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OFFICIAL REPORT
(HANSARD)

Thursday, October 24, 2013

The Honourable NOËL A. KINSELLA
Speaker

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THE SENATE

Thursday, October 24, 2013

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

Prayers.

SENATORS' STATEMENTS

NOVA SCOTIA

ELECTION 2013

Hon. Terry M. Mercer: Honourable senators, on October 8, Nova Scotians voted for change. Stephen McNeil, Leader of the Liberal Party and now premier, promised to put Nova Scotia first. His platform resonated throughout the province. It was a platform of change; it was a platform that represented the interests of all Nova Scotians. From ending Nova Scotia Power's monopoly, to reducing power rates, and to encouraging businesses to hire graduates so they can stay in Nova Scotia and build their lives and their communities, Nova Scotians voted for a progressive and positive plan. They voted for Stephen McNeil's plan for the future.

Honourable senators, with a diverse group of 50 candidates and hundreds of volunteers, Mr. McNeil travelled the province, from Cape Breton to Yarmouth, from Amherst to Halifax, talking to Nova Scotians and listening to their concerns. They believed in Stephen McNeil and the Liberal Party's plan for Nova Scotia. They voted to put Nova Scotia first.

It is quite a diverse group of MLAs, honourable senators. We saw 10 women elected, almost a third of the Liberal caucus. We saw the province's first female Attorney General sworn in on Tuesday, along with the Premier and the rest of cabinet. We saw two African-Nova Scotians elected to the new Liberal government, one of whom is a member of cabinet. We also saw the first openly gay member elected to the Nova Scotia legislature, and she, too, is a member of cabinet. Indeed, what we saw was a diverse group of people from all walks of life who want to make Nova Scotia a better place and a better province for all her citizens and, in turn, for a better Canada.

Honourable senators, I am sure you will join me in offering congratulations to our new premier, Stephen McNeil, and all the MLAs who were elected. Our thanks also go to all the candidates who had the courage to put their names on the ballot and stand up for what they believe in. To the thousands of volunteers, regardless of political party, we say thank you for putting Nova Scotia first.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I would like to draw your attention to the presence in the gallery of Ms. Vera Yuzyk, Ms. Vicky Karpiak and Ms. Eve Yuzyk-Duravetz,

daughters of the late Senator Paul Yuzyk. They are guests of our colleague the Honourable Senator Andreychuk.

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

THE HONOURABLE PAUL YUZYK

CANADA POST PICTURE POSTAGE
PERMANENT STAMP

Hon. A. Raynell Andreychuk: Honourable senators, I rise to welcome the release of a stamp commemorating the late Honourable Paul Yuzyk, professor of history, author, community leader and senator. Paul Yuzyk dedicated his 23 years in this place to advancing an all-inclusive Canadian identity, one that recognized the contributions of Canadians of all ethnic origins in the nation-building process.

Paul Yuzyk is remembered for his contributions as the "father of multiculturalism." Thanks to the Ukrainian Collectibles Society of Toronto, this Saturday, Canada Post will release a stamp honouring his achievements.

Born to Ukrainian immigrant parents near Estevan, Saskatchewan, in 1913, Paul Yuzyk was driven by his own experience of prejudice and discrimination. Setting out to become a schoolteacher, he was labelled a "foreigner" and denied jobs for which he was qualified. Instead of hiding his Ukrainian heritage, Paul Yuzyk decided to promote it. Earning his Ph.D., he went on to become a university professor. He lectured on Soviet history, Ukrainian-Canadian history and Canadian-Soviet relations. He published many important works.

He served his community as founder and President of the Ukrainian National Youth Federation; as Director of the Canadian Council of Christians and Jews; as Chair of the Canadian Folk Arts Council; and as Supreme Director for Canada of the Ukrainian National Association.

Appointed to the Senate by Prime Minister Diefenbaker in 1963, Senator Yuzyk used his maiden speech to outline his vision for Canadian multiculturalism:

In keeping with the ideals of democracy and the spirit of Confederation, Canada should accept and guarantee the principle of the partnership of all peoples who have contributed to her development and progress.

In 1971, this vision became federal policy.

I urge all senators to join me in applauding the release of a stamp commemorating the legacy of Senator Paul Yuzyk and in remembering the contributions of a remarkable individual who helped Canada embrace the principle of "unity in diversity."

NOVA SCOTIA

ELECTION 2013

Hon. Jane Cordy: Like Senator Mercer, I'm also going to speak about the recent election in Nova Scotia.

Honourable senators, on October 8, Nova Scotians went to the polls and, for the first time in over 100 years, the people of Nova Scotia did not return an incumbent government for a second provincial term. Led by Stephen McNeil, the Nova Scotia Liberal Party captured 33 of the province's 51 seats to the Progressive Conservative's 11 seats. The outgoing NDP government was relegated to third-party status, retaining only 7 seats.

When Stephen McNeil was elected Liberal Party leader in 2007, the party was sitting third in the House of Assembly. In the 2009 provincial election, Mr. McNeil successfully led the Liberal Party back to official opposition. Now, in 2013, the Liberal Party of Nova Scotia has formed a majority government.

• (1410)

Stephen and his wife Andrea have two children, Colleen and Jeffrey, and Mr. McNeil comes from a large family where he is the twelfth of seventeen siblings. Prior to entering provincial politics he was a small business owner for nearly 15 years. Family life and his experience as a small business owner in the Annapolis Valley region of Nova Scotia shaped his political drive.

Mr. McNeil was officially sworn in as Nova Scotia's twenty-eighth Premier on Tuesday of this week by Lieutenant Governor J.J. Grant. The swearing-in ceremony took place in Mr. McNeil's home riding of Annapolis Royal. This is the first time in recent memory that the swearing-in of a Nova Scotia Premier and the cabinet has taken place outside of Halifax. Almost a third of Mr. McNeil's cabinet members are women. Diana Whalen was named Deputy Premier and Minister of Finance. Kelly Regan, whose husband is MP Geoff Regan, is Minister of Labour and Advanced Education. Joanne Bernard is the Minister of Community Services. Lena Diab is the Minister of Justice and Immigration. Former interim leader of the Progressive Conservative Party Karen Casey is Minister of Education and Early Childhood Development.

I am pleased that 10 of the 33 Liberals elected are women.

I would also like to congratulate my new MLA, Allan Rowe, who was elected to represent my riding of Dartmouth South. He will be a great representative in the legislature for Dartmouth South. Also sitting with Mr. Rowe, representing the Dartmouth area, will be Liberals Joyce Treen, Minister Andrew Younger, Minister Joanne Bernard, Minister Keith Colwell and Minister Tony Ince. By the way, Mr. Ince defeated outgoing Premier Darrell Dexter in the election, which was certainly considered an upset.

I would like to pay special thanks to the Liberal team of volunteers who worked tirelessly, not only during this election but throughout the rebuilding years for our party. As Senator Mercer said earlier, volunteers are essential to the well-being of every political party.

Honourable senators, I am very pleased to take this opportunity today, in the Senate of Canada, to congratulate Premier Stephen McNeil, the new cabinet and the Liberal MLAs: those re-elected and those newly elected.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a group from the Canadian Multicultural Council — Asians in Ontario. They are guests of the Honourable senators Ngo, Enverga and Oh.

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

CITIZENSHIP WEEK

Hon. Tobias C. Enverga, Jr.: Honourable senators, I rise today with great pride to speak about Canadian Citizenship Week: a week to celebrate what Canada stands for, what it means to be Canadian, and what Canadian citizenship means to us.

Honourable senators, this is a country built on many nations. It is a country of immigrants who have come from far and wide for a chance to live a better life: not only living freely, but also living a life of improved economic opportunities.

I came to this country so that I could offer my children a better future. I had a chance to succeed, and so will their children one day.

Honourable senators, Canada is not a symbol of but the implementation of diversity. The diversity is ever increasing, and no place shows this better than my home city, Toronto, where 43 per cent of the population are from a visible ethnic minority.

Today, Senators Thanh Hai Ngo, Victor Oh and I are hosting a delegation from the Canadian Multicultural Council — Asians in Ontario that travelled here from Toronto. This non-profit umbrella organization is testament to the unique mosaic that Canada is. Their member organizations represent immigrants from Afghanistan, Myanmar, Laos, India, Japan, China, Vietnam, Sri Lanka, Korea and the Philippines, to mention a few.

According to Statistics Canada's 2011 National Household Survey, 6.8 million foreign-born individuals live in Canada. That is more than 20 per cent and higher than in any other G8 country.

Honourable senators, Canada's diversity makes us stronger because we are inclusive. Our strength lies in using the many backgrounds we have to move forward as one country.

Honourable senators, Citizenship Week is an opportunity to remember the history of this country and recognize our forefathers and their struggles to lay the foundation for our stable, democratic and free society, where we enjoy the protection of a Constitution that many peoples of this world are denied elsewhere. From our Confederation in 1867 up to the repatriation of this document in 1982, this chamber has served the regions and minorities from coast to coast to coast.

Honourable senators, the Senate of Canada plays an important part in this inclusive yet diverse country of ours. It is Canada's upper house and it is there to give the various regions and many minorities an equal voice and protection. The Senate is increasingly becoming more reflective of our wonderful mosaic.

Honourable senators, I am proud to serve Canada in this honourable chamber and I am proud to be Canadian.

ISMAILI IMAMAT EXHIBIT

Hon. Mobina S. B. Jaffer: Honourable senators, a special exhibition that explores the life and work of His Highness the Aga Khan is at the Delegation of the Ismaili Imam in Ottawa.

"Rays of Light: Glimpses into the Ismaili Imam," highlights the institution that the Aga Khan has founded and how their work has developed over the past 50 years to serve people across countries, religions and cultures.

Canada is an important partner in many of these initiatives. The Aga Khan has looked specifically to Canada as a leader in promoting a common ethical framework, including shared values of pluralism, democracy and civic engagement.

His Highness the Aga Khan is the forty-ninth hereditary imam of the Shia Imami Ismaili Muslims and is the spiritual leader of some 15 million Ismaili Muslims. He's also the founder and chairman of the Aga Khan Development Network, which brings together several non-denominational development agencies that work primarily in the poorest parts of Asia and Africa.

The exhibition captures a strong Canadian presence, such as the delegation of the Ismaili Imam and the Global Centre for Pluralism in Ottawa, the Ismaili Centre in Burnaby, and the forthcoming Ismaili centre, Aga Khan museum and park in Toronto.

In fact, Canada and the Aga Khan Development Network in Canada have had a remarkable relationship over the past 30 years. This partnership has had a lasting impact, transforming the lives of 1 million people in Pakistan, supporting the creation of a world-class university, and building the next generation of Canadian international development leaders through a fellowship program.

In 2009, His Highness became an honorary citizen of Canada: at the time, only the fifth person to be given the designation. Then Prime Minister Harper praised the Aga Khan as a beacon of humanitarianism, pluralism and tolerance. "Rays of Light" shows all these dimensions of His Highness the Aga Khan's efforts in serving humanity against the backdrop of 1,400 years of history of the Ismaili Imam.

Honourable senators, if you were not able to attend this exceptional exhibit last night, it is still open for public viewing this evening and tomorrow. I encourage all of you to attend. Thank you.

[Senator Enverga]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

ATTENDANCE AT COMMITTEE MEETINGS

Hon. David Tkachuk: Honourable senators, I want to speak about an issue of some concern to me. Two of our colleagues in three days have perpetuated the false perception that they have no access to meetings of the committee on Internal Economy.

In his speech here on October 22, Senator Brazeau said:

I've been asking for quite some time to have an open meeting of the Board of Internal Economy, because what goes on in those back rooms, we don't know. We don't sit on that committee.

He may not be a member of that committee but we all know that, as a senator, he can sit in on any meeting of that committee or any other committee in the Senate anytime he wishes.

Senator Brazeau: I couldn't. I couldn't.

Senator Tkachuk: Not two days later—last night, in fact—Senator Hervieux-Payette in a telephone interview on CTV—

Hon. Joan Fraser (Deputy Leader of the Opposition): On a point of order—

The Hon. the Speaker: This is not the time for a point of order, but there is some doubt in the Speaker's mind as to whether or not this fits within the parameters of Senators' Statements, but it's borderline.

• (1420)

Senator Tkachuk: I've said a lot worse.

Senator Cordy: You got away with it; count your blessings.

Senator Tkachuk: What is going on? Have we run out of time now?

Some Hon. Senators: Yes.

Senator Tkachuk: Mr. Speaker, you decide what you want; that's fine.

[Translation]

ROUTINE PROCEEDINGS

PRIVACY COMMISSIONER

FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE—AUDIT REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the audit report of the Office of the Privacy Commissioner of Canada concerning the Financial Transactions and Reports Analysis Centre of Canada, pursuant to section 72.2 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

[English]

HOUSING EXPENSES

DOCUMENT TABLED

Hon. Patrick Brazeau: Honourable senators, in my hand I have a document in both official languages, dated March 8, 2011, an email confirming by Senate administration that I was indeed eligible to recover expenses for housing. So may I ask leave for the Senate to table this document?

Hon. Senators: Agreed.

COMMITTEE OF SELECTION

FIRST REPORT OF COMMITTEE ADOPTED

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

Thursday, October 24, 2013

The Committee of Selection has the honour to present its

FIRST REPORT

Pursuant to rule 12-2(1)(a) of the *Rules of the Senate*, your committee wishes to inform the Senate that it nominates the Honourable Senator Oliver as Speaker *pro tempore*.

Respectfully submitted,

ELIZABETH MARSHALL
Chair

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

Hon. Senators: Now.

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

Hon. Senators: Agreed.

The Hon. the Speaker: It was moved by the Honourable Senator Marshall, seconded by the Honourable Senator Poirier, that this report be adopted.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

SECOND REPORT OF COMMITTEE PRESENTED

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

Thursday, October 24, 2013

The Committee of Selection has the honour to present its

SECOND REPORT

Pursuant to Rule 12-2(2) of the *Rules of the Senate*, your committee submits herewith the list of senators nominated by it to serve on the following committees:

Standing Senate Committee on Aboriginal Peoples

The Honourable Senators Beyak, Dyck, Lovelace Nicholas, Meredith, Munson, Ngo, Patterson, Raine, Sibbeston, Tannas, Unger and White.

Standing Senate Committee on Agriculture and Forestry

The Honourable Senators Buth, Callbeck, Dagenais, Eaton, Maltais, Mercer, Merchant, Mockler, Ogilvie, Oh, Rivard and Tardif.

Standing Senate Committee on Banking, Trade and Commerce

The Honourable Senators Black, Gerstein, Greene, Hervieux-Payette, P.C., Maltais, Massicotte, Moore, Nancy Ruth, Oliver, Ringuette, Rivard and Tkachuk.

Standing Senate Committee on Energy, the Environment and Natural Resources

The Honourable Senators Black, Boisvenu, Frum, MacDonald, Massicotte, Mitchell, Neufeld, Patterson, Ringuette, Seidman, Sibbeston and Wallace.

Standing Senate Committee on Fisheries and Oceans

The Honourable Senators Baker, P.C., Beyak, Hubley, Lovelace Nicholas, Manning, McInnis, Plett, Poirier, Raine, Robichaud, P.C., Stewart Olsen and Wells.

Standing Senate Committee on Foreign Affairs and International Trade

The Honourable Senators Andreychuk, Ataullahjan, Dawson, Demers, Downe, Fortin-Duplessis, Housakos, Johnson, Oh, Robichaud, P.C., Smith (*Cobourg*), P.C. and Verner, P.C.

Standing Senate Committee on Human Rights

The Honourable Senators Andreychuk, Ataullahjan, Eggleton, P.C., Hubley, Jaffer, Marshall, Meredith, Ngo and Seidman.

**Standing Committee on Internal Economy,
Budgets and Administration**

The Honourable Senators Campbell, Cordy, Comeau, P.C., Downe, Doyle, Furey, Johnson, Kinsella, Lang, LeBreton, P.C., Manning, Marshall, Munson, Smith (*Saurel*) and Tkachuk.

**Standing Senate Committee on Legal
and Constitutional Affairs**

The Honourable Senators Baker, P.C., Batters, Boisvenu, Braley, Dagenais, Frum, Jaffer, Joyal, P.C., McIntyre, Rivest, Runciman and White.

**Standing Joint Committee on
the Library of Parliament**

The Honourable Senators Champagne, P.C., Cools, Mercer, Charette-Poulin and Rivard.

Standing Senate Committee on National Finance

The Honourable Senators Bellemare, Buth, Callbeck, Chaput, Day, Doyle, Gerstein, Hervieux-Payette, P.C., Mockler, Seth, Smith (*Saurel*) and Wells.

**Standing Senate Committee on National
Security and Defence**

The Honourable Senators Dallaire, Day, Lang, Manning, Mitchell, Nolin, Plett, Segal and Wells.

Standing Senate Committee on Official Languages

The Honourable Senators Beyak, Champagne, P.C., Chaput, Fortin-Duplessis, McIntyre, Poirier, Charette-Poulin, Tardif and White.

**Standing Committee on Rules, Procedures
and the Rights of Parliament**

The Honourable Senators Batters, Beyak, Braley, Comeau, P.C., Cools, Enverga, Furey, Jaffer, Joyal, P.C., Martin, McCoy, Nolin, Smith (*Cobourg*), P.C., Tannas and Wallace.

Standing Joint Committee for the Scrutiny of Regulations

The Honourable Senators Batters, Campbell, Hervieux-Payette, P.C., Moore, Nancy Ruth, Runciman, Tannas and Unger.

**Standing Senate Committee on Social
Affairs, Science and Technology**

The Honourable Senators Bellemare, Chaput, Cordy, Dyck, Eaton, Eggleton, P.C., Enverga, Ogilvie, Segal, Seidman, Seth and Stewart Olsen.

**Standing Senate Committee on Transport
and Communications**

The Honourable Senators Dawson, Demers, Eggleton, P.C., Greene, Housakos, MacDonald, Manning, McInnis, Mercer, Merchant, Plett and Verner, P.C.

Pursuant to Rule 12-3(3) of the *Rules of the Senate*, the Honourable Senator Carignan, P.C. (or Martin) and the Honourable Senator Cowan (or Fraser) are *ex officio* members of all committees except the Standing Committee on Conflict of Interest for Senators and the joint committees.

Respectfully submitted,

ELIZABETH MARSHALL
Chair

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

Some Hon. Senators: Now.

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, we said later this day.

The Hon. the Speaker: Shall we return to this later this day? It requires unanimous consent to deal with it now.

Hon. Senators: Agreed.

(On motion of Senator Marshall, report placed on the Orders of the Day for consideration later this day.)

• (1430)

[*Translation*]

BUSINESS OF THE SENATE

NOTICE OF MOTION TO ADJOURN THE SENATE ON
WEDNESDAY, OCTOBER 30, 2013 UNTIL
TUESDAY, NOVEMBER 5, 2013

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That when the Senate adjourns on Wednesday, October 30, 2013, it do stand adjourned until Tuesday, November 5, 2013, at 2 p.m.

[*English*]

NOTICE OF MOTION TO CHANGE COMMENCEMENT
TIME ON WEDNESDAYS AND THURSDAYS AND
TO EFFECT WEDNESDAY ADJOURNMENTS

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

That, for the remainder of the current session,

(a) when the Senate sits on a Wednesday or a Thursday, it shall sit at 1:30 p.m. notwithstanding rule 3-1(1);

(b) when the Senate sits on a Wednesday, it stand adjourned at the later of 4 p.m. or the end of Government Business, but no later than the time otherwise provided in the Rules, unless it has been suspended for the purpose of taking a deferred vote or has earlier adjourned;

(c) when the Senate sits past 4 p.m. on a Wednesday, committees scheduled to meet be authorized to hold meetings for the purpose of receiving and publishing evidence, even if the Senate is then sitting, with the application of rule 12-18(1) being suspended in relation thereto; and

(d) when a vote is deferred until 5:30 p.m. on a Wednesday, the Speaker shall interrupt the proceedings, if required, immediately prior to any adjournment but no later than the time provided in paragraph (b), to suspend the sitting until 5:30 p.m. for the taking of the deferred vote, and that committees be authorized to meet during the period that the sitting is suspended.

NOTICE OF MOTION TO AUTHORIZE ALL
COMMITTEES TO ENGAGE SERVICES

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

That, pursuant to section 1(2) of chapter 3:06 of the Senate Administrative Rules, all committees have power, for the remainder of the current session, to engage the services

of such counsel and technical, clerical, and other personnel as may be necessary for the purpose of their examination and consideration of such bills, subject-matters of bills and estimates as are referred to them.

HEALTH CARE ACCORD

NOTICE OF INQUIRY

Hon. Catherine S. Callbeck: Honourable senators, pursuant to rule 57-2, I give notice that, two days hence:

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

BUSINESS OF THE SENATE

NOTICE OF MOTION TO AUTHORIZE HUMAN RIGHTS,
OFFICIAL LANGUAGES AND NATIONAL DEFENCE
COMMITTEES TO MEET ON MONDAYS FOR
REMAINDER OF CURRENT SESSION

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

That, pursuant to rule 12-18(2), for the remainder of this session, the Standing Senate Committees on Human Rights, Official Languages, and National Security and Defence be authorized to meet at their approved meeting times as determined by the Government and Opposition Whips on any Monday which immediately precedes a Tuesday when the Senate is scheduled to sit, even though the Senate may then be adjourned for a period exceeding a week.

QUESTION PERIOD

THE SENATE

QUEBEC COURT OF APPEAL—SENATE REFORM

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate.

Today, the Quebec Court of Appeal, in a unanimous decision, ruled that your government's attempt to reform the Senate unilaterally is unconstitutional and that contrary to the repeated assertions of your government over the past seven years, in fact, the consent of the provinces is required.

We on this side of the house have been saying that for years. For more than six years, we have urged your government to consult the provinces and in that way to actually make some

progress towards reforming the Senate. Instead, today, we are no further ahead than we were when your government took office in 2006.

Let me read to you from today's decision of the Quebec Court of Appeal:

Bill C-7, if it had been adopted, would have been unconstitutional without the agreement of the majority of the provinces pursuant to subsection 38(1) of the Constitution Act, 1982, since its true nature was to amend the method of selection of senators and the powers of the Senate without having respected the applicable amending procedure. In reality, Bill C-7 attempted to circumvent that procedure.

Can you tell me how your government responds? Will it finally stop trying to circumvent the Constitution in order to amend it and sit down with the provinces to seriously discuss real and effective Senate reform? Or do you still believe, notwithstanding the unanimous decision of the Quebec Court of Appeal, that you can proceed on your own with your proposed Senate reforms, without the consent and without even consulting with the provinces?

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Claude Carignan (Leader of the Government): Honourable senators, as is the case with any decision, we will take the time to study the decision of the Quebec Court of Appeal.

As you know, a reference on the same subject has been submitted to the Supreme Court, which will soon examine it. We look forward to the final decision of the Supreme Court, which will begin its hearings in the next few weeks.

• (1440)

Hon. Céline Hervieux-Payette: Honourable senators, I wish to share some good news with my colleagues who committed to sitting in the Senate for only nine years. If this Quebec Court of Appeal decision is upheld by the Supreme Court, you will be able to sit based on the terms of the Constitution or go ahead with the amendments, including the provinces.

When will the Prime Minister sit down with the provincial premiers and begin seriously discussing — if he is truly serious — changes to how the Senate operates?

Senator Carignan: Listen. As I said, we are awaiting the decision from the Supreme Court. The Supreme Court decision will act as a legal instruction manual on how we can proceed with Senate reform. The government will act as soon as the Supreme Court renders a decision.

Senator Hervieux-Payette: I was Leader of the Opposition when we examined the bill to amend the rules governing the Senate, and at that time, we got as far as third reading. We wanted to refer the matter to the Supreme Court, but your Prime Minister refused.

[Senator Cowan]

Does he now regret that? Why does he need the decision from the Supreme Court, when we know very well that the provinces must be part of the process to make any changes?

Whatever the Supreme Court decides, nothing will change. It is written in this country's very first law, and this law cannot be changed except by the Prime Minister and seven provinces with a majority of 50 per cent.

Will you actually do something now, or do you plan to drag this matter out for another two or three years? If you are serious about reform, why not get started immediately?

Senator Carignan: Listen. I must be dreaming. The senator has told us many times that we should file a reference with the Supreme Court. We have done so and the hearing will be held soon. The Supreme Court will develop a comprehensive legal instruction manual on how we can proceed with reforming the Senate, and now you are telling us to disregard the Supreme Court reference and to proceed immediately. I am having a hard time following you.

Hon. Pierre Claude Nolin: Honourable senators, I have a supplementary question. Senator Carignan, in Senator Hervieux-Payette's first question she referred to the Prime Minister's intention to amend the operations of the Senate. I have to believe that you did not intend for your response to convey your consent to that, since the Prime Minister, as we all know, has no authority over the operations of this chamber.

Senator Carignan: Listen. I thank you for your question. It gives me the opportunity to clarify. I was talking about issues that are currently being examined in the Supreme Court reference.

[*English*]

ENVIRONMENT

GREENHOUSE GAS EMISSIONS

Hon. Grant Mitchell: Colleagues, much was made of the government's effort through the Throne Speech to change the channel. Far from changing the channel, they may have unbundled a few, but what they really did was reveal just how weak Conservative programming is. There isn't a single mention of climate change in that Throne Speech. When the government says in the Throne Speech that they're going to enshrine in law the "polluter pay" principle, are they thinking now of making greenhouse gas emissions deemed to be pollution, and are they thinking about putting a price on that?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): Listen. We do not need any lectures from the Liberal government on climate change. Unlike the Liberals, who allowed greenhouse gas emissions to increase by nearly 30 per cent, our government has reduced greenhouse gases and is protecting Canadian jobs. We have already reduced our projected emissions by 130 megatonnes, compared to the levels we would have seen under the Liberals. We are taking action.

[English]

Senator Mitchell: The fact of the matter is that the world knows — the United States knows — the very possibility that Keystone XL will be built hinges upon the fact that the United States knows that Canada isn't doing anywhere near enough for climate change for reducing greenhouse gas emissions. It is all about earning social licence.

When the government says in the Throne Speech that it's going to preserve the jobs, it's going to work with the fisheries, with the people who work in the fisheries, to preserve and create more fisheries jobs, how can they honestly make that position without acknowledging they have to do something about the climate change that has already disrupted and diminished dramatically the fisheries in this country?

[Translation]

Senator Carignan: Listen. Our government remains committed to working with its partners. You mentioned the pipeline in the United States. We will continue to use an approach with the United States — our international partner when it comes to climate change — like the one we used with gasoline-powered vehicles. We will continue to take concrete measures in various areas to ensure that we reduce greenhouse gas emissions as effectively as possible and that we do not leave a record like the one you left us by increasing greenhouse gases by 30 per cent.

[English]

Senator Mitchell: The fact of the matter is that the United States and its President know that Canada isn't doing anything near enough to reduce greenhouse gases. When this government talks in its Throne Speech about preserving and building on 200,000 forestry jobs, is it not aware that climate change is having a dramatic impact on our forests and, in fact, having a dramatic impact on the future job prospects of people in that industry?

[Translation]

Senator Carignan: Listen. We are taking action because we think the environment must be protected. We must reduce greenhouse gases. As I explained, we have already reduced our projected emissions by 130 megatonnes compared to what they would have been under the Liberals. We will continue to work on this together with the various sectors and our international partners.

[English]

NATIONAL DEFENCE

COMMUNICATIONS SECURITY ESTABLISHMENT CANADA—PARLIAMENTARY OVERSIGHT

Hon. Wilfred P. Moore: My question is also for the Leader of the Government in the Senate.

Mr. Leader, do you believe it's time to strike a parliamentary committee to oversee the Communications Security Establishment Canada?

[Translation]

Hon. Claude Carignan (Leader of the Government): Listen. Communications Security Establishment Canada is complying with the law. It has a specific mandate. A commissioner is in charge of monitoring its activities within the meaning of the agency's governing legislation, and the agency has no right to target the activities or communications of Canadians. We believe it is doing its job well.

[English]

Senator Moore: Did Canada spy on Brazil's state oil company or on Brazil's energy ministry?

[Translation]

Senator Carignan: Listen. The same answer applies. The agency must comply with the framework set out in the law. A commissioner is appointed and tasked with monitoring and reporting on the agency's activities to ensure compliance with the law. We expect the agency to comply with the law.

• (1450)

[English]

Senator Moore: Honourable senators, I have a further supplementary question.

In June 2012, CSEC, Communications Security Establishment Canada, made a presentation entitled "Advanced Network Tracraft" for the Five Eyes partners—Canada, the United States, the U.K., Australia and New Zealand—which described a reconnaissance mission using the technology called Olympia directed at the Brazilian Energy Ministry. Apparently it was a success from what we read in the press.

Can the leader enlighten this chamber as to what was done with the data obtained by CSEC from the Brazilian Ministry of Mines and Energy?

[Translation]

Senator Carignan: Listen. With regard to the security establishment, we reviewed the matter and are satisfied with CSEC's activities. They are legal. All of the agency's activities are subject to an independent review, as I was saying, and have been for 16 years now. It is reported that the agency continues to conduct its activities in compliance with the law. I cannot comment on specific foreign intelligence gathering activities or capacities.

[English]

Senator Moore: Honourable senators, the access-to-information request revealed that CSEC met with companies that were involved in the Canadian energy sector. The meetings were designed to allow the companies and Canadian ministries and agencies to exchange information off the record.

Can the leader tell us what sort of information CSEC would have to offer to these energy sector companies in Canada?

