedy in this situation, which is serious and must be studied, should come from the ethics officer, who should look at this issue.

We have a Conflict of Interest Code for Senators. Section 1 states:

The purposes of this Code are to

(a) maintain and enhance public confidence and trust in the integrity of Senators and the Senate

That point was raised by Senator Cowan.

Section 2 states:

Given that service in Parliament is a public trust, the Senate recognizes and declares that Senators are expected

(b) to fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate; and

(c) to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest.

Section 17, which was quoted by Senator Cowan during Question Period, says specifically:

Neither a Senator, nor a family member, shall accept, directly or indirectly, any gift or other benefit...that could reasonably be considered to relate to the Senator's position.

That is the question to be discussed: was the cheque written in relation to the senator's position or for some other reason, which could include friendship?

...except compensation authorized by law.

Subsection 3 states:

If a gift or other benefit that is accepted under subsection (2) by a Senator or his or her family members exceeds \$500 in value, or if the total value of all such gifts or benefits received from one source in a 12-month period exceeds \$500, the Senator shall, within 30 days after the gift or benefit is received or after that total value is exceeded, as the case may be, file with the Senate Ethics Officer a statement disclosing the nature and value of the gifts or other benefits, their source and the circumstances under which they were given.

Subsection 44(2) reads:

A Senator who has reasonable grounds to believe that another Senator has not complied with his or her obligations under this Code may request that the Senate Ethics Officer conduct an inquiry into the matter.

That is precisely the right that all senators here have, particularly Senator Cowan, who even asked Senator LeBreton that question during Question Period.

He clearly identified the possibility of referring this matter to the ethics officer.

With regard to the power of the ethics officer to conduct an inquiry, subsection 44(13) states:

In carrying out an inquiry, the Senate Ethics Officer may send for persons, papers, things and records, which measures may be enforced by the Senate acting on the recommendation of the Committee following a request from the Senate Ethics Officer.

The Senate Ethics Officer therefore even has the power to compel the production of documents. Rather than just relying on allegations or reports that a relevant document exists, the ethics officer has the power to have the document produced, examine it himself and rely on the witnesses that he is able to call to examine the issue.

Honourable senators, we therefore have a comprehensive code of conduct, an appropriate procedure to address the serious situation that has been raised by Senator Cowan. If we can believe the media, I understand that the ethics officer has already begun his audit. Nevertheless, any senator can still request that the ethics officer conduct an inquiry.

Honourable senators, given that a comprehensive code exists, I submit to you that, in accordance with pages 132 to 136 of the twenty-third edition of *Ersine May*, the fact that the chambers adopted comprehensive codes of conduct for their members and created parliamentary commissioner for standards positions changes the procedures that the chambers follow when a question of privilege is raised. We must rely on and follow the comprehensive code of conduct adopted by the chamber and successive parliaments.

This is a serious issue. It must not be made into a partisan thing. There is a properly constituted parliamentary procedure for dealing with these types of questions, and I believe that we need to follow that procedure. For that reason alone, a question of privilege cannot be raised under rule 13-3.(1)(d) of the *Rules of the Senate* given that there is already a mechanism in place to deal with this question.

I very respectfully ask that you disallow this question.

[English]

Hon. Joan Fraser: Honourable senators, with the genuinely great respect I have for the Honourable Senator Carignan, I must nonetheless disagree with a large portion of his argument. The matter of the Senate Conflict of Interest Code and the Senate Ethics Officer may on occasion overlap with matters of privilege, but they are nonetheless separate matters.

In considering this question of privilege, I was particularly struck by O'Brien and Bosc, 2009, in Chapter 3, the section beginning on page 108, where a subsection of Chapter 3 — Chapter 3 being about privileges and immunities — is headed

“Freedom from Obstruction, Interference, Intimidation and Molestation.” In the succeeding pages, O’Brien and Bosc return several times to that word “interference.” We are more familiar with cases of intimidation and obstruction. Obstruction can be anything from blocking off access to Parliament Hill on up, but interference is in there and it is important.

It seems to me that the question of whether interference has occurred is at the very heart of what we need to be thinking about tonight — interference with the work of a committee of the Senate, and not just any committee of the Senate.

