



# DEBATES OF THE SENATE

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OFFICIAL REPORT  
(HANSARD)

Wednesday, October 23, 2013

The Honourable NOËL A. KINSELLA  
Speaker

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## THE SENATE

Wednesday, October 23, 2013

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

Prayers.

[*Translation*]

### SENATORS' STATEMENTS

#### NATIONAL OPTICS INSTITUTE

##### TWENTY-FIFTH ANNIVERSARY

**Hon. Suzanne Fortin-Duplessis:** Honourable senators, I am very pleased to rise today to highlight a major research and innovation milestone for Canada. On September 30, the Prime Minister participated in activities marking the 25th anniversary of the National Optics Institute in Quebec City.

I would like to join those who attended the ceremony in expressing my great admiration for this jewel in Canada's crown. For many years now, the INO and its members have been doing incredible work.

I was very proud and thrilled to see members of the extraordinary team that I had the privilege of working alongside when I was the federal MP for the riding of Louis-Hébert in the 1980s. It was an honour and a privilege to have participated in creating the INO from day one, thereby supporting a giant technological leap forward for the beautiful Quebec City region.

Over the past 25 years, the INO has become a mainstay both in Canada and around the world in technological innovation research and industrial development in optics and photonics. Thanks to the tremendous contributions of the many researchers who have spent time at the INO since it came to be and the financial support of the Canadian government over the past three decades, it is clear that the National Optics Institute has become a phenomenal success.

The INO has produced significant spinoffs in its 25 years of operation, and they are in line with the Canadian government's desire to transform research findings into something tangible, thereby creating a platform for spinoff businesses dedicated to innovation, creating stimulating jobs and driving economic growth.

Some 30 Canadian companies working in technology transfer have been launched thanks to the INO. In addition to the 200 direct jobs at the INO itself, over 700 high-quality indirect jobs have been generated by its clients and partners. The INO also supports subcontracting by signing some 200 research contracts every year, contracts that foster start-ups across Canada.

The National Optics Institute has made a remarkable contribution to regional economic development in Quebec City since 1988. I salute its incredible contribution to the field of optics and photonics in Canada. I would like to take this opportunity to tell the entire INO team, including President and CEO Jean-Yves Roy and Chairman of the Board of Directors Jean-Guy Paquet,

to keep up the good work. I would like to congratulate them all on the work they have done over the past 25 years, and I truly hope that the INO will continue to innovate and contribute to research in the field for at least another 25 years.

Thank you for your attention, dear colleagues.

[*English*]

#### VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before calling on the next honourable senator, I would really like to call your attention to the presence in the gallery of Ms. Sabrina Saqeb, who was Afghanistan's youngest elected member of Parliament.

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

**The Hon. the Speaker:** I know you will be interested to learn that Ms. Saqeb is currently establishing the Institute for Rethinking Policies as well as the Research Institute for Women Peace & Security in Afghanistan. This distinguished visitor is the guest of our colleague the Honourable Senator Jaffer.

Welcome to the Senate of Canada.

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

#### SMALL BUSINESS WEEK

**Hon. Catherine S. Callbeck:** Honourable senators, I rise today in honour of Small Business Week, which is taking place this week from October 20 to 26.

Small businesses are the heart and soul of the Canadian economy, playing an instrumental role in ensuring this country continues to thrive. Small business owners are a special kind of people. They had an idea, a dream, and they weren't afraid to pursue it. Despite the financial risks, long hours and incredible amount of work that goes into making a business successful, hundreds of thousands of Canadians have pushed forward and been successful.

There's no doubt the whole country has benefited. In my home province of Prince Edward Island, it's safe to say that the Island really couldn't function without them. According to the P.E.I. Business Federation, more than 86.7 per cent of Prince Edward Island businesses are small and medium-sized with fewer than 20 employees; 97.7 per cent have fewer than 100 employees. Small and medium-sized businesses produce approximately 45 per cent of the Island's GDP and employ an incredible 73 per cent of the P.E.I. workforce.

However, small businesses are not only a catalyst for the local and national economy; they are a vital part of their communities as well. They are major sponsors within our communities. Their names can be found sewn on the back of the hockey and soccer

teams they sponsor, or splashed across banners at community barbecues and bake sales to support hospitals and nursing homes. Small business owners and their staff can be found working with local charities and donating what little extra time they have left to ensuring that local groups have the support they need. These hardworking small business owners and their staff do more than we can really imagine, and for that we should all be incredibly grateful.

### CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

**Hon. Donald H. Oliver:** Honourable senators, I rise today as a senator from the Atlantic region to speak about the historic Canada-EU trade agreement and the benefit it will bring to the Atlantic region of Canada.

Workers and businesses in key industries in Newfoundland and Labrador, P.E.I., Nova Scotia and New Brunswick will stand to greatly benefit from the historic agreement-in-principle reached in the Canada-European Union Comprehensive Economic and Trade Agreement, CETA, announced by the Prime Minister last week.

Newfoundland has become a “have province,” but the Maritime provinces still depend on equalization. The CETA is the biggest, most ambitious trade agreement Canada has ever reached and will generate substantial gains across all economic sectors. For one thing, it gives businesses in Atlantic Canada access to another 800 million affluent customers.

The Minister of International Trade, the Honourable Ed Fast, said that Canadian workers in every region of the country, including manufacturing, fish and seafood, metal and mineral products, technology, forestry and wood products, and agriculture and agri-food, stand to benefit from the increased access to this lucrative 28-country market that currently generates \$17 trillion in annual economic activity. We have workers in all of these sectors in Atlantic Canada. Honourable senators, this is huge.

Moreover, this agreement will also make it easier for Canadians to invest in the EU and vice versa. Investment creates jobs, spurs creativity and technological development, and links Canada to important global value chains.

• (1410)

CETA will give Canadian suppliers, including Atlantic Canadians, access to EU government procurement, which makes up the largest procurement market in the world worth \$2.7 trillion annually.

So who and what type of people in Atlantic Canada can benefit? I have not seen any of the fine print or the details of any sector, but if, for instance, the tariffs are removed on fish, it should mean that larger markets of Nova Scotia lobster, scallops and other seafood would have a chance. There are dozens and dozens of fish and seafood producers in the Maritimes that can benefit from the opening of the doors to this European trade. Basically, it would increase the price that fishermen would receive for these crustaceans.

Nova Scotia is strategically located to benefit. It has the largest port in Halifax which is the closest Canadian port to Europe. The Stanfield International Airport is strategically located, as well, to the headquarters from which, and to which, goods from Europe could be processed.

The EU is the world’s largest importer of agriculture agri-food products, importing more than \$130 billion worth of such products in 2012. New and expanded export opportunities in this market will be very important for the growth of the Canadian agricultural sector. Many of our Atlantic Canadian companies can benefit from these incredible opportunities.

In conclusion, honourable senators, the main way in which I see Atlantic Canadians benefiting from major European countries is if countries like Germany, Norway and Sweden decide that they would like to have some presence in Atlantic Canada so they can participate in the free trade that we now have with the United States and Mexico. They may set up a plant, an office, a business or an enterprise in Atlantic Canada to take advantage of the \$1.4 billion a day that we have in trade with the United States. This would add thousands of jobs and create major economic activity in the Atlantic region.

All in all, honourable senators, this is an incredibly important new initiative and I call upon all honourable senators to support it.

[*Translation*]

### MR. CAMILLE BÉRUBÉ

#### L'ORDRE DES FRANCOPHONES D'AMÉRIQUE AWARD

**Hon. Claudette Tardif:** On September 26, the Conseil supérieur de la langue française awarded the Ordre des francophones d'Amérique to Mr. Camille Bérubé, mayor of the Town of Beaumont in Alberta. His important contribution and outstanding commitment to the Francophonie are recognized at the municipal, provincial and national level.

When Mr. Bérubé was the manager of the Caisse populaire de Beaumont, he ensured that his credit union could provide services in French. In addition to serving with distinction in the co-operative sector, Mr. Bérubé served his community as a municipal councillor and then as mayor of Beaumont.

As a result of his leadership, initiatives and vision as a francophone, the Town of Beaumont has been designated a bilingual municipality and is part of the network of bilingual municipalities headed by the Conseil de développement économique de l'Alberta. The Mayor of Beaumont is confident that bilingualism will allow his town to diversify its economy and attract bilingual entrepreneurs and workers.

Mr. Bérubé really cares about the development of his town and his francophone heritage. In practical terms, bilingualism is an integral part of his town’s strategic plan. Mr. Bérubé believes that promoting his town’s francophone heritage by talking with residents, implementing economic development initiatives and supporting immersion programs leads to more visibility and

demonstrates the advantages of bilingualism. According to the 2011 census Beaumont has the seventh fastest growing population in Canada.

Congratulations to Mr. Bérubé, ambassador for Alberta's francophones, whose ability to bring people together and to collaborate with others are being recognized across the country with this well-deserved honour. His solid expertise and success stories help promote the Francophonie.

[English]

## GROWING FORWARD 2

**Hon. JoAnne L. Buth:** Honourable senators, I rise today to talk about Growing Forward 2, Canada's policy framework for the agricultural and agri-food sector.

GF2, as it is commonly referred to, is dedicated to promoting growth and sustainability in agriculture. It has several components, including initiatives in innovation, competitiveness and market development to ensure Canadian producers and processors have the tools and the resources they need to continue to innovate and capitalize on emerging market opportunities. Let me give you three examples of recently announced GF2-funded programs.

Under the AgriInnovation Program, Agriculture Minister Gerry Ritz announced an investment for Pulse Canada to lead a research cluster of industry experts, government scientists and universities to enhance the sector's competitiveness and increase the demand for Canadian peas, beans and lentils. This \$15 million will support research in developing new varieties, improving agronomic practices, responding to consumer demand for healthier foods and contributing to potential health claims linked to pulse consumption. The research will also help the sector meet the growing global demand for top quality Canadian pulses. In 2012, pulses generated \$1.7 billion in farm sales and were Canada's third largest export crop with close to \$2 billion in exports.

In September, the Growing Innovation initiative was announced in partnership with Manitoba Agriculture to help build the expertise and capacity in innovation by supporting research, development and evaluation projects on farms and in controlled environments.

Funding will support the beef and forage sectors, crop innovation centres, value-added processing and new product development. The new five-year GF2 agreement includes a Canada-Manitoba investment of \$176 million towards strategic initiatives.

Two weeks ago, under the AgriMarketing Program, Growing Assurance - Food Safety initiatives were launched with an announcement in Manitoba. On-farm financial assistance will support producers to adopt assurance programs and best-management practices related to food safety issues like storage

[ Senator Tardif ]

and sanitation, biosecurity, plant and animal health, traceability and animal welfare. Programming will support surveillance and emergency preparedness systems.

Financial assistance will also help food processors, distributors, transporters and direct-contact packaging manufacturers. The goal is to help implement food safety systems and best practices that reduce risk factors throughout the industry.

Honourable senators, during this new session of Parliament, listen for more announcements under Growing Forward 2. It is initiatives like these that help grow the agricultural industry here in Canada. This ultimately supports our national and provincial economies through innovation and jobs in agriculture, and provides safe and nutritious food for Canadians and around the world.

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## ROUTINE PROCEEDINGS

### COASTAL FISHERIES PROTECTION ACT

#### BILL TO AMEND—FIRST READING

**Hon. Yonah Martin (Deputy Leader of the Government)** introduced Bill S-3, An Act to amend the Coastal Fisheries Protection Act.

(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.)

### FINANCIAL ADMINISTRATION ACT

#### BILL TO AMEND—FIRST READING

**Hon. Wilfred P. Moore** introduced Bill S-204, An Act to amend the Financial Administration Act (borrowing of money).

(Bill read first time.)

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

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

• (1420)

[Translation]

## OFFICIAL LANGUAGES ACT

### BILL TO AMEND—FIRST READING

**Hon. Maria Chaput** introduced Bill S-205, An Act to amend the Official Languages Act (communications with and services to the public).

(Bill read first time.)

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

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

[English]

## PARLAMERICAS

### EXECUTIVE COMMITTEE MEETING OF THE INTER-PARLIAMENTARY FORUM OF THE AMERICAS, JANUARY 29-30, 2010—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation respecting its participation at the Twenty-first Executive Committee Meeting of the Inter-Parliamentary Forum of the Americas, held in Panama City, Panama, from January 29 to 30, 2010.

### MEETING OF THE BOARD OF DIRECTORS, FEBRUARY 24-25, 2012—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation respecting its participation at the Twenty-seventh ParlAmericas Meeting of the Board of Directors, held in Manzanillo, Mexico, from February 24 to 25, 2012.

### MEETING OF THE BOARD OF DIRECTORS, MAY 13-15, 2013—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation respecting its participation at the Thirty-first ParlAmericas Meeting of the Board of Directors, held in Paramaribo, Suriname, from May 13 to 15, 2013.

[Translation]

### ANNUAL GATHERING OF THE GROUP OF WOMEN PARLIAMENTARIANS, MAY 16-17, 2012—REPORT TABLED

**Hon. Suzanne Fortin-Duplessis:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation respecting its participation at the Annual Gathering of the Group of Women Parliamentarians, held in Paramaribo, Suriname, on May 16 and 17, 2013.

[English]

## QUESTION PERIOD

### JUSTICE

#### PROPOSED QUEBEC CHARTER OF VALUES

**Hon. Mobina S. B. Jaffer:** Honourable senators, before I ask my question, I would like to take this opportunity to congratulate Senator Oliver for yet another award yesterday evening. We are very proud of his work.

**Senator Munson:** Another one.

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

[Translation]

My question is for the Leader of the Government in the Senate. As you know, I sent you my question in advance. On September 27, 2013, the federal minister responsible for Quebec, Denis Lebel, said that nothing in the Quebec Charter of Values upsets him.

However, the same minister said the following on September 11, 2013:

We are very concerned by any proposal that would limit the rights of Canadians to practice their faith. If the charter is accepted and passes in the National Assembly, we will ask the Justice Department to study it, and if it violates any constitutional rights of Canadians, we will defend those rights.

I would like the Leader of the Government in the Senate to clarify the government's position on the Quebec Charter of Values.

**Hon. Claude Carignan (Leader of the Government):** Thank you, senator. As you pointed out, Minister Denis Lebel was also quoted on Radio-Canada on September 10, 2013. He said:

If a charter is adopted and passed in the National Assembly, we will ask the Minister of Justice to have a look at it. If it violates the constitutional protections to which all Canadians are entitled, we will defend those rights.

The current sovereignist government in Quebec would like nothing more than to go to battle with the federal government over this issue, but our priority is the economy, jobs and growth. We believe that Quebecers have these same priorities, but at the federal level, our job is to ensure that everyone who lives in this country, regardless of their background, race, ethnicity or religion, feels at home in this country and is proud to be Canadian.

We are obviously concerned about proposals to limit anyone's right to practice their religion free from discrimination. That is why, as my colleague, Minister Lebel, said, we will ask the Minister of Justice to examine the bill once it is available to the public. If we determine that it violates the constitutional protections to which all Canadians are entitled, we will vigorously defend those rights.

**Senator Jaffer:** I have a supplementary question. Could you confirm that the government will go to court if the charter is adopted in Quebec?

**Senator Carignan:** I just said that we will ask the Minister of Justice to examine the final bill when it is made public, and if it violates the constitutional protections to which Canadians are entitled, we will vigorously defend those rights. We will do what is necessary in this type of situation.

[English]

**Senator Jaffer:** When responding to me, the leader said the people of Quebec, as all Canadians, are concerned about economic rights and rights of work and other rights, but as an ethnic minority I can say that those rights do not mean anything if your rights are the subject of discrimination.

I ask the leader again: Will he protect the rights of visible minorities when they are being taken away in Quebec?

[Translation]

**Senator Carignan:** If you are still referring to the Charter of Values, we will have to see the legislation and whether it contains any elements that have a negative impact on individuals. I do not want anyone to be targeted. As I said earlier, we want everyone to feel at home in this country regardless of their background, race, ethnicity or religion. That seems like a fairly inclusive answer to me.

[English]

**Senator Jaffer:** If I may, I want to tell the leader something that happened to me yesterday. Yesterday, in my statement, I spoke about a young 8 year-old Sikh boy who said he felt Quebec was his home and he was going to stay there. I have lived in this country for 40 years. For the first time ever, I received four emails to tell me to go back to my homeland.

That is what the Charter is doing: It is dividing the whole country. I'm urging the federal government to show leadership because we do not want division in our country.

[Translation]

**Senator Carignan:** We find this type of comment extremely worrisome. That is why I said that we are very concerned about the proposals that would limit human rights and that we are going to monitor this issue very carefully.

[English]

## PUBLIC SAFETY

### MISSING AND MURDERED ABORIGINAL WOMEN AND GIRLS

**Hon. Lillian Eva Dyck:** Honourable senators, my question is addressed to the Leader of the Government.

Last week the Governor General read this government's Speech from the Throne. Under the section entitled "Supporting Victims and Punishing Criminals," there is brief mention of the tragic

issue of missing and murdered Aboriginal women and girls. It reads:

- Aboriginal women are disproportionately the victims of violent crime. Our Government will renew its efforts to address the issue of missing and murdered Aboriginal women.
- Canadians also know that prostitution victimizes women and threatens the safety of our communities. Our Government will vigorously defend the constitutionality of Canada's prostitution laws.

• (1430)

I was appalled to hear the issues of missing and murdered Aboriginal women and prostitution spoken one right after the other in the Throne Speech. It gave the impression that missing and murdered Aboriginal women and prostitution are causally related. That is an unfortunate connection that ought to be stopped, as it does not represent the true or complete story of Aboriginal women who have been disappeared or murdered.

So my question for the Leader of the Government in the Senate is this: The government has pledged to vigorously defend its prostitution laws, but why hasn't it pledged to vigorously defend Aboriginal women from being made missing or murdered?

[Translation]

**Hon. Claude Carignan (Leader of the Government):** The Speech from the Throne was very clear about our position on missing and murdered Aboriginal women. We are determined to put an end to any type of violence against women and girls. We are extremely concerned about this serious issue. We have taken practical measures by investing significant amounts to address the issue of missing and murdered Aboriginal women and girls in Canada.

As the Speech from the Throne mentioned and as the practical measures we have taken show, we support the family violence prevention program, which gives funding to shelters and initiatives that work to prevent violence against women living on reserves.

We introduced a number of measures — at least 30 — pertaining to justice and public safety, including stiffer sentences for murder, sexual assault and kidnapping. This situation is of great concern to us. We want the practical measures that have been implemented to have an impact and we want to continue in that direction. That is why this issue was included in the Throne Speech.

