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Monday, June 16, 2014

The Honourable NOËL A. KINSELLA
Speaker

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THE SENATE

Monday, June 16, 2014

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

TRIBUTES

THE HONOURABLE ROMÉO ANTONIUS DALLAIRE, O.C., C.M.M., G.O.Q.

The Hon. the Speaker: Honourable senators, pursuant to rule 4-3(1), the Leader of the Opposition has requested that the time for Senators' Statements be extended today so that we can pay tribute to the Honourable Senator Dallaire, who will be resigning from the Senate on June 17, 2014.

I would like to remind honourable senators that, pursuant to our Rules, each senator will be allowed three minutes and may speak only once, and the period for Senator's Statements will be extended by no more than 15 minutes. However, those 15 minutes do not include the time for Senator Dallaire's response.

[*English*]

Hon. James S. Cowan (Leader of the Opposition): Colleagues, I rise this evening to pay tribute to our friend and colleague Senator Roméo Dallaire.

In his remarkable book *Shake Hands with the Devil*, our colleague recalled three things his father told him the night before he was to leave for military college. First, he advised him that if he wanted to be accepted, he should change his name — anglicize it. That advice Roméo rejected, and indeed he has worked hard ever since to make sure that no Canadian father need ever give such advice to a son or daughter again.

Senator Dallaire went on to describe the rest of the advice his father gave him that night:

> If I did decide to make a career in the army, he said, I would never be rich, but I would live one of the most satisfying lives there was to be had. Then he warned me that that satisfaction would come at great cost to me and any family I might have. I should never expect to be thanked; a soldier, if he was going to be content, had to understand that no civilian, no government, sometimes not even the army itself, would recognize the true nature of the sacrifices he made. I decided not to change my name, but I have tried to understand and live by the rest of his hard-won wisdom.

What extraordinary, prescient advice. The impact that Senator Dallaire has had upon the world must be cause for deep satisfaction. Yet, as his father warned, that satisfaction came at great cost to Senator Dallaire and his family. I doubt even his father could have foreseen just how great his son's impact would be on so many lives and, conversely, how great the cost.

Through strength of character and moral conviction, unfailing courage and a heart that has held all the suffering he has witnessed, Senator Dallaire became the voice of humanity's collective conscience in one of the most terrible periods of the last century and indeed since.

We all know Senator Dallaire's remarkable story, particularly involving the genocide in Rwanda 20 years ago. I don't propose to go into the details. I know how painful they are, how they live in every moment of every day for him and have done so for the past 20 years. Nation after nation, for reasons of self-interest, had left the country, abandoning those who were pleading for their help. But General Dallaire stood firm.

In his words, "Withdrawal was out of the question — we needed to keep the UN flag flying in Kigali, if only to bear witness."

Bertolt Brecht, the German playwright, wrote the play *Galileo* in 1938 and 1939, as the shadow of Nazi Germany was falling over Europe and the world. It contains the following exchange:

> Andrea: Unhappy the land that has no heroes! . . .
>
> Galileo: No. Unhappy the land that needs heroes.

Unfortunately, not even heroes were enough as Rwanda dissolved into a hell on Earth. I urge everyone to read General Dallaire's extraordinary book about what took place.

The lessons he learned have informed all in his life since. By publicly sharing his own, deeply personal experience with post-traumatic stress disorder, he has given hope and support to all our wounded military veterans, who so deserve our care and support.

On the global stage, he's worked tirelessly for the cause of conflict resolution, especially genocide prevention and eradicating the use of child soldiers.

On March 24, 2005, Senator Dallaire was appointed to the Senate by then Prime Minister Paul Martin. We both arrived in the Senate on the same day. The privilege of being asked to serve here together with Senator Dallaire was not lost on me. It underscored just how remarkable a place the Senate is and can be, and how great the opportunity to serve here.

Roméo Dallaire has exemplified the best of what a senator can be, both in his personal integrity and in his dedication to working for Canadians.

Not long after our appointment, we were walking together across the lawn of Parliament Hill. We were exchanging impressions and experiences as new senators. Those of you who

have been here for a while remember that in the old days the security guards used to salute senators, and I said I found all this saluting somewhat disconcerting. With a twinkle in his eye Roméo said to me, "Where I come from, if they didn't salute you would find it disconcerting."

Senator Dallaire has been a strong voice for Canadian veterans and their families in this chamber and as Chair of the Subcommittee on Veterans Affairs. His commitment to our veterans goes to the core of his being. Our soldiers, and especially veterans, know that they can turn to him for help and advice and will never be turned away. I think perhaps part of his determination comes from his father's warning to him that no one, sometimes not even the army itself, would truly understand the sacrifices that soldiers make. Senator Dallaire understands, and he will not let them down.

When he announced his retirement from this place, he was quick to emphasize that he's not abandoning his work on their behalf. He has a team in place that will continue to work to help injured veterans and their families on a pro bono basis.

Through his work on other committees, including as Deputy Chair of the National Security and Defence Committee, he has worked diligently to find that critical line between upholding and protecting Canadians' human rights while ensuring our national defence and security capability is strong. He has, of course, been a strong proponent of parliamentary oversight of the security and intelligence community, most recently by co-sponsoring a bill with our now former colleague Senator Segal.

After he announced his intention to resign, Senator Dallaire spoke at a press conference and described what his time as a senator has meant to him. This is what he said:

• (1810)

> Think of it. I come from East End Montreal, where there were seven oil refineries. We never saw the leaves on trees because they were burnt before they could ever come out. My father being an NCO, we lived in wartime housing where the outside sheeting was asbestos, and to be able to come to this building and say that I am a participant in the process of governance of this country, from that background, in fact I have never gotten over it. And every time I come up the Hill I can't believe I actually have an office in this building and that I'm participating in this. And when I sit in the Red Chamber and stand up and provide an objection or give a speech, I can't believe that I'm actually participating in the future of this country and how this country can continue to thrive.

Senator Dallaire, all of us have been greatly privileged to serve here in this chamber with you. I suspect you agree with Brecht and wish the world were such that there was no need for heroes. But let me express the extraordinary, deep gratitude felt by all of us here — and indeed across the country and across the world — for you are truly a Canadian hero, and the world needs heroes like you.

You've been very clear that you are not retiring today — you told a reporter that you don't understand the word. Rather, you will be refocusing your work on international humanitarian efforts. I'm particularly pleased that one of these projects will be a continuation of your work on child soldiers based at Dalhousie University in Halifax. But that's only one of the plans you have.

Here, colleagues, is a partial list. Senator Dallaire will be working on genocide prevention with the Secretary-General of the United Nations; on crimes against humanity with the International Human Rights Commission; and with the University of Southern California helping out with research into PTSD or post-traumatic stress disorder. On top of that, he's also writing two more books.

That is not retirement.

I began by quoting Senator Dallaire's father's advice to him as he entered a new stage of his life. I will close with what I think is Senator Dallaire's advice to all of us, from *Shake Hands with the Devil*:

> In the future we must be prepared to move beyond national self-interest to spend our resources and spill our blood for humanity. We have lived through centuries of enlightenment, reason, revolution, industrialization, and globalization. No matter how idealistic the aim sounds, this new century must become the Century of Humanity, when we as human beings rise above race, creed, colour, religion and national self-interest and put the good of humanity above our own tribe. For the sake of the children and of our future. *Peux ce que veux*. *Allons-y*.

May it be so.

Senator Dallaire, you will be sorely missed in this chamber. You leave a hole that no one can fill. We wish you the very best as you move on to this next stage of your remarkable career, and we hope that somewhere in your already packed schedule of plans, you do have time to spend with your family.

Thank you, and God bless.

[*Translation*]

Hon. Claude Carignan (Leader of the Government): Honourable senators, on behalf of myself and my colleagues, I am pleased to rise today to say a few words about Senator Dallaire, who will be retiring this week after nine years in the Senate of Canada.

I have so many things to say that I am going to read my notes, which should make Senator Dallaire very happy.

First and foremost, it goes without saying that Senator Dallaire is an exceptional senator. His years of experience in the Canadian Armed Forces and the many missions he participated in have truly made him a great Canadian who is recognized around the world.

Lieutenant-General Dallaire is an Officer of the Order of Canada, a Grand Officer of the National Order of Quebec and a Commander of the Order of Military Merit. He is the recipient of

the United Nations Association of Canada's Pearson Peace Medal, the Arthur Kroeger College Award for Ethics in Public Affairs from Carleton University, the Laureate of Excellence from the Manitoba Health Sciences Centre and recipient the Harvard University Humanist Award.

We are all aware of Lieutenant-General Roméo Dallaire's achievements throughout the world. Honourable senators need no reminding in this regard, but it is nice to point out these achievements as we speak about his time in the Senate of Canada.

Senator Dallaire is a world-renowned humanitarian. With remarkable determination, he undertook extremely sensitive missions and established various organizations that advocate for the rights of the most vulnerable members of society. His many contributions as an adviser to the United Nations are solid evidence of his credibility. That being said, it is interesting to see how Senator Dallaire contributed to the work of the Senate.

As you know, honourable senators, for a little over a year now, the role of the Senate and senators has been called into question. Senator Dallaire's record will certainly help better explain the role of the Senate and illustrate how one senator can make a difference.

As you can see on his website, since his appointment to the Senate in March 2005, Senator Dallaire has delivered more than a hundred speeches. Those numerous speeches addressed topics and causes that are very important to him: child soldiers, veterans, human rights, support for and commitment to our armed forces, nuclear disarmament, suicide prevention, official languages, Canada's role in world conflicts and many other topics.

Senator Dallaire brought a wealth of life experience to the Senate and used his role as a parliamentarian to raise awareness among members of the public, his Senate colleagues and the members in the other place about issues that are important to him and to which he has devoted his entire life.

Senator Dallaire has always taken his role as legislator very seriously. He applied the expertise he gained over the years to analyzing, questioning and criticizing the various bills that, indirectly or directly, affect the issues to which he devotes so much energy and perseverance.

With a sense of accomplishment, Senator Dallaire has decided to end his Senate career and take on new challenges that continue to build on his past work and commitments.

Senator Dallaire is a true example of righteousness, determination, perseverance and courage. To many Canadians, Senator Dallaire is a role model and even a hero.

Thank you for your tremendous contribution to Canada, thank you for your tremendous contribution to world peace, and of course, a huge thank you for your exceptional contribution to the work of the Senate.

I wish you every success in achieving your future goals. Good luck.

Come back and see us. Come back and share your passion about your projects, and of course, do not hesitate to ask me questions through your colleagues, who will surely make a point of passing them on to me during Question Period.

Thank you, Senator Dallaire.

EXPRESSION OF THANKS UPON RETIREMENT

Hon. Roméo Antonius Dallaire: Honourable senators, I will spare you a long speech right now because I will have the pleasure of keeping you spellbound later on with a presentation on a timely topic concerning Canada. I will transport you to the past and reveal the significance of June 17 and why I chose that date for my retirement. That will be later for those who persevere and are still here for what promises to be a long night.

• (1820)

[*English*]

I am humbled by having been called to serve my country here. I don't think that any of my classmates I went from Grade 1 to Grade 12 with in the same school would have ever imagined that one of us would have been able to find our way out of the smog and pollution of East End Montreal to actually make it to the Hill.

As Senator Cowan indicated, I still don't believe that I spent nine years here. It is an element of life that a citizen should always have the opportunity of experiencing: one, a visit to the national capital; two, this extraordinary building; three, this chamber in particular; and four, imagine being able to serve here.

I owe a lot to so many people. A general without troops is a waste of rations, and so a general without a team is also ineffective. My clan — we've called them the "clan" because they're not family and they're not a team, but they are somewhere in between that keeps them close — has been devoted to a workaholic who has always made their life difficult. However, they perceive it as challenging, and I'm always thankful for that.

We all have mentors. I thought of one who's a bit unusual and maybe at times didn't necessarily fit the bill of what one would think a classic senator, and that is Jean Lapointe. He didn't speak often. It wasn't his style. He has an incredible influence on French culture throughout Canada, particularly Quebec.

I remember that although he would take off on a spiral of expression that sometimes lost a bit of dignity, he was always trying to make a specific point, and that's what I kept remembering. He said we're here because the majority rules but the minority must be protected, and he said this chamber is where that is being done in spades. Although frustrated at times, he felt

that the duty here was a duty to minorities, the smaller groups, those who don't necessarily have a voice. That, I think, was the greatest expression of our duties in this chamber.

I speak, of course, of veterans and injured veterans because my father was a veteran of World War II, and only when I became injured myself did I realize he suffered from post-traumatic stress. In the area where we lived, which was wartime housing, many of those families lived in constant suffering because those troops had nothing to protect them, except the Legion. We would go to the Legion, and we would see them partying and, at odd times, parading, and it was their therapy. That was the only therapy, but it also brought about a lot of alcoholism which in itself created more problems than one could imagine, and so there was abject poverty in wartime housing as these veterans simply could not manage their lives under the conditions in which they had to live.