It is true that all we have to go on at the moment is press reports. However, press reports were enough for us to get this whole process started back last fall. It was on the basis of press reports that the Senate decided, having reflected carefully, that the expenses of these senators needed to be examined. We decided to do it and we did it. Now we have a press report leading inescapably to the conclusion that someone — and it looks suspiciously like the Prime Minister’s Office — interfered in the workings of the Internal Economy Committee in order to, as my leader reminded us, go easy on Duffy. That would be an extremely serious matter, and it would go to the privileges of every senator and, indeed, not only to our privileges but to our reputation and our basic integrity. If we thought, if we had grounds to believe, that anyone could rig the work of our committees so as to “go easy on” someone whose conduct might otherwise be termed “blameworthy,” that would be a very serious matter indeed.

• (2120)

I do not believe that His Honour must judge the veracity of these news reports, but I think the train of logic that my leader laid out when he raised this question of privilege makes it clear that a question exists. Therefore I would suggest that it would be entirely appropriate for His Honour, backed by this chamber, to say there is a *prima facie* question here and we will send it where it should go, to the Rules Committee, for proper examination to ascertain the final truth of this matter. No one should be able to interfere in this manner in the workings of our committees. If there is anything we should hold sacred, it is the ability of our committees to work without fear or favour, and there is now before us a terrible doubt about whether that has been allowed to occur.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, this is a very serious matter. However, we must follow the rules that we have before us to the letter, just as it is incumbent upon His Honour the Speaker to do so.

I would like to come back to the wording of the paragraph to which Senator Carignan referred. Let us read it together:

In order to be accorded priority, a question of privilege must... be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available.

[Senator Fraser]

I apologize to my anglophone colleagues, but once again, the French version is far more elegant and interesting.

Senator Segal: As always.

Senator Nolin: Honourable senators, what is the main question raised? I do not intend to address the matter of ethics, because Senator Carignan dealt with it at length. However, I would like to come back to the matter of the reports before us. Senator Cowan claims — we shall see if the evidence proves it — that at least the twenty-second report, concerning Senator Duffy, is incomplete and that the conclusions are not appropriate.

Is there likely a parliamentary procedure other than the question of privilege to address the problem to which Senator Cowan referred? The answer is yes. We have before us the twenty-second report of the Standing Committee on Internal Economy, Budgets and Administration, and it is to this report that Senator Cowan referred.

We hope that a study will be conducted quickly as possible. We heard today that the government may put forward an amendment to the report in order to send the report back to the Committee on Internal Economy so that it can examine more closely new facts that recently came to light, after the report was adopted by the committee in question.

I am suggesting, honourable senators, that this is a parliamentary procedure that in all likelihood could remedy this matter. For that reason I humbly suggest that you not deem the question of privilege raised by Senator Cowan to be well founded.

[English]

Hon. A. Raynell Andreychuk: Honourable senators, I simply want to put on the record that His Honour should take into account Beauchesne and not only look at the code and other issues, but at 31(1):

A dispute arising between two Members, as to the allegation of facts, does not fulfill the conditions of parliamentary privilege.

There seem to be two versions of the event. This was an issue that took place in the committee. There is extraneous evidence that is being pointed to, but I think Beauchesne answers that at 31(3).

The Hon. the Speaker: I thank the Honourable Senator Cowan for raising this question of privilege. I would also like to thank all honourable senators for having contributed their views, which are always so helpful to the Speaker. I will take this matter under advisement.

FINANCIAL ADMINISTRATION ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Day, for the second reading of Bill S-217, An Act to amend the Financial Administration Act (borrowing of money).

Hon. JoAnne L. Buth: Honourable senators, I am very pleased to participate in the debate on private member's Bill S-217, an Act to Amend the Financial Administration Act (borrowing of money), and to provide an explanation of the government's serious concerns with this proposal.

Specifically, Bill S-217 would repeal a key portion of the Financial Administration Act, which was introduced by our government in 2007 and passed by Parliament. Bill S-217 deals with borrowing authority and would also repeal enhanced disclosure requirements with respect to government borrowing.