[English]

**Senator Dyck:** Thank you for that answer. You know, it actually gets worse in the speech. First it talked about missing and murdered Aboriginal women, and then it talked about prostitution. Then, right after the sentences on missing and murdered Aboriginal women and prostitution, the Speech from the Throne continued with this statement:

Finally, our Government recognizes the daily risks taken by police officers and their service animals. It will bring forward Quanto's law in honour of them.

Honourable senators, some of you may not know that Quanto was a police dog. So we had Aboriginal women, prostitution and dogs all together in the Throne Speech: very appalling.

So my question for the Leader of the Government in the Senate is this: The government will bring forth legislation to honour police dogs; why isn't it bringing forth legislation to honour missing and murdered Aboriginal women?

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

[*Translation*]

**Senator Carignan:** This is a tragic situation. It is unfortunate that you are trying to impute inappropriate motives to the government because of the way a speech was worded. Our government wants to take action with regard to the tragic issue of missing and murdered Aboriginal women. As I said, we recently passed a law that gives women living on First Nation reserves the same matrimonial rights as all Canadians, including access to emergency protection orders. Many measures — at least 30 — have been introduced to protect women who are the victims of violence, sexual assault or kidnapping. We are taking this matter to heart and I hope, honourable senator, that the elements included in the Throne Speech will reassure you of the government's steadfast commitment in this regard.

[*English*]

**Hon. Jim Munson:** Honourable senators, my question for the Leader of the Government in the Senate is this: Why is your government so opposed to an inquiry? We've asked you over and over again. Why the opposition? It just makes so much sense — to this country, to Aboriginal women, to their families and to all of us — that we have a full public inquiry dealing with this issue. Why are you so opposed?

[*Translation*]

**Senator Carignan:** As I said, a number of measures were adopted and more may be adopted in the future. We need to focus on the needs and take meaningful steps to protect female victims of violence and to invest resources in looking for missing Aboriginal women and girls. We have invested a tremendous amount of money in this, and we will continue to do so. We have also talked about domestic violence prevention programs that provide funding to shelters and violence prevention initiatives on reserves. We want to take meaningful action that will have an impact on this issue.

**Hon. Roméo Antonius Dallaire:** Mr. Leader of the Government in the Senate, this is the first time I have addressed you in your new role. I would like to congratulate you; what luck to be in this role at this particular time.

I see a problem with the answer you gave about this issue. The majority of cases where women were abducted, have disappeared or were abused took place in provinces where the RCMP is the main police force in the province, whether at the provincial or municipal level. Even when under contract with a province, the RCMP remains under the ultimate authority of the federal government and the Minister of Public Safety.

The Defence Committee studied the RCMP's internal issues. I do not understand why the Minister of Public Safety is not providing very specific directives about launching a formal campaign to get to the bottom of the issue of domestic abuse and put it at the forefront, using all resources available.

This would never have happened in Montreal or Toronto, but it is happening in Aboriginal communities. There is a serious problem and it is up to the federal government to deal with it. Why has it not given the orders, and why has it not launched a major campaign to meet these needs?

**Senator Carignan:** You are making a suggestion. The government can take many meaningful actions. You talked about justice and public safety. We can institute harsher sentences for murder, sexual assault and kidnapping. We can implement various measures. We all care about these issues. As we said in the Speech from the Throne, we will pay special attention to this issue over the next two years.

**Senator Dallaire:** I would like to ask a supplementary question. Saying they will pay special attention does not mean much. They pay special attention to a thousand and one things.

**Senator Carignan:** That is not so special...

**Senator Dallaire:** What I am trying to say is that your answer suggests you are like a 12-gauge shotgun: you shoot at everything. Instead of giving the impression that you are taking all kinds of disjointed measures to address this problem, why not create an RCMP task force or some such at the national level to take control of the situation and create a very specific mandate for the RCMP with respect to Canada's Aboriginal women?

• (1440)

**Senator Carignan:** I have heard your suggestion, senator, and many other people may make suggestions. What counts is having a government that is listening. We have worked hard on this issue, we have implemented concrete measures and that is why we want to continue to take action in this matter. The purpose of a Throne Speech is to announce the government's intentions. Thus, if something specific is said about a subject, it means that it will be singled out and will be one of the elements in the government's programs in the next two years.

As for the 12-gauge shotgun, it depends on whether or not you go duck hunting. For duck hunting, it is better to have a 12-gauge shotgun.

[*English*]

**Senator Jaffer:** Honourable senators, I have a supplementary question. Leader, in my province we had an inquiry on missing women and the commissioner, Mr. Oppal, said one of the things they could not look into was the work of the RCMP. As you know, a lot of the area where the women are missing is where the RCMP is involved. You have heard from us today that we need to look at the role of the RCMP. Do you undertake to take it to your government to look at the role of the RCMP with regard to missing women?

[Translation]

**Senator Carignan:** The RCMP's role is to protect individuals. That includes people who find themselves in precarious situations. I believe that the issue of missing and murdered Aboriginal women and girls that you are raising today is an important matter for us. Concrete action is being taken by all departments, including the Department of Justice and the Department of Public Safety, and by organizations under these departments, including the RCMP.

## JUSTICE

### SUPREME COURT—NOMINATION OF JUDGES

**Hon. Maria Chaput:** Honourable senators, my question is for the Leader of the Government in the Senate and concerns the appointment of justices to the Supreme Court.

The Minister of Justice announced declaratory provisions to the Supreme Court Act. The government also added two clauses to the Economic Action Plan 2013 Act, No. 2, regarding the rules for appointing judges. Of course, it was the circumstances surrounding the disputed appointment of Justice Nadon that led to these measures. The controversy surrounding Justice Nadon's appointment demonstrates that Canadians want a Supreme Court that is competent and truly representative. Having sufficient knowledge of civil law is not all that is needed to serve on the Supreme Court. Without question, knowledge of both official languages should also be mandatory for all judges, since they are all called upon to rule on Canada's bilingual legislation.

I wrote a letter to the Minister of Justice, Peter MacKay to ask him the same question I am about to ask you here today. Since the debate has been reopened, and since the government has shown today that it is willing to amend the Supreme Court Act, why does it not also use this opportunity to specify, also by declaratory provisions, that knowledge of both official languages is henceforth an essential condition for the appointment of judges to the Supreme Court of Canada?

**Hon. Claude Carignan (Leader of the Government):** Our government has always been clear on this matter, even when I occupied another position in this chamber. Honourable members must certainly recall one of my speeches on the issue of bilingual judges. We will continue to be guided by the principles of merit and judicial excellence in the selection and appointment of all our judges. All of our appointments to the judiciary so far have reflected those principles.

**Hon. Claudette Tardif:** Mr. Leader, the government seems to have clearly anticipated that this appointment would be controversial in terms of the criteria for appointments to the Supreme Court, as it requested a legal opinion in advance for support.

The Supreme Court of Canada is key to Canadian democracy. If the government wishes to review the rules for appointing judges rather than moving expeditiously to avoid debate, why does it not do so in a serious manner, taking into account the

recommendations of French-speaking Canadians across the country — including experts — who have demanded that bilingualism be included as part of the appointment criteria?

**Senator Carignan:** As I have already said to Senator Chaput, the principles of merit and judicial excellence will continue to guide us as a government in selecting and appointing judges.

You mentioned the process. I asked for an outline of the process for appointing a judge to the Supreme Court. I can tell you about an important part of this process.

A pool of qualified candidates for appointment is established. The Minister of Justice and Attorney General of Canada consults with the Attorney General of Quebec, the Chief Justice of Quebec, the Chief Justice of the Quebec Superior Court, the Chief Justice of the Federal Court of Appeal, the Chief Justice of the Federal Court, as well as representatives of other associations, other prominent legal organizations including, in the case of Justice Nadon for example, the Barreau du Québec and the Canadian Bar Association.

A long-list of qualified candidates is reviewed by an all-party selection panel composed of five members of Parliament, including three members from the government caucus and one member from each of the recognized opposition parties, as selected by their respective party leaders. The all-party Supreme Court of Canada Appointments Selection Panel evaluates the long-listed candidates and recommends an unranked list of three qualified candidates to the Prime Minister of Canada and the Department of Justice for their consideration. The nominee selected from the three-candidate list then appears at a public hearing of an ad hoc committee of parliamentarians to answer questions from members of all recognized parties in the House of Commons.

I would like to remind honourable senators that this process was established for the first time when Justice Marshall Rothstein was appointed in 2006. The process was then repeated, making it possible to select extremely competent Canadians.

**Senator Tardif:** Senator Chaput's question and my own pertained to the changes that the government wants to make to the Supreme Court of Canada Act. The question was about the opportunity that the government has to add a bilingualism requirement. Right now, under the act, litigants have the right to be heard but not necessarily understood when a case is heard in French.

What value does the government place on equal rights, on equal access to justice in French and on our country's two official languages?

**Senator Carignan:** As honourable senators know, under the Supreme Court of Canada Act, three judges must be appointed from Quebec, from the Barreau du Québec or with court experience. One of those three positions needed to be filled. The selection process, as I mentioned, is clear and is based on the candidates' merit and the principle of judicial excellence in order

to ensure that we have the most competent judges possible. All of the appointments that have been made to date reflect these principles of merit and skill.

[English]

• (1450)

**Hon. Dennis Dawson:** The question seemed simple. It was a yes or no question about bilingualism.

I join my colleagues in congratulating you. This is the first time — and not the last time, I assure you — that I have had the chance to ask you a question in this House.

I would like to correct what you said yesterday. You said:

...our government intends to defend the long-standing right members of the Barreau du Québec to sit on the highest court in Canada.

There are jurists in this chamber who are members of the Barreau du Québec and who live in Ontario or New Brunswick. I think that the idea was not whether you were a member of the Barreau du Québec, but whether you were a member of a court recognized by the constitution, a court in Quebec, which does not appear to be the case.

I understand that you are retroactively doing something you were not able to do proactively, but I would like to make a correction. It is not a matter of being a member of the Barreau du Québec. To qualify for being a Supreme Court judge, you must be from Quebec and from a court in Quebec.

**Senator Carignan:** The criteria are set out in the Supreme Court Act. In this particular case — you seem to be referring to the appointment of Justice Nadon — the opinion of eminent Canadian jurists was required to ensure that the process was in accordance with the act.

Former Supreme Court justice Binnie rendered a legal opinion, as did Justice Charron and renowned constitutionalist Peter Hogg. They reached the same conclusion regarding the criteria for applying these provisions.

An interpretive provision is included and, as you likely know, the decision was made to ask the Supreme Court to rule on the issue of eligibility in order to resolve the situation as quickly as possible.

**Senator Dawson:** If you asked for a legal opinion before making the appointment, you must have had doubts. How is it that now, just weeks after the appointment was challenged, you feel compelled to put a clause in a budget bill that retroactively gives you the right to do what the Constitution did not allow you to do in the first place?

**Senator Carignan:** Our position is very clear. We asked for a legal opinion before making the appointment to ensure that there were no doubts. The eminent constitutional experts and lawyers were very clear in their legal opinions, and their interpretation guided the appointment.

## ORDERS OF THE DAY

### THE SENATE

#### MOTION TO SUSPEND THE HONOURABLE SENATOR PATRICK BRAZEAU—SUBSIDIARY MOTION— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carignan, P.C., seconded by the Honourable Senator Fortin-Duplessis:

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;

And on the motion of the Honourable Senator Cowan, seconded by the Honourable Senator Fraser:

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.

**Hon. Pamela Wallin:** Honourable senators, I rise to speak on Senator Cowan's motion for special hearings. I have long called for an open, fair and transparent process, but I want to make it

very clear that I would need to be sure that the protections afforded me in such a process are the same as a proceeding before a court: the right to counsel, who would be permitted to speak on my behalf; the right of my counsel to call or subpoena witnesses and to cross-examine those witnesses; the right to have my counsel question me to outline my evidence before any cross-examination; the right of my counsel to object to irrelevant or inflammatory questions; the right to make final submissions; and, of course, the right to an open-minded jury. These protections are necessary given the palpable apprehension of bias in what I contend is a purely politically motivated set of charges in a chamber that has not demonstrated it is prepared to rise above party politics. My very real concern remains the nature of the sanctions that the government intends to impose — suspension or, more accurately put, expulsion, without pay, no resources or benefits, including no health benefits, and that is a troubling prospect for a cancer survivor. So any hearing or process undertaken must provide the same procedural safeguards as a court of law.

The motion to suspend me is baseless and premature and likely beyond the scope of this chamber. The Internal Economy and Deloitte reports have not yet been tabled here, and the language of the motion is neither justified nor accurate. You can't concoct false charges on a whim. The government, through Senator Carignan, has truly put the cart before the horse, the sentencing before the trial, and that is why it would be both unfair and troubling if this motion proceeds. If it does, each and every one of you will seriously have to consider whether this is a place of sober second thought or a place where anyone who enters must blindly follow a political master's dictates. The rule of law would have to be ignored by each and every one of you who decides to vote for the motion.

Some have suggested that someday I will get my day in court. Everyone knows the RCMP has been called in to investigate. Why, then, try and convict me here and now? Why would we not await the outcome of that process, at the very least? Internal Economy are the ones that called the RCMP in the first place. You even sent them your report. Now you won't even wait for the investigation to conclude. Why is the Senate acting as accuser, judge, jury and executioner before I've had that day in court? That's exactly why this whole process is flawed.

If this chamber can take this extreme action with regard to a sitting senator, imagine what it can do to an ordinary citizen who crosses the government of the day. We live in a nation that has a Charter of Rights and Freedoms that applies to every law and every citizen. For the Senate of Canada, itself a creation of the Constitution, to decide that the constitutional protections afforded to each and every Canadian are to be disregarded here is to bring the Senate into disrepute. We have spent centuries evolving away from the divine rule of kings. Due process and the rule of law are all we have to protect us from the tyranny of those with power and from the passion of the mob. When a government chooses to flout due process to go after a perceived enemy, it is very hard to fight.

For this chamber to attempt to impose a legal sanction that is beyond your constitutional powers is puzzling. Surely you must know that. Gross negligence, as any lawyer will tell you, is a very specific legal term with very specific and serious meaning. This is a decision for courts or a formal judicial hearing, not for this chamber. By throwing a member of this Senate under the bus,

finding her guilty without a fair hearing, such as any other Canadian could expect, a right guaranteed to us in the Charter, as I've said, to proceed without the evidence having been adduced and considered on which the charge in the motion is based is a fundamental affront to Canadian democracy, and it makes a mockery of this chamber.

This charade is supposedly about preserving the reputation of this place, but the real intent is to remove a perceived liability, namely me.

• (1500)

"Gross negligence" is not found in Internal Economy's report or in the Deloitte report — although you don't officially know that, because neither has been tabled here in this chamber.

The issue is no longer about expenses, or audits, or transparency, or accountability, or even the reputation of this chamber — it's about an abuse of power.

If, as I suspect, Senator Carignan is taking direction from the PMO, then this process is not in the interests of an independent, functioning and effective Senate — although it is most clearly in the interests of those who want to abolish this chamber.

It is also designed to appease the party faithful before a Conservative Party convention at the end of the month. It is intended to intimidate not only me, but others in this chamber. It is about political expediency — to get rid of someone it considers a political liability.

They are doing this based on negative public opinion whipped up by a news media who used confidential and sometimes personal information leaked to them by members of this chamber — at least that's what I have been told by knowledgeable people.

They were targeted leaks, many of them incorrect, designed to cast my conduct in the worst possible light. They were personal and vindictive, and they violated the rules of this place.

My lawyer wrote to the Senate and to the chair of the subcommittee months ago asking for an investigation into 14 documented leaks — there were many more — but we never even received a reply. And, of course, there was no investigation.

We are entitled to that investigation under the rules. We believe those leaks were orchestrated and in large measure by Senators LeBreton and Stewart Olsen.

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

**Senator Wallin:** This whole proceeding against me, plus the leaks and the lack of an opportunity and legitimate form in which to defend myself, is backroom politics of a most odious kind, rooting out those who have fallen from favour or sending them into exile. It is, as my lawyer said, Kafkaesque.

For example, one of the senators who sits in judgment of all of us, who had her sights trained on me from the beginning, Senator Stewart Olsen, has recently had questions about her own probity in relation to her residential expense claims.

**An Hon. Senator:** Shame!

**Senator Wallin:** But of course there will be no Deloitte audit in her case. Apparently, the Committee on Internal Economy, of which she has been a long-standing member, intends to consider the matter in private.

This is a double standard. She gets the kid glove treatment; I'm unfairly singled out for a retroactive audit.

She and Senator LeBreton could not abide the fact that I was outspoken in caucus, or critical from time to time of their leadership, or that my level of activity brought me into the public eye and once garnered the praise of the Prime Minister. They resented that — they resented me being an activist senator.

In this chamber, Senator LeBreton derided me, accusing me of having an inflated view of my role. In a long statement, she said, "This narcissism... is the crux of the situation before us...."

In fact, the crux of the situation is not about narcissism — not hers, nor mine, nor anyone else's. The crux of this matter is the lack of due process and a flawed system that allows personal vendettas to be indulged.

In my case, there was a secret investigation of my activities and expenses, and it went on for months — I only learned about it much later. I was not even told last November when Senator LeBreton made her allegations and refused to cite her basis for alleging I had misspent funds.

Still, my office immediately began our own detailed examination. We scoured our books and when we found mistakes, we acknowledged them and I repaid the amounts immediately. That was before Deloitte was engaged to conduct a so-called independent audit.

When, in the new year, that outside audit began, I cooperated completely and fully. My assistant and I worked night and day verifying timelines, searching out supporting documentation for each and every event — and there were many.

Being an activist senator meant saying "yes" to as many of the invitations I received as possible. I never went anywhere where I was not invited — and my claims were not disputed at the time.

Still, despite the cooperation from me and my office, the Deloitte audit was extended again and again, finally to cover my entire tenure as a senator.

I was cautioned by the then chair of the committee, Senator Tkachuk, to limit the amount of information I was providing, but the real problem was that Deloitte had been given marching orders by Internal Economy. Some committee members were angry that Deloitte had actually said that Senators Duffy and Brazeau had not violated any Senate rules and the rules were contradictory and confusing.

The committee wanted a different story from Deloitte in my case, so the auditors were told to apply the new travel policy that had come into force in June 2012 retroactively to each and every one of my claims back to the beginning of my time here in 2009.

Retroactivity is ugly and it's unconscionable. It was designed to inflate the numbers and to inflame public opinion — in other words, to exaggerate the total amount of my alleged misspending so that the public outcry would justify the radical response we see in the motion they now propose.

