



# DEBATES OF THE SENATE

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OFFICIAL REPORT  
(HANSARD)

Tuesday, October 22, 2013

The Honourable NOËL A. KINSELLA  
Speaker

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

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

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## THE SENATE

Tuesday, October 22, 2013

The Senate met at 2:00 p.m., the Speaker in the chair.

Prayers.

[Translation]

### VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw to your attention the presence in our gallery of Pierre Riopel, the new President of Collège Boréal in Sudbury. He is a guest of the Honourable Senator Charette-Poulin.

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

**Some Hon. Senators:** Hear, hear!

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## SENATORS' STATEMENTS

### THE LATE PAUL DESMARAIS, O.C., O.Q.

**Hon. Marie-P. Charette-Poulin:** Honourable senators, I rise today to pay tribute to Paul Desmarais, who passed away on October 8, 2013.

Mr. Desmarais was loved, admired and respected by everyone here and elsewhere who had the honour and pleasure of knowing him, including heads of state, business leaders, professionals, artists, and dedicated citizens.

Paul Desmarais's extraordinary contributions to business, the arts, health, education, architecture and so forth are well known.

Paul Desmarais was a simple and modest man. He looked at people when he spoke to them and offered them a warm smile regardless of their age or status. He was genuinely interested in people and their dreams. For example, when he learned that the son of one of his employees was interested in photography, he asked to meet with him. He paid for the son's photography equipment and hired him to photograph his estate in Sagard. A superb photo book was created as a result.

Many employees' children, artists, lawyers, doctors and politicians are still so grateful to him today.

After his death, the many public tributes referred to him as a business giant, a man of vision, a philanthropist, a collector, a supporter of the arts and education, but above all, a family man.

Both our families lived on Drinkwater Street, in Sudbury, and we were neighbours, friends and francophones involved in the community. I have many memories of the 1950s when a tall, slender, young man, 18 years older than I, would take the time to make me laugh. Almost 50 years later, when I replaced his brother, Dr. Jean Desmarais, in the Senate in 1995, family ties were solidified. I knew that the Desmarais family values of integrity and service would serve as my model.

When a journalist from the French magazine *Le Point* asked Paul Desmarais to describe himself in a few words, he said, "I am Franco-Ontarian by birth. I have chosen to live in Quebec. I am Canadian. Canada is my country. Quebec is my province."

Paul Desmarais instilled pride in the people living in northern Ontario and all regions of the country. He convinced us that every man and woman living in Canada can succeed no matter what their circumstances. Even with all his professional and personal success, Paul Desmarais remained first and foremost a good man.

Together with you, my honourable colleagues in the Senate of Canada, family members and my parents Alphonse Charette and Lucille Ménard-Charette, I offer my sincere condolences to Jacqueline Marenger-Desmarais, their children, grandchildren and great-grandchildren, and the family of Jean-Noël Desmarais and Lébée Laforest-Desmarais. Canada has lost one of its great men.

• (1410)

[English]

### TRIBUTE TO THE PEOPLE OF LAC-MÉGANTIC

**Hon. Judith Seidman:** Honourable senators, around 1:15 in the morning of July 6, 2013, a train carrying 72 tankers of crude oil and five locomotives derailed in the heart of downtown Lac-Mégantic. What followed was a tragedy of unimaginable proportion. The explosions came one after the other as tanker cars burst into flame. The fire raged for close to four hours. At daylight, the people of Lac-Mégantic came face to face with a town in ruins and a list of the missing.

The extent of the devastation is beyond words. We know only that the events of that night will stay with the people of Lac-Mégantic for generations to come. Plans to erect a memorial on site are in progress, as are discussions to rebuild the heart of the downtown that was destroyed. But the horror of that day will not be forgotten, not in Lac-Mégantic, not in Quebec and not in Canada.

[Translation]

This terrible tragedy raised a number of important questions that we could address here today. However, I will limit my initial comments to simply paying tribute — from the bottom of my

heart — to the people of Lac-Mégantic, those who lost their lives as well as the grieving loved ones left behind.

I invite all honourable senators to join me in honouring the memory of the 47 people who were lost in the Lac-Mégantic disaster on July 6, 2013.

#### THE LATE PAUL DESMARAIS, O.C., O.Q.

**Hon. Céline Hervieux-Payette:** Honourable senators, as a senator from Quebec, I am pleased to follow my colleague from Ontario in honouring the memory of a remarkable businessman, Paul Desmarais. He may have been Franco-Ontarian by birth, but he was a Quebecer at heart, and of course, a proud Canadian his entire life.

His career path, his political influence and his commitment to philanthropy earned this man with the extraordinary destiny the admiration of all.

He was raised in a family in which his father was a lawyer and his paternal grandfather was an entrepreneur, which explains his exceptional business sense. From the single dollar he used at age 23 to purchase the bankrupt family bus company, he built a financial empire with over \$146 billion in assets.

[English]

Capable of successfully managing both local businesses as well as holding companies with international branches — a truly impressive quality — this “frenchy” unexpectedly prevailed in an English-speaking world during a time when French Canadians were not known for success.

He turned his attention to China before many others did and established himself as a non-conformist citizen with connections to the most powerful in the world, while always maintaining characteristic qualities of discretion and humility.

[Translation]

Mr. Desmarais was a staunch federalist. Canadian unity was always one of his major concerns and always guided his actions.

From Sudbury to Sagard, Paul Desmarais was a man in a class of his own. A history buff and wine connoisseur, he passed away at 86 years of age, after writing an important page in the history of Quebec and Canada. I wish to extend my sincere condolences to his entire family.

#### MS. JANET YELLEN

#### CONGRATULATIONS ON NOMINATION TO CHAIR THE UNITED STATES FEDERAL RESERVE

**Hon. Diane Bellemare:** Honourable senators, it has been a year since I accepted with honour and pride Prime Minister Harper's invitation to join the Senate Conservative caucus to defend a cause that has been dear to me since the beginning of my career, namely job creation.

However, I rise today not to talk about myself but to tell you about an economist who shares the same cause as me. I am referring to Janet Yellen, who will most likely be confirmed by the U.S. Senate in her new role as chair of the U.S. Federal Reserve.

Ms. Yellen will be the first woman at the head of this financial institution whose economic influence goes beyond U.S. borders. The decisions made by that institution have an impact on the growth of production and employment in a number of countries, including Canada.

I salute this economist's nomination because she believes, like me, that monetary policy is a strategic component of job creation. The U.S. Federal Reserve Act, as amended in 1977, gives that institution the dual mandate of maximizing employment while ensuring stable prices. That is not the case in Canada, where the Bank of Canada has been given the responsibility of preserving stable prices without regard for maximizing employment.

In December 2012, the U.S. Federal Reserve decided to not increase interest rates until the unemployment rate goes under 6.5 per cent and the inflation rate remains below 2.5 per cent. This is a first. Ms. Yellen welcomed the inclusion of a target unemployment rate in the U.S. monetary policy for the purpose of promoting employment.

This means that interest rates will remain low until the U.S. unemployment rate goes down, which is likely to take a while.

Monetary policy is not a cure-all to achieve full employment, but it is a prerequisite. That is why it is important to have appropriate fiscal and budgetary policy supported by employment policies.

However, the Federal Reserve's monetary policy is good news for Americans and Canadians, particularly for households interested in buying a house or taking on a mortgage, for students who must pay back loans, for consumers who have debts, and for new entrepreneurs and self-employed workers who want to start a business, because interest rates are likely to remain low.

Honourable senators, I intend to congratulate Ms. Yellen in writing as soon as her nomination is confirmed. I invite all those who wish to sign that letter to let me know.

[English]

#### PROPOSED QUEBEC CHARTER OF VALUES

**Hon. Mobina S. B. Jaffer:** Honourable senators, I rise to speak on the damaging effect that the Quebec government's proposed Charter of Values is having on visible minority communities in Canada.

I would start by describing a conversation that I had with a young Sikh Québécois boy no older than eight years who was wearing a turban. This young boy spoke to me with an expression of deep concern and fear. He said, “The Quebec Separatist government wants us to leave. But I'm not an immigrant; I was born here. Where will I go? My father was born here; where would we go? Quebec is our home.”

That young boy was expressing something that no Canadian should be feeling within Canada. He was expressing a profound sense of exclusion from his own community.

Honourable senators, I would like to explain to the Senate what it means to wear a turban for a practising Sikh so that we can understand the disproportionate sacrifice that the Quebec Separatist government is asking Sikhs to make.

I want to start by telling you what it is not. It is not just a piece of cloth. It is not a head covering that can be removed upon command. It is nothing something someone adorns without understanding the significance that it entails. To ask a Sikh to remove his or her turban would be like asking them to remove their own head. It is an intrinsic part of them. It is not only a form of religious expression; it is a religious obligation. The turban serves as a mark of someone who is aware of the divine presence. It is a symbol of someone who is openly expressing his or her commitment to the Sikh gurus, especially in times of severe persecution. It is an intricate and existential connection to their religion but also a reminder of their duties towards the societies within which they live and serve.

Honourable senators, when I asked this young boy what he was going to do about the Quebec government's proposed Charter of Values, he told me that he is a proud Québécois and that he's not going to go anywhere. He's going to stay and fight for his rights in Quebec.

Honourable senators, we need to stand behind this wise young boy and ensure that his rights, those rights that bind all of us as Canadians, are not trampled upon.

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• (1420)

[Translation]

## ROUTINE PROCEEDINGS

### STATUTORY INSTRUMENTS ACT STATUTORY INSTRUMENTS REGULATIONS

#### BILL TO AMEND—FIRST READING

**Hon. Yonah Martin (Deputy Leader of the Government)** introduced Bill S-2, An Act to amend the Statutory Instruments Act and to make consequential amendments to the Statutory Instruments Regulations.

(Bill read first time.)

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

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

[ Senator Jaffer ]

[English]

### CONTROLLED DRUGS AND SUBSTANCES ACT CRIMINAL CODE

#### BILL TO AMEND—FIRST READING

**Hon. Mobina S. B. Jaffer** introduced Bill S-203, An Act to amend the Controlled Drugs and Substances Act and the Criminal Code (mental health treatment).

(Bill read first time.)

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

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

[Translation]

### INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO HEAR TESTIMONY

**Hon. Patrick Brazeau:** Honourable senators, I give notice that at the next sitting of the Senate I will move:

That the Standing Committee on Internal Economy, Budgets and Administration, once the new membership for this session has been appointed pursuant to rule 12-2, be authorized to examine and report on the living allowance of the Honourable Senator Brazeau;

That the committee hear from the senator, who will be entitled to be accompanied by counsel;

That, notwithstanding rule 12-16(1), all proceedings of the committee on this study be held in public; and

That the committee report to the Senate no later than December 20, 2013.

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[English]

## QUESTION PERIOD

### PRIME MINISTER'S OFFICE

#### ALLEGATIONS—NIGEL WRIGHT— SENATOR MICHAEL DUFFY

**Hon. James S. Cowan (Leader of the Opposition):** Honourable senators, in view of the extraordinary press conference held yesterday by Donald Bayne, legal counsel to Senator Duffy, I would like to take this opportunity to seek clarification on one

point, one that would appear to go to the heart of the independence of the Senate and of its members. Sir John A. Macdonald said of the Senate: It must be an independent house having a free action of its own...

Yesterday, Mr. Bayne claimed there were negotiations earlier this year between Senator Duffy and individuals in the Prime Minister's office, and that Senator Duffy was presented with a scenario or script, which, if he failed to follow, would lead to his removal from the Senate. The exact words used by Mr. Bayne were "throw you out, without any kind of hearing," and, "The threat is, if you don't go along with this, we'll boot you out of the Senate."

Yesterday, the Prime Minister was asked directly in the other place whether his office threatened to have Senator Duffy removed from the Senate if he did not go along with their scheme. This is the question that my member of Parliament Megan Leslie, Member of Parliament for Halifax, asked directly of the Prime Minister:

Could the Prime Minister confirm that his office threatened to kick Mike Duffy out of the Senate if he did not go along with their scheme?

The reply of the Prime Minister was simply that he expected all parliamentarians to respect the letter and spirit of the rules. With respect, that is not an answer to the question.

I now ask the Leader of the Government in the Senate whether the allegation by Mr. Bayne is true, namely, that Senator Duffy was threatened with removal from the Senate if he failed to follow the scenario presented to him earlier this year.

[Translation]

**Hon. Claude Carignan (Leader of the Government):** As the Leader of the Opposition knows, and as the Prime Minister has repeated many times, Nigel Wright was solely responsible for this entire matter and he took full responsibility for it. He even went so far as to quit his job.

[English]

**Hon. Wilfred P. Moore:** Honourable senators, I just want to clarify here. Mr. Leader, are you saying that Nigel Wright made the threat that Senator Cowan recited today?

[Translation]

**Senator Carignan:** That is not what I am saying. I said that Nigel Wright took full responsibility. The Prime Minister was not made aware of the personal cheque until May 15, as he has said hundreds of times. Mr. Wright took full responsibility and decided to resign.

[English]

## NATIONAL DEFENCE

### BUDGET DEFICIT—PROCUREMENT

**Hon. Joseph A. Day:** Honourable senators, my question is for the Leader of the Government in the Senate as well. I will try to bring us back to some of the important and good work that the

Senate does. The question relates to deficits and the Department of National Defence.

During a recent audit of the defence department's spending, the Auditor General's office found an estimated \$1.5 billion in accounting errors — \$1.5 billion. The government is currently aiming to slash the department of defence's spending by \$2.1 billion in an effort to eliminate the deficit which has been forecast for this year.

Do these accounting errors put into question the government's deficit reduction targets, or will there be a further \$1.5 billion reduction in spending of the Department of National Defence?

[Translation]

**Hon. Claude Carignan (Leader of the Government):** As you know, honourable senator, since 2006, the National Defence budget has grown substantially each year. In recent years, we have looked at ways to implement savings measures to ensure that the Department of National Defence operates efficiently.

The mission in Afghanistan is complete; that means the number of civilians employed to replace deployed military personnel will be reduced. The department will do its utmost to mitigate the impact on the affected employees.

[English]

**Senator Day:** I thank you for the answer, honourable senator.

The Bank of Canada has recently lowered its economic forecast for the second half of this fiscal year, estimating that growth will slow to 2 to 2.5 per cent from the 3.2 per cent predicted earlier this year. This suggests that the government will have to make further budget cuts to meet the goal of eliminating the deficit by its self-imposed target of 2015.

One item that should be in the crosshairs is the \$2.1-billion purchase of 108 close combat vehicles. It has been reported that the Army does not want these vehicles. They believe they were needed in Afghanistan, but since the contract was not filled by that time, they're no longer necessary. They wish to use the money for training hours that have been drastically cut as a result of the government's efforts to balance the books. That's the \$2.1 billion reduction at the Department of National Defence.

• (1430)

As this government is forced to make further budget cuts because of the economic forecast being reduced, will it commit to cancelling the planned purchase of these close-combat vehicles?

**Senator Carignan:** Our government is committed to rebuilding the Canadian Armed Forces by giving them the equipment needed at the best value for Canadian taxpayers. We are procuring much-needed aircraft to transport supplies at home and abroad.

We are modernizing the fleet of army vehicles and making an unprecedented investment in our navy through the national shipbuilding strategy. We are continually looking for ways to

improve the way the government purchases military equipment and to make the process faster, with less administrative overhead, while maximizing job creation.

**Hon. Terry M. Mercer:** On a supplementary question, the Leader of the Government in the Senate continues along the party line and talks about the support they're giving to the military in making sure they have the proper equipment. Perhaps he could tell us where the trucks are that the army desperately needs. The trucks they have now are so old that they have to get parts off of one to keep the one next to it going.

What about the CF-18 fighter jets that we need to replace? What about the replacement for the Sea King helicopter for the navy? Could he tell us how those commitments are being fulfilled by this government when there are no trucks, no jets and no replacement for the Sea King?

[Translation]

**Senator Carignan:** As you know, Senator Mercer, government policy on this issue is very clear, and our commitment to ensure that our men and women in uniform have all the equipment they need at the best possible value for taxpayers is our priority.

National Defence and Public Works continue to work on these projects to ensure that whether we are talking about helicopters, combat gear or trucks, they have the best possible equipment at the best possible value for Canadians.