[Translation]

Senator Carignan: Listen. CSEC has a mandate under the law, and we expect the agency to carry out that mandate. CSEC conducts its activities within its legal framework. It is monitored by an independent commissioner, and we expect it to carry out its mandate. If some of CSEC's work consists in informing certain businesses of potential security risks, and doing so falls within its mandate, then we expect it to do so.

[English]

Senator Moore: In 2007 the Brazilian government announced the discovery of the largest oil fields outside of APEC. They have been estimated to contain 8 billion barrels of oil; yet, when the competition recently closed for auctioning off the rights to develop the field, not one company from Canada, the U.S., the U.K., Australia or New Zealand—the same Five Eyes countries—entered a bid. One must ask the obvious question: Why? Was it because of information gained by the cyberhacking of CSEC and shared with companies in Canada's energy sector?

[Translation]

Senator Carignan: Listen. The honourable senator seems to be making a rather odd link with regard to CSEC's activities, which are in compliance with the law. A former judge has been given the mandate to ensure that CSEC's activities are legal. I will not comment further on these security matters.

[English]

Senator Moore: Earlier this month, the former head of CSEC stated that it is time for greater parliamentary scrutiny of the agency, citing the fact that the agency has deliberately kept the Canadian public in the dark over its activities.

I would ask the leader if he would support a bill to increase parliamentary scrutiny over CSEC.

[Translation]

Senator Carignan: Listen. The independent monitoring of the agency, as I was saying, is the responsibility of the current commissioner of the agency, who is a former justice of the Court Martial Appeal Court of Canada, the Honourable Jean-Pierre Plouffe. He is already conducting independent monitoring of the agency, including independent audits, to ensure that CSEC's activities continue to be in compliance with the law. That is already in place.

[English]

Senator Moore: Honourable senators, the audit reports of the sole arbiter of this agency, are they made available to the public, to the other members of the Five Eyes, or to a complainant state like Brazil?

[Translation]

Senator Carignan: Listen. CSEC and the commissioner must abide by the law and they must ensure that they work within their mandate. I will refrain from commenting.

[English]

Hon. Hugh Segal: Honourable senators, may I ask the government leader, in view of his role both as Privy Council and a member of key cabinet committees, whether he might undertake to bring to his colleagues' attention the fact that all of our G8 colleagues and NATO colleagues have legislative oversight bodies with respect to the intelligence and security?

[Translation]

We are talking about the French Republic, Great Britain, the United States, Australia and all the other allied countries.

[English]

They have a legislative process whereby, with appropriate discretion, there is discussion of the strategies and plans that are pursued.

This situation has operated in the United Kingdom since 1994. There has never been a single leak. The report is made directly to the Prime Minister of the United Kingdom and then released to the Parliament of the United Kingdom within a month upon receipt and, if things have been excised for national security, there is a footnote that indicates that.

This is what all of our allies are doing. Canada is the only country not to have any legislative oversight of any kind for its national security services. Many of the people who head our national security services say they would appreciate the chance to talk to parliamentarians with broad experiences about their challenges.

Could I ask our Honourable Leader in the Senate whether he would be kind enough to consider the proposition, raise it with his cabinet colleagues and report back to this chamber at his convenience?

[Translation]

Senator Carignan: Listen. The current CSEC commissioner has a clear mandate to ensure independent oversight and to audit activities. I can tell you that CSEC does not share foreign intelligence with Canadian companies to give them a trade advantage. CSEC is fulfilling its role properly.

Hon. Roméo Antonius Dallaire: Honourable senators, my question is for the Leader of the Government in the Senate. I do not know why he begins all of his answers with "listen" because that is certainly our intention — to listen carefully to what he has to say.

Let us come back to the question. It is not enough to tell us that there is a commissioner responsible for overseeing this. We have had commissioners who exercised oversight without reporting back to the House of Commons, and it had a disastrous impact on the country's security and intelligence. It made us an international laughingstock, to the point where communications with the various intelligence groups of our allies — who are known as the Five Eyes, the ABCA and New Zealand — suffered and our allies became reluctant to exchange information with us. We therefore have a fundamental problem.

General John Adams, the former chief of CSEC, indicated the need for another tool himself. In this country, where we say we want democratic representation by elected officials to ensure transparency and accountability, the institution that best reflects those values is the House of Commons. That is why I do not understand why the House of Commons — among others, since the Senate should also be involved — is being left out when it comes to examining not only the operations but also the budgets of all our intelligence agencies. It is also important to find out whether there is communication between them since we do not know if such is the case. When the National Defence Committee tries to ask questions, it does not get any answers since it is not authorized to see any privileged documents that could answer these questions.

Why is the government reluctant to open the debate on this issue and give our committee the mandate to examine the issue?

• (1500)

Senator Carignan: I have to keep saying the word “listen” because you keep coming back with the same questions, which means I have to give you the same answers.

[English]

Senator Dallaire: I have a supplementary question, if I may.

When I was an officer cadet a few years ago, I got paraded in front of the chief instructor of gunnery in the school of artillery in Shilo. He paraded me in front of him and said, “You, young man, you’re flippant.” I didn’t know what it meant. I’m not sure if you know what it means, but you certainly have responded accordingly.

Some Hon. Senators: Oh, oh!

Senator Dallaire: So let me try this in English.

We have not had a response to the different questions that have been brought to you. They have been different questions, and the question that I brought to you required a yes or a no. That is to say, do you consider it not essential that the legislative portion of our system of governance have an oversight on the intelligence networks of our country in order to ensure that maybe it can do its job properly instead of being a sieve, as it is today?

[Translation]

Senator Carignan: Again, I am going to say “listen.” CSEC needs independent oversight. That is exactly what the current commissioner, former Court Martial Appeal Court judge, the Honourable Jean-Pierre Plouffe, is doing. He ensures independent oversight, which includes auditing CSEC’s activities.

Hon. Pierre Claude Nolin: A supplementary question. Senator Carignan, let us break this down. Why is Canada, unlike its main allies, refusing to allow a parliamentary committee to audit this agency’s activities? Why? That is the question.

Senator Carignan: Listen, as I said, there is already oversight, provided by an independent commissioner who is monitoring the agency’s activities. CSEC is complying with the law.

Senator Nolin: My question goes a bit further. One of our allies, Great Britain, had an operation similar to ours. They decided to go a bit further and put a parliamentary committee in charge of oversight. The question is, why is Canada refusing to consider the example of our allies and trying to preserve an approach that, for our allies, is outdated? There must be a reason for that. The question is simple. Why? What is the reasoning?

Senator Carignan: Listen, I believe that is a question of choice. We chose an independent commissioner. Perhaps our allies, in the context of their activities, found it preferable to create a commission. Our choice was to have an independent commissioner. Who knows, maybe our allies will choose to go back to an independent commissioner. Right now, it is working for us and activities are being reported on. There is oversight.

[English]

Senator Segal: I have a supplementary question.

I respect very much the Leader of the Government’s view that with respect to CSEC we have a commissioner and that ends our responsibility and we are comfortable with that. But in countries that are our allies, as Senator Nolin pointed out, their overview of security includes military security; it includes CSIS; it includes the equivalent of the anti-terrorism activities of the Royal Canadian Mounted Police. It’s a broad spectrum of contextual awareness which assists parliamentarians in doing their job, making sure the resources are voted for these agencies to protect Canadians. I was not clear on the linkage between “we have a commissioner and we are happy with that” and this broader responsibility we all have for the national security of our fellow citizens.

[Translation]

Senator Carignan: Listen, these reports on activities have been done by an independent commissioner for 16 years. The reports show that the activities have been compliant for over 16 years.

Senator Dallaire: Honourable senators, colleagues, the world has changed in recent years. We are now faced with an international environment that is much more complex and ambiguous. Security issues during the Cold War were more conventional. The Cold War was “us against them,” it had a precise location, in Europe, and it was clearly identified.

The world has completely changed in terms of what we are dealing with today. The security issue has become much broader and involves far more targets. We see extremist elements operating without any regard whatsoever for humanitarian law, the rule of law or basically anything else.

Therefore the security file has become entirely different from what it was, and we have made unprecedented investments — you will recall that we have spent \$13 billion — in national security, creating completely new entities working in this area.

Finally, it is clear that even our domestic security is threatened. We have seen terrorist elements in our country, not to mention, perhaps, other possible operations; Oka and other events have threatened the security of Canadians.

The nature of the beast has changed significantly, and it is becoming increasingly complex. I will conclude this long introduction to my question by mentioning that the entire

information technology field has made us vulnerable in completely new ways.

Different tools are needed. The current commissioner — like the former commissioner, Mr. Paul Gauthier from Quebec City, whom I knew — has a limited role in that he verifies that this organization obeys the law. He has no role in terms of our country's intelligence capability.

That is what I would like to focus on. We are not concerned just with the commissioner's role, but also with this whole issue which, in my view, and given the massive investment, requires that the country's legislative body have something to say about it. That is the case with our allies, who have expressed an absolute need for it. These countries will never go back to the formula of just a commissioner. That is impossible.

Why not at least tell us that you will raise this point with the Minister of Public Safety, or perhaps even with the Prime Minister, in order to at least give us the satisfaction of knowing that other options are being considered?

Senator Carignan: I have listened to you.

• (1510)

[English]

ORDERS OF THE DAY

SPEAKER'S RULINGS

MOTION NO. 2 AND MOTION TO REFER TO A COMMITTEE

The Hon. the Speaker: Honourable senators, I have a Speaker's ruling dealing with Motion No. 2. That will be the subject of my ruling, honourable senators.

You will recall that yesterday during the sitting, a point of order was raised as to whether the motion to suspend Senator Brazeau is final, or if the reference to rule 5-5(i) provides some mechanism to appeal or overturn the suspension.

Our Rules define a point of order as "A complaint or question raised by a Senator who believes that the rules, practices or procedures of the Senate have been incorrectly applied or overlooked during the proceedings, either in the chamber or in committee."

Upon review of yesterday's Debates, it appears that the issue is not a matter of order but more appropriately one of debate. Consequently, there is no point of order, and debate can proceed when the item is called.

[Senator Dallaire]

MOTION NO. 3

The Hon. the Speaker: Honourable senators, with reference to a point of order raised when the house was dealing with Motion No. 3, honourable senators will recall that at the start of debate on the motion proposing to suspend Senator Wallin, Senator Segal raised a point of order questioning the propriety of the proposal before the Senate. Senator Segal likened the motion to the ancient procedures for bills of attainder. He characterized the motion as arbitrary, and a violation of basic rights guaranteed under the Canadian Charter of Rights and Freedoms. He was also troubled by the fact that the Senate did not have the chance to consider the report of the Internal Economy Committee, presented in August before the prorogation of the previous session. In addition, the senator was concerned that the adoption of the motion could influence a police investigation. In summary, Senator Segal felt that the motion undermines due process and the presumption of innocence, basic Canadian principles; therefore, the motion should not be considered by the Senate.

[Translation]

Honourable senators, the Leader of the Government, Senator Carignan, disagreed with Senator Segal. In his view, the Senate has the power, at its discretion, to suspend a member. This authority comes from section 18 of the Constitution Act, 1867, and has been implemented through the Parliament of Canada Act. He argued that the reproach of gross negligence mentioned in the motion is entirely different from any criminal proceeding. Instead, it would reflect, if the motion is adopted, the opinion of the Senate about negligent actions amounting to wilful disregard that has harmed the Senate itself.

[English]

After these interventions, both Senators Fraser and Comeau spoke. Senator Fraser recognized that the Senate can, after due consideration, suspend a member, but felt that the lack of an evidentiary basis makes it difficult to consider this motion properly. The prorogation of the last session prevented the Senate from considering the report of Internal Economy on the expenses of Senator Wallin, deposited with the Clerk of the Senate on August 13. Senator Comeau, however, emphasized that the report has been available to senators since it was made public. He also noted that the Internal Economy Committee, unlike other committees of the Senate, operates on an ongoing basis, and is unaffected by prorogation.

[Translation]

Honourable senators, when considering this issue we must be clear that one of the privileges and powers of the Senate is to suspend a member. Rule 15-2(1) states that "The Senate may order a leave of absence for or the suspension of a Senator where, in its judgment, there is sufficient cause." But this provision is not the source of this power, it is merely a recognition of its existence. It is an inherent power of a parliamentary body to regulate its own affairs and to discipline its members, which includes suspension. Bourinot, at page 64 of the fourth edition, states that "The right of a legislative body to suspend or expel a member for what is sufficient cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a body."

[English]

In Canada, section 18 of the Constitution Act, 1867, allows Parliament to define the privileges, immunities and powers of the two federal houses, provided that they do not exceed those of the United Kingdom House of Commons. Under section 4 of the Parliament of Canada Act, the Senate has the powers of the United Kingdom Commons as of 1867, plus such additional powers as are defined by law.

The United Kingdom House of Commons has long had the power to suspend members, exercising it as far back as 1641. Section 4 of the Parliament of Canada Act thus provides the Senate with the same power to suspend a member. This power is entirely independent of and separate from any criminal measures undertaken by relevant authorities.

[Translation]

Suspension of a member is, without a doubt, a serious issue. It is not done lightly, and the Senate has only done it once, when Senator Thompson was suspended on February 19, 1998. His sessional allowance was also affected under regulations that are still in force and still have effect.

[English]

A decision by the Senate to exercise this power is, of course, a serious matter, to be dealt with during debate. It is through this process that honourable senators seek to convince each other whether a proposal should be accepted or not. In the end, the desirability of a proposal to suspend a senator will be decided by the Senate itself.

[Translation]

In a similar way, it is through debate that honourable senators set out the reasons, arguments and facts that favour the adoption or rejection of a suspension motion. If detailed consideration or evidence is required, the option of referring a question to committee — a proposal already made in the case of the motion relating to Senator Brazeau — is available.

[English]

It is not the role of the chair to comment on the substance or desirability of the motion that has been proposed to the Senate. The chair's authority is limited to determining whether the motion is in order in terms of procedure, and my finding is that it is. Proceedings thus far have been in keeping with the Senate's authority, rules and practices. The debate on the question, when called, can proceed.

• (1520)

COMMITTEE OF SELECTION

SECOND REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Committee of Selection (membership of Senate committees), presented earlier this day.

Hon. Elizabeth (Beth) Marshall: Honourable senators, I move the adoption of the second report.

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

Some Hon. Senators: Agreed.

Senator Cools: No. Where are the copies?

The Hon. the Speaker: The full report was read.

Senator Cools: Where is the report? Honourable senators, the report —

The Hon. the Speaker: Well, it was fully read and distributed. So there it is, honourable senators.

Is it agreed that the motion moved by Senator Marshall, seconded by Honourable Senator Poirier, be adopted?

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

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. Donald Neil Plett: Honourable senators, I rise today to speak to Senator Cowan's motion.

September 15, 2009, was one of the proudest moments of my life, when I was sworn in to serve in the Senate of Canada, representing the province of Manitoba. I am proud of all of the great work that has been accomplished by the Senate and am humbled to have the opportunity to serve in this great institution.

This past week, honourable senators, has been one of the most difficult weeks of my life. I am actually considering voting against a motion from my leader for the first time in my political career.

I respect my leader and I understand the motivation behind his motion. I believe his intentions are honourable. Over the past several months we have had the institution repeatedly called into question — an institution we are all proud of. I am saddened that our Prime Minister and our government have had to endure criticism by the media and the opposition parties and skepticism from the Canadian public over a situation not of his or their making.

I understand the desire to have a fresh start in the Senate — a clean slate. The problem here is that what we are trying to do oversimplifies a complex issue with a quick fix at the expense of three individuals before giving them the opportunity to defend themselves and before we have had the opportunity to examine all of the facts in their respective cases.

We are dealing with the future of three senators — three of our colleagues — and, as the Leader of the Opposition put it, we will be stripping them of everything except the title "Senator."

This is, at the very least, premature. As honourable senators know, I am not a lawyer. Senator Carignan stated his case as to the power of this chamber. We have heard that the Senate is, in fact, its own master.

Honourable senators, just because it is within our right does not make it the right thing to do.

Some Hon. Senators: Hear, hear!

Senator Plett: I am not here to defend the wrongdoing of any senator. I am a Conservative. I am a Conservative first and foremost, because I believe in the principles of fairness and justice.

This is the Senate of Canada. In Canada we enjoy certain rights and freedoms. Most importantly, we have the right to due process and the presumption of innocence until proven guilty. Senator Carignan pointed out that the presumption of innocence is a right afforded in a criminal investigation, but it is also a fundamental principle that guides our democracy.

Some Hon. Senators: Hear, hear!

Senator Plett: One that I would like to think guides the direction of the chamber of sober second thought.

Our Committee on Internal Economy sent these matters to the RCMP for further investigation. And now, all of a sudden, we are going to find them guilty and apply sanctions before we have let the police do their work.

If we had not yet sent this to the RCMP I could understand how we might feel it's our obligation to propose sanctions once we had allowed for due process. If we felt that we had enough information and all of the facts, this likely would never have been sent to the RCMP in the first place. Now we are putting any chance of a fair investigation or future trials in serious jeopardy.

We would be finding our colleagues guilty before they have been charged.

Senator Cowan, the Leader of the Opposition in the Senate, rightfully said — I think that is the first time, Senator Cowan, I have said you "rightfully" said.

Senator Cowan: I see a big change.

Senator Plett:

... whether charges are or are not laid, whether a court convicts or acquits any accused person — the Senate will always have the right to consider sanctions in accordance with and to uphold our own standards.

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

Senator Cowan has moved a subsidiary motion which says that, in the event that we will not be able to reach such a consensus, this motion be referred to our the Standing Committee on Rules, Procedures and the Rights of Parliament for consideration; that the senators in question — and I think actually his motion specifically refers to Senator Brazeau, but he said he would bring the following ones forward — that the senators in question be invited to appear; and, in light of public interest in this matter, that the proceedings be televised.

Although this might give our colleagues the opportunity to defend themselves — and I am considering supporting this motion — I do have some serious reservations about it.

This is a committee that would be appointed by the two leaders in the Senate. That does not necessarily make this committee non-partisan. I might be a little more supportive if an elected committee or an external and independent committee was chosen so that we do not run into the same issues of potential and perceived bias that occurred in the Internal Economy hearings.

Senator Wallin pointed out in her speech the importance of the right to an open-minded jury. I am not confident that this motion will allow for that.

• (1530)

Secondly, if a committee such as this is formed, clearly time limits need to be set in place so that these matters can be brought to a conclusion in a fair and timely manner for all concerned.

I am not convinced that I can support Senator Cowan's motion, but I know that I cannot support my leader's motion without amendments. So if Senator Cowan's motion does not pass, I may bring forward amendments of my own.

When I was first appointed to the Senate, I asked an official in Finance what qualifies as Senate business. He told me, "Senator, whatever you deem to be Senate business is Senate business." I said at that time this is wrong, and I have been lobbying and advocating since my appointment for clear rules and a code of conduct in the Senate. In a reasonable institution, a code of conduct with disciplinary actions would be clearly outlined.

Other parliamentarians, including some senators in the past year, have had to repay improperly claimed expenses. No sanctions were considered. We have not set a bar. We do not have a set of rules that outlines that a specific amount of money allegedly owed or a specific number of errors would result in a specific penalty. We are simply imposing sanctions, very serious sanctions.

Not only are these motions unprecedented in Canadian history, but in passing them, we would be setting a very dangerous precedent that any parliamentarian could be subject to should their expenses or conduct be called into question. We would be subjecting our colleagues to similar sanctions before they have had the opportunity to properly make their case. With no historical context for this and with no bar set, we are setting a precedent that any member of this chamber could be expelled because they are perceived to be an irritant or an annoyance or even, as Senator Segal suggested, unpopular.

Numerous legal opinions have come to light during this debate. As I stated earlier, I am not a lawyer. However, I have taken this matter seriously, and I sought legal advice. I had lunch with a top legal expert in Manitoba a week ago, after this motion was introduced, and asked for his opinion on an appropriate course of action. He said without hesitation that when an investigation is going on, it is inappropriate to take action. If an individual has been charged with something, then suspension with pay would be

appropriate. If the individual has been convicted or indicted, then and only then would it be appropriate to impose sanctions such as these, which in this case would be the suspension without pay. I find this to be a fair and reasonable approach and, quite frankly, find it hard to argue with.

Senator Dallaire stated in the chamber that he comes from such an organization where a disciplinary management system is in place. When an individual is convicted of something, that individual is dismissed. The individual does not lose his or her salary, only the responsibilities, and he rightly said that this is a significant punishment.

As many of you know, Toronto police officer James Forcillo has been charged with the second degree murder of Sammy Yatim. Officer Forcillo has been suspended by the Toronto Police with full pay. Again, this is an individual charged with murder.

Earlier this day, my friend Senator Tkachuk started a statement and was saying that all senators can attend committee meetings, suggesting that this is giving them the right to be heard and defend themselves. I hardly think that attending a regular committee meeting, allowing a senator to ask questions if they are recognized by the chair, but really, quite frankly, not able to defend themselves or make a statement or have legal representation should be considered as having a proper defence or having been given proper consideration.

Honourable colleagues, we need to consider other options, options like suspension with pay or options that would allow them to maintain their benefits, at least, until we know if a crime has been committed. We are not only suggesting suspending without pay, we are doing it before a single charge has been laid. We would be finding these senators guilty before giving them a fair trial.

Senator Wallin was invited to an Internal Economy committee meeting where the witnesses were her accusers, and Senator Wallin was afforded no more consideration than any other senator. I'm sorry, I read this last statement a little too early. I should have read it after this. Neither she nor her lawyer was allowed to present their case. She was never asked to be a witness at an Internal Economy committee and was only able to speak and ask questions if she was recognized.

Senator Carignan has justified this motion was using two cases of so-called precedence, the first being Senator Andrew Thompson. In this case, Senator Thompson was suspended for chronic absenteeism. He was given the opportunity to come, I think from Mexico, and defend himself but chose not to do so. This is a senator who clearly did not want to be in this chamber or a part of the Senate anymore and, eventually, they stopped his pay.

To use this as a precedent is a bit of a stretch, as the attendance records of all three of these senators demonstrate their commitment to this chamber, not to mention they have made themselves available to come here and defend themselves.

The second case used was the House of Lords. Senator Carignan cites that three members of the House of Lords were suspended for an excessive-spending scandal. I find it crucial to point out that members of the House of Lords are, in fact, not paid any remuneration for their services.

We cannot make a direct comparison in a case where the misspending largely exceeds anything we are dealing with here and where the penalties are so drastically different.

In the case of the House of Lords, nobody's livelihood was threatened. Nobody's medical benefits were taken away. To prematurely remove the medical benefits of a cancer survivor, a heart patient, a father of young children before allowing due process to run its course is, in my opinion, unconscionable.

Most importantly, to quote Senator Segal with respect to the reference from the House of Lords:

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.

Honourable senators, the case with the House of Lords fails to serve as a precedent for this motion.

I would like to personally thank my leader, Senator Carignan, for not making this a government motion and for respecting my right to vote my conscience on this important issue.

I take solace in the fact that I am not and will not be voting against my government. I believe this motion came as a result of the belief that Canadians are angry. Honourable senators, Canadians understand and appreciate the principles of the rule of law and due process. The only correspondence I have received from Canadians since this motion was introduced is to respect the rule of law and not to let politics get in the way of doing the right thing.

Some Hon. Senators: Hear, hear.

Senator Plett: We are accountable to Canadians, and we are accountable to the principles of fairness and justice. We cannot, honourable senators, make this a political issue and vote based on political expediency.

My father introduced me to the world of politics at the age of 15. He counselled and mentored me. He was Conservative all of his life. But first and foremost, he was a man of ethics and integrity. He taught me not to let politics get in the way of doing the right thing. He taught me to vote with my conscience. Honourable senators, I ask you, please do the right thing.

• (1540)

Senator Segal: Hear, hear!

Some Hon. Senators: Hear, hear!

Hon. Marjory LeBreton: I doubt very much that I will get the same standing ovation from colleagues opposite.

Honourable senators, I wish to briefly join the debate on the motions to suspend, in particular the motion and the debate on the amendment to the motion on Senator Duffy.

I specifically want to respond directly to remarks Senator Duffy made in this place on Tuesday, October 22. Senator Duffy made several references to me personally and also to other events, some of which I have direct knowledge of and others of which I have no knowledge.

Honourable senators, there is no doubt — we all know this — that Senator Duffy is a good communicator. He is a professional journalist after all, with a long career in two of Canada's major television networks. He has an interesting and entertaining way of presenting himself and is known as a great storyteller.

When he was in the media as host of *Mike Duffy Live*, I sometimes found myself bemused by his approach to politics. Sometimes I was frustrated by his style of journalism, trading as he did, more often than not, on gossip and the latest hot rumour. And sometimes I was so disgusted that I felt like putting my foot through the television set. It was often said that he could sell air conditioners in Siberia.

This is actually a tribute you never had, unfortunately, Senator Munson.

I well remember his words to me and others who would complain about his particular style of political journalism: It's showbiz, he'd say. It's showbiz. How many times have we heard him say that?

When Senator Duffy rose to speak, I was expecting a portion of his speech to be devoted to a vigorous defence of his actions, explaining why, in his own words, he believed that he had acted appropriately. Unfortunately, he devoted his entire address to a supposed conspiracy, using words like "bribery," "threats" and "extortion." I will leave it to others to sift through what is believable and what is not. My remarks today will only deal with those portions of Senator Duffy's speech about which I have direct knowledge.

The first issue I would like to address is Senator Duffy's characterization of an exchange he had with the Prime Minister and Nigel Wright on February 13, 2013. He said: "So after caucus on February 13 of this year, I met the Prime Minister and Nigel Wright, just the three of us."

Now, this is a clever turn of phrase, painting a picture and leaving the impression that this was a separate, private meeting. What he should have said, if he had been speaking accurately, was: "So at caucus on February 13, at the end of the meeting, I spoke to the Prime Minister and Nigel Wright in the caucus room." This would have been a more accurate description of the exchange where the Prime Minister said "pay the money back." His attempts to put his words, his version of what the Prime Minister said into the Prime Minister's mouth are not accurate, and this was addressed by the Prime Minister in the House of Commons during Question Period yesterday. He got one thing right, though; the Prime Minister was clear: "Pay the money back."

This was not new news, despite the gleeful, breathless and excited actions of some in the media, especially the host of one of the evening political shows, cherry-picking portions of Senator Duffy's speech. The exchange at the conclusion of the February 13 caucus has been reported in the media many times — in April, May — many times. This was the one and only exchange between the Prime Minister and Senator Duffy on this

[Senator Plett]

matter: in the caucus room at the conclusion of the caucus meeting.

Carrying on with his speech, Senator Duffy claims, quoting from his speech here in the chamber:

Elaborate undertakings were negotiated among the several lawyers involved in this. They were taking instructions from their clients — at least two lawyers from the PMO, one I know of from the Conservative Party and my own lawyer. An undertaking was made by the PMO, with the agreement of the Senate leadership, that I would not be audited by Deloitte, that I'd be given a pass, and further, that if this phony scheme ever became public, Senator LeBreton, the Leader of the Government of the day, would whip the Conservative caucus to prevent my expulsion from the chamber.

I repeat:

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

Honourable senators, this is not true. This is false. Not one single person ever suggested to me that this be done. Never did I hear of such a scheme. As a matter of fact, on Tuesday, when Senator Duffy uttered those words, it was the first time I had ever heard of this. It was news to me. There was not even a rumour around this place to that effect, illustrating how utterly postposterous this claim is.

On the question of the Deloitte audit, where on earth did Senator Duffy ever get the notion that I, as part of Senate leadership, would agree that he would not be audited, that he would be given a pass? This is another blatant falsehood. I stated publicly many times that I fully supported the calling in of outside auditors. I felt that this decision by the Standing Committee on Internal Economy, Budgets and Administration was the correct and proper course of action. It demonstrated how serious the Senate was about getting to the bottom of these serious issues, and it demonstrated to the public that we were not dealing with these issues from within, which we all know the public was most skeptical about. "How can we expect the Senate to police itself," they said.

On both sides of the chamber, we agreed. To then suggest that I would agree that he not be audited, that he would be given a pass, when in fact I wholeheartedly supported the calling in of independent auditors, is false. I will use the slang word for false: That statement was a whopper. I never asked about the audit other than inquiring on timelines; I never met the auditors; I don't know any of the individual auditors assigned to the file; and I purposely did not attend meetings of the Internal Economy Committee so as not to be perceived as interfering. Interfering? No way. I welcomed the decision to call in the auditors.

Honourable senators, let me now address the actual facts of the phone call among Senator Duffy, myself and Ray Novak of the PMO. Honourable senators, Senator Duffy's depiction of that phone call is not accurate.

• (1550)

In his speech Senator Duffy said:

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

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

Honourable senators, I will now tell you what actually happened in that phone call. It was a Thursday evening, May 16, over the supper hour. Ray Novak and I placed a call to Senator Duffy. Two scenarios were laid out for his consideration.

I can only speak for myself here and report on my notes of what I said, but I ask the question: What deal, when he said the deal was off? Consider the chronology, honourable senators. On May 9, we reported in the Senate the audits. Senator Duffy, as far as we knew, had borrowed money from the Royal Bank and repaid to the Senate his inappropriate expenses, and then, following that, there was a report that he claimed further expenses from the Senate and the Conservative Party during the election campaign. We then found out about the real source of the funds on May 14 and confirmed on May 15, so put that in context when he said that I said the deal was off. This makes no sense.

