



# DEBATES OF THE SENATE

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OFFICIAL REPORT  
(HANSARD)

Thursday, March 6, 2014

The Honourable PIERRE CLAUDE NOLIN  
*Speaker pro tempore*

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## THE SENATE

Thursday, March 6, 2014

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

Prayers.

### SENATORS' STATEMENTS

#### WINTER PARALYMPIC GAMES 2014

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, I rise today to celebrate the 2014 Winter Paralympic Games, which begin tomorrow and will take place until March 16 in Sochi, Russia.

[Translation]

Fifty-four high-performance Canadian Paralympic athletes will be competing against roughly 575 other athletes representing 45 countries. It is the largest Canadian contingent of athletes to participate in a Winter Paralympic Games.

[English]

The Canadian team will compete in six sports: Alpine skiing, Nordic, biathlon, wheelchair curling, sledge hockey and, for the first time, snowboarding. We have medal potential in every single sport, and our sledge hockey and curling teams are entering the Sochi Paralympics as the reigning world champions.

As a B.C. senator, it was an honour for me to have the 2010 Winter Paralympic Games hosted in my hometown of Vancouver, British Columbia, soon after the Olympic Games. In 2018 the Paralympic Winter Games will be held in PyeongChang, Korea, the country of my birth.

In 2010, I also had the privilege to serve on the Canadian Paralympic Foundation with several of our colleagues, including Senator Kochhar, who was chair at the time, to promote the elite athleticism of the Canadian Paralympic athletes and to support Paralympians across Canada. For all the sponsors, volunteers, organizers, parliamentarians and community members who rallied around our amazing para-athletes to achieve their dreams, I extend my deepest appreciation and respect.

As co-chair of the Rolling Rampage on Parliament Hill annually with Jim Munson for a number of years, another legacy of our colleague Vim Kochhar, I've seen the incredible passion and determination of the elite wheelchair athletes from Canada and the world who compete on Parliament Hill in a

10K race. Some of you have witnessed and participated yourselves, and as Vim has said, "the wheelchair is no longer a barrier to success but a symbol of freedom and ability."

They're an inspiration to all of us, and I encourage all honourable senators to participate once again in this year's Rolling Rampage which will be held in October of this year.

[Translation]

I look forward to cheering on our wheelchair athletes and all the Canadian Paralympic athletes competing in the Sochi Winter Paralympic Games. I am sure that all Canadians will be applauding our athletes. The country is very proud of them.

[English]

Honourable senators, I ask you to join me in wishing our Canadian athletes the best of luck in this year's games.

#### THE LATE MOLLY LAMB BOBAK, C.M., O.N.B.

**Hon. Joseph A. Day:** Honourable senators, you may recall that in the fall of 2012, I stood in this chamber and spoke of Bruno Bobak, the Canadian war artist who had died in September of that year.

It is with a mixture of celebration and sadness that I stand in this chamber today to speak of Bruno's wife, Molly Lamb Bobak, who died peacefully in Fredericton, New Brunswick, this past weekend at the age of 94.

Molly joined the Canadian Women's Army Corps in 1942. This allowed her to travel across Canada and to acquire new skills. Molly requested to become part of the Canadian war artists' program, and after VE day in 1945, she was granted her wish. She travelled to the Netherlands and to Britain, documenting activities such as the Canadian women's army show, as well as women with army units in Europe doing drills and parades. Here she also met many fellow artists, but not the least of those was her future husband, Bruno.

As a war artist, Molly painted what she saw in war-ravaged Europe. These talented artists are gifted with an ability to draw out the emotion of a scene in a way that a photo cannot achieve. It is through this ability that they can contribute to the memory of war by capturing the mood of the soldiers, of the citizens caught in conflict, and of our country. Although the paintings in the Senate Chamber are of World War I images, the talent of the artists is readily apparent.

Following the war, Molly returned to her native Vancouver with her husband Bruno. Then, in 1960, they moved to

Fredericton. Molly's obituary states that their move to Fredericton

... proved to be the start of a lasting relationship of love for the city and the province and the genesis of what was to become their extraordinary contribution to the visual arts scene in the city.

Molly used her talents to contribute to the arts scene in Fredericton in a way that will be felt for a long time after her passing. Inspired by the people and the scenes of the city, she was able to paint until the age of 84. Molly received numerous awards during her artistic career, including honorary doctorates from Mount Allison University, the University of New Brunswick and St. Thomas University. Molly represents the end of an era, as she was the last living war artist who documented Canadian involvement in World War II.

Canada has had the war artists program in both World War I and World War II, and more recently the Canadian Forces Artists Program has been established to capture forever the scenes of Canadian Armed Forces personnel in action around the world, carrying on the tradition of Molly and Bruno Bobak. Molly's works will now be on display in the War Museum until March 31. I would encourage each of us to take the time to visit the display of her fine work, which will be enjoyed by Canadians for generations to come.

• (1340)

## INTERNATIONAL WOMEN'S DAY

**Hon. Salma Ataullahjan:** Honourable senators, this Saturday, March 8, we will celebrate International Women's Day. The theme this year is "Equality for Women is Progress for All," which emphasizes the vital role of women as agents of development. Equality for women is progress for all.

Honourable senators, when I reflect on this theme, I cannot help but think of the women in the context of Afghanistan. As Canada ceased combat operations in Afghanistan in 2011 and refocused its military involvement on a training role ending in 2014, we wonder at the outcome for the Afghan women.

In 2010, the Standing Senate Committee on Human Rights examined the role that Canada could play in supporting the protection and promotion of women's rights in Afghanistan. The committee recommended that the Government of Canada make the advancement of women's rights a fundamental element of its approach to Afghanistan post-2011. The three years between 2011 and 2014 were seen as a window of opportunity to strengthen Afghanistan's people and institutions.

Now that we are in 2014, has there been any progress for Afghan women? I am sad to report that women's rights are often the first to be traded in order to appease segments of the population that see empowerment of women as a threat.

In 2012, for example, President Hamid Karzai endorsed a code of conduct issued by an influential council of clerics that was seen as a step backwards for women's rights. The code mandated for

women to fully comply with the hijab, respect polygamy, refrain from travelling alone and avoid mingling with men in public.

This January, a bill that would prevent judicial authorities from questioning relatives in cases of violence against women was passed by both houses of the Afghanistan parliament.

As violence against women occurs mostly within families, this bill would halt prosecution in many cases and would also go against the Afghan parliament's 2009 law on the elimination of violence against women, a law that was considered a victory for women.

Fortunately, after much domestic and international pressure, President Karzai ordered the law to be redrafted into one that would strengthen measures to protect women and girls from violence.

Honourable senators, as you can see, change is happening, but it is incremental, and it requires international support. As Canada withdraws from Afghanistan this year, we must maintain pressure on the nation to uphold women's rights.

On this International Women's Day, let us commit to supporting the voices of the Afghan women, because the minute we turn our backs, women's rights will be the first to go.

[Translation]

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Honourable senators, as Senator Ataullahjan just mentioned, we will be celebrating International Women's Day on Saturday, March 8. For a little over a century, the world has designated March 8 as a day of commemoration and celebration and as a day to promote women's rights and the status of women. It must be said that our success has been limited.

[English]

There has been a great deal of progress for women in the past hundred years, starting with the fact that we got the vote, in most places; but we still have a long way to go. I find it bittersweet that this week the Inter-Parliamentary Union, which tracks these things, announced with some pride, or pleasure or enthusiasm, that if current trends continue, in 20 years there will be as many women parliamentarians in the world as there are men parliamentarians. Not soon enough.

Women in politics do make a difference, but not enough. Only 22 per cent of parliamentarians in the world are now women. In Canada, in the House of Commons, it's still just under 25 per cent. In the Senate, however, we have done better, for many years, and I am proud to tell you that now we women occupy 38 of the 96 occupied Senate seats. That's nearly 40 per cent. When I look at the women who sit here, I think we can be very, very proud.

## THE HONOURABLE CATHERINE S. CALLBECK

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Honourable senators, today I want to draw attention in particular to one of our number, because she incarnates so much of what International Women's Day is about — Senator Catherine Callbeck.

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

**Senator Fraser:** Senator Callbeck was, as I'm sure we all know and indeed remember, the first woman ever to be elected premier of a Canadian province in a general election. She served as Premier of Prince Edward Island from January 1993 to October 1996, and how fitting it is that the first elected woman premier should be in Prince Edward Island, the Cradle of Confederation.

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

**Senator Fraser:** But it wasn't an accident that she blazed that particular trail. She has been blazing trails all her life. If I were to read the list of awards and accomplishments, we would be here very late today, and there is an even longer list of the volunteer work she has undertaken in fields ranging from the arts to business to health to the United Church.

I would note particularly her interest in women, especially women in business. This comes naturally to her. She has a Bachelor of Commerce degree as well as a Bachelor of Education degree and postgraduate courses in business administration, and perhaps most important, was a pillar of her family's business in Central Bedeque, Prince Edward Island, where she lives in her family's truly beautiful ancestral home, more than 150 years old.

We know her as a wonderful senator, hard-working, dedicated, generous, warm-hearted, a model of what we all should be; and it is a terrible thing to think that she will be leaving us this summer, which is why on this, her last International Women's Day in this place, I wanted particularly to tell her how grateful we all, but particularly women in this place, are to her.

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

[Translation]

## INTERNATIONAL WOMEN'S DAY

**Hon. Diane Bellemare:** Honourable senators, I, too, would like to speak to International Women's Day, which will take place on Saturday, March 8. I would like to acknowledge the remarkable performance of our Canadian athletes in Sochi and, in particular, the performance of our young Canadian women who brought home 11 medals, including 7 gold. I would also like to acknowledge the hard work, energy and determination of women entrepreneurs in Canada. A growing number of women in Canada are embarking on the adventure of starting their own business, creating jobs for other women and for men, too.

Keep in mind that in 2011, 15.6 per cent of small and medium-sized businesses in Canada were owned by women. Indeed, women-owned businesses created 1.5 million jobs. As the Honourable Dr. Kellie Leitch, Minister of Labour and Minister of Status of Women, said so well:

Entrepreneurs are the engines of growth, the creators of jobs and the drivers of innovation on which our economy relies, and so it makes sense to celebrate women business

owners during International Women's Week 2014. These women make outstanding contributions to our economy every day and our Government is committed to supporting their success.

Even though we are seeing an increasing number of women entrepreneurs, they need an extra boost. The vast majority of women entrepreneurs — 77 per cent — are self-employed workers without paid help, whose annual income falls below the average income.

Others are seasoned businesswomen. Aboriginal women are particularly remarkable. Indeed, 51 per cent of small and medium Aboriginal-owned businesses are owned, in whole or in part, by women.

Many Canadian women would like to get into business. According to a study done by the Bank of Montreal for International Women's Day in 2012, 71 per cent of Canadian women indicated that they would like to start their own business and 83 per cent of Canadian women said that having access to role models or mentors would be important to their success.

• (1350)

That is why, in the most recent budget, our government made a commitment to undertake consultations in order to identify the best means to encourage women to start their own businesses and to support them through mentorship activities.

The Minister of Status of Women will hold these consultations as part of a campaign called "Strong Women, Strong Canada."

Finally, I would like to take this opportunity to invite all Canadian entrepreneurs, especially women, to apply for one of the entrepreneurship awards sponsored by the Business Development Bank of Canada: the BDC Mentorship Award, the BDC Innovation Award, the BDC Entrepreneurial Resiliency Award and the BDC Entrepreneurship Champion.

Good luck to all female entrepreneurs. Good luck to everyone.

[English]

## ROUTINE PROCEEDINGS

### THE ESTIMATES, 2014-15

#### MAIN ESTIMATES—REPORTS ON PLANS AND PRIORITIES TABLED

**Hon. Yonah Martin (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, the Reports on Plans and Priorities, Main Estimates, for 2014-15.