Just to be clear, when asked, Deloitte said there was no evidence of deliberate misrepresentation or fraud or fiddling with the books, as the media had reported. They spoke with former staff members who agreed, and by their own admission, Deloitte conceded they had no standard by which to judge my activities. They interviewed no senators about what constituted "Senate business," nor did they review anyone else's expenses for the sake of comparison.

Interestingly, I have had several independent auditors tell me of late that they were shocked that Deloitte would agree to audit my expenses under rules that were not in place when those expenses were incurred.

Today's rules, Deloitte said, were applied to yesterday because they were told they were the same as the old rules. It's not true.

A "Record of Decision" by the Committee on Internal Economy says in several places — and it was raised in the chamber as well — that the travel policy is new, including Appendix A, which actually lists travel that is acceptable or not.

There were no such examples in previous documents.

Prior to the new rules coming into force, I have been unable to find any rule of this place that forbade speaking at a fundraising or a partisan event so long as an election campaign wasn't under way.

So, honourable senators, the travel rules were considerably different before June 2012, and yet those June 2012 rules were applied retroactively to me.

When I was appointed to the Senate, I knew it could be a platform for the causes in which I deeply believe, just as Senator Dallaire works to stop the exploitation of child soldiers; or Senator Munson works actively to support families with autistic children; or Senator Segal, for his work in fighting poverty. And so I, too, used this platform. I travelled the country talking about Afghanistan and the decisions facing Canada about our role in the world. And I did so as a senator. I was asked to speak because I was a member of this chamber and because of my previous experiences.

Prime Minister Chrétien had asked me to serve as Consul General in New York after the 9/11 attacks. Much was at stake for our country, and I was an activist diplomat there, too. That is part of the reason, I assume, that Prime Minister Harper appointed me to the Afghan Panel and then to the Senate of Canada.

I work hard, and I may be guilty of being unable to say no when asked, as a senator, to come and speak. But I always did it willingly and gladly, recognizing the responsibility bestowed on me to reach out to all Canadians.

I always spoke about issues of public interest and public policy, which, by the way, is permitted by the current travel policy and which was not forbidden by past rules.

But, more than that, I knew the Conservative leadership expected me to work hard outside this chamber, too, not only for the good of Canadians but for the Conservative Party of Canada because I had a track record as a communicator and a reputation then as a fair and honest person.

It was my job to raise the profile of this chamber and to make the case for Senate reform because I had agreed to term limits, even though no law demands it.

• (1510)

I am privileged to have this great honour of being a senator from Saskatchewan. It is my home, and it is the place that taught me the value of hard work. My life is my vocation and my avocation. My function is my duty and it is no 9-to-5 job.

You all now know I was subjected to a secret investigation, an extended audit process in which details of my life and activities were leaked to the media. My reputation was attacked and I was summarily thrown out of the Conservative Party.

On Friday, May 17 of the May long weekend, I received a panicked phone call ordering me to resign immediately from the Conservative caucus. I think it was around 5:00 p.m. Eastern Time. Senator LeBreton and the Prime Minister's principal secretary Ray Novak said that they were speaking on behalf of the Prime Minister and that now my being a part of the Conservative caucus was an embarrassment to him.

When I attempted to argue that absolutely nothing had changed in my case and to question them about why they were demanding this immediate resignation, I was just told that they were speaking for the Prime Minister; he wanted me gone, no discussion.

The audit wasn't even finished. We finally negotiated with the two a statement that said I would recuse myself from caucus, not resign. I had not done anything wrong. Less than 10 minutes later, Senator LeBreton broke the deal and publicly declared that I had resigned. My lawyers immediately sent an email to her and to Mr. Novak demanding an explanation. There was no reply and to this day there is no reply. We followed up with another request and to date no reply to that either.

Now, having been thrown out of the caucus, the show trial continued. In mid-August I was told I could show up at a closed-door Internal Economy meeting where I could make no opening

statement and where I was denied legal representation. Once again, there was no due process.

In the end, I was ordered by the committee to pay back the money spent doing the job I was asked to do—objectives promoted by the Senate itself in its own annual report and I quote:

Modern telecommunications and air travel make it possible for parliamentarians to do much more, much more quickly... than was possible in the early days of Parliament.... They organize or speak at events, attend and present to conferences, publish research, raise matters with Cabinet ministers, and provide credibility and support to causes they believe in.

All of you sitting in this chamber have to think about what you have done and where you have been in the past two years, or perhaps your entire tenure, doing your job as a senator outlined above. If today's new travel rules, which I gather are under revision again, or other rules are applied to you and if those rules were applied retroactively, many of you may be asked to pay back. I'm not just speaking theoretically; many of you have privately told me how concerned you are.

Shouldn't the same standard apply to all of us?

Read this motion carefully. Today my name is there. Tomorrow, next month, next year, it could just as easily be yours.

My understanding is that the Auditor General's audit on all of you will be restricted to a start time of fiscal 2011-2012. What if the Auditor General changes its mind and demands a broader mandate or makes rules retroactive?

If this keeps up, if this place continues to function without even a nod to due process or to the rule of law, to paraphrase Senator Segal, eventually you could run out of buses and the people to throw under them.

Surely I'm entitled to expect this to be a place where the rule of law is respected. After all, we are all lawmakers. If the Senate proceeds with this motion, I believe it is the beginning of the end of this chamber.

For the better part of a year the government has sought to embarrass me and undermine me in the public eye. It has said things about me which simply are not true.

This has left my reputation—hard earned over 40 years—in tatters. Now the government wants to deprive me of my income, or my ability to earn one in the future anywhere, so that I can't afford to mount a proper legal defence. They hoped all this would force me to resign. Despite the clear vindictive intent of this motion, you will never break my spirit.

**Senator Munson:** Hear, hear.

[ Senator Wallin ]

**Hon. Marjory LeBreton:** Honourable senators, I have listened to this speech and I really do feel, because of the references Senator Wallin made to me, I must respond. It wasn't my intention to respond. I was going to respond to the things that Senator Duffy said yesterday, later on in the debate.

First of all, I did hear the rumour that Senator Wallin believed that Carolyn Stewart Olsen and I had targeted her, or, for some reason or other, had a vendetta against her. Nothing could be further from the truth. I was one of Senator Wallin's biggest backers. I used to talk in caucus when I was out on the road any time she was making a speech about what a great job she did.

Unfortunately, though, I was the individual who was approached by Senate administration last fall. I believe it was in October. They came to me and said there had been some very serious allegations made against Senator Wallin and they were with regard to her expense claims. There had been some allegations made by members of her staff, and apparently these allegations were made in a letter to the Senate administration in the summer of 2012. I believe it was August. I never did see the letter and I don't want to see the letter. Then they told me that, as a result of that letter and as a result of the allegations, they had been doing some checking and, indeed, they found there was some basis for the complaint.

This was not a situation that I like to hear about. I'm a great admirer of Pamela Wallin's. I have defended her appointment to the Senate when people were attacking her. As recently as a couple months ago, I asked what was there not to like about Senator Wallin's appointment. She had an outstanding career in journalism and was a recipient of the Order of Canada, a Chrétien appointee as Consul General to New York, a very powerful journalist and a great communicator—what is there not to like?

In any event, I got this news from Senate administration. We're in this chamber one day and I asked Senator Wallin if she could stop by my office on her way out of the chamber, which she did. I remember very distinctly what I said to her. She sat down and I said that this was a conversation I hate to have. I was the Leader of the Government in the Senate so I was therefore the unfortunate bearer of this news to her. I said that there had been some very serious allegations made against the claiming of her expenses and she was going to have to fix this. I had a very simple suggestion: "Get all of your expenses that you have claimed and put them in one pile; get your calendar and put it in another area; and match your expenses to your calendar." She did acknowledge that there were some problems in her office and she was working to sort it out.

That was it. I was absolutely confident that she would be able to do just that—sit down, sort it all out and match it all with her calendar and there would be nothing more said or done about it.

I made no reference to Internal Economy. I have never attended Internal Economy, and I never ever again discussed Senator Wallin's expenses with anyone. Therefore, this idea that somehow or other, for some reason which is not known to me, that I would ever target a person whom I admired like Senator Wallin is ludicrous.

In any event, it was then reported that Internal Economy had, in fact, started an audit of her expenses. I am not sure of the date but I think it was around Christmas 2012, or it could have been early 2013. This was going on. I never participated in it. I'm sure my colleagues in the Internal Economy Committee and my colleagues in the Senate could say the same thing.

I was always supportive. I remember an op-ed piece she wrote in the newspaper. I sent her an email. I thought it was a great piece she wrote defending her right to represent Saskatchewan.

• (1520)

Now, it is true, honourable colleagues, that there was one other incident where Senator Wallin and I did clash. It had nothing to do with her expenses, nothing to do with this audit that was going on. It was over the way she was handling her responsibilities as Chair of National Security and Defence. There were some problems on the committee with regard to a motion that was put before the Senate that she did not want referred to the committee. So I dealt with that, with her directly and also with members of the committee. I never got up in the Senate. I never made a big fuss about it.

Then, when all of the other issues surfaced with regard to Senators Harb, Duffy and Brazeau, and all of that was in the news, I was always amazed that somehow or other the fact that Senator Wallin's expenses were being audited was not public. I couldn't believe; I was rather impressed with Senate administration that this had not leaked out. Certainly there would be nobody that would want to see it leaked out. No one wants to cause difficulty for one of our colleagues. Most importantly, from my position, I didn't want to cause any problems for the government or the Prime Minister.

So it didn't leak out, and how did it get out in the media? Well, I have a clipping here where it was in the media because Senator Wallin herself, in answer to a question from CTV, confirmed that she was being audited. That was the first time the media actually had confirmation that Senator Wallin was being audited.

I'm very sad and sorry that Senator Wallin would ever think that I would, for any reason — I'm not threatened by Senator Wallin. I heard the rumours. I think there was a rumour in the newspaper that I feared that Senator Wallin was after my job. I've been the Government Leader in the Senate for seven years. It's not me, and it's not her, and it's not any of us that will decide who the Government Leader in the Senate is; it's going to be the Prime Minister. So I just would laugh and say I didn't pay any attention to these rumours because, frankly, I actually didn't believe them.

The suggestion that I would ever, ever do anything to harm an individual, a human being, for any reason, is just appalling to me. I wouldn't do it to my own worst enemy. I didn't consider Pamela Wallin an enemy; I considered her a friend. At different times I had caucus colleagues tell me that they thought I spent too much time talking about the great talents of Pamela Wallin.

I wasn't intending to speak, but I feel very sorry that she feels this way. I hate to disappoint my colleagues, but I can't imagine that Carolyn Stewart Olsen and I ever spent more than two

minutes talking about Senator Wallin. This idea that we were these two people sitting in a back room hatching up crazy — this is utter nonsense.

But I do know that there have been people around Senator Wallin who have kept repeating this. I read that very interesting story in *Macleans* magazine where a close friend of hers said that I, Marjory LeBreton, started the fire in the kitchen sink that engulfed the whole place. I didn't start any fire in any kitchen. I simply reported to her what was reported to me by Senate administration. I had every confidence that she would resolve this matter. I never discussed it with anyone. I never went to Internal Economy.

Then, of course, when the word of the audit came out, and then the fact that they were going to look further, it wasn't my decision, and I didn't sit on Internal Economy. I was an ex officio member of Internal Economy. But you know and my colleague Senator Cowan knows — because any time that Senator Cowan went to Internal Economy, we'd exchange the courtesy of letting each other know — I never, ever, ever went to Internal Economy. I never participated in any debate about Senator Wallin. So the claims that she made that somehow or other I had anything to do with the difficulty that she is in now is false, false, false; and I am terribly troubled that she would stand here and say those things, think those things, and believe that I would ever do such a thing.

I have been in politics for 50 years. I pride myself on my honesty and my integrity, and I would never, ever, ever do that to any colleague, including colleagues that I consider — I'm often asked by the media about colleagues opposite, and I won't comment, because I wouldn't want to be in the same position myself and I would never want to do something to someone that I wouldn't — and somehow or another see myself in that position. I just wouldn't do it.

Senator Wallin, I'm very sorry that you felt that you had to deliver that speech today. I'm not responsible for your expense claims. I'm not responsible for leaking your expense claims. As a matter of fact, most of the things that I found out about the various expense claims I found out by reading the media. I never, ever — and I'm sure the Senate administration will bear me out on this — I never, ever, ever even inquired. Sometimes I was curious, but I was always smart enough never to inquire. I would never do such a thing, and I regret that you should get up and make these charges against me, which are totally false.

**The Hon. the Speaker:** Honourable senators, as mentioned yesterday when the Honourable Senator Tkachuk rose on a question of privilege, I announced to the house that this is an honourable chamber, and the statements by all honourable senators are that: They are statements by honourable senators. Senator LeBreton has risen on a similar issue of privilege. The honourable senator has made her statement, and the question now before the house is the motion in amendment by the Honourable Leader of the Opposition. That is the question to be debated.

On debate.

**Hon. Hugh Segal:** Mr. Speaker, colleagues, I rise to speak on Senator Cowan's amendment to the motion of Senator Brazeau and for broad application across the other motions before us. I

shall speak again, with the permission of the chamber, when the motion dealing with the sanctions against Senator Wallin is called.

I support the proposed amendment. The sanctions in the motions on Senators Wallin, Duffy and Brazeau are very, very severe, as they reflect on both reputation and economic impact in their lives. In one circumstance we are taking almost seven times the amount of money under dispute by taking away two years of salary; in another circumstance we are taking away two times the amount of money under dispute, which has been paid back with interest; and in another we are taking close to five times the amount of money under dispute.

This is running a vengeance racket at a profit. That's what this motion does, which is why I think Senator Cowan's amendment is such a responsible way of moving forward.

As people with a legal background in the British tradition will know in this chamber, the higher the sanction, the tougher the penalty, the greater the responsibility for due process. Due process is not a speech made under duress in a star chamber. That's not how we do it in the British system. What we do when we have high sanctions and high penalties is we have a responsive due process, where those who have allegations to make have the right to do so. Those who wish to explain or defend themselves have the right to respond, with their counsel, in a fashion that reflects genuine due process in the British tradition, not the civil law tradition.

• (1530)

Thirdly, it is important that we keep in mind that the ability to determine the appropriateness of a sanction must be tied to the facts, and the facts have to be looked at as they are laid out in these motions before an independent committee of this place that could examine the relevance of the facts to the actual allegations that are made and the sanction being offered. As a chamber of sober second thought, we are not in a position to do that before the careful detailed work is, in fact, done, as anticipated by Senator Cowan's amendment to this motion.

I think it's also important to keep in mind that should we proceed in any other way, we would be opening up this chamber to some very serious allegations. In one circumstance, we will be proceeding to a sentencing hearing, which is what these motions actually produce, before any discussion of the alleged infraction for which the sentence is being imposed. That is a serious violation of the tradition of the presumption of innocence in any circumstance, even in a chamber of this nature.

The final point I would make, and I think it's perhaps the most important, is that there is a reference in these motions to the reputation and honour of the Senate. Just think about this. With all the difficulties that emerged for the House of Lords over an excessive spending scandal that makes ours actually look like small potatoes, they decided to proceed with a committee. They decided to take a good, hard look case by case. Nobody suggested that you bring in one motion with the same wording for every individual as if they are all the same and as if the problems with which they were associated, fairly or unfairly, were of the same proportionality. The problem with that is that is the sort of stuff that actually destroys the reputation of any legislative body, of

any organization that is trying to itself legislate, to pick through legislation from the other place to find violations of people's rights and insensitivities to regional, linguistic and other concerns, which we try to do as best we can in this place.

I commend Senator Cowan's amendment, not because it seeks to impose a sentence or an answer, but because it provides a civilized and even-handed way to determine the right way ahead. That's why that amendment deserves support. Thank you, colleagues.

**Hon. David P. Smith:** Had I asked the question, I would have made the same point, but again, I do want to refer to something I do keep in my desk, which is the Charter of Rights. I was in Parliament when that came into place and was quite involved in it. Let me just read something to you, and I read this the other day:

Any person charged with an offence has the right... to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

Now, had I asked her, "Senator Wallin, have you had a fair and public hearing by an independent and impartial tribunal," I know what the answer would have been: No.

We could have an argument about whether this applies directly or not. I am a lawyer and have made lots of arguments in court, but I point out that section 32 reads:

This Charter applies... to the Parliament and government of Canada in respect of all matters within the authority of Parliament...

That should reflect the sort of due process that we apply around here, I think.

The other thing following from "Any person charged with an offence has the right..." is that I could have asked her, "Have you been charged with an offence?" No, she hasn't. This stuff was sent to the RCMP some months ago. Whether that happens down the road, who knows, but it hasn't happened yet.

I think the right and conscientious thing to do is to support Senator Cowan's amendment. At least have some due process around here. Give people a little respect. Let them make their case. I recommend we all support Senator Cowan's amendment.

**Hon. Anne C. Cools:** Honourable senators, I want to ask a question to Senator Smith or perhaps to Senator Cowan, if he wanted. I think the objective of further study and deeper study on this matter is important, and I'm supportive of that.

I just wonder if Senator Smith, in his years of experience, could help me with a little bit of a dilemma. I have always been led to understand that the invariable practice of the houses of Parliament has always been that specific allegations always ought to have been accompanied by definite evidence in support of allegations but, in addition to that, I have always understood that the house, as the master of itself, has to bring and draw and adduce its own evidence in the house. In other words, the evidence collected in a committee is a very desirable thing and very helpful to the house, but I have always understood that, in a circumstance such as this, the house has to bring the necessary witness's counsel if necessary before the bar and to put evidence before the house,

and that the house can be assisted by the committee but that the committee in no way at any point replaces the house itself.

There are many precedents for that, mostly in the instance of judges or senior officers where such appeals have been made and counsel have been heard at the bar. I think one of the most famous cases is *Stockdale v. Hansard*, where Lord Denman, who was a judge in the case, at one point in his career had been the counsel for Jonah Barrington, who is a British judge who was removed. He petitioned the house and appeared at the bar and spoke and placed the evidence in defence of the accused or the afflicted or the affected.

I'm very concerned here that, in all of these processes, I am not seeing an opportunity for counsel for any of these three individuals to appear at the bar before the house and before all of us.

I'm not speaking; I'm putting a question that I'm hoping Senator Smith can help me with. The house is not its committee, and the house makes the decision. I wonder if Senator Smith has any answers for me.

**Senator D. Smith:** Well, it's a complicated legal matter and I'm hesitant to make a quick, definitive opinion off the top of my head. If it were to be concluded that the house is the master of its own, I would still want whatever we are doing to be compatible with what's in this Charter of Rights. Those are my values, and I think that we should act in a manner that is in accord with them. Thank you very much.