That's why I believe we have a significant responsibility. I will argue a little later on that we should be deploying forces again, but I'm also arguing now that when we deploy forces, we don't just deploy the member. We are now in an era where we are deploying the family.

When I came back from Africa, my mother-in-law told me she would have not survived World War II if she had to go through what Elizabeth had to. In World War II, my father-in-law commanded an infantry regiment, and he fought, but there was little information. There was censorship, the whole country was at war, and the technology simply wasn't there.

Yet today, the families live the missions with us. They are zapping continuously, watching for the next report where we get killed or injured or abducted, and so they go through enormous stresses. When we come back, we're not the same and never will be the same, but they are not the same either. So we must consider seriously that when we deploy the member, we take on the responsibility federally of also taking care of the family and their medical needs and not slough them off to the provincial system and hope for the best.

An Hon. Senator: Hear, hear.

Senator Dallaire: The second thing, if I may humbly say, is that the era of having two departments taking care of serving and retired veterans is over. We must bring Veterans Affairs Canada into DND with its DM and a set budget, but keep it within a family construct. We're losing so many to suicide because they are of a broken heart. Their abandonment is not necessarily by the system but by the fact that they are no more within their family. Loyalty is instilled in them from day one, and it doesn't come off when the uniform comes off; it stays for life. So it is time to stop that gap, to bring it all into one, and ensure that we will reduce the cases of suicide and destruction.

My last point, Your Honour, is when we deploy, there are only three things we ask of our fellow citizens: one, that we deploy with the tools to be able to succeed; that we have the intestinal fortitude back home to sustain the casualties and the sacrifices that we in the field and our families sustain; and that we don't pull out before the mission is either a success or we've adjusted it accordingly, and we certainly don't pull out because it's politically cute when we spill blood. The second thing that we ask when we're deployed is that when we come back, as we come back in body bags, as some of my soldiers have, or injured for life, that we and the families are treated with dignity, with respect, and we don't have to fight again to live decently as injured veterans in our country.

Thank you so much, colleagues, for being so patient with an old soldier.

Hon. Senators: Hear, hear!

[*Translation*]

RADIO-CANADA

Hon. Percy Mockler: Honourable senators, I am saddened. Today I want to speak to you about Radio-Canada's Atlantic news network, RDI, and its lack of coverage of the events of June 4 in Moncton. As you know, the people of Moncton were taken hostage by a crazed gunman that day, while three RCMP officers were killed and two others were seriously injured. Out of fear for their lives and concern for the safety of their families, thousands of residents of north-end Moncton had to remain barricaded in their homes for more than 36 hours.

While the English television network provided live coverage of events, it took two days for RDI and Radio-Canada to decide that this event was important enough to warrant live coverage. Our Acadian and French-speaking families in Moncton, as well as their friends and families in the rest of the province, had to watch the English stations CTV and CBC to find out what was happening in Moncton and understand why residents of the north end of the city could not leave their homes.

• (1830)

Honourable senators, the problem was not lack of resources, since SRC Atlantique reporters were on site 24/7 to report on this major crisis for Radio-Canada radio and television news reports.

Honourable senators, RDI did not think it was important, and I stress this, to dedicate a special program to the crisis until the next day, even though Quebec newspapers such as *La Presse* and *Le Soleil* had already sent in their reporters.

I am bringing up this glaring lack of coverage by RDI and Radio-Canada because the Acadian population in our province sees it as nothing but contempt for the community and is outraged by how it is treated by the Crown corporation, except, obviously, when it is trying to renew its Canadian broadcasting licence.

This was a decision made by RDI executives in Montreal, who though it was more important to broadcast a special on the Quebec budget, which had been tabled earlier that day.

The Crown corporation's executive director for news admitted that they had dropped the ball, but this is not the first time that our Acadian and francophone communities in New Brunswick

have complained about lack of coverage by the Crown corporation. In the past, our former colleague Senator De Banée and Professor Marie-Linda Lord have spoken out against these shortcomings on a number of occasions, in particular during hearings to renew the broadcasting licence.

Honourable senators, I believe that the Standing Senate Committee on Official Languages should examine RDI's lack of coverage and consider a motion of censure against our national broadcaster.

[*English*]

Honourable senators, while RDI and Radio-Canada did not think it important to keep Monctonians and New Brunswickers informed of what was going on in the early hours of this major news event, CBC News Network and CTV News Channel ought to be congratulated for their wall-to-wall coverage of this major event.

[*Translation*]

To conclude, honourable senators, I would like to again commend the excellent work done by the reporters from Radio-Canada Atlantique, who were a constant presence as this situation played out and who reported the events on Twitter. They provided comprehensive and informative news reports on Téléjournal Acadie and during radio news bulletins. I am in no way questioning the professionalism and competence of those who work at Radio-Canada Atlantique. I salute them. It is their bosses in Montreal who lacked judgement by not airing a special broadcast until two days later. This is intolerable and unacceptable, honourable senators.

[*English*]

THE HONOURABLE WILFRED P. MOORE

CONGRATULATIONS ON HONORARY DEGREE

Hon. Jane Cordy: Honourable senators, I rise today to honour one of our colleagues, Senator Wilfred P. Moore. On May 17 of this year, Senator Moore received an honorary Doctorate of Fine Arts from the Nova Scotia College of Art and Design, also known as NSCAD. This award was presented during the university's graduation ceremony at the Cunard Centre in Halifax.

Amid his various contributions to community life in Halifax, Senator Moore is particularly responsible for the Community Studio Residency Program in Lunenburg, Nova Scotia. The program, which is now in its eighth year, offers recent graduates of NSCAD the opportunity to develop their studio practice. As part of the residency, the graduates also work with elementary and secondary school students and offer workshops and lectures in the Lunenburg community.

An example of someone who has benefited greatly from the program and her time at NSCAD is visual artist Hangama Amiri. Ms. Amiri is an Afghan woman who came to Canada at the age of seven. In 2010, she returned to her hometown of Kabul, and upon her return to Canada created a project based on the women she met and observed while there. This project, entitled The *Wind-Up Dolls of Kabul*, garnered international attention. She worked on a second project during the time of her residency in Lunenburg entitled *The Male Gaze*.

Ms. Amiri is just one example of how support for the arts and, indeed, for artists is extremely important. It is also a testament to how these endeavours are valuable to our communities. The Lunenburg residency program established by Senator Moore has served as an example for residencies in other communities, including New Glasgow, Sydney and Dartmouth. Because of these residencies, many artists have stayed to live, to work and to contribute to their respective communities.

Senator Moore, I would like to congratulate you on this well-deserved honour and applaud your many contributions to our home of Nova Scotia. Your contributions to the arts community are not only invaluable, but they create a chain effect that facilitates others to contribute their gifts and their voices as well, and for that, we thank you.

[*Translation*]

VALCARTIER GARRISON

ONE HUNDREDTH ANNIVERSARY

Hon. Josée Verner: Honourable senators, on Saturday, June 14, I had the honour of participating in a ceremony to celebrate the one hundredth anniversary of the Valcartier garrison, which is home to 6,200 military personnel and their families in Quebec City. Senators Suzanne Fortin-Duplessis and Roméo Dallaire were also in attendance.

In addition to important political figures, this ceremony brought together active and retired military personnel and senior officials from National Defence, including Colonel Dany Fortin, Commander of the 5th Canadian Mechanized Brigade Group; Colonel Hercule Gosselin, Commander of the 2nd Canadian Division Support Group, who had very good things to say about the work being done by senators in this chamber; and Brigadier-General Jean-Marc Lanthier, Commander of the 2nd Canadian Division, formerly known as the Land Force Quebec Area.

Honourable senators, it was a wonderful opportunity to reflect on the many activities that I was involved in at Valcartier during my term as the minister responsible for the Quebec City region. Brigadier-General Lanthier recalled that I had been named the base's sponsor, in particular because of my support for the soldiers deployed in Afghanistan and their families.

Honourable senators, in May we also marked the end of the Canadian mission in Afghanistan. Later this summer, we will commemorate the centennial of the United Kingdom's declaration of war against Germany on August 4, 1914, which led to Canada distinguishing itself during the First World War at the cost of enormous human sacrifice.

In both cases, Quebec City's Valcartier base led the charge in deploying our soldiers overseas. Both Valcartier and the Royal 22e Régiment were created in 1914. The base was a mobilization

camp to train the Canadian Expeditionary Force deployed in Europe during the First World War. It was later used to train thousands of francophone soldiers who fought with courage and honour during the Second World War and the conflicts in Korea and Afghanistan, and participated in many peacekeeping missions.

The people of Quebec City had an opportunity to learn more about the rich and proud military, francophone and historic heritage of this garrison during a doors open activity last weekend to celebrate the centennial.

Honourable senators, I invite you to discover this fascinating history as told in a book by Michel Litalien, *Semper Fidelis, Valcartier: D'hier à aujourd'hui*, which recounts the history and achievements of the garrison up to the present day.

[*English*]

THE HONOURABLE ROMÉO ANTONIUS DALLAIRE, O.C., C.M.M., G.O.Q.

TRIBUTE

Hon. Donald Neil Plett: Honourable senators, I was told that General Dallaire had given strict orders that he did not want a lot of tributes today, but since I never served in the military, I don't believe that I have to listen to his orders.

I rise today to pay tribute to my very good friend General Roméo Dallaire. The upper house is meant to be a place that is less partisan in nature, cooperative in spirit, and where minority interests are prioritized. In my opinion, no one has exemplified that more than Senator Dallaire.

• (1840)

Senator Dallaire has witnessed more tragedy in his lifetime than any of us could imagine, and more than any person should ever see. However, from that terror has come great passion — a great will to fight the injustices of the world. He has been able to accomplish much in his role as a senator, especially with his ongoing work for veterans, and specifically as chair of the Subcommittee on Veterans Affairs.

I had the opportunity to work closely with Senator Dallaire while I was the deputy chair of this committee for a few years. Those were some of the most memorable and proud moments that I have had in the Senate. Senator Dallaire was able to bring a unique perspective to issues faced by veterans and I always relished the opportunity to learn from him. For me, what was most impressive about his work on Veterans Affairs was that I always knew that he was coming from a place of sincerity and genuine concern, and that he was not pushing any political agenda.

His work here has only been surpassed by his work outside of this chamber. He has worked tirelessly to combat genocide and sexual violence in conflict and, perhaps most notably, to eradicate the use of child soldiers globally. He has done all of this without compromising his dedication to veterans here at home.

I was disappointed to hear that he was leaving the Senate early. However, I know that this is far from retirement for Senator Dallaire. We know that the international dimension of his work will only be enhanced with more time and flexibility in his schedule.

Senator Dallaire, I want to thank you for your friendship and cooperation over the years, and I look forward to seeing the important work you will continue to accomplish both here in Canada and in the countries in conflict that need you the most.

Senator, I wish you well. God bless you. You will be greatly missed.

Hon. Senators: Hear, hear!

ROUTINE PROCEEDINGS

HUMAN PATHOGENS AND TOXINS ACT

PROPOSED REGULATIONS TABLED

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, Proposed Regulations under Section 66 of the Human Pathogens and Toxins Act.

STUDY ON STATUS OF CANADA'S INTERNATIONAL SECURITY AND DEFENCE RELATIONS

TENTH REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE TABLED

Hon. Daniel Lang: Honourable senators, I have the honour to table, in both official languages, the tenth report of the Standing Senate Committee on National Security and Defence entitled: *Canada and Ballistic Missile Defence: Responding to the Evolving Threat,* which deals with Canada's international security and defence relations.

(On motion of Senator Lang, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

ELECTORAL BOUNDARIES READJUSTMENT ACT

BILL TO AMEND—TWELFTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. Bob Runciman, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Monday, June 16, 2014

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TWELFTH REPORT

Your committee, to which was referred Bill C-37, An Act to change the names of certain electoral districts and to amend the Electoral Boundaries Readjustment Act, has, in obedience to the order of reference of Thursday, June 12, 2014, examined the said bill and now reports the same without amendment.

Respectfully submitted,

BOB RUNCIMAN
Chair

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

(On motion of Senator Batters, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That, for the purposes of its consideration of Bill C-24, An Act to amend the Citizenship Act and to make consequential amendments to other Acts, should this bill be referred to the committee, the Standing Senate Committee on Social Affairs, Science and Technology have the power to meet on Tuesday, June 17, 2014, even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto.

The Hon. the Speaker: Is leave granted to consider this motion, honourable senators?

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

CITIZENSHIP ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-24, An Act to amend the Citizenship Act and to make consequential amendments to other Acts.

(Bill read first time.)

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

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 5-6(1)(f), I move that this bill be placed on the Orders of the Day for second reading at the next sitting.

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

Hon. Senators: Agreed.

(On motion of Senator Martin, bill placed on the Orders of the Day for second reading at the next sitting of the Senate.)

[*Translation*]

FOOD AND DRUGS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-17, An Act to amend the Food and Drugs Act.

(Bill read first time.)