## BANKING, TRADE AND COMMERCE

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY THE USE OF DIGITAL CURRENCY

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

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and report on the use of digital currency including the potential risks, threats and advantages of these electronic forms of exchange; and

That the Committee submits its final report no later than June 30, 2015, and that the Committee retains all powers necessary to publicize its findings until 180 days after the tabling of the final report.

[Translation]

## THE SENATE

### NOTICE OF MOTION TO URGE GOVERNMENT TO ESTABLISH A NATIONAL COMMISSION FOR ONE HUNDRED AND FIFTIETH ANNIVERSARY OF CONFEDERATION

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

That the Senate urges the Government to take the necessary measures to establish a *National Commission for the 150<sup>th</sup> Anniversary of Confederation* charged with the responsibility of preparing and implementing celebrations, projects and initiatives across the country to mark the 150<sup>th</sup> anniversary of Confederation during the year 2017. Further, the Senate urges that the membership of this commission include representatives from all the provinces and territories and that, in addition to any budget voted by Parliament, the commission be able to receive contributions from Canadians.

[English]

## CANADA-EUROPE PARLIAMENTARY ASSOCIATION

### PARLIAMENTARY MISSION, NOVEMBER 14-20, 2013— REPORT TABLED

Leave having been given to revert to Tabling of Reports from Interparliamentary Delegations:

**Hon. Leo Housakos:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-Europe Parliamentary Association, respecting its participation in the Parliamentary Mission to Athens, Greece, the next country to hold the rotating

presidency of the Council of the European Union and Zagreb, Croatia, the newest country to join the European Union, from November 14 to 20, 2013.

## QUESTION PERIOD

### EMPLOYMENT AND SOCIAL DEVELOPMENT

#### YOUTH HOMELESSNESS

**Hon. Art Eggleton:** Honourable senators, my question is for the Leader of the Government in the Senate. According to a new report from York University, Canada is failing to meet the needs of homeless youth. We have a system that is geared towards adults and adult responses, such as shelters and drop-in centres, but it's doing little to reduce youth homelessness. Youth needs are different from adult needs. This is creating a very difficult life for homeless youth, now and in future.

We know that only one in three homeless youth graduates high school. In an economy increasingly based on credentials, this puts them and their future at risk. More than half of homeless youth have been in jail, youth detention or prison. This further isolates them and limits their ability to move ahead.

What is needed is a plan targeted at homeless youth. Will the government join with and support the provinces and municipalities to develop plans to end youth homelessness?

[Translation]

**Hon. Claude Carignan (Leader of the Government):** Thank you for your question, senator. As you know, we have always been committed to helping vulnerable Canadians become independent and lead productive lives. In our 2013 action plan, we allocated an additional \$1.25 billion to new investment in affordable housing. That was in addition to money already granted for renovating existing social housing units, including cooperatives.

We are implementing measures to help low-income households, especially in terms of social housing, as well as families, seniors, people with disabilities, Aboriginal persons and, of course, youth. As I've said, the 2013 Budget renewed the homelessness partnering strategy. Senator, you were the mayor of a large city; I was also mayor of a city that benefitted from this homelessness partnering strategy, the HPS, which specifically targeted youth. I myself have witnessed government actions to reduce youth homelessness in my municipality.

That is why I have a hard time understanding why you would ask such a question and say that our government is doing nothing for homeless youth. I completely disagree.

[English]

**Senator Eggleton:** First of all, I didn't point any finger at the government at all. I said Canada, the country. We, as a country, are failing to meet the needs of youth. Many of the programs and services you've talked about, I'm familiar with. They are primarily geared to the general population or to adults specifically.

What I'm saying is that many homeless youth don't graduate from school. Many of them can't get jobs. Many of them have been in detention. They were from broken families. They need particular attention to help them get on their feet again. They're very much at risk, these young people. What I'm suggesting here is that we need a program designed for homeless youth. That's what I'm suggesting.

There are communities, as I think you've pointed out, which are doing some good work in terms of homeless youth. But the problem is that these are small pockets of promise in a system that does not otherwise meet the needs of homeless youth. That said, we can learn from those cities that are doing something for homeless youth.

• (1400)

Needed here are programs to be put in place to share best practices. We've done that in some cases. I think of Pathways to Education, where the government through the Finance Minister just a few years ago put money into helping that be spread into other communities. We need to do that here in terms of homeless youth as well.

Will you take this up with the government as a basis for saying that we need a specific program for homeless youth, and we need to also share with other communities whatever best practices do exist in municipalities now?

[Translation]

**Senator Carignan:** As I said, we have programs that were put in place under Canada's Economic Action Plan, particularly the 2013 action plan. This type of program exists. There is funding allocated to helping homeless youth. I personally know of programs and funding to combat youth homelessness. We are going to continue to work so that vulnerable Canadians can become self-reliant and lead a productive life. In the future, I invite you to support our economic action plans, which contain measures to combat homelessness.

## CANADIAN HERITAGE

### CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION— TELEMARKETING—NATIONAL DO NOT CALL LIST

**Hon. Grant Mitchell:** Honourable senators, I have the honour and the opportunity to ask a question on behalf of Alberta resident Ed Best.

[English]

He's from Calgary, and he's questioning about the role of the CRTC in regulating telemarketing. Mr. Best asks:

I receive unsolicited telemarketing calls approximately 10 to 20 times per week (even on Sundays). With the advent of robocall computer systems, this type of solicitation has become, in my opinion, nothing less than harassment. This equipment will continue to call back until you acknowledge the calls. There is no way to stop it. Specifically, the "do not call" registry DOES NOT WORK. Period.

Can the Leader of the Government in the Senate please explain how this government plans to address the concerns of Mr. Best and thousands of other seniors and Canadians across this country?

[Translation]

**Hon. Claude Carignan (Leader of the Government):** I will take the question as notice so that I can give Mr. Best the most complete answer possible. As you know, the CRTC already has rules in place for these types of robo-calls. The electoral reform bill that was introduced in the other place contains provisions dealing with the use of robo-calls at election time. As a result, we, in this chamber, will have the opportunity to conduct a more in-depth examination of those provisions and the impact they will have on Canadians.

**Senator Mitchell:** Thank you very much, Mr. Leader. I appreciate it and I am sure Mr. Best will too.

[English]

He goes on to ask and suggest that "the CRTC require phone providers to oblige telemarketers." He suggests that perhaps the definition could be something like the following:

... phone numbers whose outgoing calls exceed a certain number of calls per day/month, etc. — and that by pressing \*99 or some such sequence on [his] phone [he] could indicate to the phone company that [he] wish[es] to have that number blocked from calling [his] number in the future.

Mr. Best says that he "realizes that the argument against this is that telemarketers have a right to carry on business," but he goes on to point out that "laws that have been passed against internet spam and telemarketing must be treated the same way."

Can the leader please comment why his government has not considered a solution like the one Mr. Best is proposing?

[Translation]

**Senator Carignan:** As I explained earlier, this falls under the CRTC's jurisdiction. If you could submit a copy of Mr. Best's question and suggestions, we will forward it to the minister responsible for the CRTC and to the CRTC to inform them of those suggestions.

**Senator Mitchell:** I will do, thank you.

[English]

**Hon. Percy E. Downe:** I have a supplementary question. I wonder how closely the government monitors the CRTC and the do-not-call list. I noticed the CRTC fined TELUS and some other companies, and they were significant fines. In the case of TELUS, it was \$200,000. Rather than returning the money back to the general revenue of the Government of Canada, CRTC made the decision to pay the Carleton University School of Public Policy and Administration to set up a program.

If we have agencies and Crown corporations collecting fines and then deciding on their own where the money should go, many Canadians would question why that's not coming back to the general revenue of the government.

**Senator Mercer:** He seemed to take note of that one!

[Translation]

**Senator Carignan:** That is a rather technical question that I will take as a suggestion and pass on to the minister responsible for the CRTC.

[English]

**Senator Downe:** I have a further brief supplementary, because I know my colleague Senator Mercer has another question.

Last week, the Quebec media reported a new scam from these telemarketers where they're using the provisions that political parties have who are excluded from the do-not-call list. They're calling, saying, "The captain is calling. You won a cruise. What do you think the big issue is in the country?" Then they go on with their sales pitch.

This is obviously not the intention of the exemptions for political parties, but it is now being abused. Do you know what the government or the CRTC intends to do about that, to cut back on these unnecessary calls that we all receive?

Finally, I'm wondering why the CRTC continues to sell the list of names of Canadians who sign up for the do-not-call list.

[Translation]

**Senator Carignan:** Senator, the case you are referring to was reported in the French-language media roughly two weeks ago. This seems to be an elaborate international fraud scheme. I am sure that the public safety services and police services are already aware of these sorts of cases and scams.

[English]

## NATIONAL DEFENCE

### CADET PROGRAM CUTS

**Hon. Terry M. Mercer:** Honourable senators, we depend upon the youth of our great nation to foster a better future for Canada through their participation in the arts, education,

entrepreneurship and volunteering. Young people are members of many clubs, societies and groups that help their communities promote Canada on the world stage and, most importantly, instill the values of service for the greater good.

The Cadet Program is:

A national program for young Canadians aged 12 to 18 who are interested in participating in a variety of fun, challenging and rewarding activities while learning about the Sea, Army and Air activities of the Canadian Armed Forces.

Right after Christmas, the government announced a \$2 million cut to the budget of the Cadet Program that affects all purchases. Cadets are now being forced to wear their own clothes when existing supplies run out, including their own parkas when it gets cold. These young people want to feel and look like they belong to something higher than themselves. And what does the government say to them? Get your own coat.

• (1410)

Does the Leader of the Government in the Senate not think that balancing the federal budget on the backs of young cadets is a little too much?

[Translation]

**Hon. Claude Carignan (Leader of the Government):** I think that is a comment. I will pass it along to the minister.

[English]

**Senator Mercer:** Thank you for passing on my comments. I was looking for an answer, but I guess it's another typical day where we don't get answers.

Honourable senators, this is deplorable. The government continues to foolishly spend money on advertising the economic action plan and then turns around and tells cadets to get their own parkas. I can tell you from first-hand experience just how beneficial being a cadet is. I, in fact, was a cadet.

**An Hon. Senator:** No!

**Senator Mercer:** Yes, I know; it's hard to believe. My son Michael, who is currently the commanding officer in the Sea Cadet Corps in Mount Uniacke, Nova Scotia, grew up in the cadet program, and I've participated in many events over the years with him. These programs give young people a sense of purpose. They keep them safe and free from the bad influences that some young people face today. They help to develop small communities, like the community I live in, Mount Uniacke, Nova Scotia, and encourage participation by all members in those communities. Indeed in my community, every weekend you turn around there's another activity as a support to the cadet corps. A few weeks ago I was involved in driving cadets around for a bottle drive to raise money for their activities.

I'm told that the local RCMP believes that participation in the new cadet unit in Mount Uniacke has even reduced vandalism and nuisance calls. They have been cut in half; think about that —



50 per cent. As reported by the principal of the local school, almost all of the cadets' school grades have improved greatly.

The government continues to spend money to promote the economic action plan. How much could you save by cutting down on that and restoring the funding to cadets? Would the leader not agree that restoring the \$2 million in funding is invaluable and quite easy to do?

[Translation]

**Senator Carignan:** Senator Mercer, I will pass your comments along to the minister. As for spending money to promote the Economic Action Plan, when the current government spends money to promote economic action programs, it does so to ensure that as many Canadians as possible can learn about and take advantage of these programs.

When our government spends money on advertising, that money goes to those who need it, but when the Liberals spend money on advertising, that money goes to their friends.

[English]

**Senator Mercer:** One of these days — and I hope it's soon — Senator Carignan is going to be so surprised when he wakes up in 2014 because he continues to live in the past.

Honourable senators, I'm here to talk about a program that affects young people in Canada. Senator Carignan seems to want to talk politics. I want to talk about helping young people.

The record of this government is abysmal when it comes to supporting anything that resembles helping the military. There are no ships, no armoured vehicles, no fighter jets — and we still have those helicopters. How much of that money could have been spent to buy uniforms for our young cadets? This is shameful bungling. The defence procurement has wasted millions.