**Hon. Elaine McCoy:** I want to be very brief today to make it clear that I would not support a suspension at this time. I think conflicting statements have been made, and I don't think we know the truth of the matter, or even the balance of probabilities, if you wish. I just think it would be irresponsible for us to proceed, as some have said, to sentence before we have even had the trial.

I'm particularly supportive of your suggestion, Senator Cowan, to have a special committee struck following the precedent of the House of Lords, and I think this is what Senator Segal was endorsing as well, so that we can have a proper tribunal that would delve further into matters and indeed give the three individuals an opportunity to put their own case forward, for others to probe that case, for others to put evidence forward and for these three individuals to probe that case. That's the British system.

It's not just having them at the bar being cross-examined; they also get to test the case put before them either by a plaintiff or by a prosecutor, and that's a piece of the rule of law and due process that we have supported.

• (1540)

I think that we need to indeed have some sober second thought here and proceed very carefully. I, for one, would not support this chamber succumbing to what might be called the "tyranny of the majority." I think we must follow our best traditions, and I think we are all on trial ourselves, as a matter of fact, to see how we vote on this matter.

I think it would be probably take an agreement between the leaders of the Liberal Party and the Conservative Party to come to an agreement over a special committee, and I would really urge them to do so. But if they don't, then I will vote for the motion in

amendment, which is to refer the matter to our Standing Committee on Rules, Procedures and the Rights of Parliament. At least that may give us some opportunity for some reflection and some judicious suggestions as to how we might proceed.

Above all, we must not be unfair. Canadians expect us to be fair, and that's what I want to see as we go forward. Thank you.

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

[Translation]

**Hon. Céline Hervieux-Payette:** Honourable senators, I am worried about what will happen once the committee delivers its report. I do not often agree with Senator Cools, but this time I do.

I feel that in some way we are playing the role of a jury in a trial. Even though we have a fair-minded committee and I trust the members of the committee — although we have not been able to hear all the evidence and our work has been rearranged so we can follow the televised proceedings — it is still difficult for us to hand down a sentence, which is virtually a political death sentence.

I have received several emails in English and French, both from Quebec and the rest of Canada. People are asking us to respect the Constitution because we are legislators and that is our first duty.

How do we handle this issue once we receive the committee's report? What will be the recommendation?

There are two processes going on at the same time: the suspension, intended to send our colleagues as far away as possible so we do not hear from them again, and a legal process involving an RCMP investigation, which will produce a report that may lead to the Attorney General laying charges.

My colleague very eloquently said that this is not a criminal proceeding. However, as far as I know, senators do not usually ask the RCMP to deal with Senate issues and search for evidence, unless these are issues that involve the Criminal Code.

These persons will be tried twice. This is even more confusing to me, because they will be sent home without pay. They will want to defend their rights under the Charter of Rights, and eventually they may even have criminal charges brought against them, if warranted by the evidence.

I am therefore quite puzzled by the legal undertaking we are involved in, and would like to know what steps we will be taking once the committee submits its report.

[English]

**Hon. George Baker:** Is this on continuing debate, your honour?

**The Hon. the Speaker:** Yes.

**Senator Baker:** Honourable senators, I'll just say a few words concerning this matter. I think some of the points raised here today are vital and will set precedent in parliamentary law. I say that because the last three speakers referred to two proceedings, and the question of the Latin phrase *res judicata* arises, or the defence of *autrefois convict* arises.

[ Senator McCoy ]

Let me, for a moment, refer back to the last time this occurred in this chamber, just two years ago. A member of this chamber was charged in a criminal prosecution with trying to obstruct justice in a judicial proceeding. The judicial proceeding was this Senate. It was a committee of the Senate called the Internal Economy Committee.

The Public Prosecution Service of Canada brought the charge and said this is a judicial proceeding for purposes of section 139 of the Criminal Code, obstructing justice. It was heard in the Ontario Superior Court of Justice under the heading of *R. v. Lavigne*, 2011, Carswell Ontario 1800. This was in Superior Court, and the judge said this at paragraph 98:

The accused is charged with obstruction of justice...

At paragraph 99, he referred to the obstruction of justice, obstruction of a judicial proceeding. Then, he said this at paragraph 100:

The words "obstruct the course of justice" include obstructing a criminal prosecution or an inquiry including the Senate Inquiry which occurred in Senator Lavigne's case. A "judicial proceeding," is defined in section 118 of the *Criminal Code* and includes a proceeding:...

(b) before the Senate or House of Commons or a committee of the Senate or House of Commons, or before a legislative council, legislative assembly house of assembly or a committee thereof... [or]

(c) before a court, judge, justice, provincial court judge or coroner...

Then he made his decision.

Let's not forget that under the Criminal Code, this is a judicial proceeding. If it is not, then the Public Prosecution Service of Canada should be informed immediately. The Superior Court judge in this case was R. Smith J., a very reputable judge.

This, according to case law from two years ago, is a judicial proceeding and this is very important. Why? They took it from the Supreme Court of Canada's judgment in *R. v. Wijesinha*, 1995, Carswell Ontario 547, in which the Supreme Court of Canada overruled the Ontario Court of Appeal, which said that a Senate committee or the Senate or the House of Commons or a committee of the House of Commons is not a proceeding.

Let me just read it. Cory J. is speaking here, and he twice referred to the Senate. In paragraph 26, he says:

118. In this Part,

"judicial proceeding" means a proceeding

(a) in or under the authority of a court of justice...

(b) before the Senate or House of Commons or a committee... thereof...

That's paragraph 26. He repeats it in paragraph 37. Once again, says Cory, J., that section provides "judicial proceeding" means a proceeding in or under the authority of a court of justice before the Senate, House of Commons or a committee thereof.

• (1550)

He says this at paragraph 38; this is the unanimous decision of the Supreme Court of Canada:

The Court of Appeal was of the opinion that the s. 118 definition of judicial proceeding was of no relevance in considering the scope of the phrase "the course of justice". With the greatest of respect, I cannot agree.

He concludes:

It follows that the phrase "the course of justice", as it appears in s. 139(2), is not limited to existing or proposed judicial proceedings. Rather, it must include all those proceedings that fall within the definition of "judicial proceeding" set out in s. 118.

— which includes the Senate and proceedings before the Senate. So this is a judicial proceeding.

There was another case I was going to reference that just came to my mind — I don't have a prepared text here — that happened 45 years ago, which decision was in a provincial legislature, but that decision is suspect because I was the law clerk in that legislature at the time. I then, as Newfoundland senators would know, went on to be the chief clerk for three years, so that would be a rather tainted decision for me to quote from.

The reason why I raise this, in listening to the debate here, is that it's an important point. Why? Because the Supreme Court of Canada has said many times — and let me quote one of them, from *R. v. Mahalingan*, 2008 CarswellOnt 6664.

Mr. Speaker would know given his position as the former Chair of the Human Rights Commission, and Professor Oliver would know from his teachings in law at the University of Nova Scotia, as would the many jurists in this room, and there are many of them who are former litigators, that paragraph 83 says:

This appeal concerns the application of issue estoppel in Canadian criminal law. Issue estoppel, which forms part of the doctrine of *res judicata* ... precludes the relitigation of an issue that has been finally decided in a prior judicial proceeding.

Finally decided in a prior judicial proceeding: It cannot be relitigated.

As Senator Carignan has pointed out very carefully, this is a final decision. The decision being made here today in this judicial proceeding cannot be appealed. It's not appealable. It has no appellant relevance. He pointed this out very carefully, very methodically in his two-hour address to this chamber.

Let me repeat that sentence: "It precludes the relitigation of an issue that has been finally decided in a prior judicial proceeding.

The point is this, senators: This may preclude, bar a proceeding that could follow in another judicial proceeding in a criminal court if in fact the police do find criminality. We have codified that in our law, as the jurists here would know. It's section 607 of the Criminal Code of Canada, sections 607 to 610. Section 607 of the Criminal Code spells out the defence of *autrefois convict*, and it says as follows: At plea, a judge can hear a motion of *autrefois convict*. In other words, when you are charged with an offence, you go before the judge, and the judge says, "How do you plea?" You say you plea section 607 of the Criminal Code, *autrefois convict*. You can go to any case law in Canada, and there is lots of it. Here is one: *R. v. Tyhy*, 2008, Carswell Manitoba 256, the Manitoba Court of Queen's Bench, at paragraph 27, the defence of *autrefois convict*, and the court spells out what's in the Criminal Code.

I would like senators to really listen to this because if you are charged in a criminal proceeding after this decision of this judicial proceeding, it doesn't have to concern the same matter. It can concern a similar matter. Senator Carignan has pointed out that the reason he brought forward this motion was because of what the RCMP had investigated and the forensic investigative accountants had concluded.

Section 609 of the Criminal Code states:

Where an issue on a plea of *autrefois convict* ... to a count is tried and it appears

(a) that the matter on which the accused was given in charge on the former trial is the same in whole or in part as that on which it is proposed to give him in charge...

the judge shall give judgment, discharging the accused in respect of that count.

Section 610 of the Criminal Code is even more on point. It says this, which I believe will apply in this case:

Where an indictment charges substantially the same offence as that charged in an indictment on which an accused was previously convicted or acquitted, but adds a statement of intention or circumstances of aggravation tending, if proved, to increase the punishment, the previous conviction or acquittal bars the subsequent indictment.

The Manitoba Court of Queen's Bench goes on at paragraph 31 and says:

It should be noted that presently, section 610(1) of the *Code* uses the words "the same, or substantially the same, offence" in allowing the special pleas to be heard by the trial judge in a subsequent trial. This obviously removes the need for the subsequent trial to be the identical offence in order for the special plea to succeed.

Senator Carignan quoted from House of Lords decisions, British law. Let me quote again from the Ontario Court, 2002, Carswell Ontario, in a case in which *autrefois convict* succeeded. It says at paragraph 8 that as far back as 1851 in England, a double

jeopardy, et al — as we know, the common term that people understand, generally speaking, as double jeopardy — would include *autrefois acquit*, *autrefois convict*, *res judicata*, multiple convictions, the Charter — we have it in our Charter at 11(h) — and abuse of process.

He says this. The court goes back to 1851, referred to 14 judges, and they split eight to six. This is in Britain. He quotes from the leading English case:

... we must bear in mind the well-established principle of our criminal law, that a series of charges shall not be preferred, and, whether a party accused of a minor offence is acquitted or convicted, he shall not be charged again on the same facts in a more aggressive form.

— in other words, criminally.

We all know section 11(h) of our Charter: Any person who is charged with an offence and found guilty or innocent shall not be tried or punished for the same again. Those are the exact words, as I recall, of the Canadian Charter of Rights and Freedoms.

I would suggest that Senator Carignan should consider the future of such proceedings as this. A reasonable person or a political animal would claim — I wouldn't claim — that perhaps this motion is a way to prevent the Prime Minister and the Prime Minister's staff from appearing before a court of law to be cross-examined. Now, I would never say that — in a judicial proceeding, I would not say that.

• (1600)

**Senator Mercer:** Such a cynic!

**Senator Baker:** I will conclude with this, Mr. Speaker; I know you will call me to order. I think this is important as far as the police are concerned. We all put our confidence in the police. Let's not forget what happened.

The police went to a judge or a justice. I don't know which, because section 487.012 of the Criminal Code, production of documents — which we passed in this chamber within the past 10 years — says you appear before a justice or a judge. Under the Criminal Code, a justice means a justice of the peace or a provincial court judge, so it could have been anybody.

Corporal Horton, in investigating these matters, swore out an affidavit. It concerned Senator Duffy. He went before a judge on June 24 and said as follows:

55 a. This is an ongoing investigation involving high level political officials. As such it has garnered heightened media attention. While investigators have interviewed some of the people involved, there are still others who may not have been interviewed. It is important that those who have not yet been interviewed, not be aware of the evidence the police have, or do not have, prior to their interviews. To know the extent of the evidence collected to date, and what other witnesses said or didn't say to the police, could cause others to withhold certain facts.

[ Senator Baker ]

b. Some of those not yet interviewed —

I won't list them all off —

— include... Benjamin Perrin, former legal adviser to the PMO, who cannot meet investigators until after July 5<sup>th</sup>.... [and] Nigel Wright... have not yet been interviewed.

This is the officer swearing under affidavit:

c. I believe that if those involved became aware of the investigation to date then it would compromise the... ongoing investigation —

— of the police in this matter.

It is signed the June 24.

I wonder, Mr. Speaker, could I have two more minutes to complete?

**The Hon. the Speaker:** Honourable senators?

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** Five minutes.

**Senator Baker:** I don't really need five; two minutes. Take the day?

**Senator Carignan:** Five, because I have a question.

**Senator Baker:** I don't want to monopolize the debate.

This was on June 24 — a police officer going before a judge and swearing this out and saying, "Look, here are 28 pages. Here is the evidence I have. Here are the documents I wish to have. I want you to wait two weeks to allow me to interview people in the PMO. I don't want them to know what is in my affidavit because it will forewarn them of what I know and what I don't know in order for me to conduct a proper investigation.

It was sworn on June 24. There it is. There is his signature. He wanted 14 days. What happened?

On June 25, the next day, this entire affidavit was in every media in Canada. In other words, he requested something from the court that he obviously did not get; that is, a guarantee that he could conduct a proper investigation.

Senators, I believe that by passing this motion while the police are trying to conduct an investigation we might again be thwarting the police down the road so that if they do in fact find criminality, they may not be able to pursue a charge in criminal court.

I would ask Senator Carignan, and everybody else, to keep these matters under advisement.

[Translation]

**Hon. Claude Carignan (Leader of the Government):** All of the honourable senators know how much respect I — and the rest of our colleagues here, I believe — have for your opinion, Senator Baker.

However, I believe that it has been clearly established by case law that the concepts of *autrefois acquit* and *autrefois convict* do not apply to disciplinary proceedings, although they might apply to criminal proceedings, because they are two different processes. There is plenty of case law on that subject.

Second, if I accept your argument Senator Baker, and I assume that the Senate acts as a court when it renders a decision on a matter like this, could you explain to me why section 31 of the Constitution sets out that if an individual is found guilty of an offence, the Senate must expel that person? That would result in two convictions.

[English]

**Senator Baker:** First of all, I will say that I have great respect for the honourable member. I have read many judgments in which he was the litigator, especially before the Court of Appeal of Quebec on civil matters. The first thing I thought of when he introduced this motion was section 169 of the Income Tax Act that spells out gross negligence and what it is. I said it was section 139 the other day in a speech and I was corrected — 169. I went back and checked it and found out that in 1980 it actually had changed to 169 and I was thinking prior to 1980.

Let me answer the question this way: I completely agree that there is a special procedure in disciplinary proceedings. You have the RCMP. Cases have gone to the Supreme Court of Canada where the RCMP officer had been charged with a criminal offence, had been disciplined prior to that, lost his job, and then was convicted in a criminal court. It was adjudicated accordingly at the Supreme Court of Canada. However, the problem here is that this is not a disciplinary tribunal under the Criminal Code. This is a judicial proceeding.

If you read explicitly section 118 of the Criminal Code of Canada — and it's always been there; it's been there since this Parliament came into being — this is a judicial proceeding, although the interpretation of what is meant by that has changed over the years. As I have quoted in recent case law, the recognition of this as a judicial proceeding has now been captured to enable the Public Prosecution Service of Canada to convict somebody who interferes with the Senate of Canada as a judicial proceeding. All other matters, disciplinary tribunals, are not captured by the phrase “judicial proceeding” in the Criminal Code — we are. I would suggest that that is the difference.

However, senator, you could be correct; I could be correct. This has never been litigated on point — only in the province I named earlier, 45 years ago, of which I was a part. It has never been litigated, so it could go one way or the other, and those persons who are asked to pass judgment constitutionally would have to spend a considerable amount of time — I mean days — reading case law, one way or the other, to arrive at a definitive position.

[Translation]

**The Hon. the Speaker:** Senator Baker's time has expired. Is the honourable senator prepared to ask for five more minutes?

POINT OF ORDER—SPEAKER'S RULING RESERVED

**Hon. Claude Carignan (Leader of the Government):** I wish to raise a point of order.

**The Hon. the Speaker:** Of course.

**Senator Carignan:** It is about the content of the motion. A number of times now, I have heard it said that there is no possibility of appeal, that the suspension cannot be appealed.

• (1610)

I simply want to point out that the text of the motion says the following: “until this order is rescinded pursuant to rule 5-5(i)”. Rule 5-5(i) stipulates that an order of the Senate may be rescinded if a motion is presented with at least 48 hours' notice.

**The Hon. the Speaker:** Senator Carignan has raised a point of order. Senator Fraser may now speak to that.

[English]

**Hon. Joan Fraser (Deputy Leader of the Opposition):** I would simply observe that a decision by the Senate to rescind a previous order does not constitute an appeal procedure within my understanding of what an appeal is.

**The Hon. the Speaker:** On the point of order, the Honourable Senator Baker.

**Hon. George Baker:** The finality of the motion that Senator Carignan has proposed is a final decision that cannot be appealed. I believe he repeated that four times in his address to this chamber.

There is no appeal to the actual decision made by this motion, and that is what is under enlargement here, and not the fact of the content of the motion but the actual motion itself.

**The Hon. the Speaker:** On the point of order, Senator Moore.

**Hon. Wilfred P. Moore:** Yesterday, in his remarks, Senator Carignan made the point that the authority to take the action that is set out in his motions lies within section 19.6 of the Parliament of Canada Act. In his motion he goes on to say that the Committee of Internal Economy, Budgets and Administration retains the authority to do what he proposes in these motions. When I look at section 19.6 of the statute, the Parliament of Canada Act, it says that the committee has the exclusive authority to determine, and so on, as you provide for in the motions.

It seems to me that what Senator Baker has been saying is correct. The words are pretty clear. The committee has the exclusive authority. There's nothing there about appeal or

opportunity to have the decision reviewed. The words “exclusive authority” are pretty clear. I really think you should think about the wording of this motion and perhaps follow the suggestion of Senator McCoy: Put in place a committee to do this work properly.

**The Hon. the Speaker:** The Honourable Senator Cools may make a contribution to this point of order.

**Hon. Anne C. Cools:** Yes, I certainly shall do so.

I think it is fair to say that the mind of the Senate eschews arbitrariness. There’s a lot here in this motion that relies exclusively on the Rules.

There’s a lot in those Rules that was questioned very deeply when those Rules were created. Senator Carignan was not in the Senate at that time and could not be aware of those rules. However, there was a lot of concern at the time for the arbitrariness that these rules were going to create.

Many of us at the time thought that many of those rules were unparliamentary. These rules were attempting to create a shortcut to put down one motion and thereby a senator be suspended, when prior to those rules a better process would have to have been initiated and entertained.