Let me begin by saying that this proposal has been before the Senate several times by another senator and did not advance. I want to be very clear: Repealing this portion of the Financial Administration Act would seriously harm Canada's ability to quickly respond to a major financial crisis, as we saw in 2008.

In 2007, our government modernized the Financial Administration Act to ensure that the Minister of Finance must obtain borrowing authority from the Governor-in-Council. This important addition provides greater transparency and accountability than ever before to facilitate more efficient, responsive and prudent financial management, particularly with respect to the borrowing of Crown corporations.

As a result of our actions in 2007, the government now meets all of the borrowing needs of the Business Development Bank of Canada, the Canada Mortgage and Housing Corporation and Farm Credit Canada through direct lending to these corporations. This has eliminated additional interest charges that were paid by these Crown corporations, which Budget 2007 projected would result in savings for taxpayers of up to \$90 million over five years.

In fact, as interest rate spreads between non-government borrowers and the Government of Canada have widened since the onset of the credit turmoil in 2007, the actual interest savings for these Crown corporations are higher.

Honourable senators, as I have mentioned previously, our actions in 2007 have provided greater transparency and accountability when it comes to the government's borrowing activities. Our Conservative government has a strong record of openness and transparency, especially when it comes to economic forecasting and fiscal projections because we believe they are essential to the functioning of our democracy.

Since forming government in 2006, we have demonstrated our commitment to provide accountability to Canadians, especially when it comes to their hard-earned tax dollars. That is why we

introduced the Federal Accountability Act and other legislation designed to increase transparency in government agencies and Crown corporations.

• (2130)

This act greatly improved the current system of government oversight and management by strengthening its rules and institutions. It strengthened the capacity and independence of officers of Parliament, including the Auditor General, in their duties of holding the government to account, and it increased the transparency of appointments, contracts and auditing within government departments and Crown corporations.

As a result of the act, Crown corporations such as Canada Post, Via Rail Canada, the CBC, and Export Development Canada are no longer exempt from requirements to be more open and transparent. These changes have improved Canadians' access and understanding when it comes to government spending of their hard-earned tax dollars.

In the same way, the 2007 additions to the Financial Administration Act have provided for greater transparency and accountability about the government's borrowing activities by establishing enhanced disclosure requirements. Information on anticipated borrowing and planned uses of funds are now presented in the publicly available Debt Management Strategy. Enhanced disclosure requirements on actual borrowing and uses of funds compared to those forecast is set out in the *Debt Management Report*. These two reports reflect our government's commitment to providing all Canadians with timely and important information on debt strategy and management, and additional information on outcomes is included in the Public Accounts which, of course, is subject to review by the Auditor General.

In addition to that, our government also shortened the period within which the *Debt Management Report* must be tabled from 45 to 30 sitting days following the tabling of the Public Accounts. Bill S-217 proposes to change the reporting period back to 45 days.

Honourable senators, these current requirements, supported by the government and approved by Parliament, are the framework for enhanced transparency and accountability. What is more, the previous borrowing authority framework was not in line with best practices in other countries. The 2007 additions to the Financial Administration Act modernized the government's borrowing authority provisions, bringing them into line with the borrowing authority frameworks used in other countries like the United Kingdom, New Zealand, and many others.

Most important, honourable senators, as I mentioned in my introduction, the effectiveness and necessity of the 2007 additions was most clearly demonstrated in November 2008. In response to the turmoil in financial markets, the government was able to respond quickly, even though Parliament was not yet sitting due to the 2008 fall election.

Thanks to these amendments, the Governor-in-Council was able to approve, in a timely fashion, new borrowing that enabled the government to provide immediate liquidity into the financial

markets to help maintain the availability of longer-term credit in Canada. This additional liquidity took the form of a \$25-billion installment of the Insured Mortgage Purchase Program, or IMPP, and an additional injection of liquidity by the Bank of Canada through purchase and resale agreements.

If the provisions S-217 seeks to reverse had not been in force, the government's ability to respond to the financial crisis in 2008 in a timely and effective manner would have been seriously compromised.

Honourable senators, if we have learned anything from the ongoing global financial turmoil, is that it is prudent to ensure that the government is equipped with a broad range of flexible tools to safeguard financial stability and to address potential problems in credit markets.