[English]

**Senator Mercer:** Honourable senators, what we have are some pretty hollow promises from this government. Every year, the Prime Minister has been making a trip to the Arctic. I commend him for that; it's important for the people in the North to know the rest of Canada thinks they're important. But while he was up there, he spent time with some Rangers in the Arctic. They are an important group of people who are doing good work for Canadians in the North and all across Canada.

The one piece of equipment they need to help do their job is a new, modern rifle. We're not talking about a big truck. We're not talking about a jet plane. We're not talking about a big ship. We're not talking about a replacement for the Sea King helicopter. We're talking about some rifles. Come on! Think about it, leader. When is the Government of Canada going to provide the Rangers in the North with the proper equipment to do their job?

[Translation]

**Senator Carignan:** Senator Mercer, I am so pleased with your enthusiasm for ensuring that the men and women in our military can have the best equipment. I can only assume that when financial measures are presented in the budget to ensure that we can provide the necessary equipment to our military, you will support them with the same enthusiasm.

[English]

**Senator Mercer:** I've seen money in previous budgets for the replacement of the Sea King helicopters, to buy new trucks for the army and to buy new jets. My supporting or not supporting the

budget hasn't helped. You've passed these budgets with this money. When are you going to start delivering on the shallow commitments you made to Canada's military?

[Translation]

**Senator Carignan:** I feel I am giving the same answer; perhaps this was the same sort of question. It is quite clear to us that we will take all necessary steps to ensure that the men and women in uniform who make up our military have the best equipment available, whether that is ships, combat gear, ground equipment or planes. Earlier you mentioned jet planes. There is a special committee working to ensure that we make the best decisions. I am very confident that the result will enable Canadians to achieve our goal to have the best equipment, the kind of equipment that meets our needs, at the best possible value for Canadian taxpayers.

## JUSTICE

SUPREME COURT—HONOURABLE  
MR. JUSTICE MARC NADON

**Hon. Jean-Claude Rivest:** Honourable senators, I realize that the Leader of the Government has some sensitive questions to handle today. I am going to try to lighten his load by asking a relatively easy question. It is about the very controversial appointment of Justice Nadon to the Supreme Court of Canada.

No one is questioning Justice Nadon's integrity, probity and competence, but I am sure the leader is aware that this appointment has caused an absolutely unprecedented uproar in Quebec, given that, under the Constitution and the Supreme Court Act, judges appointed to the Supreme Court must be selected from the Superior Court or Court of Appeal of Quebec. Justice Nadon's career, eminent and entirely respectable as it is, has been in the federal courts. We are also told that he lives in Ontario.

It must be noted that, in a development that is absolutely unprecedented in the constitutional history of Canada, an Ontario lawyer is challenging Justice Nadon's appointment in the courts. The Government of Quebec itself announced that it was considering taking this issue before the courts in the next few days. At the political level, there will probably also be a National Assembly of Quebec resolution condemning the Canadian government's decision regarding Justice Nadon.

I will ask the Leader of the Government in the Senate whether the government should consider not just the legal impact, but also the political impact of this decision. There is no need to go back in history to see that Supreme Court decisions have a particular resonance and importance in Quebec when it comes to the constitutional rights of the National Assembly, language issues and all other questions concerning extremely sensitive subjects, and now this judge will be one of the three judges from Quebec nominated to sit on the Supreme Court of Canada.

Are the leader and his government aware that, again, whatever Justice Nadon's personal merits, the government has put the Supreme Court and the court's credibility in an extremely difficult position with this appointment? Would it not be wise to reconsider Justice Nadon's appointment and perhaps name him to the Supreme Court in a later appointment, in order to preserve

[ Senator Carignan ]



the credibility of the Supreme Court in Quebec and in Canada as a whole? I would reiterate that this is extremely important not only in legal terms, but also in political terms.

**Hon. Claude Carignan (Leader of the Government):** Honourable senators, as a Quebecer, I am very proud that our government intends to defend the right of people who are long-standing members of the Barreau du Québec to sit on the highest court in Canada.

• (1440)

Members of the Barreau du Québec should have the same rights as lawyers in the other provinces. That is why we have taken steps today to confirm the eligibility criteria that apply to Supreme Court justices. We are anxious to have this issue resolved and for Justice Nadon, an eminently qualified individual, to be able to sit on the bench. We are confident that this matter can be resolved speedily so that the right of Quebecers to sit on the Supreme Court is respected.

**Senator Rivest:** I understand the Leader of the Government in the Senate and I understand his desire to have this issue resolved, but we are going to be facing court challenges about the judge's appointment. This will never be speedily resolved. It is going to go before the courts and work its way up through all the levels. Quebec, which has the constitutional right to have three judges on the Supreme Court, will have only two judges for how many months and years to come?

**Senator Carignan:** As you know, our decision to appoint Justice Nadon was supported by some of the leading members of Canada's legal community, including former Supreme Court Justice Ian Binnie and former Supreme Court Justice Louise Charron, as well as noted constitutional expert Peter Hogg. It is obviously in the interests of the administration of justice and of all Canadians that the Supreme Court of Canada have a full complement of nine judges as soon as possible. That is why we included declaratory provisions in the Budget Implementation Act relating to the Supreme Court Act, to ensure that this issue can be speedily resolved.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** I would like to ask a supplementary question.

I would like to take this opportunity to congratulate the Leader of the Government in the Senate on his new position, since I have not had a chance to do so before.

I echo Senator Rivest in saying that I am in no way criticizing Justice Nadon's competence or his career.

However, by agreeing to change the act now, is the government not admitting that there was in fact a problem in the act when Justice Nadon was appointed?

**Senator Carignan:** As I said, the position on the interpretation of the Supreme Court Act was supported by eminent members of the legal community, including former Justice Ian Binnie, Peter Hogg and Louise Charron. This position is clear. I do not know whether you have had a chance to read the opinion that was

given; I think it is quite influential in terms of the weight it lent. We are going to incorporate declaratory provisions and we hope that this matter can be resolved as speedily as possible so that the right of Quebecers will be respected.

**Senator Fraser:** Being a Quebecer myself, I am anxious for the issue to be resolved. Frankly, however, Mr. Leader, it seems to me that one thing this case reveals is the significant weaknesses in the system that the present government has adopted for appointing judges to the Supreme Court. Clearly, the government knew there would be questions about this; why else would it have sought the opinion of former Justice Binnie? It had known since April that Justice Fish's seat had to be filled, but months went by and the government did nothing. Ultimately, it gave the House of Commons committee that has the heavy responsibility of examining the appointment of a judge to sit on the Supreme Court of Canada barely 48 hours' notice, and this plainly did not give our colleagues in the House of Commons enough time to do all the research they would have liked to do on this subject.

Is the government prepared to review this system to make it more transparent, clearer and more timely, to give our colleagues in the House of Commons the time they need, precisely so they are able to examine all the questions that may be asked and prepare proper answers to those questions?

**Senator Carignan:** I just want to be clear on questions about interpretation; the budget provisions include declaratory provisions that clarify the Supreme Court Act. Those clarifications are in line with the legal opinions we received from former Chief Justices Binnie and Charron and constitutional expert Peter Hogg.

The Supreme Court Act is very clear about the composition of the court. The appointment process is also very clear. The Prime Minister of our government — and I am very proud of this — introduced the opportunity for members of Parliament to question the future Supreme Court justice; this is an element of transparency that I think is welcomed and that was introduced by our government. I am therefore very proud that our government is demonstrating transparency in its nominations and giving the various parties represented in the House of Commons the opportunity to question candidates who are to be appointed to the Supreme Court.

[English]

**Senator Fraser:** I respect your pride, but something went wrong. An eminent lawyer — I do not dispute his eminence, nor his talent, nor his estimable career, but the fact is that somebody was named to the Supreme Court about whom serious questions have been raised, about whom a provincial government, the government of the province he's supposed to represent, is very distressed, and for whom the House of Commons was given practically no time to conduct an examination and reach a considered opinion.

Something is wrong here, and I wish you would admit, on behalf of the government, that this should be re-examined, the system should be re-examined, so that no such occasion ever arises again. We should not be standing here, or sitting here, saying that there are any questions at all about the qualifications of someone who is named to the Supreme Court. That should all be settled long before he is appointed.

[Translation]

**Senator Carignan:** Personally, I think it is very difficult to be shielded from legal challenges. What I am very proud of, however, is that our government will defend the long-recognized right of members of the Barreau du Québec to sit on the highest court in Canada and be one of the three judges authorized to sit on the Supreme Court. Justice Nadon is an excellent candidate; he went through an arduous process to get this nomination, and he succeeded. He is an excellent candidate, and we hope that the declaratory provisions relating to the Supreme Court that were included in the Budget Implementation Act will ensure that we can benefit from his opinion and his talent as speedily as possible.

• (1450)

**Senator Rivest:** I would like some clarification. I understand that Justice Nadon is a member of the Barreau du Québec. I have no issue with that. He has practised in Quebec. However, Supreme Court justices are supposed to come from the Quebec Superior Court or the Quebec Court of Appeal, are they not? Such is not the case with Justice Nadon.

Furthermore, how can you say that you can amend the legislation with declaratory provisions that have been legally verified? Justice Nadon does not come from the Quebec Superior Court or the Quebec Court of Appeal.

**Senator Carignan:** I do not want to comment on the interpretation, particularly since we have learned that there is a case before the courts pertaining to the interpretation. However, it is clear that if the appointment was made, it was supported by various legal experts who feel, as we do, that Justice Nadon has the right, as a Quebecer, to sit on the Supreme Court and that he exercised that right.

[English]

## TREASURY BOARD

### PUBLIC SERVICE REDUCTIONS

**Hon. Catherine S. Callbeck:** My question is to the Leader of the Government in the Senate. First, I want to congratulate the leader and the deputy leader on their appointments to their new positions.

The people in my province are really worried and concerned that they're being hit harder by these federal public service job cuts than other parts of Canada. In fact, a McInnis Cooper report estimates the province could lose between 379 to 458 positions in P.E.I. That's 10 per cent to 12 per cent of the current permanent federal workforce. To compare that to the rest of Canada, the cuts there will be less than 5 per cent of the federal workforce.

On a recent visit to my province, the Treasury Board President Tony Clement heard the concerns of Island business leaders. He dismissed their concerns. He told them the cuts were fair to

everyone. Yet, he did not provide any evidence to back up his claims. He simply said, "... we've got a pretty good handle on the impacts...."

My question is: If the minister has a good handle on the impacts, why won't he share these figures? Why won't he back up his claims?

[Translation]

**Hon. Claude Carignan (Leader of the Government):** The 2013 Economic Action Plan very clearly set out our objective to create jobs and long-term prosperity. As promised, we intend to reduce the size of the public service; however, this must be done in a manner that will have as little impact as possible on employees and that will begin with people who are able to retire.

[English]

## ORDERS OF THE DAY

### HER MAJESTY QUEEN ELIZABETH II

#### CONGRATULATORY ADDRESS ON BIRTH OF PRINCE GEORGE ALEXANDER LOUIS— MESSAGE FROM COMMONS— MOTION ADOPTED

The Senate proceeded to consideration of the message from the House of Commons in the following words:

Thursday, October 17, 2013

*RESOLVED,—*

That an humble Address be presented to Her Majesty the Queen in the following words:

TO THE QUEEN'S MOST EXCELLENT MAJESTY:

MOST GRACIOUS SOVEREIGN:

We, Your Majesty's loyal and dutiful subjects, \_\_\_\_\_ the Commons of Canada, in Parliament assembled, beg leave to offer our congratulations to Your Majesty on the birth of a Prince, a son to Their Royal Highnesses, the Duke and Duchess of Cambridge, and assuring Your Majesty that this happy event affords the greatest joy and satisfaction to Your faithful Members of \_\_\_\_\_ the House of Commons of Canada.

*ORDERED,—*

That the said Address be engrossed;

That a Message be sent to the Senate informing their Honours that this House has adopted the said Address and requesting their Honours to unite with this House in the said Address by filling up the blanks with the words "the Senate and"; and

That a Message of congratulations be sent by the Speaker, on behalf of this House, to Their Royal Highnesses the Duke and Duchess of Cambridge upon the joyful occasion of the birth of a son to Their Royal Highnesses.

*ATTEST*

MARC BOSCH

*For the Clerk of the House of Commons*

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, I move:

That the Senate do agree with the House of Commons in the said address by filling up the blank spaces left therein with the words “the Senate and”; and

That a message be sent to the House of Commons to acquaint that House accordingly.

**The Hon. the Speaker:** On debate.

**Senator Martin:** I wish to express the importance and timeliness of this message that the Senate sends with our house colleagues to Her Majesty. Given the occasion of Prince George’s christening tomorrow, we, her loyal subjects, stand together in sending such an address on this very auspicious occasion to express our sincere congratulations to Her Majesty.

**Hon. Serge Joyal:** Honourable senators, on behalf of our colleagues on this side, I would like to associate myself with the message that should be sent to Her Majesty. There is no better occasion to use the opportunity afforded to us to express our gratitude to Her Majesty Queen Elizabeth II for the service and dedication that she has always expressed to the people of Canada.

History will remind honourable senators that when the father of Prince George was born I stood in the other house to congratulate his father, Prince Charles. It speaks to the longevity of the monarchy in Canada.

**Senator Mercer:** What about you?

**Senator Joyal:** I would like to remind honourable senators that last spring we adopted an important act of Parliament.

*[Translation]*

We passed the Succession to the Throne Act in 2013. In the debate, I reminded honourable senators how important this legislation is, since it affirms the principle of the supremacy of Parliament with regard to the selection of the head of state.

*[English]*

This is a fundamental principle in the existence of Parliament, which is to affirm the supremacy of Parliament on the selection of who should be the head of state in Canada. I want to remind

honourable senators that since we adopted that act last spring, which received the royal sanction on March 27, litigation has begun.

*[Translation]*

Two law professors from Laval University, Geneviève Motart and Patrick Taillon, went before the Quebec Superior Court to challenge the constitutionality of the legislation that we passed last spring.

I am taking this opportunity to inform honourable senators because, as I mentioned, this act is fundamental to the existence of the Parliament of Canada. The following month, the Government of Canada stepped in to uphold the principles underlying the Parliament of Canada’s ability to assent to changes made to the Succession to the Throne Act, which has existed since 1701. The challenge involved three other interveners, including the Quebec government on July 17, 2013, and the Canadian Royal Heritage Trust at the end of September.

I deemed it appropriate to file a petition with the Quebec Superior Court to support the constitutionality of the bill that we had passed in this chamber. I would remind honourable senators that under the petition that I filed in court, I am going to uphold the following legal principles: first, the office of the Queen, which is included in section 41 of the Constitution Act of Canada, allows the Parliament of Canada to amend the titles and the nomination of the successor to the throne without amending the office of the Queen per se, which relates to the function and the powers. There is therefore a very clear distinction between the titles of the individual who holds the office and the function and powers of that office.

• (1500)

The second aspect of the submission will basically concentrate on the preamble to the Statute of Westminster, which recognizes that Canada can express its assent, which is required before the Parliament of the United Kingdom can pass legislation. This touches on a fundamental element pertaining to Canada’s international capability.

The third aspect concerns compliance with the Canadian Charter of Rights and Freedoms, in particular sections 2 and 15. Section 2 addresses freedom of conscience and religion, and section 15 addresses equality rights. Honourable senators, these are extremely important principles. Proceedings are under way, and we will have to file expert opinions and factums next spring, in March 2014. I have no doubt that there will be other opportunities in this chamber to keep you apprised of the progress of this important constitutional issue.

*[English]*

That being said, honourable senators, we should think today of the joyful moment of expressing our joy at the birth of an heir to the British throne because this is not only a British throne occupant, this is also an occupant of the Canadian throne. It is our future king. It is in that context that we should express our joy and gratefulness to Her Majesty Queen Elizabeth II.