I was here when those rules were created. I didn’t think they were fair when they were created, and I don’t think that they are fair now.

That is just an opinion. I abide by the Rules, I accept the Rules, but I had great problems with them.

Colleagues, my understanding is that at the common law there is a power for the grantor of an office to suspend. The Senate is not the grantor of the office here. But in that suspension, the grantor can suspend the officer from the duties. The suspension cannot and should not affect the emoluments or salary, and that is where these Rules bridged some opposites to accomplish a result. My understanding of the old common law is that suspensions didn’t touch emoluments, or salary, or remuneration or any of those things.

I will just put that out for honourable senators to think about, but perhaps as we go on, in due course, I can go into this a bit more deeply.

**The Hon. the Speaker:** Honourable senators, let me thank the honourable senator for raising the point of order and for the contribution to help the Speaker study the matter.

As honourable senators know, among the very famous six inscriptions that are carved into the *bois sculpté* in the corridors of the Speaker, there is one in particular that seems to me appropriate for this moment in time, and it comes from Seneca, *Epistulae morales ad Lucilium*, which says in Latin: “*Nihil ordinatum est quod praecipitatur et properat.*” In English it would translate as “Nothing that rushes headlong and is hurried is well ordered.”

[ Senator Moore ]

[*Translation*]

**The Hon. the Speaker:** In French it would translate as: “la précipitation exclut la mesure.”

[*English*]

For that reason, honourable senators, I will take this point of order under consideration.

## BUSINESS OF THE SENATE

**Hon. Elaine McCoy:** I move adjournment of the sitting today for the purpose of allowing the leader of the Liberals and the leader of the Conservatives to have some discussion, and perhaps you, Your Honour, could use your good offices in helping them.

**The Hon. the Speaker:** Honourable senators, there is no debate. Senator McCoy did secure the floor and has moved the adjournment of the Senate, and I will ask the house: Is it the will of the house to adjourn?

**Some Hon. Senators:** No.

**The Hon. the Speaker:** The answer is no. The table will call the next item.

• (1620)

[*Translation*]

## THE SENATE

### MOTION TO SUSPEND THE HONOURABLE SENATOR PAMELA WALLIN—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 Wallin for sufficient cause, considering her gross negligence in the management of her 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 Wallin, while under suspension, shall not receive any remuneration or reimbursement of expenses from the Senate, including any sessional allowance or living allowance;
- (b) Senator Wallin’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 Wallin 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 Wallin's office and personnel for the duration of the suspension.

[English]

**The Hon. the Speaker:** The Honourable Senator Segal on a point of order.

POINT OF ORDER—SPEAKER'S RULING RESERVED

**Hon. Hugh Segal:** Colleagues, my point of order on the motion regarding Senator Wallin for the Speaker's consideration goes to the violations by this motion of several areas of propriety, rules and standards.

First of all, I contend to colleagues that this motion is the same as what used to be called in the British common law a "bill of attainder," also known as an "act of attainder" or a "writ of attainder," which is an act of a legislature declaring a person or group of persons guilty of some crime and punishing them without privilege of a judicial trial. As with attainder resulting from the normal judicial process, the effect of such a bill is to nullify the targeted person's civil rights, most notably the right to own property, or prevent it from being taken away from them, for themselves and for their heirs.

Bills of attainder were used in England between, now get this, 1300 and 1800 — that's what's being attempted by the government as we speak — 1300 and 1800, going back to a time when there were Tories, but maybe a touch more thoughtful than the ones we have to deal with on occasion in this chamber. However, the use of these bills eventually fell into disfavour due to the obvious potential for abuse and the violation of several legal principles, most importantly separation of powers.

Second, the motion passes sentence on Senator Wallin — one that is harsh, discriminatory, largely unprecedented, confiscatory and unfair — while there has been no discussion of any kind in this chamber of the alleged infractions that produce this sentence. It is out of order to be discussing and voting upon a collective premature sentencing motion. It is certainly out of order in advance of having the discussion on the alleged reasons for the sentence included in the substance of the motion. This motion, as poorly worded, turns Canada's Senate chamber into a star chamber, the ultimate violation of the order of this house.

My third point for asserting that this motion is out of order is that it clearly violates the Charter of Rights and Freedoms by assuming guilt in advance of a hearing of any kind where the rights of the accused are defended by counsel. This has never happened and did not happen at the committee meetings on August 12 and 13 of this year. I was there. Senator Wallin's counsel was prohibited from speaking, itself a violation of her due process rights.

The fourth reason for making this point of order is that the actual auditor's report and committee report have never been before the Senate as a whole. While the clerk of the committee deposited the report on August 13, 2013, with the Clerk of the

Senate, the effect of that filing was wiped away by prorogation. Hence, the report is not before us. Neither of the reports — that of the committee nor that of the auditors — is before us. The notion that we would move to the consideration of a sentencing motion before the chamber has even had the chance to assess the basis upon which it has been constructed is a violation of every principle of fairness and due process that this chamber is supposed to defend for all Canadians.

Another key reason used for this point of order relates to the use of the term "gross negligence" by the Government Leader in the Senate in the framing of this motion. This is a term with a specific meaning in the criminal law. He may protest that he is only addressing matters of civil reparation in this context, but that is not how others will view the use of that very expressive criminal term. There are independent police investigations to determine if a criminal investigation is required with respect to Senator Wallin and other investigations proceeding relative to the other two senators.

Senate rule 15-4(5) states:

For greater certainty, the Senate affirms the right of a Senator charged with a criminal offence to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal. No intent to comment on or pass judgment with respect to a Senator shall be imputed to the Senate because of the operation of this rule.

The use of the term "gross negligence" violates the above rule — and finds a senator guilty who has not even been charged. The Senate is, in no uncertain terms, passing judgment. The use of this term, which I find repugnant and biased, directly interferes with independent police investigations, and this motion is a direct interference with police discretion, something Senator Baker referred to in his comments earlier.

As such, should this motion be debated and voted upon in this chamber, that would constitute an unconstitutional and completely inappropriate effort by the upper house to influence an ongoing independent police investigation in a fashion calculated to limit the discretion of the police — something that is completely contrary to the rule of law and principles of independent law enforcement. How's that for advancing the reputation of this institution?

Mr. Speaker, colleagues, this motion, on the sentence it imposes combined with the judgment it renders, is largely without precedent in this chamber or in the elected house. Senator Andy Thompson was dealt with in this fashion for other reasons — the refusal to come before a Senate committee. That is a different matter. Every order given by the committee with respect to Senator Wallin she has complied with in a timely fashion. So the notion that one can use Senator Thompson as a precedent for this excess I think is a bit over the top.

What would the precedent be if we debated and passed this motion? It would simply be that at any time — think about this — a majority in this chamber could suspend, without pay, without benefits, any member they viewed as embarrassing, unpleasant or

unpopular. This could be done without any hearing and without charges being laid or proven. This is a serious break from established practice.

With this precedent, as Prime Minister Harper began to fill vacancies that had mounted up since 2006, the Liberal majority opposite could have brought in a similar motion that any new appointee they did not like be suspended. If the NDP or Liberals were to form a government in 2015 — something I hope never happens — and they used their right of appointment to fill vacancies in this place with those who might support their platform, today's motion could be used by Conservative senators in majority to expel those appointees, for no reason. This is a slippery road to a Senate riding roughshod over due process and presumption of innocence. Were we to do that, the eight hundredth anniversary of Magna Carta in 2015 would not have a damn thing to do with us — nothing at all.

For all these reasons, I submit respectfully to the Speaker that finding this motion out of order is necessary to preserve the principle of due process, the principle of presumption of innocence and the right of all senators to consider the critical issues of substance before their rights are suffocated by a forced march to a premature rendering of a sentence, which is exactly what this motion does and why I hope His Honour will view it as out of order.

[*Translation*]

**Hon. Claude Carignan (Leader of the Government):** Honourable senators, I listened to Senator Segal's point of order. I do not wish to repeat my speech from yesterday on the disciplinary power of the Senate to suspend one of its members when he or she has violated one of the Rules of the Senate.

• (1630)

I would rather see you refer to it in my points. I think it would be more useful.

Someone told me that I was competing with Senator Cools, that my speech was one of the longest in the history of the Senate, with that of Senator Cools. I would not want to repeat the arguments. However, I remind you that under section 15-2 of our Rules the Senate may order a leave of absence for or the suspension of a senator where, in its judgment, there is sufficient cause. This chamber has full discretion to carry out its duties as it sees fit. This is also a constitutionally protected right, and it is included in the preamble and in the immunities that were given. This delegation is found in section 18 of the Constitution Act, 1867, and in the Parliament of Canada Act. In this respect, things are pretty clear.

As regards the Charter, the decision in *Harvey v. New Brunswick* clearly states that section 32 of the Charter did not apply to amend the Constitution: the two are equivalent. To clarify, it is parliamentary privilege that applies here.

Again, the criticism here has to do with the fact that the *Rules of the Senate* were violated repeatedly, with negligence and recklessness, thus undermining the dignity of the Senate. To my knowledge, this is not something that is found in the Criminal Code. In any case, we do not even know whether criminal charges

[ Senator Segal ]

will be laid or, if there is an investigation, at what level that investigation will take place. This is something completely different, and a distinction must be made.

A clear rule was violated, a rule established under the exclusive authority of the Internal Economy Committee. As for what happens next, we do not know. Perhaps no charges will ever be laid. Perhaps the investigation will never be completed. We have no idea. This is a separate process that is complete in itself, and it is an exclusive power of this chamber.

[*English*]

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Honourable senators, I shall not enter into discussions of bills of attainder and the Magna Carta, but I do share the view of Senator Segal that this motion is not properly before us.

I do not dispute the right of the Senate to suspend its members after due consideration of the evidence, but this chamber has no evidence concerning Senator Wallin. Such evidence as ever existed was contained in a report of the Internal Economy Committee which was completed in August and deposited with the Clerk of the Senate on August 13 and properly done. I was there. You, I believe, were also there, Your Honour.

That report, which was quite detailed and included a report of the auditors, would have formed the evidentiary basis, or at least part of an evidentiary basis, for this chamber's proper consideration of this matter, but that report is dead. It died at prorogation. It would have been on the Order Paper of the Senate when we resumed in the fall, but we were prorogued. It is well known, but I shall remind colleagues, that things die when Parliament is prorogued. Among other things, committee reports die when Parliament is prorogued.

O'Brien and Bosc, for example, in the second edition at page 382, states:

Prorogation of a session brings to an end all proceedings before Parliament. With certain exceptions—

—which do not apply here—

—unfinished business “dies” on the *Order Paper* and must be started anew in a subsequent session.

Bills which have not received Royal Assent before prorogation—

—even if they have passed third reading in both chambers—

—are “entirely terminated” and, in order to be proceeded with in the new session, must be reintroduced as if they had never existed.

If that's true of bills that have gone through third reading in both chambers, it's certainly true of a report that has never been before the Senate on the Order Paper.

Erskine May says, in the twenty-second edition — and I cite the twenty-second edition because, as Your Honour knows, the rules and procedures of the Westminster Parliament have changed in

the interim, but the twenty-second edition refers to the rules and procedures that most closely resemble our own. In the twenty-second edition, at page 57, Erskine May states:

The effect of a prorogation is at once to terminate all the current business of Parliament.... Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons, and appeals before the House of Lords.... every bill must be renewed after a prorogation, as if it had never been introduced.

Erskine May goes on to say, in the same edition, at page 233:

The effect of a prorogation is at once to suspend all business, including committee proceedings, until Parliament shall be summoned again.... Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed.... Every bill must therefore be introduced afresh after a prorogation...

And Beauchesne says, in the sixth edition, citation 235 on page 66:

(1) The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again.... all proceedings pending at the time are quashed.

Have I already cited this? The authorities all say the same thing, and I do sound as if I'm repeating myself, don't I? That's the point, Your Honour. The authorities all say the same thing.

A Speaker's ruling in the Senate on February 19, 2004, referencing a different citation in Beauchesne, citation 890 at page 244, stated:

... reports from previous sessions, may, if the House agrees to such a motion, be considered by the chamber in a subsequent session.

"May, if the House agrees to such a motion." No such motion has been presented to the chamber.

A ruling that Your Honour will recall, on December 11, 2007, indicated:

A report only becomes a report of the Senate if and when it is adopted....

... business can indeed be revived or reinstated from a previous session, at least within the same Parliament.

However, the ruling goes on to say:

This is done by a clear and deliberate decision, either by adopting a motion or by establishing provisions in Rules or Standing Orders.

And the ruling says later:

... prorogation does have real practical effects in Parliament...

We did not need, procedurally speaking, to be in this mess. The Internal Economy Committee met last week. It could have re-adopted its report and submitted it to the Senate that afternoon. It did not do so. I do not criticize the proceedings of the Internal Economy Committee, as it has an extraordinarily heavy workload, but this was not done. Therefore, the report is not before the Senate. We have absolutely no evidence upon which to base this extraordinarily important and severe decision that we are being asked to make. That, I submit to you, colleagues, is contrary to every principle or parliamentary convention of tradition, fairness and justice.

• (1640)

**Hon. Gerald J. Comeau:** Honourable senators, I thank all of you for having joined in this particular debate, and I do enjoy points of order of this type.

I should remind honourable senators that back in June, the Internal Economy Committee did seek permission of this chamber. There were rumours going around that there might be a prorogation. With that in mind, we sought permission of this chamber to report the report referred to, the review into the expenses of Senator Wallin, because we were expecting it in mid-August. We did have permission from this chamber, that, notwithstanding the usual practice or provisions of the rules, any presented report deposited with the clerk under the terms of this order be placed on the Orders of the Day for consideration at the next sitting. That was the motion made at that time.

We did get permission. As a matter of fact, I think it was unanimous. Pardon me, Senator Robichaud? That's correct, exactly; it was before prorogation, and we did it because we were expecting a prorogation. That was the main point.

Internal Economy did get that permission. Now, on August 13, we did get the report. The Internal Economy steering committee did look at it and came up with some ideas as to how we would deal with it the next day, which was why it was going to the full committee.

Senator Fraser made the point that anything that happens during a prorogation therefore dies, but Internal Economy works a little bit differently. Internal Economy looks at expense claims and determines before, during and after prorogation, if it happens to happen, and makes decisions, and these decisions stand. It is, I think, the only committee in this chamber that actually does that.

**Some Hon. Senators:** Conflict.

**Senator Comeau:** Yes, Conflict. Thank you very much. Senator Cordy, you are usually right on the ball with these kinds of things, and I do appreciate that advice.

But it does make decisions. Therefore, what Senator Fraser is saying is that any decision made by that committee would, I think in your words, die. It would not exist. It would no longer be around. That is not the case at all. The Senate did present the report, and we got the permission and we did, in fact, do it. We did hand over that report to the clerk. It was posted on the website, and I believe a copy was sent to virtually every senator. So the fictitious report, in my case, I happened to leave it in my office today, but it is in my office. Anybody who wants to look at

it — in fact, I invite Canadians to actually read the report. Here we are — I have a number of copies here. I invite senators in this chamber to read the report. Don't base it on what you read in media clippings; read the report. It's worth reading. Then make your conclusions. Read the report. Read it very carefully, and then make your conclusions based on what is in the report, not what people say is in the report or not what people presume is in the report. Read the report.

Senator Furey and I did pore over it for a couple of days, and I do want to refer to Senator Furey, whose guidance I've enjoyed throughout while looking at this report, and I did seek his advice quite a bit. He has been very helpful to me as we went through this process.

The decisions of Internal Economy do not die with prorogation. We assess expense claims. Sometimes the administration comes to us and asks if an expense claim meets the principles of our rules, and we make a determination. A prorogation does not change whatsoever the decisions we make at that point. Senators may make appeal to the full committee. That is a provision that's available to senators, if the steering committee makes a decision, and sometimes it does happen. But the decisions we make at Internal do not die with prorogation.

**The Hon. the Speaker:** I think, honourable senators, that I have been helped sufficiently. I think I've heard enough, and I will take this point of order — thank you, Senator Segal, for raising it — under advisement.

We now then will call from the Notice Paper Motion No. 4.

[*Translation*]

MOTION TO SUSPEND THE HONOURABLE SENATOR  
MICHAEL DUFFY—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 Duffy 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 Duffy, while under suspension, shall not receive any remuneration or reimbursement of expenses from the Senate, including any sessional allowance or living allowance;
- (b) Senator Duffy'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 Duffy shall not receive any other benefit from the Senate during the duration of the suspension;

[ Senator Comeau ]

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 Duffy's office and personnel for the duration of the suspension.

Honourable senators, in view of the point of order, I do not have to repeat the same introduction on the power to discipline because I explained previously that my comments applied to the three motions.

I will not recite the different elements that were repeated by others, exactly as the Leader of the Opposition explained. I believe it is more appropriate to simply refer to the part of the introduction.

I would like to draw senators' attention to the 22nd report of the Standing Committee on Internal Economy, Budgets and Administration, dated May 9, 2013, which was tabled and which I will quote directly. The 22nd report of May 9, 2013, states:

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

TWENTY-SECOND REPORT

It also states:

Recent media reports with respect to Senator Michael Duffy's living allowances in the National Capital Region (NCR) were a matter of discussion. The Senate Administration was asked to provide a summary report of Senator Duffy's travel patterns between Prince Edward Island, his province of appointment, and the NCR. The travel summary raised concerns, whereby, on February 14, 2013, your Committee determined that it should amend a current contract with Deloitte for an examination of two senators' claims to include an examination of Senator Duffy's claims.

Deloitte was asked to review Senator Duffy's 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 Duffy.

Deloitte was provided with all documentation internal to the Senate that could be relevant to its examination. In addition, Deloitte requested documentation directly from Senator Duffy and/or his counsel. This request was not met.

• (1650)

On February 22, 2013, Senator Duffy wrote to me, in my capacity as Chair of the Standing Committee on Internal Economy, Budgets and Administration. He said that he had filled out the Senate forms in good faith, but that he "may have

been mistaken.” He stated his intent to “repay the housing allowance that I have collected to date.” Senator Duffy asked to be provided with the amount to be repaid in order to “settle this matter in full.” Repayment was subsequently made in the amount of \$90,172.24.

In the second paragraph, Deloitte says that its report, which is attached as an Appendix, was based on a number of documents, including:

[...] Senate telecommunications invoices for the Senate mobile phone assigned to Senator Duffy. Deloitte was able to confirm within 94 per cent accuracy and another three per cent likelihood Senator Duffy’s location during the period of review, i.e., Ottawa versus his declared primary residence, PEI. Three per cent of the time, his location was unknown.

The report also states, further down:

The Committee...