That brings me to today's economic climate. Without the changes our government made through Canada's Economic Action Plan, we would not be in the enviable position we are in now. As many of our allies and trading partners continue to struggle, we are well placed to prosper. Today we find ourselves further ahead than any other G7 country when it comes to creating jobs and economic growth, further ahead than any other since 2006 when it comes to income growth, further ahead than any other when it comes to our debt-to-GDP ratio, and now we are among just a handful in the world that hold an enviable Triple-A credit rating from all the major agencies. Canadian government bonds are among the most sought-after investments in the world. This means that investors here and abroad are confident in our government's ability to manage the economy now and in the future. We have also been a leader in job creation.

Since the worst of the recession in 2009, employment has increased by over 900,000, the strongest job growth among G7 countries over the recovery. Overwhelmingly, these have been full-time, well-paying jobs in the private sector.

While it is reassuring to highlight Canada's economic strengths, we also know we cannot afford to be complacent. Today's advantage will not carry into tomorrow simply by sheer luck or good intentions. External threats beyond our borders could have severe economic consequences here at home. The global economy remains fragile as the United States, our major trading partner, continues to experience modest growth, while Europe is mired in recession. All the while, developing countries like China are growing their economies. To remain competitive, we must stay the course.

Since 2008, Canada has been the envy of the world in its ability to respond quickly to the economic crisis, and we need to stay the course. Given the ongoing global economic uncertainty, we must continue to have the flexibility to respond quickly if needed. Canadians would expect no less of us.

Today's proposal endangers that course. If Bill S-217 is adopted, the government will not have the flexibility it needs to respond effectively to help maintain the availability of credit in Canada, endangering efficient, responsive and prudent financial management. In particular, the benefits of consolidating Crown corporation borrowing would be put at risk, along with considerable savings for taxpayers.

In addition, honourable senators, S-217 proposes to repeal the enhanced disclosure requirements on the government's borrowing activities set out in the amendments. Repealing these requirements would not only roll back the greater transparency brought in by this Conservative government, but would also cause delays in advising Parliament about the government's borrowing activities.

Honourable senators, once again we are faced with a proposal which endangers the government's ability to protect our economy, while reducing transparency for Canadians. For these reasons, the government cannot support Bill S-217, and I urge all honourable senators to vote against it.

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

Some Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

REFERRED TO COMMITTEE

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

Hon. Wilfred P. Moore: I move that Bill S-217 be referred to the Standing Senate Committee on National Finance.

[Translation]

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I understood that the Standing Senate Committee on Banking, Trade and Commerce will be the one studying this bill.

[English]

Hon. Claudette Tardif (Deputy Leader of the Opposition): I had understood that this item was going to the Finance Committee. It is a financial matter that is being dealt with here, and I believe that that was indicated in the exchange between Senator Moore and Senator Carignan.

[Translation]

Senator Carignan: Honourable senators, my understanding was that the bill was to be sent to the Standing Senate Committee on Banking, Trade and Commerce. However, I think that the

Standing Senate Committee on National Finance could also study it. We will send it to the Finance Committee for now, and then we will see if a change is necessary.

(On motion of Senator Moore, bill referred to the Standing Senate Committee on National Finance.)

• (2140)

[English]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

TWENTY-SECOND REPORT OF COMMITTEE REFERRED BACK TO COMMITTEE

The Senate proceeded to consideration of the twenty-second report of the Standing Committee on Internal Economy, Budgets and Administration (Examination of Senator Duffy's Primary and Secondary Residence Status), presented in the Senate on May 9, 2013.

Hon. Carolyn Stewart Olsen: I move the adoption of the report.

[Translation]

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, as far as the study of this report is concerned, given the facts that have been brought to our attention over the past few days, particularly with regard to the Ottawa living expense claims Senator Duffy was submitting when he was also submitting claims for expenses incurred during the election campaign, there were allegations of double-billing.

MOTION IN AMENDMENT

Hon. Claude Carignan (Deputy Leader of the Government): It seems to us appropriate to move:

That the report be not now adopted, but that it be referred back to the Standing Committee on Internal Economy, Budgets and Administration for further consideration and report.