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

**Some Hon. Senators:** Question.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

[Translation]

## THE SENATE

### MOTION TO SUSPEND THE HONOURABLE SENATOR PATRICK BRAZEAU—DEBATE ADJOURNED

**Hon. Claude Carignan (Leader of the Government),** pursuant to notice of October 17, 2013, moved:

That, notwithstanding any usual practice or provision of the Rules, in order to protect the dignity and reputation of the Senate and public trust and confidence in Parliament, the Senate order a suspension for the Honourable Senator Brazeau for sufficient cause, considering his gross negligence in the management of his parliamentary resources, until such time as this order is rescinded pursuant to rule 5-5(i), and such suspension shall have the following conditions:

- (a) Senator Brazeau, while under suspension, shall not receive any remuneration or reimbursement of expenses from the Senate, including any sessional allowance or living allowance;
- (b) Senator Brazeau's right to the use of Senate resources, including funds, goods, services, premises, moving and transportation, travel and telecommunication expenses, shall be suspended for the duration of the suspension; and
- (c) Senator Brazeau shall not receive any other benefit from the Senate during the duration of the suspension;

That, notwithstanding the provisions of this suspension motion, the Senate confirm that the Standing Committee on Internal Economy, Budgets and Administration retains the authority, as it considers appropriate, to take any action pertaining to the management of Senator Brazeau's office and personnel for the duration of the suspension.

He said: Honourable senators, we will be voting on three motions to suspend three of our colleagues, without pay or benefits, for gross negligence in the management of their parliamentary resources. This disciplinary power is rarely used by this chamber. It is important to remember, however, that these violations of the *Rules of the Senate* have already been proven and established by the Senate.

It has been nearly a year since the Senate Committee on Internal Economy, Budgets and Administration began auditing all senators' expense claims. Following certain allegations

regarding the place of residence of some senators, a subcommittee of that committee ordered an external review on November 29, 2012, to examine Senator Pamela Wallin's travel patterns, which the subcommittee found to be unusual. Her travel patterns included frequent stops in Toronto, as well as return trips between Ottawa and Toronto and between Saskatchewan and Toronto.

I would like to point out that this part of my presentation on historical background and this chamber's authority to exercise disciplinary power under the *Rules of the Senate*, the law and the Constitution covers all three situations. Once I have finished addressing the common scenarios, I will address the three situations separately: that of Senator Brazeau in Motion No. 2, Senator Duffy in Motion No. 3 and Senator Wallin in Motion No. 4.

While travel from Ottawa to a senator's province or territory of appointment for purposes of going home is a usual practice and the foundation of the points travel system, travel to a destination in Canada other than one's provincial or territorial residence may only be claimed if a senator is attending to parliamentary business at that destination.

[English]

On December 6, 2012, the Standing Committee on Internal Economy, Budgets and Administration instructed the Senate Administration to conduct an audit to assess whether all senators' declarations of primary and secondary residences are supported by sufficient documentation.

Following this exercise, on January 3, 2013, outside auditors Deloitte were given an official mandate. On the one hand they would investigate expense claims submitted by Senator Wallin, as well as supporting documents, to determine whether they respect Senate practice by being eligible for reimbursement by the Receiver General or are subject to the interpretation and decision of the Standing Committee on Internal Economy, Budgets and Administration; and, on the other hand, they would examine living expenses made by Senator Wallin in the National Capital Region.

[Translation]

On Friday, February 8, 2013, the Standing Committee on Internal Economy, Budgets and Administration confirmed that external auditors would review the payment of housing allowances claimed by Senator Brazeau, Senator Harb and Senator Duffy because their primary residence declarations were being called into question.

On Monday, February 11, 2013, Senator LeBreton and Senator Cowan sent a letter to the chair and the deputy chair of the Internal Economy Committee, Senator Tkachuk and Senator Furey. They asked the committee to interview each senator who claimed a secondary residence allowance to confirm the legitimacy of such claims.

The letter states:

Should any Senator be unable to convince you that the claim is valid that Senator should be required to repay immediately all monies so paid with interest.

On Tuesday, February 12, 2013, CTV National News reported that Deloitte would also examine Senator Wallin's expenses. She confirmed this news and told CTV:

I certainly did willingly meet with a representative from Deloitte to review travel expenses and I answered all questions and have provided all the necessary information regarding claims.

• (1510)

[English]

February 28, the Standing Committee on Internal Economy, Budgets and Administration reported back to the Senate regarding the documentation to confirm the residency of each senator. The report stated that as a result of this process, no other senators were referred to the external auditor.

Following this investigation, the Standing Committee on Internal Economy, Budgets and Administration concluded that four senators must reimburse the amount they respectively claimed.

[Translation]

In particular, the twenty-third report of May 9, 2013, concerning Senator Brazeau concluded as follows:

It is therefore the conclusion of your Committee that, based on the evidence presented in the examination report, while recognizing the ties of Senator Brazeau with Maniwaki, his level of presence at his primary residence does not support such a declaration. It is contrary to the meaning of the word "primary" and to the purpose and intent of the provision of living allowance in the NCR.

Your committee therefore recommends:

That Senator Brazeau be ordered to reimburse the Receiver General for Canada for any living and related mileage expenses reimbursed to him by the Senate of Canada for the period from April 1, 2011 to date, with interest at prime rate plus one percent; and

That expense claims submitted for reimbursement by Senator Brazeau be overseen by the Subcommittee on Agenda and Procedure of the Standing Committee on Internal Economy, Budgets and Administration, from the date of the adoption of this report for a period not less than one year.

Once the administrative aspects of these cases were settled, following the findings of the Committee on Internal Economy, Budgets and Administration, this committee called for investigations by the competent authorities. These investigations would assess whether other types of offences have been committed. However, no disciplinary action was taken against the senators involved.

[English]

Following Senator Harb's resignation, this file is deemed closed.

The first question we must ask ourselves is if we can, with good reason, impose disciplinary measures on our colleagues. Also, what are our obligations as parliamentarians in these situations?

[Translation]

Before addressing the issue of offences and disciplinary action, I would like to address you, honourable senators, on this institution's power to discipline its members.

As you know, a given behaviour can constitute, depending on the circumstances, a civil fault, a disciplinary fault or even a criminal fault. For example, a member of a professional body may take actions that result in civil liability, disciplinary responsibility and criminal liability.

An individual who works for an employer may do things in his job that will have civil consequences and give the employer the right to demand to be paid back or to impose disciplinary measures such as a suspension, a dismissal or a reprimand. A complaint may also be filed in criminal court.

In the cases before us, the civil faults were acknowledged since three of our colleagues paid back the money they owed. Is there any criminal fault? We do not know whether the conduct in question is of that nature, even if it was such that the Committee on Internal Economy, Budgets and Administration asked for an external investigation. The matter is being investigated by the appropriate authorities. We do not know what will come out of these investigations. Some have suggested that, in the wording of my motion, I was alluding to the notion of gross negligence found in the Criminal Code.

Let me be clear. That is completely false. I never claimed and I never will claim that I am going to show or insinuate that Senators Duffy, Wallin and Brazeau committed a criminal act.

I am going to talk about this later on, but it is the civil notion that I have always referred to and will continue to refer to. Therefore, if my comments or the wording of my motion left some under that impression and hurt Senators Duffy, Wallin and Brazeau, it was certainly not my intention.

We are here to discuss the issue of discipline. Should we suspend a senator who violated the *Rules of the Senate*? The issue is not whether the Rules were violated. That is clear, and the Committee on Internal Economy, Budgets and Administration, which has the exclusive power of determining whether the Rules were followed, has already ruled on this issue.

[English]

Section 19.6 of the Parliament Act stipulates that:

Exclusive authority

19.6 (1) The Committee has the exclusive authority to determine whether any previous, current or proposed use by a senator of any funds, goods, services or premises made available to that senator for the carrying out of parliamentary functions is or was proper, given the discharge of the parliamentary functions of senators,

including whether any such use is or was proper having regard to the intent and purpose of the regulations made under section 19.5(1).

(2) Any senator may apply to the Committee for an opinion with respect to any use by that senator of any funds, goods, services or premises referred to in subsection (1).

Honourable senators, I suggest to you that the violation of this rule has occurred in such a manner and at such a frequency that it constitutes wilful contempt of our institution, and that we must act with disciplinary action to protect its dignity, as well as preserve the public trust in the Senate and Parliament.

[Translation]

In the past, the Senate has had to consider its power to discipline and suspend, as in the case of Senator Thompson in 1998. I want to share what parliamentary law experts told the Rules Committee at the time. During proceedings of the Standing Senate Committee on Privileges, Standing Rules and Orders on Tuesday, February 10, 1998, J.P. Joseph Maingot, Q.C., advisor to the committee, said the following:

The houses of Parliament, each of the 10 provincial houses of assembly and the two territorial assemblies, and their respective members have had certain immunities and parliamentary privileges which have enabled them to carry out their constitutional functions since their creation. These privileges are also legal rights.

[English]

Parliamentary privilege is the necessary immunity that the law provides for Members of Parliament and for members of the legislatures of each of the 10 provinces and two territories in order for these legislators to do their work. It is also a necessary immunity that the law provides for anyone taking part in a proceeding of Parliament or of a legislature. In addition, it is the right, power and authority of each house of Parliament and each legislative assembly to perform their constitutional functions. Finally, it is the authority and power of each house of Parliament to protect its integrity and to enforce its immunity.

• (1520)

[Translation]

Legislative bodies need this legal protection or immunity to perform their functions and to defend and vindicate their authority and dignity.

They enjoy these rights and immunities because the legislatures could not perform their legislative functions without the unimpeded service of the members.

Where do individual privilege enjoyed as a member of Parliament and the duty of the house to protect its integrity come from?

[ Senator Carignan ]

Section 4 of the Parliament of Canada Act reads as follows:

Parliamentary privileges, immunities and powers

4. The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise

(a) such and the like privileges, immunities and powers as, at the time of the passing of the Constitution Act, 1867, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act; and

(b) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those, at the time of the passing of the Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof.

In addition, section 18 of the Constitution Act, 1867, stipulates the following:

Privileges . . . of Houses

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

[English]

The expert in the Thompson case followed with his testimony by referring in this manner of these two prerogatives:

Legislation provides that the powers of the Senate are the same as the powers of the British House of Commons. These powers include the right to regulate its internal affairs free from interference, which includes the right to enforce discipline on members and the right to have the attendance of its members. This power also includes the right to administer its affairs within its precincts and the right to administer that part of statute law related to its internal procedure and internal affairs.

The discipline of a member by reprimand, suspension or expulsion is a matter relating to the Senate's internal affairs.

[Translation]

Matters of procedure and discipline are traditionally under the control of the house alone. The expert, Mr. Maingot, went even further in his testimony:

Thus, if a statute spells out the procedure in the house, unless that statute is constitutionally entrenched, jurisprudence sets out that a house may depart from that

procedure and change or supersede the law. In other words, internal matters are under the control of the house alone.

As part of this study on the power of the Senate to impose sanctions on one of its members, another expert in parliamentary law also addressed the committee. The expert was Neil Finkelstein, a lawyer at Blake, Cassels and Graydon.

When he appeared before the Standing Senate Committee on Privileges, Standing Rules and Orders on February 18, 1998, he said:

[English]

On the power of the Senate to suspend, in my opinion, this too is clear. It is clear that the Senate does have the power to suspend a member, and that that power is not reviewable by a court. Again, it is a question of power and privilege codified by section 4 of the Parliament of Canada Act, provided for in section 18 of the Constitution Act, 1867. I have three reasons for coming to that conclusion.

First, on its face, it is clear that the power to suspend is a power that resided in the imperial House of Commons.

[Translation]

Second, section 18 provides that the Parliament of Canada can give, and has given in section 4 of the Parliament of Canada Act, the Senate up to but not exceeding the powers, immunities, and privileges enjoyed by the imperial House of Commons at Confederation. The power to suspend was a power enjoyed by that house at that time and therefore carries over to this house.

Third, there is nothing in the Constitution Act, 1867, or in any other constitutional instrument of which I am aware, which cuts back on that power. At the end of the day, in my view, the power to suspend a member for contempt is part and parcel of the power of the Senate to control its own process and to protect itself from being brought into disrepute.

Of course, to repeat the obvious, it would certainly be within the Senate's power in this case to use section 59 to reduce or eliminate the sessional allowance during the period of the suspension.

After this study, the committee confirmed that the Senate had the power to suspend and recommended that it exercise that power in the case of Mr. Thompson, given that his failure to obey the chamber order to be present and attend the sittings of the Senate constituted contempt of the Senate. Here are the committee's conclusions:

THURSDAY, February 19, 1998

...

Your Committee met at 7:00 p.m. on Wednesday, February 18, 1998. After careful consideration of all the facts, and of the legal and procedural advice that it has received, your Committee recommends:

1. That the Honourable Senator Andrew Thompson be found in contempt;

2. That, since your committee finds Senator Thompson in contempt, he be suspended for the remainder of the session; and

3. That the matter of Senator Thompson's expense allowance, as provided in the Parliament of Canada Act, be referred to the Standing committee on Internal Economy, Budgets and Administration for immediate action.

The third recommendation is the result of legal uncertainty at the time about the power to suspend a senator's office expenses. It was then clarified when rules 15-2 (1) and 15-3 (1) were adopted, as follows:

15-2. (1) The Senate may order a leave of absence for or the suspension of a Senator where, in its judgment, there is sufficient cause.

15-3. (1) While a Senator is under suspension:

(a) the sessional allowance otherwise payable to the Senator shall be reduced by the amount remaining after any deductions required by any Act of Parliament; and

(b) the Senator shall not be entitled, except as provided in subsection (2), to the use of any Senate resources allocated for the purpose of carrying out the Senator's parliamentary functions, including funds, goods, services and premises as well as any entitlements for moving, transportation, travel and telecommunications.

The express provisions in the *Rules of the Senate* regarding the power to suspend, as passed on February 18, 1998, in accordance with section 59 of the Parliament of Canada Act, also apply to sessional allowance.

[English]

Parliament's powers to decide, by virtue of its privilege to manage its own internal economy matters and to discipline a member, is also the subject of a Supreme Court of Canada decision in *New Brunswick Broadcasting Co. v. Nova Scotia*, a decision handed down on January 21, 1993.

• (1530)

On behalf of the majority, Chief Justice Lamer, on page 341, quotes with approval Mr. Joseph Maingot, whom I have mentioned previously.

[Translation]

Page 12 of Joseph Maingot's *Parliamentary Privilege in Canada* (1987) provides a general definition of the theory of privilege. It reads:

Parliamentary privilege is the necessary immunity that the law provides for members of Parliament, and for members of the legislatures of each of the ten provinces and two territories, in order for these legislators to do their

legislative work. It is also the necessary immunity that the law provides for anyone while taking part in a proceeding in Parliament or in a legislature. Finally, it is the authority and power of each House of Parliament and of each legislature to enforce that immunity.

On page 343 of this ruling, the Supreme Court also cites *Stockdale v. Hansard* (1839), 9 Ad. & E. 1 (K.B.), 112 E.R. 1112, at page 1199 E.R., where Justice Coleridge, later Lord Chief Justice, made the following statement to this effect:

...that the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules, or derogation from its dignity, stands upon the clearest grounds of necessity.

Justice McLachlin, now Chief Justice of the Supreme Court of Canada, also expressed her opinion on page 377. She said:

It seems indisputable that the inherent privileges of Canada's legislative bodies, those "certain very moderate privileges which were necessary for the maintenance of order and discipline during the performance of their duties" (see R. M. Dawson, *The Government of Canada* (5th ed. 1970), at p. 338), fall within the group of principles constitutionalized by virtue of this preamble. The principles constitutionalized in this manner were seen to be unwritten and unexpressed; I do not understand the entrenchment of written rights guarantees, or the adoption of specific written instruments, to negate the manifest intention expressed in the preamble of our Constitution that Canada retain the fundamental constitutional tenets upon which British parliamentary democracy rested.

Honourable senators, this passage confirms that not only do we have the power to discipline under our *Rules of the Senate* and the Parliament of Canada Act, it is a fundamental constitutional right. Justice McLachlin ends with these words on page 378:

I conclude that the written text of Canada's Constitution supports, rather than detracts from, the conclusion that our legislative bodies possess those historically recognized inherent constitutional powers as are necessary to their proper functioning.

Further on she says:

[English]

It has long been accepted that in order to perform their functions, legislative bodies require certain privileges relating to the conduct of their business. It has also long been accepted that these privileges must be held absolutely and constitutionally if they are to be effective; the legislative branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch.