So we laid before Senator Duffy two scenarios. Scenario 1 was that I would put out a statement saying that Senator Duffy has informed me that he has resigned from the caucus to sit as an independent senator; and scenario 2 was that I would put out a statement saying that given the growing number of questions related to Senator Duffy's conduct, he has been removed from the Conservative caucus.

Once he was presented with these options, I said to him, and I quote myself because I wrote my words down: "Mike, do the right thing and get out in front of this." Naturally, he did not take this news well. There were some back and forth discussions about the implications of this and how the announcement of this would unfold. Honourable senators, because I could tell he was

concerned, I said the following in order to assure him that sitting as an independent did not impact his position as a senator. “Mike,” I said, “this is the only option that can ensure your future livelihood.” A few angry words were spoken, and he hung up on us. Cooler heads eventually prevailed, and we got word back that he would issue a statement saying he was leaving to sit as an independent until these matters were resolved.

Finally, honourable senators, I will comment on the tons of documents that he referred to in his speech, and I again will read from his speech:

I’ve followed the rules, and I’ve got a ton of documentation, including a two-page memo from Senator LeBreton’s office about it, and I never received a single note from Senate Finance or the leadership that suggested anything in my travels was amiss. In fact, those on the other side will remember how often I was lauded by the Prime Minister . . .

And in fairness to Mike Duffy, he is an entertaining speaker, and in fairness to Mike Duffy, he did accept a lot of invitations from our caucus because he was a celebrity and people wanted to hear him, and he was lauded by the Prime Minister. Many members of the caucus are lauded by the Prime Minister when they do good work.

I now say: “a two-page memo.” What two-page memo? I have searched high and low and checked my files, and, for the life of me, I can find no memo that supposedly gives my approval to Senator Duffy to claim his property in Prince Edward Island as a principal residence in order to claim living expenses in Ottawa. Think about it for a moment, honourable senators. This two-page memo was supposedly written in early January 2009, two to three weeks before the opening of Parliament and the new Throne Speech, and two to three weeks before Senator Duffy was officially sworn in as a senator.

This makes no sense. The government leader in the Senate does not run the Senate. The Senate runs the Senate through the Clerk and the Internal Economy Committee. At that time, in 2009, the other side, the Liberals, were the majority in the Senate, and they had the chair and were the majority on the Internal Economy Committee. The Leader of the Government in the Senate answers for the government in the Senate. The Leader of the Government in the Senate does not handle individual expenses or approve expense claims. To suggest that this mystery memo gives approval to Senator Duffy regarding his potential expenses weeks before he is sworn into office stretches credulity. As I said, I have no idea what Senator Duffy or his lawyer Mr. Bayne is referring to.

Therefore, may I join with our colleague Senator Ringuette and request the tabling of these documents.

In closing, honourable senators, I wish to say once again that I am only responding with the facts on those issues that I am aware of. Honourable senators, I will be just a few more minutes.

Some Hon. Senators: Agreed.

Senator LeBreton: I simply want to put on the record that the story that Senator Duffy spun in this place is not based in facts, and it certainly leaves open to question what he was talking about or what on earth he was thinking.

[Senator LeBreton]

Honourable senators, there is no joy in having this whole situation before us. Senator Duffy had an opportunity in this place to make his case for why he thought his expense claims were appropriate. He did not. I therefore, honourable senators, applaud the Leader of the Government in the Senate for putting this motion forward and dealing with this issue as the Senate should, from within. I believe it is the appropriate step. This is what must be done. In everyday life, people do not continue to get paid when there are serious issues, such as there are with regard to Senator Duffy and others. I will simply say, honourable senators, that I applaud the leadership. I applaud the great arguments that Senator Carignan has placed before us, and I will be voting against Senator Cowan’s motion and for Senator Carignan’s motion.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: This is a period for questions and comments.

Hon. Art Eggleton: Senator LeBreton, you said in your comments that when having a discussion with Senator Duffy about quitting the Conservative caucus and sitting as an independent, you said words to the effect, “Mike, do the right thing” — I think that was one of your quotes — and then you had a later quote where you said, “You should do this for the benefit of your own future,” or words to that effect. Have I got that right?

You then said that, ultimately, some sanity prevailed and he did it. He got out of the caucus. You sort of gave him some hope that his future was going to be okay if he was out of the caucus. Yet, today, you are saying you are going to support Senator Carignan’s motion, which is a very severe kind of punishment, which is ruinous.

How do you reconcile what you told Senator Duffy back then with the motion that’s on the floor?

Senator LeBreton: Well, as I pointed out, Senator Eggleton, the situation on May 16 was quite different than the situation that we faced here in the Senate on May 9, when we in fact thought that Senator Duffy’s case was closed. The money was returned; there was nothing more to be said about Senator Duffy.

• (1600)

By May 16, there were many new bits of information, as we now know, including the new story that he claimed expenses against the Senate during the election campaign, which we all know is improper, and we are all very careful not to do. At the same time, he was being paid by the Conservative Party.

The true source of the repaid money was revealed in a national television news broadcast on the evening of May 14 and confirmed on May 15. By May 16, with all of this new information and with the grave concerns this new information caused our caucus colleagues, not only here but also in the elected Parliament, it was felt that it would be in the interests of all of us, and especially of Senator Duffy, if he were to step aside until these matters were resolved.

At that time, I had no reason to believe that the matters would not be resolved. I was envisaging a situation where all of this new information could be explained, and Senator Duffy would continue on with his future.

So I reassured him that the act of leaving a caucus and sitting as an independent would in no way affect his salary as a senator or the resources that are available to him as a senator.

Much more information has come out since. You are asking me to apply what we now know today to what I believed then and the situation we were facing on May 16.

Senator Cools: I would like to ask a question.

Senator Munson: No. We are on debate.

The Hon. the Speaker: That is fine. The problem is, honourable senators, that the extension of time has also been exhausted; so we are now on debate, and the chair recognizes the Honourable Senator Dyck.

Hon. Lillian Eva Dyck: Thank you, Mr. Chair.

I rise to speak to this motion in support of Senator Cowan's amendment, but I am not in support of Senator Carignan's original motion. It is because it has arrived too late in the process, it is fundamentally unfair and the penalty within the motion is far too severe.

Essentially what we are doing is the equivalent to changing our rules extemporaneously, in midstream, for these three cases only. While we have the right to do that, it does not mean it is the right thing to do.

I want to read parts of the motion into the record. I have looked at this motion very carefully, and to me the motion contains a logical fallacy.

If we look at the very first part of Senator Carignan's motion, it reads:

That, notwithstanding any usual practice or provision of the Rules . . .

So we all know "notwithstanding" clauses mean we are going to break something that is already there. This means we are going to break our existing rules.

The motion before us is proposing that we break our existing rules in order to penalize senators who have broken other administrative rules. We are breaking a rule; they have broken a rule. How can two wrongs make a right?

In order to penalize them, you are asking us to break our own rules. It makes no sense. How can breaking our own existing rules be seen as protecting the dignity and reputation of the Senate? As I said, two wrongs don't make a right.

It has been made clear throughout the debate that we have the power to break our own existing rules. That does not mean it is the right thing for us to do.

In Senator Brazeau's case, we did follow our rules from the past in the last parliamentary session. In that case, we had a motion to order a leave of absence, which was passed by this chamber.

If we look at the beginning of the motion in our past parliamentary session with regard to Senator Brazeau, it reads that pursuant to rule 15-2(1), in order to protect the dignity and reputation of the Senate, and public trust and confidence in Parliament, the Senate order a leave of absence.

But the motions before us now are ordering a suspension without pay, without benefits, and so on. It is much more severe.

Why are we changing the motion for Senator Brazeau? Nothing has changed in that case. It is inconsistent, illogical and not right.

It is clear that our rules allow us to order a leave of absence when a senator is charged with a criminal offence. In response to my questions yesterday, Senator Carignan confirmed this. I will read into the record what he said:

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

Furthermore, he says:

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 a totally different category. He said:

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".

As has been stated before, in Senator Brazeau's case, a criminal charge has been laid. In the cases of Senators Duffy and Wallin, no criminal charges have been laid.

Nothing has changed in Senator Brazeau's case. Why now do we have a motion that we should suspend him with pay? We should be putting forth the same motion.

It is clear that by proposing the suspension of the three senators, we are intentionally breaking our own rules — specifically rule 15-5(1) — dealing with suspension of senators.

Rule 15-5(1) reads:

A Senator who has been found guilty of a criminal offence in proceedings by indictment and who is given a sentence other than a discharge is suspended from the Senate as of the time of the sentence.

When a senator has been found guilty of a criminal offence, we can suspend them. It is clear that that is the case: When a senator is found guilty of a criminal offence, he or she can be suspended.

In the one case, we have a senator who has been charged. Our rules say we can put that person on a leave of absence, which we have done.

So far, the three senators have not been found guilty of any criminal offence; therefore, if we put them on suspension, we are breaking our existing rules. The motion before us to suspend these three senators is inconsistent with our own rules. Ordering a leave of absence is in order, but not a suspension without pay.

How can such a motion restore public trust and confidence in Parliament when this chamber of sober second thought deliberately beaks its own existing rules?

If the intention of the motion is to apply a civil penalty, then it is not fair to apply a penalty that results from a criminal conviction.

The situation for the three senators is unfair. The motions before us are not only to suspend them but also to take away their salaries and benefits. Our existing rules only allow the withholding of their salaries if they have been found guilty of a criminal offence. This is in rule 15-3(4), which deals with suspension of allowances. It states:

Where a finding of guilt is made against a Senator who has been charged with a criminal offence that was prosecuted by indictment, the Standing Committee on Internal Economy, Budgets and Administration may order the withholding of the payable portion of the sessional allowance of the Senator in accordance with paragraph [rule 15-3](1)(a) as if the Senator were suspended.

• (1610)

Honourable senators, people do expect the three senators to face some consequences for their alleged misuse of public funds. People are angry. I was angry. All of us have been painted with the same brush. However, there is an overreaction, which is promoted and is still being promoted by the intense media coverage. Let us not fall into the trap of acting inappropriately ourselves and breaking our own rules. Let's not forget the fundamental principle articulated in rule 15-4(5). I will read that into the record:

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.

I would like to make a couple of brief final comments about the process. If we read the motion before us and we move towards its end, we have another “notwithstanding” clause. It says:

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.

[Senator Dyck]

This means to me that this motion has taken away the authority of Internal Economy to have applied the sanction but it is giving it back to it to apply administrative actions that it considers appropriate. Is this right? I don't think so.

In my reading, the motion has usurped the role of the Internal Economy Committee. However, if we read subsection 19.6(1) of the Parliament of Canada Act, which is entitled “Exclusive authority,” the Committee, meaning the Standing Committee on Internal Economy, Budgets and Administration —

... has the exclusive authority to determine whether any previous, current or proposed use by a senator of any funds, goods, services or premises made available to that senator for the carrying out of parliamentary functions is or was proper, given the discharge of the parliamentary functions of senators, including whether any such use is or was proper having regard to the intent and purpose of the regulations made under subsection 19.5(1).

To me, that means that the Parliament of Canada Act has given the exclusive authority to the committee and this motion has usurped that role, in a sense, and proposes a different rule and has taken over the process.

With regard to Senators Brazeau and Duffy, it's like we're backtracking. We already had motions to deal with what should happen to them as consequences. Why are we changing it now? With Senator Wallin, it's like we're fast-forwarding. We haven't dealt with that report yet.

I believe this motion proposes a change in the way we normally conduct our business for no apparent reason other than responding to public outcry or public outrage and opinion.

Passing this motion to suspend the three senators without pay or benefits is not a fair way to go and, in fact, passing this motion will not restore public confidence in the Senate. It will not restore the dignity and reputation of the Senate. In fact, I think it will do the exact opposite. People will have seen that we have overreacted to public pressure and thwarted the principles of fairness, democracy and justice. Therefore, I do not support Senator Carignan's motion.

The Hon. the Speaker *pro tempore*: Are there honourable senators who wish to put questions?

The Hon. David P. Smith: Yes, I wish to put a question.

Senator Dyck, you referred to and quoted rule 15-5(1) and the reference to:

A Senator who has been found guilty of a criminal offence in proceedings by indictment.

Isn't it your understanding that the offence that Senator Brazeau is charged with, which really doesn't relate to the expenses, is a summary charge rather than indictable? Is that your understanding? Would that make your point even stronger?

Senator Dyck: I am not a lawyer, so I really cannot answer that question.

Senator D. Smith: I think, in fact, it was a summary matter, which would make your point even stronger.

Senator Dyck: Yes. Thank you for that.

Hon. Jane Cordy: I am not a lawyer, so my question won't be a legal question.

Thank you very much for what was an excellent speech. I am wondering if you feel—and I got that sense during your speech—that if we vote in favour of this motion that in fact what we are doing is coming in with a sentence before we have an actual verdict, since the RCMP investigation is ongoing?

Senator Dyck: Yes, it does feel like this motion does put forward a sentence, and it is not the right thing to do. They should have their due process. No matter whether the public is upset or whether I'm upset, people deserve due process.

Hon. Anne C. Cools: I am wondering if the honourable senator would take a question.

We keep hearing references to the fact that the Internal Economy Committee called in the RCMP. What authority would the Internal Economy Committee have to do that? I would have thought that would have taken a decision of the Senate.

Senator Dyck: I believe that the Parliament of Canada Act has given the authority to the committee to do that. I could be mistaken. I'm not familiar with all the ins and outs of the Parliament of Canada Act, but really it does not matter who has the authority. The fact still remains that the motion is asking us to break our rules. The motion is sentencing these people before they have had a chance. The authority is a good technical question, but the outcome is still the same.

Senator Cools: I quite agree with you. It's just that there is a constant reference to it. But it seems to me if the power, supposedly, to do this motion of suspensions is claimed by virtue of the power that the Senate and senators have over each other, then that same power would have demanded that the Senate as a whole took a decision on the question of the RCMP.

It is just something that you brought to my mind as you were speaking, but it is a horrible thing, an extremely horrible thing that is happening here.

The Hon. the Speaker pro tempore: On debate, Honourable Senator Nolin and then Honourable Senator Dallaire.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, to begin, I believe that we are debating Senator Cowan's motion in amendment. Am I right?

The Hon. the Speaker pro tempore: Yes.

Senator Nolin: I was hoping to speak to the main motion, but if I must speak to them at the same time, I am prepared to do so. First, I would like to speak to the motion in amendment.

Honourable senators, I have been here for more than 20 years, and I have enormous respect for the right to dissent that is so often exercised in this chamber. I am not calling that into question. Quite the opposite. I have a great deal of respect for my colleagues who choose to face the majority and express their dissent, no matter which bench they are from.

That being said, earlier today, the Speaker made a ruling, at Senator Segal's request. Unfortunately, I was absent yesterday, but I took the time to read the transcript of yesterday's debates in order to understand the scope of our colleague's point of order. I wish to thank the Speaker for making his ruling so swiftly. It is a good thing he did, because his ruling will influence our decision to, unfortunately, reject Senator Cowan's motion in amendment.

• (1620)

His Honour the Speaker fully grasped the importance of the main motion before us. He also identified and accepted the arguments raised by Senator Carignan in his presentation, specifically, that no one except this chamber has the full authority to make a decision on the motion of the Honourable Senator Carignan. In his ruling, His Honour reminded us of the authority that comes to us through parliamentary privilege, an authority we share with our colleagues in the British House of Commons, an authority we had in 1867, and still have today. It is this authority — and I quote the text of the ruling delivered earlier today — “that is entirely independent of and separate from any criminal measures undertaken by the relevant authorities.”

I have a great deal of respect for my colleagues who raise the point that people have a right to legal counsel, a right to due process, but that is not what we are talking about. We are faced with an issue and we ourselves, and no one else, must decide if the motion moved by Senator Carignan is in order. Some will argue that it is and others will say it is not. However, in the end, it is this chamber alone that will have to determine whether it has heard sufficient arguments on both sides and then make a decision.

His Honour the Speaker clearly explained this authority. No one else but us has this authority. It is now up to those who have arguments against those that were properly and, I believe, skillfully presented by Senator Carignan during his indictment, to table before the Senate, as the Honourable Senator Brazeau did earlier today, any documentation they deem appropriate for a meaningful debate. However, in the end, the decision must be made by us and no one else.

We must not fall into the trap. I respect the notion of due process, but this is not a criminal case. This is a disciplinary case. This is a chamber of Parliament, and we are responsible for disciplining ourselves; no one can challenge that. Even the courts cannot challenge that authority. The only way we can lose that authority is through a formal constitutional amendment. Anyone who decides to promote such an amendment will have to get up pretty early in the morning. We have had this authority since

1867, and we have every intention of exercising it properly and ensuring that everyone's rights are observed. However, the decision must be made by the chamber.

Honourable senators, I am therefore opposed to Senator Cowan's motion in amendment, and I reserve the right to speak to the main motion, which, by the way, I think is appropriate and in order.

[English]

The Hon. the Speaker *pro tempore*: Are there questions of the Honourable Senator Nolin?

Senator Segal: Senator Nolin, will you take a question?

Senator Nolin: Absolutely.

Senator Segal: By means of introduction to the question, I am not quibbling with the right of this place to discipline its own members. I am suggesting, however, that if we go down the route of professional discipline as suggested by the government leader, then there are rules to that process. There are rules when the Quebec bar brings a lawyer up to be disciplined, there are rules when the Upper Canada Law Society brings a lawyer up to be disciplined, and it is the same with the college of dentists and the college of physicians and surgeons. Those rules imply that even in the area of professional discipline, which is where our leader in the government has suggested we are finding ourselves, those imply a very high standard when we are trying to commit professional capital punishment on three of our colleagues. That's what we are doing. The high standard of due process applies as much to us as it does to anybody else. I don't question our right to set those principles aside. My question to you is: Accepting there is a constitutional right to be arbitrary, unfair, mean and cruel, are you arguing that we have to defend that right and execute on that basis?

[Translation]

Senator Nolin: We have the parliamentary privilege of making the decision we feel is appropriate in light of the facts presented.

Once again, I would like to quote the text of the ruling issued earlier today by His Honour the Speaker. First, the Speaker reminded us that the suspension of a member is a serious issue — and you elaborated on the consequences of such a decision. A little earlier I quoted this section of the ruling: this power is independent of and separate from any criminal measures undertaken by the relevant authorities.

A little later, the Speaker said:

A decision by the Senate to exercise this power is, of course, a serious matter, to be dealt with during debate.

“To be dealt with during debate.”

It is through this process that honourable senators seek to convince each other whether a proposal should be accepted or not. In the end, the desirability of a proposal to suspend a senator will be decided by the Senate itself.

[Senator Nolin]

I will not ask this chamber to endorse an unlawful measure. On the contrary, I am asking senators to respect the parliamentary right of this chamber, which is to rule on the right and the decision to suspend or not suspend a senator. The Speaker reminded us that this is a serious matter — I would even say very serious. It is up to us to weigh the facts and the evidence. We clearly heard Senator Carignan, earlier this week, presenting his arguments, what I call his indictment. I read the interventions from my three colleagues identified in these three motions. I think they have raised arguments that deserve further consideration. However, this must be done through a debate here and nowhere else. It is up to us to decide.

[English]

Senator Segal: I accept the premise in your speech and your very thoughtful answer that we have the responsibility and the right.

[Translation]

As we say, we have the right to rule on this ourselves, as an institution in the federal Constitution and as an institution of the Parliament of Canada.

[English]

When you say we have the right, however, to array the facts and to reach a decision, are you saying — I would be surprised if you would ever say this — that the way we do that and the process that we use for that purpose matters not a whit?

[Translation]

Senator Nolin: I have too much respect for your competence to fall into the trap of such a silly and mischievous leading question. On the contrary, it is our responsibility to judge.

The Speaker reminded us of the importance of our role, which is not just to say yes or no. Our role is to assess the arguments and the facts that are presented and to analyze the counter-arguments.

We heard some of the facts. I was not here, but I read them in Hansard. It is up to each senator to determine if he or she wants to agree with one side or another.

We heard Senator Plett say he is voting against the motion. That is his right. I spoke to you from the outset about my respect for the right of dissent. I respect that principle. I am the first to respect that right. However, far be it from me to suggest that this chamber wants to rubber-stamp a miscarriage of justice. On the contrary, I believe that it is up to us to do our duty, not to anyone else.

• (1630)

[English]

Senator Segal: Could I just ask my colleague: In view of my understanding that he believes that the process should be fair, that there should be due process, that the facts should be arrayed and discussed in different ways, and his opposition to the amendment proposed by Senator Cowan that would allow a special committee to do this, with the presence of counsel and arraying of the facts in

an orderly fashion, that he is, in fact, comfortable — and he's saying to us that he is comfortable — that we can do that without a special committee, without the right to have counsel, that we can do it just the way we're doing it and we need not worry about any due process issues? As a distinguished member of this place, is he quite comfortable with what we are now doing?

[*Translation*]

Senator Nolin: That is what I call an insidious question. I follow the main idea behind your question, but I take issue with the underlying idea of your question.

Our chamber has the power here. The Speaker reminded us of the procedure we have to follow and our responsibilities. It is up to us to decide whether our procedure is appropriate or not, and the Speaker deems our procedure to be appropriate.

The Speaker told us, at the very end of his ruling, that if the chamber comes to the conclusion that we are lacking information, a decision will be made then. In any case, Senator Cowan's motion is premature since we have not yet finished debating the main motion. It will be the chamber that decides whether the arguments that were presented in favour of the motion and those that were presented against the motion need to be explored further.

For now, I believe that this is premature. I do not think that this motion is in order because we have enough information in front of us. Those who disagree with the information are free to come here to this chamber, as Senator Brazeau did earlier today, to present documentation that would help us to come up with a final decision that cannot be appealed.

[*English*]

Hon. James S. Cowan (Leader of the Opposition): I have a comment and then a question, if I may, Senator Nolin. I listened to you and I agree with you, and I think we all agree. Senator Carignan stated at great length the powers that we have — the power to discipline our own members. I said the same thing in my speech. I'm not sure if you were here when I spoke, but I'm sure you've had an opportunity to read it. That's not the issue. The issue is the one that Senator Segal raises, and that is the process by which you reach a decision.

I will read to you a portion of my proposed amendment — and it's similar with respect to each of the three motions that Senator Carignan has made — and that is that each of the three motions be referred to the Rules Committee for consideration and report. I would ask you whether you agree with me that nothing in the wording of this amendment is intended to take anything away from that power which resides in this chamber to ultimately make that decision.

I would suggest to you — and hope you would agree, ask if you agree — that this motion would simply be a way of facilitating us coming to a solution, to a decision, by making sure that those of us who don't have enough information in order to vote on the motion which Senator Carignan has proposed, we're simply — this is a process issue. I suggest — and I would hope you would agree, and ask whether you would agree — that this is a better way to achieve the result that we all agree ultimately must be made in this chamber.

The Hon. the Speaker *pro tempore*: Honourable Senator Nolin, are you asking the chamber for more time?

Senator Nolin: Of course.

The Hon. the Speaker *pro tempore*: Is more time granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: Five minutes.

Senator Nolin: Senator Cowan, I think we have to stand by the decision given by the Speaker earlier today. The Speaker is showing us “how,” in black and white. Ultimately, if we come to the conclusion that we are missing some information, some evidence, we then will decide, or should decide, to move to a committee, but it is too early to decide.

Personally, I think we have sufficient capacity to look into the arguments proposed by Senator Carignan earlier this week and to weigh that with arguments and elements of evidence presented by some of our colleagues. At the end of the process, if we come to the conclusion that we need more, it's going to be up to the chamber to decide that. For the moment, I humbly suggest to the chamber that your motion is not appropriate.

Hon. Elaine McCoy: I think I am on somewhat of the same point as my predecessors, Senators Segal and Cowan. I, too, have a great deal of respect for you, Senator Nolin, and particularly have watched your legal expertise over the years and also the heart with which you usually judge issues.

My point, too, would be that the issue is not whether we have the power. I've said this earlier this week as well. We have great power. With that comes great responsibility.

Maybe I could ask a question put this way: In conducting our responsibility, are there any standards of care, or even standards of conduct, that you think we should apply to one another? Are there any principles that you might suggest we should apply as we senators are coming to a decision?

Senator Nolin: You are absolutely right; we have great responsibility.

First, thank you for your comments. It is always important for a senator to accept and receive all those flowers, even more when we have people listening to us.

You are right: it is up to us to decide if we are applying those principles of justice and respect for fundamental rights. It is up to us to decide if we have the process here. I suggest that we have it within our rules, and we have a Speaker who is there to watch over our debate to make sure that we respect those rules. Any colleague can raise a point of order questioning the application of those rules by one or a group of senators.

To your question: Absolutely, we have the authority. It is up to us, nobody else; it is up to us to decide how we will govern ourselves to reach a conclusion that is asked of us by Senator Carignan.

Senator McCoy: Do you have any suggestions in that regard? Rule 15 of our rules makes mention of leaves of absence and suspensions — I've reread it again. Well, I suppose that's a redundancy, isn't it? A leave of absence is spoken of when you are charged, indictable, and then it says it lasts until you're convicted or acquitted. It goes on to say suspension happens if you actually are convicted of an indictable offence. Then it says that what happens next is a series of things. Either it's appealed and you're found innocent on appeal, your conviction is replaced with a discharge, or "the Senate determines whether or not the place of the Senator shall become vacant by reason of that conviction." That rule is obviously a reflection of the Constitution. I forget which section. I think it's section 33 of the Constitution Act, 1867.

That is what our rules actually deal with: a criminal charge, an indictable offence, and what happens until that's disposed of, and the various stages which proceed from leave of absence to suspension. None of that applies in the current circumstance, even Senator Brazeau's. I was asking this earlier today to confirm my understanding. His criminal charge is actually a summary conviction charge.

• (1640)

None of the above, none of our rules apply at the moment, actually. We're charting a new course, but that isn't to say we don't have the authority to proceed and debate and come to a conclusion on the motion that's in front of us, Senator Carignan's motion.

Would you suggest that there are any principles of conduct on our part, or principles of law that we should apply, or principles of procedure and due process that we might evoke in our handling of this matter?

[Translation]

Senator Nolin: First of all, Your Honour, I must again ask my colleagues for another five minutes, if possible.

Hon. Senators: Agreed.

[English]

Senator Nolin: The answer, we have that authority already within the rule. First, read properly what Senator Carignan is asking us and what part of the rule he's referring to. He's basically citing 15-2(1):

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

That is what Senator Carignan is asking us. Not the criminal approach, not the summary, nor the conviction. No, that is the piège we should avoid that I was referring to earlier. It's not a criminal charge, and the Speaker reminded us of that earlier in his decision. It's not penal. It's disciplinary. It's within the scope of what this chamber is asked to achieve, according to rule 15-2.

It's up to us to decide if we have the authority. I think we all agree we have the authority.

Now, you're asking me if there are any rules or any kind of procedure that we should adopt. I think we already have all of that in our rules and in the conventions. Don't forget that we are a chamber following the old British parliamentary process, which Senator Cools reminds us of. I love those comments, because she explains to us that we go back to a very long history of conventions. All those conventions, with the able monitoring of our Speaker, are applicable when we are asked to make quite grave decisions like this, after deciding on the three motions of Senator Carignan.

We have all the rules and, if we miss one, it's up to us to decide if there is one, but I don't see any missing rules that we don't have that we should have.

Senator Fraser: The question period is over.

Senator D. Smith: Could I have five minutes?

Senator Fraser: He's had more than five minutes.

Senator D. Smith: He recognized me.

Senator Fraser: Your Honour, we gave leave for five minutes. The five minutes expired right after Senator McCoy's last question, and our side gave leave for Senator Nolin to answer the question.

Is Senator Smith going to speak now in debate? Splendid.

The Hon. the Speaker: My understanding, honourable senators, is we are still on Senator Nolin's time because he was given extra time. I know there are other honourable senators who have comments and questions. I thought our colleague Senator Smith was rising on comment and questions, but I'm now advised it's on debate.

Senator D. Smith: If I can ask him a question, I will. If I can't, I'll speak.

The Hon. the Speaker: You have full right to participate in the debate, so why don't you hold that and we'll let Senator Eggleton ask a question.

Senator Eggleton: Honourable senators, there is one other aspect of this that was talked about yesterday, and it doesn't go to the authority question or the right of the Senate to decide on the matter. It goes to the wisdom of doing it in view of the RCMP investigation going on.

Senator Baker yesterday cited much judicial decision-making and precedence for this being a judicial process and that if, in fact, it could interfere with the RCMP's ability to conduct its process and bring the matter to trial. He went on at some length, and perhaps you read that.

What are your thoughts on that aspect, interfering with the police investigation and perhaps preventing them from doing their job?

Senator Nolin: Senator Eggleton, it's not new. You and I enjoy being lawyers: me in Quebec and you in Ontario.

An Hon. Senator: He's not a lawyer.

Senator Nolin: He's not? Oh, excuse me. Some of us enjoy that privilege, and we are quite used to having disciplinary questions put to us. You don't want that and you try to avoid that, but it could happen at the same time as the police are investigating what you've done with your trust account or what you have not done in defending your clients. It's not rare to see the coexistence in two fora: one disciplinary and one criminal. One can live, and that's why human beings and judges—and parliaments are composed of human beings—are able, I hope, to distinguish between rights, responsibilities, criminal charges and disciplinary matters. That is the beauty of being human. I think people in this chamber are quite able to evaluate the consequences of the decisions asked of us.