When will this government find its competence? How can Canadians trust you to deliver these programs when you can't even handle something as basic as cadet uniforms?

[Translation]

**Senator Carignan:** It is sad that Senator Mercer refuses to acknowledge the past. The past exists and we cannot forget it overnight. We certainly cannot forget how important the sponsorship scandal was in our history. You cannot just turn around one day and say, "I am no longer Liberal," to avoid living with the consequences of the past.

[English]

**Hon. Wilfred P. Moore:** Leader, like Senator Mercer, I too was involved and have been a cadet and served in the air force reserve. You and I also have something in common, having been

municipal politicians. I know the value of the cadet corps in the city of Halifax, whether it be army, navy or air force, and the pride of the uniform and the pride of doing something for your country, even at that young age.

Will you not agree that that \$2 million would be well spent to encourage our youth? There's great discipline that goes with being a member of a cadet corps. There's fellowship and pride of wearing the uniform. Would you not agree that would be money well spent?

[Translation]

**Senator Carignan:** Senators will recall that a few weeks ago I had guests from the Kiwanis Club in Saint-Eustache. Back home, the cadet program is called Saint-Eustache Kiwanis. The Kiwanis Club in Saint-Eustache was created to support cadets the year that the cadet program was established.

I am very familiar with the system and with how important cadets are, since I have attended many of their events. We sponsored them, we supported them, and the Kiwanis Club in Saint-Eustache continues to support them. As for Senator Mercer's suggestion, I will pass it on to the minister.

[English]

## FOREIGN AFFAIRS

### EGYPT—DETENTION OF MOHAMED FAHMY

**Hon. Jim Munson:** Honourable senators, this question is obviously to the Leader of the Government in the Senate.

Mr. Leader, as you know, we recently began asking questions submitted by Canadians during Question Period, but today I would like to ask you a question from a Canadian who can't ask a question because he is in an Egyptian jail. Mohamed Fahmy is unable to take part in any of our questions because of his circumstance, and he's being held by a foreign government. Mohamed Fahmy is the English language bureau chief for Al Jazeera news service, and he has been detained, along with two of his colleagues, in Cairo since late December.

He has received consular services, but your Conservative government has been silent while others — journalists, international organizations, UN representatives, world leaders — have called for his release. Even the President of the United States, Barack Obama, is calling for him to be released.

Mr. Leader, where is your government on this issue?

[Translation]

**Hon. Claude Carignan (Leader of the Government):** Canadian representatives are providing consular assistance to Mr. Fahmy and are in contact with his lawyer. Senior Canadian officials have discussed his case with their Egyptian counterparts. They have called for a speedy and fair trial in accordance with Mr. Fahmy's wishes.

We are in regular contact with his family and will continue to look out for his overall well-being.

[English]

**Senator Munson:** A fair trial. It seems that there should not be any trial for Mr. Fahmy, who was doing his job as a journalist in Cairo. Mr. Fahmy is a dual citizen. He came to this country 20 years ago with his family, but he's been told by consular officials that because of his dual citizenship, their hands are tied in terms of getting his release.

Do you believe that is the case?

[Translation]

**Senator Carignan:** As I said before, Senator Munson, Canadian representatives are providing consular assistance to Mr. Fahmy and are in contact with his lawyer. Senior Canadian officials have discussed his case with their Egyptian counterparts. We are in regular contact with his family and will continue to look out for his overall well-being.

• (1420)

[English]

**Senator Munson:** I have a brief supplementary question. When I was a reporter, many years ago now, and was thrown in jail in China, in the Forbidden City jail — and, God forbid, you don't want to spend a couple of days there — your government, the Progressive Conservative government, a compassionate government, through Minister Barbara McDougall, negotiated my release pretty quickly by foreign minister talking to foreign minister. I was a grateful journalist to not have to spend too much longer there. I was simply doing my job, post-Tiananmen massacre, doing my work.

I recognize that it's very sensitive, and I understand the issue in Egypt, but all Mohamed Fahmy was doing was his work. Consular to consular, officials to officials, I recognize the work that they do, but don't you think this should be looked at on the ministerial level?

[Translation]

**Senator Carignan:** Senator, even in light of the experience you just mentioned, the answer is the same. Senior Canadian officials are discussing this case with their Egyptian counterparts. Canadian representatives are providing consular assistance to Mr. Fahmy to continue to look out for his overall well-being.

[English]

#### HAMILTON DECLARATION

**Hon. Wilfred P. Moore:** Leader, I'd like to follow up on my question yesterday regarding the Hamilton declaration with respect to the conservation of the Sargasso Sea. I don't know if you've had a chance to get an answer from the Department of

[ Senator Carignan ]

Foreign Affairs, but I want to put on the record that this is an opportunity for Canada to show sensitivity to this very unique environmental area.

I want to read this into the record because it is important. The document says:

... *Acknowledging* that this Declaration is not legally binding and is without prejudice to the existing legal rights and obligations of the Signatories under international law or to the competences of regional and international organizations.

I want to make the point that, in your pursuit of this matter, this is not something that restricts or adds to the obligations of our country. I know that Speaker Kinsella is aware of this file. I know that we're going on break after today, but I would hope that the offices will still communicate. Maybe you could find an answer to my question of yesterday and convey it to Speaker Kinsella before the signing ceremony, which is set for next Tuesday. I would appreciate it if you could look into that again.

[Translation]

**Hon. Claude Carignan (Leader of the Government):** I promised to obtain a reply from the minister responsible and to provide you with a written answer. Therefore, I will keep my promise and obtain an answer to your question.

[English]

## ORDERS OF THE DAY

### NORTHWEST TERRITORIES DEVOLUTION BILL

#### THIRD READING

**Hon. Richard Neufeld** moved third reading of Bill C-15, An Act to replace the Northwest Territories Act to implement certain provisions of the Northwest Territories Lands and Resources Devolution Agreement and to repeal or make amendments to the Territorial Lands Act, the Northwest Territories Waters Act, the Mackenzie Valley Resource Management Act, other Acts and certain orders and regulations.

He said: I'm pleased to have the opportunity to speak to Bill C-15, the "Northwest Territories Devolution Act." As Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, I've had the opportunity to study the impact of this bill on the people of the Northwest Territories over the past few months, and I can tell you that it is a game-changer.

During the committee's pre-study of the bill, we heard from 34 witnesses, over eight meetings, and received a number of written submissions. I was particularly struck by the testimony of the Premier of the Government of the Northwest Territories, the

Honourable Bob McLeod, who highlighted the importance of this bill for the political and economic development of the Northwest Territories.

I think the premier described it best at his appearance before the committee in December when he said:

Devolution will mark the culmination of a political evolution that began with the original creation of the Government of the Northwest Territories in 1967. For the first time, the people of the Northwest Territories will enjoy a level of self-determination and control over territorial affairs on par with that enjoyed by their fellow Canadians in the provinces and Yukon. Devolution will make good on the promise from 46 years ago and which we have secured through the ongoing development of a fully elected and representative legislative assembly that has steadily assumed responsibilities from Canada.

Honourable senators, Bill C-15 will transfer greater responsibility for lands and resource management to the Government of the Northwest Territories and improve the territory's regulatory regime. The powers afforded to the Government of the Northwest Territories by this bill will put the N.W.T. in a position to capitalize on its tremendous economic potential.

After more than three decades of discussions and negotiations and upon the passage of Bill C-15, the devolution agreement, we are working towards a seamless transition to the target devolution effective date of April 1, 2014.

Ultimately, our government believes that northerners should exercise greater control over and assume greater responsibility for their lands and resources. We also believe that if northerners possess the proper authorities and legal tools, they will be able to exercise these new powers in ways that benefit not only themselves but also all Canadians. The result will be northern communities marked by greater confidence and self-sufficiency. The "Northwest Territories Devolution Act" will bring tangible improvements to the Northwest Territories and fully deserves the support of this chamber.

Honourable senators, I encourage you to join me in supporting the "Northwest Territories Devolution Act." Thank you.

**The Hon. the Speaker *pro tempore*:** Continuing debate? Question?

**Some Hon. Senators:** Question!

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

**Hon. Senators:** Agreed.

(Bill read third time and passed.)

## CITIZENSHIP ACT

BILL TO AMEND—MOTION TO AUTHORIZE SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE TO STUDY SUBJECT MATTER—DEBATE ADJOURNED

**Hon. Yonah Martin (Deputy Leader of the Government),** pursuant to notice of March 5, 2014, moved:

That, in accordance with rule 10-11(1), the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine the subject matter of Bill C-24, An Act to amend the Citizenship Act and to make consequential amendments to other Acts, introduced in the House of Commons on February 6, 2014, in advance of the said bill coming before the Senate.

She said: Honourable senators, I will keep my remarks brief. I know that this is a very important bill that is before the house. It is one of importance on a very personal level for me as an immigrant to Canada, having served on the Social Affairs, Science and Technology Committee and having worked and met with the previous minister, as well as with the current minister. It is a bill that is of great significance to Canadians and the real integrity and effectiveness of our system, and I understand that it has not yet gone to committee. Therefore, looking at our very busy calendar, with two constituency weeks happening in both March and April, in order to really address this important issue, a pre-study is appropriate. Especially timed with the fact that it has not gone to committee in the house, it would be a chance for the committee to pre-study and perhaps weigh in in a way that could have some impact.

• (1430)

The chair of the committee and members of the committee, on which I served for five years, are so capable. They will do considerable good work in a pre-study, so I ask all honourable senators to adopt this motion at this time.

**The Hon. the Speaker *pro tempore*:** Continuing debate?

**Hon. Art Eggleton:** I would like to respond, but I would need some time to do so. I therefore take the adjournment of the debate.

**The Hon. the Speaker *pro tempore*:** It is moved by the Honourable Senator Eggleton, seconded by the Honourable Senator Moore, that further debate be adjourned until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

(On motion of Senator Eggleton, debate adjourned.)

## ADJOURNMENT

## MOTION ADOPTED

**Hon. Yonah Martin (Deputy Leader of the Government),** pursuant to notice of March 5, 2014, moved:

That when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, March 25, 2014 at 2 p.m.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

## FINANCIAL ADMINISTRATION ACT

## BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Day, for the second reading of Bill S-204, An Act to amend the Financial Administration Act (borrowing of money).

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Question.

**The Hon. the Speaker *pro tempore*:** It was moved by the Honourable Senator Moore, seconded by the Honourable Senator Day, that this bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

(Motion agreed to and bill read second time.)

## REFERRED TO COMMITTEE

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

**Hon. Wilfred P. Moore:** Honourable senators, I want to say a couple of words. I will be very brief, I promise. I want to thank the leadership on this side for supporting my efforts. I want to thank the leadership on the other side for maintaining and confirming the honour and integrity of this chamber. Thank you very much.

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

DISABILITY TAX CREDIT PROMOTERS  
RESTRICTIONS BILL

## SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Buth, seconded by the Honourable Senator Unger, for the second reading of Bill C-462, An Act restricting the fees charged by promoters of the disability tax credit and making consequential amendments to the Tax Court of Canada Act.

**Hon. Art Eggleton:** Honourable senators, I rise to speak to Bill C-462, An Act restricting the fees charged by promoters of the Disability Tax Credit and making consequential amendments to the Tax Court of Canada Act.

Honourable senators, according to Statistics Canada, 12.5 million Canadians are disabled. As a social group, disabled Canadians face many obstacles. They are highly marginalized. They face exclusion from quality education. According to the Social Affairs Committee report on post-secondary education, disabled Canadians are 50 per cent less likely to get a university degree. They have lower employment rates and generally earn less. According to Statistics Canada, of those in the working age population, 54 per cent are unemployed or not in the workforce, and almost 50 per cent of those earn less than \$15,000 annually. The ones who are employed generally have to work in part-time positions. This leads to a lower household income than adults without disabilities have. Disabled men, for example, earn approximately \$9,000 less, and women are not much better, earning \$8,000 less than people with full abilities.