[Translation]

She concludes on page 384:

In summary, it seems clear that, from an historical perspective, Canadian legislative bodies possess such inherent privileges as may be necessary to their proper

functioning. These privileges are part of the fundamental law of our land, and hence are constitutional. The courts may determine if the privilege claimed is necessary to the capacity of the legislature to function, but have no power to review the rightness or wrongness of a particular decision made pursuant to the privilege.

Honourable senators, I want to go over that last sentence again. When the Senate exercises its necessary power stemming from its inherent privileges, such as the right to discipline its members,

The courts may determine if the privilege claimed is necessary to the capacity of the legislature to function, but have no power to review the rightness or wrongness of a particular decision made pursuant to the privilege.

That begs the question, honourable senators: in the three cases before us, must we take action?

This is what Chief Justice of the Supreme Court of Canada, Justice McLachlin, said in another decision.

[English]

In *Harvey v. New Brunswick*, paragraph 62 of the judgment handed down on August 22, 1996, Justice McLachlin said:

When faced with behaviour that undermines their fundamental integrity, legislatures are required to act. That action may range from discipline for minor irregularities to expulsion and disqualification for more serious violations. Expulsion and disqualification assure the public that those who have corruptly taken or abused office are removed. The legislative process is purged and the legislature, now restored, may discharge its duties as it should.

In this decision, Justice McLachlin again revisits the historical perspective of the parliamentary privilege to discipline, in paragraph 64:

The history of the prerogative of Parliament and legislative assemblies to maintain the integrity of their processes by disciplining, purging and disqualifying those who abuse them is as old as Parliament itself.

She then goes on to quote Erskine May, author of the *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*, fifth edition, 1863.

[Translation]

Justice McLachlin continues, stating in paragraph 67 on page 916:

It is thus clear that Parliament and the legislatures of Canada are not confined to regulating procedure within their own chambers, but also have the power to impose rules and sanctions pertaining to transgressions committed outside their chambers.

Later on, in paragraph 76 on page 920, she says:

The authorities establish that expulsion from the legislature of members deemed unfit is a proper exercise of parliamentary privilege. Regarding the British House of



Commons, Erskine May, *supra*, wrote that, “[n]o power exercised by the Commons is more undoubted than that of expelling a member from the house, as a punishment for grave offences” (p. 58).

In Canada, J. G. Bourinot, in *Parliamentary Procedure and Practice in the Dominion of Canada* (2nd ed. 1892), at pp. 193-94, affirmed the same rule:

• (1540)

The power of Parliament to expel a member is undoubted. This power has been repeatedly exercised by the English and Colonial Parliaments, either when members have been guilty of a positive crime, or have offended against the laws and regulations of the House, or have been guilty of fraudulent or other discreditable acts, which proved that they were unfit to exercise the trust which their constituents had reposed in them, and that they ought not to continue to associate with the other members of the legislature.

Honourable senators, I must stress the following excerpt:

...when members have been guilty of a positive crime, or have offended against the laws and regulations of the House.

The judge reaffirmed that this right to discipline is not subject to judicial review. The following excerpt is from paragraphs 78 and 79, page 921 of the same decision:

The right of expulsion on these two grounds —discipline and unfit behaviour — is a matter of parliamentary privilege and is not subject to judicial review. Thus Maingot . . . concludes at pp. 161-62.

One might wonder about the basis for this lack of judicial review of Parliament’s disciplinary decisions. The Chief Justice explains in paragraph 79, page 921:

The point is not that the legislature is always right. The point is rather that the legislature is in at least as good a position as the courts, and often in a better position...

— I emphasize “and often in a better position” —

...to decide what it requires to function effectively. In these circumstances, a dispute in the courts about the propriety of the legislative body’s decision, with the delays and uncertainties that such disputes inevitably impose on the conduct of legislative business, is unjustified.

Honourable senators, why take action in these three specific cases? What exactly is the alleged offence? It is simple: contempt of Parliament.

I would like to read from the notice of motion that I gave concerning Senator Brazeau. It states:

[...] notwithstanding any usual practice or provision of the Rules, in order to protect the dignity and reputation of the Senate and public trust and confidence in Parliament, the Senate order a suspension for the Honourable Senator Brazeau for sufficient cause, considering his gross negligence

in the management of his parliamentary resources, until such time as this order is rescinded pursuant to rule 5-5(i), and such suspension shall have the following conditions [...]

The notice then outlines the various conditions, which I will not repeat here today.

A parliamentary publication produced under the direction of Robert Marleau and Camille Montpetit contains the following edifying information regarding this infraction. It states:

These “peculiar rights” can be divided into two categories: those extended to Members individually, and those extended to the House collectively. The rights and powers of the House as a collectivity may be categorized as follows:

1) - the power to discipline, that is, the right to punish (by incarceration) persons guilty of breaches of privilege or contempts, and the power to expel Members guilty of disgraceful conduct;

2) - the regulation of its own internal affairs.

[English]

Any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed, is referred to as a contempt of the House. Contempt may be an act or an omission; it does not have to actually obstruct or impede the House or a Member, it merely has to have the tendency to produce such results.

... either House can, formally by resolution, decide not to claim or apply privileges it has hitherto claimed.... And finally, each House can individually adjudicate and punish breaches of its privileges.

[Translation]

With regard to the question of privilege or contempt, just as it is impossible to categorize or delineate contempts, it is also impossible to categorize their seriousness. They can vary greatly in that regard, ranging from a minor breach of decorum to a serious attack on the authority of Parliament.

Why is it that these breaches are not minor ones but something that I call gross negligence in my motions?

As honourable senators know, my background is in civil law, and the examples that came to my mind relate to civil law. I referred to the notion of gross negligence because it illustrates the difference between a simple mistake made in good faith, which can sometimes be of an administrative nature and can be made in the course of our daily activities, and a more serious mistake that reflects a laissez-faire attitude, carelessness and negligence. This may include not doing something that should obviously be done.

[English]

Gross negligence on the part of a lawyer on a case is, for example, a blatant omission, mismanagement, carelessness or recklessness. This carelessness is made even worse if, as a net result, the senator had a financial benefit and made money on

taxpayers' backs. This makes it even more unacceptable and offends the public. And it is this type of behaviour which undermines the dignity of the institution, since a simple mistake made in good faith would not have produced such a public outcry.

The fact that the Committee on Internal Economy, Budgets and Administration, in addition to confirming that the Rules were not followed, decided to refer the matter for an additional external investigation by competent authorities is further proof of the seriousness of the wrongdoings.

[Translation]

Consequently, since any legislative body has the undoubted right to suspend or expel one of its members for what seems sufficient grounds, and since it absolutely needs such power to preserve its dignity, as pointed out by Justice McLachlin, it must intervene to protect its dignity when it finds a breach.

Honourable senators, I submit that the three cases before us are violations of the established rules. They are of such magnitude and were committed with such a degree of repeated carelessness and such frequency that they undermined the integrity of the institution. Therefore, we must act to preserve its dignity and protect its integrity. We cannot ask Canadians to respect our institution if we do not respect it ourselves.

Without repeating what is said in the reports of the Standing Senate Committee on Internal Economy, Budgets and Administration concerning each of the three senators, to which the Deloitte reports are appended, I would like to draw your attention to a few points.

• (1550)

As I explained earlier, section 19.6 of the Parliament of Canada Act stipulates that the Standing Committee on Internal Economy, Budgets and Administration has the exclusive authority to determine if the rules governing administration of spending were followed.

In the case of Senator Brazeau, I would like to read excerpts from the twenty-third report, which was tabled on Thursday, May 9, 2013.

On November 22, 2012, your Committee created a Subcommittee on Living Allowances to investigate media reports with respect to Senator Patrick Brazeau's living allowances in the National Capital Region (NCR); and to inquire into and report on all matters relating to living allowances in the NCR.

The Subcommittee began its examination of Senator Brazeau's living allowance claims with an internal review of all Senate policy instruments relating to living and travel expenses, together with Senator Brazeau's claims and related documents. The period of review was established as April 2011 to September 30, 2012, or from the time that

Senator Brazeau began to claim living expenses for a rented home in the NCR to the last month that full invoices and other records were available to the Subcommittee. Documents internal to the Senate Administration, specifically telecommunications invoices for Senator Brazeau's mobile phone supplied by the Senate, assisted your Subcommittee to notionally establish Senator Brazeau's location during the period of review, i.e., Ottawa versus his declared primary residence, Maniwaki. The information and analyses provided to the Subcommittee raised a number of questions that warranted discussion with Senator Brazeau directly. The Subcommittee therefore invited the Honourable Patrick Brazeau to attend its meeting of December 11, 2012 at 6 p.m. Senator Brazeau was accompanied by his lawyer.

The internal review of Senator Brazeau's claims represented many employee work-hours and resulted in issues that merited an external third party review of the information. Your Subcommittee therefore referred the claims and related findings to Deloitte. A contract was entered into with Deloitte on January 3, 2013, for an independent examination . . . .

Deloitte was asked to review the travel claims and supporting documentation to determine whether the travel occurred or could have occurred; to categorize the claims as appropriate, subject to reimbursement to the Receiver General, or subject to consideration and determination by the Standing Committee on Internal Economy, Budgets and Administration; as well as to assess where the primary residence was located for Senator Brazeau. Deloitte conducted an examination of Senator Brazeau's claims, for which their report is attached as an Appendix. Deloitte's examination provides analysis of the claims and, using a variety of sources, Deloitte was able to confirm with a high degree of accuracy Senator Brazeau's location during the period of review, that is from April 1, 2011 to September 30, 2012. This information is fundamental to our determination of the Senator's primary residence.

In its report, Deloitte noted that prior to the adoption of the Senators' Travel Policy on June 5, 2012, a definition of primary residence did not appear in Senate policy instruments. Deloitte further noted that, "The regulations and guidelines applicable during the period of our review do not include criteria for determining primary residence." Given this, Deloitte reported that they were "not able to assess the status of the primary residence declared by Senator Brazeau against existing regulations and guidelines." However, they did conclude that all of the trips between the Senator's respective primary and secondary residence "did take place or could have taken place."

Your Committee acknowledges Deloitte's observation regarding the absence of criteria for determining primary residence. It is nonetheless our conclusion that the Primary and Secondary Residence Declaration form in force during the scope of these investigations and signed by Senator Brazeau is amply clear, as is the purpose and intent of the guidelines (as of June 2012, policy) to reimburse living expenses. In summary, the Declaration requires Senators to

[ Senator Carignan ]

affirm whether their primary residence is “within 100 kilometres from Parliament Hill” or is “more than 100 kilometres from Parliament Hill.” The purpose and intent of the policy instrument is to allow Senators, who do not have their home within 100 kilometres of Parliament Hill and would not be in Ottawa if it were not for the fact that they are Senators who must attend Senate business, to not incur additional costs for accommodations . . . any residence owned or rented by a Senator must be a secondary residence, not the place where he or she ordinarily lives, for use by the Senator while in the NCR for Senate business. Your Subcommittee considers this language to be unambiguous and, plainly, if a Senator resides primarily in the NCR, he or she should not be claiming living expenses for the NCR.

Deloitte’s reports have been very helpful to our determination of the appropriateness of the living expense claims filed. Senator Brazeau was found to have spent approximately 10 percent of the 549 days in the period of review at his declared primary residence of Maniwaki, with an additional 13 identified day trips to the Maniwaki area.

It is therefore the conclusion of your Committee that, based on the evidence presented in the examination report, while recognizing the ties of Senator Brazeau with Maniwaki, his level of presence at his primary residence does not support such a declaration. It is contrary to the meaning of the word “primary” and to the purpose and intent of the provision of living allowance in the NCR.

Consequently, your committee recommends that Senator Brazeau be ordered to reimburse monies in accordance with the various findings.

I would like to also cite section 4.03(14), quoted on page 8 of the Deloitte report, with respect to eligibility for the allowance. I have the *Senate Administrative Rules* that were in effect in the period at issue.

Section 4.03(14) states:

A Senator whose provincial residence in the province or territory the Senator represents is more than 100 kilometres from Parliament Hill, and who is within 100 kilometres of Parliament Hill for the purpose of carrying out the Senator’s parliamentary functions is on travel status in the National Capital Region.

Thus, there are two conditions. The first is that the provincial residence is more than 100 kilometres away; the second is that the senator is within 100 kilometres of Parliament Hill for the purpose of carrying out his parliamentary functions. Therefore, when the senator is in Ottawa, he must be here to carry out his parliamentary functions, for which he may claim living expenses.

Section 15 states:

A Senator on travel status in the National Capital Region is entitled to claim [the following] in respect of accommodation expenses . . .

I repeat:

A Senator on travel status in the National Capital Region is entitled to claim [the following] in respect of accommodation expenses . . .

a) cost of hotel;

b) cost of rented accommodation —

— which is the case for Senator Brazeau —

c) an allowance for private accommodation —

— which was the case for Senator Duffy. —

• (1600)

16. A Senator on travel status in the National Capital Region is entitled to claim an allowance for meal and incidental expenses incurred by the Senator.

17. An allowance for meal and incidental expenses incurred by a Senator who is on travel status for a day of arrival in or departure from the National Capital Region may be claimed under section 11.

There is also section 19:

19. Subject to the need to fulfil their parliamentary functions and to obtain reasonable comfort and convenience, a person shall exercise due economy in the selection of travel options.

Honourable senators, because the committee alluded to it, I would also like to talk about the form which is clear. We all sign the form to request reimbursement or to claim travel expenses at least once a week. We sign another statement when required, which is usually once a year or every two years, or if there is a change in our situation.

I want to read a few passages from the primary and secondary residence declaration form.

The subtitle is, “Senators’ Living Expenses in the National Capital Region.”

It indicates the primary residence, the name of the senator and the region he or she represents, and the senator must check the section that states:

My primary residence is more than 100 kilometres from Parliament Hill, for the purpose of the Twenty-Second report of the Standing Senate Committee on Internal Economy, Budgets and Administration, adopted in the Senate on June 18, 1998.

Those of us who have been around a bit longer will remember that this is when the infamous allowance for staying in Ottawa was established and that the purpose of that allowance was to

compensate senators who had to stay in Ottawa to carry out their parliamentary functions.

Also on the form, in section B, it states:

A senator who owns a secondary residence in the NCR will be reimbursed a flat rate.

Thus, regarding residency, in order to be reimbursed, the form is clear. I repeat:

A senator who owns a secondary residence in the NCR will be reimbursed a flat rate.

In section C, it states:

A Senator who leases or rents . . .

— which is Senator's Brazeau's case —

. . . accommodations in the NCR will be reimbursed.

The senator must then put an "x" in the box where it states:

I rent a secondary residence in the NCR and meet the above conditions.

Another important aspect of this form is the senator's declaration, which states:

I declare that the information provided above is accurate as of the date of this declaration and that all receipts or reimbursement requests are compliant with the *Senate Administration Rules* and Senate policies and guidelines. I will advise the Financial Services Division immediately of any changes in the status of my residences and will amend this declaration accordingly.

I must emphasize this. Senators must declare that the information provided on the form is accurate as of the date of declaration and that all receipts or reimbursement requests will be presented in accordance with the *Senate Administrative Rules* and Senate policies.

I read you part of the *Senate Administrative Rules* earlier regarding the conditions for claiming expenses, namely, the existence of a secondary residence and the fulfilment of parliamentary functions when occupying a secondary residence. This is only logical. I am among those who rent in the NCR. If I come here to attend the hot air balloon festival, I cannot submit an expense claim. If I come here to carry out my parliamentary functions, I am entitled to an expense claim.

Another form that the Standing Committee on Internal Economy, Budgets and Administration judged to be clear was the form that is filled out almost every week, depending on the senator, with the titles mentioned therein. The name of the form that senators sign to claim housing allowances and per diems is the "Travel Expense Claim."

The name implies that when you are here and you are claiming money, you are travelling. Because if you live here, you are not travelling.

The subtitle is "64 Points Travel System and Living Expenses in the N.C.R."

The form states:

Please complete one claim per trip for each payee, sign the claim, and attach all original receipts.

Complete one claim per trip. It is rather clear that this requires some form of travel.