The courts, if they are asked—and I do not wish that—to decide, and what proceedings of this chamber are presented to a tribunal for or against an argument, it will be for that tribunal to evaluate the evidence and take a decision upon it.

The Hon. the Speaker: Honourable senators, we're back on debate, Senator Nolin's time, even with the extra inning, having being exhausted.

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, I do not wish to halt debate in any way. I know many senators still wish to speak, but there are a couple of things that I did want to say.

First, I want to be very plain that at the time when the Internal Economy Committee made its original reports on the cases of these three senators I was a substitute member of that committee. I voted for the reports. I strongly supported them. I voted for two of the three—the two of the three that have been brought before the Senate—in the Senate, and I spoke in support of them. I think it is vital that money that has been wrongly claimed—public money, taxpayers' money—should be paid back with interest. I will go to my grave believing that.

I also, like everyone else, agree the Senate has the right, even the duty, to sanction members of this body who have committed acts that they should not have committed.

Indeed, I agreed with Senator Cowan who, at the time, last spring expressed regret that the Internal Economy Committee did not propose sanctions at that time. It would have been, in my view, the appropriate time to do so. I have some understanding, however, why they didn't, because at that time Internal Economy's work, which was carefully and thoughtfully done, was not concerned with the circumstances surrounding the claims of money that should not have been paid out and was not concerned with the motive or the reasons. I will not use the phrase "*mens rea*," because I don't want to talk about criminal matters, but Internal didn't look at that. Internal just looked at whether money had been claimed that should not have been, and whether it should be paid back. That's what the auditors looked at, that's what Internal looked at, period. I can sort of understand why they didn't proceed to sanctions.

That's where we were last spring and that was sort of in keeping with what has been done in the past, as has been stated here.

Now, months later, out of the blue, come these three identical motions for sanction. These are the one-size-fits-all motions, even though the three cases are not the same. The details of the cases, of conduct traced by the auditors, are not the same, the amounts of money are not the same, but we're faced with a one-size-fits-all approach, late in the day, to sanctions.

• (1650)

It is, if I may say so, a whole new take on the policy of mandatory minimum sentences. Indeed, you might even argue that it's the introduction of mandatory maximum sentences, because as we know, colleagues, suspension without pay is the second harshest penalty that this chamber can levy, the harshest being to declare a seat vacant. Suspension without pay is the next harshest. It is rarely done, and it should never be done without very careful consideration, because suspension without pay, particularly open-ended suspension without pay such as proposed here, can be an extremely dangerous precedent in the hands of a determined majority. It doesn't even have to be a partisan majority, but in the hands of a determined, angry majority of senators, any one of us could face a sanction if we engaged in conduct that a majority of our colleagues found objectionable, even if all we were doing was exercising the right to dissent of which Senator Nolin spoke eloquently earlier. It's a dangerous precedent.

Yes, we have the legal power to do this, but to paraphrase Senator Plett earlier, not everything that is legal is right. I must say that the people of Canada are following our proceedings, and my office is getting lots of emails saying precisely that: Do not rush to judgment on this matter.

So from the outset, I supported Senator Cowan's motion to refer this matter for careful study to the Rules Committee. My conviction that we needed a committee study of these motions was only reinforced by the debate that we have heard so far, and we're going to hear more. This week we have heard statements that at least some of these senators had written confirmation that the claims they were making were allowable. That would be, for anybody, a powerful influence on their conduct even if later the claims turned out not to be allowable.

We've heard flatly contradictory claims about those statements. We have heard Senator LeBreton say flatly that things that Senator Duffy and Senator Wallin had said were false, and we can't settle that on the floor of this chamber. We have a presumption that senators who speak here speak the truth, and maybe they all believe they're telling the truth, but we can't figure that out in simple debate in this chamber.

Most important is that we should do a very careful study of the arguments raised yesterday in Senator Baker's powerful speech about the legal implications of what we are up to. I know that not all legal experts agree with him, but I know that some do. To even think of engaging in a proceeding in this chamber that might impinge upon a criminal investigation is unthinkable. We don't do that in this country. We would need to be very sure that the

course upon which we were engaged was not going to do that. That, too, can only be resolved by committee study, hearing from experts in the matter.

I was also influenced by a suggestion by Senator Carignan in his discours fleuve on Tuesday that the three senators in question had engaged in contempt of Parliament. The discours fleuve covered a lot of familiar ground, but that was an interesting new point to consider. That actually tended to confirm my view that this matter should go to the Rules Committee, because contempt is akin to questions of privilege, and the Rules Committee is normally the place where we go for that. However, there are other things to take into account here.

There is a strong public interest, in the best sense of the word and also in the sense of public attention being paid. There is a strong public interest in having these questions resolved fairly, after due and proper study, but also without undue delay. I note that the Rules Committee does not yet exist. It's likely to exist at the close of our proceedings today.

Oh, it does exist, but it hasn't had its organizational meeting. That will take time. That won't begin until next week. Most importantly, the Rules Committee has no background in these particular cases. It would be starting from zero.

In contrast, the Internal Economy Committee arguably has already done half the work on these three cases, and it already exists. It has already met since we returned after prorogation.

I conclude, therefore, that all things considered, it would be in the public interest to entrust this matter to the Internal Economy Committee, although I would also suggest it would be appropriate that any member of that committee whose personal conduct has been directly implicated in this debate recuse himself or herself. I think that the Internal Economy Committee could conclude the work it began so carefully last winter, and I therefore move an amendment.

MOTION IN AMENDMENT

Hon. Joan Fraser (Deputy Leader of the Opposition): Therefore, honourable senators, I move:

That the motion be amended by replacing the words "Rules, Procedures and the Rights of Parliament" with the words "Internal Economy, Budgets and Administration".

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

This subamendment is now open for debate. There is a question of Senator Fraser from Senator Segal.

Hon. Hugh Segal: Senator, you indicated that you had been involved in the discussions both in this place and in committee with respect to two of the three reports that were in issue on the matter of spending. I had the occasion of attending the third set of meetings, August 12 and 13, as it related to Senator Wallin. While I have the highest respect for the integrity and the good faith of all the people who sat on the committee, including yourself, I have a

strong view, which I shall advance when Senator Wallin's motion is called, that the committee's overall process and structure was deeply biased.

My problem, and I'd be interested in your advice, is if we put back to the same committee, minus one or two souls, a proposition where some of us will be of the view that they've already acted not in any fashion that was bad faith, but produced a result that, in my view, is deeply biased, aren't we creating another difficulty that will make it harder to get to the truth of the matter, because any committee will stand by the conclusions they came to before, even if the fashion in which they did so was both erroneous, misinformed and unfair?

Senator Fraser: As you may have gathered from my comment, Senator Segal, I don't agree their work was biased. I think what they set out to do was to make a factual finding, which is very different from the study we are talking about now in connection with Senator Cowan's amendment. They set out to determine whether expenses had been claimed that for whatever reason should not have been claimed. They did not consider the question of sanctions. Therefore, they did not get into the individual cases of whether there were extenuating or aggravating circumstances or motives. The thing they were looking at was the simple fact, like the tax people. The tax people don't care why you make a claim that they determine you are not entitled to; they just make the determination. That is what Internal did.

• (1700)

The study I am talking about now is quite different in nature, and I understand that it is the kind of study that Senator Cowan is talking about now. I am just trying to square the circle. There is, I truly believe, a public interest in proceeding with this matter, both fairly and without unnecessary delay.

It is my contention that Internal, having already gone down the factual part of the road, would be in a position to conduct the rest of the study. Having been there and having understood what they were trying to do at that time, I think they are perfectly capable of doing that. I believe any committee of this Senate, particularly on a matter of this importance, will do its work diligently, with every effort to achieve true fairness. But what we are talking about now is not what the committee was talking about last spring, which may explain the frustration that some of the senators involved felt about the actual process at that time.

Senator Segal: I have a supplementary question.

Am I to understand that the purport of your amendment is to have the committee, minus one or two souls, address the actual language of the motions put before us by the Leader of the Government so they would be free, in your judgment, to look at words like "gross negligence" as opposed to "negligence"; they'd be free to examine the horrific sanctions imposed in the motion and determine whether they thought that was appropriate; and they'd be free to get legal advice, as Senator Cowan has suggested, about what the realm of opportunity, freedom, balance and fairness might be within their operational scope as a committee? Those things would transpire, and in your judgment, even though it's not the practice of the committee we speak of now, rights to counsel and full representation for those who might be given a

[Senator Fraser]

chance to give their side of the story would also be guaranteed in the proposition as you advance it now, and that might require, of course, a separate reference from this chamber to the committee in order for that to transpire. I would be interested in your distinguished advice; you have been in this place substantially longer than I have.

Senator Fraser: I am older than you are, too.

I don't want to get into counselling any committee on the precise method it adopts to conduct its work. I'm suggesting that what is needed is a thorough, careful, but not unduly delayed study.

With my subamendment, the chamber has the right to choose between two committees. I can't impose one or the other. I'm making a suggestion in good faith.

The Hon. the Speaker: Honourable senators, the time for Senator Fraser has been exhausted. However, a number of honourable senators have indicated they wish to make further comments and ask questions. It's in the hands of Senator Fraser if she wishes to ask for another period of time.

Hon. Gerald J. Comeau: Five minutes?

The Hon. the Speaker: Agreed?

Senator Fraser: Yes.

The Hon. the Speaker: The Honourable Senator Comeau.

Senator Comeau: Thank you very much. I won't comment on whether I support your subamendment or not.

I do appreciate the final comments, in response to Senator Segal, regarding the work of the committee. In my view, it is a group of some of the finest individuals I have ever had the honour to work with over the years, and I do not ascribe to the issue that they are biased in any way. I appreciate what they have done. They work well on behalf of this chamber, and I applaud them for it.

Early in your comments, Senator Fraser, you indicated Senator Cowan had been disappointed that Internal Economy had not provided sanctions. I wonder if the senator is aware that the committee does not have the power to make sanctions and that it strictly stuck to the powers within its mandate, which were to have a fact-based analysis of the expense claims and that it could not get into the issue of sanctions. I wonder if you were aware of that.

Senator Fraser: If I said that I thought the committee should have imposed sanctions, I misspoke, but I believe that it would have been within the mandate of the committee to include in its report recommendations for consideration by the Senate concerning sanctions.

Senator Cowan: That is what I said, too.

Hon. Elaine McCoy: Senator Fraser, would you entertain a question?

Senator Fraser: Yes.

Senator McCoy: First a comment. I think the Rules Committee will be up and running fairly quickly, but rushing right past that small comment in the sense of time, I wonder if this has been thought through all the way because you do say — and I think you are absolutely right — that this is a matter of great public interest in both senses, as you mentioned. I wonder whether it will be seen as a sufficiently impartial committee, given its former involvement in these issues and given some of the public attention that has been paid to the way they were handled in some instances. I wonder if that isn't inviting somewhat of a cynical response from some members of the public.

Senator Fraser: In a sense, you are echoing some of the remarks made by Senator Plett earlier today, Senator McCoy.

I repeat that we now have before us two possibilities for committees, and senators would certainly be free to choose between those two. But I would also add that it is the nature of the Senate that it is composed in large measure — not including yourself — of partisan politicians. It is my experience in this body that on the great questions of the day, senators do their work carefully and seriously, and it is the quality of the work that matters.

There will always be people who have doubts or criticisms, but I believe that the work of the senators in this chamber, in either committee, would be well and fairly done.

Senator McCoy: I have no compunction about rallying to the talents of our senators. It has been my experience as well.

I thank you for the recognition of my independence. You do know that I abhor the politics that I think are in excess in this chamber; however, working on committees, I have seen remarkable work. It is the strength of this chamber, and I continue to congratulate every senator who participates in that way.

I do have another question. Actually, Senator Segal was reaching for this. The mandate that you would be asking of the committee review has not been made clear to me. Senator Comeau mentioned what their official mandate is, and I'm reading that from our rules. It says that within the committee's mandate are "all financial and administrative matters concerning the internal administration of the Senate and to interpret and determine the propriety of any use of Senate resources," whereas the Rules Committee actually has a reference to the practices of the Senate and therefore, by implication, of senators. I wonder if that is not a consideration to be given more thought.

Senator Fraser: Do I have leave for a short answer, colleagues?

The Hon. the Speaker: Senator Fraser, a short answer.

Senator Fraser: Senator McCoy, it is my view that an order of reference from the Senate, which this would be, overrides any otherwise standing mandate set out in the rules. We sometimes

do assign matters for study to committees that might not be the most obvious choice, but there are good reasons for doing so at the time.

The Hon. the Speaker: On debate, Senator Champagne.

• (1710)

[*Translation*]

Hon. Andrée Champagne: Honourable senators, I would like your permission to take three minutes of your time, not more, to try to lighten the mood we have had in here for the past 48 hours. This may bring back memories of school for some of you, but I think this poem shares some amusing advice that should be read to all parliamentarians the day they are sworn in.

Brave friends, be careful what you say!
 Anything can come of a word gone astray.
 Anything: hatred and despair!
 Don't object that your friends are safe and you're speaking low.
 Listen carefully:
 Face to face, in slippers,
 Doors closed, at home, no witness to your whispers
 You'll utter in the ear of the most mysterious
 Of your heart's companions, or, if you're desirous,
 All alone you'll murmur, almost silent, you know,
 In a basement's deeps at some thirty feet below,
 About some individual, an unkind word.
 This word—which you believe that nobody has heard,
 Which you whispered so low in such dark, mute places,
 Flies though scarce hinted, leaves, leaps, from shadows
 races;
 Oh, my, it's gotten out! It seems to know its way;
 It has two feet, a cane in hand, it walks away.
 In good, steel-toed shoes, a passport in due form;
 If it needed, it would take flight on eagle's wings!
 It escapes from you, nothing will stop it, it's gone;
 It skirts the river's edge, crosses the square, and so on,
 Boatless, passes over, in times of rain in sheets,
 And proceeds right on through a labyrinth of streets,
 Straight home to the citizen of whom you've spoken.
 It knows his number, and his floor; the key has gotten,
 It climbs up the stairs, opens the door, passes through,
 Enters, walks up, and eyeballs him mockingly, too,
 And says: "Straight from the lips of so and so, you see!"
 So there you go. You have a mortal enemy!

I did not write this poem. It is by Victor Hugo. I apologize to our interpreters for this extra challenge.

[*English*]

The Hon. the Speaker: Honourable senators, to make it clear, Senator Smith will be speaking on the amendment of the Honourable Senator Fraser.

Senator Mercer: The sub-amendment.

Hon. David P. Smith: Thank you, Your Honour.

[Senator Fraser]

I am quite open on this subamendment. I go back to the point Senator Nolin was making that he feels very strongly that, yes, we have the jurisdiction to be masters of our own house and deal with it.

Now, you know, let's assume that's correct. The other day I cited a couple of provisions from the Charter of Rights, just a sentence or two, such as any person charged with an offence has the right — and it doesn't say "criminal offence" or is limited — to be presumed innocent until proven guilty, according to law, in a fair and public hearing by an independent and impartial tribunal.

If we are doing this, and I am not going to challenge our doing it, I want us to have an ethical compass by which we exercise those rights, and I am very comfortable with the ethics set out in the Charter. I am not going to get into the big argument as to whether or not it is applicable, but read section 32 of the Charter, and I think there is an argument that it is.

For example, when it was dealt with before by the previous committee, if you are going to have a fair and public hearing by an independent and impartial tribunal, I would think you would want to have the right to have counsel with you, given the severity of these penalties —

Senator Moore: There is no question.

Senator D. Smith: — which are much more severe penalties than many criminal events, much more severe — the right to have counsel and the right to ask some questions of witnesses who provided the evidence on which it was concluded that you broke the rules.

Now, that is the sort of ethical compass I want to have the comfort of. Okay, sure, we can be masters of our house, but I don't want a lynching mob. I want an ethical compass and, if I have comfort that that is the end result that is going to happen here, then I'm okay, but I feel very strongly that people that are facing severe charges like this — are we a country that believes in human rights and due process? Well, let's prove it.

Some Hon. Senators: Hear, hear!

Hon. John D. Wallace: Senator Fraser, will you accept perhaps two questions?

Senator Fraser: Yes. Just let me put on my ear piece.

The Hon. the Speaker: Senator Wallace, we're on debate. Do you want to participate in the debate?

Senator Wallace: With respect to the amendment to the motion, we have two propositions before us, one from Senator Cowan and one from Senator Fraser. I will address the one by Senator Fraser because I think that both of them come down to a basic issue, and that is one of due process.

Senator Moore: Exactly.

Senator Wallace: We heard in a very impassioned way from Senator Wallin the concern she had when her matter, the subject matter which is before us today, was before the board of internal economy. As I recall what she had to say, she was highly critical of the process followed by the board of internal economy; that she was not able to appear at times that she wanted to appear; she was not able to have counsel. Now, whether that is right or not, I'm not here to judge that, but I believe all of us heard it.

I think in view of that, to propose that, again, in the name of creating more due process and transparency, the suggestion that the matter now be referred back—and I will refer to Senator Wallin's, for example—to the board of internal economy, which, according to what she has expressed to this chamber, has not exercised due process to that point, I think would be a serious shortcoming. It's not only that there is due process or an attempt at it in what we do, but there has to be clearly a strong appearance of that, and I would say the appearance most certainly from those that are impacted directly by it, and those are the three senators.

The other comment I would make is that the board of internal economy has provided a valuable and essential role in the main motions that we will be considering for the three senators.

The motions that Senator Carignan has brought forward are very serious and they involve very serious sanctions that could be imposed against our fellow senators. In considering that, we will obviously have to be well familiar with and apply the rules that we have in our Senate and how they relate to those motions.

But equally as important is to consider the facts that apply to each of the senators and how it relates to the rules and, again, how that will relate to the sanctions that are being sought in the motions of Senator Carignan.

The facts that we have before us are facts that have been presented by the board of internal economy in the forms of their report and the Deloitte reports that they have commissioned. I would suggest to you that they have done their job, and we will each have an opportunity to pass judgment on the work that they have done and the facts that they've presented. Senator Wallin, for example, has expressed opinions on that, and I am sure that will be explored more at a later date.

But the point of this is, the facts having been presented, the issue of the sanctions proposed in Senator Carignan's motions for the three senators can only be dealt with by this chamber.

• (1720)

We are the ones who have to make the decision based upon all of the factual information that will be presented in respect of the motions for each of the senators. That factual basis, as I say, will come from what the board of internal economy has done, what Deloitte has provided us with, and whatever other factual information is brought before this chamber by each of the three.

Senator Brazeau, for example, has filed a document, which I'm certainly anxious to see, and I'm sure all of us will take that into account. There are additional facts to be brought forward.

The conclusion, I would suggest to you, is that having requested the board of internal economy to provide this very valuable and needed service in considering Senator Carignan's motions, to then have them voice an opinion and pass judgment on the very matter that we have to deal with in this chamber, which is: Are the sanctions appropriate? Was there gross negligence? Did the actions constitute gross negligence? With the procedures and the facts we have before us, it would be entirely inappropriate, for the board of internal economy, to involve them in that. Thank you.

Senator Fraser: Question!

Hon. Patrick Brazeau: Would Senator Wallace be willing to take a question?

Senator Wallace: Yes; certainly.

Senator Brazeau: Senator Wallace, I thank you for your intervention, although I am not really surprised. One can assume by the fact that you said that you were looking forward to seeing the document that I tabled here today, I'm not surprised to hear that. I've had some private conversations with many of our colleagues here, and they were not aware of some of the facts that I have been presenting, including the document that I referred to today.

In fact, I first talked about this document when I met before the subcommittee of Internal Economy and also made mention of that document in the media last spring.

A lot of the process that we are talking about here, and the rights and the power for this chamber to decide upon what is happening here in the three different and very separate cases, but my issue and my questioning has been about the process all along.

I met before the subcommittee. I have asked and asked to appear before the board of internal economy, because I don't even know what facts the board of internal economy utilized to come to the conclusion in my case. I'm not going to speak for my other two colleagues.

I asked specifically which rules did I break. No response.

I asked specifically where it said in the Deloitte report where I contravened anything. No response.

I wrote to all of you requesting to appear before the board of internal economy, or anywhere, so that I can present my case, because at every turn I have been denied.

We talk about due process. Do you believe that there has been due process in my case?

Senator D. Smith: No, there has not.

Senator Wallace: Senator, we have heard from Senator Carignan that in this chamber we have control over the procedures and we can determine the appropriateness of those procedures. When you speak of due process, you can compare it to a judicial setting, and I think it's probably fair to say the process that has been followed to date would not meet that same standard. But the fact is that in this chamber and our committees, we have the authority to do what has been done.

You have asked a question. It's not to confuse our role here in dealing with Senator Carignan's motions. I don't see that our role is to be an appeal of the decision of the board of internal economy. They have done what they thought and believed to be right. They've provided us with that information. What we have to do in this chamber is take that into consideration in determining if there's evidence to support allegations of gross negligence, in your case, against you; if the suspension proposed in the motion is the appropriate sanction; and if the other consequences of the motion — namely, the removal of salary and all other benefits — is an appropriate sanction.

The short of it is we have to deal with it here in this chamber. It's our responsibility. We are seized of it here, and we will deal with it. All of the issues that you will raise, I can assure you from my point of view, I will certainly take into account in the most serious of ways in determining my personal conclusion on the matter that we have to deal with in this chamber. It is not to revisit the decision of the board of internal economy.

Senator Brazeau: Supplementary question. Would you take another question, Senator Wallace?

Senator Wallace: Yes; certainly.

Senator Brazeau: Well, with all due respect, I beg to differ that we should not go back and look at the initial decisions that were made. I just made the point that I had previously presented some information to the subcommittee of Internal Economy. After that, the board of internal economy, I'm sure, looked into the report of the subcommittee that I have not seen yet, and presented the report in this chamber, which means that those who voted in favour of that report — and I heard earlier this week that it was unanimous — so how can you, as a chamber, vote upon a report when all the facts were not presented to you?

Senator Wallace: Senator, you took from what I said that we shouldn't go back and consider and look at the report, in your case, from the board of internal economy. If that is what you took from what I said, I can tell you it is wrong. You can rest assured I have looked extensively at the report of the board of internal economy and the reports of Deloitte. I can assure you that the observations I would make from each of those reports will play a major role in determining the conclusion I would come to in considering Senator Carignan's motion.

[Senator Brazeau]

If there are any issues that yourself or any of the other senators who are facing the realities of Senator Carignan's motion before us, then I would say bring that information to us, as you have done today. Continue to do it. We don't want there to be guesswork in this. We want it based on fact.

Senator Brazeau: Supplementary question. I will not belabour this point. I was afforded the opportunity to start providing this information here this week, because obviously you were not made aware of this information. If I have already presented this information to the subcommittee, then why hasn't the subcommittee presented this information to the board of internal economy in which they brought a report that I'm assuming you voted in favour of without having all the facts in front of you? It is about due process. That's my point.

We should revisit those decisions and be allowed a fair process whereby we can bring this information. Just bringing one document here and there on this day and this day in front of this entire chamber is not going to do justice to anybody.

Some Hon. Senators: Hear, hear!

Senator Wallace: I am not sure if that was a question, but I did hear you.

Senator Brazeau: Do you agree?

Senator Wallace: Senator, you referred that comment to me, and I thought you were suggesting I was on the board of internal economy and saw this exchange. I didn't.

• (1730)

As I said, what I've looked at carefully is the report of the board of internal economy. I have considered the process as I understand they went through to obtain the information they have. All of that will weigh in my mind in making my final decision. All I can say to you is that this chamber is seized of the ultimate decision as to what the proper conclusion is to Senator Carignan's motions. If you or any of the other senators have information that you feel we should know, as tedious as it might be, I would suggest you do not hold it back: bring it to us.

Senator Fraser: On a point of clarification?

The Hon. the Speaker: Senator Fraser, is this a clarification you are seeking from Senator Wallace?

Senator Fraser: It is arising out of Senator Wallace's remarks. He knows how highly I respect him, but he made a frequent slip of the tongue that occurs too often in this place. It is the other place that has a Board of Internal Economy. We have a Standing Committee on Internal Economy, Budgets and Administration. Maybe my long years as a pettifogging editor are showing here, but I couldn't resist.

Senator Wallace: Senator Fraser, I apologize for using the wrong name in referring to the committee.

Hon. James S. Cowan (Leader of the Opposition): Senator Wallace, do you really think that asking individual senators to table this document, as Senator Brazeau said, today and another document tomorrow, referring to, well, we have another opportunity to look at sanctions, we can hear the debate — there has been none of that. Do you not agree that a more appropriate way, recognizing and accepting that the ultimate decision is a decision of this chamber — and we all agree on that; I have not heard a single person disagree with that — do you not agree that the process by which we get to the making of that final decision is critically important?

Senator Wallace: Yes, I certainly do believe the process is important. The reality is we are considering the motions of Senator Carignan on the basis of the board of internal economy reports — I'm sorry I'm not referring to the proper name; we know who you are — and the reports of Deloitte. That's what is before us. If there is something to supplement that, I would again suggest that it be brought to this chamber.

The Hon. the Speaker: Continuing debate. Senator Dallaire.

Hon. Roméo Antonius Dallaire: Just for clarification, Your Honour, I am continuing the debate on the amendment to the motion, not necessarily the subamendment. Is that correct?

The Hon. the Speaker: Yes, that is correct.

Senator Dallaire: Thank you very much.

Colleagues, I once had the opportunity of having to charge 109 soldiers for the use of drugs. Each one of these soldiers in the same regiment was tried individually, having their individual opportunity in front of the commanding officer to present their case. Every one of those soldiers had an assisting officer who individually also presented the facts in defence of the soldier, and then that soldier subsequently was given the opportunity to speak in mitigation of the circumstances when found guilty. That affected, of course, the sentence from the commanding officer.

I also sat on a court martial where a group of soldiers were being tried for having been involved in a drug ring out west. Although all were brought in front of the court martial together, they were subsequently referred to four courts martial because, although the crime was similar, they individually had a different role in it, it was proven. So the first court martial was annulled and they were then brought in under four separate courts martial. They presented their case in due process in front of a judge and so on and then when found guilty their legal adviser was able to bring in mitigating information, and then subsequently they were sentenced.

We're sitting here today on what seems to me to be shotgun justice. I can't imagine how you can have three cases like this in which there are differences in what we're holding people accountable for. There are significant differences in the interpretation of what happened. How is it possible that, although we've got three motions there, we're handling all three together and, on top of that — and this really caught me by

surprise — all three are going to get the same sentence? All three, the same thing. It's like running three courts martial at the same time.

I would suspect that somebody said, "We might as well sort all this out in one shot and we can maybe make it more expedient. We could make it less difficult not only on us here in the Senate but also on all the journalists and the rest of the country that is watching this."

I am not sure that is justice. I would have no problem if the government brought forward its motion of sanctioning one of these individuals and that we go through due process, be it here or through a committee, which some might have their opinion on, and then the decision is taken on that individual; then subsequently the second individual is brought in, a motion is introduced, and we spend our time doing that; and then the third one.

There is, of course, potentially going to be repetition, but so what? It's going to take time. So what? That is the way that even a disciplinary institution does things, coming from an organization that very much has a disciplinary/administrative side, and a judicial side or legal side or even criminal side. We were able to even have capital punishment until the 1990s, so I am very conscious of the two different areas. Even in those circumstances we don't shotgun people in the same exercise. It is just not done. How do you account that one the highest institutions in the land — we actually participate in approving the laws of the land — is actually going to do a process that is absolutely against every fundamental rule of justice for every individual? I would consider that what we are doing here is horribly inappropriate.

Senator Nolin was quite eloquent, as was the chair, in saying that we are in our legal right to do things this way. I'm not going to argue that. But it was also raised that being legal doesn't necessarily mean it's right. I want to use a personal example to raise this point.

I received legal orders 20 years ago to pull out of a country in the midst of a catastrophic situation. It was a legal order to abandon the mission, the country and the people in that country by a legal authority, the Secretary-General. However, I refused that order. I refused that legal order because the order was immoral; the order was unethical; the order was just not right, because at the time we had about 30,000 people under our protection and if we had pulled out they would have been slaughtered with all the rest of them. We had the proof of one contingent having done that without orders and it happened. It was legal but it was immoral. It was wrong. It was unethical, and I refused to apply it.

I only raise this because this is where we're at here. We are, yes, in a legal process, and we have all the authorities as articulated by so many so clearly here to take these decisions. The question is this: Is the way we're doing it right? Is it the way we should go?

• (1740)

My first point is you will never get my vote for these motions because I consider them to be inappropriately handled by this institution in shotgunning them and ganging them all together right off the bat.

Second, I wish to bring to your attention a piece that I would like to read from a book.

At this point, I wish this was gin, but anyways.

Senator Mercer: Don't we all!

Senator Dallaire: I will read from a book from one of the éminence grise of the other side, Eugene Forsey. I will read what I believe is trying to situate what we are doing. It is situating it, not saying it is legal or not legal, but situate it within the context of our responsibilities to the institution and the responsibilities that this institution has in our system of governance and ultimately to the people of Canada.

Eugene Forsey's project was, at heart, a conservative one. Like most of us, his early political outlook remained, largely, a lifelong orientation.

His credentials are established. Now here is where he comes to what he did, and the following is of his writings:

The structures, practices, and restraint that grow up around political power reflect the goals and values that make that power not only tolerable but necessary in the modern age of liberty. Decisions of convenience and efficiency often drive us backwards into the dark and the dangerous state.

Think of what we are doing.