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

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

[*English*]

CANADA BORDER SERVICES AGENCY ACT

BILL TO AMEND—FIRST READING

Hon. Wilfred P. Moore introduced Bill S-222, An Act to amend the Canada Border Services Agency Act (Inspector General of the Canada Border Services Agency) and to make consequential amendments to other Acts.

(Bill read first time.)

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

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

• (1850)

QUESTION PERIOD

THE SENATE

ANSWERS TO ORDER PAPER QUESTIONS

Hon. Percy E. Downe: As we start our descent into summer recess, there are a number of written questions on the Order Paper. I am wondering if the Leader of the Government in the Senate can find out or use the resources of his good office to let us know if many of them, some of them or most of them will be answered before we adjourn.

[*Translation*]

Hon. Claude Carignan (Leader of the Government): I will check about the questions. We have tried to prepare answers more quickly to some questions from Senator Callbeck, for instance, because she is leaving. I will find out about the questions to which you referred. However, as you know, we always try to diligently answer all questions, but sometimes certain questions require more detailed answers. Your questions often require exhaustive research.

[*English*]

Senator Downe: I appreciate that answer. I am sure the Leader of the Government in the Senate understands that many of these questions are asked by people who have asked me to try to find out. In many cases, they are waiting for the answer; it is not so much that I am waiting for it. I am waiting to forward it to them, so your cooperation is always appreciated.

ORDERS OF THE DAY

PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Housakos, seconded by the Honourable Senator Fortin-Duplessis, for the third reading of Bill S-4, An Act to amend the Personal Information Protection and Electronic Documents Act and to make a consequential amendment to another Act, as amended.

Hon. James S. Cowan (Leader of the Opposition): Colleagues, last Friday, as we were voting on the amendments proposed by Senator Furey, the Supreme Court of Canada handed down its decision in *Spencer*.

I suggested then that we would be well advised to take the weekend to review the decision before the third reading vote on the bill. It was agreed by both sides that third reading would be adjourned until today so that we could get an opportunity to do that and that we would vote on this bill tonight but not before we have had an opportunity to look at it.

A quick reading of the decision suggested to me that the court's findings could have relevance to the provisions in Bill S-4 that permit disclosure of private information from one organization to another, not only without consent but without a warrant of any kind.

The Supreme Court of Canada said in *Spencer* that, in the circumstances of that case, the police — and we are dealing with a police situation there — should have obtained a warrant before requesting the information they sought for the purposes of their ongoing investigation. I assume someone will be speaking to us tonight on behalf of the government to respond to the concerns that we have expressed, and that my colleague Senator Baker will express a little later, and that have been the subject of much media attention and media comment over the weekend.

The amendments proposed in Bill S-4 dispense with the requirement for any kind of authorization — warrant or otherwise. I certainly don't profess to be an expert in this area, but reading the decision and the comments of many observers over the weekend who have such knowledge and such expertise leads me to the conclusion that, as the house of sober second thought, we would be wise to take a second look at Bill S-4 in the light of the Supreme Court of Canada decision in *Spencer*.

Colleagues, let us realize that this is a Senate bill; passing it today will not result in its becoming law tomorrow. If we pass it, and when we pass it, it still has to go through the various stages of debate and study in the other place. So why not refer it back to our committee for another look to make absolutely sure that it meets the Charter and privacy concerns that have been raised before sending it over to the other place?

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Continuing debate.

Hon. George Baker: Honourable senators, I have just a few words on this particular bill.

I congratulate everybody for putting off the vote until today. Senator Cowan was absolutely correct in his initial assessment as to the relevance of the Supreme Court of Canada decision and the importance of it to all Canadians.

I wasn't intending to mention this, but it just occurred to me that the decision dealt with the IP address of a home. Every senator who has a computer in their home has an IP address. In

the criminal matter that was decided on Friday by the Supreme Court of Canada, somebody else had entered that home with a computer and accessed information that was judged in the end to be child pornography, but the warrant was issued for the home of the person who owned the IP address.

I wanted to make that point because when you have grandchildren who attend your home, and if they share music or movies, then you as the IP address owner could be confronted by the police or a warrant that the IP address for which the police disclosed your name and address — you will be the subject of the late-night visit of entering your home and collecting every computer that is present if, in fact, the police are given authority to find out who is behind that IP address.

Now, I make those comments just as an aside.

The first thing I want to do, honourable senators, is to congratulate the members of the committee who heard the evidence on this matter: Senators Dawson, Housakos, Demers, Eggleton, Greene, MacDonald, Manning, Mercer, Merchant, Plett and Verner.

It is unfortunate that, after the hearing that took place, the Supreme Court of Canada made its ruling. The offensive part of what we are doing here in this bill, as Senator Cowan pointed out, is that we are allowing the introduction into PIPEDA of certain authorities:

> . . . an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is . . .

And here is the amendment:

> . . . made to another organization and is reasonable for the purposes of investigating a breach of an agreement or a contravention of the laws of Canada . . .

And then it goes on:

> . . . for the purposes of detecting or suppressing fraud or of preventing fraud . . .

And so on. In other words, the disclosure of private information.

This will be completely new to the law in Canada. Before, the police were allowed to do it without a warrant. That is in the first section of this edition we are dealing with. Now the Supreme Court of Canada has said, "No, you can't do that without a warrant." We are adding now a section that allows organizations and associations to exchange without warrant the same personal, private information that the police are not allowed to get without a warrant. That is how serious the matter is.

Now I must say that — and I will try not to do this, but Senator Carignan is a great expert in civil litigation. He would first say to me, "Look. This was a criminal matter," and he is absolutely correct: criminal matter, criminal standard. The court, in the end, actually allowed the evidence to be admitted. In other words, after the Charter violation had been established, the Supreme Court of Canada agreed with the lower courts to admit the evidence, because if you didn't admit it, it would bring the administration of justice into disrepute because of the actual charges that were laid.

• (1900)

Let's look for a second at what the Supreme Court of Canada said that affects this motion we have before us today. The headnotes to the decision state:

> . . . *PIPEDA* cannot be used as a factor to weigh against the existence of a reasonable expectation of privacy since the proper interpretation of the relevant provision itself depends on whether such a reasonable expectation of privacy exists. It would be reasonable for an Internet user to expect that a simple request by police would not trigger an obligation to disclose personal information or defeat *PIPEDA*'s general prohibition on the disclosure of personal information without consent.

They were talking about disclosure to the police. In this proposed amendment, we are talking about allowing organizations and associations to exchange the same information, such as banks. As Senator Furey pointed out, copyright trolls could get that information. I understand the term "copyright trolls," but most Canadians wouldn't. We know what copyright is; and a troll is a man-eating monster under the bridge, and when you walk over the bridge — well, that's what a copyright troll is in law in the United States, Britain and now in Canada. It's a person or an organization, usually a group of lawyers representing an organization, who go after people who have violated copyright law, mainly in music and movies.

I mentioned it before. When somebody gives something that has initially been downloaded, say, in iTunes, but then they share it, they are breaking copyright law. These organizations have been formed throughout the world to write letters. In Canada prior to this bill, they had to go before a court to get the IP name and address. Under this bill, they won't have to do that. That's why Senator Furey raised this point as a logical example.

Let me continue with what the Supreme Court of Canada said about this matter. Paragraph 54 states:

> There is no doubt that the contractual and statutory framework may be relevant to, but not necessarily determinative of whether there is a reasonable expectation of privacy.

In other words, you sign a contract for your cellphone or for your bank statements. You sign a contract that says the bank or the institution will give your private information if it's a matter of police investigation — the contractual and statutory framework. What's in the statute? The Supreme Court of Canada says that it is not determinative of a reasonable expectation of privacy. They ruled that no matter what the person has signed and no matter what the law is, PIPEDA prevails if that institution comes under the framework of PIPEDA.

Paragraph 60 states:

> The statutory framework provided by *PIPEDA* is not much more illuminating.

The court was very discouraged when they reviewed PIPEDA because it's contradictory. Section 3 says that your information is private and the purpose of PIPEDA is to make sure that institutions don't give your private information to anybody without a warrant. In section 7 of PIPEDA, as the committee pointed out, there are exceptions to that. One exception was a police investigation, which has been struck down by the Supreme Court of Canada saying no, you need a warrant. The other exception will become an organization or association that can exchange your information with other associations.

Paragraph 61 states:

> Shaw's collection, use, and disclosure of the personal information of its subscribers is subject to *PIPEDA* which protects personal information held by organizations engaged in commercial activities from being disclosed without the knowledge or consent of the person to whom the information relates:

Well, there it is. We're doing the opposite of that in this bill. That's contained in section 4.3 and 3.

Paragraph 61 also states:

> Section 7 contains several exceptions to this general rule and permits organizations to disclose personal information without consent. . . . The provisions of *PIPEDA* are not of much help in determining whether there is a reasonable expectation of privacy in this case. They lead us in a circle.

One section of PIPEDA says it's private, while another section says there's an exception to it.

The Supreme Court decision continued:

> . . . *lawful authority* to obtain the information. But the issue is whether there was such lawful authority which in turn depends in part on whether there was a reasonable expectation of privacy with respect to the subscriber information. *PIPEDA* thus cannot be used as a factor to weigh against the existence of a reasonable expectation of privacy since the proper interpretation of the relevant provision itself depends on whether such a reasonable expectation of privacy exists. Given that the purpose of *PIPEDA* is to establish rules governing, among other things, disclosure "of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information" (s. 3), it would be reasonable for an Internet user to expect that a simple request by police would not trigger an obligation to disclose personal information or defeat *PIPEDA*'s general prohibition on the disclosure of personal information without consent.

That's the Supreme Court of Canada ruling on this particular section that we're dealing with.

Paragraph 63 states:

> I am aware that I have reached a different result from that reached in similar circumstances by the Ontario Court of Appeal . . . .

The decision then lists all the other courts that they now disagree with.

Paragraph 72 states:

> I recognize that this conclusion differs from that of the Saskatchewan Court of Appeal in *Trapp*, at para. 66, and the British Columbia Supreme Court in *R. v. McNeice*, . . . at para. 43.

And so on and so on.

In other words, the Supreme Court of Canada is saying that all of the decisions that allowed the disclosure of private information that happened in each of the jurisdictions across Canada are wrong. If you go to the evidence at the first committee meeting on this subject, you'll notice that the banks were all quoting those decisions as justification for the procedure that this amendment is trying to institute. In other words, the banks supported the exchange using the court decisions in four jurisdictions; but now those court decisions have been struck down. Well, they haven't been struck down, it's just that the Supreme Court of Canada says that they don't agree; it's just the opposite.

I have to congratulate all committee members for the excellent questions they asked the minister and the assistant deputy ministers. Senator Furey said:

> . . . under PIPEDA now, the telecoms can actually release information at their own discretion without warrants. Do you think that should be rectified?

Mr. Hanson, an assistant deputy minister, said before the committee:

> . . . the types of information that law enforcement could request would have to identify their lawful authority to request it, and they would be receiving what we would call basic subscriber information.

That would be name, address and telephone number. The Supreme Court of Canada has now struck that down. He said, "This basically ties into" consideration of "the charter and reasonable expectation of privacy. In the sense of basic subscriber data, that could be obtained without a warrant. I would distinguish that from something more intrusive like transmission data or an electronic intercept, for example . . . ."

• (1910)

The point is that the evidence given to the committee has now been negatived by the Supreme Court of Canada.

I was going to go on to illustrate that the Conservative members of the committee should be congratulated as well for their interventions during the committee hearings.

I would strongly suggest that, given the importance of the matter, there might be some way this could be held off for third reading in the fall, if possible. I don't know if somebody could check with the government to find out if that is possible to do.

Senator D. Smith: Ask for five minutes.

Senator Cowan: Ask for five minutes.

Senator Baker: I would like to have five more minutes, if I could.

Hon. Senators: Agreed.

Senator Baker: Honourable senators, for a moment, let me go back to Senator Verner. I always mispronounce her name, but she always stayed in my mind as being so impressive because several years ago she was appointed to the shadow cabinet without being an elected member in the House of Commons. The media asked Prime Minister Harper how he could appoint somebody to his shadow cabinet who's not a member of the House of Commons. Prime Minister Harper said he was appointing his next cabinet, and that's exactly what happened.

Here's the senator saying:

> I would like to go back to the sharing of personal information between two private organizations.

She kept repeating her question, and repeated it again:

> I was thinking more about consent, about the sharing of information between two private companies without consent.

Then the minister said that if you signed a contract with somebody, then that would cover it, and so on.

The point is that what she and other members of the committee were saying was exactly what the Supreme Court of Canada has now decided in their decision — that section 3 of PIPEDA trumps section 7 of PIPEDA, that you cannot disclose these matters without a warrant. They've said it very firmly.