The hardships for persons with disabilities have many causes and components, and I can't begin to do justice to all of them today. One element that the Social Affairs Committee found in our report, *In From the Margins: A Call to Action on Poverty, Housing and Homelessness*, is the role of governments in Canada. In Canada, there is no coordinated policy response to the plight of persons with disabilities — no coordinated policy response. Instead, there's a patchwork of local, provincial, territorial and federal programs that overlap, grab back and fail to provide the adequate income and basic supports required to remove barriers associated with disability.

For example, the five sources of disability income security have different definitions of disability, differing conditions for eligibility and duration of entitlement, different levels of benefit generosity and different incentives to encourage and support return to labour force participation.

Also, benefit levels for persons with disabilities on social assistance have declined in real dollars over the last few years. In seven out of ten provinces, assistance rates in 2005 for persons with disabilities were the lowest they had been since 1986.

• (1440)

The complexity of current programs and their interactions can leave too many people with disabilities without adequate incomes,

and even without any income at all, as they are bounced from one system or program to another.

We need change. We need a coordinated approach between all levels of government when supporting persons with disabilities. Our report from the Social Affairs Committee recommended that one of the ways to do that would be for the federal government to develop and implement a basic income guarantee at or above the poverty line for people with severe disabilities. Like the Guaranteed Income Supplement for seniors, which has done a lot to lift seniors out of poverty, it would be income tested, providing an income above the poverty line for people with disabilities. This would take about half a million Canadians with disabilities off the social assistance rolls and the impact in terms of income for persons with disabilities would be significant.

That would be a bold plan to help people with disabilities, but the government and other parties don't seem interested in a bold plan to help our most vulnerable citizens. Until we get systemic changes like the ones I've outlined, we have to rely on what we have.

One important program that we do have is the Disability Tax Credit. It provides financial aid to some, and has become the gateway for determining eligibility for other benefits, but there are problems.

Currently, it is non-refundable, meaning it doesn't pay anything to recipients with income so low that they do not owe income tax. According to the Caledon Institute, only 30 to 40 per cent of the potential target group receives the tax credit. That means fewer than half the people who could benefit do so. This is an inadequate program, honourable senators.

We advocated making the tax credit refundable in our report four years ago and nothing was done. We cannot wait any longer. The government needs to make this benefit refundable now. That simple change would do wonders for thousands of disabled Canadians.

Honourable senators, we have heard from the disability community that the process and paperwork needed to get the benefit is difficult to navigate, particularly for the severely disabled. This has created an industry of third-party consultants offering to help disabled Canadians through the process.

We also heard the government cutbacks at Canada Revenue Agency, particularly the closing of its service counters, make it more difficult for people to obtain information and manage the application process. This pushes more and more disabled persons to seek help by third-party consultants.

Why is this important? In 2005, the government allowed disabled Canadians to claim the tax credit retroactively for up to a decade. When their application is approved, some people receive a refund in the thousands of dollars, but the consultants take a percentage of that money. Some of the consultants are taking advantage of very vulnerable people. Some are charging an astonishingly high rate, as high as 40 per cent of the benefit the

disabled person is receiving. This is deplorable. This is taking an estimated \$20 million out of the hands of Canadians who need it the most.

We need to curtail this unacceptable practice. We need the money in the hands of Canadians who need it most. This private bill that comes before us today seeks to crack down on this fraud and set fee ceilings for consultants.

Honourable senators, we need to make sure that we are measured in our approach. The bill does not spell out how high the cap will be, how it will be set, or what criteria will be used to set it. One hopes that the appropriate levels will be determined, but that's going to come later in the regulatory process.

We must ensure that by restricting these fees we do not restrict disabled Canadians' access to this tax credit. There are legitimate businesses that, at a reasonable cost, provide a valuable service to help disabled Canadians access this program.

We also need the government to look at the real root cause of this issue, which is the complexity of the application process. This bill is just a band-aid solution.

Does the process need to be so difficult? There must be a better way to ensure the program is fair and accessible to Canadians with disabilities.

Honourable senators, I look forward to the testimony at committee to better understand some of the details of this bill. There are some unanswered questions and a full hearing would go a long way to determine the best way forward.

Unfortunately, many disabled Canadians have a very difficult time in Canada. We need to do better to support them. We need to make sure that they can live full and productive lives. They should not have to live in such hardship. They deserve better.

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

**Some Hon. Senators:** Question.

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

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** When shall this bill be read the third time?

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

**CRIMINAL CODE  
NATIONAL DEFENCE ACT**

BILL TO AMEND—SECOND READING—  
DEBATE CONTINUED

Leave having been given to revert to Other Business, Commons Public Bills, Second Reading, Order No. 1:

On the Order:

Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator Marshall, for the second reading of Bill C-394, An Act to amend the Criminal Code and the National Defence Act (criminal organization recruitment).

**The Hon. the Speaker *pro tempore*:** Senator Dallaire has 35 minutes remaining of his time.

**Hon. Roméo Antonius Dallaire:** Honourable senators, I'm back on Bill C-394 and, if you remember the discussion yesterday, the aim of the bill is to seek to criminalize the act of gang recruitment by making it a criminal offence to recruit, solicit, encourage, coerce and invite a person to join a criminal organization.

• (1450)

Yesterday, when we adjourned I spoke of the youths of the diaspora in the country, which is a growing element of our communities, and the impacts of gangs on them. The example I was using, where these youth may have come in even as unaccompanied minors from countries that are in turmoil, end up, of course, every year being a year older and become adults as of 18. That doesn't necessarily mean that they have been able to find the solution of how to handle the profound cultural changes or adjusting to our way of life, let alone achieving any economic stability to permit advancement.

Yesterday I was about to speak about the lost boys of Somalia. These are groups of former child soldiers who, because of that conflict, were brought into the country as refugees and given a three-year time frame to attempt to adjust to the way of life. They got some support from welfare and the like, but we're discovering that they still have a fundamental problem with being accepted due to a variety of reasons: First, not having the skill sets; second, the educational level is not there; and third, simply the loss of any reference they have to their previous cultural framework and the current one here, and I'm not even going to talk about the cold.

This group I met in Calgary told me that a number of them find themselves recruited, by extension of survival in the community, into gangs that are engaged in drugs and in misdemeanours of different types, and once they're in it they can't get out.

Last year, five of them were killed in the streets of Calgary. They were over 18, they were in these gangs, caught in the maelstrom of doing things and couldn't get out, and then nearly held for ransom by the leaders of those gangs. They survive a war as a child soldier in their home country, they come here and within less than three years they're dead — killed in the streets of our own cities.

There is an absolute requirement to get at this fundamental premise of recruitment of youths and ultimately young adults into these gangs. One of the tools presented here of course is to criminalize that, but I think it's not sufficient. It's not one that will achieve the aim ultimately.

Poverty, abuse, loneliness, disengagement from society, all these are factors that limit the potential of these young people to integrate and do more than survive but hopefully thrive as new Canadian citizens. This, to my chagrin, makes them an absolutely excellent target for recruitment by criminal gangs while minors and then they're in it as young adults.

These at-risk groups face two problems, which are often intertwined. First, the young people feel hopeless and lost. They long to have the power to shape their own future but all the circumstances in their life point them down a specific and disheartening path. They join gangs to feel important, to feel like somebody and to be empowered, for they have been and feel totally disenfranchised. They see it as a way to maintain control over their own life. They have more power than their background and experience might otherwise allow, but that power is, of course, misdirected and a source for their demise.

[Translation]

Criminal gangs are gaining notoriety because they create fear in neighbourhoods where people and their children should be able to feel safe. That fear gives rise to another problem: an entire generation is growing up in gang territory and does not expect to live in safety. These children have come to believe that they need to join a gang to protect themselves and their family. They are looking for protection and believe that there is strength in numbers.

When I was at a youth centre in Edmonton, the four guys I spoke about yesterday described how they patrol the streets of Edmonton to protect Aboriginal girls who are used as prostitutes.

[English]

These four guys were describing how their gang is not profiting from these girls being used in prostitution but are protecting them from people who will abuse them and, in fact, even distributing instruments for their own well-being as best they can. They're talking about Aboriginal kids — girls — who are 12, 13, 14 years old.

[Translation]

Before they can even realize what is happening, they fall into a vicious cycle of drugs, violence and, of course, crime.

That is why I fully support the principle of this bill, which is designed to prosecute individuals who prey on at-risk youth, namely, the recruiters, the men and women these who target youth in particular, who run these gangs that are a threat to everyone's safety. They also rob our country of our potentially promising youth, by claiming to offer them a fair chance if they join the gang.

Adults recruit children to commit crimes and, on that front, I have no reservations about the bill.

[English]

However, we all recognize that it is our duty as senators to give all legislation a critical eye. Laws cannot be made based on feeling and opinion alone. We must also ensure that there is reason behind this bill, that there are metrics to ultimately build policies to implement these bills, and that it is constructed in such a way that actually addresses the problem it seeks to solve; that is to say, reduce the possibility of youth being recruited and reduce the power and the capability of the gangs within our community.

Similar to my colleagues in the opposition parties in the House of Commons, I have a few concerns about the bill in its current form. My first concern is about the necessity of this bill. As you can tell from the remarks I've just made, there is no doubt in my mind that the government must do more to address the problem of gang recruitment. That's a given. However, as many have already noted, there are already sections in the Criminal Code that allow for the prosecution of recruitment into gangs. Section 467.11 was designed with this purpose in mind.

I will quote from Catherine Latimer, Executive Director of the John Howard Society of Canada, who notes that:

Good criminal law principles prefer broad categories of offences rather than particular offences addressing possibly transient concerns, news stories or public hysterias

We're not in that realm. We know there is a problem but the question is: Do we need another hammer above what is already in existence within the Criminal Code? Do we need something different from simply a law to increase the punitive side of trying to address the gang problem? Would there have been other tools available? That's a question of why introduce it when there are tools that may not be maximized.

The question we must ask ourselves, honourable senators, is whether the recruitment of gang members is adequately prosecuted under existing law, and if not, whether the remedy is a new category offence, which the bill proposes, or merely some new language clarifying the intent of an existing section of the Criminal Code, which is an option that could have been entertained without necessarily introducing new law.

• (1500)

[Translation]

I am also concerned, of course, about the mandatory minimum sentences for recruiting minors. One thing is certain, I agree with the government when it says that the crime of recruiting minors is worse than that of recruiting adults. I devote a major part of my life to the issue of child soldiers.

When it comes to adults in our country who recruit minors into criminal activity, it goes without saying that I fully agree that we should take more aggressive action against them to prevent them from causing harm and, in doing so, strike a blow against gangs, which would disappear if they were unable to recruit new members.

However, by imposing mandatory minimum sentences, the government is taking away the judges' discretionary power, when they are trained to take into consideration all the circumstances of a case before making their decision. With these minimum sentences, the government seems to be saying yet again, "Don't bother us with the details. Just throw everyone in prison. Let's get rid of them."

We must accept that there are extenuating circumstances in some cases or at certain times. What is more, sometimes a rehabilitation-oriented sentence would be more appropriate than a simple prison sentence; however, that element seems to be lost in many of the proposed bills in which the government does not seem to want to use existing social tools aimed at education to deal with a problem. The preference seems to be to hit the offender over the head with a hammer and potentially get rid of the problem. Only, those offenders will not stay in prison their entire lives — but maybe that's what the government wants. It wants the offenders to remain troublemakers and stay in prison their whole lives. However, when they get out of prison, they may pose a much more serious problem than before.

Some say this is especially true for gangs, whose influence over their members persists even in prison. These people cause more harm to themselves and others if they are in prison than if they do community service or enrol in some kind of training while serving their sentence. That takes money and resources too. I'm talking about the ability to rehabilitate these people and show them that they can escape the trap they fell into when they were recruited, sometimes without realizing the gravity of the situation they ended up in.