Canada's political society is organic and comes from specific needs and context which reflect our basic core values. When we seek to solve challenges or promote political advantage through the detachment of constitutional rules —

— or rules that we have established to bring forward our ability to do our job properly —

— we risk losing the state's essential and fundamental connection to legitimacy and history. Forsey's type of conservatism fosters the political conditions that allow politics and public policies that are bold, reformist, innovative and, above all, responsive to our ever changing needs.

Eugene Forsey's conservatism was central to his values and political identity but so, too, was his vision of what Canada could do for its citizens.

We are fiddling with the books. We are fiddling with the future of this institution. We are being cowboys in our process.

I speak in favour of the amendment proposed by the Leader of the Opposition in the Senate to refer this matter under consideration over the last few days to the Committee on Rules, Procedures and the Rights of Parliament for proper and adequate adjudication.

Indeed, the current crisis will not only test the limits of public trust in our government. If it is mishandled, it is also likely to shake to the institutional core of our democracy.

[Senator Dallaire]

We ain't done yet in the Senate, no matter who wants to reform it. On the contrary, many of us want to see reforms, but not destruction. We don't need a nuclear bomb in this place to solve it. In this regard, I invite you to consider the following before you consider your vote on both the amendment and potentially the motion later, which I will speak to at a later time.

This week, the Leader of the Government in the Senate has stated that this exercise is not a judicial one and that it is not anything like a summary trial. However, I can't agree. What we are doing, or being asked to do, is pass sentence on our colleagues and to do so without first examining the relevant evidence of their conviction in a reasonable, responsible fashion, individually, with all the potential facts present, and, of course, with the participation of the individuals and their ability to speak with that same freedom and with the same possibility of rebuttal.

While the Internal Economy, Budgets and Administration Committee did examine their expenses and find certain instances of wrongdoing, they did not determine that the correct remedy is suspension without pay. We discussed that previously, and Senator Comeau presented his argument there.

However, if we as a Senate are to sit in judgment of our honourable colleagues and to pass a sentence, then we as a Senate should be the ones to examine the evidence and the witnesses related to the very serious allegations made in this place. Call in the witnesses. We do it for other circumstances. Bring somebody up to the bar here, and let's ask some of the questions that we believe are necessary to understand fully the breadth of the parameters of the accusations and what people are being held accountable to and then ultimately individually be able to take the appropriate decisions in regard to sentencing. That is what we are doing. The exercise of passing judgment without having the evidence on which this judgment is based fully explained and defended is against the principles of fundamental justice. It is not worthy of this august institution. They used to accuse us in the army of saying, at a summary trial, "Sergeant Major, march the guilty bastard in."

As we look to deal with the many issues that continue to shape the mission and foundation of our institution, we need to handle this and future challenges not with spur-of-the-moment exercises in public relations but with a deliberative and deliberate effort to reach out to Canadians to explain in clear language our mission and the contribution this institution continues to make to the creation of public policy in Canada. We must avoid grandstanding political stunts as we try to resolve such a fundamental exercise of the appropriate use of the national resources to do the job.

This whole issue is further complicated by new revelations. People did express their opinion. I heard, on a couple of occasions, that people in the Internal Economy Committee did their best and they are ethical and responsible. I have heard other people compliment each other on how they have enormous respect for their position and what they have said, and all of a sudden, because three who are under duress are trying to explain themselves, their position is suspect, not credible and not to be considered with weight in order to debate.

May I ask for five more minutes?

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted for an additional five minutes?

Hon. Senators: Agreed.

Senator Dallaire: There are just too many facts still out there. If the new allegations are correct, Internal Economy itself, as an example, in coming to the subamendment, needs to be excused potentially from this adjudication, given its alleged unfortunate role in the matter. Maybe the members of the Internal Economy committee should not be going through this exercise to start with, having been so intimately engaged in the initial processes.

In looking into these motions, the Senate must seek to do better than to succumb to the heat of pressure from wherever. This matter requires serious consideration of all legal and technical issues involved, ensuring that the whole story is explained.

• (1750)

I wish to say a word about mitigation. The motions call for all three to be sentenced to the same level; not particularly explained but just simply said they all are garnisheed their pay, their benefits, and they can remain senator in name.

What kind of gibberish, Hill-type language is that? Yes, by staying a senator, maybe at the end of the session we might let them come back. If you're going to take such a draconian decision as to garnishee people's ability to live, to garnishee their salary and the benefits for them and their family, then you are passing a significant, grave sentence. That sentence has got to be complete, because if I was back where I come from, yes, there would be this level of sentencing from the court martial, but there could also be an administrative sentence that says that we fire the individual out of the army also.

So you can have both; it is true, and Senator Nolin explained that. But we would have in those circumstances an opportunity, once found guilty, to express in mitigation — and gain support in doing that, technical or whatever — in order to discuss the potential sentence.

I look at Senator Wallin. I was her deputy. We had good times and we had less good times as we conducted our duties. She has represented this country for decades, inside and outside the country. She has been dynamic in attempting to assist in moving this institution from nobody wanting to know about it to maybe people realizing it exists. So with that level of commitment, there has to be, surely, a consideration in regard to the potential sentencing if Senator Wallin is found guilty.

I know less of Senator Duffy and less of Senator Brazeau, but I would expect somebody, and them, to be able to express their position in their defence, ultimately affecting potential sentencing.

So, colleagues, the exercise has started wrong from the start. This is not the way to do justice. This is shotgun justice.

Some Hon. Senators: Hear, hear.

Senator Dallaire: This is not the level of responsibility for each one of those individuals that they are due to process. I am not even going to debate whether they're guilty or not and all the

information. That's yet to be done. I'm just saying that the method we've used is wrong. The solution that I think has been proposed by Senator Cowan gives us the opportunity to give those three individuals, separately, the opportunity to have their cases looked at, all the information to be reviewed, they are able to defend themselves fully, and then bring that report in. By the by, the thirty-seventh report of Internal Economy, dated August 13, I still do not see it approved here.

Senator Segal: Hear, hear.

Senator Dallaire: Yet, we're going to crucify somebody on a report that hasn't even been approved. I tried that once before and I certainly got shot down.

I am fully in support of phase one, being sending it to committee; and phase two, have them bring it back and individually we take the appropriate decisions, whatever they may be.

The Hon. the Speaker *pro tempore*: I regret to inform you that your time has expired. Further debate?

Senator Dallaire: I have no problem being asked questions.

The Hon. the Speaker *pro tempore*: Are you asking for more time? Is more time granted, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

Hon. Pierre Claude Nolin: Senator Dallaire, we have a great deal of respect for your military experience. At the beginning of your remarks, you talked about a court martial and the measures that, to your knowledge, were taken.

Those measures were prompted by the violation of a federal law, a criminal law. That is why your officers were able to charge those soldiers for having violated federal legislation. Is that what happened?

Senator Dallaire: Yes, there is no question. It is a federal law in the context of the Queen's Regulations and Orders for the Canadian Forces, which have been enacted — in other words, a federal law.

However, what do you think we do here? We enact federal laws. We deal with issues concerning our federation. We are a federal institution. I therefore do not really see the difference, except that one case is criminal and the other is disciplinary. We are talking about the same institution.

Senator Nolin: You opened the door to another issue and summarized it very well. What you shared with us as a very significant experience was a criminal matter. Those soldiers were charged by your officers for having violated Canada's criminal laws. That is not what is happening here. That is not what Senator Carignan is asking us to do. That is why I asked you to specify if the experience you described occurred in a criminal context. The answer is yes. It was not disciplinary. In the military world, there is an entire disciplinary framework that has nothing to do with criminal law, but everything to do with military efficiency.

Senator Dallaire: You will remember my first example of the 109 soldiers I charged. In that case, I did not find them guilty under the Criminal Code; it was by virtue of the Queen's Regulations and Orders for the Canadian Forces that I reached that verdict.

I will not start debating this; it was debated in committee. Not all charges brought by the Department of National Defence are necessarily criminal in nature, and we do not want that to be the case. They can be administrative and they can result in a sentence that will re-educate the individual in question. There are also a number of criminal charges that are much more serious, both for members of National Defence and the general public.

Senator Nolin: You will agree with me. Smoking cannabis — because I presume that is what your soldiers did — is a criminal offence. I realize that it is not in the Criminal Code, and we could start a debate on the fact that it is not. It is a federal criminal law, and your 109 soldiers were accused of committing a criminal act. They were charged and perhaps found guilty.

Senator Dallaire: I was in the army for 36 years, and I could give you several other examples. What I am trying to say is that in a summary trial or court martial, whether it deal with a criminal or disciplinary matter — I like that term because you made the distinction — hence not an administrative matter, every individual has the right to be dealt with as an individual, to stand before the authorities as an individual, to be defended individually so that, ultimately, he is or is not found guilty and serves his sentence. My point is that this is not what is happening here.

[*English*]

Hon. George Baker: Let me ask, senator: In other words, before our courts martial were enabled in 2002 to prosecute criminal charges under the Criminal Code, we saw many cases involving disciplinary procedure under the Queen's Rules and Regulations. Would he verify that?

• (1800)

Would he also verify that all of those decisions by those tribunals, those disciplinary tribunals, were appealable—but here is something that is not appealable—and that there is a whole body in administrative law that doesn't deal with criminality but deals with disciplinary measures in which the doctrine of procedural fairness applies and the rules of natural justice also apply which, if applied to this motion, wouldn't stand?

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Order, order.

Senator Dallaire: If they did, no one else would wear a uniform.

The Hon. the Speaker: Honourable senators, it being 6 p.m., the Senate stands adjourned until 8 p.m.

(The sitting of the Senate was suspended.)

• (2000)

(The sitting of the Senate was resumed.)

The Hon. the Speaker: Order!

Honourable senators, the sitting is resumed.

The question before the house is the motion in amendment by the Honourable Senator Fraser.

On debate.

Senator Carignan: Question.

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

Some Hon. Senators: No.

Senator Munson: I wish to adjourn the debate.

(On motion of Senator Munson, debate adjourned.)

[*Translation*]

MOTION TO SUSPEND THE HONOURABLE SENATOR
PAMELA WALLIN—DEBATE CONTINUED

On the Order:

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

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.—

Hon. Claude Carignan (Leader of the Government): Honourable senators, we are on the motion concerning Senator Wallin.

The Hon. the Speaker: Order. This motion has already been moved by Senator Carignan, and before the Speaker moves adjournment to ponder his decision on the point of order, Senator Cowan was going to speak, is that right?

[*English*]

Senator Cowan was going to speak. My understanding is that the motion was made by Senator Carignan, and you are continuing your debate?

Senator Carignan: Yes.

Senator Munson: Yes, sir. A few words.

[*Translation*]

Senator Carignan: Honourable senators, I would like to say a few words to sum up Senator Wallin's file. I am talking about the twenty-seventh report of the Standing Committee on Internal Economy, Budgets and Administration.

[*English*]

POINT OF ORDER

Hon. Hugh Segal: A point of order.

The Hon. the Speaker: Point of order, Senator Segal.

Senator Segal: As it has been established by Senator Fraser that the twenty-seventh report is not now before the Senate — it was distributed in other ways but it has never been tabled in this place — is it appropriate — and I am only asking so we are well advised — for Senator Carignan to quote from it as if it were before this place when it has never, in fact, been tabled in this place or been brought forward for debate or discussion in this place? I just ask the question.

The Hon. the Speaker: Honourable senators, it has been indicated in debate, I believe by the Honourable Senator Comeau, that indeed whilst the report had been tabled through a mechanism agreed upon by this house, the report has been tabled and prorogation intervened. But that does not mean that we, in the Senate — or indeed, because it was made public across the land — are not cognizant of the content of this report which is now, since some time, a public report. So I find that it is quite appropriate that it can be cited as a public document.

Senator Segal: Mr. Speaker, if I could, the report was submitted to the Standing Committee on Internal Economy, Budgets and Administration, and there were meetings on the twelfth and thirteenth to discuss that report. There are transcripts of those meetings. The committee was in camera.

An Hon. Senator: Point of order, Mr. Speaker.

Senator Cowan: He is on a point of order.

An Hon. Senator: Oh, oh!

Senator Mercer: This is not your house, this is our house.

[*Translation*]

Senator Carignan: Mr. Speaker, you have made your ruling, yet I am hearing a senator call it into question. That is not the way to go about questioning the Speaker's ruling.

[*English*]

Senator Cowan: He is on a point of order!

The Hon. the Speaker: Honourable senators, this report that Senator Carignan has made reference to has been in the public domain for some time. That has been my ruling.

Now, if my ruling is to be challenged, I shall not be offended. However, if you really want me to put the formal question to the house, shall the Speaker's ruling on this matter be sustained or not, I will put the question. But is it necessary?

Senator Segal: No, it's not, Mr. Speaker.

The Hon. the Speaker: Good.

Senator Segal: I accept your ruling without question, but I was about to raise another question, if I could.

The Hon. the Speaker: Absolutely.

Senator Segal: Thank you.

The Deloitte report that Senator Carignan has referenced was brought to the committee on expenditures, on the twelfth and thirteenth. There was a lot of back and forth discussion in the meetings, back and forth between the folks at Deloitte and the people sitting around the table. That transcript remains confidential. What transpired in that meeting, what was said, the back and forth, is not available to any member in this chamber for the purposes of this discussion.

And I just ask the question, in the best of faith, whether it's appropriate to go down the road of quoting from a report which may, in fact, be in the public domain, which was discussed by a committee whose discussions were in camera and transcripts are not available to the members of this chamber for the purpose of assessing the veracity or appropriateness of any of the findings that may be discussed or what went on in committee.

The Hon. the Speaker: Honourable senators, I would be happy to hear comments and expressions of opinion on this particular point.

[*Translation*]

Hon. Fernand Robichaud: Honourable senators, I know that the Standing Senate Committee on Internal Economy, Budgets and Administration has the power to deal with matters during prorogation, but what are those powers? I believe that they are limited to administration of Senate affairs.

As for the report that was submitted to us, it was neither discussed nor adopted in the chamber. It has been before us for some time and, as we were told yesterday, we received copies. However, the fact remains that the difference between this report and the two others is that the two others have been tabled and adopted. This one was neither debated nor adopted. There may be information in this report that would push certain senators — perhaps all senators — to vote against the report. To me, this is a contentious issue. Mr. Speaker, I am not sure if that helps you, but those are my thoughts. Thank you.

• (2010)

Senator Carignan: I am referring to the twenty-seventh report of the Standing Senate Committee on Internal Economy, Budgets and Administration.

On November 29, 2012, a subcommittee of this Committee ordered an external review of the unusual travel pattern of Senator Pamela Wallin. The travel pattern included frequent stopovers in Toronto, as well as return travel from Ottawa to Toronto and from Saskatchewan to Toronto. While travel from Ottawa to a senator's province or territory of appointment for purposes of going home is a usual practice and the foundation of the Points Travel System, travel to a destination in Canada other than one's provincial or territorial residence may only be claimed if a senator is attending to parliamentary business at that destination.

A formal contract was entered into with Deloitte on January 3, 2013. Deloitte was engaged to conduct a review of Senator Wallin's expense claims and supporting documentation in order to categorize them as: appropriate in keeping with Senate practice; subject to reimbursement to the Receiver General; or subject to interpretation and determination by the Standing Committee on Internal Economy, Budgets and Administration; as well as to review Senator Wallin's living allowance claims in the National Capital Region (NCR).

Deloitte's findings in the attached Report relate to Senator Wallin's travel patterns and the appropriateness of the related claims . . .

The review period for the examination was January 2009 to September 30, 2012. The unusual pattern that required examination related to frequent stopovers in Toronto, where Senator Wallin maintains a residence. Over the period, Deloitte concluded that the Senator had made 94 trips between Saskatchewan and Ottawa, and that 75 of them involved stopovers of one or more nights in Toronto. Where these stopovers had evidence of parliamentary business or were made to avoid a late arrival at final destination, Deloitte deemed the claims as appropriate; where assessed as not having such business, the incremental costs of stopovers

have been designated as reimbursable. Other travel claims were deemed reimbursable in their entirety. The full amount assessed as reimbursable is \$121,348, of which Senator Wallin has already reimbursed \$38,369 following her own review. As a comparison, \$390,182 of the total travel expenses of the \$532,508 were determined to be appropriate (73 percent).

Deloitte has also categorized a number of travel claims and events as subject to interpretation and determination by the Steering Committee of the Internal Economy Committee. The total amount of claims subject to determination is \$20,978.

Over the course of its review, Deloitte encountered inconsistencies between the information obtained from Senator Wallin and her Executive Assistant, and what they subsequently obtained through research and Outlook calendar back-ups. Examples of these inconsistencies provided by Deloitte in its Report elicit serious concerns that your Committee considers cannot be addressed and resolved internally.

With regard to living expenses, Deloitte has reported that Senator Wallin submitted a Declaration of Primary and Secondary Residence on March 26, 2009, providing an address for privately owned accommodations in Ottawa (proof of ownership followed on June 26, 2009), and including an address for her primary residence in Wadena, Saskatchewan. The status of Senator Wallin's accommodations in the National Capital Region did not change until June 25, 2011, when she submitted a new Declaration indicating that she no longer owned private accommodations in Ottawa. From that time on, Senator Wallin's living expense claims in Ottawa have been for the reimbursement of commercial accommodations. Over this 26-month period from April 2009 to June 2011, a total of \$22,960 was reimbursed to Senator Wallin in living allowances as may be claimed for privately owned accommodations.

In its consideration of living expense claims, Deloitte conducted a detailed review of Senator Wallin's location, following the same methodology used in their examinations of Senators Brazeau, Harb, and Duffy's living expenses. Senate documentation such as the Senate Attendance Register and Travel Claims (with receipts from commercial carriers, etc.), and additional third party documentation such as cellular telephone invoices and credit card statements, were used to determine Senator Wallin's location over the period of review, which covered January 2009 to September 30, 2012. Deloitte was able to confirm with 93 percent accuracy . . . Senator Wallin's location over the review period, i.e., Ottawa versus her declared primary residence in Saskatchewan, or elsewhere.

Deloitte ascertained that over the 1,369 days of the review period, Senator Wallin had spent 22 percent of her time in Ottawa on Senate business; 27 percent of her time in Saskatchewan; and 35 percent of her time in Toronto some of which is attributable to parliamentary business. She spent the remainder of her time in other locations, including 6 percent of it on Senate business and 9 percent private. Deloitte noted that, given the Senator's travel pattern, the

fact that she did not maintain a residence in Ottawa for 19 of the 45-month review period, and that she rarely spent time in Ottawa when not on Senate business, they were able to conclude that her primary residence was more than 100 kilometres from the NCR and that living allowance claims appeared to be appropriate.

In conclusion, this Committee is in agreement with the assessments that Deloitte has made in its Report. We wish to acknowledge that Deloitte's application of the Senate's policy framework and principles, with consideration to general practices where available, has been fair with regard to the claims in question.

Your Committee therefore determines and recommends:

- That the reimbursements of travel expenses submitted by Senator Wallin to date have been properly received;
- That the Standing Committee on Internal Economy, Budgets and Administration order Senator Wallin to reimburse additional amounts as identified by Deloitte in its Report, and that the Senate do order the reimbursement of interest on said amounts at prime rate plus one percent;
- That further amounts for claims identified as "subject to interpretation and determination by the Committee" be reviewed, advising Senator Wallin of any further reimbursable amounts resulting therefrom at the earliest opportunity;
- That the Standing Committee on Internal Economy, Budgets and Administration suspends Senator Wallin's right to the use of Senate resources for travel in the following manner:
 - only direct or immediately connecting flights between Saskatchewan and Ottawa to attend Senate business are authorized;
 - all other itineraries must be preapproved by the Subcommittee on Agenda and Procedure (Steering); and
 - travel claims submitted for reimbursement by Senator Wallin will continue to be monitored from the date of the adoption of this Report for a period of not less than one year;

• (2020)

- Notwithstanding usual Senate practice, that the Standing Committee on Internal Economy, Budgets and Administration request that the proper authorities examine the matters dealt with in the Deloitte Report and related information, and that the Committee refer such documents, as it considers appropriate, to the

proper authorities for the purposes of the investigation; and

- That, upon adoption by your Committee, this Report be deposited with the Clerk of the Senate, whereby it shall be deemed presented in the chamber and placed on the Orders of the Day for consideration at the next sitting of the Senate, in accordance with the Order adopted by the Senate on June 20, 2013.

Honourable senators, attached to the Internal Economy Committee report was the report reviewing Senator Wallin's travel expense and living allowance claims, prepared by Deloitte and dated August 2013. I must point out that it was quite a lengthy report, representing a very thorough review. I would like to draw your attention to the first page of the Deloitte report, in the second paragraph, which states:

Senator Pamela Wallin, appointed in late December 2008, has been travelling regularly from and to Saskatchewan with extended stays and stopovers in Toronto. Senator Wallin's claims have been made mainly with the purpose indicated as "Senate business". These claims appeared to be compliant with the expense policies and were processed on that basis by Senate Finance. In late 2012, Senator Wallin's travel expense claims were under review as it was brought to the Senate's attention that, although Senator Wallin had been following the proper procedures for submitting expense claims, the purpose of travel and the travel patterns may not be compliant with Senate travel policies and guidelines.

Deloitte was given a mandate — I will now quote from section 1.2 of the same report, which states:

The initial Review Period for this engagement was from April 1, 2011 to September 30, 2012; however, subsequent to Deloitte providing an interim briefing on the preliminary results of our review of the initial period, the Senate expanded the period under review to include all claims by Senator Wallin from January 1, 2009 to September 30, 2012. This included a review of Senator Wallin's claims for living allowance in the National Capital Region.

Just as in its other reports, Deloitte refers to the policies and guidelines on senators' travel and living expenses.

Section 1.3 of the report states the following:

Senators claim their office and travel expenses in compliance with the *Parliament of Canada Act* and internal rules and policies of the Senate. Senators are able to request reimbursement of travel and other expenses by indicating on their claims "parliamentary" or "Senate business" as the purpose, with no further requirement to demonstrate the appropriateness of the claim to Senate Finance, which processes the claims. Senators are required to retain the details of the nature of the parliamentary business for which they have been reimbursed in their offices for seven (7) years.

Then, the report goes on to quote chapter 4, section 1 of the Senators' Resource Guide:

Senators are entitled to travel at Senate expense to carry out their parliamentary functions within their region, to and from Ottawa and elsewhere in Canada . . .

Then, it refers to section 2.1.1 of the Travel Policy, adopted on June 5, 2012, which is along the same lines, as well as Appendix A to the same policy, which provides some examples. The report states:

In assessing Senator Wallin's Travel Expense Claims . . .

—so, she met with them —

. . . we have obtained from her, and from a variety of other sources, information regarding the nature of the events that she attended, and the underlying purpose of her travel. We have assessed whether or not these events would be regarded as carrying out the Senator's "parliamentary functions" and in doing so have considered:

- Appendix A to the Senator's Travel Policy. Although it was introduced on June 5, 2012, we have applied these examples throughout the period of our review, as we understand they provide specific examples of the existing policy principles.

Here we are being told that Appendix A to the policy, which provides examples, served as a guide because it provided specific examples of the policy principles that existed before the policy was adopted on June 5.

- The Steering Committee of Internal Economy's review of items highlighted by Deloitte from our review of the initial period.

After the review, the senator was asked to repay the Receiver General a total of \$121,348 in expenses. A total of \$20,978 in expenses was referred to the Steering Committee of Internal Economy for interpretation.

There is also an explanation of the process that was used.

For most of Senator Wallin's travel claims, the purpose of the travel was stated as "Senate Business," in accordance with what we understand is the general practice in the Senate. For a limited number of travel claims there was additional narrative or supporting information around the purpose for travel in the documentation supporting the claim maintained by Senate Finance.

Information was also obtained from the following sources:

- Senator Wallin and her current executive assistant
- Senator Wallin's calendars

[Senator Carignan]

- Research — Internet and third party

The report provides details on expenses subject to reimbursement to the Receiver General, totalling \$90,323, and explains that the various costs include amounts reimbursed by Senator Wallin as she deemed the claim was for personal business.

Therefore the senator admitted that some of these expenses were for private activities.

Some expenses were incurred for private business commitments made prior to Senator Wallin's appointment to the Senate. Therefore it appears that some expenses for personal commitments that were made prior to her Senate appointment but that took place after she entered the Senate had also been claimed.

The report also mentions the following categories: travel claim included amounts related to returning to Ottawa from private business activities; travel claim related to speaking or other events which were non-Senate related; and travel claim related to partisan-related activity, such as fundraising.

There were also additional expenses totalling \$31,025. These costs were incurred by the senator as she stopped in Toronto on her way between Ottawa and Saskatchewan. In quantifying the amount to be repaid to the Receiver General, Deloitte determined that such additional costs would appear to be appropriately charged to the Senate in the following situations (page 3 of the report):

- Where Senator Wallin had to be in Toronto during the stopover period to attend to Senate business; and/or
- Where the Senator was required to be in Ottawa or Saskatchewan for Senate business at such times of the day that a direct or connecting flight to/from Saskatchewan would not have been reasonable, given the approximately two-hour drive that the Senator has to take once in Saskatchewan to reach Wadena.

The section beginning at page 5 of the report contains a list of the documents reviewed and discussions or interviews conducted.

- (2030)

I am going to list them to show you how the Deloitte audit took into consideration a large number of facts and documents.

The first document is a letter, dated August 24, 2012, from Alison Stodin, a former employee in Senator Wallin's office. That letter was addressed to Senator Stewart Olsen in her capacity as a member of the Standing Senate Committee on Internal Economy, Budgets and Administration. This person was employed by Senator Wallin for two months, July and August 2012.

There is a report on a review of the senator's expenses, prepared by the Senate's financial services in October 2012, and the Senate policies and guidelines in effect between January 1, 2009 and September 30, 2012. All the enforcement and interpretation documents in effect during that period were

examined, including the *Senate Administrative Rules*, the Senators' Travel Policy, the Senators' Travel Guidelines, the Senators' Resource Guide, and the Senators' Living Expenses in the NCR Guidelines.

We have additional documents, including Senator Wallin's travel expense claims and supporting documentation from January 2009 to September 2012; descriptions of travel and events together with the Outlook monthly calendars provided by Senator Wallin's office to support travel expense claims; media reports and Senator Wallin's office newsletters regarding her attendance at various events; responses from Senator Wallin's office to Deloitte queries regarding travel expense claims and related events, and supporting documentation; Internet research regarding various events attended by the senator during the review period; memos from Senator Wallin's office addressed to Senate Finance regarding repayment of travel expense claims; Senate attendance reports and sick leave documentation; information from riding associations in Saskatchewan and selected riding associations in Ontario relating to events attended by Senator Wallin; public disclosure summary forms given by Senator Wallin to the Office of the Senate Ethics Officer; the senator's cell phone records for the review period; her Visa statements for the review period; her primary residence declaration forms and supporting documentation; the electronic versions of Senator Wallin's Outlook calendars with data download dates as at September 30, 2011, December 27, 2012 and June 28, 2013; and, finally, a summary of scheduled committee meetings and Senator Wallin's attendance at committee meetings during the review period prepared by the Deputy Principal Clerk of Committees.

You can see that there was an exhaustive study of all of the documentation and evidence from Senator Wallin's office.

In addition, there were interviews with Senator Wallin; her assistant Renée Montpellier, who has been the senator's assistant since October 2012; Helen Krzyzewski, Senator Wallin's assistant from September 2009 to October 2010; Sabrina Hamilton, the senator's executive assistant from December 2010 to June 2012; Alison Stodin, the senator's executive assistant from approximately July 2012 to August 2012; discussions with the clerk, Mr. O'Brien and Jill Anne Joseph, our director of internal audit and strategic planning; and discussions and meetings with Senate finance staff, including Nicole Proulx, Bonnie Marga, Maggie Bourgeau and Mélissa Lalande, and Peter Feltham, the chief of network services for the Senate of Canada.

Honourable senators, there is a significant amount of documentation and evidence. There were several meetings with the senator's employees, with the senator herself and with the administrative services, and there are all the relevant documents to conduct a comprehensive review.

Among these documents is a table, on page 9, that summarizes the various enforcement measures for the relevant periods. I want to draw your attention to section 3.2 on page 9, which states:

Throughout the period under review, the senators' entitlement to travel at Senate expense is set out in the Senators' Resource Guide, as well as in the Senators' Travel Policy upon its adoption on June 5, 2012.

The report refers to the Senators' Resource Guide, in chapter 4, where it states:

Senators are entitled to travel at Senate expense to carry out their parliamentary functions within their region, to and from Ottawa and elsewhere in Canada.

Subsection 2.1.1 of the Senators' Travel Policy states:

This policy recognizes that travel is a necessary component of Senators' parliamentary functions. Parliamentary functions are typically carried out in Ottawa and Senators must travel to and from their primary residences in order to attend Senate sittings and committee meetings. Parliamentary functions are also carried out in Senators' regions and, from time to time, Senators may be required to travel to other locations, both within Canada and internationally, in the service of the Senate.

Subsection 2.7.1 identifies the 64-point travel system for all parliamentary functions.

Honourable senators, I am not going to show you the travel expense claim form again. You are familiar with it and you have seen it. You fill it out. It is the same travel expense claim form where you have to justify the notion of parliamentary functions and the different amounts or the different claims.

During its investigation, Deloitte identified a problem with calendars. On page 15 of the report, we find section 4.2.1, "Conflicting Information and Microsoft Outlook calendar entries." It seems that there were three different versions of the Outlook calendar and that there were inconsistencies in the entries. I will not go into detail about each of these inconsistencies. You can look them up; it is a public document. Pages 15 to 17 of the report detail the inconsistencies in the different versions of the calendars.