[English]

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, the eyes of Canadians are on the Senate today with an intensity, frustration and anger which has seldom been seen before. None of us could have imagined a week ago Thursday, when we adjourned for the parliamentary break, that events would have unfolded as they have. It is no exaggeration to say that the faith of Canadians in the core institutions of our parliamentary democracy have been badly shaken by these events.

Honourable senators, we need to reflect upon what each of us has said and done, and not said and not done, over the past few weeks. Did our actions or inactions, individually or collectively, bring credit or discredit to ourselves and this institution?

We, on this side of the house, have consistently supported measures aimed at investigating in a fair, open and transparent manner, allegations of impropriety on the part of certain of our colleagues. We have insisted that due process be followed and allowed to lead wherever the evidence leads it, including the involvement of outside authorities, if that is what is necessary. Unfortunately, that has not been the position of the government.

In normal circumstances, we would support this motion sending the report on Senator Duffy to the Standing Senate Committee on Internal Economy, Budgets and Administration for further examination and review. However, I must remind honourable senators that we are debating and talking about the report which Senator Tkachuk tabled here on May 9 and tried to ram through that day before most of us had even had a chance to read it.

Senator Tardif: That is right.

Senator Cowan: How wrong that would have been, even without the revelations of the past 10 days.

On this side we quite properly insisted that the report be dealt with according to our normal rules, upon our return today: a position which I think all of us would now support in hindsight.

Honourable senators, if we send this report back to the committee and the auditors for further investigation and reporting, what confidence can we have that they will be allowed to do their work without political interference from outside: from the leadership in the Senate, the House of Commons or the Prime Minister's office? In view of what they have witnessed to date, I do not believe that ordinary Canadians would have any confidence in this proposed approach.

It is time for us to acknowledge that serious concerns have been raised publicly about how we have dealt with this matter and about our ability to deal with it properly in the days ahead.

This morning, in the *National Post*, Andrew Coyne began his column on the crisis by referring to provisions of the Senate Conflict of Interest Code, the Parliament of Canada Act and the Criminal Code, saying, "'serious' does not begin to describe" what is going on.

Honourable senators, there can be no business as usual: enough is enough.

Some Hon. Senators: Hear, hear.

Senator Cowan: This matter needs to be turned over now to the appropriate authorities. In a scrum I gave in the Senate foyer on February 26, I was quoted as saying, "If there is further action that is required as a result of the audit reports, Senator LeBreton and I are certainly agreed that that action will be taken." That is what I said then, and that is what I believe today.

In view of all that has taken place, in view of all we have learned over the last several days, I am not prepared to stand before Canadians to say that no further action is required. Further action is required.

MOTION IN SUB-AMENDMENT

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

That the twenty-second report not be referred back to the Standing Committee on Internal Economy, Budgets and Administration, but that it be referred immediately to the appropriate law enforcement agency, and that the Senate cooperate fully with any investigation that may result.

Some Hon. Senators: Hear, hear.

Hon. Pierre Claude Nolin: Honourable senators, this is a very serious matter. The last time we dealt with such an imbroglio, ending with the RCMP, was with former Senator Lavigne.

The house made that decision after a thorough review in Internal Economy, coming to the conclusion that it was needed for the house to say “yes” or “no” to sending that to the RCMP — not to jump ahead of Internal Economy, but to listen to the committee.

What Senator Carignan is proposing is to send everything back to Internal, giving them all the time to make all effort they can invest, and then they will be able to come back to the house and recommend that the house exercise its authority to call in the RCMP, not the other way around. It is not what we did.

• (2150)

[Translation]

Honourable senators, this is not a pleasant situation, but I think we need to approach it very seriously and very carefully. Adding partisan politics to such an important issue will not help us move forward on this. The Internal Economy Committee must conduct the fullest possible examination of all the facts, even those reported by Senator Cowan, and render a decision, and it must then ask the Senate to decide on the next step, which could involve referring the matter to the police and letting them do their job.

[English]

Hon. Percy E. Downe: Senator Nolin makes a very good point, but he overlooks one key factor: The difference between what happened with Senator Lavigne and this case is we have a serious allegation of outside influence on the conclusion of the committee. We did not have that with Senator Lavigne, and I suspect that is why Senator Cowan is suggesting the course of action he is suggesting tonight.