The existing law in Canada, which Senator Furey was trying to point out, can be found in many decisions of the court. There is the Federal Court on February 20, 2014, Carswell, 1599, *Voltage Pictures LLC v. John Doe and Jane Doe*. This is what a copyright troll has to do today in Canada, which they won't have to do if we pass this legislation. They have to go and look for a court order. The court placed such restrictions on this copyright troll that they had to notify the person being investigated. They had to keep the persons who lived at that IP address informed throughout the process so that, when they received the letter demanding $5,000 not to be taken to court, they wouldn't be in a hurry to pay just to keep their name out of the news.

The similarity between Senator Furey's amendments and exactly what the Federal Court now demands in this country is remarkable. Unfortunately, when we pass this bill, it will no longer be necessary. It's obvious that with the first court challenge the bill will be struck down and we'll be back to square one. We'll be back in this place approving a substantial amendment and other legislation that does exactly the opposite to what we're doing here tonight.

Senator D. Smith: And we won't look good.

[*Translation*]

Hon. Claude Carignan (Leader of the Government): Does Senator Baker agree to take a question?

Senator Baker: Yes.

Senator Carignan: Senator Baker, you talked about two private companies sharing information. Do you agree that in order for the Canadian Charter of Rights and Freedoms to apply, there needs to be what is called "government action"? When a law authorizes sharing or when we are talking about two companies sharing private information, there is no government action; therefore there is no Charter application to the sharing of information between two private companies.

[*English*]

Senator Baker: This is exactly what I predicted Senator Carignan would ask because he is an experienced litigator in civil litigation. I would just remind him that another experienced litigator in civil matters, but also an experienced litigator in criminal matters, is Senator Furey.

The answer to Senator Carignan's question is this: If we allow, in PIPEDA legislation, an action that is contrary to the overriding principle of PIPEDA, sections 3 and 4.2, as the Supreme Court of Canada says —

Senator Carignan: They never said that.

Senator Baker: Well, what I just read out was referenced to section 3 and section 7. Now we have a difference as to what exactly the Supreme Court of Canada said.

Senator Tkachuk: Not really.

Senator Baker: I agree with him almost all the time, because he's got a legitimate point here, but my point is that this will be argued in the Department of Justice and the Department of Justice will be throwing back suggestions to the minister's office for the next month or so as to what extent this question applies to this legislation and another bill being introduced in the House of

Commons. I would suggest to him that you can't pass legislation that is inherently different from a decision of the Supreme Court of Canada.

Senator Carignan: Not different.

Senator Baker: That section 3, that the primary purpose of PIPEDA, when you have organizations under the control of PIPEDA by law and the intent is to protect private information, that will prevail. They will go to the Supreme Court of Canada and they will take sections from this criminal proceeding, as you so rightly point out, and apply it to a civil proceeding.

An Hon. Senator: Hear, hear.

[*Translation*]

Senator Carignan: Senator Baker, you anticipated my question and you also anticipated an answer whereby this does not apply. However, I will still take advantage of my opportunity to speak.

The *Spencer* decision involves a government action, namely a request made by a police force for information that is private in nature as part of an investigation into a crime. This leads to the application of section 8 of the Canadian Charter of Rights and Freedoms, which guarantees that Canadians have the right to be secure against unreasonable search or seizure.

The request that was made by the police force was made under subparagraph 7(3)(*c.1*)(ii) of the Personal Information Protection and Electronic Documents Act. This subparagraph is not being amended by Bill S-4. It already exists. Senator Baker, surely you have noticed that this subparagraph is not being nullified. What we did was to look at the law and identify its purpose. This law was made to protect citizens' privacy, to protect personal information when two private organizations exchange information for business purposes or as part of their commercial activities. It creates a framework and protection for the personal information.

We looked at subparagraph 7(3)(*c.1*)(ii) as part of the study into section 8 violations. To confirm section 8, we must determine whether we are dealing with a search or a seizure and, if appropriate, whether it is unreasonable.

• (1920)

We received a request for personal information, we deemed it to be a type of search and then we must decide whether it is an unreasonable search. I am skipping over some of the criteria, but a search is unreasonable when it touches on personal information. How do we determine whether the information is personal? We might have a subjective expectation that our information is private, but we must also have an objective expectation that our interests will be protected.

With respect to the subjective expectation, when we sign a contract with an Internet service provider, our expectation is that our IP address and the sites we visit will not be made public and that our information will not fall into the hands of third parties.

With respect to the objective expectation, it was determined that the Personal Information Protection and Electronic Documents Act is intended to protect personal information. Under the act, personal information must be protected.

The judges therefore agreed that it is reasonable to expect that the information is private. Not only can the person have a contract with the service provider, but the law stipulates that their information must remain private. Accordingly, the Internet user has a reasonable expectation that his information and his IP address, and especially the use he makes of the service or his computer — because it is not just about the IP address and name, but also about the sites he visits and the history of his Internet searches — will be private.

It was from that perspective that we studied the Personal Information Protection and Electronic Documents Act, and never, ever, has the court set aside this law, or has said or implied that this law is unconstitutional or applied in an unconstitutional manner. On the contrary, the Supreme Court confirmed that personal information is protected under the law, and Bill S-4 is consistent with that. All the clauses of Bill S-4 have the objective of protecting personal information.

Moreover, the Interim Privacy Commissioner, Chantal Bernier, said that Bill S-4 meant some very positive developments for the privacy rights of Canadians and that she agreed with the proposals in the bill.

Why did she say that? Because Bill S-4 will better protect the privacy of individuals.

The Supreme Court examined subparagraph 7(3)*(c.1)*(ii) in terms of its application because the police made a request to Shaw Communications under this section. The section says that a company may disclose personal information when the request is made to a government institution or a part of a government institution that has made a request for the information and identified its lawful authority to obtain the information. Those are the key words: "lawful authority to obtain the information." The court specified that to obtain this information, the lawfulness of the request and the authority to obtain it had to be proven. In such a case, the lawful authority to obtain that information is the equivalent of a search warrant. That is what the Supreme Court stated in *Spencer*. A search warrant is required to prove the lawful authority to obtain the information, based on the Supreme Court's interpretation of that section.

The *Spencer* ruling applies the Personal Information Protection and Electronic Documents Act with respect to subparagraph 7(3)*(c.1)*(ii), which simply says that when the police request personal information, such as an IP address or a web and search history, from a company as part of an investigation, a search warrant is necessary because that is sensitive, private information that a reasonable person has a right to expect will be kept private. The *Spencer* ruling was based on this subparagraph.

Bill S-4 does not deal with that section at all. The bill includes various provisions to strengthen the protection of privacy. At no

time does the *Spencer* decision either directly or indirectly affect the existing legislation or Bill S-4.

I think it is important to clarify those facts before voting. Senators must not draw conclusions from the *Spencer* decision that could be detrimental or contrary to Bill S-4. That would be a misinterpretation of the *Spencer* decision, to put it politely.

I would also like to say a few words about the provisions that, in your opinion, violate the Charter. I completely disagree with your interpretation because section 8 of the Charter deals with searches and seizures. As a result, the police must submit a request, not the other way around. Paragraph 7(3)(*d*), which you cited, states that the disclosure is made, and I quote:

> . . . on the initiative of the organization . . . to a government institution . . .

In that case, it is up to the private business to decide whether to share information with the police because it thinks or suspects that an offence has been committed and that it has information about that offence. The company decides whether to send that information to the police. When the company sends the information to the police, the government has not violated anyone's privacy. It is not something the government has done. In fact, it is quite the contrary. The company decided to disclose the information and it is authorized to do so under certain circumstances. This has nothing to do with searches. The company calls the police and shares the information. It is authorized to do so. However, the company is not authorized to share that same information if the police calls looking for it.

Honourable senators, I therefore urge you to vote in favour of Bill S-4 because it helps strengthen the Personal Information Protection Act and requires companies to inform people as quickly as possible when their information has been lost or disclosed. This bill also establishes heavy fines to help ensure that personal information is protected and taken into account. This is an important bill given how quickly information exchange is evolving, particularly via the web, as we know it now.

• (1930)

This update was badly needed, and we were bound to do it. When the bill was passed, a commitment was made to review it regularly. The constant change in technology made it clear that we needed to strengthen and make changes to the Personal Information Protection and Electronic Documents Act. That is exactly what we are doing to meet our objective to protect Canadians' personal information.

[*English*]

Senator Baker: In other words, you were saying that what the police cannot get on their own, for which they need a warrant, all they have to do is get an association or an organization to get the private information for them so they can prosecute.

You mentioned the Privacy Commissioner. The Privacy Commissioner gave that opinion prior to this decision of the Supreme Court of Canada. You talked about search and seizure, and you suggested that the search was actually a search in a home or a search of a computer. No, the search in this case was instituted by the provision of the name and address of the IP owner, the IP address. That was the search that the Supreme Court of Canada ruled was a search. Why did they rule it a search? Because there was a reasonable expectation of privacy.

I know what you are saying, that if the police want to search a car and there is a reasonable expectation of privacy in it, they have to have a warrant. If they want to search your home and there is a reasonable expectation of privacy — and that is the most reasonable expectation of privacy you can have — you need a warrant. An IP address, you need a warrant if you are the police. What you are proposing is that after you pass this, a copyright troll will be able to get names and addresses, in order to carry out their schemes against Canadians, without a warrant.

All in all, when you look at it, I cannot see how one can conclude that this decision of the Supreme Court of Canada, which repeats the whole purpose of PIPEDA at section 3:

> . . . to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals . . .

Don't you think this amendment will strike down that very principle exactly as the Supreme Court of Canada said it did in *Spencer*?

[*Translation*]

Senator Carignan: I suppose that was a question. To begin, I will talk about information. If I give my BlackBerry to the police and they look at it, that is not a search. If the police come and take my BlackBerry from my pocket, that is a search; that discrepancy is set out in the legislation.

Second, in terms of application, it is the Privacy Act that will be enforced. The Supreme Court said that we have a search if, under subparagraph 7(3)(*c.1*)(ii), a government institution is investigating an offence and requests an IP address and an individual's browser history. The police have the authority, under subparagraph 7(3)(*c.1*)(ii), to request that information, but they must demonstrate their lawful authority to do so and they must obtain a warrant. The Supreme Court provided additional information about how subparagraph 7(3)(*c.1*)(ii) applies in connection with the investigative powers of the police.

That seems quite clear to me, but I don't know whether that addresses your concerns, Senator Baker. However, I'm sure that you understand the provisions we are discussing and that you're making a clear distinction between an exchange of information between companies and an exchange of information or a government action seeking to obtain personal information.

Finally, I find it interesting to see the distinction you made about searching a private residence. The Supreme Court makes that distinction. It also uses other extremely interesting cases of

searches, including searches with a sniffer dog. We are talking about the air around a backpack or the odour around the backpack. Can we expect to have privacy when it comes to the odour of our backpack, when the dog is sniffing it and giving an indication of what might be in that backpack? The Supreme Court recognized that if the odour around a backpack causes the dog to react, and that reaction provides an indication of what is in the backpack, then that is a form of search. I can see my police friend reacting to that ruling.

To come back to the home aspect, the Supreme Court made a distinction with regard to the residence. It was not because the computer was in a private residence. That was another case that called for a search. You will recall from the facts that it was the computer belonging to Mr. Spencer's sister that was searched because he used his sister's computer to search for that information, and it was his sister who signed the contract with Shaw and agreed to the conditions of the personal information disclosure policy. It did not therefore apply to him since it was not his computer and he did not sign the contract with Shaw. However, the Supreme Court did not take the home into account. A search warrant was authorized in the prescribed manner to enter the house, but the IP address, the name and especially the user history constitute the information that has to be protected, and that is what the court determined and dealt with completely separately.

[*English*]

Senator Baker: Let me read from paragraph 7:

> Mr. Spencer, who lived with his sister, connected to the Internet through an account registered in his sister's name. He used the file-sharing program LimeWire on his desktop computer to download . . .

So it was his computer that he was using, but it was in an IP address belonging to his sister.

If the senator gave the police his BlackBerry, as he suggested, if the police seize a computer or a BlackBerry, or if you give them a computer or a BlackBerry, a second warrant is needed to examine the brains of that computer. A second warrant is issued.

The reason you give them your BlackBerry is not to examine the brains of a BlackBerry. I imagine if you put it in writing, you can examine the brains of the BlackBerry; they wouldn't need a warrant to do so. You mentioned dog sniffs. Of course, that is a search. Under the law in Canada that has been a search for 20 years. Infrared on grow operations above somebody's home is a search determined by the Supreme Court of Canada.

We can list off 20 cases that seem rather strange, but they are considered to be searches.

The problem we have here with this bill is that the Supreme Court of Canada, yes, they have made a judgment in a criminal matter, but as I read out and put on the record, they referenced PIPEDA and that the intent is to protect private information, and it trumps section 7 in the case of the police.

Now, are we going to pass a law that says if it trumps for the police, let's create another law and let everybody have the information? It goes against the meaning of PIPEDA and the organizations and institutions that are under its control.

• (1940)

Don't you think that Canadians would look at this in a reasonable manner and say, "Well, if the police are not allowed to do it without a warrant, then why should the Bank of Canada or some copyright troll from the United States be allowed to harass Canadians without having a warrant to get their actual name and address?"