- (2040)

There is also a letter from Senator Wallin's lawyer. She too had legal representation during this review process. A letter from her lawyer is attached explaining why there were different versions of her calendar.

Honourable senators, I would like to give a more detailed account of the various expense claims. I have prepared a breakdown.

[English]

Hon. Anne C. Cools: Point of order.

The Hon. the Speaker: Point of order, Senator Cools.

Senator Cools: I am not too sure I understand why we are still here going on nine o'clock. I really don't understand. Perhaps we could have some explanation.

I would like to know what time I can expect to be sitting until tonight. I am a member of no caucus so I never get information from the caucus. You have a duty to explain to us. We have been

here for quite a while. I have no idea what the sitting calendar is. I was just told by accident that we are sitting tomorrow morning.

Do you think so, Senator LeBreton? I think this is a great shame what is happening here. I think it is a terrible scandal. You are ruining people's lives. This is a disgrace. This is the Senate of Canada. I want to know our sitting plan.

The Hon. the Speaker: Honourable senators, order.

Senator Cools has raised a reasonable question as a matter of a point of order. She would like to know if anybody is able to provide an indication of how long we are going to sit this evening and whether we are sitting tomorrow morning.

I know it is always safer to speak as a historian than as a prophet, but according to the rules, we will sit no later than 12 o'clock tonight. At 12 o'clock tonight, the rules provide that we shall rise. If there is no agreement on when we will adjourn to, then it will be nine o'clock tomorrow morning. That is what is provided for by the rules.

On debate, Senator Carignan.

[*Translation*]

Senator Carignan: I would like to continue with the various claims. As I explained earlier, I prepared a breakdown of all the claims that were deemed acceptable in relation to parliamentary functions, those that were partially or completely unacceptable, and those that had to do with personal activities.

For the period from January 2009 to September 2012, the number of claims made that were entirely or partially unrelated to Senate activities was 78.

There were 43 claims that incurred additional costs because there was a stopover. These stopovers were mainly in Toronto, were longer than one day and resulted in a surcharge, and these stopovers were not justified by parliamentary activities. This means a total of 121 claims that were either fully or partially unrelated to the senator's parliamentary activities.

In addition, there were 31 other claims on which Deloitte was unable to reach a decision, because the firm did not have enough information. They needed the experience of senators. As senators, we are the ones who carry out parliamentary functions and therefore are most familiar with them. Deloitte therefore asked the Internal Economy Committee for its interpretation. There were 31 claims that had to be decided upon by the Internal Economy Committee.

You heard about the whole matter of interpretation, namely that the concept of parliamentary functions is not clearly defined; it depends on the activities of each individual. Having more activities makes things more difficult to determine. A more active senator will meet more people. Parliamentary functions can be quite diverse.

There may be problems with interpretation, which resulted in a situation where Senator Wallin made 121 claims that she thought would qualify under parliamentary functions but that were

rejected by the Internal Economy Committee, following the recommendations in the Deloitte report.

I would like you call your attention to 31 claims. I am not referring to the 31 claims that were reviewed by the committee. The number is the same but the claims are different. Senator Wallin herself admitted that 31 claims were for private business. Following a review of those files, once the audit and the investigation had started, there were 31 separate claims that were, in whole or in part, related to private business — which Senator Wallin herself admitted — and therefore were not subject to interpretation.

For claim 5382, from February 9 to 13, 2009, in the amount of \$1,077, for a Toronto-Ottawa, Ottawa-Toronto flight, it was deemed that an amount of \$505.85 should be reimbursed to the Receiver General. Senator Wallin's version is that she flew from Ottawa to Toronto on February 13, 2009. Her office stated that the trip was to attend to private business that predated her appointment to the Senate. It added that during that transitional time the senator's understanding was that she was allowed to honour her commitments predating her appointment to the Senate. She admitted that this was a private activity.

Claim 5387, from March 16 to 20, 2009, for the amount of \$114.11: Senator Wallin flew from Ottawa to Toronto on the evening of March 20, 2009. The Senator's office represented that the trip was to attend to private business that predated her appointment to the Senate. I apologize, the amount is not \$114, but rather \$3,843.71.

Claim 5388 from March 23 to 26, 2009: Senator Wallin flew from Toronto to Ottawa; this was her return flight. Farther on, the report indicates that "Senator Wallin flew from Ottawa. The Senator's office represented that the trip was to attend to private business that pre-dated her appointment to the Senate."

These were then three private claims that seem to be for commitments made prior to her appointment to the Senate.

• (2050)

Claim number 5394, from May 3 to 8, is for \$5,519.02 for a flight from Toronto to Calgary. The purpose: still for Senate business. Senator Wallin flew from Toronto to Calgary on May 3, 2009. Her office represented that this trip was for the senator's private business and that the related expenses should not have been charged to the Senate and therefore repaid \$4,794.90 on May 9, 2013.

The total amount is \$5,519.02, and the amount paid back is \$4,794.90. You may say that this was between February and March, and now it is May, three or four months later, on the fourth claim associated with private business, an amount of \$4,754.74, and she herself admits that it was for private business. That is not open to interpretation.

From June 22 to 26, 2009, \$2,856.05. The purpose: still for Senate business. The report indicates that the senator flew from Ottawa to Calgary on June 23, 2009. Her office represented that this trip was for the senator's private business, and that the related expenses should not have been charged to the Senate. Therefore, there was a reimbursement of \$2,561.50.

[Senator Cools]

From July 21 to 26, there was another claim for Senate business. The reason: Senator Wallin travelled to Calgary from July 22 to 26. Her office indicated the following: "Personal travel - Senator's own expense. July 22 - 25 in Calgary. Some per diems were claimed that should not have been - administrative error." The senator was reimbursed by the Senate for travel per diems.

On January 16, 21 and 22, 2010, a claim for \$1,769.95, Ottawa-Toronto, Ottawa-Toronto. Reason: Senate business. We are told that Senator Wallin flew from Ottawa to Toronto on January 16, 2010, and returned to Ottawa on January 21, 2010. Her office represented that on January 19, 2010, she was invited to attend the Empire Club Luncheon, where the Porter Airlines CEO was the keynote speaker. The 2013 Outlook calendar has a new entry, "Empire Club Event," and the following entry: "Luncheon, Porter 7th Annual CEO of the Year Award." A total of \$1,281.95 was claimed under "Senate Business" but had to be repaid.

Claim for May 3 to 12, 2010, of \$707.78, under "Senate Business." Reason: the senator flew from Toronto to Ottawa on May 10, 2010. The senator's office represented that this was a return trip from the senator's private business and that the related expenses should not have been charged to the Senate. Repaid.

July 16, 2010, \$99.23, route not provided. Senate interview. The senator's office represented that the senator was on private business from July 14 to 16, 2010, and should not have made this claim.

December 2 to 13, 2010, \$1,252.71 for Ottawa-Toronto-Ottawa under "Senate Business." The senator flew from Ottawa to Toronto on December 2, 2010. Her office represented that this trip was for the senator's private business, and that the related expenses should not have been charged to the Senate. Amount repaid.

September 5, 2011, \$1,779.62, Toronto-Ottawa-Toronto, with "Senate Business" as the justification. Senator Wallin flew. The senator's office represented that this trip was for the senator's private business, and that the related expenses should not have been charged to the Senate.

Another claim was submitted for the week after, from September 7 to 14, 2011, for Senate business. It was found that the senator claimed \$723.83 in inappropriate expenses. The senator's office verified its records and the senator repaid \$738 in related expenses that should not have been charged to the Senate.

October 31, 2011, another claim, \$1,251.17, for Senate business. Senator Wallin flew from Ottawa to Toronto. Her office indicated that she had travelled for private business and that the related expenses should not have been charged to the Senate.

A few days later, November 1, 2011, \$1,861.77, for Senate business. We were told that Senator Wallin flew from Ottawa to Toronto on the evening of November 1, 2011. The senator's office indicated that she had travelled for private business and that the related expenses should not have been charged to the Senate. The amount was repaid.

November 2, 2011, \$1,251.17, Toronto-Ottawa-Toronto, still the same justification. After checking her records, the senator repaid \$763 in related expenses that should not have been charged to the Senate.

From November 9 to 13, 2011, \$1,703.03, for Senate business. The senator flew from Ottawa to Toronto on November 13. The senator's office indicated that she had travelled for private business and that the related expenses should not have been charged to the Senate. The senator repaid \$1,128.34.

From November 14 to 20, 2011, another claim for Senate business. The senator repaid part of the amount. The senator's office verified its records and, as a result, the senator repaid \$761.78 for related expenses that should not have been charged to the Senate.

From December 21 to 27, 2011: \$5,130.94, Senate business. Senator Wallin flew from Saskatoon to Toronto on December 27, 2011. The senator's office represented that this trip was for the senator's private business and that the related expenses should not have been charged to the Senate. Reimbursement: \$2,492.81.

From January 7 to 17, 2012: \$5,300.89 in claims, Senate business. The senator's office identified and the senator repaid a total of \$2,790 in related expenses that had been previously claimed and incorrectly reimbursed by the Senate.

From February 27 to March 2, 2012: \$1,573.01 in claims. Justification: Senate business. Senator Wallin indicated that this was for private business and that the related expenses should not have been charged to the Senate. Reimbursement: \$1,516.16.

From March 4 to 8, 2012, the same thing.

• (2100)

Then, from May 7 to 9, 2012; May 10, 2012; from June 11 to 13, 2012; from June 13 to 14, 2012; from June 18 to 22, 2012; from June 25 to 29, 2012; from July 9 to 13, 2012; from July 26 to 29, 2012; from September 20 to 23, 2012; from September 23 to 25, 2012: these were all claims that were paid back in full or in part because they were for private business and should not have been submitted.

You remember the form on which we have to certify that the amounts claimed are in accordance with the *Senate Administrative Rules*, the guide and the policies, that they were checked and that everything is in compliance. How can you know, three years later, whether it was for private business and not know it 30 days later? We have a maximum of 60 days to submit our claims. Normally, we remember the nature of the claim we made. If we are able to remember three years later that it was for private business, we had to have known that 30 days after the claim.

As I said for the other senators, these are significant amounts of money that are not open to interpretation. The senator herself admitted that they were for private business. It is not a matter of "I met president so-and-so as part of my duties," or "I met the ambassador as part of my foreign affairs duties," or "I had a meal

with the president of this company, and I think it falls under my parliamentary functions.” These were events that were not deemed to be parliamentary functions. She admitted that they were private business.

When there are 31 obvious claims, which she herself admitted to and she signed as being related to parliamentary functions, there is something wrong in the office or with affixing her signature. There were four different secretaries involved. Therefore, we cannot say that mistakes were made by a specific secretary who did not know how to apply the rules. In any case, the senator certified that everything was in order with her signature. Therefore, between January 2009 and September 2012, she submitted 121 claims that, according to the interpretation of the Committee on Internal Economy and Deloitte, were not, in whole or in part, associated with parliamentary functions. She admitted to 31 of them. Thus, two or three travel claims a month were deemed to be improper.

Honourable senators, it is clear that Senator Wallin repeatedly signed claims without making a minimal effort to ensure that the claims were justified. When one knows three years after the fact that a claim pertained to private business, one must surely have known 30 days after the fact that it pertained to private business.

We were told by the media that the senator claimed that she had not been given the opportunity to explain her position. The report is clear. She met with the auditors a number of times. The senator’s position and the auditor’s position, or the auditor’s recommendation, were recorded for each claim. The report was studied by the Committee on Internal Economy on August 13, 2013. At that time, the senator was able to express her views in the hours preceding the drafting of the report.

Honourable senators, from time to time mistakes can be made when senators fill out claims. However, as I said, claims are prepared within 60 days of the expenditure. Having such a large number of mistakes indicates a serious management problem, lack of prudence and carelessness. When we affix our signature and certify that everything is in compliance with the rules, it has to be true, especially when the claim — as I said for the others — results in the transfer of public money into our private account. A modicum of attention on the senator’s part would have prevented these copious errors. It is even more important when we have duties such as Senator Wallin’s.

I am of the opinion, and it is rather obvious, that there was some mismanagement, some carelessness, on her part when she was completing her forms. When one claims \$4,500 and those expenses were for private business, one needs to pay close attention. It seems clear to me that close attention was not paid and that there was gross negligence in the management of her affairs and her expense accounts.

That is why I urge all honourable senators to support my motion.

Hon. Pierre Claude Nolin: Senator Carignan, you talked about a total of \$121,348. Is it true that, after all the documents and supporting documentation were examined, the claims totalled \$121,348?

[Senator Carignan]

Senator Carignan: Yes. I did not redo the calculation, but it seems to correspond, at least within a few dollars. It seems to tally up, I think.

Senator Nolin: Are all of those documents, the ones you consulted and cited during your speech, from the Internal Economy Committee or were they submitted to the Internal Economy Committee by the auditors?

Senator Carignan: Listen, many of these documents are Senate documents, such as our rules, policies and guidelines. Many of these documents were provided to the accounting firm by the Director of Finance, Ms. Proulx. However, did the Internal Economy Committee examine the Visa receipts, or did Deloitte do that? I think it was more likely Deloitte. I was not at this specific meeting of the Internal Economy Committee. I was out of the country. I was replaced by Senator White that day. The report reflects that, but Senator Wallin obtained the report and was able to comment on it, and still can, if the numbers are not accurate.

• (2110)

Senator Nolin: During the review, did you see, read or ask for any documents that could have somehow resulted in a motion that was not as harsh?

Senator Carignan: To be quite honest, no.

Senator Nolin: No? Thank you.

Hon. Roméo Antonius Dallaire: If I am not mistaken, there was a meeting yesterday with auditors who explained what will happen for all of us in the future. We asked them to give us a definition of “parliamentary functions” and they were not able to give us an answer. They did not even commit to making inquiries with parliamentarians to answer our question at a later date.

Is there a definition of “parliamentary functions” in the report from the Standing Senate Committee on Internal Economy, Budgets and Administration? Does it contain a guide to help us understand what exactly that concept is?

Senator Carignan: Listen. Listen. I really need to stop that, and I promise to by the end of the session.

The concept of “parliamentary functions” is defined in chapter 1.03(1) of the *Senate Administrative Rules* and in section 1.5.3 of the Senators’ Travel Policy. It covers duties and activities related to the position of a senator. Where does that duty begin and where does it end? There may be grey areas, and that is why the 2012 policy includes a guide, an appendix that includes specific examples of “parliamentary functions” and “non-parliamentary functions.”

After hearing the various comments, arguments and criticisms made by Senator Wallin about things being said out there about the claims, I decided to focus on the easiest ones. There are 31 claims. I said to myself, “Forget the others. I will trust her on all the others.”

I focused on the 31 claims that she admitted to, telling myself that if it was her personal business three years later, normally 30 days later, then she would come to the same conclusion. Since there are only 31 that are clearly of a personal nature — she admitted it herself — for me that demonstrates that there is a problem, a serious problem.

Senator Dallaire: What constitutes parliamentary functions is unclear. In the analysis done by the Internal Economy Committee and the one done by the auditors, is private business defined the same way in 2009 and 2013? We know that things change. Traditions change and so do interpretations. We are also very good at Monday morning quarterbacking. Changes are always being made. I am trying to ensure that the definition of “private business” was the same in 2009 as it was when the audits were conducted.

Senator Carignan: Listen. With regard to the parliamentary functions that are being questioned, if you look at the document, the senator’s position is always indicated. Each time, she indicates that she believes that it was a parliamentary function because she met with Mr. X, who is the CEO of a such and such a company. I am giving that example because there are 121 claims. She provided her opinion on each of them. When Deloitte disagreed, she provided her rationale each time. I therefore assume that when she said she travelled for private business, it really was for private business because, when she challenged the various claims, her opinion was clearly indicated, as was Deloitte’s decision or recommendation. This allowed the Standing Committee on Internal Economy, Budgets and Administration to rule and recommend the same interpretation or application as Deloitte. The Standing Committee on Internal Economy, Budgets and Administration could have told Deloitte that it disagreed with the firm’s interpretation of “parliamentary functions,” that that is not how we interpret them in our everyday practice. However, that is not what happened and approximately \$30,000 worth of claims had to be reviewed. I believe it was found that she had to repay \$17,000 worth of expenses. The other claims were deemed to have been for parliamentary business. The claims were very clearly identified as either private business or Senate business by Senator Wallin, as non-parliamentary business by Deloitte, and there was a grey area with claims that were ruled on by the Internal Economy Committee.

Senator Dallaire: It is important because it seems that we will have no other opportunity to ask questions whereas, if the matter were referred to a committee, as proposed, these questions could be asked by the committee. In 2009, when the senator travelled for private activities, the Senate administration, Senate Finance had to review the claims anyway, did they not? In my experience, Senate Finance must review expense claims. They do not refund expenses blindly, just because a senator signed the claim. They are responsible for applying the rules. In 2009, was the definition of “private business” the same as it was this summer?

• (2120)

Senator Carignan: According to the report, it seems that all of the senator’s claims were generally substantiated as “parliamentary functions” or “Senate business.” On several occasions, the administration requested clarification or additional justification when they saw some clues that would raise some doubts or would require them to dig a little deeper, but it is

noted in each claim when the administration required more information. You know, this was largely based on the honour system. Therefore people would claim “parliamentary functions.” If at first glance, the administration sees nothing wrong, and if the senator says that they were parliamentary functions, it is assumed that they were parliamentary functions. But if I have a meal with my son and I write “parliamentary functions,” the administration cannot know that. When they see a “parliamentary functions” bill, they do not know whom I ate with. It would be necessary for someone else to have seen me with my son to know that those were not “parliamentary functions” but “parental functions.” The administration needs clues to know when to dig deeper and probe further, but when something is this general, it is harder.

Senator Dallaire: When someone writes what you told us for a non-parliamentary activity, are you saying that the document has been deliberately falsified, or is a matter of the person’s interpretation at that time? I know you have several of those. That is why I am asking you. You know more about the file than we do.

Senator Carignan: There is no way to know. That is one reason why the Internal Economy Committee referred the case to the appropriate authorities, to see whether this was repeated carelessness or whether there was fraudulent intent. Since this was not possible to determine, the case was transferred to the appropriate authorities so that they could investigate and establish whether there was intent.

The committee cannot, and I do not think that we can rule on intent, which is why the Internal Economy Committee asked for an external audit for that part. As I explained yesterday, the Internal Economy Committee has the power to decide whether something complies with the Rules. It was so far from complying with the Rules that even Senator Wallin admitted it.

[English]

Hon. Terry M. Mercer: Senator Carignan, I listened to your speech with some interest. Early on in your speech you talked about Senator Wallin’s travel back and forth to Toronto, back and forth to Saskatchewan, and you talked about the percentage of time that she spent in each place. That is all very interesting, but perhaps you could tell me what percentage of a senator’s time must be spent in the province or territory that they represent? What is the benchmark? What is the mark that senators must meet in order to say that they are doing their job in representing their province or territory?

[Translation]

Senator Carignan: This question was not asked in Senator Wallin’s case, unlike in the cases of Senator Brazeau and Senator Duffy. For Senator Brazeau, it was a question of residence, primary and secondary residence. For Senator Duffy, it was a matter of two things: primary residence, secondary residence, a dispute over that issue, in addition to the 49 days that were claimed when he was clearly not in Ottawa during that time.

In this case, the matter of secondary residence was clear. Her primary residence was more than 100 kilometres away. When Senator Wallin comes to Ottawa, it is obvious that her primary residence is not in the NCR. She was and is entitled to be reimbursed for living expenses in the capital. The dispute is not

over where her primary residence is for the living expenses. An argument could be made for Toronto, because her percentage of time in Toronto is higher than in Saskatchewan or Ottawa, but that had no direct connection to functions. She could have carried out her parliamentary functions in Charlottetown. It depends on the nature of the request and the individuals involved, in light of her functions here in the Senate.

[English]

Senator Mercer: You didn't answer the question. The fact of the matter is, according to the rules, one could spend one day in their region or territory that they represent and meet the qualifications of having been there.

I mean the problem is — and our friends in the media need to recognize it — nothing is written down anywhere. There are 413 people who work in this building who have no job description — 105 in this chamber and 308 down the hall. There are no job descriptions for what we do and there shouldn't be because we all come here to do the job of legislating but we also come here with all very different interests and different ways that we're going to do the job. The way that you do your job, Senator Carignan, is entirely different from the way I do my job. I respect that and I hope you respect the way I do my job.

I am not here to defend Senators Wallin, Duffy or Brazeau, but I am here to defend the Senate. I think it is important that people recognize that there is no cookie cutter here. You cannot say, "This is the job of a senator." Senator Dallaire does his job differently than I do. Senator Wallin tries to do her job differently than I do. Senator Segal does his job differently, and there is no job description here.

So to continue to go on and talk about the time, and excluding the time in Toronto, to draw reference to the fact that Senator Wallin spent only this much time in Saskatchewan or that Senator Duffy spent only this much time in Prince Edward Island, I think that is totally irrelevant. There are no guidelines that say that Senator Andreychuk has to spend so much time in Saskatchewan or I have to spend so much time in Nova Scotia. I try to spend as much time as I can, and I've been criticized in the media for doing that. But I think it's very important that we understand that, and I don't understand how you continue to make reference to Senator Wallin and Senator Duffy — you don't do this for Senator Brazeau; I understand why — that they don't spend enough time in their regions or they're not travelling to their regions enough. There are no guidelines for this. You can't damn someone for breaking a rule that doesn't exist. There are no rules for this.

Senator Dallaire could go to Quebec City once or twice in a year and still be fulfilling his obligations as a senator. I could go to Nova Scotia once and still fulfil mine.

[Translation]

Senator Carignan: Listen. Let me give you some advice. There are rules. If you do not know about them, the Auditor General will be meeting with us. You should perhaps read them before he gets here.

[Senator Carignan]

The definition of "parliamentary functions" set out in chapter 1:03.1 of the *Senate Administrative Rules* is cited on page 10 of the Deloitte report:

... "parliamentary functions" means duties and activities related to the position of a Senator, wherever performed, and includes public and official business and partisan matters, but does not include activities related to:

(a) the election of a member of the House of Commons during an election under the Canada Elections Act; or

(b) the private business interests of a Senator or a member of a Senator's family or household.

Thus, when activities are in your own private interests, they are not part of your duties as a senator.

• (2130)

There is also the definition of "public business" as set out in chapter 1:03.1 of the *Senate Administrative Rules*, which states:

"public business" means all business carried on by a senator for public purposes, whether or not authorized by the Senate or the Government of Canada, and includes official business, representative business, partisan business and related travel, but does not include attending to one's private concerns.

Thus, there is a definition, a framework that gives a certain degree of flexibility. That is why I did not necessarily want to go into the 90 other claims that were deemed inappropriate, either completely or partially, and why I focused on the 31 claims relating to private concerns, which Senator Wallin herself admitted.

[English]

Senator Mercer: You missed the point of the question. The point of the question was you talked about what we can't do, and I agree. I'm familiar with those rules, and I try to follow them. However, there are a couple of things that are not defined. "Senate business" is not clearly defined. What Senate business is for Senator Dallaire or Senator Robichaud or Senator Segal or Senator Greene is different from Senate business for Senator Mercer, because we all do our jobs differently. We don't have job descriptions here. Senator Dallaire is out there talking about child soldiers. I spent a lot of time in the not-for-profit world talking to charities and people in the fundraising communities. Senator Munson talks to people in the autism world and is helping there. Those are things that are not written down. The Auditor General will have a hell of a time with that, and he and his crew will have a hard time defining that.

However, back to my question: How much time do the 105 of us in this place have to spend in our regions to meet the qualifications? Is it one day? Is it 10 days? Is it 10 per cent? Is it 15 per cent? Is it 60 per cent? There are no guidelines on this, Senator Carignan, and you know it, and you can't quote any guidelines that are there.

[*Translation*]

Senator Carignan: I will answer your question, but first I want to come back to your introduction to your question. Parliamentary business is not just anything. What you said worries me and you should start feeling a little nervous, because when it comes to private business, when I go back home and take part in activities for the Saint-Eustache hospital foundation, I do not do so as a senator. It is my own personal choice to help the foundation. It has nothing to do with my duties as a senator. Even if I were not a senator, I would still go and help.

The test is whether or not I would still go if I were not a senator. The answer is yes, so for me, it is private business. I am a senator and if I go to an activity or a meeting, that is the first test, the first question I ask myself.

If you are unsure about your functions, I encourage you to ask the Internal Economy Committee to give you its opinion. It has exclusive responsibility to help you if you are unsure whether an expense falls under parliamentary functions. I do not know whether that can help you retroactively.

With regard to the percentage of time that you need to spend in a province to be considered a resident, it is the connections to the province that count. Here it was not relevant for calculating the claims that were made.

[*English*]

Senator Mercer: It is relevant, Senator Carignan, because our friends in the media talk about how much time Senator Duffy does or does not spend in Prince Edward Island. They talk about how much time Senator Wallin does or does not spend in Saskatchewan.

The issue here is I don't think you understand the job we have to do here in the Senate.

After I was appointed, I was on a plane back to Halifax. When I got on the plane, I met Bill Casey, Progressive Conservative Member of Parliament from Cumberland-Colchester-Musquodoboit Valley. He is a good guy. He's been around a long time. You guys eventually kicked him out of caucus because he had the intestinal fortitude to stand up to the Prime Minister.

Bill Casey said to me, "Terry, congratulations on your appointment. You have a big advantage over me." I said, "Why?" He said, "I can't accomplish a lot as a member of a large caucus in the House of Commons because of what I do and the fact that I have to go through an election every three or four years. You," meaning me as a senator, "can accomplish a lot, because you can pick something you want to accomplish," whether it be fighting for child soldiers, whether it be working on behalf of the charitable sector, whether it be fighting autism, or whether it be, as Senator Kenny did, fighting against tobacco, or Senator Nolin fighting on the drug issue. He said we can accomplish something, because we are not limited by the confines of having to face an election every four years, and we have a long term here. We can start working today. It may take us four years. It may take us six years. It may take sometimes 20 years to accomplish what we want, but we have that advantage.

We all come here with different interests, and those interests are not personal interests. They are public interests because we are working on behalf of the public across the country. If I go back to my village of Mount Uniacke in Nova Scotia, of course that's not Senate business. If I go to certain meetings in Halifax, that is not Senate business. But if I'm going off visiting different groups to try to understand the issues in the areas I am interested in as a senator, then guess what? I think that's Senate business.

[*Translation*]

Senator Carignan: As I said, the definition of parliamentary business is set out in the rules. I am not sure that we have the same definition. That worries me, not for myself, but it worries me to hear you talking like this and asking me this type of question. Since you have been here for a long time, you should know that parliamentary functions are those functions that are related to the Senate, and a distinction must be made between them and private interests or things that are particularly meaningful to us.

There is a fairly definite line between them, which means that we must be careful. When we are not certain, we must ask our legal counsel or the Internal Economy Committee, and they will tell us whether, in their opinion, something constitutes a parliamentary function or not before we make any expenditures.

The Auditor General will surely be able to help you more than I can, and you may have money you have to repay.

Senator Robichaud: You are going to listen to me. We see in the report about Senator Wallin that was submitted by the Internal Economy Committee an amount of \$121,348.

If I understand the reports I heard correctly, the total amount plus interest was repaid to the Senate through the Receiver General of Canada. Is that correct?

• (2140)

Senator Carignan: Yes, the amount was repaid, because the Internal Economy Committee ordered it. However, \$38,369 was repaid voluntarily. That leaves a net amount of \$82,979 that was repaid by Senator Wallin. However, it does not appear that she admitted to owing this money, because when she came out of the Internal Economy Committee she made some rather disparaging remarks that I will not repeat. I did not get the impression that she agreed with the decision.

Senator Robichaud: Honourable senators, I do not think we should be interpreting the comments made by someone who was coming out of a meeting. The amount was repaid, was it not?

Senator Carignan: Yes.

Senator Robichaud: When you considered the conditions for suspension, did you take that repayment into account?

Senator Segal: Not at all.

Senator Robichaud: In fact, the suspension conditions are the same for the three senators in question. I find it a bit odd that they all have the same punishment — if I can call it that — but there is

no regard for the seriousness or the amounts in question for each of the three. When we want to punish someone — that is not the right word — we have to take into account what was done and what was repaid. I am not denying that amounts were claimed that should not have been. However, I think that the fact that the money was repaid should have taken into account.

Senator Carignan: Yes, but there is a difference between the amount of \$38,369 that was repaid in the beginning, during the investigation, when she realized that some of the claims were for private business, and the other amount, which she was forced to repay because the Internal Economy Committee told her, “either you pay or we garnishee your salary,” as we saw happen with Senator Brazeau.

You say that I am suggesting the same sanction for three different situations. I feel that the three situations are serious, and they all require the same sanction, but for different reasons. In Senator Brazeau’s case, for example, it is a smaller amount. He never admitted that he owed money or that he made misleading claims. He is challenging it. He brought us a document — we saw it, it was tabled — that explains that the administration told him in 2011 that he could rent a house. If I had answered, “Yes, you can rent a place and are entitled to do that if it is your secondary residence, not if it is your primary residence.” However, it is 133 kilometres away. If you have a supposed secondary residence in Ottawa and a supposed primary residence in Maniwaki, which is 133 kilometres away, and you only spend 10 per cent of your time at your primary residence and some 80 per cent at your secondary residence, there are clearly other intentions.