The last thing I want to talk about is the indirect consequences of the legislative measure. Under Bill C-394, if an adult offender is convicted of recruiting minors for street gangs, he must serve at least six months in jail. That is clear and unequivocal. I think that the committee really needs to look into whether this measure will prompt street gangs to get minors to do their recruiting. You're 16, you target some kids, get them on board, and you'll never have to serve a mandatory six-month sentence because you're a minor.

Since adults automatically go to prison — there is no alternative — we might end up seeing that young people, who can be even more effective at influencing their peers, are the ones going out to recruit them. Instead of protecting these children by preventing them from falling into the hands of gang members, I am afraid we are condemning those who are already caught in the trap to become even more deeply involved as recruiters of their peers.

[English]

Additionally, there is significant research and evidence to suggest that gang suppression programs and incarceration of gang members simply do not work.

According to a report from the Aboriginal Council of Winnipeg, although gang suppression programs are "effective in decreasing gang-related crime in the short term," they fail to address the root causes of why young people join gangs, which are the tools that the recruiters use. The report also states, "Suppression initiatives should only be utilized to complement a range of interventions." Furthermore, they note that incarceration of young gang members actually increases the

chances of reoffending and staying in the gang because grouping high-risk youths only increases the strength of those gang bonds. They join them, they become brothers in arms and there's a loyalty that's installed there out of fear but also out of the fact that they have found a place in society, even though that place is so terrible and, in fact, against the law.

[Translation]

Honourable senators, I support the principle of the bill and would be pleased to take a closer look at it when it gets to committee. I think we, as senators, have the opportunity to show once again that we are capable of making the necessary changes to a bill that may be fair in theory, but not necessarily enforceable in practice, so that we can make this bill worthy of its name.

We can restore our reputation as legislators and protect neighbourhoods all across the country where vulnerable youth feel they have no choice but to join a gang and live a life of crime and violence. We can help ensure that no one is able to destroy the potential of these young people, whether they are from Aboriginal communities or live in one of our many major urban centres as part of diaspora communities that came to this country in search of a better world.

Thank you, honourable senators.

**The Hon. the Speaker *pro tempore*:** Senator Dallaire, would you take some questions?

[English]

**Senator Dallaire:** Yes, of course.

**Hon. Donald Neil Plett:** First of all, senator, I want to thank you for keeping your word and for speaking this week. I know you wanted to speak on Tuesday and leadership wouldn't allow you to, so we'll deal with leadership at some point.

Nevertheless, I appreciate your keeping your word, senator. I further appreciate the fact that you have said that you, in principle, support this legislation, and everything you have said certainly indicates that.

You have said a few times that we have legislation already, so this is somewhat redundant. The current law that exists requires that the individual has to accept the invitation to join a gang. This new legislation is simply that the act of inviting or encouraging makes it illegal, even if the young individual doesn't accept the invitation to join the gang.

Mandatory minimum sentences have long been a tradition in Canada, and we have had them since the turn of the 20th century. They are used for crimes that the public finds particularly heinous and offensive.

So my question, senator, is — and I think you would agree but nevertheless I want you to tell me — would you not at least

consider the recruitment of a young 12, 13 or 14-year-old individual into a gang to be particularly heinous and offensive?

**Senator Dallaire:** I think that you're quite correct that in the wording between "accept" and actually conducting a recruitment there is a nuance there.

• (1510)

What is sad, in my talking with these youths, is that they don't seem to have the freedom to not accept. That is, once they've been targeted by someone in the community who has seen them, they generally simply fall into the ranks just from peer pressure or because of their circumstances or, in fact, because they already have an addiction, like drugs.

It's true that this will cover every potential base, but the percentage of acceptance of these youths into these gangs is nearly 100 per cent, from what people are telling us.

With regard to the minimum sentence, you are right on track with the point that anybody over 18 who recruits somebody into a gang under that is deserving of the full weight of the law. I certainly fight that internationally, and I think it only appropriate that we fight it here in our country.

The question is, though, what has created that milieu? If so many of the youth being recruited are being recruited by one section of the community, and that section seems to feel that it is in that sort of Catch-22 scenario, then I think the judges have a mitigating opportunity to consider whether that 19- or 20-year-old who is doing the recruiting is doing it freely or is already caught up in the circumstances of the gang and potentially their life is at risk — that is, if they don't recruit, they'll be shot.

This came out from those young child soldiers I spoke of in Calgary. They just didn't have any option. They ultimately were caught in that milieu, and it continues to feed on itself.

Here is one of the terrible examples of societal influence on a community to continue a bad habit, if I can use that term: Many of the women in prostitution in a number of our urban centres are Aboriginal women. A lot of them, as they appeared before our committee on the sexual exploitation of Aboriginal children, would tell us they were 13 and 14 years of age. We were able to get them in front of us, and they said, "Well, my mother was like that." They could even say "my grandmother." They got caught up, hauled into town, thrown into some dump and were not able to escape. They simply fall in line, so they don't know anything different.

It's like the kids in Quebec City where I live who come from that very disenfranchised area. They just don't escape that jungle. They just don't feel secure going to upper town, where it's more elaborate. The impact of society on them has enormous ramifications.

That's why, doggone it, if we're paying judges \$200,000 to \$300,000 a year to sit there and make judgments, then maybe we should let them do it and hold them accountable for that rather than trying to make damn sure they throw the guy in jail.

[ Senator Dallaire ]



**Senator Plett:** If I can just follow up, senator. I understand that you are one of the experts, maybe not on dealing with gangs but certainly on dealing with child soldiers. You have looked down the barrel of a rifle held by a 12-year-old; so I know you, more than anybody in this chamber, are an expert on some of the problems that youth go through, whether it's child soldiers or recruitment to gangs.

I respect you for that, and I know, senator, that you are one of the people who want to study things to the utmost to make sure we have good legislation. Let me simply say that I hope we will support this at second reading so that we can get it into committee and you and I can sit there and study it at committee.

**Senator Dallaire:** The fact that I like long studies is something we can talk about in a different forum. If we had a bar here, we could probably discuss it together; but we don't do that, and that's a great shame.

However, with regard to the child soldier dimension, I'm doing work out of Dalhousie, and we've been approached by the Toronto and Calgary police forces. They have come to us and told us they are facing these gangs in the diaspora groups, and they don't know how to handle them because they are culturally different and have different parameters.

As we were discussing with the deputy chief of police in Toronto what training his team needs in order not to revert very rapidly to the use of force, because a lot of these kids come from areas where extreme force is used, the community came to us and said, "You have got to help us find ways to prevent their recruitment."

Well, part of the work we're doing is exactly that. We want to prevent the recruitment of child soldiers; and I think the links with the gangs here in Canada are worthy of study, and we are working with the police to do that.

We need the bill. I'm not going to say no. I just think that you want to tone it in a fashion to give people the opportunity to do their jobs and also to consider mitigating information, which some of these communities have extensively. This kid who was a child soldier for three years finds himself with no other option, and he's 19 and he's caught up in that, and there is mitigation there. I think we should give the judge the opportunity of taking that decision.

So, yes, I hope the committee will look at it in detail. Don't forget, you owe me a box of jujubes. Thank you.

**The Hon. the Speaker *pro tempore*:** Senator Dallaire, there is another question from Senator Meredith.

**Hon. Don Meredith:** Senator Dallaire, would you take a question, please?

I am someone who has worked with youth over the last 12 years in the GTA and has seen the gun violence that has erupted since 2005, the "Year of the Gun" in our city. In your research, what

has been the fundamental cause of why these young people feel so marginalized that they would want to join a gang in the first place? I have a supplementary as well.

**Senator Dallaire:** They can't get to first base. They literally can't even feel that their peers, within the normal societal program, are able to accept them or even bring them in and give them other options.

They come from a milieu that is often disenfranchised; they are often barely surviving and may be caught up in an area where the criminality is such that they get wrapped up in it.

It's surprising in some of the work we're doing what we find within blocks in the city. For example, in Vancouver we had a girl who by then was 16, an Aboriginal, brought from the reserve at 12 years old, brought into a building, kept prisoner in that building for four years and prostituted, never able to escape; and she's just a couple corners away from that steam clock they have there where all the tourists go.

So the milieu is favourable for them to fall into that option, their being disenfranchised and finding no way, and often the family situation is difficult. It's an escape.

I think that's the worst thing. So we're working at how to give them options so that they don't seek this way to escape the circumstances they're in.

**Senator Meredith:** Supplementary, senator. Do you feel, then, that whether it is Surrey, B.C.; North Preston, Nova Scotia; the city of Toronto; right here in Ottawa; or Montreal, all three levels of government are doing enough to find ways to engage, encourage and empower these marginalized youth from joining these gangs and, further, being caught up in the criminal justice system?

**Senator Dallaire:** Well, the numbers would say that we've really messed it up. The numbers of incarceration in the institutions prove that we didn't find the answer; we're just trying to haul them off the street.

• (1520)

But as with the Aboriginal community and the diaspora community, they are the fastest growing communities in the country; the youths from there are exploding. You are creating a mess that can have quite an indirect security problem for the community, the city at large, let alone our cities.

So, no, I don't think that we're close to achieving what you're saying. If you want immigrants to come in and your methodologies are based on a European immigrant, then you're right out to lunch. In the West, there is Asian immigration. If your structures are based on an Asian culture — it is and is working well — it ain't going to work for sub-Saharan Africa. It isn't going to work for many of the groups that come from nations that are in conflict. We haven't adapted that, and that's why the police are caught up in the front lines of ultimately using force.

I was in the *favelas* of Rio, the slums, where kids under 18, even as young as 9, are caught up in drug wars, moving drugs for the

middle and upper classes. They kill and maim over 2,000 children a year in that city alone. We're nowhere near that scale.

But be advised that as the diasporas and the Aboriginal communities keep growing, and given the communications revolution where gangs can coalesce much faster and build capabilities to make them even stronger, we may face a significant security problem in our nation, not because they want to become one, but because that's the option left to them.

It's one thing to police our community. It would be another thing if we have to police the country because perhaps these gangs will get together.

**The Hon. the Speaker *pro tempore*:** Senator Meredith, I think we have time for another question.

**Senator Meredith:** Senator, I listened to your speech. I was moved by your research and the fact that you've pinpointed some of the challenges that our young people are facing.

On Monday, the Human Rights Committee had an information session. Professor Kwok from Western University highlighted alienation. We talked about new immigrant children coming to this country and the fact that they cannot assimilate into the society. They then become a target. Can you elaborate on the sense of alienation that's dragging them into these gangs where they are feeling a sense of family?

**Senator Dallaire:** I'm not a sociologist. I'm just a soldier using experience from the field. Whether it be here or in other countries, with ethnicity, tribalism, religion, socio-economic variances or simply power-sharing in the community, people let frictions blow up to the extent of becoming conflicts. Those realizations can happen here in a growing nation like ours. So they are different.

Now, there's a school that carries my name in Ajax, Ontario, not far from Toronto. There are 29 classes in that primary school and there are 68 nations reflected. In each class, you have the whole spectrum of religious, ethnic and even tribal differences. And, yes, there were a few White children, the European-based ethnic group in there. They were being brought together in that school and nurtured there.

The principal, who was from Nigeria, I believe, spent an enormous amount of time with her teachers for them to spot the children who were being pushed away or moved aside, trying to circumvent that. Getting them into the schools and keeping them there with programs where they feel their peers are building with them is useful.

There's another school, which I will humbly say carries my name as well, near Barrie. It's a high school. After the visit, we had discussions with the principal and said, "You've got kids coming from countries in war zones. Some of these kids lived through that. Why not have a day where these kids can talk to their peers about what happened to them?" They did that. The other kids could not believe the experiences of their peers and they became not heroes, but people they wanted to bring in.

[ Senator Dallaire ]

That communication reference is sorely needed for community centres, schools and teachers. That system is crucial for the cohesion of our communities.

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

(On motion of Senator Fraser, debate adjourned.)