As with both previous situations regarding senators Wallin and Brazeau, the report states:

[...] Deloitte reported that they were unable “to assess the status of the primary residence declared by Senator Duffy against existing regulations and guidelines.” However, they did conclude that “all of the trips between Ottawa/Gatineau and PEI claimed by Senator Duffy occurred.”

The Committee acknowledges Deloitte’s finding that criteria for determining primary residence are lacking. This is being addressed by the Committee.

Deloitte’s report has informed our determination of the appropriateness of the living expense claims filed by Senator Duffy. Senator Duffy was found to have spent approximately 30 per cent or 164 of the 549 days in the period of review at his declared primary residence.

Given that, at that point in time, Senator Duffy had paid the money back, this fact is noted and it is further recommended that the living and travel expense claims submitted for reimbursement by Senator Duffy be monitored in the future.

Deloitte’s report is attached as an Appendix, and I would say it is similar, in presentation, to the report on Senator Brazeau. On page 8 of the report, there is a section outlining eligibility criteria to claim living expenses.

Under the “Travel Status” section, the report cites rule 4.03(14) of the Senate Administrative Rules, which states the following:

A Senator whose provincial residence...is more than 100 kilometres from Parliament Hill, and who is within 100 kilometres of Parliament Hill...

—the wording is important here—

...for the purpose of carrying out the Senator’s parliamentary functions is on travel status...

The living expenses section of the report refers to the Senators’ Resource Guide, which states the following:

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...

By and large, the quoted rules are those that were in effect at the time, the same ones I spoke of yesterday in the case of Senator Brazeau, namely section 4.03 that clearly states two conditions under which a senator is entitled to be reimbursed.

Section 4.03(14) reads as follows:

A Senator whose provincial residence in the province or territory the Senator represents is more than 100 kilometres... for the purpose of carrying out the Senator’s parliamentary functions...

Then, section 4.03(15) states, and I am paraphrasing, that the senator on travel status in the region is entitled to claim an allowance in respect of private accommodation — in the case of Senator Duffy — which is section (c).

Section 4.03(16) reads as follows:

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

Section 4.03(17) reads as follows:

An allowance for meal and incidental expenses incurred by a Senator who is on travel status...

Section 4.03(19) reads as follows:

Subject to the need to fulfill their parliamentary functions... a person shall exercise due economy in the selection of travel options.

Honourable senators, rule 4.03 of the Senate Administrative Rules is very clear. It is reproduced in pages 8 and 9 of the Deloitte report. Page 10 of the report also includes an indication of the living expenses guidelines for ownership of a secondary residence in the NCR.

In terms of the guidelines in effect from April 1, 2011 to June 4 2012, the following is stated:

A senator who owns a secondary residence in the NCR may be reimbursed for accommodation expenses at the rate set out...

This is therefore a clear reference to the idea that when within the 100 km, a senator must have a secondary residence and not a primary residence. The same applies to the section on meal allowances and incidentals; another reference to the guidelines on senators’ living expenses as follows:

Senators on travel status in Ottawa will be reimbursed at the per diem rates.

The notion of travel to Ottawa is important here. Yesterday, I also talked about the forms that senators fill in, forms that are not open to interpretation. One of these is the declaration of primary and secondary residence; each senator must complete this form. In the first section, under “primary residence”, senators have to check a box to indicate that their primary residence is within or more than 100 kilometres from Parliament Hill. Sections B and C are in the middle of the form. In Senator Duffy’s case, he filled out section B, which says:

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

The senator signed the form, which, as I said yesterday, states the following:

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 Administrative Rules*...

The *Senate Administrative Rules* is what I quoted from earlier, sections 4.03(14), (15) and so on. With respect to Senate policies and guidelines, I also quoted those earlier and they are in the Deloitte report.

I would like to quote again from the form:

I will advise the Financial Services Division immediately of any changes in the status of my residences and will amend this declaration accordingly.

It should be perfectly clear to those signing the form that they are declaring they will follow the rules and that they are declaring their residence in the National Capital Region to be a secondary, not a primary residence.

This is also the form that all senators have to fill in and sign for all travel expenses. This form is entitled “Travel Expense Claim.”

• (1700)

Travel Expense Claim: 64 Points Travel System and Living Expenses in the N.C.R., makes things clear right away. If senators have to fill out that form, then it means that they are travelling and that their primary residence is not in Ottawa.

Senators also have to fill in their date of travel, their itinerary — where appropriate — and the purpose of the claim. Often senators will write, as was the practice, “parliamentary functions.” If senators are claiming per diems for when they are in residence in the national capital region, they have to indicate “parliamentary functions” on the form. Technically, in order for senators to claim per diems, the Senate must be sitting or must soon be sitting, unless the senator is in the national capital region for an impromptu visit or committee meetings. The form therefore includes “accommodation and per diems” for living expenses and once again indicates “I certify.” As a result, when senators sign the form, they certify that the charges are in accordance with the Senate Administrative Rules.

In Senator Duffy’s case, he completed two declaration forms and had to fill out the appropriate part of at least 18 living expense claims. He therefore stated that his secondary residence was in Ottawa at least 20 times.

I would also like to draw your attention to page 13 of the Deloitte report, which deals with Senator Duffy’s primary residence indicators. Honourable senators will recall that the Senate Standing Committee on Internal Economy, Budgets and Administration rendered a decision to request primary residence indicators to serve as a guide in applying the rules. It is not always a conclusive indicator, but when a senator votes in a certain region and is on the voter list there, it is usually because, in accordance with the Canada Elections Act, that is where he or she lives. Senators had to submit four things: a copy of their driver’s license, a copy of their health card, their income tax return, and a signed statement indicating where they vote.

In Senator Duffy’s case, the health card was not conclusive, because we did not have the address, nor was his income tax return. The address was not that of the declared primary residence. The address on his tax return was not the declared address in Prince Edward Island. Finally, the signed statement regarding the polling station and the information provided were insufficient to determine whether Senator Duffy was on the voters list in the same area as his declared primary residence. Therefore, he could not prove that his name was on the voters list in Prince Edward Island.

Senator Duffy’s location was presented on page 16 of the Deloitte report. It was determined that he spent only 30 per cent of the time at his declared primary residence in Prince Edward Island, that 45 per cent of this time was related to Senate business, but 37 per cent in Ottawa, that undocumented activity in Ottawa accounted for 6 per cent, and that work in Ottawa the day before or after Senate business accounted for 11 per cent. This meant that Senator Duffy was in Ottawa for 296 days out of the 549 days that were looked at.

I want to draw your attention to something that becomes a key element for what follows. Page 18 of the report refers to an overpayment. The report says: We identified one group of days where Senator Duffy submitted expense claims for per diems during a time period when he does not appear to have been in Ottawa. Our review of telephone records indicate that Senator Duffy was located in Florida, United States, from January 12, 2012 to January 28, 2012, confirmed by telephone communications on eleven (11) of seventeen (17) days during this period. He submitted claim T64-20671 for \$1,150.60. Claim T64-15839 relates to Senator Duffy’s living expenses in the NCR, including 27 days of private accommodation, plus 18 days of per diem at \$87.55 per day. Included in these claims were twelve (12) days of per diems during the period where Senator Duffy appears to be located in Florida, United States, for a total amount of \$1,050. Based on the available information, it does not appear that Senator Duffy was eligible for per diem payments for the twelve days while he was in Florida. One cannot claim amounts for staying in the National Capital Region when one is in Florida.

Through his lawyer, Senator Duffy provided a copy of a letter signed on April 18, 2013, addressed to Senator Tkachuk, in which he wrote the following, seemingly regarding the above-mentioned amounts: “Following our informal conversation Tuesday evening,

[ Senator Carignan ]

I examined my files for January 2012. I then realized that because of a clerical error, per diems had been claimed for a number of days during which I was not in the national capital region. The person who normally deals with these matters was on maternity leave and it was a temporary staff member who processed the claim. It is clear that the claim was inappropriate and I will reimburse the Senate without any hesitation.”

In the Deloitte report, this appears as a simple mistake, a clerical error made inadvertently. This is not normal but it can happen on a more or less regular basis in a normal administration.

• (1710)

The Deloitte report, which was tabled in the Senate was another report that covered the various situations. The fourth report was presented on May 9, 2013. However, after that, on May 21, 2013, the Senate passed a motion to not adopt that report. Therefore, the Deloitte report, which was attached to the Internal Economy report dated May 9, was tabled in the Senate. Some significant events ensued, which have since become public knowledge, and this called attention to certain information that suggested that Senator Duffy had claimed living expenses while he was on the campaign trail.

On May 21, 2013, the Senate passed the following motion, on division:

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

In order to proceed with this new order of reference, your subcommittee recommends: That a summary of issues relating to Senator Duffy’s travel claims prepared by the Clerk of the Senate be reviewed by the Committee.

We therefore asked the clerk’s office to draft a summary in order to prepare the committee so that it could consider making additions to the twenty-second report in light of the new information that had been obtained. On May 21, we received that proposal.

The evidence from the May 28 meeting is what is extremely important. On May 28, another Internal Economy meeting was held. I would like to read an important part of the transcript because there are some particularly troubling aspects here. There were 20 claims that were inappropriate given the senator’s declaration that he had followed the rules and that his secondary residence was in Ottawa, when in fact it was a primary residence, so Internal Economy held a hearing. Honourable senators will recall that this meeting was open to the public, at the request of Senator Duffy, who asked that cameras be present. However, Senator Duffy did not attend the meeting that was held on May 28 at 6:40 p.m.

I would like to read part of the transcript from the meeting of the Standing Senate Committee on Internal Economy, Budgets and Administration, where Senator Tkatchuk said the following:

Honourable senators, I will call the meeting to order. I will start by a statement.

On May 21, the Deputy Leader of the Government in the Senate, Senator Claude Carignan, asked that the twenty-second report of Internal Economy be not now adopted but that it be referred back to the Standing Committee on Internal Economy, Budgets and Administration for further consideration and report.

In making that reference, Senator Carignan stated that as far as the study of this report is concerned, given the facts that have been brought to our attention over the last few days, particularly with regard to the Ottawa living expense claims Senator Duffy was submitting when he was also submitting claims for expenses incurred during the election campaign, there were allegations of double billing. That job leading up to the twenty-second report was to see if Senator Duffy had claimed expenses for living in the National Capital Region that he should not have, pocketing taxpayer money he was not entitled to. If in fact we found that we had our task, our one and only task at the time was to get the money returned.

The *Senate Administrative Rules* state that the Standing Committee on Internal Economy, Budgets and Administration shall be authorized to consider on its own initiative all financial and administrative matters concerning the Senate’s internal administration...

A bit further on, he said:

Colleagues, I think it is important to note that upon this report being referred back to us and in light of the additional information, we directed the clerk to do a review of the information it had on hand that relates to these new claims and all claims of a similar nature by Senator Duffy. They did that, and the clerk will report their findings.

Before he does, I want to state that it is highly unusual to hold a public meeting of the committee on matters such as that before us and, colleagues, as you are all aware, these are serious matters.

Then Senator Furey — you will surely remember that day, Senator Furey, I remember it very well — stated:

Thank you, Mr. Chair. I do not see Senator Duffy in the room. For the record, has Senator Duffy been notified of the time and place of this meeting and has there been response from him or his solicitor?

The chair then replied:

Yes. I will ask our legal counsel...

Our legal counsel, Mr. Patrice, stated:

Yesterday I spoke to his legal counsel to inform him of the meeting taking place tonight after the Senate rises, and there was further communication late this afternoon asking confirmation in terms of where the meeting will take place.

The committee concluded that Senator Duffy and his lawyer were aware of the time, place, the agenda of the meeting and all of that.

The chair then stated:

I would like to repeat again that this is a highly unusual process, but it was Senator Duffy who publicly asked for a public forum, and we are providing it here today if he wants it.

Then, we have the full text of the clerk's report. I will mention the important parts because I think this report was basically what opened up the whole issue. It is on page 9.18 of the committee minutes. Perhaps, for reference, for the benefit of anyone following from outside the Senate or the gallery, I should say this is in issue number 9 of the Proceedings of the Standing Senate Committee on Internal Economy, Budgets and Administration, chaired by the Honourable David Tkachuk, on Tuesday, May 28, 2013.

At page 9.18, Mr. O'Brien, Clerk of the Senate and Clerk of the Parliaments stated the following:

Honourable senators, my purpose is to present a report on Senator Duffy's travel claims, more specifically in relation to per diems claimed and reimbursed.

Following recent articles in the media, questions have been raised in relation to Senate funds being used during the 2011 election period. Additional analysis and review is required to verify those allegations and to establish if there are other areas of concern.

He then went on to quote an excerpt from the Deloitte report, setting out that Senator Duffy's location was established through his cell phone information, which was 97 per cent reliable. Section 6.3 of the Deloitte report stated:

• (1720)

We identified one group of days where Senator Duffy submitted expense claims for per diems during a time period when he does not appear to have been in Ottawa.

This relates to the 12 days in Florida.

The Senate administration was asked to conduct a subsequent review...

I will skip down to the last paragraph, which says:

This prompted a further review of all claims submitted during the April 2011 to September 2012 period.

Specifically, the review focused on per diems and the points system. The review was done using information from the Deloitte report and travel claims.

On page 9:19 under "Analysis," he quotes Deloitte:

Deloitte indicates in the report:

Our only restriction is that our analysis is based on the assumption regarding the telephone records and we have not been able to confirm with Senator Duffy, whether he was the sole user of the cell phone on which we relied.

Deloitte's only doubts about the location of the cell phone is whether Senator Duffy decided to lend his cell phone to somebody, which would have caused some confusion, but that does not appear to be the case.

The number of days for which, as I mentioned, per diems claimed in Ottawa when Senator Duffy is reported by Deloitte to have been outside Ottawa.

What the administration did was take the cell phone data identified in the Deloitte report and match them with the information it had about claims in the NCR.

The conclusion:

April 2011: 6 days claimed; paid, 6 days.

May 2011: 12 days claimed; paid, 12 days.

June 2011: 1 day claimed; not paid.

August 2011: 18 days claimed; not paid.

September 2011: 6 days claimed; paid, 3 days.

October 2011: 2 days claimed; paid, 1 day.

January 2012: 13 days claimed; paid, 12 days.

March 2012: 1 day claimed; paid, 1 day.

For a total of 49 days claimed and only 25 paid.

Therefore, in the period from April 2011 to March 2012, Senator Duffy claimed an allowance 49 times — at any event, for 49 days —, stating that he was in the national capital region when he was elsewhere, either in Charlottetown, Florida or elsewhere, outside the national capital.

I will continue reading:

Honourable senators, the following is a summary of concerns identified: Number of days of per diems claimed in Ottawa when Senator Duffy is reported by Deloitte to have been outside Ottawa.

It concludes:

...this review leads to a conclusion that the Deloitte finding in relation to per diems claimed in January 2012, when the senator was in Florida, is not an isolated incident; it represents a pattern that raises concerns. As shown in the above table, there were 49 days where per diems were claimed in Ottawa during a time period, according to the Deloitte report, that Senator Duffy does not appear to have been in Ottawa. Senator Duffy has never been interviewed about this.

This finding may merit the inclusion of one or more...recommendations in the...report.

Honourable senators, you will recall that we started out with a case involving the notion of primary residence, and now we have a completely different case about claiming expenses when he said he

was in the NCR but was actually elsewhere. As I said that day, I believe that 99 per cent of people know where they live, where their primary residence is. I can understand that maybe 1 per cent of people might have a hard time figuring out where their primary residence is. Still, I found it much more disturbing that someone might not actually know where he was.

Naturally, that raised a lot of comments from senators. Senator Furey commented first and asked Mr. O'Brien, the clerk, the first question. He said:

I noticed that in August of 2011, 18 days were claimed, but none were paid. Is that because Finance did not receive sufficient documentation...?

Senators will recall that 18 days were claimed in August, but none were paid. The clerk responded:

As you said, Senator Furey, there were 18 days claimed in August 2011. They were not paid because we had a travel claim from Senator Duffy. We knew he was not in Ottawa.

For August 2011, he claimed 18 days in the NCR, but for that same period, he also claimed a plane ticket to Charlottetown, Prince Edward Island. The Senate administration saw that there was a problem, so it called the senator's office and asked him why he was claiming 18 days in the NCR as well as making a travel claim when he was in Prince Edward Island.

Therefore, he was not reimbursed and that is why that month, in particular, the claim was disallowed.

Senator Furey said:

It was actually the Senate administration that discovered this and disallowed it.

Mr. O'Brien replied:

That is correct.

Senator Larry Smith said:

Chair, based on what we have heard, I would like to move that the twenty-second report be amended by the following recommendation:

That the Senate request the proper authorities to examine the matters dealt with in this report and related information, and;

That the Standing Committee on Internal Economy, Budgets and Administration be authorized to refer such documents as it considers appropriate to the appropriate authorities for the purposes of the investigation.

Senator Furey asked Senator Smith asked if by "appropriate authority" he meant the RCMP.

Senator Smith replied that, in fact, he would suggest that the RCMP would be the appropriate authority, but that he was trying to be delicate.

All this occurred at a public meeting. We were extremely surprised by the frequency. What struck us at the time was that whereas we believed we were dealing with an isolated incident with the Florida claim, the report made us realize that there was a pattern, that a number of claims were made over the course of several months.

• (1730)

There is no white or grey area here. Are you in the National Capital Region or are you not? In August, he submitted a claim for reimbursement to say that he was in the National Capital Region, but he was in Charlottetown, and he almost always sends in the same claim. This raises a lot of questions.

I will draw your attention to page 9:23, where I asked a question to Ms. Proulx, who is the director of finance and procurement for the Senate. I asked:

I see that in April 2011— during the election campaign, that is — Senator Duffy claimed seven days of per diems when he was in Ottawa. When he claimed those per diems, it was not only because he was in Ottawa, but he was also engaged in Senate business. Is that correct?

Being in Ottawa is not the only thing. You must be here for parliamentary duties, but he was campaigning.

She responded:

That is correct.

I asked:

Did you dig a little deeper, not just looking to see whether the arithmetic is correct or whether the claims and the Deloitte report match up, but did you dig a little deeper into the nature of the Senate business? Let me use May 2011 as an example.

In May 2011, we had the election on May 2. The Speech from the Throne took place on June 3; the cabinet was appointed on May 18. So no committees had been formed and Senate business was on hold, waiting for Parliament to be recalled.

But there are 18 per diem claims in Ottawa and three for Senate business, but outside Ottawa. That means 21 days of work for the Senate when the Senate is not operating, but is waiting for the Speech from the Throne.

How could there be 21 claims for parliamentary business after an election campaign and before the Speech from the Throne, unless of course — I have had personal experience with this in recent weeks — a senator is appointed Leader of the Government in Senate, which is why I had to travel to be here several days before the Speech from the Throne.