Senator Nolin: We had similar issues with Senator Lavigne.

[Translation]

It was a different environment, but we had the same concerns. As long as it remained a question of just allegations, the Senate wanted the Internal Economy Committee to produce a report confirming, to the extent possible, that it was a matter of more

than just allegations; it involved proven facts. Serious decisions regarding Senator Lavigne had to be made at that time, moreover, in light of the finding that it was no longer a question of just allegations, but rather facts that had been proven by a special committee created by the Internal Economy Committee.

This is why we cannot presume to know what the Internal Economy Committee will do. Have any new facts been revealed? Great! Then Internal Economy needs to be aware of those facts, take the necessary steps to get to the bottom of things and come back to the Senate with a final decision based on the facts that were proven by its investigation. This explains the similarities between the two situations.

[English]

Senator Downe: I urge the honourable senator to read the comments Senator Fraser made earlier. In my opinion, she hit the nail right on the head. It goes to the very integrity of the Senate and the role of our committee. In this case, the serious allegation is that there was influence from the Prime Minister's Office after payment of a significant amount of money, and the committee adjusted the report to the words “to go easy.” We never had that situation with Senator Lavigne. It is completely separate. If the concern is that we cannot count on the independence of our committee, then the course of action we have to agree to is the one proposed by Senator Cowan.

Senator Nolin: My point is about the word “allegations.” We cannot in this chamber base a decision on allegations. That is why I am saying it is serious. I am frustrated by that. I want evidence. I want something solid to take a decision on, not allegations. I am troubled by allegations. I am pointing to the deputy chair of the committee. He is sick, and if I were sick, I would like to be treated as being sick. He is not here.

Some Hon. Senators: Hear, hear.

Senator Nolin: Allegations need to be treated as allegations and examined by a committee that knows how to do that. They know how to do that. They can do it properly. If they need to create a special committee, they will do that. We have done it in the past and it worked.

The Hon. the Speaker: I was about to recognize Senator Stewart Olsen. Did I hear a point of order?

[Translation]

POINT OF ORDER

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I rise on a point of order. I have some comments about the amendment. I already moved a motion in amendment to send the report back to the committee, and I think that we must first vote on this amendment. Another proposal could then be received. First, we must vote on this motion in amendment.

Rule 6-8 states:

Except as otherwise provided, during debate on a question, no other motion shall be received unless it is a motion:

(a) to amend the motion under debate;

(b) to refer the motion to a committee...

The points after that are “to put the previous question” and “to adjourn the debate.”

Therefore, we must first vote on the motion in amendment and then, if this chamber decides to amend the motion, Senator Cowan may move a second motion in amendment.

Second, a motion in amendment must be specific, must be applicable. The motion in amendment that was moved refers to “the proper authorities.” Who is the proper authority?

We can try to speculate about who that authority is, but it is certainly not clear to me who the authority referred to in Senator Cowan’s motion is.

For now, I suggest that you declare this motion in amendment out of order, so that we can vote on the first one and then discuss the others.

[English]

The Hon. the Speaker: I would be happy to hear another comment on the point of order raised by Senator Carignan.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Your Honour, I strongly believe that the point of order raised by my colleague is not valid. Senator Cowan has moved a motion, which is defined in the *Rules of the Senate* as the following:

A proposal made for the purposes of eliciting a decision of the Senate or a committee. A motion, once adopted, may either express the opinion or make an order of the Senate that something be done.

That is exactly what Senator Cowan is proposing.

I remind all honourable senators that serious concerns have been raised publicly, and in this place, about how we have dealt with the matters relating to the recent reports of the Internal Economy Committee and about our continued ability to deal with them properly. The government has made a motion to refer these reports back to the Internal Economy Committee, but these reports have already been tainted by recent events. Therefore, it is plainly clear that we are beyond a point where the Internal Economy Committee could re-examine these reports and their implications with any legitimacy in the eyes of Canadians. As we on this side have said all along, this matter must be referred to the appropriate law enforcement officials if and when it becomes necessary. It is clear to me that we are now at the point where it is necessary.