In Senator Duffy’s case, there are two situations. There is the issue of primary versus secondary residence. I told you about an identical case in London where an individual was suspended until the end of the session. Add on top of that the 49 days he made claims for, saying he was in Ottawa when he was in Charlottetown, Florida or here. In that situation, there are 121 irregular claims. There were an estimated 230 or 240 claims at the most. More than half of the claims did not comply with the concept of parliamentary functions, in part or in full, and 31 of those claims were of a completely personal nature.

As a result, given how large the amounts were, if the full claim is for \$5,500 and if the expenses claimed were related to personal business and the senator signed the claim and said that the expenses were related to parliamentary functions, that is a very, very serious situation. That is why I am asking that the senator be suspended until the end of the session.

Let us remember that the newspapers were suggesting that he should pay back \$80,000 when the forensic audit alone cost \$100,000. I do not remember the exact amount but just paying back the amount comes to over \$100,000.

[English]

Senator Cowan: Who supported that? What’s your point?

Senator Fraser: Administration costs money.

[Senator Robichaud]

[Translation]

Senator Carignan: I am saying that the senator is not only responsible for paying back the money but also for incurring expenses for the Senate related to the investigations and audits. All of this is costing our institution money.

Senator Robichaud, you travelled all summer. Did you proudly tell everyone that you are a senator? How many times did people come up to you and say, “Oh, you are a senator? I know you. You are good and kind, but the rest of the bunch in the Senate are really something else.” People said it to you. They have said it to all of us. We were outraged. People are outraged. That is what it means to undermine the dignity of the institution.

Senator Robichaud: Yes, I travelled around my region, but I never hesitated to tell people that I am a senator. As you said, people looked at me with a bit of a smirk and said, “Well, maybe you are not like that but as for the rest of the bunch . . .” Maybe it happened to everyone. I am not disputing the fact that there are expenses that should not have been reimbursed, or claimed and then reimbursed. What I find strange is the way you compared the three cases or considered them all to be of the same magnitude so that the same conditions of suspension would be imposed in all cases. That is what makes me extremely uncomfortable.

Senator Carignan: These three situations all have similarities. There are different factors involved, but they are all equally serious. We had one case in the past, Senator Thompson, who was suspended for failure to comply with an order of the Senate. I think Senator Plett indicated that he was suspended for truancy. I do not wish to correct my colleague, but that is not totally accurate. It was because he had received an order from the Senate, with which he did not comply.

Senator Segal: That has nothing to do with this.

Senator Carignan: That is the precedent we have in Canada, in the Senate, of contempt of Parliament. That is the only case we have had.

I mentioned the case in the House of Lords in which it was a question of allowance, much like Senator Duffy’s case, and in which a suspension was imposed until the end of the session. However, there was no aggravating factor, which I talked about earlier regarding the 49 days.

The three cases are serious and warrant severe sanctions.

Senator Robichaud: When you said, honourable senator, that we have only one example of contempt of Parliament, that is not the case. It happened in the House of Commons not too long ago.

Senator Carignan: We are really flaunting the jurisprudence. Unfortunately, we would be the first. Just because we are the first to do so, does that mean we should be kind and warn people when

the auditors are coming, since there may be other cases? I do not want to get a slap on my wrist so I will be kind to my friend because, if it were me, I would want him to be kind to me? No. Therefore, the question—

Some Hon. Senators: Oh, oh!

• (2150)

Senator Carignan: Senator, which one of us has the floor, me or you? If you are talking, then I will sit down so you can go ahead.

Senator Segal: Listen with an open mind.

Senator Nolin: There is no “listen” about it. He is giving orders.

Senator Carignan: This is an extremely serious situation. It must be taken seriously. Senator Mercer gave an example earlier when he spoke about a member of Parliament who told him, “You are lucky you are a senator; you have more time to do your work.” Yes, you are a senator, but that does not just give you opportunities, it also brings responsibilities. Things are different in the other place, where they have elections every four years. If a member there does something wrong, and we have seen such situations, he or she will resign soon enough. And if the member does not resign, the party leader will not sign the letter, and that person will not run for the party.

Therefore, every four years there is a kind of renewal that makes those people more accountable. We have no elections. Since there are no elections, if we want to ensure responsible management we must discipline our members when they engage in repeated and gross violations of our rules. And we, their peers, are the best people to determine what the best sanctions are.

In disciplinary matters, in disciplinary committees, who is responsible for administering discipline? The peers. Why? Because the peers are the people who know best the standards of the profession or the group. This is why disciplinary sanctions are always decided by peers. And in this chamber, we are the peers.

Senator Dallaire: Yes, but not all of us!

[English]

Senator Wallace: Senator Carignan, would you accept a question?

[Translation]

Senator Carignan: Of course. I answer so many questions from Liberals. I will be happy to give an answer to a Conservative.

[English]

Senator Wallace: Senator, I have listened very carefully to what you have had to say, in particular on this issue of the way you have categorized the claims that Senator Wallin has made, the 121 that were rejected. It seems to me they fall into two categories: those where there could be some disagreement about what constitutes Senate business or what is really known as “parliamentary functions” under our *Senate Administrative Rules*; and those claims that relate to personal matters.

I’d like to ask you a question, first, dealing with parliamentary functions or Senate business and your understanding of what those terms mean. I will make a comment about how those terms were reflected upon in an audit a few years ago.

I know you are well aware of this, but in the case of parliamentary functions, or what is referred to as “Senate business,” “Senate business” isn’t defined. It is parliamentary functions that are set out in our *Senate Administrative Rules*. That refers to the duties and activities that relate to the position of a senator wherever performed. They include public and official business and partisan matters, but do not include activities that relate to the election of a member or the private business interests of a senator. So it includes public and official business.

Public business, under the *Senate Administrative Rules*, refers to all business carried on by a senator for public purposes, whether authorized by the Senate or the Government of Canada, and it includes partisan business. Partisan business is not defined.

When I look at that description of the types of activities that we as senators can be involved in, to me, there is some grey area there. I suggest that, and I will seek your thoughts on it shortly.

I suspect you are aware of this report. In the Annual Report on Internal Audits of the Senate 2009-10, there was a report of the Standing Committee on Internal Economy, Budgets and Administration — I believe that’s the name of that committee — December 2010. In that audit, there are some interesting observations made by the firm Ernst & Young, a very reputable national accounting firm, of which I know you are aware. This statement is at page 3 of that report:

The audits found that some administrative policies were outdated, inadequate, or non-existent. They also found that, in certain instances, policies were poorly communicated and/or not well understood by users.

At page 4, it states: “The Senate should provide clearer guidance and criteria on which activities constitute a parliamentary function.”

At page 8, it states:

Given the broad definition of parliamentary functions within the SARs, there is a risk that allowable expenditures in support of parliamentary functions and those which are ineligible may not be clearly understood by Senators.

Again at page 8, the report of the committee states: “There is a risk of inconsistent application of policies and understanding of the policies across Senators’ offices.”

At page 10, it is stated:

Although a definition of a parliamentary function exists within the SARs, there is a lack of clear guidelines and criteria clarifying what activities constitute a parliamentary function. For example, there is no clear guidance made between partisan activities relating to Senate business (allowable expenses) and partisan activities on behalf of political parties which may not be eligible. This issue affects

Finance staff responsible for processing claims as well as the level of understanding of the rules by Senators' offices and can lead to inconsistent interpretation and processing of reimbursements.

The response of the Standing Committee on Internal Economy, Budgets and Administration to that report of Ernst & Young is found on page 18, where it is stated, and this is the committee response:

It should be noted that the Committee disagrees with the recommendation that the Senate give consideration for a second-level approval process for Senators' expenses claims. It was felt that the Senate's rigorous expense claim review process was adequate and that there are effective mechanisms in place to mitigate the typical risks associated with expense claims.

Senator, I would ask for your thoughts and your opinion on the clarity or lack of clarity of what constitutes parliamentary functions or Senate business, because I think that issue is very critical, certainly, to Senator Wallin's situation.

[Translation]

Senator Carignan: That is why, Senator Wallace, I drew attention to her private business, where there is no room for interpretation. The senator says she is sure. She admitted it herself. This is part of the facts. I did not want to submit that to you and pretend it is an arguable matter.

• (2200)

If we start interpreting these things, then there will be no shortage of people claiming that what they were doing constituted parliamentary functions. I realize that in some situations, there may be room for discussion about the nature of the function. However, if we focus on private business, it is easy to know whether the function is private or not. If we look at the 31 claims for private business, there is no room for interpretation.

I would also point out that the senators' travel policy and guidelines were adopted on June 26, 2009, and changes were made that came into effect on November 26, 2009. That is roughly the period at issue in the report. I do not know whether there is an overlap here that could leave room for interpretation given the dates you are talking about, but one thing is certain: the notion of private business is clear.

[English]

Senator Wallace: Thank you for that response.

From what you had said, 121 claims were rejected by the Standing Committee on Internal Economy, Budgets and Administration and Deloitte because they were non-parliamentary or did not relate to parliamentary functions.

I realize you are focusing on the 31, but it seems to me there are other claims that are involved in this that do involve this understanding, both within administration as well as among senators, as to what is an acceptable activity and what is not for the purpose of seeking reimbursement of expenses.

[Senator Wallace]

Referring to the 31 claims which, as you said, Senator Wallin acknowledged were of a personal nature, was there an explanation given? Was the question asked specifically of Senator Wallin or her staff in respect of each of those 31 claims? How could this happen? How could claims be made when they do relate to personal matters?

[Translation]

Senator Carignan: In each case there is a justification either from the senator or from her office. She cut a cheque to give the money back, so I imagine she agreed in that case that it was for personal business and that it should not have been done on the Senate's dime. I have an example of a claim here from December 2 to 13, for \$1,652.71. That was the full amount. The justification for each case is quite clear.

[English]

Senator Wallace: Certainly we heard they were repaid; that was acknowledged by Senator Wallin. I think the question that is in each of our minds—I suspect everyone here—is: How could that happen? Was it administrative oversight? How could that happen within her office?

Some might take the position it does not matter what the intention was. They were filed incorrectly; that is the end of the story. The intention is irrelevant. It's not irrelevant to me. Was it asked of her why were 31 claims for personal expenses filed? Was there some administrative problem or what?

[Translation]

Senator Carignan: I am glad you asked that question, Senator Wallace. That is precisely why it is important for us to be able to debate this here. Senator Wallin is here. She has the right to speak. She can exercise that right to explain to us, for each situation, what happened that caused her to submit claims for private business. Like you, I wonder how claims could have been submitted for personal business. The senator has the opportunity to speak and explain to us why she claimed expenses for private business. She can provide a breakdown for each of the 31 claims. I am sure she would be given more time if she needs more than 15 minutes and then we could get to the bottom of this.

[English]

Senator Cowan: You are making this up as you go along.

Senator Wallace: Senator Carignan, if I could, I believe that Senator Wallin will have to—well, it is up to her, but I guess that is why we are here. That is why in this chamber—

Senator Mercer: That is what we want to do: give her a chance to talk.

Senator Wallace: I thought I was talking.

We will have that opportunity; she will have that opportunity in this chamber. As I commented earlier, that is what this chamber is about. We don't have to delegate out the responsibility to get the facts; we will get them here.

But in your response, yes, we will find it out of here. It would be surprising to me if the Standing Committee on Internal Economy, Budgets and Administration and Deloitte didn't ask the question

why this happened, and so we will find it out here. But it would surprise me in this type of an audit of her records that that information would not have been provided. In any event, it appears they didn't and I will leave it at that.

Quickly, you referred to three claims that related to flights claimed by Senator Wallin that occurred prior to her appointment. When I think of that, I find that completely mystifying. I can't understand how those claims would ever have been processed by Senate Finance.

As we know with each of us, when we file our claims for flights, we provide full details of flight. We provide our boarding passes, so the date of a flight is clearly on the record. It's clearly there for Senate Finance to approve.

How could they have ever approved and processed those, when they see from an examination of the dates that they relate to a time prior to her appointment? I was part of the group of 18 senators with Senator Wallin in January that—

[Translation]

Senator Carignan: Senator Wallace, if that is how you understood it, then either I did not explain myself very well or you did not understand what I said. Those flights occurred after her appointment, but for commitments she had made prior to her appointment. The flights occurred when she was a senator.

[English]

Senator Wallace: Thank you. Now I do understand that.

Senator, from the various claims that were rejected, were there any trips where it was claimed by Senator Wallin that the trip could have been in part for a parliamentary function or Senate business and in part for private business?

[Translation]

Senator Carignan: Yes, there are a few and each one is justified. In the numbers I gave you, you see the claim, and when the amount was paid back in full, then it was private business and when it was partially paid back, then it was partially eligible and partially private. We have both situations.

• (2210)

[English]

Senator Wallace: A final question, if I could. A number of the claims relate to trips by Senator Wallin from Ottawa to Toronto, Toronto to a primary residence in Saskatchewan. Some of those were called into question, and I believe a number of them were rejected by the Internal Economy Committee.

You refer to a pattern of travel or behaviour that was unusual or out of the ordinary. For most of us, perhaps that would be. I know with some of the waits that I have in flights going to where I go in the world, probably staying overnight would have been a better choice than trying to make it straight through.

That pattern would have been evident from the beginning. That pattern, when the reimbursement for those trips for Ottawa to Toronto to Saskatchewan was submitted to Senate Finance,

would have been apparent and, I would think, would have stood out to be a little out of the ordinary; maybe there was a reason.

Was Senator Wallin ever questioned by Senate Finance on that pattern that you say was unusual and not normal?

[Translation]

Senator Carignan: She was asked that question by Deloitte on page 22. You have Table 4: "Summary of travel between Saskatchewan and National Capital Region." You have the information for each period: from January 1, 2009 to March 31, 2009; then from April 1, 2009 to March 31, 2010; April 1, 2010 to March 31, 2011; April 1, 2011 to March 31, 2012; and April 1, 2012 to September 30, 2012.

You have the direction of travel between Saskatchewan and Ottawa; the number of flights; the number of direct flights and flights connecting in Toronto; the number of flights with stopover in Toronto for one night; and the number of flights with stopover in Toronto greater than one night. There were 11 direct flights between Ottawa and Saskatchewan; one flight for the entire period of four years or four and a half years; one flight connecting in Toronto; 43 flights with a stopover in Toronto for one night; and 32 flights with a stopover of more than one night. The senator explained why some parliamentary functions required a longer stopover.

Deloitte felt that if warranted and if there was a connecting flight and the senator stayed over one night because the connecting flight would not have been reasonable or because she would arrive later, the claim was considered justified. When there was a parliamentary function in Toronto, the claim was justified. However, when there was no indication of a parliamentary function or specific meeting, or when the stopover was more than one day, the claim was not justified and Deloitte claimed only the incremental cost, which is the difference between the regular expense and the higher expense due to the longer stopover.

[English]

Senator Wallace: Senator, is that stopover for more than one day in our policies and guidelines?

[Translation]

Senator Carignan: There are 32 stopovers in Toronto that lasted more than one day.

[English]

The Hon. the Speaker pro tempore: Honourable Senator Dallaire, on a point of order.

Senator Dallaire: It is a point of order or procedure. Forgive me; I've only been here eight years and am still doing my apprenticeship.

I heard Senator Carignan say that Senator Wallin will have the opportunity to respond in the normal 15 minutes with the possibility of extensions. I have no problem with me intervening and having 15 minutes, plus extensions, but if she is being brought

forward in front of this august body with all of the information, surely she won't be held to 15 minutes plus a few extensions. Am I correct?

The Hon. the Speaker *pro tempore*: She will have to ask the chamber if more time can be granted, and the chamber would make that decision.

Senator Dallaire: The chamber's history has been stingy on that, giving you five minutes here and five minutes there. I'm just finding, as part of the overall process that we spoke of early on of this not even being a summary trial, that if a person is getting all this info from all these different sources, there should be within the procedure an ability for that person to have as much time as they need or something of that nature to be able to respond to it and not go by, well, you are just a senator and as everybody else you get your 15 minutes. This doesn't seem to be justice. It just doesn't seem to be fair.

The Hon. the Speaker: The Honourable Senator Dallaire rose on a point of order. The order of this debate has been precise, has been totally in order, and this chair will make every effort to ensure that it continues to be totally conducted in order.

I think, to the credit of all honourable senators, that we have had a very good debate to this point and I'm sure and I'm confident, given the skill set that is in this chamber, that it will continue to be a fulsome, thorough and orderly debate, as it has been to this point.

Thank you, Senator Dallaire, but we have been conducting this matter, a difficult matter, somewhat historic, in a very orderly fashion.

Hon. Joan Fraser (Deputy Leader of the Opposition): I have what I consider to be a very serious question. It has been troubling me all week but, in particular, in the light of your remarks this evening, Senator Carignan.

In your long speeches this week — I don't know where you get the stamina, actually — you have gone into truly staggering detail about many things. You have read to us long, long, detailed excerpts of the reports from Deloitte. You have cited jurisprudence going back to *Stockdale*, and maybe I missed a reference that goes back further than that, but coming up to two centuries is already quite a lot of jurisprudence, and I think you have cited just about every case on point. You've cited statutes; you've cited authorities —

Senator Carignan: No, I did not.

Senator Fraser: I think you did. You cited statutory authority for us to discipline our own members. If I'm wrong, I beg your pardon, but I really did think I heard that.

What I didn't hear you give was any comparable, grounded, detailed explanation with authorities for the criteria that you used in coming to the conclusion that the sanctions you propose in your motions are appropriate in these cases.

Can you explain those criteria to us and cite the authorities upon which you based them?

[*Translation*]

Senator Carignan: There are precedents, for example the Thompson case, which is the only ruling we have. There are some from the House of Lords, as I explained. In the case that seemed similar in terms of residency, a one-year suspension was given.

Normally, when you are determining a penalty you would look at the seriousness of the offence, the number of times it was committed, whether the individual fixes the problem or acknowledges that they made a mistake and the seriousness of the offence in relation to the individual's status, duties or functions.

• (2220)

There are various criteria.

I can produce case law to support disciplinary penalties. We can draw from disciplinary law but, in the end, we need to establish our own benchmarks.

We can draw from the criteria that exist for professional bodies. For example, judges are appointed and, in principle, are independent, have security of tenure and are appointed to serve until they reach 75. We can look at case law involving judges. I do not know what the Judicial Council would recommend if a judge repeatedly made claims of such a nature. I have a feeling that the recommendation would be to remove the judge if he had not already stepped down.

I think that the role that is most similar to ours is that of a judge. I can check and come back at another time with decisions from the Judicial Council that could guide us, given that judges have security of tenure and are irremovable until the age of 75. However, I do not think that it will work in our colleagues' favour.

[*English*]

Senator Fraser: You may not think so, but I think it would be very helpful for colleagues. We are considering a case of historic gravity in this place.

Let me explain to you a little further one of the reasons I am so perturbed. In most cases—certainly we have heard this often enough on the Standing Senate Committee on Legal and Constitutional Affairs, on which for some years I served with you—sentences or penalties are supposed to be proportionate to the offences. In this case, you are proposing the second harshest sanction that this place has at its disposal, the harshest being to declare the seat vacant. I said that this afternoon and I am simply repeating it for any of you who have may have nodded off while I was speaking this afternoon.

What would you reserve, then, for offences that most people would consider more serious? There are offences that most people would consider more serious, such as offences against the election laws, for example, which, as we have seen, are not always proceeded with by way of indictment and therefore would not fall under chapter 15 of our rules.

[Senator Dallaire]

Would you consider it more serious if a senator were found to have actually embezzled money, say a lawyer from a trust fund? Sure the bar would discipline the lawyer, but we are talking about the senator.

What kind of offence would you consider more serious than what these senators have done, and what penalty would you consider remained that would be harsher but within our powers than what they are now facing?

[Translation]

Senator Carignan: A tougher penalty would be expulsion. It is something that would warrant in-depth study. I believe that we have the power to expel. It is clearly still the most severe penalty. Section 31 of the Constitution provides for expulsion in the case of disqualification. There are documented cases. If someday someone decides to reopen the Constitution, they will need to update the reasons for disqualifying a senator, for example, in the case of infamous crimes. I believe that the terms need to be modernized, as does the institution. The most severe penalty is expulsion.

Obviously, the punishment could be harsher. After consulting some colleagues, I made a recommendation based on a consensus of sorts. A number of senators suggested expulsion. I thought suspension for the session was more appropriate and that expulsion was perhaps too harsh. Some of the people I consulted were so outraged that they were also thinking of calling for expulsion. It could be amended if people want to ask for expulsion. I believe that suspension until the end of the session is harsh.

However, I spoke about rule 5-5(i), which is in the motion and provides for reconsideration of the punishment in the coming months if a senator wanted to revisit this matter.

[English]

Senator Fraser: I didn't think that in this debate I would be congratulating you, but I do congratulate you for resisting calls for expulsion in these cases. These are cases where restitution has been made and where no individual—except perhaps the senators themselves—has suffered harm. I truly believe it would have been a scandal of historic proportions to apply expulsion to these cases.

I look forward, senator, to your provision of criteria that you applied in reaching the decisions you reached to call for these sanctions, which, as I say, I consider excessive. I regret that I gather you are opposed to a committee study of this matter, because I can think of few elements of these cases that would be better suited to a thorough committee study than the appropriate penalties to be imposed for various infringements of our rules and, in particular, for these infringements. Thank you.

[Translation]

Senator Carignan: Was that a question?

Senator Fraser: It was a comment.

[English]

The Hon. the Speaker: The Honourable Senator Cowan?

Senator Cowan: No, go ahead. I always defer to Senator Plett.

Hon. Donald Neil Plett: I would like to ask—

Senator Tkachuk: You call him “friend.”

Senator Plett: Well, Senator Tkachuk, I hope you also call me “friend.”

Leader, would you accept a question? I don't want to put you on the spot here, but me not having the legal background that you have, or others have, would you give me the definition of “consensus,” please?

[Translation]

Senator Carignan: I do not dare talk about the Latin etymology in the presence of the Speaker, but it is what converges, what goes in the same direction. Different points of view are expressed and they point in the same direction. That does not necessarily mean that the direction is a fine line. It can sometimes be a little broader and have a certain flexibility, but it points in the same direction.

• (2230)

[English]

Hon. George Baker: Honourable senators, I think one of the major problems here is that this is precedent setting and we don't have anything in writing that defines “gross negligence” within the meaning of its application in these circumstances.

I'd like to ask Senator Carignan—I don't know if he wants to answer this question—but it appears to me, from the exchange recently, that perhaps there is a reverse onus here. I listened to Senator Wallace, a distinguished jurist in his past life. He asked the questions and you responded in a way that signals to me that there is a reverse onus at play here and that if any of the senators can provide proof, I presume the proof would be on a balance of probabilities. I don't know if the senator wishes to answer that question.

It even becomes more complicated, because when you examine the case law, as I'm sure Senator Carignan will agree, whenever the words “gross negligence” are used, it requires, for proof, a certain amount of *mens rea*—in other words, a certain amount of *mens rea* that would require circumstances that, knowingly or unknowingly, the offence amounted to gross negligence.

What the courts have said is that if there is no proof of an element of *mens rea*, of intention, then the charge reduces to negligence. Now, that's under acts of Parliament like the Income Tax Act. I'll quote for you: “The application of the subsection requires the evidence of *mens rea* or culpable conduct,” *Boileau v. The Minister of National Revenue*.

Do you have any comment on that? Given that we're asked to consider a very complex matter because there's nothing in writing, like in the Income Tax Act, no case law really on point on gross negligence. You've compared it to other cases which have not been defined as gross negligence. So it's difficult to place the term "gross negligence" within the meaning of those cases that you've cited.

Do you have any thoughts on that? Because really we should know what you commonly refer to in law as the constituent elements of the offence. What are the constituent elements of the offence? You've said it does not include any intent.

If I heard you correctly—I don't know if I did, because I'm getting up there, but I think that's what you said—it wouldn't require negligence. You're shaking your head. Okay, I take that back.

But what does it require? What would be, in your estimation, the essential elements of the offence? Do you regard it as being the same elements of the offence that are applied with the term "gross negligence" in the Income Tax Act? Is there, in fact, a reverse onus here, and what would be the standard of proof on the person charged with gross negligence? I don't know if you want to comment on any of that.

[*Translation*]

Senator Carignan: I will most certainly comment. The offence is contempt of Parliament. It is acts, deeds, carelessness, a violation of the Rules of the chamber that undermines the dignity and integrity of Parliament. Somewhat as in disciplinary matters or ethics, the offence, for example, can relate to the conduct of a lawyer who undermines the dignity and integrity of the profession. Who are the best people to judge this assault on the dignity or integrity of the profession? They are the person's peers, because they know the standards, they are the experts in that field, and so they know what is or is not correct. I am a lawyer. I have a good idea of what does or does not constitute a conflict of interest for a lawyer. In the case of a doctor, I may not be as qualified, and it is the same thing here.

The offence is then engaging in serious, negligent behaviour to the extent that it undermines the dignity and integrity of the Senate and Parliament. How do we see it? It is what we experience. That is why, during the summer, the discomfort you felt, which I discussed earlier with Senator Robichaud, the derogatory comments that were brought to our attention, enabled us to measure the impact of this assault on our dignity, integrity and honour. Our experience and expertise as individuals and senators enable us to judge that affront to our dignity.

This is a bit technical, but it is not a matter of "beyond a reasonable doubt." We are not in a criminal court. I would suggest the preponderance of the evidence. If I had to argue in matters of discipline, this is what would apply. It is at this level that I believe it should apply.

As I explained to you, gross negligence, in the context of my motion here, is mismanagement, carelessness. If you look at the facts I presented to you, there is no other logical conclusion to be

[Senator Baker]

reached. Something must have happened for a senator to submit 31 claims for private business even though she indicated that they had been for parliamentary business.

Was it intentional? If it was intentional, it is not gross negligence: it is another kind of act. That would be a violation of our Rules, but also another violation of another parliamentary act that would be punished and investigated by another authority. As for the breach of dignity and integrity, the contempt of Parliament, it is up to us to judge that based on professional standards.

We are setting precedents here, as you said: this is new. By adopting these decisions — if we adopt them, of course — we will be creating jurisprudence. This will set a standard: we will be setting a precedent. If this happens again in 2 years, 10 years or 15 years, whatever form the Senate takes at that time, then this will be the standard.

[*English*]

Senator Baker: On the Law Society Act?

Senator Nolin: On that question you just raised.

[*Translation*]

Senator Nolin: Senator Carignan, Senator Baker raises a very important point. Does the criminal offence necessarily involve *mens rea*? In your answer, I heard you talk about intent, although you did not qualify it as criminal intent. Do you see the nuance there, one that I think is important, which would actually address Senator Baker's question? We are talking about disciplinary matters.

Senator Carignan: We are talking about disciplinary matters, but also about negligence.

Senator Nolin: There is a notion of intent, but perhaps not criminal.

Senator Carignan: What we are dealing with here is carelessness. I am not suggesting that our colleagues acted with fraudulent intent. I have been saying the opposite from the outset of the debate. They are our honourable colleagues, and I cannot believe that that would be the case. I do not have proof of that, nor does the Internal Economy Committee. That is why the committee said that this did not fall under its jurisdiction and that it was not able to rule on criminal issues. It said it would send the case to an authority that would investigate. If the case is of a criminal nature, it would pursue legal action, since that does not fall under the committee's jurisdiction.

• (2240)

We have jurisdiction over the *Rules of the Senate* and can rule on issues of contempt of Parliament. I will not repeat the first speech I made, but the authors said that cases of contempt of Parliament develop as the story progresses, because it is not defined as a specific act, but rather as what constitutes an affront to the dignity and integrity of Parliament.

Any inappropriate conduct or misconduct can constitute contempt of Parliament, whether it happens within the chamber or outside of Parliament. I am paraphrasing, but that is essentially what the authors wrote about privilege and immunity in the doctrine.

[English]

Senator Baker: So what would distinguish negligence from gross negligence, I presume, is in the magnitude of the negligence. Would you clarify that?

The second point is you use the example of your law society. Now, I have read the rules of your law society many times over the years, and when a complaint is made for disciplinary action that either comes from within the society or without, an investigation takes place by the law society of the province of Quebec and then, if need be, if there is some substance from the investigation that is concluded by the committee of the law society, a panel is struck, a tribunal is struck. It's called a disciplinary tribunal.

During those proceedings in the province of Quebec, when a lawyer goes before those proceedings, the lawyer has their counsel with them. Only a fool would not have their counsel with them. Then counsel would represent the law society before the disciplinary tribunal, and the offence that is being charged could be any number of a list of offences that are considered in the code of conduct for lawyers in the province of Quebec. And, I'm sorry, but they are, in many cases, very explicit. They pertain to particular circumstances that have arisen from the past or they're taken from the code of conduct from the Canadian Bar Association as it applies to lawyers in the rest of Canada.

Then a report is made by the tribunal back to the law society, and then they consider whether or not they will implement the disciplinary action and what the fine would be or whatever the case is, and the range of sentences.

It's an open process in which you have matters clearly at hand that you know here is the case you have to meet, here is what you are being charged with and here is a full and complete hearing that lasts for days before a tribunal that reports to the law society for which other adjudication is done. Then there is the protection in the law society act of Quebec. You appeal that to the Superior Court of Quebec. Then, if you don't like that, you have the right to appeal it to the Court of Appeal of Quebec. Then, if you don't like that, you can appeal it the Supreme Court of Canada, if they'll hear it.