Some Hon. Senators: Hear, hear!

[*Translation*]

Senator Carignan: Senator Baker used the BlackBerry as an example. If I turn on my BlackBerry and show the police everything in it, there's no need for a warrant because I'm the one showing the information.

You asked why a private enterprise would be able to do it but a corporation would not. The difference is pretty clear according to section 8 of the Canadian Charter of Rights and Freedoms. As you know, the Charter applies to government activities. If there's no government activity, the Canadian Charter of Rights and Freedoms does not apply. In Quebec, the Quebec Charter of Human Rights and Freedoms might apply between private parties. It might have that kind of provision that would apply to private investigations.

It might be the Quebec charter or the Ontario charter. The British Columbia charter applies to private matters too, just like Quebec's. That's possible. However, for the Canadian Charter of Rights and Freedoms to apply, there has to be government activity. In the case you referred to, there is no government activity, so the Charter does not apply.

[*English*]

Senator Baker: There is a decision of the Federal Court by Prothonotary Kevin Aalto on February 20, 2014, involving an American company, *Voltage Pictures LLC v. John Doe and Jane Doe*. The Federal Court, in a long decision, said that you cannot have private information — here is paragraph 1, the first sentence:

> Do persons who download copyrighted material from the internet using a peer to peer (P2P) network and the BitTorrent Protocol (BitTorrent) through the auspices of an Internet Service Provider (ISP) have a right to privacy such that their contact information not be revealed to the party whose copyright is being infringed?

That was the determination of the Federal Court. They had to go to the Federal Court to get the information. They could not get it directly from the Internet service provider. Why? Because the

law said they had to go to court. That was their understanding of the law.

We are about to change the law in order to allow an organization for the very reasons that we are allowing people here who have breached an agreement or are in contravention of the laws of Canada, the copyright law — the honourable senator knows the copyright law inside out and upside down. This will allow the information to be given, as Senator Furey pointed out so vociferously at committee, without having to go to court. Does the honourable senator really think that is where we should be going with privacy legislation in Canada?

[*Translation*]

Senator Carignan: Senator, with all due respect, you are comparing apples with oranges. You said I knew a thing or two about civil law. You provided a perfect example of civil law: the opportunity for a person whose rights under the law have been violated to sue for damages and interest in order to ensure his rights are respected.

The question you raised is about the impact of the *Spencer* ruling on a criminal investigation. That is within the purview of the Canadian Charter of Rights and Freedoms, specifically, section 8.

That is quite the departure. Obviously, the people whose civil rights are violated will have more recourse with Bill S-4 because the bill strengthens their protection and provides for more substantial fines.

I hope that you will agree with us and that in the next few minutes you will vote for the bill in order to increase the protection of Canadians' personal information and ensure that companies that violate the privacy of Canadians can be prosecuted and properly convicted so that we can reduce these violations as much as possible or eliminate them.

[*English*]

Senator Baker: But the copyright law is a law. With respect to every person who has a computer and an IP address, if somebody walks in — a grandchild or a great grandchild — and downloads music, this bill will allow the troll of the copyright law to be able to send the grandparents a letter saying, "You owe us $5,000 or we will take you to court." Why? Because you have downloaded material. Now, imagine if it were movies; imagine what the letter would say then.

Don't you think that opening this up to allow that one instance of civil law, which you verified as a civil matter, that allowing a U.S. firm, as they have applied in court — they have 20,000 IP addresses in Canada on downloading music, and they want to get to the people who own those IP addresses, regardless of whether they were the ones who downloaded the music. We have a law in Canada that prohibits them from doing so, except under certain conditions, the very conditions that Senator Furey outlined in his amendments; you have to do this, this, this and this. We are taking that away.

I think that is the bottom line. I don't think that Canadians, if they understood the significance of that, would want us to pass this bill. On reconsideration, wouldn't you agree with me that perhaps you should stand in your place tonight, senator, and vote against the bill?

Some Hon. Senators: Hear, hear!

[*Translation*]

Senator Carignan: Honourable senator, you gradually got away from the *Spencer* ruling and now have arrived at the core of Bill S-4, which contains provisions that increase protection for privacy and personal information as well as providing the recourse that Canadians are entitled to. This is what led Chantal Bernier to state the following about the bill:

> . . . there are some very positive developments for the privacy rights of Canadians . . . I welcome proposals [contained in the bill].

I invite you to contribute to these positive developments in privacy protection in Canada.

[*English*]

Senator Baker: At a time when there is a great person who has assumed the chair, who knows section 8 of the Charter probably better than anybody else does as far as his report is concerned, the Nolin report — he has been called as a witness in courts in Canada to give testimony regarding cases in which section 8 is in question — I have come to the conclusion that we are going to have to agree that we disagree. I want to thank you sincerely for your answers here tonight and for providing us with the opportunity to ask questions. Thank you.

• (1950)

Hon. Joan Fraser (Deputy Leader of the Opposition): Would Senator Carignan take another question?

Senator Carignan: Yes.

Senator Fraser: You quoted Chantal Bernier a moment ago, and it is perfectly true that on April 8 she issued a statement on Bill S-4 saying, "At first glance, there are some very positive developments for the privacy rights of Canadians," and I don't think anybody on this side has disputed that. Senator Furey was at pains in his speech to point out some of the good elements of this bill.

However, on June 13, commenting on the *Spencer* decision, the Privacy Commissioner, Daniel Therrien, said:

> Our Office welcomes this seminal decision for privacy protection in Canada. . . .

> The Court ruled that there is indeed a reasonable expectation of privacy in subscriber information. The Court agreed that this information could, in many cases, be the key to unlocking sensitive details about a user's online activities and is therefore worthy of constitutional protection.
>
> The decision has important implications for Bill C-13 . . .

— which is not yet before us. Then, at the very end, he says:

> We would encourage Parliamentarians to carefully consider the implications of this ruling as they deliberate on Bill C-13 as well as Bill S-4, the *Digital Privacy Act*.

That sounds to me like a great, big red flag being waved by the Privacy Commissioner. I wonder if you would comment on his statement.

[*Translation*]

Senator Carignan: Like you, I took note of that statement. Last weekend, we looked at the ruling, as the commissioner asked us to. He may not even have had a chance to do a full analysis of the decision, since his statement was made just a few hours after the Supreme Court rendered its decision.

At your suggestion, we examined it over the weekend, and I imagine you did the same on your side, to see whether the decision would have any adverse effects on Bill S-4. We have debated this in the Senate, and we concluded that the decision has no effect whatsoever on Bill S-4. The *Spencer* ruling states that if a government representative, such as a police service, requires access to information such as an IP address in order to investigate a crime, this representative must have a search warrant and must provide justification for its lawful authority not only to request the information, but also to obtain it.

[*English*]

Senator Fraser: Well, honourable senators, I, too, spent some of my weekend going through as much of the relevant material as I could. I must say that I am more persuaded by Senator Furey's original argument before the *Spencer* decision and, above all, by Senator Baker's really powerful presentation of the case in the light of the *Spencer* decision.

I, for the life of me, cannot see why we would be allowing private organizations to do what the Supreme Court has just said the police cannot do in terms of passing on confidential information. I guess on this, as Senator Baker said, we will simply have to disagree profoundly.

[*Translation*]

Hon. Pierrette Ringuette: Honourable senators, following on my questions about this bill last Friday and some comments I just heard, I would like to share some comments of my own. I will be brief. You will recall that last Friday I told honourable senators in this chamber that the Senate was in a privileged position to ensure that the Constitution and the Canadian Charter of Rights and Freedoms are complied with.

I also said that I was not convinced that Bill S-4 fulfilled its objective. This is a chamber of sober second thought, and it is even more important in the case of Bill S-4 that we have no doubts that the bill at least complies with the Canadian Charter of Rights and Freedoms before we send it to the other chamber.

We were discussing this last Friday morning, but now a Supreme Court decision is focusing our discussion more intensely on protecting Canadians.

I did not study law, but it has been said that, in civil law, an individual whose information was shared by an organization can take legal action against said organization. I would like to point out that last Friday we were told that the individuals in question may not even be informed that their personal information was shared because of the considerable red tape it would create for the organizations.

Clearly, I am very disappointed that this chamber does not want to wait to obtain the necessary assurances. A couple of weeks or months will not have that great an impact on the entire Canadian economy.

Before we continue, we must be sure that the legislation is compliant. We must send the bill to committee for sober second thought. I am urging you to do this. Don't you think that the public has already had enough negative things to say about this chamber? Now, today, the day after a Supreme Court ruling, we are prepared to send a bill that, I feel, contravenes the Canadian Charter of Rights and Freedoms to the other place? Come on.

My colleagues said that they don't expect to come to an agreement with you. Given the number of senators here and the potential outcome of the vote, it is possible — if you are adamant that we proceed to third reading tonight — that Canadians, in a few months, will have yet another opportunity to say that perhaps senators, once again, did not fulfill their duty to act as a chamber of sober second thought.

[*English*]

Hon. Serge Joyal: Honourable senators, I listened carefully to the comments that were made by the Honourable Leader of the Government, and there is something in his answer that puzzles me. If we try to understand the fundamental principles that the Supreme Court outlined in its historic judgment, the court states for the first time that the Internet has opened a whole domain of risk for the protection of privacy and that it is difficult to start to establish boundaries with the way information circulates on the net so easily. You take your computer, you open it, you put your name in it or your password, and then you have access to the world.

• (2000)

That is fine. It is effective. It's useful, but it also carries a danger. The danger is that everything you do, say, comment or add, somebody else could snoop through and use it against you.

The court said there are principles in there that we have to establish, "we" being the court. What the court states quite clearly is that anyone on his or her computer, BlackBerry, cellular phone

or any technology related to that method of communication has a reasonable presumption of privacy. This is fundamental. It's not because you communicate with the world over that the world over can come into your computer, BlackBerry or cellular phone and pick up any kind of information, use it for his or her own purposes and then spread it to other groups of people so that you can't really know where it's going to end up. Because the information circulates that easily, nobody seems to think that there should be parameters. As I said, it's so easy to be all over the world.

I think that one of the fundamental principles that the court has stated is that presumption of privacy. So, unless you accept clearly that that information is given to somebody else, or the court, through a litigation process whereby somebody applies and establishes the proof in front of a judge, will make a reasonable decision that the information is needed for a public purpose. But somebody cannot snoop into your computer.

An Internet service provider will exchange that information with other providers because there is no problem. Rogers can give it to Shaw. Shaw can give it to Bell. Bell can give it to AT&T in the United States. AT&T can give it to a British telecom and so on, and then everybody knows where you are.

The fundamental principle is that you have a presumption of privacy. I think that it is very important that we draw the conclusion on the grounds of the *Spencer* decision. Whether it be for criminal or private purposes unless, when you sign a contract of services with a provider — any one of them — it's clearly spelled out that you are abandoning your right to privacy and authorize your service provider to share your information with anyone without informing you that they are giving it to a company established in the United States. That company in the United States, which is not bound or regulated by the same law in Canada, can then give it to anyone — the border agency, the bank, whomever. Imagine the spectrum of all those who may want to look at your information.

It seems to me that this is a fundamental conclusion of the *Spencer* decision. The court had to interpret section 8 of the Charter. I totally agree with that, but the court also states very clearly what it seems, in the wisdom of the court, are the parameters for the spreading of the information. That's why I think it is so important in this debate.

There will be another debate, honourable senators. Don't think that tonight is the final say on it. Everything we say in this chamber will be taken by the other place. We have changed the two roles of Parliament: we are the first ones to discuss this bill. This bill, if it is adopted, will be sent to the other place and the other place will look at everything we have said. The answers of the Honourable Leader of the Government and our interventions tonight — mine, Senator Baker's, Senator Fraser's, Senator Ringuette's, Senator Furey's and all other senators in this chamber — will be read carefully. They will re-start the debate and they will do the sober second thought debate in the other place on this.

I think it is very important in such a domain, where the principles were not that clear until last Friday, that we ask ourselves if we are satisfied that we have canvassed what I call the logic of the decision of the Supreme Court.

When I read the decision of the court in relation to the Senate reference, what did the court say? The court said that we have to look into the nature and architecture of the Constitution. Don't read only sections 28 and 26 and say, "Well, section 41 doesn't say that," or "Section 38 doesn't contain that word." The court says to try to understand the system.

In relation to the Internet, we have to try to understand how the system works and where the boundaries have to be placed. That's why I think, in relation to this debate, it is so important to take our time, reflect upon it and ask ourselves if those parameters are clearly understood in terms of how the Supreme Court opened the horizon of that spreading of information. I would say that the principle of the abandonment of privacy when you use those systems is not in the sound principles to protect the rights and freedoms of individual citizens.