[Translation]

## THE SENATE

MOTION TO CALL UPON MEMBERS OF THE HOUSE OF COMMONS TO INVITE THE AUDITOR GENERAL TO CONDUCT A COMPREHENSIVE AUDIT OF EXPENSES—POINT OF ORDER—  
SPEAKER'S RULING RESERVED

On the Order:

Resuming debate on the motion of the Honourable Senator Downe, seconded by the Honourable Senator Chaput:

That the Senate call upon the Members of the House of Commons of the Parliament of Canada to join the Senate in its efforts to increase transparency by acknowledging the longstanding request of current and former Auditors General of Canada to examine the accounts of both Houses of Parliament, and thereby inviting the Auditor General of Canada to conduct a comprehensive audit of House of Commons expenses, including Members' expenses, and

That the audits of the House of Commons and the Senate be conducted concurrently, and the results for both Chambers of Parliament be published at the same time.

**The Hon. the Speaker *pro tempore*:** Honourable senators, we are resuming debate on the point of order, which I suspended two days ago. I will first give the floor to the Honourable Senator Downe, and then the Honourable Senator Fraser will continue.

[English]

**Hon. Percy E. Downe:** Honourable senators, as I said earlier, the points of order on this motion don't reflect the reality of the motion. There's no instruction, no order from this chamber if we pass the motion.

Having said that, I did a little research, and the fantasy that one chamber cannot give advice to another — I'll repeat that because you were tied up by the government leader.

The fantasy that one chamber cannot give advice to another chamber, or indeed instructions, is simply that — a fantasy. That in no way relates to my motion, but I wanted to draw your

attention to the *Journals of the House of Commons*, No. 49, Tuesday, February 12, 2008, where the government was very upset that the Senate, in their opinion, was not passing a bill quickly enough. They held a recorded vote that a message be sent to the Senate calling on the Senate to pass Bill C-2, the Tackling Violent Crime Act, and they also included it should be done by March 1, 2008. The government won that vote, 172 yeas and 27 nays. So, obviously, even if it was instructing or recommending to another chamber, which my motion is not doing, that seems to be perfectly allowed.

**The Hon. the Speaker pro tempore:** Senator Downe, is it possible to have a copy of the document that you just referred to, making sure we are on the same page?

**Senator Downe:** Yes.

**The Hon. the Speaker pro tempore:** Thank you.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Honourable senators, in raising this point of order, Senator Tkachuk suggested that the Senate was attempting to instruct the House of Commons, attempting to direct the other place to do something. That is, as Senator Downe has just said, absolutely not the case. This is a motion that invites the House of Commons to join with the Senate in taking action that, for our part, we determined was appropriate for us, and we are suggesting it might well be appropriate for them, too.

Senator Tkachuk cited a ruling by the Speaker in 2003, but, with respect, that ruling was entirely irrelevant because it concerned a question of privilege that had been raised about proceedings in the House of Commons. This has nothing to do with a question of privilege. This proceeding is a motion.

• (1530)

What is a motion? The *Rules of the Senate* say that a motion is:

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

In the same vein, I would cite *Bourinot's Parliamentary Procedure and Practice*, fourth edition, at page 292:

The determination or opinion of a legislative body is expressed by the adoption of a motion or resolution, proposed by some member in accordance with the rules of procedure.

I would suggest that what we have here is essentially an expression of opinion. Nothing the Senate does can bind the House of Commons; all we can do is express an opinion, a suggestion, an invitation, and that is exactly what we have done.

[Translation]

I would further suggest, colleagues, that the sense of invitation is reinforced by the French version of the motion. In French, the

text says “exhorte.” The French verb “exhorter” is far from an instruction.

[English]

So, we are in no way dealing with an interference of any kind with the House of Commons, nor should we be dealing with interference with the House of Commons. It is agreed by all authorities that each house should refrain from criticizing the proceedings of the other house. For example, Erskine May's *Parliamentary Practice*, in the twenty-fourth edition, at page 517 states that, in the House of Lords:

Criticism of proceedings in the House of Commons or of Speaker's rulings is out of order, but criticism of the institutional structure of Parliament or the role and function of the House of Commons may be made.

We're not even criticizing in this motion; we're just suggesting. But even if we were criticizing, I suggest that would be well within what is permissible, because we would be discussing not the legislative function of the House of Commons but the administrative arrangements by which it is governed.

When it is established that we're not supposed to criticize the proceedings of the other house, it's worthwhile checking what “proceedings” actually are. Here I would draw your attention to O'Brien and Bosc *House of Commons Procedure and Practice*, in the second edition at page 119, which says:

The exclusive right of the House of Commons to regulate its own internal affairs refers to its control of its own debates, agenda and proceedings as they relate to its legislative and deliberative functions.

This motion has nothing to do with the “legislative and deliberative functions” of the House of Commons. It has to do with methods of verifying expenses. It's a simple suggestion, but that's all the suggestion has to do with.

Audits are not part of the legislative function of either chamber, but even if audits were part of our, or their, “legislative and deliberative functions,” I draw your attention again to the motion passed Tuesday, February 12, 2008 by the House of Commons to which Senator Downe referred a few moments ago. That motion said, in part that “... in the opinion of this House, the Senate majority is not providing appropriate priority to the passage of Bill C-2....”

Every authority I've seen suggests that it is way out of line to criticize the way in which the other chamber handles its legislative proceedings, but that's what the House of Commons felt free to do to us. Then they went on to call on us to pass the Tackling Violent Crime Act within a matter of two and a half weeks.

At the time, we did not object to that. I think quite a number of us — and I would venture to say on both sides of the chamber — were offended by what the House of Commons felt free to do in terms of sending messages to us, but we did not object. We did not

raise points of order. We did not raise questions of privilege. We said, essentially, that they're free to pass any kind of motion they want, expressing their opinions.

I suggest the contrast is striking, colleagues. If we view that motion and Senator Tkachuk's point of order together, it is suggested that the Commons can criticize the Senate, but we cannot make a civil suggestion to them. Really? There is no logic to that position.

I suggest, colleagues, that before arguing that this motion is out of order, we should remember the importance of freedom of speech in Parliament. For example, Beauchesne's *Parliamentary Rules & Forms* says in the sixth edition, citation number 75 on page 22:

The privilege of freedom of speech is both the least questioned and the most fundamental right of the Member of Parliament on the floor of the House and in committee.

In moving his motion, Senator Downe is exercising his rights as a parliamentarian, first and foremost, and his rights of freedom of speech and argument. In my view, it would be grossly inappropriate to argue that the rest of us should not be allowed to express our opinions on the suggestion put forward in his motion.

It is a profound parliamentary tradition, Your Honour, where any doubt does exist, to favour the continuation of debate. In that light, I would draw to your attention the Speaker's ruling of April 16, 2013, where His Honour said:

... that matters should generally be presumed to be in order unless the opposite is clearly demonstrated. As stated in a ruling of February 24, 2009, "In situations where the analysis is ambiguous —

I don't think it's ambiguous here, but if it were ambiguous:

— several Senate Speakers have expressed a preference for presuming a matter to be in order, unless and until the contrary position is established. This bias in favour of allowing debate, except where a matter is clearly out of order, is fundamental to maintaining the Senate's role as a chamber of discussion and reflection."

Those words seem to be entirely appropriate here, as in many other cases. I would urge Your Honour to find that the point of order is not founded, that this motion is decidedly in order, and that debate on it should be allowed to continue.

**The Hon. the Speaker pro tempore:** Before I recognize the next speaker, for those who are interested, there are a few copies of the decision that was referred to by Senator Downe. Because we want to get to the bottom of that question this afternoon, for those who wish to look at the document, it's available for you to read.

**Hon. Yonah Martin (Deputy Leader of the Government):** Your Honour, if I may, Senator Downe's motion runs contrary to the very nature of equality and autonomy of each house. It is a

long-standing tradition in our federal legislative system that each house of Parliament has the authority to exercise its own autonomy in carrying out its duties. For this reason, I believe that neither the Senate nor the House of Commons can call upon or suggest to the other as to how to conduct its own internal affairs.

In the *Upper House Reference*, the Supreme Court, quoted the following excerpt from John A. Macdonald's speech delivered in the debates on Confederation:

There are three great sections, having different interests, in this proposed Confederation.... To the Upper House is to be confided the protection of sectional interests: therefore is it that the three great divisions are there equally represented for the purpose of defending such interests against the combinations of majorities in the Assembly.

• (1540)

This chamber did adopt a motion to invite the Auditor General to conduct an audit of our expenses. However, the decision of the House of Commons in regard to the Auditor General is to be made by the House of Commons and not called upon nor suggested by the Senate. To do so, as articulated in the motion, is contradictory to the arguments made by our founding Fathers of Confederation and a violation of fundamental constitutional norms and values.

For this reason, Your Honour, I do urge you to support the point of order raised by Senator Tkachuk. I look forward to hearing what others have to say.

**The Hon. the Speaker pro tempore:** Senator Martin, can I ask you a question? You heard the arguments from Senator Fraser. When the expression "call upon" is used and, further down in the motion, "inviting," do you see a problem there? I think that goes to the heart of the decision that will be taken. How do we read those words, "call upon," in French "exhorte?" Do you see that as an order or as a wish? I will value your opinion on that. Can you answer that?

**Senator Martin:** Your Honour, that is how I am interpreting it. I return to the fundamental point of the equality and autonomy of each house. For me the language being used is how I would see it, namely as the motion being somewhat convoluted; that there is an interference.

I rest on the point that there is this clear dependence and separation and I feel that the motion seems convoluted in the language that is used.

**Hon. Anne C. Cools:** I thank His Honour. I also thank Senator Downe and Senator Fraser for their remarks.

Colleagues, I rise to speak in support of Senator Tkachuk's point of order on Senator Downe's motion. It proposes many things, but fundamentally it is proposing concurrent audits of the Senate and the House of Commons by the Auditor General.

The first point there is that the motion involves a third party, the Auditor General, which I will come to in a few moments. If you read the motion, it really could have been three or four motions, but that is beside the point. It states:

That the Senate call upon the Members of the House of Commons... to join the Senate in its efforts to increase transparency by acknowledging....

That's a decision that the Senate is taking for the House of Commons. They have chosen how to frame the decision of the House of Commons. The motion continues:

... the longstanding request of current and former Auditors General of Canada to examine the accounts of both Houses of Parliament,....

This Senate has no knowledge of the longstanding request of current and former Auditors General to examine the accounts of the House of Commons.

It continues:

... and thereby inviting the Auditor General of Canada to conduct a comprehensive audit of House of Commons expenses, including Members' expenses,....

Honourable senators, the Senate has no power to invite the Auditor General of Canada to conduct an audit of the House of Commons expenses. I shall come to this in a moment. I am just reviewing the motion, since Your Honour asked for some input on this. Any decision about an Auditor General's audit of the House of Commons is the exclusive purview of the House of Commons, including members' expenses.

The last paragraph of the motion states:

That the audits of the House of Commons and the Senate be conducted concurrently, and the results for both Chambers of Parliament be published at the same time.

Colleagues, this motion is trenching all over the House of Commons. It is an articulated decision of what it wants the House of Commons to do. The motion also says that it wishes the House of Commons to act in unison and in lockstep with the Senate, that is concurrent action.

This is just by way of a passing and cursory read of the motion. If you go back and read it again, you will find how much larger and how much more complex it becomes with each reading.

I wish to make several points. Please forgive me for my voice, colleagues; I have a bit of a cold.

Honourable senators, I want to begin by asking us to be mindful of the substance of Senator Downe's motion in light of the anti-Senate sentiments that emanate daily from some in the

other place. I want us to weigh that against the likelihood of obtaining agreement from the House of Commons.

But my major point here, honourable senators, is that I urge honourable senators here to be diligent that our debate does not attach the Auditor General in any way. I urge that we be vigilant not to entangle the Auditor General or his office in any disagreement or quarrel between the Senate and the House of Commons, the co-equal, sovereign, independent houses of Parliament. To enmesh the Auditor General in this motion's debate would be unfair and even unkind to the Auditor General, and not very helpful to the business of audit.

Honourable senators, I urge caution and care. One just can't flip different office-holders in and out of our motions.