The form also states, "Check applicable box(es) for travel by the Senator," "Date(s) of Travel," "Itinerary," "Purpose." If I came to Ottawa for parliamentary business, there is a line for "Cheque Payable to," which in my case would be me.

I will continue. The next subtitle is "Accommodation and Per Diems (Living Expenses in the N.C.R.)." At the bottom, once again, the individual must sign where it states:

I hereby certify that these charges are in accordance with the *Senate Administrative Rules*.

Every time we make a claim and sign the form, we certify that these charges are in accordance with the *Senate Administrative Rules*.

These sections are identified in the Deloitte report on page 8, under the title "Eligibility to claim living expenses." There, under "Travel Status," is section 4.03(14), which I quoted. The report quotes the text, which clearly states that:

A Senator whose provincial residence in the province or territory the Senator represents is more than 100 kilometres from Parliament Hill, and who is within 100 kilometres of Parliament Hill for the purpose of carrying out the Senator's parliamentary functions . . .

Therefore, he must be here to carry out his parliamentary functions to be considered on travel status.

Next, under living expenses, the report quotes section 2.8 of the *Senators' Resource Guide*, Section IV, Travel:

Senators who come to Ottawa to carry out their parliamentary functions and who are more than 100 kilometres from their primary residence when in Ottawa are on travel status . . .

• (1610)

When I certify that these expenses were incurred in accordance with the *Senate Administrative Rules*, I am certifying that I am in compliance with chapter 4.03, section 14, which says that I am in Ottawa to carry out my parliamentary functions.

It is possible to have doubts. Even though a majority of people know exactly where their primary residence is, I understand that in certain situations, there may be grey areas; it is quite rare, but we have seen that there could be a grey area about the location of the primary residence. One thing is certain, however:

when I come here, in order to be entitled to my allowance, I have to be here to carry out my parliamentary functions and only if I meet that condition may I claim reimbursement for expenses.

The Deloitte report, at page 9, discusses eligibility to declare a secondary residence, which I referred to earlier. Under the section on claimable living expenses, living expenses in the NCR, it again quotes chapter 4.03, sections 14 and 15, which say that a senator who is travelling is entitled to claim various expenses.

I would also like to draw your attention to page 17 of the Deloitte report, which is attached to the report, and to the decision of Committee on Internal Economy, Budgets and Administration. I would point out that the committee has the exclusive power to determine whether expenses were appropriate. It is thus not for a court to decide, it is not for an accounting firm to decide, it is not for whomever to decide; it is up to the Committee on Internal Economy, Budgets and Administration to do that.

At page 17, table 7, "Monthly Detail of Senator Brazeau's Location," our analysis shows that Senator Brazeau was in Ottawa for 443 days out of the 549 that made up the period we examined, representing about 81 per cent of the time; 76 days, or 14 per cent, for documented Senate business; 50 days, or 9 per cent, immediately before or after Senate business; and 317 days, or 58 per cent, in Ottawa for unknown reasons. The senator has stated that when he is in Ottawa, he spends five days a week on Senate business, whether documented or not.

If a senator is travelling to Ottawa and is here to determine or claim expenses, it has to be for the purpose of carrying out parliamentary functions. That is self-evident.

In April 2011, when Senator Brazeau made his first declaration, Senator Brazeau made two declarations of primary and secondary residences. Excuse me, he made three: the first was on March 3; the second was on April 11, 2011. The report starts in April 2011. He made one more, on March 14, 2012. If we look at the table of Senator Brazeau's locations, we see, by doing the calculations, that in February 2012, for Senate business between April 2011 and February 2012, he used 48 days; for other location Senate business, eight days; for work in Ottawa the day before or after Senate business, 31; for undocumented activity in Ottawa, 191 days; at his declared primary residence in Maniwaki, 32 days; other location, 11. So in February 2012, he spent 14 per cent of the time on documented Senate business and 58 per cent of the time in Ottawa for other reasons. By February 2012, after one year, he may have been using his secondary residence in this way but in March 2012, his secondary residence had become his primary residence, in Gatineau.

I would remind honourable senators that on the declaration of primary and secondary residences, the certification says: "I will advise the Financial Services Division immediately of any changes in the status of my residences and will amend this declaration accordingly." He signed it on March 14, 2012, after a period of a year with this operation or this use of periods of days or of his supposedly secondary residence. A year later he was still declaring, on March 14, 2012, that his primary residence was in Maniwaki and his secondary residence was in Gatineau.

So for travel before April 1, 2011, it is difficult to determine, because we do not have a travel record in the file and it is before the period covered. For the second period, however, on March 14, 2012, he identified Gatineau as his secondary residence, even though it is located 133 kilometres away from his primary residence. By March 14, 2012, he had spent more than 191 days out of 321 in Ottawa for undocumented reasons.

If we take the Deloitte report, at page 13, we see that the senator signed 29 expense claims for year 1, and 14 after that up to April 1, 2012. He therefore declared and certified on at least 14 occasions, and at most 43 occasions, that he was on travel status in the National Capital Region, when in fact he was living in Gatineau.

The form for declaring these expenses is actually very clear. Was this a matter of good faith? Was it in good faith? Perhaps. As for the interpretation of the concept of secondary residence, when you live in Gatineau 91 per cent of the time and you spend 10 per cent of your time in Maniwaki, 133 kilometres away, and on 43 occasions, you sign a claim for living expenses entitled "Travel Expense Claim; Points Travel System; complete one claim per trip; certify that charges are in accordance with the Rules." I think, honourable senators, there is a serious problem. We have a duty to make sure that claims are valid when we sign them and certify them. We are the ones certifying them; we are making the declaration on our honour.

I think the senator's 7 conduct is characterized by mismanagement and by carelessness, recklessness, in his claims. The declarations he completed amount to gross negligence.

• (1620)

In addition to repeatedly breaking this rule, he consequently made inappropriate claims and undermined the dignity and integrity of the Senate. When we control taxpayers' money and, with the stroke of a pen, can transfer money automatically from the public purse, and when we can submit a claim, by signing or certifying it, and then on the strength of that claim, the money is transferred directly to our bank account, we must be very careful.

This is not our money; it is the taxpayers' money. We must be careful. Therefore, I respectfully submit that showing this degree of carelessness, of recklessness, amounts to gross negligence in my opinion, and we cannot allow it to go unpunished.

[English]

**Hon. David P. Smith:** Senator Carignan, I'm not rising to defend the actions of the three senators these motions apply to, and I still have an open mind, but I have two questions that really deal with the issue of due process. Of course we are all aware that the Deloitte reports were all referred to the RCMP several months ago and to date no charges have been laid.

You did give a very thorough legal rationalization as to jurisdiction, but I want to read from the Charter of Rights and Freedoms. I don't recall references to the Charter of Rights and Freedoms in your argument, but section 11 states:

11. Any person charged with an offence has the right...

— and, of course, two of the three have not been charged —

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

Let me repeat:

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

If I go over to section 32(1) of the application of the Charter, it states:

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament . . .

Do you believe that these motions specifically comply with the Charter, and do you have a legal opinion to that effect? If so, could you table it for us?

[Translation]

**Senator Carignan:** Thank you for your question, honourable senator. I will not answer soon; I will answer right now.

Section 11 of the Charter applies to persons charged with criminal offences. Here we are not talking about a criminal trial. We are talking about exercising our power to discipline.

The case of Senator Brazeau is a good example of this procedural difference. During the last session, Senator Brazeau regretfully was charged with criminal offences in a case outside this chamber. This forced us to make a decision to place him on leave.

Therefore, if I take rule 15 —

**Senator Brazeau:** With pay.

**Senator Carignan:** With pay, precisely. Thank you for pointing that out. Rule 15-2(1) states that:

The Senate may order a leave of absence for or the suspension of a Senator where, in its judgment, there is sufficient cause.

What is the difference between a leave of absence and a suspension? Rule 15-2(2) states:

When a leave of absence is granted, it is solely to protect the dignity and reputation of the Senate and public trust and confidence in Parliament.

Rule 15-2(3) states:

Except as provided in subsection (4), a Senator on leave of absence or under suspension shall not attend any sitting of the Senate . . .

Rule 15-2(4) stipulates that:

To avoid disqualification, a Senator who is on leave of absence or under suspension for more than a full session may attend the Senate . . .

Rule 15-3(4) states:

Where a finding of guilt is made against a Senator who has been charged with a criminal offence that was prosecuted by indictment, the Standing Committee on Internal Economy, Budgets and Administration may order the withholding of the payable portion of the sessional allowance of the Senator in accordance with paragraph (1) (a) as if the Senator were suspended.

Rule 15-4(2) states:

When notice is given under subsection (1) . . .

— in other words, charges were laid and the person was found guilty —

. . . the Senator charged is granted a leave of absence from the time the notice is tabled . . .

It was rule 15-4(2) that I was looking for regarding leave of absence.

When a senator is charged with a criminal offence, the clerk is notified by means of a signed written notice and the senator is given a leave of absence. Why? The senator is presumed innocent and the leave protects the dignity of the Senate.

The section on suspension and the power to suspend differs from the notion of leave. A suspension is something else. As the Supreme Court indicated to us, we can use our power to discipline by suspending for any other offence, such as breaking the rules or contempt of Parliament.

I do not wish to discuss the issue of external investigations. That is not part of the debate. We are currently exercising our disciplinary power.

The best example that I can provide is the following. Imagine you are an employer and a crime is committed elsewhere. Your employee is a victim of crime or is accused of committing a crime elsewhere. You do not fire the employee. You wait for him or her to be convicted, you wait and see what happens and you ensure that there is no conflict with his or her work.

But if the incident happened at your workplace, you as the employer would ask the employee for reimbursement. You might suspend or fire the employee — disciplinary power — and you might phone the police and say to them “Arrest the employee, conduct an investigation, and if he is found guilty, then the employee is guilty.” That does not prevent you from exercising your disciplinary power. That is an example of an action that is also a criminal offence.

I do not believe that we can deal here with the issue of a criminal offence because it is under investigation. We are talking about exercising our disciplinary power to impose a suspension. A

person subject to disciplinary action is not criminally charged, and the Charter does not apply to Parliament in this case. The Charter does not apply to disciplinary action against a member of Parliament. It is a power, and it is the thrust of the decision in *Harvey v. New Brunswick*. That is it exactly. The judge stated that they tried to apply the Charter to Mr. Harvey. They said no, that the power to discipline is distinct, and that that part of the Charter does not apply to him because the constitutional power to discipline is at least equal to that provided for in the Charter. That is very clear in the decision.

• (1630)

[English]

**Hon. Elaine McCoy:** Would the honourable senator entertain a question?

First of all, this is the first opportunity I've had formally in this chamber to congratulate you on your new position. I'm really only sorry that your first official act had to be something of this serious nature, and I hope that that's not an omen for the future, for a long and fruitful tenure at this stewardship role that you take on.

I congratulate you again on your speech. It always impresses me when you speak. You do take a legalistic approach, and you are very careful to cite your precedents and the grounds upon which you have come to your conclusions, and I listened as carefully as I could to those.

You went on at some length describing the powers of the Senate. I have no question on that. I think we do have a great power, but of course with great power comes great responsibility. And we must move, I think, with every degree of natural justice, fairness and propriety, and be seen to be doing so.

I am concerned about the use of your language in choosing the phrase "gross negligence," and I base this upon my understanding of the law. We probably all had Torts 101 in first-year law school, and, still being frightened of that institution, we probably never will forget it. I know my torts law professor was quite terrifying.

As I recall the definition of "negligence" — and I will ask if this accords with yours — it is, broadly speaking, a duty of care, but it is a duty of care that an individual owes to be sure that his or her action does not harm another person or property, and that is what negligence truly is. Would you agree with that?

[Translation]

**Senator Carignan:** If I understood your question on gross negligence correctly, it relates to the notion of repetition. For me, it is important to use this civil law notion because I am familiar with it. I think your background is in common law. But the notion invoked here is carelessness, recklessness, mismanagement in the documents that are prepared. Again, some people thought I was suggesting this was of a criminal nature. It is absolutely not my intention to refer to this notion in a criminal law sense.

In my opinion, when we certify something and put our signature on a document, we should check to ensure that everything is in order. I must be careful if the document that I

sign will result in a transfer of public money, of taxpayers' dollars, into my personal account. What is the minimum degree of caution that I must observe? I must certify that the facts are accurate.

I may have made a mistake once about a date. On another declaration, I may have made another mistake regarding the date. I may even have made such a mistake a third time. However, after making three, four or 23 mistakes when signing or certifying something that is not accurate, am I guilty of carelessness or recklessness if I say, "I am signing this because, in any case, I will be reimbursed. They will not ask any questions." Is that the case? I do not know. In my opinion, there is an element of negligence, carelessness and recklessness, and this is reflected in the notion of gross negligence.

I do not want to say that it is criminal. There are investigations going on. The issue will be debated at another level, before the courts. If there are investigations that — I hope with all my heart that it is not the case — however, when I look at this and see the repetitive nature, when I see that the rules were violated, because the Rules Committee, which has the exclusive power to make that determination, has made such a determination, I cannot help but feel that negligence is involved. I am trying to rule out the possibility that the senators did this intentionally.

I can only think they showed gross negligence. I do hope they did not do this intentionally, with *mens rea*, because that would bring on other consequences.

[English]

**Senator McCoy:** I have a supplementary question. I was asking about the term "negligence." Much of what you have said makes sense to me. I'm concerned — and this is a legalistic point — with setting a precedent in this chamber, calling something "negligent," or even "gross negligence," when it is not really true from a legal position. It is a misuse, almost a distortion, of a legal concept. When you say "reckless" or "careless" but you don't want to imply knowledge of the act, then would we not be best to say that?

Let me ask you the following question, and I do intend to raise these points again before we're through: How do we know the difference between somebody signing frequent expense claims over a period of time, that somehow some of them are honest mistakes, some of them are negligence, some of them are gross negligence, and therefore different consequences follow? That has not been made clear to me.

May I just point out how contemporary that question is. Two weeks ago, a member of the steering committee of Internal Economy, who indeed was handling these complaints in the first place, said she had reimbursed the Senate for having misclaimed on the same issue, secondary residence. It was an honest mistake, some member of your caucus was heard to claim, or so it was reported.

I've heard other rumours, not publicly, that other members of your caucus have repaid expenses. I don't know the truth of that.

But how do I know, without our being very clear or at least using language that is legally correct?

[Translation]

**Senator Carignan:** To me, the difference is in the frequency, in the continuous repetition of the same mistake. You gave the best example when you said, “Yes, we can all make mistakes and we have probably all made some.” The Auditor General is here. He will probably find that a majority of senators made the kind of mistakes where we say, “Oh, sorry. I claimed that amount, but it was an honest mistake made by my assistant.” We lawyers would often say that the mistake was made by our assistants. They took a lot of blame. This is the kind of honest mistake that is sometimes made in our daily activities.

• (1640)

When this type of error is continuously and frequently repeated to a point where it becomes unusual — these are the terms used by the Internal Economy Committee — that becomes a problem. And in the cases we are dealing with, this posed so many problems to the committee members that they decided to refer the matter to the proper authorities for external investigations. Therefore we must read between the lines that this was found to be an extremely serious issue; indeed this was written in the minutes of one of the hearings, which concerned Senator Duffy — but I want to try to stay on the case of Senator Brazeau.

In terms of the notions of negligence, carelessness and recklessness, if I keep signing without looking, if I keep certifying without looking, and the consequence of this is that I take public money and transfer it to my personal bank account, and if this is continuously repeated, in my opinion this is gross negligence. When we sign a form, we must take care to examine it carefully to see that it is compliant and that we are not being careless. In my view, the accumulation of these errors demonstrates recklessness, especially when there is a frequent and repetitive pattern.

If this happens to someone else, and I hope not, and we have this concept of gross negligence, we will have set a precedent. But frankly, if it happened to me, you would suspend me — that is the consequence.

[English]

**Senator McCoy:** I did not hear you quoting section 33 of the Constitution Act, 1867, which states that if a question of qualification or vacancy of a senator arises, “it shall be heard and determined by the Senate.” I would like your opinion on that. Why would we suspend, or are you saying that the word “suspension” is a synonym of “expulsion”? Is that your position?