Senator Cowan’s motion is properly before us. It is a motion that seeks to compel the Senate to take action. If some senators do not agree with the motion, they may vote against it, but they have no grounds to seek to prevent the Senate from taking this decision; it is for the Senate to decide.

The motion before us, and this larger subject matter, is a very serious matter indeed. I ask Your Honour to consider that, as Senator Cowan said today, the eyes of Canadians are on the Senate today with an intensity, frustration, and anger that has seldom been seen before. We must do everything in our power right now to enable accountability in every possible instance.

To rule Senator Cowan’s motion out of order — the effect of which would have law enforcement authorities investigate these reports — would be a very unfortunate decision indeed.

Some Hon. Senators: Hear, hear.

• (2200)

SPEAKER’S RULING

The Hon. the Speaker: Honourable senators, I am prepared to rule on the point of order that has been raised by Senator Carignan, but I do so in the firm conviction that the institution of the Senate is a critical and foundational part of our bicameral Parliament. All honourable senators in this chamber operate with goodwill for the betterment of the institution as they serve the people of Canada.

From a strictly procedural point of view, the parliamentary practice is that a sub-amendment is not able to enlarge the amendment that is before the house. In providing some support for a clear practice from the literature, *Beauchesne’s Parliamentary Rules and Forms*, at paragraph 580, states:

(1) The purpose of sub-amendment (an amendment to an amendment) is to alter the amendment. It should not enlarge upon the scope of the amendment but it should deal with matters that are not covered by the amendment.

Honourable senators, in order to be helpful to the house, if the motion of Senator Carignan is adopted and this matter is referred back to the Standing Committee on Internal Economy, Budgets, and Administration, nothing would obviate the committee coming to the conclusion much along the lines as the Honourable Senator Nolin has indicated.

From a purely technical point of view, the subamendment having been challenged is not in order.

The question before the house is the amendment of Senator Carignan, seconded by Senator Nolin.

Some Hon. Senators: Question.

The Hon. the Speaker: It is moved by the Honourable Senator Carignan, seconded by the Honourable Senator Nolin, that the report be referred to the Standing Committee on Internal Economy, Budgets, and Administration.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: On division?

Some Hon. Senators: On division.

The Hon. the Speaker: Carried, on division.

(Motion in amendment agreed to, on division.)

TWENTY-THIRD REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the twenty-third report of the Standing Committee on Internal Economy, Budgets and Administration (Examination of Senator Brazeau's Primary and Secondary Residence Status), presented in the Senate on May 9, 2013.

Hon. Carolyn Stewart Olsen: Honourable senators, I move the adoption of this report.

The Hon. the Speaker: It is moved by the Honourable Senator Stewart Olsen, seconded by the Honourable Senator McInnis, that the twenty-third report of the Standing Committee on Internal Economy, Budgets, and Administration (Examination of Senator Brazeau's Primary and Secondary Residence Status), presented in the Senate on May 9, 2013, be adopted. Is there debate?

Are honourable senators ready for the question?

Some Hon. Senators: Question.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Carried.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I apologize for asking to go back, but there was a lot of confusion. People were speaking, and I missed the question being called. I believe it was on the Brazeau report. Is that correct?

Some Hon. Senators: Yes.

Senator Tardif: I understand there was a request by Senator Brazeau to participate in the debate. It was my understanding, when I met with Senator Carignan and asked about it, that he was willing to adjourn the debate to see what the possibilities might

be. Is that no longer the case? I ask only for the sake of due process, as a request has been made. The honourable senator indicated to me that he would be taking the adjournment in order to contact Senator Brazeau. Has there been a change?

[Translation]

Hon. Claude Carignan (Deputy Leader of the Government): Senator Brazeau had the opportunity to share his views. He was invited to appear before the committee, but he did not appear. We are prepared to proceed. However, if you want to move the adjournment of the debate, you may do so.

[English]

Hon. Anne C. Cools: Honourable senators, I had wanted to speak to this report. Is it too late? It is gone? I would like to move the adjournment.

The Hon. the Speaker: I will tell honourable senators what happened. The table called, under "Reports of Committees," Item No. 2, which was read. The Honourable Senator Stewart Olsen rose and moved the adoption of the report, seconded by the Honourable Senator McInnis. The Speaker called "Is there debate?" Silence reigned, and I heard someone call for the question. I asked, "Are honourable senators ready for the question?" I asked, "Is it your pleasure, honourable senators, to adopt the motion?" The majority responded, "Agreed." I heard a few nays. I said "On division." I heard, "Yes;" and I sat down.