We have a duty to protect the integrity of the independence of the Auditor General, cognizant of the fact that he cannot answer anything said in debate here or in the House of Commons. He cannot answer. We can reasonably expect that the other place has no appetite to join the Senate in its audit and little interest in any audit at the instance and the initiative of the Senate. We should also be attentive to the Auditor General's peculiar and unique relationship to the Commons house. We should strive to uphold this relationship.

Honourable senators, most urgently, we should immediately ascertain whether Senator Downe sought and obtained the Auditor General's willingness to perform such audit on the House of Commons as joined to the Senate's audit, and also to the concurrent execution and publication, as Senator Downe's motion proposes.

This matter is far more serious than it appears. This is not a matter of free speech here. I am the biggest proponent of free speech. This is a matter of the intricate business of who has exclusive cognizance of what. I will submit that, since we know that the Auditor General Act contains no power to audit either of the two houses, any audit of either house by the Auditor General would be, and must be, the exclusive cognizance of that individual house.

It would be disturbing, colleagues, if the Commons house members formed wrong and bad impressions about our actions here. If Senator Downe has not obtained the consent and the agreement of the Auditor General, then, colleagues, I believe his motion is out of order *ab initio* and should be struck off the Order Paper forthwith.

Honourable senators, last June, on sound constitutional grounds, I had opposed Government Leader Senator LeBreton's government motion to have the Auditor General audit the Senate. On this very same ground, I am now opposed to Senator Downe's motion to order — and that's what a motion is once it's adopted; it's an order of the house — that the Commons house act in unison and lockstep with the Senate audit. I add that my arguments that the Auditor General Act holds no constitutional power to audit the Senate stand on solid ground because this act also legislates that there's no power in the Auditor General Act to audit the Commons house to whom the Auditor General reports. Such audit of the Commons is solely between the Commons, the Auditor General and the Auditor General Act.

• (1550)

We are not clear here. Many of these details have not addressed whether or not the Auditor General Act can be enforced on senators and in the Senate. These are the questions that were skillfully avoided last June, like a host of other important constitutional questions.

Honourable senators, Senator Downe's motion exceeds the limits of our ancient *lex parliamenti*, the law of Parliament. This law commands that each house be the master of its own proceedings and decisions and also that the two houses are coordinate institutions in a relationship of constitutional comity. This is our Constitution's parliamentary reality that we call the independence of the houses. This independence is absolute, well-established and inviolable. About this, I shall cite paragraph 4 of Beauchesne's sixth edition of *Parliamentary Rules and Forms* at page 4:

Beyond the vast legacy of tradition implanted in Canada by the preamble to the *Constitution Act*, one section above all affects procedure. Section 18 permits the adoption in Canada of all of the privileges of Parliament current in the British House of Commons. Few of these are of greater importance than the right to regulate the internal proceedings of the House, or more specifically, to establish binding rules of procedure.

Honourable senators, Senator Downe's motion encroaches on the independence of the House of Commons, the independence of the Auditor General and the unique relationship between the Auditor General and the House of Commons. This unique relationship is in respect of the Commons' constitutional powers in taxation and revenue — remember, the House of Commons has powers that we do not have in these regards — the public expenditure, and ministerial responsibility, being that Her Majesty's ministers hold office and their tenure at the sufferance of the house.

Honourable senators, there is a collection of principles hanging together here, which is why I am raising these issues, colleagues and Your Honour, because this question is far deeper than it looks on the face of it.

Senator Downe's motion is flawed, defective and out of order in its form and in its substance and, most particularly, in its reach into the House of Commons' powers to make its own judgments with respect to its own audits. The Senate is trenching on House of Commons' ground.

Honourable senators, last June, Government Leader Senator LeBreton, in full party and whip dress, moved a hasty government motion that was quickly adopted here on June 6, with little debate. This motion, which I opposed, by its adoption became an order of the Senate, supported, as all Senate orders are, by the Senate's penal and contempt jurisdiction, that body of powers. That is how you can enforce these orders. This motion read:

That the Senate invite the Auditor General of Canada to conduct a comprehensive audit of Senate expenses, including senators' expenses.

It is unclear to me, and has been for the past little while, how an invitation can be a Senate order, under the pain of the contempt power, to the Auditor General or anyone, because invitations, by their nature, contain the right to decline. Invitations are not commands as Senate orders are. It is clear why this order was engaged for senators, who would otherwise have the same right to decline as does the Auditor General, but it is unclear why such an order under the contempt power was engaged for the Auditor General, whose independence should preclude this. The Auditor General is not a servant of the government to be dispatched at whim as a lofty disciplinary agent to audit the Senate or the House of Commons, which is what happened here last June, colleagues. Make no mistake about that. Such action is neither intended nor contemplated by the Auditor General Act or by the Office of the Auditor General. It would have been far kinder if the Senate order had been directed to its own Senate Internal Economy Committee, ordering the committee chair to invite the Auditor General to audit the Senate. It would have been a far kinder thing to the Office of the Auditor General. I have not really understood why one would want to take the action of mentioning the Auditor General in a Senate order.

Honourable senators, speaking frugally and sparsely to her motion, Senator LeBreton said:

Today, I am moving forward on this promise of accountability by introducing this motion calling upon —

This is a buzzword now — “calling upon.” Everybody is calling.

— the Auditor General of Canada to conduct a comprehensive audit of Senate expenses.

The Office of the Auditor General is a respected body...

Senator LeBreton's unfortunate choice of words insinuates that the Senate is not a respected body. We know that many government ministers daily repeat the mantra that the Senate is not a legitimate body, not a legitimate institution, seemingly to habituate the public mind to Senate illegitimacy as a public fact. Sadly, that day I observed that many senators, on both sides, rightly sensed that her motion violated and hurt something deep inside of them. I spoke against that motion on June 6. I note now, as then, that no Senate motion and no Senate order can alter, amend or set aside the Auditor General Act, which, by its nature, does not contemplate that the Auditor General should be auditing either of the two houses of Parliament.

He should not be auditing this house. He should not be auditing the other house. That's why I am taking the same position on this motion as I did on the previous one.

Honourable senators, we must be mindful that the Auditor General Act is the statutory framework for the Auditor General's audits of the government's many departments, expenditures and charges on the public purse. We call this the public accounts. This statute clearly enacts that the Auditor General report his findings to the House of Commons. This is important because the Commons is not subject to any superintending power, any audit or any other power of the Auditor General.

In fact, neither the Senate nor the Commons, as the sovereign houses of Parliament, are constitutionally subject to any power of the Auditor General. To his great credit — and I admire this — the Auditor General has not sought or claimed any such power. The point is, colleagues, that Senator Downe's motion is claiming a power for the Auditor General to audit the House of Commons, but the Auditor General has never claimed such power.

Honourable senators, this is the nature of the sovereignty of Parliament and of Canada's Constitution, yet, daily, we see and hear these principles diminished by many who call it reform. Their offerings are unmistakably clear that the Senate should be treated as a mere government department. Some of them even conduct their own public wars with the Senate. The Senate and the Commons are constituted to administer efficient and effective, independent internal and external audits, despite the fact that successive governments have consistently kept the Senate starved of financial resources.

• (1600)

Honourable senators, the House of Commons now, and for over a century, has had a long constitutional and statutorily defined relationship with the Auditor General who, in the earliest years, had been the Deputy Minister of Finance. That's a very important piece of history, Your Honour, being when the Government of Canada decided to separate the function of audit from the Department of Finance. It is an interesting thing and relevant here.

The Senate has no such relationship with the Auditor General. I'm making this point again and again. The Senate does not have the same relationship with the Auditor General that the House of Commons has.

The Senate should be respectful and should defer to that particular relationship, which is the Auditor General's relationship to the House of Commons. We cannot step into that relationship and we should avoid doing so.

Honourable senators, as Senator LeBreton's motion was without precedent, so now is Senator Downe's. For these reasons, I say that Senator Downe's motion is out of order because his motion grants the Auditor General, and his act, a superintending power and control over the houses of Parliament, as did Senator LeBreton's motion last June. Senator LeBreton's motion was limited to the Senate though, but this motion goes much further. I will not support Senator Downe's motion for the same reason that I did not support Senator LeBreton's motion. His motion subjects the houses, and the unique House of Commons relationship with the Auditor General, to actions and audits that are not authorized by the Auditor General Act, and may not be desired or agreed to by the Auditor General himself.

Honourable senators, Senator Downe's motion is also out of order because it proposes to speak directly to the House of Commons. I would like to say to you, Senator Downe, with full respect and due respect — and you know I think highly of you — that your 2008 example isn't relevant. I didn't hear the whole thing and I haven't been able to get it yet, but according to what I heard, the motion included a message. I heard Senator Downe say, I believe, that a message be sent.

I believe I heard Senator Downe say — and feel free to correct me, Senator Downe — it was something to do like "that a message be sent." The situation that he described is not even comparable to this situation. There is no message being sent to the House of Commons by his motion. I am coming to messages in a very few seconds. As I said, Senator Downe's motion speaks directly to the House of Commons.

Honourable senators, parliamentary law and practice dictate the form of social intercourse between the houses. This motion is not in the correct form. In short, the houses of Parliament do not communicate by calling upon each other. They communicate by the form and process in Parliament that is called messages, to which Senator Downe just referred, and also the rarely used conferences.

Messages are the form in which the houses speak to each other, just as addresses are the way the houses speak to the sovereign. Our current *Rules of the Senate* contains a section headed Messages Between the Houses and Conferences. Rule 16-2(1) states:

The Clerk shall arrange for the sending of messages from the Senate to the House of Commons and for the receipt of messages from that house.

Rule 16-2(2) states:

The Speaker shall read messages received from the House of Commons at the earliest appropriate time.

Honourable senators, no message is found in Senator Downe's motion. For example, his motion didn't end with "and that the Senate send a message," or something like that. The message is a very real thing and it's the most frequently used form of communication between the houses.

Honourable senators, everyone is calling upon someone. It seems that "calling upon" is the current buzzword. Senator Downe's motion calls upon the members of the House of Commons. I would think that perhaps a whisper might be better, but the fact of the matter is the houses communicate by messages. That is the parliamentary form. Beauchesne's sixth edition of *Parliamentary Rules and Forms* describes the well-established parliamentary practice of messages under the heading "Interchange Between The Two Houses," at paragraph 743. Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, eighteenth edition, defines messages thus:

A message is the most simple and frequent mode of communication; it is daily resorted to.... for communicating all matters of an ordinary description, which occur in the course of parliamentary proceedings.

Honourable senators, the Speaker rises here daily and reads messages to us and daily, when we adopt bills at third reading, we send messages to the House of Commons to that effect. But somebody has given careful thought for centuries as to how the houses speak to each other and it is not calling upon.

Honourable senators, the houses of Parliament are separate and independent and simply cannot, and I would suspect would not, unite in a concurrent audit. They make their distinct decisions by

their own separate and independent proceedings. Senator Downe's motion is flawed and defective because it reaches from the Senate into the House of Commons' decision making. It wades right into it. By so doing, it presses upon the Commons a false duty to do something concurrently, as the Senate is doing it. The house has no duty to do that. The Senate had no duty to bring in the Auditor General either. Senator Downe's motion is creating a power of the Auditor General to audit the House of Commons. It is unfortunate in a way that this is before us.

Honourable senators, this motion is of some gravity in its well-meaning but mistaken efforts, because the House of Commons holds the special constitutional power to control the public purse, which is vital to ministerial responsibility. For these reasons, this motion is out of order. But it is out of order for another reason, and an even more serious parliamentary reason, of which many here seem to be unaware and, if they are aware, they are choosing to ignore. The constitutional fact is that the power granted by Senator LeBreton's motion of last June for the Senate audit is now spent. It is an exhausted power, because the Governor General prorogued both houses last September 13. By prorogation, all incomplete orders and proceedings are terminated. It is an extremely bad position that the Senate has now placed the Auditor General in. The fact of the matter is a prorogation has happened. Prorogations quash and terminate.