[Translation]

**Senator Carignan:** No, suspension does not mean expulsion, and suspension does not cause disqualification as a senator. The suspension I recommend in my motion would run until the end of the session. Consequently, at the next session, if the Senate does not act further, the senators can return to their duties. But the motion reads “until rescinded,” so, technically, the Senate could rescind the limit or the duration later.

However, of course I am not recommending here that we go as far as expulsion, which would mean disqualification.

[English]

**Hon. Percy E. Downe:** I’m not clear on your last statement. Which is it? Are they expelled from the Senate until the next session, or are they expelled, if this motion passes, until it’s rescinded?

[Translation]

**Senator Carignan:** The motion talks about suspension. I have always talked about suspension. The authority set out under our Senate Rules can be found in rule 15, which talks about:

...suspension...where...there is sufficient cause.

Our powers under the Parliament of Canada Act also include suspension. It appears in section 18 of the Constitution, but it is rather unclear, because it has to do with the immunities and privileges that applied to the British House of Commons in 1867. There is jurisprudence, which is why I quoted the Supreme Court, which gives a good outline of the historical context of the immunities and privileges under section 18.

There is also section 31. If, for instance, someone were to face criminal charges — as was the case with Senator Lavigne — and were found guilty, section 31 sets out the situations in which that individual must be disqualified. However, with privilege, under section 18, this is discretionary, and as I explained earlier, this chamber is master of its own affairs, of its own procedures. The procedure here is typical of all decisions that we make in this chamber. All decisions, even individual decisions, are always made in this manner, with debate and with limits on our speaking time and the various means we have of expressing ourselves. Furthermore, the Supreme Court has told us, “You know, perhaps the best way is to leave it up to the legislature to deal with its own affairs, based on its rules; I think that is the best solution.”

We must be cautious before trying to use procedures from courts of law here, because the Supreme Court says that it is best for the legislature to handle this with its own procedures in its own system.

[English]

**Senator Downe:** Thank you very much for that information. Unfortunately, I didn’t hear an answer. Are you proposing today that this “suspension,” as you call it, “expulsion” as I call it, is until Parliament is prorogued the next occasion, or is it open-ended?

[Translation]

**Senator Carignan:** I do not know how my answer could be clearer. My motion talks about suspension. I talked about suspension. I used the word repeatedly. I do not see how you can insinuate that I am calling for expulsion. I do not understand.

[English]

**The Hon. the Speaker:** Are there further questions and comments? The Honourable Senator Eggleton.



**Senator Cowan:** I was going to enter the debate.

**The Hon. the Speaker:** Senator Eggleton has a question and comment.

**Hon. Art Eggleton:** I have one question regarding the level of penalty. There's a wide range that one could consider in terms of level of penalty. Frequently, when those considerations are made in a judicial process, for example, all of the circumstances are taken into consideration in determining what that should be.

You've outlined in (a), (b), and (c) the level of penalty that you think should be put on these three members. Yesterday, the solicitor for Mr. Duffy said that he was led to believe that this was all okay, both by your predecessor, the former Leader of the Government in the Senate, and also by the Prime Minister's Office. Shouldn't we know all of those facts? Shouldn't all those facts be taken into consideration as part of determining the level of penalty? Why have you arrived at this level of penalty, and what about that other information?

[Translation]

**Senator Carignan:** I hear your political question. Penalties are obviously important, but for the time being, we are discussing the motion concerning Senator Brazeau, and I think it is important to note — and I quoted it — that section 15 of the Parliament of Canada Act states that the Internal Economy Committee has the exclusive authority to determine whether an expense is in order, and subsection 2 states that a senator may request that the committee give its opinion on whether the expense is proper.

If a senator is unsure about whether an expense can be claimed, before he signs and says, "yes, I am entitled, even if I am not sure," he can ask the Internal Economy Committee whether the expense is allowed under the policies and rules, and whether it is proper.

The best person to ask about whether an expense is proper is the Internal Economy Committee.

• (1650)

As you all know, we have a lawyer in our employ who must respect solicitor-client privilege and with whom we can speak when we have questions about the application of the Rules and we want to be sure that our expenses comply with the Rules.

I did not hear anyone tell us that they obtained the opinion of the two authorities we have access to, namely the public body that is the Internal Economy Committee and our legal counsel, whom we can go to when we have questions about interpretation.

[English]

**Senator McCoy:** Point of order—well, perhaps it is just a point of fact. The quoting and citing of section 19.6 of the Parliament of Canada Act is correct; it refers to the exclusive authority of

Internal Economy, Budgets and Administration, which is our committee. However, one cannot read that without first reading subsection 19.1(4), which states:

In exercising its functions and powers under this Act, the Committee is subject to the Rules, direction and control of the Senate.

It has always been the practice of the Senate that none of our committees have authority beyond the full power and collective ruling of this body. Let us not mislead ourselves. Let's not fall into a trap of thinking that some small group of us has extreme authority.

Also, let's not be too confident about asking their opinion when several of them seem to have made the same errors themselves.

**The Hon. the Speaker:** Is there a question of Senator Carignan?

**Hon. Hugh Segal:** Could I ask Senator Carignan to share with the chamber, in the context of the very impressive constitutional tour de raison, which says we can make any silly mistake in here because we're a sovereign body, the difference between an expulsion and a suspension for two and a half years without a centime of pay or benefit? Could he share with me the practical difference between the two?

**Senator Carignan:** In Senator Brazeau's case, it's probably 30 years.

**Some Hon. Senators:** Oh, oh!

[Translation]

**Senator Carignan:** Expulsion means disqualification for the rest of your term, until you turn 75, whereas a suspension is only in effect until the end of the session. If the session ends in six months, the suspension is for six months. At most, a suspension lasts until the next election, since election dates are fixed, but technically, it could be for six, eight or 12 months. The Senate has the power to rescind the order if it finds that the next election is too far off.

[English]

**Senator Segal:** I don't disagree with his clinical distinction, but what advice would he give to any senator who is removed from any source of income while still being a senator, thereby conflicted out from doing almost anything else, about what they might do with respect to their own kind of survival? Would he have any advice, or is that beyond the constitutional solutions he has been quoting in the process?

[Translation]

**Senator Carignan:** As senators, currently — and I believe you are one of the senators who does this — we are allowed to have other sources of revenue, even while serving as a senator. When senators are suspended without pay, they may perform other duties.

[English]

**The Hon. the Speaker:** Honourable senators, as a reminder about speaking time, rule 6-3(1)(a) states that the Leader of the Government and the Leader of the Opposition shall be allowed unlimited time for debate....

**Hon. James S. Cowan (Leader of the Opposition):** Thank you, Mr. Speaker. I will try not to take undue advantage of that invitation.

Honourable colleagues, this is a difficult debate. It will require each of us to search our own minds, our hearts and our consciences.

We are dealing with the future of three of our colleagues in this chamber, and if we adopt these motions, we will be stripping them of everything except the title of senator. We will have to take personal responsibility for our decisions, because this is not something that our political parties can decide for us. If anything is a matter of personal conscience, this is it. I will certainly not be imposing my views on my colleagues on this side. This is not a vote to be “whipped.” I hope the same will hold true for my colleagues on the other side. We cannot avoid personal responsibility for what we do with these motions by hiding under the cloak of party discipline.

None of us relishes the prospect of standing in judgment on three of our colleagues. When we each accepted the opportunity to serve in this chamber, it was with an eye to serving Canadians and building a stronger, better Canada for our neighbours and our children. I am sure none of us contemplated ever being required to debate suspending, without pay, certain of our colleagues.

At the same time, I know that all of us share the deep anger felt by Canadians. We have heard how these three senators abused our rules and claimed money to which they were not entitled. Quite simply, colleagues, this is wrong, and in and of itself it is conduct that, in the ordinary course, for any Canadian caught doing similar acts, would result in consequences far beyond mere restitution.

As senators, we are and should be held to a higher, not lesser, standard than we expect of others. To date, apart from being expelled from the Conservative caucus, there have been no consequences, beyond restitution, for these acts.

Canadians feel betrayed. As senators, we have been given the enormous privilege to serve Canadians. That privilege has been abused by these senators. The result impacts not only these three individuals, but the Senate as an institution, and all of us as senators.

It is that aspect, the impact of these senators’ actions on the Senate as an institution — in the words of the motion presented by Senator Carignan, on “the dignity and reputation of the Senate and public trust and confidence in Parliament” — that we are asked to consider.

But let us be very clear: How we deal with these senators will equally reflect on the Senate as an institution. It is not just these three senators who will be judged here, colleagues — it is the

Senate as a whole, and it is all of us who participate in the making of that decision.

Will we proceed with full and careful regard for the rule of law and due process, or will we persuade ourselves that these may be compromised, that time-honoured and fundamental principles of justice may be shaved, skirted around because of public outrage and, indeed, our own very justified anger at the actions of these senators?

Churchill once described our parliamentary customs and traditions as “the splendour of our moral and political inheritance.” Colleagues, that was during the Second World War, when London was under siege during the Blitz. If Churchill could be determined to uphold our parliamentary “moral and political inheritance” while bombs were falling, surely the challenges we face today merit nothing less. Let’s be very clear: Political bombshells must not be allowed to justify trampling on basic rights under our Canadian system of justice.

• (1700)

Senator Carignan has pointed out the Senate has the right, and indeed the responsibility, to discipline its members when their actions warrant. But we must be vigilant in ensuring that we are working to uphold the integrity of the Senate, and not to appease the naked political requirements of the government of the day. We must be absolutely certain that we acquit ourselves of the right and responsibility to discipline our members with careful regard to the principles of due process, reasonableness and proportionality.

If we fail to respect these principles, then what kind of Senate are we pretending to defend? It would not be the check on the executive and on the majority power of the other place — it would, in fact, have become a shadow, a puppet, and there would no longer be any integrity left for us to defend.

Unquestionably, the issue whether to discipline one or more of these senators is separate from the question whether any of their actions breached the Criminal Code. Those matters are now under investigation by the RCMP. The RCMP and the prosecutorial service will decide whether or not criminal charges are warranted.

But we must be very careful that nothing we do affects in any way the investigations of the RCMP or risks prejudicing the rights of any accused person in the future. Of course, whatever the results of the RCMP investigations — whether charges are or are not laid, whether a court convicts or acquits any accused person — the Senate will always have the right to consider sanctions in accordance with and to uphold our own standards.

Those standards are completely different from those at issue under the Criminal Code. The burden of proof, the rules of evidence, the witnesses to be heard — these are all utterly different, reflecting the fundamental differences between the Senate and a criminal proceeding. But one thing that is common to both is the need to respect fundamental principles of fairness, due process and the rule of law. That can never change.

The Senate has carefully thought out and developed rules and procedures with respect to suspensions and expulsions, and Senator Carignan has quoted those at some length. Those rules must apply. To change the rules in the middle of the game is always unfair, dangerous and simply wrong.

I would like to take a few minutes to review how we got here, and then to propose some principles that may help to guide us in our consideration of these motions.

As a preliminary point, Senator Carignan has quite correctly moved three separate motions, one for each senator at issue. Rather than repeat myself, I propose to speak now on all three motions, though acknowledging that there are important differences amongst the three situations.

Last November — almost one year ago — reports in the media identified concerns about the housing and living expense claims of Senators Brazeau, Harb and Duffy, and our own Senate internal financial control systems flagged concerns with respect to the travel claims of Senator Wallin.

These concerns were brought to the attention of our Standing Committee on Internal Economy, Budgets and Administration, whose responsibility it is to oversee the internal administration of the Senate and the allocation and use of Senate resources.

That committee, after conducting an initial investigation, referred the claims of these senators to an outside firm of forensic auditors, Deloitte. Each senator was given the opportunity to meet with Deloitte to clarify and explain their claims. Senators Brazeau, Harb and Wallin did so; Senator Duffy did not.

Deloitte reported its findings in each case to the Internal Economy Committee, which then reported to this chamber.

With respect to Senators Brazeau, Harb and Duffy, the Deloitte reports and the recommendations of the Internal Economy Committee were presented to the Senate and made public on May 9.

The Deloitte report on Senator Wallin and the committee's recommendations in her case were deposited with the Clerk of the Senate and made public on August 13. This last report has not been debated or adopted by the Senate. The government has not brought that report forward for our consideration since it was deposited.

All the reports found that these senators had claimed significant expenses to which they were not properly entitled.

Colleagues, on May 9, when the Committee on Internal Economy tabled its reports on Senators Brazeau, Harb and Duffy, I issued a statement in which I said that while I supported the committee's recommendations on repayment of the amounts improperly claimed, "I was personally disappointed that the committee did not address the question of whether or not any further disciplinary action or investigation was required."

To me, that is basic: The Internal Economy Committee investigated the allegations and then made recommendations to the Senate in reports. I would have thought it was the responsibility of the committee to then consider whether any sanctions — any consequences — were warranted by their findings.

The committee did not do so; yet now — months later — the Senate is being asked to do precisely that.

The government was very clear in its approach at the time: The only thing that mattered was that the senators repay the amounts improperly claimed, and then the cases would be closed.

I said at the time that repaying the money, while important, was not enough — restitution of monies improperly claimed is not a sanction. The government was firm: Repayment was all that was required; case closed.

Indeed, the Government House Leader in the other place, Minister Van Loan, praised Senator Duffy for showing "leadership" in repaying the amounts he owed.

Colleagues, yesterday we learned much more about what apparently was going on. We heard allegations from the lawyer for Senator Duffy that his "repayment" was orchestrated by the Prime Minister's Office — indeed, that he had been threatened that unless he agreed to repay the money owing, whether from his own resources or those of Nigel Wright, he would be expelled from the Senate.

Colleagues, that is a shocking allegation, made on national television, and which the Prime Minister refused to expressly deny yesterday in the other place during Question Period. If this threat was actually made by the Office of the Prime Minister, it would presume an extraordinarily pliant Senate.

As questions about Senator Duffy's expenses were raised in the media, the Prime Minister's Office wanted, in the words of Senator Duffy's lawyer, "to sweep political embarrassment to their Conservative base under the rug." Canadians need to be assured that these motions are not simply another attempt to sweep unpleasant facts under the rug.

The government has brought forward these motions, to suspend Senator Duffy and the other two "embarrassing" senators appointed by Prime Minister Harper. In effect, we are being asked to do what we are told the Prime Minister's Office had threatened to do months ago. The objective today would appear to be the same: not to uphold the highest standards of ethics and moral conduct, but, rather, to avoid or limit political embarrassment.

Colleagues, let us remember what happened when the reports of our Internal Economy Committee were first tabled, back on May 9, when the government still believed that it could control the scandal — when Senator Duffy was being praised for showing "leadership."

The government did all it could to limit debate on the reports. Indeed, they tried to ram the reports through the Senate without senators having an opportunity even to read them. When we

refused, we were accused by the then-Leader of the Government in the Senate of delay and filibustering.

Colleagues will recall that on May 21 — the first day the Senate sat after the May 9 tabling of the reports — I moved an amendment to refer the report on Senator Duffy to the RCMP. The government did not agree.

Meanwhile, it did succeed in pushing the report on Senator Brazeau through the Senate on May 21, with literally no debate. It happened so quickly, and there was so much confusion and talking at the time in the chamber, that we on our side did not even realize it had passed. Our Deputy Leader of the Opposition at the time, Senator Tardif, immediately rose, saying she had understood that there was a request from Senator Brazeau to participate in the debate. In the interest of due process, she had spoken with Senator Carignan, the then-Deputy Government Leader here, who had indicated he would adjourn the debate to give Senator Brazeau the opportunity to speak. Senator Carignan replied that Senator Brazeau had the opportunity to appear in committee and had not done so.

• (1710)

Senator Cools then indicated that she wanted to speak to the report on Senator Brazeau and asked for unanimous consent for the item to be recalled to the Senate's agenda. This was denied.

The result, colleagues, was that Senator Brazeau never spoke to the report in the Senate, although he had communicated a wish to do so.

I want to take a few minutes to look at the reports themselves.

With respect to Senators Brazeau and Harb, colleagues will recall that the Committee on Internal Economy rejected the suggestion by Deloitte in its report that the applicable Senate Rules lacked clarity. The committee reports said that they considered the language to be “amply clear” and “unambiguous,” and ordered repayment of the sums in question.