Honourable senators, there must be unanimity in the house to go back and ask the table to recall an item. Otherwise, the house order is that the motion has been adopted on division.

Is there unanimous consent for this item to be recalled?

Some Hon. Senators: No.

The Hon. the Speaker: The order of the house stands.

Hon. Terry Mercer: Transparency reigns!

(Motion agreed to and report adopted.)

TWENTY-FOURTH REPORT OF COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the twenty-fourth report of the Standing Committee on Internal Economy, Budgets and Administration (Examination of Senator Harb's Primary and Secondary Residence Status), presented in the Senate on May 9, 2013.

Hon. Carolyn Stewart Olsen: Honourable senators, I move the adoption of this report.

The Hon. the Speaker: Honourable senators, Item No. 3 having been called, is the consideration of the twenty-fourth report of the Standing Committee on Internal Economy, Budgets, and Administration (Examination of Senator Harb's Primary and Secondary Residence Status), presented in the Senate on May 9, 2013, duly moved by the Honourable Senator Stewart Olsen and seconded by the Honourable Senator Ogilvie. Is there debate?

Hon. Anne C. Cools: Honourable senators, I move the adjournment. These reports are very important.

The Hon. the Speaker: There is no debate on an adjournment motion. It is moved by the Honourable Senator Cools, seconded by the Honourable Senator Rivest, that further debate on this item be continued at the next sitting of the Senate.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: There is no debate on an adjournment motion.

Hon. Claudette Tardif (Deputy Leader of the Opposition): May I ask a point of clarification?

The Hon. the Speaker: Certainly.

Senator Tardif: Honourable senators, His Honour has taken the question of privilege of Senator Harb under advisement. Would that not come into play? Could this item not be moved forward because His Honour has taken the question under advisement? I wonder about the feasibility of dealing with the report at this time.

The Hon. the Speaker: In my opinion, no. There is nothing that obviates this committee report, which has been duly called. Full notice of it was available because it was tabled on May 9, 2013.

This is simply a motion, which has been moved and seconded, to adjourn the debate on this, so it is still before the Senate if this motion carries standing in the name of the Honourable Senator Cools. Is that clear?

Senator Tardif: Thank you.

The Hon. the Speaker: Are honourable senators ready for the question? It has been moved by the Honourable Senator Cools, seconded by the Honourable Senator Rivest, that this report be continued to the next sitting of the Senate.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Carried.

(On motion of Senator Cools, debate adjourned.)

• (2210)

BUSINESS OF THE SENATE

Hon. James S. Cowan (Leader of the Opposition): Your Honour, there is some confusion here. We have dealt with No. 3; what did we do with No. 4?

The Hon. the Speaker: No. 4 was called and stood.

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO STUDY THE CHALLENGES FACED BY THE CANADIAN BROADCASTING CORPORATION

Hon. Dennis Dawson, pursuant to notice of May 7, 2013, moved:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report on the challenges faced by the Canadian Broadcasting Corporation in the context of the complex and changing broadcasting and communications landscape; and

That the committee report to the Senate from time to time, with a final report no later than October 31, 2014, 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.)

SUSTAINABILITY OF HEALTH CARE SYSTEM

INQUIRY—DEBATE ADJOURNED

Hon. Catherine S. Callbeck rose pursuant to notice of March 19, 2013:

That she will call the attention of the Senate to the need to the growing need for the federal government to collaborate with provincial and territorial governments and other stakeholders in order to ensure the sustainability of the Canadian health care system, and to lead in the negotiation of a new Health Accord to take effect at the expiration of the 2004 10-Year Plan to Strengthen Health Care.

She said: Honourable senators, this is an inquiry that I wanted to speak on. I notice it is on the fourteenth day, but I have not completed my research yet. I would like to take the adjournment.

(On the motion of Senator Callbeck, debate adjourned.)

(The Senate adjourned until Wednesday, May 22, 2013, at 1:30 p.m.)

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