About the legal effects of prorogation, Alpheus Todd, in his 1887 edition of *On Parliamentary Government in England*, Volume I, wrote at pages 387 to 388:

The deliberations of Parliament may be cut short at any moment by the exercise of the royal power of prorogation, which quashes all proceedings pending at the time....

• (1610)

Alpheus Todd then goes on to identify the proceedings that aren't quashed, being judicial-like proceedings, impeachments and that sort of thing. He continued:

... By a prorogation, all resolutions, bills and other proceedings, pending in either House, are naturally terminated, and cease to have any further effect, except in so far as they may be continued in operation by the express authority...

The Senate had a duty to renew the motion to allow the Auditor General here.

Alpheus Todd continued:

The only apparent exception to the rule concerning resolutions is in the case of standing orders.

I shall read this again carefully:

The only apparent exception to the rule concerning resolutions is in the case of standing orders. By the custom of Parliament these are accounted to be in force,

in succeeding sessions, until rescinded. They are considered as being declaratory of the law and practice of Parliament; and, without relying upon their absolute validity, the House agrees to adhere to their observance....

Honourable senators, there has been a practice since the institution of standing orders and standing rules that they are the exception and the only resolutions that continue to stand. That is why we do not have to renew our rule book every session, but we have to reconstitute committees and committee members.

Honourable senators, I think we have been quite unfair to the Auditor General and his people, who are now operating, doing audits in this place, without proper legal and constitutional authority for their presence and work on audits here in the Senate. The motion authorizing the Auditor General's people to audit the Senate has expired, as I said. It ended by prorogation last September 13. This is not good. In fact, it could be an injury to some very fine and diligent people. The fact that the Senate has allowed this is unacceptable, and it seems to me that we have been insensitive, inconsiderate and unconstitutional.

En passant, I have met with some of those auditors, and I encourage senators to meet with them and if they have questions to be in touch with them.

I conclude, colleagues, by saying that Senator Downe's motion is out of order in substance and in form. In addition, on a very grievous ground, the audit that the motion is inviting and calling upon the Senate and the House of Commons to join concurrently, is now without legal and constitutional authority because the resolution that authorized it is now expired because of prorogation.

Honourable senators, in conclusion, Senator Downe's motion is out of order in substance and in form. The present audit of the Senate now lacks legal and constitutional authority. Therefore, Senator Downe cannot put a request to this house or to the House of Commons to join the Senate's audit, which is now ongoing, I believe, without parliamentary authority.

Colleagues, I hope that this has been helpful to some here. I say, time and again, these matters look so simple on the surface. Senator Downe is a well-informed and, I would say, a well-meaning man and a competent individual.

I had planned to speak against his motion, but a senator raised a point of order. I myself find the question out of order. Your wisdom, Your Honour, will carry the day.

I thank you very much, and I thank all senators who have contributed. I say to senators again and again that we have to stay with the law of Parliament. We have nothing else but that. That is the foundation of all the rules, of the law, and it has been bequeathed to us by section 18 of the 1867 Constitution Act, the British North America Act, which received into Canada the ancient law of Parliament and these constitutional practices.

Honourable senators, we must understand that it was a very difficult matter for the Fathers of Confederation to obtain the name "the House of Commons" for the chamber here in Canada.



Sir John A. Macdonald and others thought it was one of the great achievements of the Constitution when London agreed that our House of Commons would be called the House of Commons.

Let us not believe for a moment that the powers of the two houses in respect of the Auditor General's relationship are the same. The House of Commons has a unique relationship. The Auditor General's reports go to the House of Commons. As we will recall, that question was in issue here some months ago when the Auditor General first came to the Senate. The question was: To whom will he report? Many senators here shuddered at the thought that the Auditor General might report to the House of Commons about Senate expenses.

**Hon. Pierrette Ringuette:** Senator Cools, I listened to you very carefully, and I think that your speech was addressing two different issues.

A point of order was raised on the motion from Senator Downe, and you yourself raised another point of order with regard to the Senate standing rules and the prorogation effect that happened last year with regard to a motion that was passed in this house but that upon prorogation seems to be null and void. If that is the case, did I hear you correctly in the second part of your comments that you were raising a point of order with regard to the Senate standing rules and the fact that the motion entertaining activities right now is null and void?

**Senator Cools:** No, I raised no new point of order. I was speaking to the point of order that was before us. That is the matter before us.

I raised the effect of prorogation on the motion, because Senator Downe's motion is founded on the existence of Senator LeBreton's motion last June which invited the Auditor General in to audit the Senate.

Therefore, Senator Downe's motion is calling upon the members of the House of Commons to join the Senate in transparency and accountability, to be expressed by acknowledging the various requests of the various auditors general.

So, no, I did not raise a point of order. Besides, Senator LeBreton's motion only enters this debate by virtue of the fact that Senator Downe is relying on her motion for the authority of the Senate audit.

• (1620)

As Senator Downe's motion is reliant and dependent upon Senator LeBreton's motion of last June, I am saying that his motion would have to be rethought and voided in a way — I didn't use the word "void"; that is your word — and is certainly undermined because currently there is no constitutional power for the Auditor General to be at work in this place; and that should bother us a lot. This man is an important office-holder and these are important questions. I don't understand why this is happening. I have merely noted it; and I did not raise a point of order. That was in the context of my little treatise on Senator Downe's notice of motion.

One could go on — it depends how much time you have. At any given moment you could raise 10 points of order on any given question before the house.

For example, this particular motion has within it as well quite a few complex, different propositions, but that's beside the point.

[Translation]

**The Hon. the Speaker *pro tempore*:** Do you have a question for the chamber before I share a comment?

**An Hon. Senator:** No.

[English]

**The Hon. the Speaker *pro tempore*:** Colleagues, I'm open to hearing your arguments on one question. Senator Cools raises an important point: the validity of some affirmation contained in the main motion.

Should the Speaker or I look into the validity of those points or take them at face value? That's my question to honourable senators. While Senator Ringuette will make her comments, I want those who wish to answer my question to reflect. That will influence how the Speaker and I will decide upon this point of order.

I repeat: Should we take at face value what's in the motion or question the validity of what is said in the motion? To be clear, I quote the motion:

... by acknowledging the longstanding request of current and former Auditors General of Canada to examine the accounts of both Houses of Parliament,....

Should the Speaker and I take that for granted, or should we question the validity of that affirmation? I ask the question. We will form our own reasoning, but if you have a point to make on that, I think it would be valid for me to hear it.

[Translation]

**Senator Ringuette:** Honourable senators, I read in the media — this was quoted material — that the Auditor General had asked the Public Accounts Committee to audit members' and senators' accounts. That includes a summary of the individual expenses of each member and senator at once.

I would also like to reply to comments on the form and content of the motion, which seem to have raised some questions. If someone invites me to dinner, I am perfectly free to accept or decline the invitation. The motion says "call upon," which means "invite." I don't have a problem with the form.

We have to focus on the content, and there is precedent for this. You may recall that, a few years ago, the former Auditor General, Ms. Fraser, asked for an invitation to conduct a simultaneous audit of both the Senate and the House of Commons. That was done. The whole process began under Ms. Fraser and continued under the current Auditor General.

To those who say that the form, the substance and the content of the motion are unjustified, I say that there is definitely a precedent. The Auditor General visited both houses simultaneously to conduct a performance audit.

To those who say that some members of the House of Commons are anti-Senate, I say that we should find out if that's true. Some statements were made. Remarks made last weekend during the Manning Centre conference in Ottawa included statistics showing that people share the same opinion about Parliament.

I think it would behoove all politicians to accede to the wishes of the people and have the same auditing standards, just like what was done three years ago by the former Auditor General, Ms. Fraser.

To sum up, Mr. Speaker, I believe that, as an independent chamber, we are entirely free to issue invitations.

[English]

**The Hon. the Speaker *pro tempore*:** Have honourable senators covered all the opinions?

**Senator Fraser:** No, I have a point of information that may be of interest to colleagues and to His Honour, as well as one small further point that I hoped to make and forgot to do so in my earlier remarks.

In response to your question about the factual nature of the motion, I would first observe that this point of order is not about the factual nature. It is about potential interference with the other chamber and I suggest that it would be the responsibility of senators in debate to examine the factual underpinnings of the motion.

• (1630)

However, if I may, I would draw to Your Honour's attention the third report of the House of Commons Standing Committee on Procedure and House Affairs, which is now under debate before the House of Commons. On page 9 of that report, the committee says that on November 19, 2013, the Auditor General of Canada, Mr. Michael Ferguson, appeared before the committee:

The Auditor General also suggested that comprehensive financial, compliance, and performance audits of the House of Commons be conducted. He suggested that the Committee may consider an amendment to the Auditor General Act to allow his Office to conduct such audits at his discretion.

He wasn't even asking for invitations to be issued; he was asking to be allowed to conduct these comprehensive performance audits at his discretion.

If Your Honour checks the record, you will see that previous requests have been made by previous auditors general.

[ Senator Ringuette ]

The point I wish to make is that Senator Tkachuk had observed when raising this point of order that the House of Commons had that very day denied unanimous consent to a motion by one of its own members — a motion very similar to the one to call in the Auditor General — and so he said, "I think Senator Downe's motion is moot."

However, I repeat, this report from a house committee — as distinct from a motion by an individual member of the House of Commons — has been adopted by the House of Commons committee and is now before the house for debate, and it contains the following recommendation:

That the Auditor [General] be invited by the Board of Internal Economy to conduct audits with greater frequency.

The question is not "moot." The report has been neither adopted nor rejected; it has not even been amended by the House of Commons. "With greater frequency," colleagues, is a pretty vague term, given that in living memory the Auditor General has never conducted an audit of the House of Commons similar to the one he is doing here, but that is a separate issue.

**Hon. Terry M. Mercer:** I've recalled my thoughts. They are very much in keeping with Senator Fraser's.

The question was raised whether the Auditor General has asked to audit the House of Commons and, indeed, to audit this place. I think it's common knowledge in the public domain that previous auditors general — Auditor General Ferguson, Auditor General Fraser — have in the past asked repeatedly to be able to do audits of both chambers.

To make it as part of the argument that they haven't asked — they have consistently asked. They have been trying to do this for years. I think that part of the argument is indeed irrelevant to the discussion of Senator Downe's motion.

**The Hon. the Speaker *pro tempore*:** Thank you.

**Senator Cools:** Perhaps I should clarify.

**The Hon. the Speaker *pro tempore*:** A little clarification?

**Senator Cools:** A little bit. There is some sort of misunderstanding here. All of that information from the Procedure and House Affairs Committee and so on is not part of the record here and has not been put before this house. It's not really relevant.

When I raised the question about the Auditor General's agreement, I was speaking in terms of his name being used and proposed in this motion — not about anything actually said in the House of Commons. In other words, I do not think it's a good thing that we should make offerings of motions before the houses, using people's names and positions without their knowledge and agreement. That was how I posed the question. I said that such should have been ascertained.

Also, we keep forgetting: We speak of audits. Let us be crystal clear that the audit done two or three years ago under the former Auditor General Fraser is not the same kind of audit that is being

conducted now in the Senate. At the time, that audit was of the Senate administration. This is a different audit. This one includes senators' expenses. It's not quite the same thing, so we should not act as though it is.

On the last question that you pose about validity and looking at the motion itself, I think Your Honour should look at whatever you need to look at in order to be able to come to a wise decision. My concern with Senator Downe's motion is that it was putting words into the House of Commons' mouth. It is not as though the Senate took a decision and then sent a message saying that the house will concur. The motion was pressing its own words and its own decisions upon the House of Commons.

**The Hon. the Speaker *pro tempore*:** Thank you.

First, I want to thank everybody who took part in the discussions. Thank you for answering some of the questions I had. I am sure Speaker Kinsella will also have those.

I will take this under advisement. Speaker Kinsella and I will discuss it during the break, and we will come back with a decision as soon as possible when we reconvene in two weeks.

Thank you.

(The Senate adjourned until Tuesday, March 25, 2014, at 2 p.m.)

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