I agree with that conclusion. I have always said that I find the rules to be clear. But I must point out that nothing in the committee report, and no finding by the Senate in adopting that report — indeed, there was absolutely no debate on the report — spoke of “gross negligence” by Senator Brazeau, as alleged in Senator Carignan's motion before us today. There may well have been gross negligence, but there has been no finding of that to date. And, as I said a moment ago, Senator Brazeau had no opportunity to appear before the Senate as a whole to explain his side of the story.

With respect to Senator Duffy, I have noted how the government first staunchly defended his actions, even praising his “leadership.” Colleagues will recall that the Committee on Internal Economy reached a very different conclusion in its May 9 report on Senator Duffy than it did in the reports on Senators Brazeau and Harb issued that same day. While looking at the exact same Senate Rules, two reports — the Brazeau report and the Harb report — concluded the words were “amply clear” and “unambiguous,” while the Duffy report of May 9 agreed with the

Deloitte opinion that criteria were “lacking.” The language that the words were “amply clear” and “unambiguous” was startlingly absent.

Yesterday, we heard suggestions from Senator Duffy's lawyer that, in fact, the report of the Internal Economy Committee on Senator Duffy was very much part of the deal orchestrated by the Prime Minister's Office. He even said that there were suggestions from the PMO that Deloitte would not be involved at all. In his words, “The PMO was making arrangements that Deloitte would not even be involved.”

Colleagues, think of this: If true, this would mean that the Prime Minister's Office was directing the conduct of investigations by the Senate into its own members.

We only learned these details yesterday, but shortly after the reports were tabled in May, Canadians learned of the secret cheque for \$90,000 given by Nigel Wright to Senator Duffy. Many questions were raised about whether or not the investigation by Internal Economy had “gone easy” on Senator Duffy — questions that still remain unanswered and, as I have demonstrated, have only grown in magnitude and seriousness. After these questions arose, the government agreed to refer the Duffy report back to Internal Economy for reconsideration.

The second report by Internal Economy, dated May 29, amended the May 9 report by adding in the words found in the Brazeau and Harb reports, that the language in the rules was “unambiguous,” and further, recommended that the Senate refer the Duffy report to the proper authorities, another way of saying to the RCMP.

Therefore, colleagues, we have a situation where the exact same Deloitte report led first to a report by the Internal Economy Committee that absolved Senator Duffy of any serious misconduct, and then to a report finding that the “pattern raises concerns” and evidence that raised concerns significant enough to warrant referring the file to the RCMP.

Senator Duffy, as I have said, did not participate in the audit process. Senator Duffy's lawyer was asked point-blank about this yesterday. He replied:

Because it was being manipulated behind the scenes. He was being told what he could say and not say, and what he should say to Deloitte.

Now, the Harper government, through the Senate Government Leader, is claiming Senator Duffy exercised “gross negligence” and that we should suspend him without pay. Colleagues, one could get whiplash trying to follow the government's position on Senator Duffy — “leadership” on the one hand, “gross negligence” on the other.

Finally, we come to the report on the expense claims of Senator Wallin. In August, the Committee on Internal Economy received the report from Deloitte on Senator Wallin's expenses. They identified a large number of improperly claimed expenses. As happened with the amended Duffy report, Internal Economy recommended that the proper authorities examine the matter, in other words, the RCMP.

Colleagues will recall that a few months earlier, on February 13, Prime Minister Harper rose in the other place and told Canadians that he had personally reviewed the expense claims of Senator Wallin, and they were clean. In his words:

In terms of Senator Wallin, I have looked at the numbers. Her travel costs are comparable to any parliamentarian travelling from that particular area of the country over that period of time.

Here again, what a difference a few months make. Now, of course, these same numbers are evidence of “gross negligence” and grounds for suspension without pay. Senator Wallin, once the Conservatives’ “rock star,” as described by Senator Tkachuk, is now a pariah, to be summarily suspended without pay, as quickly as possible, and before the Senate has even debated let alone adopted the Internal Economy report on her expense claims.

Colleagues, what are we to do? Like many Canadians — and this was strongly reinforced by yesterday’s press conference — I suspect that the government has its own motives for these motions before us today. With the resignation of Senator Harb in August, each of the senators now at issue was appointed to this chamber by Prime Minister Harper. The Prime Minister is of course not responsible for their actions, but it was his judgment that put them in a position where they exercised the lack of judgment that has led to the motions now before us. Indeed, according to allegations made yesterday, Senator Duffy was repeatedly assured by Prime Minister Harper’s close advisers that in fact he was acting properly and legally. As I have said, Prime Minister Harper himself rose in the other place to say that he had personally reviewed Senator Wallin’s expenses and they were perfectly fine.

So I understand why the government is anxious to suspend these senators, to keep them out of this chamber and to remove from the public consciousness the poor judgment of Prime Minister Harper in appointing them in the first place and enthusiastically supporting and encouraging them after.

But however questionable or even improper the motives of the government, we still face a situation where three of our members have been found to have abused our rules and claimed expenses to which they were not entitled. The issue, as I stated at the beginning of these remarks, is whether the integrity of the Senate requires that disciplinary action be taken against one or more of Senators Brazeau, Duffy and Wallin and, if so, what disciplinary action is appropriate and when it should be imposed.

I listened carefully, as I am sure we all did, to my friend’s speech this afternoon. While he spoke about the need to impose that disciplinary action, I didn’t hear any argument to support the severity of the proposed sanction or any reason why now, this precise point in time, is the appropriate time for that action to be taken.

• (1720)

Senator Carignan referred us for a precedent to the actions taken by the House of Lords in 2010, in their own expenses scandal, when three members were suspended. I was particularly impressed by the House of Lords’ very different approach to the issue of repayment from that originally urged upon us by the

Harper government. The chairman of the Lords committee that investigated the allegations said, in presenting their report on October 21, 2010, as reported in the House of Lords Hansard:

... we regard the repayment of this money as a matter of restitution rather than sanction, and therefore concluded that the length of suspension should not be linked to repayment.

In other words, colleagues, simple repayment was never considered to be sufficient in the House of Lords, unlike the position originally taken by the government here.

I also noted that it was the House of Lords committee that investigated the allegations that recommended appropriate sanctions. Colleagues, as I said on May 9, that is what I believe to be the correct approach, and that is what should have happened here.

It did not. Indeed, there was never any suggestion to any of the three senators that they were facing a possible two-year or longer suspension, let alone being without pay or office resources. To the contrary, while the matter was ongoing, Senator Duffy was receiving the full support of the government, and praise — and when Senator Duffy repaid the money in question, the then Government Leader in the Senate announced that she considered the matter closed. And, of course, Senator Wallin had her expenses reviewed and then publicly supported by none other than the Prime Minister himself.

But far from the matter being closed, Senators Brazeau, Duffy and Wallin now find themselves facing serious punishment that was not even hinted at when Internal Economy was examining their expenses — and for expenses that the government was aware of when expressing its full support.

Let me be clear: I have absolutely no sympathy for these three senators. In my opinion, they breached our very clear rules and claimed money to which they were not entitled. I believe that the Senate has the power, indeed the obligation, to protect its integrity and, as part of that, to take appropriate disciplinary action against any senator as necessary to protect that integrity — in Senator Carignan’s words, “in order to protect the dignity and reputation of the Senate and public trust and confidence in Parliament.”

I’ve witnessed, as we all have, the impact of the actions of these senators on the dignity and reputation of the Senate. Public trust and confidence in Parliament has, in my opinion, been severely undermined. But, colleagues, we have due process in this country. We have fundamental principles that allow a person the opportunity to answer charges such as these.

It now appears that Senator Duffy was deliberately instructed by the Prime Minister’s Office not to speak out during the investigation of his expenses. Senator Wallin’s report was never brought before the Senate for debate, so she has not had an opportunity to present her case. And Senator Brazeau reportedly wanted to speak and expected that the government would adjourn the debate on his report to provide him that opportunity, but this did not happen and the report was adopted without him speaking in his own defence.

Colleagues, this is not due process.

We also need to know, legally and constitutionally, what we can and cannot do here. And we need to proceed in a way that ensures that nothing is done that could prejudice the ongoing police investigations.

This situation, colleagues, is unprecedented in our history.

In 1998 the Senate suspended a senator without pay, but the issue was very different: persistent non-attendance in the Senate and a refusal to appear before a committee when ordered by the entire Senate led to a finding of contempt. Improper expense accounts were not the issue. In that case, there was no attempt to push motions through the Senate with just a few hours' debate. In that case, the issue was referred to a committee, the Standing Senate Committee on Privileges, Standing Rules and Orders, which afforded an opportunity to the senator in question to appear and testify in public, and also called expert witnesses on the issue of the powers of the Senate.

The Leader of the Government in the Senate has referred us to the precedent in the House of Lords. As I have said, the issues there were also studied in committee, which afforded an opportunity for the members in question to be heard and then it recommended appropriate sanctions, which, by the way, differed for each member. It was not "one size fits all."

Colleagues, we are very conscious that our role is to be the chamber of sober second thought. This requires that we look very seriously at the issues and ensure that those accused have a real opportunity to defend themselves. It also requires the careful consideration of what is a measured, appropriate sanction, if a sanction is warranted, and ensuring that we have the power to impose those sanctions by calling expert witnesses.

I believe that sanctions are in order. Like many Canadians, I am appalled by the abuses that have been documented, but anger, however righteous, is not justice. I know very well, as I am sure we all do, the damage that has been done to the Senate by the actions of these senators, but I also believe that we would compound that damage if we gave in to the pressure and passed these motions without the serious attention and due process that Canadian justice requires.

**Some Hon. Senators:** Hear, hear.

**Senator Cowan:** On May 9, we refused to be part of any cover-up and therefore refused to rubber-stamp the report of Internal Economy on Senator Duffy, notwithstanding great pressure from the government members, including being held up to public ridicule. Today, five months later, I still have no interest in being part of any cover-up.

Honourable colleagues, I believe the best course for us to take is to follow as closely as possible those precedents that have been established for difficult cases such as this, both in the House of Lords and here in the Senate. Consequently, I believe that these three motions should be referred to a special committee where our accused colleagues will have an opportunity to defend themselves and answer our questions, and where we will be able to seek guidance from constitutional and parliamentary authorities to

ensure that we have embarked on a proper path, and from legal experts to ensure that we do nothing that could prejudice the ongoing police investigations.

As I understand it, this reference to a special committee for all three motions can be done at any time during our debate with leave.

#### SUBSIDIARY MOTION

**Hon. James S. Cowan (Leader of the Opposition):** In the event that we will not be able to reach such a consensus, I move, as a subsidiary motion under Rule 5-7(b) and Rule 6-8(b):

That this motion be referred to our Standing Committee on Rules, Procedures and the Rights of Parliament, when and if the committee is formed, for consideration and report;

That Senator Brazeau be invited to appear; and in light of the public interest in this matter, pursuant to Rule 14-7(2), proceedings be televised.

I said to colleagues that I will not be repeating this speech on the other two motions with respect to the other two senators, but I will propose, at the conclusion of Senator Carignan's remarks on each of the motions, a similar amendment with respect to the motions with respect to those two senators. Thank you, colleagues.

**Some Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** The question before the house is the subsidiary motion.

• (1730)

**Hon. Michael Duffy:** Thank you, honourable senators. I want to speak in support of this motion because I believe, after the excellent speech we heard from the Leader of the Opposition here in the Senate, that there are a lot of questions that need answers. And while some might argue that having the proceedings before a judge and under oath might be absolutely preferable, given the size of the issue we're dealing with, any move towards allowing senators to have their say before they're shipped off I think is a great move and I support it.

I rise here today against the orders of my doctors, who fear my heart condition has worsened after months of unrelenting stress. But given the unprecedented nature of today's proceedings, I feel I have no other choice than to come here to defend my good name.

Like you, I took a solemn oath to put the interests of Canadians ahead of all else. However, the sad truth is I allowed myself to be intimidated into doing what I knew in my heart was wrong out of a fear of losing my job and out of a misguided sense of loyalty.

Much has been made of the \$90,000 cheque from Nigel Wright. I hope I'll be able to give an explanation of the chain of events and the circumstances surrounding that gift without impugning the rights of others to a fair trial, should criminal proceedings follow.

Let me summarize it this way: On December 3, 2012, the *Ottawa Citizen* ran a story asking how I could claim expenses for my house in Kanata when I had owned the home there before I was appointed to the Senate. The inference was clear: I was doing something wrong.

I immediately contacted Nigel Wright, the Prime Minister's chief of staff, and explained that I was doing nothing improper. Nigel Wright emailed me back, saying he'd had my expenses checked and he was satisfied that my accounts were in order, that all was in compliance with Senate Rules. In fact, he said, there were several other senators in the same situation. This was in December 2012. Mr. Wright said the story is a smear.

Following the PMO's advice, I ignored the media, but the attacks from Postmedia continued, and the political heat escalated. So after caucus on February 13 of this year, I met the Prime Minister and Nigel Wright, just the three of us. I said that despite the smear in the papers, I had not broken the Rules, but the Prime Minister wasn't interested in explanations or the truth. It's not about what you did; it's about the perception of what you did that has been created in the media. The rules are inexplicable to our base.

I argued I'm just following the rules like all of the others. But it didn't work. I was ordered by the Prime Minister: Pay the money back, end of discussion. Nigel Wright was present throughout, just the three of us.

The next week, while I was at home in P.E.I., I had a series of discussions on the phone with Nigel Wright. I said I didn't believe I'd broken the Rules and that to repay would be an admission of guilt. Canadians know me as an honest guy. To pay back money I didn't owe would destroy my reputation.

The PMO piled on the pressure. Some honourable senators called me in P.E.I. One senator in particular left several particularly nasty and menacing messages: Do what the Prime Minister wants. Do it for the PM and for the good of the party. I continued to resist. Finally, the message from the PMO became: Do what we want or else.

And what was the "else"? He said the Conservative majority on the steering committee of the board of internal economy, Senator Tkachuk and Senator Stewart Olsen, would issue a press release declaring me unqualified to sit in the Senate. However, if you do what we want, the Prime Minister will publicly confirm that you're entitled to sit as a senator from P.E.I. and you won't lose your seat. Tkachuk and Stewart Olsen are ready to make that press release now. I said: They don't have the power to do that. He said: Agree to what we want right now or else.

I made one last effort. I said: I don't believe I owe anything, and besides which, I don't have \$90,000. Don't worry, Nigel said, I'll write the cheque. Let the lawyers handle the details; you just follow the plan and we'll keep Carolyn Stewart Olsen and David Tkachuk at bay.

Elaborate undertakings were negotiated among the several lawyers involved in this. They were taking instructions from their clients — at least two lawyers from the PMO, one I know of from

the Conservative Party and my own lawyer. An undertaking was made by the PMO, with the agreement of the Senate leadership, that I would not be audited by Deloitte, that I'd be given a pass, and further, that if this phony scheme ever became public, Senator LeBreton, the Leader of the Government of the day, would whip the Conservative caucus to prevent my expulsion from the chamber.

PMO officials confided it wasn't easy to get this commitment to do as they were told from Senators LeBreton, Tkachuk and Stewart Olsen, but the email chain shows it took hours of shuttling back and forth as the lawyers checked with their principals about the guarantees they were going to give to ensure that I wasn't censured for going along with this PMO scheme.

Given all of those emails, you can imagine my shock when I heard there's not a single document about all of this in the PMO, not one. In response to an access to information request, CBC was told there's not one single document related to this matter in the PMO.

Well, if they're not in the PMO, they're in the hands of my lawyers and I suspect in the hands of the RCMP. Why don't I release those documents now? Because the people involved have rights, which under our system must be protected. Are the police looking at possible criminal charges? Are they wondering about bribery, threats and extortion of a sitting legislator? This is serious stuff, and the people who were involved — and there are more than those I've mentioned here today — deserve to have their rights protected. It's the Canadian way. It will all come out in due course when all of the players are under oath and the email chain can be seen in its entirety.

While all of this was going on, in the interim, despite the big agreement, I was sent off to Deloitte, not by the board of internal economy but by the special select subcommittee. Not Senator Marshall's group, no, no. I wasn't sent there. I was sent straight off to Deloitte by Senators Stewart Olsen, Tkachuk and Furey — straight to Deloitte.