This therefore made me uneasy. I asked Ms. Proulx a question about it and she replied:

Going back to your first question, senator, for May, when senators claim travel to Ottawa, any time up to June 22, the purpose of the trip is not required. So, to the

question of whether the report asked what the business in Ottawa was, we did not do that.

You will recall why we changed the guide after that to read that in regard to parliamentary functions when the Senate is not sitting, senators will need to justify and clarify what were the parliamentary functions performed.

A little later, on page 9:24, at the bottom, I asked Ms. Proulx another question. This time we were talking about per diems. I said:

That has just raised the point that I wanted to make, that what has been presented is simply the number of days for which he submitted a claim in Ottawa. We know that he was not in Ottawa, but there are no other claims submitted where he is supposed to have been doing Senate work. But it clearly refers to a time when the Senate, Parliament, was not sitting, specifically in May 2011.

She replied:

Exactly.

Those are some of the conversations we had with the witnesses, proving that there was a significant number of claims submitted regularly that, at first glance, may have been payable, but that, upon cross-referencing the data with other information, such as cell phone data, turned out to be improper and false.

On page 9:32, I asked a question, or rather, I commented to Ms. Proulx:

As Senator Stewart Olsen said, it matters little whether it was a temporary employee or the regular one; there is a pattern of irregular claims.

Ms. Proulx responded:

Yes, there is. Two people were there during the period when the report was done. So those two people dealt with the claims.

Then I asked her this question:

All those claims, on the usual forms that each senator signs —

Ms. Proulx: Yes.

I continued:

— to attest to the accuracy of the information, and is signed, dated...?

Answer:

Absolutely.

Earlier, I talked about the Florida claim, which he blamed on a mistake made by a replacement assistant. However, we also established that there was a second assistant, his regular assistant, who had also helped with the claims, and she was an experienced employee.

Senator Furey raised another point on page 9:34:

I asked at the beginning if, in fact, Senator Duffy had been notified. I was very distinct in terms of when and where the meeting was and how he had been notified, and I am satisfied that he has had every opportunity to be here. If he is not here, it is by choice. When a report of this full committee goes to the chamber, he will have another opportunity to partake in any discussions on it...

Then there was a discussion. Senator Cordy, like all of us, was really surprised and said on page 9:35:

We do have to remember that regardless of who filled out the form, Senator Duffy had to sign every expense form that he would agree with it. We cannot forget that these were not just sent in by a temporary staffer; he actually signed them, as we all sign our own and check them over carefully.

I want to make a few comments. Like Senator Campbell, I am certainly loath to limit the scope of the RCMP investigation. Canadians are justifiably furious. They deserve answers, and the RCMP should not be limited in the scope of their investigation.

You remember using those words, which is why we added “and related information” in the conclusion of the report. Senator Cowan made some remarks, which led us to change the report tabled in the Senate.

Senator Furey moved:

Your Committee acknowledges Deloitte’s finding that criteria for determining primary residence are lacking and this is being addressed by your Committee.

I suggest adding — these were the sections that we, the Conservatives, did not think should be included in the first report because he had repaid the monies, he had admitted that he owed the money, and we did not think it was appropriate to include them — you suggested adding the following, which was agreed to:

• (1740)

On the other hand, to claim living expenses in the NCR, 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.

That was a proposal that you made, Senator Furey, to be added to the report.

The report was drafted, sent to the Senate and passed. We found that we were dealing with a recurring situation, a pattern, not an isolated incident where allowance amounts were claimed for parliamentary duties in Ottawa. Senator Duffy put in frequent claims when he was in Florida, or during an election campaign, or in Charlottetown or somewhere else, 49 days in eight different reports that he submitted. He also claimed 21 days for Senate

activities when the Senate was not sitting. It was for a period when no committees were sitting, other than the Committee on Internal Economy.

In conclusion, honourable senators, to so frequently sign a statement declaring that the claim is in compliance with the Senate Rules, to say that you were in Ottawa when you were really somewhere else, I understand that Senator Duffy seems to disagree with the definition of primary residence, that he thought it was a little bit vague. We believe it is clear and the Committee on Internal Economy was very clear about it, we saw it in the forms and in the Rules.

Knowing where you are when you are submitting expense claims is something that is black or white. There is no gray area that is open to interpretation. As I have explained on a number of occasions, I want to make this distinction. There are criminal investigations under way, I do not know whether we are dealing with a crime, I just know that there was an intention to commit a crime, the *mens rea* element and I do not think we should become involved in that. However, with regard to disciplinary action in the Senate, it seems to me that this is behaviour that is characterized by poor management, by a level of carelessness and irresponsibility in his claims and in the statements he made. This leads me to believe that this is a case of gross negligence which, in addition to repeatedly violating the rules of the Senate, led to his receiving money unduly, which is an offence to the dignity and integrity of the Senate.

I said it yesterday in connection with Senator Brazeau and I would like to say it again. When we put our signature on something, when we attest that a document is in compliance, we need to take some care to ensure that everything is in compliance. When the consequence of signing the form is that money will be taken from the public treasury and transferred into our personal bank account, the degree of care taken must be even higher.

Honorable senators, the public finds situations of this kind shocking, and rightly so. I think that we all had an opportunity to see how our fellow Canadians were shocked when they heard about these inappropriate payments. At the very least, there has been negligence, which justifies disciplinary action on the part of the chamber. Punishment for a colleague is not really the kind of motion that we like to move or that we like to adopt, but the power to discipline its own members belongs exclusively to the Senate and I think we must exercise this power. This is why I urge you to vote in favour of the motion.

[English]

**Hon. George J. Furey:** Senator Carignan, I'm going to go back to your general comments yesterday that pertained to all three motions. I listened very carefully to your words yesterday. I thank you for your very measured and reasoned comments. That's not to say that I agree with them. In fact, I do not agree with your conclusion.

However, one aspect of your comments gave me some rather serious concern, and I want to read from the transcript yesterday. You said:

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.

You were adamant that you are not straying into the area of criminal law and that you are not implying in any way that the senators in question are guilty of any criminal conduct, but when you introduce the concept of negligence, it requires an analysis of the converse of your statement.

When you say the senators in question are guilty of negligence, whether it's ordinary or gross — I'm not going to go into that — are you in fact ipso facto negating the possibility, then, of criminal conduct?

[Translation]

**Senator Carignan:** No, not at all. You know that words are words. If they are used in the Criminal Code, it is because the intent is to point out that the words that are written there describe a criminal offence. If the same words are used in the Civil Code, it is because they are meant to govern civil situations. If the same words are used in tax legislation, very often it is to govern behaviour in a tax context.

These words are also used in the Occupational Health and Safety Act. When an employee is the victim of an accident, if he showed gross negligence when the accident happened, he will not be compensated.

These are words, these are concepts. If these words are used to describe a breach of dignity and integrity, they do not insinuate that this is a criminal offence. Rather, these are words that describe behaviour, that denote mismanagement, carelessness, recklessness or negligence.

You know that a criminal offence requires the *actus reus* and the *mens rea*. There must be intent to commit a criminal act. Let us take August as an example, and whether Senator Duffy intended to commit a criminal act in August.

• (1750)

I would be quite surprised, particularly for August. It is rather inept to send a claim for living expenses in Ottawa and at the same time send a claim for tickets to Charlottetown. It is as though there was an intent to defraud the Senate or commit a crime.

This is why I keep bringing up the words “gross negligence” in the civil law context, meaning mismanagement, recklessness, carelessness. In such a situation, what kind of behaviour is called for? I think that in this kind of situation, the thing to do is to study the claim and, when signing it, make sure it is in compliance with the rules.

And when the situation is repeated and the information is not checked, because clearly the information was not checked, then we fall into the area of gross negligence, especially when the same thing happens again and again.

[English]

**Senator Furey:** I certainly agree from everything you've said, Senator Carignan, that it's not your intention to stray into that area of criminality, but when you use the word "negligence," by definition it takes intent out of the picture. Are you not worried that by classifying this conduct as negligence, you may be impacting on an investigation that may or may not be looking for intent?

[Translation]

**Senator Carignan:** I merely want to be careful. I think I have been fairly clear with the words I used in my speech today. I said that it was not my intention to insinuate that a crime had been committed. We do not have the jurisdiction to look into this aspect of the matter. We have passed the matter on to the appropriate authorities, and according to information published in the media, the investigation is ongoing.

The Senate exercises its disciplinary authority like any other entity, whether it be a professional corporation or an employer who receives an expense account from an employee or a senior manager. The employer must verify that the amounts claimed are correct. When it realizes that some amounts claimed are not consistent with its business practices and this happens frequently, it takes disciplinary action. You can do this without criminal intent because it may just be negligence, which is what I think happened here.

[English]

**Senator Furey:** I'll emphasize again that I certainly agree with what you are saying, Senator Carignan, but are you satisfied that when you classify conduct as negligence and, by definition, take out intent from that conduct, that it will not have an impact on any other investigation that may or may not be looking at this whole aspect of intent?

[Translation]

**Senator Carignan:** I do not see how that can have any impact on an investigation that is under way. If charges are laid, the courts will probably have to study these cases from a criminal perspective on another type of offence. I do not know what other type of offence may have been committed, and beyond a reasonable doubt, with the preponderance of evidence that is so much greater in a criminal matter.

I think that is totally separate. For instance, if an employer decides after an internal investigation to fire an employee who demonstrated gross negligence, this is not something that will influence the judge in handing down his sentence.

[English]

**Hon. Art Eggleton:** I want to try a question that I put to you yesterday and I really didn't get an answer to it. It has to do with the severity of the penalties you are proposing here in all three motions — all the same, too, no distinction of one case versus another. You are saying there should not be any remuneration or reimbursement of expenses, the right to use Senate resources be

suspended and not receive any other benefits, which, as I think we've heard from two of the speakers, is going to affect health claims and affect their need for medication. It sounds quite severe, particularly when you consider that we don't have all the facts of the case.

You cited a lot of things there, but there are other things. Senator Duffy yesterday talked about being led to believe that he was doing the right thing, being encouraged to do this and that. We also know that the Prime Minister's Office was considerably involved, but we don't know to what extent. We still don't have much information on that, including the \$90,000 cheque, so there are a lot of unanswered questions. In a judicial proceeding, you take everything into consideration when you come to sentencing.

It strikes me as being rather premature to come to these levels of penalty, the sanctions that you are advocating. Why have you come to the conclusion that these are the right penalties? In the House of Lords, for example, in the case that occasionally gets cited here, there were different penalties for different lords, and they were maybe a suspension of three months or four months, but here you are saying for a whole session, which could likely be a couple of years. You are taking away all the money and benefits they have, plus their health care benefits. Can you explain why you have come to the conclusion that those penalties are appropriate in these cases?

[Translation]

**Senator Carignan:** The procedure is well known here. When a motion is introduced, we say "moved by" and "seconded by". A senator proposes and I say the Senate disposes.

It is up to the Senate to decide whether suspension is justifiable. Together, through our debates, through the different points of view that are expressed, we decide in the opinion of this House on the most appropriate penalty.

In my motion, I proposed a suspension until the end of the session with the possibility that I raised earlier in a point of order, but I really wanted to draw attention to Rule 5-5 (i) which makes it possible to revoke that order.

[English]

**The Hon. the Speaker:** Honourable senators, we are getting very close to six o'clock. Not wanting to offend the *Rules of the Senate*, it's my understanding that we will not see the clock.

**Senator Carignan:** Yes.

**The Hon. the Speaker:** I see assent being nodded.

**Senator Eggleton:** I realize it's up to the Senate to determine the penalties. I was asking why you, who put the motion, decided that these are the kind of penalties you wanted to propose. You haven't answered that yet.

Let me ask another thing. You talked a lot about primary residence. Is it your view that primary residence needs to be in the province in which the senator is appointed to represent?

• (1800)

[*Translation*]

**Senator Carignan:** I do not want to give my opinion on this. That appears to me to be an element. It is desirable. I know that in certain cases that does not happen. The per diems are not claimed. The problem is that when we claim per diems in the national capital region, it must relate to our secondary residence, not our primary residence. I know that some colleagues on the other side had a primary residence in Ottawa and represented a province other than Ontario but did not claim allowances. That is the major difference here.

[*English*]

**Hon. Serge Joyal:** On this important subject, I listened carefully to the Honourable Leader of the Government, but in my mind there is still a cloud of shadow on this whole file, which is the issue of residence.

The issue of residence to me is a constitutional issue. It is not an issue of administrative rules. It is not up to the Internal Economy Committee to say, “Oh, you have opened a file.” You came to the conclusion, according to your own words, that Senator Duffy was not living in a residence in the province for which he was appointed at the very beginning.

I will read section 23 of the Constitution for the benefit of honourable senators. I will read it in French also because the honourable senator is of civil tradition; he will understand very well what the word “domicile” means.

Section 23 of the Constitution pertains to the qualifications to be a senator and to remain a senator. It states the following:

The Qualifications of a Senator shall be as follows:...

(5) He shall be resident in the Province for which he is appointed.

This is a fundamental qualification for any one of us to sit in this chamber. The Supreme Court of Canada in its 1979 ruling outlined how much residence is an essential qualification. It is so essential a qualification that section 42 of the Constitution Act, 1982, states that an amendment to the Constitution of Canada in relation to the residence qualification of senators “may be made only in accordance with subsection 38(1),” which is the 7-50 amending formula.

In other words, that qualification is so important. Why? Because our chamber is composed of regions, and being from a region — i.e., I am from Quebec — I need to reside in that province to speak on behalf of that province. That’s why it is such an essential qualification, and not only at the time of my appointment but all through the terms of office through which I serve in this chamber.

When I read the French version, honourable senators will understand clearly the strategic importance of this section.

[*Translation*]

I am going to read it again, in the other official language:

23. The Qualifications of a Senator shall be as follows:

(5) He shall be resident in the Province for which he is appointed;

[*English*]

The honourable senator is a civilist like me; he has been trained under civil law. In the province of Quebec, the notion of domicile is very clear. It is defined as your principal place of establishment. You outlined in your report that the committee checked four items. They checked the health insurance card, whereby you are registered in a province, if you live at least six months in that province. You have checked his driving permit. You have checked his voting place. You have checked his income tax return.

When you receive your income tax return, your address is printed on it. You cannot fuff around this. It is the same with the electoral list. I have received my electoral list to vote in the municipal election in Montreal. I receive it where I am domiciled.

What puzzles me is that when the honourable senators on the Internal Economy Committee looked into the file of Senator Duffy and realized — and you stated this multiple times in your presentation — that he was not living — I would put it differently — that his principal residence was not in Ottawa, it should have been in P.E.I., and you declare P.E.I. as a principal residence but, in fact, he was all the time in Ottawa, as in a factual principal residence, it didn’t ring any bell in anybody’s mind that for this senator there was a major constitutional problem, much more than \$50,000, the right to sit in this chamber, which is a fundamental point of credibility. When I stand up and I speak as a senator, it is because I’m qualified.

The Honourable Senator Smith and I listened, too, when you said that. The Honourable Senator Smith proposed to refer the file to the competent authority, and Senator Furey says, well, the RCMP. To me, for this file there were other competent authorities to pronounce on the qualification of Senator Duffy.

Why did nobody at the Internal Economy Committee come to the conclusion that there was a constitutional problem with the status of Senator Duffy?

[*Translation*]

**Senator Carignan:** The report was tabled in the Senate and, to my knowledge, that was also not raised in the Senate. I may be wrong, but I do not think so.

We looked at it in the context of the policy governing the reimbursement of expenses. Under that policy or those rules, the primary residence must be located more than 100 kilometres away. Whether the residence is in Prince Edward Island, in Quebec City or in Vancouver, even if one claims that his primary

residence is in Prince Edward Island, even if we were to determine that one's primary residence is in Quebec City, the rules on reimbursement state that the primary residence must be over 100 kilometres away. This is something that was briefly discussed in Senator Wallin's case, because she had a really strong base in Toronto and Deloitte auditors wondered whether her primary residence was in Saskatchewan or in Toronto. They seemed to think it was not clear and that is why they wrote that the notion of primary residence was not clear. As regards the directive on the reimbursement of allowances in Ottawa, the issue of whether the primary residence is in Saskatchewan or in Toronto is irrelevant because it is beyond 100 kilometres away.

[English]

**The Hon. the Speaker:** Senator Segal, on a point of order.

**Hon. Hugh Segal:** Just so we are clear, the report from Deloitte, which we don't have in this place and which is not before us, made no such assertion. It made no such assertion about any representation by Senator Wallin that her official residence was in the wrong place from where it really was. I think the Leader of the Government in the Senate should not go down that road.

[Translation]

**Senator Carignan:** I can withdraw my statement.

**The Hon. the Speaker:** I wish to inform this honourable chamber that this is not a point of order. It is more a matter of debate. Senator Carignan has the floor.

**Senator Carignan:** Thank you. The issue did not arise because the point was to determine whether the primary residence was within 100 kilometres for the purpose of applying the policy.

As regards the concept of primary residence, I know that some senators, particularly on your side, stayed in Ottawa while representing Quebec. That happens. From a constitutional point of view, that is another debate. We were thinking of the application of the notion of 100 kilometres. However, if you wish to make a proposal in addition to that to disqualify Senator Duffy because his primary residency is not in Prince Edward Island, but rather here, you can move a motion to disqualify for failure to comply with the residency rules. It is your right as a senator to do so.

• (1810)

[English]

**Hon. John D. Wallace:** Senator Carignan, would you accept a question?

**Senator Carignan:** Yes.

**Senator Wallace:** Senator, in the point made by Senator Joyal, he referred to the constitutional requirement that each of us, in order to sit as senators and to be appointed to the Senate, must be resident in the province that we represent.

[ Senator Carignan ]

With the discussion taking place today about primary residency and principal residency it gets a bit confusing, but I thought that Senator Joyal may have said that primary residency had some relevance to the residency requirement in the Constitution.

My question for you would be: Do you agree with that? Does a primary residency have any relevance? Is it mentioned in the Constitution?

Second, if we have to be resident in the province we represent, is it possible that—since many people have residences, seasonal and otherwise, in various provinces—a person could be resident in more than one province?

[Translation]

**Senator Carignan:** To be quite honest, I have not examined this issue. One can be a resident for various reasons. The same goes for the facts, as I said yesterday when I explained that the same facts can be regarded as a civil fault, a disciplinary fault or even a criminal fault under various laws. The same is true for the notion of residency.