Honourable senators, this is, in my opinion, where I sit on that. I understand that we are at the end of the spring session. We all want to leave; I know that, myself included. But on Bill S-4, where the debate has just started in terms of the implications for the future of Canadians and their rights in relation to the use of the Internet and all those technological means of communication, I don't think we need to do this in haste. I think we need to reflect on those things, and I think summertime is a good time to reflect. Take the 48-page *Spencer* decision with you to the beach or under a parasol and try to understand what it means to you. Then, when you come back in September, you might have the wisdom needed to finally take a stand on it and see if it is the best effort that this chamber can make.

Thank you, honourable senators.

Hon. Céline Hervieux-Payette: May I ask a question?

Reflecting on the purpose of the bill, I was wondering if we could make a parallel with a letter sent through Canada Post and if any person can open our private mail. I tried to recollect what we're using now and why Canada Post has so many problems. Perhaps the government wants to increase mail through Canada Post, and then all our secrets will be in the mail. If we compared those two, should we not have the same principle of the sacredness of the message contained, whether it's electronic or through Canada Post?

Senator Joyal: Read the Supreme Court decision again. Justice Cromwell, in my opinion, has done a very great service to the Canadian public.

An Hon. Senator: Hear, hear.

Senator Joyal: Justice Cromwell is a very wise person. I know some of you have read some of his past decisions. He's not somebody who rushes or hurries to conclude something. He tries to understand what he has in front of him, and he tries to understand what may spill over.

Since the Supreme Court has embarked on those important decisions to frame what I call electronic communication in its widest sense, those principles have to be in sync with what Canadians traditionally have had as privacy protection.

Again, it's not the electronic means that determine that the right doesn't exist anymore. It's not the cart that tells the horse where to go. It's not the electronic device that will say to you, "Follow, and open the gate." He has been able to understand that the principle the court, in its wisdom, established would be used in the future in other decisions. And there are other decisions. There was one — I don't want to go over time. Am I okay?

• (2010)

The Hon. the Speaker *pro tempore*: You are fine.

Senator Joyal: There was one decision that I read this morning in the paper, in *La Presse*, which I refer to my honourable colleague, the Honourable Leader of the Government. He might have read it this morning. It's a decision of the Federal Court of Appeal in the United States.

The court, following the Fourth Amendment of the U.S. Constitution, came to the conclusion that the information that you store in your cellular phone when making calls is protected by the Fourth Amendment, unless you go in front of a court and you seek the authorization of the court to snoop into it.

It means that the company that provides the service, or a company friendly to that company, to say the least, cannot try to recoup the information that is in your phone, that because you phoned from Toronto, somebody else can decide, "Oh, she was in Toronto; then she can't be in Ottawa. So if she is in Ottawa, she can't claim that she was in Toronto."

I say that to you because the Auditor General is doing that today.

Senator Moore: It's wrong.

Senator Joyal: The Auditor General is taking your phone list and identifying where you have called; and in relation to where you have called, they draw conclusions.

Senator Moore: No right to it.

Senator Joyal: But according to the decision of the Federal Court of Appeal in the United States today — read it — this can be done only if the police have sufficient reason to believe, on the basis of a fact — I insist: on the basis of a fact — that they can go into your phone list.

This is the decision I read this morning. I know that when I raise it in this chamber tonight, all of you will listen. Why? Because there is an element of privacy here. No more than the Auditor General can come into your office and say, "Turn on your computer. I want to see everything. I need it."

They need it for a performance audit? This is not a performance audit; this is a forensic audit. There's a distinction between the two, honourable senators. If it is a forensic audit, it's because they start from a basic fact that there is something that deserved a forensic audit. In other words, they can't go on a fishing expedition.

Those are principles that the Supreme Court raised on Friday. When I said to you that what is important is the nature and architecture of the decision, this referred to that.

So, honourable senators, think individually about this. I was not expecting to mention that tonight, but the question I was asked by Senator Hervieux-Payette called upon us to discuss this. I think it is important that we discuss this. I'm not afraid of discussing it because we live under the rule of law.

May I have another few minutes?

An Hon. Senator: Five more minutes.

The Hon. the Speaker *pro tempore*: Agreed.

Senator Joyal: I'm not afraid of raising it, honourable senators, because we live under the rule of law, and the rule of law is as much the obligation that any citizen has or any senator has in relation to the Senate. But the rule of law is also the legal system that protects the rights and freedoms of the individual, the citizens or the senator.

We are protected by the rule of law, as much as under the rule of law we have obligations to the Senate. The extent of those obligations is important, and any one of us reflects those days on the basis of those responsibilities.

It seems to me that in relation to that, there are responsible groups within the chamber. There's the Internal Economy Committee, which has a subcommittee that meets regularly with the Auditor General and the representative of the Auditor General. Honourable senators, my humble advice to you is that they should raise the principles of those issues at stake.

Senator Moore: Absolutely.

Senator Joyal: I'm not afraid to say it in this chamber. I have the impression of walking in a porcelain store. On the other hand, I tell you that if we don't have that reflection now, we might at a point in time find ourselves as citizens in court who realize that everything they are and everything they have been is suddenly open, without any parameters to be given within a due process.

It is the due process that protects us, as any other citizen. I think what I say tonight, honourable senators, is very important and very serious. We are all concerned — I as well — but I think we have to raise it, because if we don't raise it and we try to solve our little, individual case *in petto* — that is, in secret, as the Latin language would say — we're not helping the system to improve and to grow, as much as it is important to abide by our obligations and as fundamental as it is that we know the rules that have to be followed and how they have to be implemented.

That's what I want to propose, Senator Hervieux-Payette, to your question, because I think that before we leave for the summer, there is food for thought.

[*Translation*]

Senator Carignan: Would Senator Joyal accept a question?

Senator Joyal: Certainly, senator.

Senator Carignan: I agree with approximately 90 per cent of your speech, which was quite eloquent. However, sometimes I think that the more we discuss this issue, the more we lose sight of the very principle behind the *Spencer* decision, namely the issue of why the Supreme Court determined that the IP address is the connection. It is not just about the IP address. Usage also reveals intimate details that must be protected. They are protected under the Personal Information Protection and Electronic Documents Act. The court said that since the personal information in question is protected under that law, people must be able to reasonably expect that the information will in fact be protected.

The very basis for why this information is protected is a law that stipulates that the information is personal and that it is protected. What we are doing today with Bill S-4 is strengthening that protection.

Accordingly, why would we today deprive ourselves and Canadians of greater protection, protection that is in keeping with the *Spencer* decision?

Senator Joyal: We would do so in order to uphold an extremely fundamental principle that, if there is no authorization or provision under the act for information to be made public through a certain process, then that information must remain private. In this case, a company could take a customer's information and share it with another company, which would also have information that it could share with someone who asked for it; they would have a kind of common interest in sharing the information without the authorization of the person who has, in good faith, entered his information in the database.

• (2020)

That is the basic principle at issue here. The government can create a legislative process under which information can be shared, but the person who owns the information must clearly and freely consent to that information being shared. That is the basic principle of protecting privacy.

When I say that consent must be freely given, that is not the case when the company or provider says, "If you don't authorize me to share this information with another company, you can't be my client." That is not the free market; that is a scenario where an individual is taken hostage by the provider, and that signals the end of the right to negotiate a contract in good faith based on rates regulated by the CRTC or public organizations. I think that is the context the Supreme Court had in mind when it established the privacy protection principle, which applies to all electronic media, including telephones, the Internet, private computers, BlackBerrys, smart watches or whatever you can imagine. It seems as though there is a new gadget every six months that collects even more information about who you are and what you do.

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

[*English*]

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore***:** Those who are in favour of the motion please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore***:** Those who are against the motion, please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore*: In my opinion, honourable senators, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore***:** Call in the senators.

Whips, what is the length of the bell?

It will be a 30-minute bell. The vote will take place at 8:52 p.m.

• (2050)

Motion agreed to and bill read third time and passed, on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Martin
Ataullahjan	McInnis
Batters	McIntyre
Bellemare	Meredith
Beyak	Mockler
Boisvenu	Neufeld
Buth	Ogilvie
Carignan	Oh
Champagne	Patterson
Dagenais	Plett
Demers	Poirier

Doyle
Eaton
Enverga
Fortin-Duplessis
Frum
Gerstein
Greene
Housakos
Johnson
Lang
LeBreton
MacDonald
Maltais
Marshall
Raine
Rivard
Runciman
Seidman
Seth
Smith (*Saurel*)
Stewart Olsen
Tannas
Tkachuk
Unger
Verner
Wallace
Wells
White—50

NAYS
THE HONOURABLE SENATORS

Baker
Callbeck
Campbell
Chaput
Charette-Poulin
Cordy
Cowan
Dallaire
Dawson
Day
Downe
Dyck
Eggleton
Fraser
Furey
Hervieux-Payette
Hubley
Jaffer
Joyal
Lovelace Nicholas
Massicotte
Merchant
Mitchell
Moore
Munson
Ringuette
Robichaud
Smith (*Cobourg*)
Tardif—29

ABSTENTIONS
THE HONOURABLE SENATORS

Nolin—1

• (2100)

CANADA—HONDURAS ECONOMIC GROWTH AND PROSPERITY BILL

THIRD READING

Hon. Leo Housakos moved third reading of Bill C-20, An Act to implement the Free Trade Agreement between Canada and the Republic of Honduras, the Agreement on Environmental Cooperation between Canada and the Republic of Honduras and the Agreement on Labour Cooperation between Canada and the Republic of Honduras.

He said: Honourable senators, I rise today on third reading of Bill C-20, the Canada-Honduras Free Trade Agreement. I intend to be brief at third reading given that I gave a lengthy speech at second reading stage of the bill and the bill was brought to committee.

I want to thank and compliment the fine work of the Standing Senate Committee on Foreign Affairs and International Trade under the leadership of the chair, the Honourable Senator Andreychuk. I also want to thank the critic on Bill C-20, the Honourable Senator Dawson, for the diligent and efficient cooperation that he showed on this bill. I also want to thank all members of the committee, including independent Liberals, for their bilateral support of this agreement.

Free trade agreements are the cornerstone of this government's strategy when it comes to international trade development and enhancing Canadian markets for Canadian industry and Canadian businesses. Obviously, Canada, being a trading country, has a long history of benefiting from free trade agreements. We are all too familiar with the big ones like the Canada-U.S. Free Trade Agreement and big agreements like CETA where we are dealing with hundreds of millions of people in huge markets; but we can't belittle small arrangements and smaller trade agreements with countries like South Korea and, of course, now Honduras.

We do recognize the challenges with Honduras regarding security issues, poverty and human rights, but we as a committee and the Senate have to compliment the Government of Canada in recognizing that their view on dealing with these issues is engaging with countries and not isolating them. Engagement, they believe, is the best way to help Honduras meet its challenges.

For Canada, this agreement I'm sure will be opening up new markets, new opportunities, new potential for Canadian industry — industries like the potato farmers of Prince Edward Island, the pork industry in Ontario and Quebec, the beef industry in Alberta. These are just some of the sectors that will benefit from this free trade agreement with Honduras.

Furthermore, investors will have the opportunity under this agreement to be protected and will be encouraged in furthering their current investment in the country. Canada already enjoys the privilege of being one of the largest employers. Canadian companies are one of the largest employers in the Honduras market.

Of course, we all understand and recognize that with trade agreements not only do you help enhance commercial exchange but you enhance cultural and technological exchange. We believe this will be one small step going forward in Latin America for Canada, Honduras and all surrounding countries.

That is why, senators, I encourage you all to unanimously support Bill C-20.

Hon. Percy E. Downe: Would the honourable senator take a question?

Senator Housakos: Absolutely.

Senator Downe: You quite correctly identified trade as the root cause of our prosperity in Canada, and international trade is a vital element of our economy. Exports account for 31 per cent of this country's GDP and one job in five in this country is directly or indirectly dependent on exports.

Given the importance of trade, the value of free trade agreements would seem to be self-evident, but if you look at some of the facts, the benefits of these minor agreements are far from obvious. Of the seven free trade agreements for which we have data, five have seen an increase in our trade deficit with those countries.

I'm wondering if the honourable senator would explain why that is.

Senator Housakos: Honourable senator, of course it varies from country to country and circumstances vary, depending on the region, depending on the circumstance, depending on the year.

As I said in my speech at second reading, and I reiterated that at third reading, when you make these trade agreements, especially with smaller markets, it's a long-term perspective. There are political ramifications that are also involved when you're dealing with these countries, where you're dealing with labour agreements and environmental agreements. Like I said, you're going to have technological exchanges. Some of these smaller markets face challenges, as I outlined. They face challenges of poverty, governance, corruption. They don't necessarily have some of the infrastructure in place for having two-way trade like United States, Canada or the EU. But we think it is a long-term strategy and we feel that by taking baby steps we help them contribute to improving their governance, their battle against poverty, their battle against lack of governance in certain circumstances. You can't just look at it in terms of the bottom line. You have to look at these trade agreements from a long-term perspective.

Senator Downe: I appreciate that answer. It's very interesting, but what we see here is part of a very disturbing trend.