And then, when Deloitte wanted to see everything, including my wife's bank account, I was told in the reading room in the back: They've got all they need. It doesn't matter. Don't bother.

After combing my living expense claims, my travel claims, Senate air travel, my cell phone records and Senate AMEX, Deloitte found that I had not violated the Senate Rules.

Then, in May, after someone leaked selected excerpts of a confidential email I had sent to my lawyer in February, in which I voiced my opposition and concern about the deal, the PMO was back with a vengeance. I was called at home in Cavendish by Ray Novak, senior assistant to the Prime Minister. He had with him Senator LeBreton, Leader of the Government in the Senate. Senator LeBreton was emphatic: The deal was off. If I didn't resign from the Conservative caucus within 90 minutes, I'd be thrown out of the caucus immediately, without a meeting, without a vote. In addition, she said, if I didn't quit the caucus immediately, I'd be sent to the Senate Ethics Committee, with orders from the leadership to throw me out of the Senate.

With Ray Novak, my wife and my sister listening in on the call, Senator LeBreton was insistent: "You've got to do this, Mike. Do what I'm telling you. Quit the caucus within the next 90 minutes. It's the only way to save your paycheck."

I understand that caucus disputes are internal and not a matter for the Senate. However, when one's status as a senator is repeatedly threatened, I believe this amounts to an attack on my independence as a senator and is criminal, or at the very least, a serious violation of my privileges.

Colleagues, like you, this kind of politics is not why I came to the Senate of Canada. It's not why millions of Canadians voted for the Conservative Party. It's not the Canadian way. I came here to build a better country, to use my experience as a journalist to help build a better Prince Edward Island. I want to continue my hard work for the Island, and I can only do that if you follow due process.

• (1740)

Honourable senators, this particular motion, should it pass, will be a serious violation of my human rights, including the most fundamental right of all, to be considered innocent until proven guilty. That's a basic right in our democracy. In the words of the Canadian Bill of Rights of 1960, one of the great Tory accomplishments in my lifetime and, in my view, John Diefenbaker's most important legacy, we are all entitled to "fundamental justice."

This motion put forward by Senator Carignan is in direct conflict with any sense of fundamental justice. Not only is it a firing without a firing, as Senator Segal has correctly pointed out, it deprives me not only of a paycheck but of a health plan, of life insurance. This, a guy who came back off sick leave because of serious heart problems. Who is going to buy the heart drugs I need? What kind of a country do we have when the power can override the sick-leave provisions of the federal Government of Canada health care act or arrangement?

I've got a certificate at home that says I'm a member of the government health plan. Well, guess what? Senator Carignan has the power to tear it up. Doesn't matter. I gave up a life insurance plan because I had government insurance under the Senate. What? That's all going to be gone in the twinkling of an eye because of a conspiracy?

Let me repeat: Deloitte investigated. Their audit of my expenses related to my home in P.E.I. did not find wrongdoing, and they said I had not broken the Senate's Rules. It was the 15 members of the Senate board of internal economy who refused to accept the determination of the independent auditors at Deloitte. Why? I still don't understand. And those same senators who conspired to put me in this corner, conspired to destroy my reputation with Canadians, they are going to sit here in judgment of me?

Let me be clear: I've violated no laws. I've followed the Rules, and I've got a ton of documentation, including a two-page memo from Senator LeBreton's office about it, and I never received a single note from Senate Finance or the leadership that suggested anything in my travels was amiss. In fact, those on the other side will remember how often I was lauded by the Prime Minister, in a

weekly meeting, for all of the travelling I was doing and all of the assistance I was providing Senator Gerstein, who has been an honourable man throughout this sad affair.

Serving in this chamber has been, I repeat, the greatest public or professional honour I've ever had. Why would I want to subvert it or discredit it in any way? I did not and I do not.

Needless to say, I strongly agree with the remarks made on the weekend by Senator Segal. This motion is something one might expect to see in Iraq or Iran or in Vladimir Putin's Russia, but not in democratic Canada. It is not, I repeat, it is not fundamental justice. Mr. Diefenbaker and Mr. Trudeau, were they here today, would be mortified.

I urge you to defeat these motions or, at the very least, vote in favour of Senator Cowan's motion to refer, so that people can have their day in court.

Honourable senators and my friends, especially my colleagues on the other side, today you are facing what I faced in February: Be a team player and go along with the PMO and the Senate leadership, or stand up and do your constitutional duty. I wish I had had the courage to say no back in February when this monstrous political scheme was first ordered. Today you have an opportunity to stand strong and use your power to restrain the unaccountable power of the PMO. That's what this Senate is about, sober second thought, not taking dictation from kids in short pants down the hall.

I urge you to say no to these outrageous motions. Tell the whips my oath as a senator is to put Canada first, and that comes before my loyalty to any party or any leader.

**An Hon. Senator:** Hear, hear.

**Senator Duffy:** Senators, Canadians are watching.

**Hon. David Tkachuk:** Honourable senators, I want to raise a point of personal privilege. I would have done it during the speech, but I thought that Senator Duffy should finish his remarks. He went to great lengths to talk about the conspiracy in the Office of the Prime Minister to remove him from the Senate, of which he did not say that others had told him, but implied here that I and Senator Carolyn Stewart Olsen were a part of. Nothing could be further from the truth. Nothing could be further from the truth.

We went to great lengths to make clear the distinction between constitutional residency and a residency for the purpose of claiming living expenses. This latter was the business of Internal Economy, and I, along with Senator Stewart Olsen and others, wanted to make sure that distinction was clear. I did not want our job muddled by getting into constitutional questions. Everybody here knows that, because it was repeated publicly and it was repeated in this place.

Then there would be a presumption. Why would I make a threat like this, a threat that I had no power to make? What Senator Duffy doesn't tell you is that he was on the Legal and Constitutional Committee, on the Rules Committee, which would deal with matters like this, and that he would know that I had no



power to do anything like this or I had no reason to do anything. I like Mike. Mike was my friend and my colleague. That's why this is even more disappointing, that he would think that I would be part of a conspiracy like this, and to name it in the Senate, and not tell me ahead of time.

His claim is further undermined by the fact that Mike's lawyer said that Carolyn and I would use our majority on steering to make sure that this happened. Excuse me. I'm not sure if there would have been a lot of Liberals supporting or not supporting an issue like this.

I know that Senator Duffy is fighting for his life in here. We're trying to do the right thing. But I want to assure senators, and I'm saying this in front of all my colleagues here, that I would never, ever participate in a conspiracy like this — never. I would never, ever participate in a conspiracy like this for any senators, let alone one of my colleagues on this side of the floor.

I don't know where this goes from here, Mr. Speaker, but this point of privilege is extremely important to me personally, as Chair of Internal Economy who represented all the senators here and who represented Mike Duffy. I can't make it any clearer than I've made it just now.

**The Hon. the Speaker:** Honourable senators, as the Speaker of this honourable house, obviously we accept any statement made by an honourable senator as simply that: a statement made by an honourable senator. I thank the Honourable Senator Tkachuk for his statement.

Continuing debate on the motion before the house.

• (1750)

**Hon. Patrick Brazeau:** I guess the Senate is, in fact, where due process goes to die. Our very society, our democracy, is built upon the concept that we are all entitled to due process. Regardless of their racial heritage, gender, sexual orientation, employment status or political preferences, all people are innocent until proven guilty, but, obviously, not here.

The burden of proof lies with the accuser, not with the accused, but, then again, we have unlimited time for the accuser to speak and only 15 minutes for the accused.

At what point upon entry to this chamber do honourable senators lose their memory of and respect for fair process? Does the autumn breeze blow it like dust off their overcoats as they reach Parliament Hill? Due process, never heard of it. What does it mean to believe in a principle? If our principles disappear when tested, then perhaps they were never our principles at all.

I am told that my due process is being suspended today to protect the dignity of the Senate. We'll get back to that later.

Let us pause for a moment to reflect on what actions would contribute to the dignity of the Senate.

Was it dignified to vote and accept a report that you did not read? Please allow me to remind you that because you did not read the board of internal economy's report regarding my

housing claims, you were unaware that the board ignored the advice of an outside auditor. The Deloitte report clearly and unmistakably faulted the Senate for its incoherent policy, but you remain in the dark about this because you did not read the details before voting to sanction me. Colleagues, I ask you: How does that protect the dignity of the Senate?

Your board of internal economy developed a new four-part residency test to determine primary residence. The outside auditor determined that I meet that test. We'll get back to that later as well.

What you failed to tell your audience is that the outside auditor found a troubling lack of clarity in your policy. So incoherent is your policy that this well-respected and renowned auditor was ultimately unable to come to any clear decision on the data before them. They were clear on only one point, that the current Senate policy is insufficient and incoherent.

Yet, there you are in your splendour, assuring all Canadians that the bad guys have been found, that the policy is clear and all is well. How does such duplicity in any way contribute to the dignity of the Senate? When you fail to hold your board of internal economy to account for charging taxpayers for the services of an expensive auditor whose advice they chose to disregard anyway, does this contribute to the dignity of the Senate? When rules are changed behind closed doors and sanctions imposed retroactively, does that contribute to the dignity of the Senate? When no one can explain why the rules and procedures do not seem to apply equally to all, and when honourable senators offer up the feeble excuse that "it's not my job to know this or that," is the dignity of the Senate now protected?

Paying lip service to due process while removing every vestige of it does nothing to protect the dignity of the Senate. While we might not find due process enacted in every corner of this country, one certainly would expect to find it in an institution at the heart of federal policy and law-making.

Let's bring some context to the issue at hand. In November of 2012, the media source of CTV came with their very unbalanced and sensationalist report. We saw on TV people saying they never saw me in the town of Maniwaki. Well, I was called to appear before the subcommittee of Internal Economy to refute, because that was the mandate of the subcommittee, to look into the media reports considering residency. Well, I did that. You know, I'm going to say this outright, because I can. That was a kangaroo court at its best. I appeared before three members of the subcommittee on internal economy, and they didn't even know what questions to ask of me. Everybody was uncomfortable. But here's the fact: I am the one who provided the information that the Senate now utilizes for the criteria for primary residence. And the Deloitte auditors said that of all the senators they looked into, I am the only one who met all four criteria. Yet I hear that there's an RCMP investigation going on in these matters. Well, I don't know, because I haven't been personally approached by any RCMP officer.

Now, so if the Deloitte auditor said that I met all four criteria for primary residence, why is there an investigation at all? What did I do? I'll tell you what I did.

Before I started claiming the housing allocation, I asked Senate administration if I could claim, and I have it in black and white: Yes, I could. I went further and asked: Well, can we claim just for the sitting months that the Senate sits? And the response that I got back in black and white from the Senate administration is: No, you can claim for the entire year.

Okay, so I did that. In black and white I had it from the Senate administration that I was eligible to claim expenses. But here's a go-getter: Senate administration, throughout all several months, asked my assistant: Why isn't he claiming any per diems? Well, I'm a better cook, and I cook at home. I never claimed per diems or incidentals. In fact, my expenses, my travel expenses, I believe, are under the amount of \$5,000. And I never hid the fact that when I did go back to my primary residence, I claimed. When I did not go, I did not claim. It's no one's business what any of us do on our personal time, as long as we're not billing the taxpayer, and I never billed the taxpayer for that. The auditors also highlighted that fact — fact, not innuendo, not sensationalism — fact.

I've been asking for quite some time to have an open meeting of the board of internal economy, because what goes on in those back rooms, we don't know. We don't sit on that committee. It's a little bit ironic that it's the board of internal economy that also approves the expenses that we submit. Yet, they're there judging us or judging some of us or trying to. Well, we all know what this is about, but we'll get into that as well.

Now, a little bit of further information and context. Soon after this story broke in November of 2012, I was in Senator Tkachuk's hometown, in Saskatoon. I was traveling on committee business at that time, and I got a call from his office saying that he wanted to talk to me, so I called him. He had some serious concerns with the media report that had come the night before, and he asked me this one question: Did you submit any false claims? My response was: Absolutely not. I guaranteed him on the phone; it was about 11 o'clock in the morning, Saskatchewan time. But he asked me that question: Did you submit any false claims? I said: Absolutely not. He said: Well, then you'll be fine.

During the Conservative caucus's Christmas party on the Senate side, in December of 2012, which was just before I appeared before the subcommittee of Internal Economy, I had a private discussion with Senator Tkachuk, and I asked him why it was that only I and Senator Harb at the time were going to appear before the subcommittee. I mentioned my colleague's name: Why isn't Senator Duffy, about whom there were allegations of housing issues as well, and I asked: Why isn't he being required to appear before the subcommittee? I quickly assumed, correctly, that they wanted to protect Senator Duffy but use Senator Harb and Senator Brazeau, myself, as scapegoats to protect Senator Duffy. This is no disrespect to Senator Duffy, but this is my calculation of what was going on here. And if you recall, Senator Tkachuk, I sang you a wonderful song because I quickly figured out what was going on here, and I sang the Garth Brooks song: I have *Friends In Low Places* because I knew at that time what was going on.

So I went before the subcommittee. I provided all the information, not that they requested, because they didn't know what to request. I and my legal counsel provided the information,

again, which sets the basis for primary residence. So all of you, I'm sure, after April 1, signed a declaration of primary residence, and you have to meet all four criteria. The auditor said that I met all four criteria. I still meet four criteria, but I get a letter from Internal Economy saying: Oh, no, no, not you, Senator Brazeau, you are not eligible for any expenses due to housing because — well, we don't know.

• (1800)

How can that happen? Is this not a democracy?

I have been asking for months and months to have a public hearing so I can give my side of the story, and I have been denied at every turn.

This is not administrative. This is not a legal battle between lawyers in here trying to interpret what the rules and regulations are. No, this is political abuse of power at its most.

Senator Carignan talked about the powers that the — I'm sort of speaking like Senator Baker here, not as well versed, but with the hands.

I've been trying to have a fair process, and I've been told no at every turn. I demanded to speak to the motion with respect to my suspension. I was denied.

Like I said, Senator Carignan was talking about the powers the Senate has, but he forgot the outright abuse of power that is trying to be tested here.

It is a complete joke. I mean, you talk about protecting the dignity of the Senate. Well, I have nothing to hide. Do any of you? Open up the meetings so that we can move beyond this; we can get to the heart of this matter.

**The Hon. the Speaker:** Order, please.

Honourable senators, is it agreed that we do not see the clock?

**Hon. Senators:** Agreed.

**Senator Brazeau:** This is the dignity of the Senate, and the world is watching. This is an absolute abuse of power and political power at its most.

I'll use the words that Senator LeBreton used at my expense several weeks ago, in which she called me a failed experiment. Well, the way the leadership on the other side and the board of internal economy has managed this issue is a complete farce. And that has been a failed experiment.

We talk about gross negligence, or some talk about gross negligence. Well, let me speak about gross negligence. The only gross negligence here — we don't have to wait for Stephen Harper, or whoever the next Prime Minister will be, to reform this place. We don't need to wait for the Supreme Court to reform this place. We can reform this place by making the board of internal economy public to all Canadians, because you make decisions in the back rooms, in the back doors that nobody knows about; yet

you're ready to throw three of your own under the bus just to protect yourselves. Well, I'm going to tell everyone here: You all better be clean before you make these types of decisions, because if you could look at yourself in the mirror and say, "I'm clean," then you have a right to vote.

I'm telling you and all Canadians today, I am clean; I did not do anything wrong. If I did, I'll take responsibility, but give me the opportunity for you to tell me, in my face, where I went wrong, which rules did I break, any wrongdoing that I may have made.

No, instead we have the board of internal economy going against the Deloitte report, going against their own rules as they

go along, they make up each and every day, for political purposes. Give me that opportunity.

All I have to say in conclusion — and I'll keep it short because I'll probably get that opportunity — but I'll just say again to all Canadians, if this is the Harper government's way of believing in democracy and exercising democracy, I think we should all be very fearful. This is a complete joke, a complete farce. And, Stephen Harper, you lost my vote.

(On motion of Senator Baker, debate adjourned.)

(The Senate adjourned until tomorrow at 2 p.m.)

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