In other words, protections are built in with an explicit case the person has to meet. Do you agree with me that in this case it falls below that standard that you quoted from the law society?

[Translation]

Senator Carignan: That is an interesting question. I would like to draw a parallel. First, with respect to the offence, section 2.00.01 of the Barreau du Québec's code of ethics of advocates states:

An advocate shall act with dignity, integrity, honour, respect, moderation and courtesy.

That is broad, so yes, there is a list of offences that deal with specific obligations, but if they do not apply, then the case is heard more generally. I am telling you this because I have filed lots of complaints for disciplinary action. There is therefore a peer-review process.

You are saying that usually an investigation is conducted by the committee of the law society, which renders a decision and determines whether to file a complaint against a lawyer who failed to act with dignity and integrity. That is what I am getting at in my motion: who undermined the dignity and integrity of Parliament? Do you see the parallel? There is an investigation, a complaint and an appearance before a disciplinary tribunal made up of the person's peers.

For offences involving contempt of Parliament, who makes up the tribunal? We do. What is the procedure? Our procedures. Our procedures ensure that an investigation is conducted by the Internal Economy Committee, which has the exclusive authority to determine whether an expense is appropriate or not, which made a decision and which said that the expenses were inappropriate. Who can file a complaint? All of us, as individuals, as senators, can file a complaint against another member to say that he or she has undermined the integrity and dignity of our institution. How do we do that? By giving notice of a motion and then moving it, as I did, by saying why I thought the senators in question undermined the dignity and integrity of the Senate. We are the tribunal. We will determine the case law. We are the ones who have to establish the criteria for what sanctions are imposed.

[English]

The Hon. the Speaker: I will recognize the Leader of the Opposition if it's a question.

Hon. James S. Cowan (Leader of the Opposition): Thank you, Mr. Speaker.

Senator Carignan, with the greatest of respect — and I share Senator Fraser's admiration for your stamina — I have listened carefully to you speaking and answering questions for close to seven hours now over the last three days, and I have been waiting for you to address what I consider to be the fundamental questions. I addressed those briefly in my speech the other day, and I may come back and bring them up again because, in my view, they have not been addressed. We've listened to your responses or, I suggest with respect, lack of responses to Senator Fraser, Senator Dallaire, Senator Eggleton the other day and others about what criteria you applied when you were coming to the conclusion that this was the appropriate sanction to place in your motions.

But, more fundamental to that, I wonder why we're here doing this. I wonder, apart from the obvious pandering to your political base and the obvious attempt to shut down debate and prevent folks from having an opportunity to meet the charges against them in a way that respects the principles of due process and the rule of law in this country, what was your thought process that led you to propose that we would deal with these three motions at this particular point in time?

Senator Mercer: Good question.

• (2250)

[Translation]

Senator Carignan: We made the decision at the earliest opportunity. We received the report on Senator Wallin in mid-August, and we had to decide if we would be extending Senator Brazeau's leave or not.

We needed to decide if we would be renewing Senator Brazeau's leave. Because the report on Senator Wallin was released in mid-August and our chamber was not sitting, I believed — and I still do — that the Senate needed to consider these matters at the earliest opportunity.

As Justice McLachlin said in her Supreme Court ruling, in the *Harvey* case, it is our responsibility to act. When we feel that the dignity and integrity of Parliament have been undermined, we have an obligation to act. We are the only ones with the authority to do so. If we do not act, nobody else will. Not only are we the only ones with the authority to do so, but it is our constitutional duty to do so.

That is why I moved the motions.

[English]

Senator Cowan: We've had this discussion before, Senator Carignan. Nobody disagrees with the fact it is our responsibility. It's our duty. That's been stated over and over again. There's no dispute about that.

What I hear you say is that with respect to Senator Wallin, the reason you brought it forward now is because it was the first opportunity following the tabling of the report, the receipt of the report, in mid-August. What is it about the situations with respect to Senator Brazeau and Senator Duffy that's different now than it was then, and why do you want to move —

An Hon. Senator: Oh, oh.

Senator Cowan: I'm asking the questions of Senator Carignan, Senator Tkachuk. You might get your chance sometime but not tonight. You weren't very good at answering questions before, so you should listen.

Why is it now that you feel this is the appropriate time for you to move on them? Why are they in the same situation as Senator Wallin?

[Translation]

Senator Carignan: As I explained yesterday, the process was clearly established where Senator Duffy was concerned because Senator Brazeau was already on leave with pay. The process became clear for Senator Duffy on May 28, when the committee held a meeting, which Senator Duffy and his lawyer requested be made public. I was particularly offended by the fact that he did not show up and also by the things we learned. As senators can tell from the transcripts I have read, all the members of the Internal Economy Committee were downright angry, as I was.

It was at that point that I began thinking about it. Senator Wallin's case was being studied. As this happens so infrequently in the history of a Parliament, and because there are no cases to cite, I thought it was appropriate to deal with the three cases at the same time in order to be able to compare them.

[English]

Senator Cowan: Another basic question I've had and I raised in my speech the other day, and others have referred to it as well, particularly my colleague Senator Baker, is a concern that I think all of us share — and I'm sure none of us on either side of this house would want to do anything that would impede or imperil or prejudice in any way the police investigations and anything that might flow from those police investigations.

When you were asked about this yesterday, you said that you relied on your own research, and you like to do legal research, and you were confident in your own right. I don't doubt your abilities and skills as a legal scholar and legal researcher, but all of us have to make up our own minds and derive what comfort we can on basic issues. So I ask you again: Are you prepared to table in the Senate, if not for your benefit, perhaps you don't need to, but for the benefit of the rest of us, are you prepared to table in the Senate today, or before we are asked to vote on these motions, any legal opinions that you've received or that you can obtain that will give us absolute assurance that if these motions were passed they would not impede or imperil or prejudice the ongoing police investigations or any charges that might result from those police investigations? Are you prepared to give that commitment?

[Translation]

Senator Carignan: It is not up to me to give you legal opinions. We both have access to legal experts whom we can ask for legal opinions. And if you think there is a risk or that it could be a case of "autrefois acquit, autrefois convict," as Senator Baker was saying yesterday — I do not believe that principle applies here — you can table them if you have any.

Yesterday, I said that I had made up my mind based on my own research and that of my team, my own staff, and not the opinion of outside parties. I was asked if I had sought legal advice from the PCO, and the answer was no.

I provided my own legal opinion in my arguments on the first day.

[English]

POINT OF ORDER

Hon. Joan Fraser (Deputy Leader of the Opposition): Point of order.

The Hon. the Speaker: Point of order, Senator Fraser.

Senator Fraser: I didn't raise this immediately. I wanted to consult the authorities and, in particular, to get confirmation from the table that my understanding of what Senator Carignan said in French was indeed accurate. Therefore, forgive me, but I'm moving back a few minutes in time.

More than once this evening and, in particular, in one of his answers to Senator Baker, Senator Carignan has said that these cases involve contempt of Parliament. In particular, he said that when Senator Baker asked what were the common elements in the perceived offences. Now, maybe Senator Carignan is right. I'm not prejudging that matter. Well, I might, but I'm not doing it on this case. It seems to me that he jumped the gun there, if I may use that phrase, in a rather serious way. Contempt of Parliament is an extremely serious matter. It is up there with privilege, which, as we all know, in our Rules takes priority over every other matter. It is not something a single senator can assert and thereby establish has occurred.

I took a quick look at the second edition of O'Brien and Bosc, and I was interested to see that in a series of footnotes, beginning with footnote 123 on page 84 and running over to page 88 of that edition, various cases of contempt in this Parliament are referred to and set out. And in every case, so far as I can determine, either a committee first or perhaps — it's not quite clear — just the house itself, but not an individual senator — a committee reporting to the house or the house itself determined, after investigation and debate, that a contempt had occurred.

• (2300)

I think it is out of order for the Leader of the Government in the Senate to make such an assertion in such an important debate as this, and I would humbly ask you so to rule.

The Hon. the Speaker: Honourable senators, as this matter has come up in the context of debate, it would be helpful if the honourable senator whose speech is being questioned might share with us his view as to whether the phrase "contempt of Parliament" or "*outrage au Parlement*" was the terminology used in the unequivocal sense of the phrase, or was it an equivocal expression and other words might have been used? It might be helpful and the matter might be resolved right now if the Honourable Senator Carignan could just provide a bit more of an explication on that point.

[*Translation*]

Senator Carignan: Listen, I was making a suggestion. I will say that the alleged offences here, in exact terms, involve an attack on the integrity and dignity of Parliament.

[*English*]

The Hon. the Speaker: I think I've heard enough just on this point, honourable senators, that there was a question of choice of terminology. I thank Senator Fraser for raising that because it would otherwise have raised a different kind of issue.

It is the finding of the chair that the explanation given by Senator Carignan satisfies the chair. Thank you.

Further questions?

[*Translation*]

Senator Dallaire: Honourable senators, I have been following the debate from the beginning, and I must admit that I am surprised to see how many senators on this side of the

chamber are taking part in the debate compared to the number of senators on the other side, with a few exceptions. Although there are twice as many on their side, hardly any are speaking. That makes me uncomfortable.

Once again, the procedure being used right now makes me very uncomfortable, because I have the impression that many of our colleagues are simply waiting impatiently for the debate to end so we can vote. Perhaps they are totally comfortable with this method and have no problem with it? If that is the case, perhaps we are just holding up the process? Or perhaps it is something else.

On another note, Senator Baker mentioned the example of our province, Quebec, which follows a well-established procedure when someone dishonours their profession, such as a doctor, for example. That procedure involves asking experienced peers to examine all the facts, debate the issue and ultimately reach a decision. However, if we look at the example of the Barreau du Québec, it is not members of the Barreau who are given this task, but rather another body that represents them. Those people are appointed, I believe, to sit on a special committee, which analyzes the problem and submits its report to the Barreau. I do not understand why we cannot do the same thing here in the Senate.

When a general is charged with contempt or misconduct, not all 74 generals are forced to examine the problem. There is a well-established methodology. A few peers are appointed to do that job. The accused can defend himself, he has a right to appeal, and a decision is ultimately reached. Since you have indicated that this decision will set a precedent, I do not understand why you refuse to establish such a procedure. There seems to be a great deal of reluctance to use a fairer method, which would allow us to ultimately make a decision.

Senator Wallin gave a short speech, as did Senators Brazeau and Duffy. Now we are supposed to render a decision on something as serious as taking away their salary and privileges for perhaps two and a half years, which also affects their families. No organization in our country would do such a thing, whether the organization was insulted or not. I find this process horribly irresponsible. I do not feel I am able to make such a critical decision with the information I have and the process that has been followed. Not only have you put three senators in the same boat — you move from one to the other every minute, it seems — but you also have not given us any tools, other than the Internal Economy Committee, that would enable us to review the entire file.

Why do you refuse to acknowledge that we can set this precedent? We are told that Senator Wallin will be treated with dignity, but she is being given only 15 minutes to speak. If we feel like it, she may get more time. She is not being given a reasonable amount of time to prepare. I spent 36 years in an institution that has Rules for sending people to prison, cutting their career short or even making life-and-death decisions in certain cases. I find this completely irresponsible, and it will do far more damage to our dignity than exposing these senators, as you are doing, and taking away their privileges and, ultimately, their salary. Why? Why the haste? Why this quasi-irresponsible process in dealing with one, no three, of our colleagues? I am not forgiving them; I am just asking you to be fair to them.

Senator Carignan: First, regarding your comment about senators on this side not asking questions, as I often say, they are listening. It does not mean that they are not doing anything. This is about responsibility. You can accept your responsibility and exercise it, or you can reject it. We accepted a mandate from the state, in accordance with the Constitution, to pass laws, to perform our duty and to meet our constitutional obligations.

• (2310)

We can decide to fulfill our responsibilities, which sometimes involves making difficult decisions that are not necessarily pleasant but that must be made. We can choose not to make them, sweep the issue under the rug and pretend that the problem does not exist. We can say that everything is fine, but at some point it catches up with us. It catches up so fast that we are in the midst of the biggest crisis in the history of the Senate right now, probably because people did not fulfill their responsibilities.

I am asking everyone in this chamber to resolve this crisis by taking responsibility, addressing this issue, finding the right penalty, if appropriate, and then doing our jobs. If we do not step up — we are the only ones who can make this decision — the public will lose respect for us. How much credibility will we have when we are out in the streets and talking to the media — who are still here at this late hour — and we say to them, “look how good we are in the Senate, look at the good job we are doing” and then, “Don’t abolish the Senate. We are so useful!” They will tell us, “We know you. You don’t fix problems and then think you are entitled to everything.” I have heard so many journalists talk about the culture of entitlement in their commentary and analyses.

It is not a culture of entitlement. We have obligations. It is not our money; it is the public’s money. And when you sign with your pen and taxpayer money goes into your bank account, you have to be careful. I have often said that you sometimes see lawyers fudging the numbers, and I caught an intern doing that. I said, “You can’t do that, whether you’re using a knife or a pen, it’s all stealing. You are not better than someone stealing from the corner store because you are using a pen.”

Senator Dallaire: It is unfortunate that there are not enough senators on this side to applaud; in any case we are not here to applaud in unison but to do our duty. I am certain you do not believe my colleagues and I are afraid to make a decision. We have been around the block a few times. And I am not saying this because I am being heckled on the street by people who not only do not know the first thing about what we do, but who equate the misdeeds of a few individuals with the value of the institution as a whole — even journalists make that mistake. Just because there are a few rotten apples in an organization does not mean it is worthless and deserves to be shut down. Surely these things have no bearing on us, in this place.

In the end, I am not afraid to make a decision. But when it comes to meting out justice to one of our peers, I believe we should act responsibly, the way Canadians expect us to act. We are not talking about the Usher of the Black Rod, for example, much less a child from whom we are demanding answers. We are talking about one of us. Under these circumstances, we do not

have the right to react to public opinion, or anyone’s opinion; we must act in a way that ensures that no one will look at our institution and say, “Who are these people who make decisions with so little information, following such a vague process, unlike every other institution in the country?”

We are not the only ones whose salaries are paid by the public. So are police officers, prosecutors, judges and scores of other people. And all of them have processes in place.

We are lucky to have the opportunity to develop a process. Of course, I do not want this to take three or four months, during which time our colleagues would continue to receive their pay the whole time we are reviewing their cases to find out whether or not they did something wrong. They have not yet been found guilty. We can choose our process. Instead of doing this with all of us in this place now, why not select a group of our peers to examine every little detail and report back to us? That would enable the Senate to make that decision, and it would give our three colleagues a chance to defend themselves before their peers.

The plan right now does not seem to be for them to defend themselves before their peers.

Senator Carignan: Listen, the Rules set out specific provisions. Senator Wallin could have asked me questions for three hours, just as you are doing now.

Senator Dallaire: I am trying.

Senator Carignan: That is how our debates work. The Rules say that the Senate can suspend a senator if it is deemed justifiable. We are the Senate. People can talk about us as individuals, but a collective spirit emerges from the whole. “Light emerges from the clash of ideas,” or something like that. Only by going through the process of debate will we arrive at a fair decision. This is a group decision. This is the way things are done in the Senate. We have a process; this is it. It may not be perfect. Maybe we can improve upon it, but for now, it is what we have.

The senators targeted by these three motions — we have three independent motions before us — can ask questions and contribute to the debate. I am sure that the senator knows the report better than I do. She worked on it; her version is heavily annotated. She provided evidence, documents. I imagine she could set me straight on any number of things if anything in there is not true. She can tell me.

Given the issue, the situation and the wisdom of this house, there is no doubt that, if a senator wants to speak for more than 15 minutes, we will say “Yes, take all the time you need, even one, two or three hours.” That is not a problem.

[English]

Senator Baker: Senator Carignan consistently references the law societies of lawyers, and I don’t know of any disciplinary proceedings under any provincial act involving lawyers and the disciplinary procedures adopted by law societies that also do not trigger the Inquiries Act. I don’t know of one set of rules in Canada that does not trigger the Inquiries Act.

In other words, if a third party had any interest in what was proceeding in a disciplinary proceeding of the Law Society, they have a right to apply to the tribunal, and the rules governing that are within the provincial inquiries act. In other words, the tribunal has the same power of the commissioners in the Inquiries Act. In other words, you would have a disciplinary proceeding involving a lawyer, and you might have then a letter from a third party to the chair of the disciplinary tribunal, as it's called, quoting section such-and-such of the provincial inquiries act and asking for the right to intervene, to have intervenor status. In Quebec, it's not called "intervenor status." It is called something to do with interest status in the proceedings.

• (2320)

And then that person, and everyone involved, is then asked to make submissions, first of all, on their right to intervene to the tribunal, and then their reasons for receiving intervenor status so they can participate in the inquiry.

My point is this: It's not just the Law Society and the complicated procedure that they go through in the hearing of evidence. The hearing of evidence is like any court proceeding, like any originating document in a superior court. In other words, you make application, and the application is lawyer so-and-so versus the Law Society of Quebec. You state your facts, and you present your argument. Even third parties are allowed to participate in those proceedings, if there is an interest, no matter what that interest is.

The rules in the inquiries acts provincially are fairly broad. It could be a financial interest that someone has; it could be a legal interest; it could be an academic interest. It is a more complex procedure with the law societies than it is in this judicial proceeding.

I am not saying that this judicial proceeding has any faults that are determinative to kill the procedure, but what I am saying is that even in an inquiry made by the Auditor General there is reference to the Inquiries Act, to commissioners of the Inquiries Act. My point is no matter what the inquiry is, no matter what the disciplinary tribunal is, including lawyers, it is a far more complete procedure that we have here.

I don't know whether Senator Carignan thinks that it is necessary to enlarge the decision-making body in this instance. He is pretty much on the record as saying that this is adequate in and of itself. It is not like a Law Society disciplinary hearing, but it suffices on its own grounds. Is that correct?

[Translation]

Senator Carignan: Listen. I cannot make the decision-making body any larger than it is now. The Senate as a whole has 99 seats and 6 vacant seats. Ninety-nine of us will make the decision. What is more, the people targeted by the motion can also participate. It is fairly rare for the person who is being prosecuted to participate in rendering a decision on their own fate. This is an unusual situation, but that is what a parliament is like. You cannot have greater natural justice than to participate in rendering the ruling deciding your own fate. We all agree on that. That is how collegial decision-making works.

When we talk about the aspects of the offence, we must not forget that the first part involves the expenses that were deemed inappropriate under the rules. A committee decided. That committee has the exclusive authority to decide and met with Senator Wallin. Deloitte met with the three senators in question several times. Senator Wallin had the opportunity to present her opinion, to the point where she was able to justify \$390,000 of her \$532,508 in questionable claims. She was able to justify two-thirds of those claims, which left \$121,348. She did not manage to convince the committee that these claims were appropriate. According to the committee, just under a quarter of the claims were inappropriate. She managed to get the Internal Economy Committee to side with her on three-quarters of the claims.

There were steps that occurred after that. The evidence was weighed, but the Internal Economy Committee rendered a decision and found that Senator Wallin had to repay \$121,000.

The fact that Senator Wallin violated the rules has already been established. What comes next? To determine whether she undermined the dignity and integrity of the Senate. Who is in the best position to do that? We are.

[English]

Senator Segal: I wanted to ask a question of the Leader of the Government, and I'd like to ask it to him in the context of his role as Leader of the Government in the Senate, and not in the context of the other role which I am sure he feels he has to play, and that is of a prosecuting attorney. I understand the difference; so does he. I understand the complexity, and I am not troubled by the fact that he has to do a bit of both.

I am not asking him now to answer this question as a prosecuting attorney. I am asking him to answer the question as Leader of the Government in the Senate. He has a broader duty than that of a prosecuting attorney, as he will understand better than most.

The meetings that took place on August 12 and 13 concerning Senator Wallin were in camera. I understand that he would normally have been able to attend; he was unable to. He had a substitute sitting in his place. I had the privilege of being there, and as I listened to the degree to which the Leader of the Government in the Senate relied upon the report of that committee and the auditor's report, it occurred to me that what is missing from that — those who were in the room have it now, but those who were not in the room do not have it, because it is not in the report — the back and forth with the auditors about what rules they used to make judgments, the back and forth with the auditors about whether they independently verified the rules that were used. I'm not going to get into what they said; it is not for me to report on them. The question about comments attributed to the auditors — which they worked very hard to deny, and did so on the record — none of that exists in any place other than the secret transcripts of that committee.

Does he not have any pang of conscience at all? Not as the prosecuting attorney — because I understand prosecuting attorneys are out to get someone sentenced; that is their job — but as government head in the Senate, does he not have any pang at all that no one in this chamber, except for those who happened to be at that committee meeting, has any idea of what transpired,

what discussions took place? As Leader of the Government in the Senate, to facilitate the decision of conscience he is encouraging members on all sides to take, would he not want to interact with the administration of the Senate to make sure that those confidential transcripts from the twelfth and the thirteenth, and the meeting of the steering committee that decided what to tell the auditors about what rules to use, and any meetings that took place between individual members of the steering committee and the auditors, that all of those transcripts should, in fact, be tabled on the floor of this Senate so every senator has access to that information and can judge accordingly? Would he not give that thought some consideration, and would he reflect on whether, as Leader of the Government in the Senate, the absence of that documentation causes him any pangs of conscience at all?

Some Hon. Senators: Hear, hear!

[Translation]

Senator Carignan: Senator Segal, you are calling into question two important principles. The first relates to in-camera meetings. Why should meetings be held in-camera in situations like these, as the rules allow? In camera meetings protect people's privacy. When the Internal Economy Committee makes decisions regarding staff members and other people behind closed doors, it does so to protect their privacy. Therefore, in choosing in camera meetings, our goal was not to hide anything but to protect the person involved.

• (2330)

The individual is present and is entitled to all the information. As senators, we can all attend the meeting. You were there, even though you were not a member of the Internal Economy Committee. That is one of our principles and we can review it if you wish.

You asked me the question because I am the Leader of the Government. In that role, I want to open the doors to this institution; I want more transparency and more openness. I would welcome a discussion of these aspects by the Internal Economy Committee in order to make it more public. Just because things happen behind closed doors does not mean they are wrong. That is our way of doing things. The Internal Economy Committee always makes decisions that way. We have the twenty-seventh report. Does that mean that the other 26 reports are not good? That is how we always do things. There is no need to change our Rules or our way of doing things. The reports are available, the senators are present and they can ask questions.

Senator Wallin could have asked for a public meeting. Senator Duffy asked for one on May 28. He asked for a public meeting. He did not attend. Because it was public I was able to obtain a transcript that I used yesterday in the motion on Senator Duffy. Thus, I am guided by what the Senate deems to be authoritative and that is the decision made by the Internal Economy Committee, which has exclusive power to determine if the rules were followed. For me, the authority rests with the 15 colleagues who sit on the Internal Economy Committee, and I have full confidence in them.

[Senator Segal]

[English]

Senator Segal: I want to be clear that I understand. I think the leader was very clear and precise. Even though he has said in the chamber tonight that we are setting a huge precedent in the way we treat people who have had negligence problems; even though he has said in response to Senator Baker that the structure underneath “gross negligence” is contempt for Parliament, which Senator Fraser clearly indicated was not problematic and he was kind enough to withdraw that; he is still of the view that a report that does not reveal what happened at the meeting, what questions were put, and how they were answered by the auditor is a sufficient base to establish this precedent, establish the worst penalties ever set out by this chamber, and he's quite happy on that limited factual base to force everybody to cast a ballot based on their conscience without all the information. I can understand why he's protecting the principle of *à huis clos*, or in camera. I get it. It's hard to change that retroactively, but, as this is a precedential process, setting a penalty that has never been set before, maybe the notion of openness might be addressed not after we throw people off a cliff but while in the process, and his invitation of doing it in this chamber now.

[Translation]

Senator Carignan: Each time we make a decision, we affect individual rights. We are always making those types of decisions. The Internal Economy Committee sometimes awards contracts or takes them away, and that affects rights. All of our decisions affect rights. The Internal Economy Committee affects rights in each of our decisions. In this chamber, we affect collective and individual rights. We pass laws, we legislate, and we constantly affect rights. These are our rules, we adopt them and we affect rights with the rules we have here. We are simply respecting how it works here. This is how we work. If Senator Wallin disagrees, she can tell us. She is here. She has the opportunity. The Auditor General is not here. In the law, I might have a statement against a document written by someone else who is not there to certify it. Technically, she has an extra chance here that she would not have in a trial.

[English]

Hon. Elaine McCoy: It is late at night and perhaps we are losing a little focus here. I sincerely hope we will adjourn soon.

I am very impressed, though, with the general tenor of the questions and debate that have been going on because it seems me that we are, and properly so, focusing on how we conduct ourselves in this matter. I think that's very important. I'm pleased to see this trend continuing.

But I did want—and maybe it's almost through you to Senator Baker—to harken back to an analogy that has been drawn to disciplinary hearings at a law society. The example was the Law Society of Quebec. I am more familiar, as one might expect, with the Law Society of Alberta. To much of what Senator Baker said, I said yes, absolutely, of course, we have all those procedures, but it seemed to me that the analogy was not in total. It wasn't a total analogy, if I can put it that way. Although I have myself never, thank goodness, been subjected to those proceedings, I've observed them or at least paid attention to them when I was practising in Alberta.

It seems to me that the disciplinary proceedings against the individual, and certainly the civil case against the individual, did not proceed until whatever possibility of criminal proceedings might have been played out. I thought that that would be an important piece to remember even this late at night on this debate—not that it's a determinative factor, but just to try to remind ourselves that there are several levels being played out. I think that it is something that we might also consider in how and when we proceed in our own matter.

I do believe, at home, at least, lawyers would not continue to practise law. I think that they would be suspended, if I could use that word loosely, while criminal matters were being considered, even before the charge was laid, but that the law society itself and its disciplinary hearings might wait for those to play out.

It's a thought I wish to leave with all of you. If you wish to respond, Senator Carignan, please do, but this is probably more in the nature of a comment and a thought to take us through until tomorrow morning's debate.

• (2340)

[Translation]

Senator Carignan: With regard to the issue of disciplinary proceedings versus criminal proceedings, the same facts examined in the light of different laws can create different offences. The situation examined under civil law gives rise to a civil offence. The same situation examined in light of the Criminal Code gives rise to a criminal offence. The same situation examined in light of a disciplinary code gives rise to a disciplinary offence.

The three offences apply to the same situation, and a civil finding of guilt does not necessarily have an impact on ethical offences. Why? Because discipline relates to the dignity and integrity of the profession. There is a different element associated with it. Civil offences are based on the civil code, whereas the conditions are different for the other situation. *Mens rea* or criminal intent and proof beyond a reasonable doubt have a great deal to do with it. The two are not mutually exclusive.

[English]

Hon. Pamela Wallin: I just want to make a few comments, and I guess it will be a question ultimately to you. You've challenged me several times to ask you questions, as if that would somehow represent a defence. I have about nine pages of notes, questions and comments to make on what I think are misrepresentations or inadequate understanding of what actually occurred during the process.

To be allowed in this chamber, or even in front of the Internal Economy Committee, to pose questions to others and have that construed to be a defence seems bizarre. It certainly seems to me unfair. As I made reference to in my statements yesterday, what I'm looking for and what I've asked for is due process, a fair hearing, an open-minded jury and time in which to respond.

I just simply have to challenge the notion that this is a productive way or reasonable and fair way to proceed. We've been here since eight o'clock, four hours of accusations and comments. By asking you questions, even if I got 15 minutes and

then another five, to say that that is somehow due process and a fair hearing, I can't believe that you believe that that's the case.

[Translation]

Senator Carignan: The way things work in a deliberative chamber such as a parliament involves being able to debate, share one's opinion, ask questions and table documents, as Senator Brazeau did this morning.

We have rules, ways of presenting our opinions. You have often presented your opinion here. You have surely also had the opportunity to present your opinion on the report, on the points that were raised in it, and to tell us whether, for example, the 31 claims that you admitted were for private business were in fact for private business, and explain why you then said that they were for parliamentary functions.

[English]

Senator Baker: I think Senator Segal has a point on the release of the transcripts of those two meetings. As he will recall, I was concerned, without disclosing everything that was said in that meeting — why not disclose it all, I suppose. This is a judicial proceeding. If you say one thing in front of a judicial proceeding, namely the committee, and you say something else before a future judicial proceeding that contradicts that with the intent to mislead, that violates section 135 of the Criminal Code, 14 years in jail. The transcripts of those meetings are important.

I took exception to the fact that words were used in the report that the investigative forensic accountants had taken the word definitively of the administration of the Senate as to what the rules were and what applied, without question. I quoted from the standards of the investigative, forensic accounting association of Canada. It said in their general rules.001, that you must not take the word of your client at face value but you must take a — I think the word that was used is "cautious" — approach, and question, and not take the word of your client at face value but conduct a thorough investigation to find out if in fact what they told you was absolutely correct. I read out the sections in the summary. I think that's interesting and very important.

I agree with Senator Segal that the proceedings of those meetings should be released to other members of the Senate.

The Hon. the Speaker: Are there further questions or comments of Senator Carignan?

Are we ready to continue the debate? The Honourable Senator Cowan.

Senator Cowan: Thank you, Mr. Speaker. I do obviously want to respond to Senator Carignan. I have prepared some notes, but I want to consider what we've heard from him and others tonight. In view of the hour, I would ask for the adjournment in my name on a solemn undertaking that my speech tomorrow will be shorter than Senator Carignan's tonight.

(On motion of Senator Cowan, debate adjourned.)

(The Senate adjourned until tomorrow at 9 a.m.)

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