This government has presided over a 7.5 per cent decline in the value of goods and services exported to other countries, where our trade deficit increased from $37.8 billion in 2006 to $143 billion in 2011. Exports as a proportion of our GDP now hover around 31 per cent. When the government came to power, that figure stood at 38 per cent. Why are we signing more agreements and our trade deficit keeps getting higher?

Senator Housakos: Senator Downe, as I said earlier, free trade agreements are a work-in-progress, and Conservative governments historically have shown vision when it comes to trade agreements. Should I not remind everybody in this chamber that you were chief of staff for a prime minister who wanted to tear up the Canada-U.S. Free Trade Agreement? Obviously, in retrospect, I think you will agree with us that that was not necessarily a bad deal.

We are ready to defend these deals. We know we are building long-term structures and political and trade relationships with these countries. We have faith in them. We think they are door-openers for various regions, as South Korea is in Asia, as we believe now Honduras will be in Latin America.

Senator Downe: I think that's a very defensive answer, if it's an answer at all. I will return to my question. Since you formed government, exports as a proportion of our GDP are now 31 per cent, down from 38 per cent when you came to power.

If you're doing such a great job, why don't the statistics back you up?

Senator Housakos: Senator Downe, do I need remind you that in 2008 and 2009 we experienced one of the worst economic crises in this century, definitely the worst crisis since the Great Depression? I think you will admit that the compression in trade because of those two years obviously has impacted the numbers, but in terms of job creation and trade vis-à-vis what is happening in the rest of the world, Canada is a model. We stand by our policy and we stand by our record.

Some Hon. Senators: Hear, hear.

Senator Downe: It could be argued Canada is a model because these other countries are certainly interested in signing deals with us because the trade balance goes in their favour, not in our favour. So we're a model for the world, all right.

Why is your government not doing more to help Canadian businesses take advantage of these deals that you sign? Could you elaborate on that a bit more?

Senator Housakos: Again, I think you're being unfair. I think if you look at the balance with Honduras, for example, we are trading more than they are trading here. We feel obviously that you cannot have a very parochial view when you're looking at trade agreements. Trade agreements have to be win-win. As I highlighted so many times, there is more to trade agreements than just the import-export trade balance. There are a lot of elements that you have to take into consideration, not only who won out this year vis-à-vis somebody else.

Senator Downe: I'm now not sure. Are they trade agreements or are they trade and social policy agreements? If they're social policy, that's a different story. Certainly on trade, we're not doing that well.

As I mentioned earlier, our trade deficit increased from $37 billion in 2006 to $143 billion in 2011. How do you explain that? Maybe it's good social policy, is it?

Senator Housakos: Social policy comes from strong economic indicators, and the economic indicators right now have Canada at number one. We are number one around the world. So I don't think we need to take lessons from the Liberals in terms of dealing with trade. As I said earlier, Senator Downe, you were part of a government and an administration that wanted to tear up the Canada-U.S. Free Trade Agreement. You tell me what the numbers are vis-à-vis our trade with the United States over the last 15 years. If you give these other, smaller free trade agreements the same benefit of the doubt and give them time in order to really bear the fruits they will bear in the next few years, maybe we'll be having the same type of discussion vis-à-vis these trade agreements as we are having today vis-à-vis the U.S. trade agreement and the North American Free Trade Agreement.

• (2110)

Senator Downe: The counter-argument could be that if you worked on more significant deals, you might have more significant impact instead of running around doing deals with Jordan and Columbia. For example, we do more trade with the U.S. in nine hours than we do with Jordan in a year.

Where is the trade deal the Prime Minister announced eight months ago?

Senator Campbell: With Europe?

An Hon. Senator: It is coming.

Senator Housakos: Again, you are belittling huge successes for the economy of this country. CETA right now is probably the most important trade agreement since the U.S. free trade agreement. You are dissing the trade agreement with the United States, and now you're doing the same thing with CETA.

Senator Campbell: Where is it?

Senator Housakos: It is a market of 500 million buyers — a strong market — that is going to be open to the commerce and trade of this country.

Listen, obviously when you are dealing with the number of countries we are dealing with in Europe, it takes a bit of time, effort and vision — vision, Senator Downe — something that our government and the Conservative governments of the past have always had. We have to be patient. We have a tentative agreement with the European Union. They are going through their regular due diligence right now of getting approval about the various nation states.

Senator Campbell: Sure they are.

Senator Housakos: Once we sign that agreement, you will see the net benefits with CETA as you have seen with the North American Free Trade Agreement and the Canada-U.S. Free Trade Agreement.

Senator Downe: I am delighted to hear we have a tentative agreement. Could the honourable senator table that in the Senate so we could look at it?

Senator Housakos: It is going through the EU right now and will be tabled in the House of Commons. When it gets through the House of Commons, we will have ample opportunity to look at all of the details in the agreement.

Senator Downe: I fully agree with that, but the Prime Minister announced it eight months ago. Where is the agreement?

An Hon. Senator: It's coming.

Senator Plett: This is not Question Period.

Some Hon. Senators: Oh, oh!

Senator Housakos: Senator Downe, you will see that agreement, but now we are dealing with the Honduras free trade agreement. It is one agreement at a time.

Hon. Mobina S. B. Jaffer: I have a supplementary question. Senator, I listened carefully and you spoke about the challenges some countries were having. You talked about corruption. I am wondering, having studied this carefully, what is the situation with human rights, especially around mining?

Senator Housakos: Mining in regard to Canadian mining companies or mining in general in Honduras?

Senator Jaffer: Well, senator, you are being cute. If we are entering into a trade agreement, one of the things we look at is our Canadian values. Is this something we want to do? Is this a country we want to trade with, in a free trade situation? I am asking: Have you studied the human rights and how will you protect them when we enter in this agreement, and corporate social responsibility?

Senator Housakos: All elements of the trade agreement were taken under consideration. We had a number of witnesses come before the committee, including a Canadian mining company that is one of the largest employers in Honduras. If I am not mistaken they employ over 800 people. They pay their employees four times the national average of Honduran income earners in that country. They have health care support for their employees, which is second to none for a country like Honduras.

We think Canadian mining companies that are there respecting the local requirements, rules and regulations of Honduras are doing it in an admirable fashion but, more importantly, Canadian companies are there bringing Canadian expertise, Canadian governance, Canadian respect for environmental and social policy, and hoping they are a model for every other mining company in Honduras, because I know that they are. They have shown a large number of successes.

Senator Jaffer: Are they bringing Canadian values? Are they bringing Canadian corporate social responsibility? You talked about the mining person who was there representing a corporation, but how about the young woman who was speaking about mining rights that were being abused? What was she saying?

Senator Housakos: One of our senators specifically asked the lady, in terms of the mining abuse that is going on in Honduras, whether they are applicable to Canadian companies. She said no. She did not use any Canadian example where they were infringing upon social and environmental standards that we hold so dearly as Canadians. Mining is such an important industry in this country. Canadian mining companies all over the world have a fantastic reputation of providing mining services in the most effective and respectful fashion.

Senator Jaffer: Do you know what happened in the Congo?

[*Translation*]

Hon. Céline Hervieux-Payette: Since you are such a fan of free trade agreements and you just cited NAFTA, I would like to know, with respect to CETA and NAFTA, how many countries will require special visas, as is the case with Mexico, which has currently reduced trade with Canada. We were recently told that a businessman can obtain a visa within 10 days. I have never heard of a businessman who takes 10 days to decide whether or not to go and visit a client.

Are you going to place a restriction on individual countries or will all of Europe now be able to access Canada without a visa?

[*English*]

Senator Housakos: To my knowledge, there are a number of European companies right now where there is an impediment vis-à-vis visas. From what I understand, that is in the process of being rectified.

I also want to highlight to all of the questioners in the chamber today that the Liberal Party of Canada on the other side unanimously supported this accord.

Some Hon. Senators: What do we care?

The Hon. the Speaker: Is there further debate? Are honourable senators ready for the question?

Hon. Senators: Question!

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

(Motion agreed to and bill read third time and passed.)

APPROPRIATION BILL NO. 2, 2014-15

THIRD READING

Hon. JoAnne L. Buth moved third reading of Bill C-38, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2015.

She said: Honourable senators, I gave you the details of the Main Estimates in my second reading speech. This is the second bill for Main Estimates. I just want to say thank you to the clerk, Ms. Jodi Turner, for all of her work in the Standing Senate Committee on National Finance, and to the Library of Parliament analysts, Sylvain Fleury and Raphaëlle Deraspe. I also wish to thank the chair, Senator Joseph Day, and the deputy chair, Senator Larry Smith.

It is recognition for all of the work that goes on in National Finance, the detailed questioning that occurs and the exceptional service from the clerk and the analysts.

Hon. Joseph A. Day: I would like to thank Senator JoAnne Buth as well, while we are thanking everybody. I really appreciate the work that you were doing on the committee, and I wish that you would be continuing in that particular position.

Honourable senators, this is main supply. You are being asked to vote for $61.5 billion. Along with the $24 billion that you voted in March, it means that $86.3 billion is total voted appropriation for this year, along with $149 billion of statutory. It means that what the government needs to run, excluding supplementary estimates, is approximately $235 billion for this particular fiscal year.

Senator Buth has referred to the report that was filed. I don't intend to go over the report either, but it will help you with respect to understanding what is in the Main Estimates. This is the second interim report. We will have other reports as we go along. We study the Main Estimates throughout the year. We also anticipate that there will be more supply required through (A), (B) and (C).

• (2120)

The only other point I would like to make — and I normally do it at third reading with respect to these various appropriation or supply bills — is to look at the schedule that's attached to ensure that it is the same as the schedule attached to the main supply bill.

At the back of the main supply, there is an appendix. I have looked through it. You find a number of interesting points when you go through the schedule. One of them that may be of interest to honourable senators is the appropriation for the year. The Senate is asking for about $57 million — let us say $60 million. Times three — with three times as many people in the House of Commons — we should expect House of Commons would be somewhere around $180 million. The House of Commons is asking for $270 million to run their shop. That is important for us to keep that figure in mind, honourable senators.

This is supply. This is what the government needs in order to carry on with the machinery of government for the coming year.

Hon. Jane Cordy: Senator Day, would you take a question?

Senator Day: Absolutely.

Senator Cordy: We heard a couple of years ago about this $3.1 million that Minister Clement lost. Has your committee or anybody been able to track and find out where that money has gone?

Senator Day: We asked Minister Clement about that, and he said it is somewhere in the boxes in the basement of the Treasury Board. That is as close as he could come to helping us find that money that was unaccounted for.

Senator Hervieux-Payette: It must be a big box.

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

Some Hon. Senators: Question.

Hon. Catherine S. Callbeck: Honourable senators, I would like to say a few words on Bill C-38. Actually, I want to highlight an aspect in the second interim report on the 2014-15 Main Estimates that really goes hand in hand with this piece of legislation before us. I want to mention an item that appears several times in that report — one that I really have serious problems with because I believe that it makes voting on this legislation extremely difficult.

As I have discussed before in this chamber, the majority of departments have items in their estimates over the past two years that relate to the savings or reductions from the 2012 spending review. Time after time, we fail to get a breakdown of what makes up those cuts. If we do end up getting a response, which is very infrequent, the information the committee receives is vague, and we don't really get any information.

Honourable senators, this problem is not going to go away. In the report that I am talking about, linked to this supply bill, we find on four separate occasions the following lines:

> The officials committed to providing a list of the savings achieved through the spending review launched in the 2012 federal budget. At the time of writing, the committee had not yet received the requested information.

The departments who were asked and have yet to provide a response in this report include: Foreign Affairs, Trade and Development Canada for $52.7 million; Citizenship and Immigration for $13.9 million; and Health Canada for $59.1 million. That is over $125 million in cuts with absolutely no explanation.

Included at the end of this report is the response from Aboriginal Affairs and Northern Development Canada. They, too, were asked to provide a detailed report — a breakdown of the programs and positions that would be affected by the $240.2 million in cuts. Here is the information we received from that department:

> $61.3 million, resulting from changes to project funding for Aboriginal representative organizations.

Well, what does that tell you?

Senator Moore: Nothing.

Senator Callbeck: That's right. What changes were there and to what organizations?

Then you go on, and it says:

> $51.7 million, following the review of the governance and institutions of government programs.

Well, there again, that tells you absolutely nothing.

It goes on:

> $42.2 million through internal streamlining and restructuring; $28.5 million through restructuring of the Co-operative Relationships program; and $16.7 million through the restructuring of Aboriginal economic development programs.

In each case in that restructuring — one for $28.5 million and the other for $16.7 million — there is no explanation whatsoever as to how those dollars were saved.

I suppose you could say, "Well, it is better than nothing; at least we have some figures." However, it is not the detailed explanation that the committee asked for.

Responses like this make it abundantly clear why people like Kevin Page ended up in court trying to get the information he needed to assess the impacts of these cuts. These high-level numbers do little to show what is actually happening within the departments. Yet, here we are tonight being asked to vote on this legislation.