From a constitutional point of view, what is the definition of residence, for instance, to qualify? The constitutional notion of residency is not necessarily the same as the definition that is used for voting, for example, or for paying one's taxes. As we know, under tax law, it has to do with the number of days. It does not matter if you intend to return to wherever your social network is. That changes nothing; it is the number of days. For voting, if you vote in Montreal, other criteria are established regarding the election. In civil law, it is a question of intention, that is, determining where you intend to settle down permanently, where your ties are, where your social network, your friends and your family are. There are some helpful clues, such as your driver's licence.

Here, in the Internal Economy Committee, we looked at the criteria of being within 100 kilometres and the notion of secondary residence. These were the two conditions to be eligible for living expenses, to determine if the secondary residence is a secondary residence, regardless of where the primary one is, and if it is within 100 kilometres.

[English]

**Hon. Lillian Eva Dyck:** Would you accept another question, Senator Carignan?

If I look at the motions involving Senators Duffy, Brazeau and Wallin, the basis of the motion really says in order to protect the dignity of the Senate and public trust and confidence in Parliament, the Senate shall order suspensions for the three senators.

When I look at the Rules of the Senate—and I have read them through many, many times—they are not crystal clear. I don't know whether you took these into consideration when you came up with this motion, but rule 15-2(2) says:

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.

If you were going to protect the dignity and reputation of the Senate and public trust and confidence in Parliament, instead of ordering a suspension, you could have ordered a leave of absence.

Did you take that into consideration, because a suspension is a much more severe penalty?

[Translation]

**Senator Carignan:** I studied the rules as well. As you know, I was part of the subcommittee that reviewed the Rules with Senator Fraser and Senator Stratton. We examined the rules. There is a distinction to be made between a senator on a leave of absence and a suspension.

When we talk about a leave of absence, when we are talking about protecting the dignity — the leave of absence is for when criminal charges are laid.

Rule 15-4(2) says:

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

I will read rule 15-4(1), which states:

At the first opportunity after a Senator is charged with a criminal offence for which the Senator may be prosecuted by indictment, either:

(a) the Senator shall notify the Senate by a signed written notice that is delivered to the Clerk of the Senate, who shall table it; or

(b) the Speaker shall table such proof of the charge as the court may provide.

That was the case with Senator Brazeau when charges were laid against him.

Rule 15-4(2) states:

When notice is given under subsection (1), the Senator charged is granted a leave of absence from the time the notice is tabled...

There is an explanation as to how the leave of absence with pay is administered and when it comes to an end. The leave of absence remains in force until the individual is found guilty, at which point that person falls under the suspension category. That is in cases where criminal charges have been laid. In cases where the Senate is exercising its disciplinary authority, for whatever reason, the term used is “suspension.”

Section 15-2(1) states the following:

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

The leave of absence was really created to be used in cases where criminal charges have been laid.

[English]

**Senator Dyck:** Thank you for that answer.

I notice that when a senator is charged with a criminal offence — and you can read that rule out — the next rule is 15-4(2). When notice is given of such a charge, the senator is granted a leave of absence. He or she is not suspended. There’s a leave of absence even when the senator has been charged; it’s not a suspension.

It seems to me that we have jumped the gun, because some of the senators named in the motions have not been charged, and they have not been found guilty.

[Translation]

**Senator Carignan:** It cannot work that way, and I will explain why.

**Senator Tardif:** Those are the rules.

**Senator Carignan:** Yes, I know, but the rules use the term “suspension.” That is the term used in the context of exercising our disciplinary authority.

If we were to accept your argument, Senator Dyck, this is what would happen. There is a serious breach of the rules and we choose to go easy on the person because the matter is under investigation and we do not know what will happen to the individual. How long does an investigation last? Some investigations can last as long as 10 years before charges are laid. Does this mean that, during that period, Parliament cannot discipline a parliamentarian for breaking one of the *Rules of the Senate*? No. We have the power to do so, regardless of any process outside of the chamber, which is a criminal process for criminal offences. This is an offence against the chamber.

● (1820)

Just try going to court to enforce the *Rules of the Senate*. Try taking a senator to court to reimburse you because he broke one of the *Rules of the Senate*. The judge will say that he has no authority, that the Senate has the authority to enforce its rules. It is the same thing.

**Hon. Roméo Antonius Dallaire:** That seems pretty ad hoc to me. I come from a system that has a discipline management system as well as a legal management system. When an individual is convicted of an offence, that person is dismissed. In this case, the individual does not lose any salary, only his or her responsibilities. That is a significant punishment.

If the individual messed around with funds, as is the case here, and if there is administrative proof that the funds should not have been given to the individual, that individual is obligated to reimburse the funds or his pay can be garnisheed. That is what was done. There is no problem.

However, you, the person who committed the act, find yourself facing what I would call a legal procedure, you will be charged.

[English]

You will be charged because you have committed this act. There are two levels. You can be charged in a summary trial — which this place is more or less reminding me of — for minor infractions, or you will be court-martialled. If you are court-martialled that is for major infractions. Even if you are court-martialled, which could take two years due to operational backlog, no one is allowed to garnish your salary.

You can suspend them from duty; you can tell them to stay at home; you can even tell them not to wear their uniform and they certainly have no more authority and responsibility, but you cannot garnish their salary unless they are proven guilty. At that point that then becomes part of the punishment. In this case, we are talking about \$270,000, or more.

It seems to me that, yes, you can suspend somebody, but I don't remember reading that you can suspend somebody and then also garnish their salary. If you are doing that, then you are going well beyond the process that we have so far; you are going into a much more formal process where the amendment that's been proposed of having a committee committed to looking at that specific dimension would then, in my opinion, have, after due process, the authority to perhaps come to this decision.

Here we have jumped ahead one step. We hold our whole military structure accountable in due process and in the legality with its own laws, but here we have administrative and legal dimensions all mixed in. This is really nothing better than a summary trial, where a person doesn't have a right to a lawyer and all kinds of things like that. To my knowledge, you can't impose the type of punishment, the type of punitive action that we're doing here at this level with the kind of process we're going through right now. I believe you have to move to something far more deliberate in order to achieve that point.

[Translation]

**Senator Carignan:** I am not familiar with the military justice system. You say you have received emails from people calling for due process. I have received emails as well. One came from a woman who works for a provincial government, and she said that if one of her colleagues had made inappropriate expense claims, he would have been fired immediately.

Just because inappropriate claims were filed, that does not necessarily mean that there will be criminal charges. There are two distinct processes. The House has its rules, its own Standing Orders, its own powers to protect the dignity and integrity of Parliament. It has the power to discipline its members, whether or not charges are laid.

As I explained yesterday, section 18 of the Constitution allows us to use the privileges, immunities and powers held by the Commons House of Parliament of the United Kingdom in 1867. In this situation we have some discretion. We can decide to suspend someone using this power.

Section 31 of the Constitution states that in other situations, a senator will lose his seat and be disqualified if he is found guilty. We have two powers. One is the power to disqualify the person

[ Senator Dallaire ]

with certain conditions if, for example, if he is adjudged bankrupt; the other is a discretionary power that we must exercise, in accordance with the rules of the chamber. Each system, each business and each government has its own disciplinary system. In the Senate, it is the British parliamentary system, and that is why I cited the precedents yesterday.

**Senator Dallaire:** I do not deny that there are procedures in the private sector. It is more complicated when there are unions involved. However, in the private sector, they have the option of an administrative dismissal. It is similar at National Defence.

However, you did not ask for them to be dismissed. You asked to suspend them and you gave a penalty. The first penalty was to take away their jobs. Senator Wallin was a committee chair. She lost her position, she lost money, and she lost prestige and her responsibilities. You also expelled her from the party. That was another penalty. In addition, you are saying that they will remain senators, they will not receive any resources and on top of that, they will be penalized.

I do not object to the punishment per se, but to the method used here to establish the punishment. I believe that the way in which this was done, especially in another file where we did not even have the reports, was rushed and not in keeping with the nature of our institution, which protects people's rights.

I have absolutely no problem referring this to a committee that will have all the information to conduct a study of the matter and prepare a report, as opposed to referring it to just an administrative committee.

**Senator Carignan:** Is that a question?

**Senator Dallaire:** My question is this: Are you going to skip another step and continue to subject us to an incomplete and unfair process?

**Senator Carignan:** I have explained this a few times. We already have a committee — the Standing Committee on Internal Economy, Budgets and Administration — that has the exclusive authority, under the Parliament of Canada Act, to decide whether or not Senate and senators' expenses are justified.

• (1830)

That committee already determined that the Rules of the Senate had been violated and that certain sums had to be paid back, and administrative measures were set out to ensure follow-up.

The rules were broken; that has already been established. Thus, are we to refer this to a committee to determine the degree of the sanction? We are in the Senate chamber. Rule 15 states that the Senate can impose a suspension where there is sufficient cause. It is up to us to debate this, as we are doing here, and to determine the most appropriate sanction. I would like to reiterate that Rule 5-5 also allows us to revoke an order of the Senate, and with 48-hours' notice, call for a motion. Those are the rules governing this chamber.

[English]

**Hon. Percy E. Downe:** I'm wondering if you could advise us if, prior to tabling these three motions in the Senate, did you seek any legal advice or any advice from the Privy Council Office or any official in the Prime Minister's Office?

[Translation]

**Senator Carignan:** Those questions are inappropriate in the context of the study of this motion.

**Some Hon. Senators:** Why?

**Senator Carignan:** Because it is a matter of professional confidentiality. However, I will say that it was a decision that I considered for some time, beginning when we had our meeting on May 28, when we examined Senator Duffy's expense claims. That is when I began reflecting on that.

I reflected on that over the summer. When I was asked to be Leader of the Government in the Senate, I knew that I would be leading the Conservative caucus here in the Senate. Many people are familiar with my interest in research, especially constitutional law. I trained in law and have a graduate degree from the University of Montreal in public law, and I am capable of forming my own legal opinion. If you listened carefully and paid attention to the various topics I addressed yesterday, clearly, my speech was more like a legal opinion than a typical speech in the Senate.

Unfortunately, doctors rarely have the privilege of operating on themselves. Lawyers can at least give themselves an appropriate legal opinion.

[English]

**Senator Downe:** I'm disappointed the Leader of the Government in the Senate would not give an answer to a very clear question: Why will you not disclose — and by your answer, you did indirectly — that you were seeking opinions from either officials in the Privy Council Office or the Prime Minister's Office? You consult widely, I assume. I don't know why you would be fearful of saying that on the floor of the Senate. You claim solicitor-client privilege, whatever, but you are the Leader of the Government in the Senate; you consult people. You consult people in your own caucus; you consult others; you may even consult people in our caucus.

I'll ask the question again in as non-threatening a manner as I can: Did you consult officials in the Privy Council Office or the — let's just ask that question. Did you consult any officials in the Privy Council Office prior to tabling these three motions?

[Translation]

**Senator Carignan:** Your question is completely inadmissible. However, you raise some doubts, so I will provide an answer. No, I did not consult them, but your question is not legal. You do not have the right to ask it because it is an issue of solicitor-client privilege, and I think you should know.

[English]

**Senator Downe:** Maybe in your version of Stephen Harper's Canada I don't have a right to ask it, but in my version of Canada I can ask anything I want. You can decide if you answer or not.

**Hon. Hugh Segal:** I have a question for the government leader. Will he take a question?

**Senator Carignan:** Yes.

**Senator Segal:** I have made the mistake of not congratulating the government leader on assuming his new responsibilities. I am sure he did not want to spend his first week dealing with this difficult challenge, but I think he has tried to do so in a civil and thoughtful way. However we may disagree, I appreciate that civility on his part and do want to extend my profound congratulations for him having taken on a very difficult job. I know he does it in the interest of the country and in the interest of this chamber.

That having been said, I wanted to engage with a question that was asked by Senator Eggleton, who made the specific request of why were the sanctions that are in the motions chosen. I think I understood the government leader to say:

[Translation]

“The senator proposes, the chamber disposes.”

[English]

The senator proposes, as he has in this case, and it's up to this chamber to dispose of that motion in some fashion.

Was he leaving the door open to an amendment that might want to modify the sanctions in any one of the cases, and would he indicate that he would be open, on merits, to the consideration of such amendment; or, as a matter of principle, would he reject any such amendment out of hand?

[Translation]

**Senator Carignan:** Thank you for your message of congratulations. The words I used when I was appointed Leader of the Government in the Senate show that I am very proud of the trust placed in me by the Prime Minister.

[English]

Canadians expect an accountable and efficient Senate, and that is what I will provide.

[Translation]

One component of the process is part of that ideology. You have the right, as you well know, those of you who have been here longer than I, to propose amendments to the sanction that has been put forward here. How did I come to decide that this is the sanction that should be put forward? The precedent we have here

is the Thompson case. He disobeyed an order and was suspended until the end of the session. I know that there have been recent cases in the House of Lords — where 120,000 British pounds in housing claims were repaid — that resulted in suspension until the end of the session.

In Senator Duffy's case there are two problems. There is the residence problem: he declared and claimed a residence. There is another problem, which I believe to be as serious if not more so: he submitted expenses and claimed to be in Ottawa when he was elsewhere. That makes me take a harsher stance than if it were just the matter of his residence, which was not as much of a factor.

**Hon. Pierrette Ringuette:** Senator Carignan, do not worry, I have no legal training. I will not bother you with legal terminology; I will speak like ordinary people do.

Like all my colleagues and many other people, I left Parliament Hill last night after listening to your speech and the speeches of Senators Cowan, Duffy and Brazeau. The adrenalin was pumping.

• (1840)

Last night, when I went to bed, a light came on — it happens every once in a while — and all of a sudden I thought, “Hold on.” I cannot argue using legal terminology, but I am starting to connect the dots.

In his speech yesterday, Senator Duffy mentioned that he had received a two-page memo from Senator LeBreton regarding his primary and secondary residences when she was Leader of the Government in the Senate.

**Senator Carignan:** Did the memo stay in the filing cabinet?

**Senator Ringuette:** No, I did not see it, and you will soon understand my question. I remember that during question period about a year ago, when questions about Senator Duffy's primary residence were first being raised, Senator Cowan or another one of my colleagues asked Senator LeBreton about Senator Duffy's qualifications. The senator asked if Senator Duffy's primary residence was in Prince Edward Island, if that was where he really lived. Her response was, “Several experts in the field have provided opinions and the answer is certainly...” That is more or less what she said, and I encourage you to re-read the *Debates of the Senate* to see her exact words. Senator LeBreton told this chamber that she checked and she received opinions from constitutional experts about Senator Duffy's primary residence and that everything was in order. That was confirmed in this chamber.

When we are talking about the expenses, we want to know whether they were related to his primary or secondary residence. There were three new senators who, with all the rules, constitutionality, residences and so on, asked for advice from their leader, which was confirmed by Senator Duffy in this chamber yesterday and by the answers that were given in this chamber in the past. I am wondering if we might be punishing people for putting their trust in long-time senators.

To make certain things clearer for me, and for all my colleagues, Senator Carignan, could you table in this chamber the famous two-page memo that was discussed yesterday? I

believe that it is central to all our discussions, notwithstanding the legal aspect. New senators rely on people who have been here for over 20 years and should know the rules by heart, and this is something to consider when making a decision on the motion before us.

Therefore, Senator Carignan, could you please table in this chamber the two-page memo that will clarify the whole residence story for Senator Duffy in particular?

**Senator Carignan:** I do not know anything about that memo. I do not know what you mean. I have not seen it. I just want to be careful. You said that we would speak like ordinary people. I will answer you in that manner too. You should not believe in conspiracy theories either.

**Senator Ringuette:** I do not...

**Senator Carignan:** Senator Duffy cast aspersions on just about anything that moved, but he had the floor to debate this motion, and if there was such a memo, he should have tabled it and said, “Look, I relied on a memo, I have it, and I am tabling it. Here it is.” This did not happen. I cannot commit to tabling a document that I know nothing about and have never seen. I would ask you not to put the onus on me. I would never ask you to table a document that you had never seen and knew nothing about. I would ask you to extend the same courtesy to me. Frankly, I do not know anything about that.

Regarding the relevance of the motion, I go back to the concept of the 100 kilometres. The question is this: are we dealing with a secondary residence within the National Capital Region? If the primary or secondary residence is outside this region, anywhere in Canada — unfortunately, that is what it is, as I explained to Senator Joyal, for the reimbursement of expenses — then it is less relevant.

**Senator Ringuette:** I am sorry. On the one hand, I can perhaps understand that you do not have the memo in your possession. However, tomorrow I am certainly going to consult past question periods. I believe it is very important that we are all aware of the main issue. If a so-called expert opinion was indeed given to any of the three individuals who are the subject of these very serious sanctions, it is important that all senators in this place be aware of that. That would certainly influence my decision. This would be like leading people down a certain road and once they get there, telling them that there is construction and that they have to turn around and go back home. That is the situation we must examine more closely. If the senators were told that that was the scenario and those were the rules to follow, there has to be some degree of justice.

• (1850)

**Senator Carignan:** We must not start speculating. There is a report from Deloitte, there is a report from the Internal Economy Committee. Senator Duffy had several opportunities to table this memo, if the memo exists and exonerates him.

He could have done so during the Deloitte audit, when they asked for documents. As I said earlier, he did not respond. There was the meeting of the Internal Economy Committee; there was the report of May 9, the meeting of the Internal Economy

Committee on the 28th, which he was supposed to attend. He asked that it be public and he asked for as many cameras as possible so that he could share his point of view and explain to the public how he had followed the rules, and he did not show up. He had many opportunities to show up. He was here yesterday. If he had had it with him to clear himself, he could have used it. If he has a memo that exonerates him, I hope that he will send it as quickly as possible.

**Senator Ringuette:** I will table in this chamber the answer we were given about this whole issue of residency. If memory serves me correctly, there were several expert reports on this topic.

[*English*]

**Hon. James S. Cowan (Leader of the Opposition):** Colleagues, I will not repeat the speech I gave yesterday. It's slightly shorter than the speech Senator Carignan gave. Well, if you insist, Senator Comeau, I'll do it.

I think we've heard a lot of things today that are food for thought. I certainly want to consider overnight what I would say. I will certainly propose the same amendment with respect to

Senator Carignan's motion here as I did yesterday, and I would ask for the adjournment of the debate in my name so that I can prepare my notes and come and speak as briefly as I can tomorrow, but to cover the very important points that many of my colleagues raised tonight and this afternoon, and I would like to address those tomorrow. I move the adjournment of the debate.

(On motion of Senator Cowan, debate adjourned.)

#### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Senator Wallin.

**Hon. Pamela Wallin:** I want to correct the record, if I can. I misspoke earlier when I referred to a date in August. In fact, the date was May 17 of the May long weekend. I have contacted the office of the *Debates of the Senate*, but I wanted to put that on the record. Thank you.

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

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