I believe that parliamentarians have a fundamental right to know where every single dollar of taxpayers' money is being spent or not spent. This is information that we shouldn't have to fight over; it should be provided to us and to our colleagues in the other place without hesitation. Without that information, we can't fulfill our duties to the best of our abilities, and that is a real problem. The erosion of clarity and openness from the bureaucracy is troubling to say the least.

I and many other senators on that committee are tired of being stonewalled and being given insufficient answers over basic questions. So here we are tonight, being asked to vote on this supply bill, when we don't know how much of that money is being spent.

Parliament is supposed to be supreme in our system. We can't forget that. But under this government, we are certainly slipping away from that fundamental principle. I have just outlined a good example of that.

Honourable senators, I find it very difficult to vote for legislation where we have not been given the information that we requested. What we got was just a bunch of figures with very vague comments.

Some Hon. Senators: Hear, hear.

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

Some Hon. Senators: Question.

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

Some Hon. Senators: Yea.

Some Hon. Senators: Nay.

An Hon. Senator: On division.

The Hon. the Speaker *pro tempore*: Carried, on division.

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

APPROPRIATION BILL NO. 3, 2014-15

THIRD READING

Hon. JoAnne L. Buth moved third reading of Bill C-39, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2015.

She said: Honourable senators, Bill C-39 is the supply bill for Supplementary Estimates (A). At the risk of being repetitive, I need to read into the record that we, again, thank the exceptional service of the clerk Jodi Turner and the Library of Parliament analysts Sylvain Fleury and Raphaëlle Deraspe. Thank you, also, to Senator Joseph Day, Chair, and Senator Larry Smith, Deputy Chair.

• (2130)

Hon. Joseph A. Day: Honourable senators, I would like to join Senator Buth in thanking the various clerks and staff that have helped us. We tend to find that quite a few of these bills — budget implementation, supply, main supply and supplementary estimates — all come rushing at us at the same time. It takes a lot of extra work by the Library of Parliament and the clerk to make all of this work for us, as well as the cooperation of all members of the committee, whom I thank for the extra time we put in to have these bills ready at this time for consideration.

Supplementary Estimates (A) is in addition to the amount that we just discussed with respect to main supply of $86 billion. There's another $2.5 billion that the government has determined it needs. That's in addition to the Main Estimates, and that flows from initiatives in the budget. As I mentioned earlier, the budget is developed at the same time as the Main Estimates and, therefore, budget items are not reflected in the Main Estimates. Rather, they come through supplementary estimates.

This first one is for $2.5 billion, which is about average. There's a report on Supplementary Estimates (A) that I don't intend to go into at this time because we've already dealt with it. However, it is important for us to look at the schedule that's attached to the supplementary estimates and compare it to the schedule attached to the supply bill. If they are the same, then we've pre-studied it. If they are not the same, then we have a problem. I've determined by looking at the schedule that they are the same, so we don't have a problem. This is what we had studied previously.

I looked at the schedule with respect to the Senate and the House of Commons. The House of Commons is asking for $3.8 million more in supplementary estimates for its operations. The Senate has not asked for anything further. It's important, when people talk about the cost of the Senate and the cost of the House of Commons, to have some figures you can throw back at those who question expenditure.

Honourable senators, this is Supplementary Estimates (A) supply bill. Deal with it cautiously.

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

Senator Fraser: On division.

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

ECONOMIC ACTION PLAN 2014 BILL, NO. 1

SECOND READING

Hon. Larry W. Smith moved second reading of Bill C-31, An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures.

He said: Honourable senators, having completed our pre-study of Bill C-31, an act to implement certain provisions of Economic Action Plan 2014, I'm happy to briefly explain the structure of the bill as our committee chair, the Honourable Senator Day, will speak in greater detail shortly.

Bill C-31 is divided into six parts. Part 1 implements tax measures in a wide variety of areas to benefit individuals, families, law enforcement officers, business and investors as well as the environment. Part 2 implements adjustments to certain goods and services, tax harmonized sales to remove taxes in some areas of necessity, such as for medical devices. Part 3 implements excise measures such as eliminating the preferential excise duty on tobacco.

Part 4 focuses on changes to the customs tariffs. Part 5 implements a process for Canada to comply with the U.S. Foreign Account Tax Compliance Act, FATCA. Part 6 of Bill C-31 is divided into 30 divisions in order to enact and amend several acts; 11 divisions were studied by National Finance while four other committees evaluated the remaining 19 divisions and reported back their findings to National Finance.

To conclude, I would like to thank the following committees for their thorough work in reviewing the proposed legislation before you today: Transport, National Security, Social and Banking. I

encourage all members of this chamber to give this bill the support it deserves.

Hon. Joseph A. Day: Thank you, Senator Smith, for laying the groundwork for me to talk a wee bit about Bill C-31, the budget implementation bill. We have looked at supply and now we're looking at the other document that flows from the budget, the budget implementation bill. The tradition has been two budget implementation bills, one now and another in the fall to pick up other items.

I should also point out that because of the nature of how these bills have evolved, there are often items in a budget implementation bill from previous budgets, not necessarily just the budget for this year. Bill C-31 is 363 pages in length, consisting of six parts and 486 clauses. It proposes to amend 40 acts — existing statutes — and to create three new statutes. Honourable senators, this budget implementation bill is often referred to as an omnibus bill.

I looked at the average size of budget implementation bills so we could get a little bit of an idea because 363 pages is a lot of material for the committee to go over. Under former Prime Minister Jean Chrétien, the average budget implementation bill was 78 pages. Under former Prime Minister Paul Martin, the average bill was 88 pages. Under Prime Minister Stephen Harper, the average is 319 pages. We can see a trend, honourable senators. This bill brings the average up — 363 pages. That's my first point: There's a lot in this bill and it's long. That's why we divided it into six different committees to work on.

Omnibus bills are not all bad. There is a place for them, but if a bill gets too big, then parliamentarians just don't have an opportunity to delve into each provision in the amount of time that's allotted.

• (2140)

Proof of this is that each year we're finding more and more corrections in this budget implementation bill of items that turned out to be wrongly worded or not clearly worded or have been amended by court challenge in previous budget implementation bills. We're seeing more and more of that.

Honourable senators, how do we handle this? We've talked about omnibus bills being so long that it's very difficult for us to do the job that's expected of us. Well, what we've done in this particular case is divide the bill into six different parts, allocating different parts to a committee that is more appropriate to deal with it. If we could go that step, why wouldn't we go the next step and just divide the bill into six different parts and let each one of those committees handle that particular aspect?

What we've done is gone only halfway. We let other committees deal with their clauses. They file a report here — some extensive reports and others very brief reports. We haven't had a debate on those other reports but they have been tabled. Finance is required to do clause-by-clause consideration of the entire bill. So we haven't divided the bill from the point of view of the next step, and that presents its own difficulties in that the question we have to ask as members of National Finance is do we then take the report and go through each of the clauses that were studied so we clearly understand them the way we understand those clauses that we studied?

The steering committee decided not to do that. Senator Smith, Senator Buth and I decided to ask the chair and deputy chair of each of the committees that studied certain portions of the bill to come before us and talk with us about what they had found in their particular study of their portions of the bill. That's been helpful but not totally satisfactory. It would be a lot better if each of the committees could do clause-by-clause consideration of their portions of the bill.

Part of the difficulty with respect to omnibus bills, honourable senators, is not the fact that they're omnibus bills and contain a lot of different things. The problem is financial omnibus bills, bills that are tied to a budget, also contain a lot of things that are non-budgetary. That's where the problem arises because bills that are tied to a budget are treated in a special manner in our procedure and in our chamber. We do not typically know what's going to be in the budget until the budget comes out. It's a matter of secrecy. Therefore, items that are in the budget implementation bill that flow from the budget have not had the opportunity for consultation.

Time and time again we hear that provisions in a budget implementation bill like Bill C-31 are not fiscal matters but deal with other items, such as the Trademarks Act revisions that I'm sure you'll hear more about over the next few days. These provisions are not fiscal and not part of the budget other than perhaps mentioned in passing, with no consultation on such a fundamental issue as the basis for trade and commerce within our country. All we heard is from those who came before us and from the report that the Banking Committee has filed in relation to this particular aspect because the Banking Committee did the main study on that portion. It's Division 25 of Part 6. Banking indicated the same thing; there were questions asked and the comment was that there was no consultation beforehand. This creates a problem with respect to budget implementation.

Another aspect is that budget implementation omnibus bills are a matter of confidence. Confidence isn't an issue in this chamber directly, but indirectly of course it is. The government will fall if a confidence matter in the other chamber is defeated, so a senator supporting the government is going to support the bill. We don't get a chance to debate the bill the way we should, and we don't get a chance to debate the issues in there that are non-fiscal, non-budgetary.

Honourable senators, those are the concerns I have with respect to this particular matter. I believe the fiscal omnibus aspect creates the problem and the discomfort of dealing with this, along with its length. The bill's length would be reduced significantly if we took out all of Part 6, because all of Part 6 is "other matters," and those are the non-fiscal, non-budgetary items.

I will give you a few examples of items that don't belong in budget implementation. Division 6 of Part 6, amending the Members of Parliament Retiring Allowance Act, deals with a particular situation. If a member of Parliament — a senator or member of the House of Commons — is suspended, they are not entitled to pay into a pension plan or a retiring allowance.

Division 11 of Part 6 provides for the transfer responsibility for the administration of the programs known as online works of reference and the Virtual Museum of Canada from the Minister of Heritage to the Canadian Museum of History. This is not a fiscal matter and not a matter that had to be in this particular bill, but it is here because somebody went around to all the departments and said, "What have you got that you want to throw in here? We'll get it through real fast for you because it's tied in with matters in this omnibus budget implementation bill that have to be passed before senators go home for their break and that will put some pressure on them. We'll get all these other things done with little debate."

There are other items that don't belong in a budget implementation bill, as I mentioned. Division 25 amends the Trademarks Act. Division 29 of Part 6 enacts the Administrative Tribunals Support Service of Canada — 11 different tribunals being combined and supported by one support service. Senators can imagine the various items that have to be considered in that particular initiative. It might well be a good initiative, but absolutely no way could we delve into the 11 different tribunals, what aspects are peculiar to them that can't be generalized and what services they need that other tribunals might not need. None of those questions could be asked. Division 30 enacts the apprentice loans act, another piece of legislation. As I mentioned, there are three new statutes created in this bill.

I have mentioned before the list of options for remedies regarding how we stop this kind of thing from continuing. It's not getting better. About a year ago we got one budget implementation bill that was significantly smaller. I thought, "Somebody is listening, this is good," but it turned out that that was false hope.

Honourable senators, there are a lot of different possibilities. I will just mention them again for the record. We could delete all non-budgetary provisions and proceed to consider only those parts of the bill that are budgetary in nature. We could defeat the bill on second reading by way of a reasoned amendment on the grounds that it's an affront to Parliament, which indeed it is.

• (2150)

We could find the Minister of Finance in contempt for persisting in a practice that the Senate has denounced, or we could establish a new rule of the Senate prohibiting the introduction of budget implementation bills that contain non-budgetary measures.

Any one of those we could do, and what we need to do is to determine what steps we can take to avoid this, because we're not doing the job that we should be doing.

There's another area that I feel is necessary for me to mention and that is pre-studies. We do a pre-study — and we have been doing these now for a couple of years — because of the lateness with which we get the bill from the House of Commons. We know that, if we had waited until the bill arrived, we would just be starting our study on this now and we would be going well into July, like we did about three years ago, because we refused to do the pre-study.

How many pre-studies have we been doing in the last while? It seems to me that it's a lot more than Finance. So far in 2014, four bills have been referred for pre-study. Pre-study is contrary to the fundamental role of the Senate, which is a chamber of sober second thought. We've heard the quotes on this on many occasions, Sir John A. Macdonald's quotes on pre-study.

We have just had, in the last while, Bill C-31, the budget implementation bill; Bill C-23, the elections bill; Bill C-24, the citizenship bill; and Bill C-33, the First Nations education bill, which was set up for a pre-study and then was slowed down because of some other circumstances.

We must not, honourable senators, allow ourselves to fall into the easy process of agreeing to pre-studies for all of these bills because of what's happening in the other chamber, because we're sacrificing a fundamental role that we have to play. We're being removed from the sober-second-thought role that the Senate is well known for.

The Senate does not get to benefit from the initial study in the House of Commons if we do a pre-study. When we don't have the benefit of that, then the result of the legislation will not be as good and will not be referred to by the courts, as Senator Baker has so often reminded us of, because we're doing an initial look at the legislation and are not as sophisticated in our studies.

I fear that pre-studies are becoming the norm in this chamber, honourable senators, and I respectfully suggest that we may wish to reverse that trend. I had some research done on this as well.

During Mr. Jean Chrétien's time, only one pre-study was done during the time that he was Prime Minister and that was with respect to the Anti-terrorism Act after 9/11. Under Mr. Paul Martin, Prime Minister, there were no pre-studies. Since Stephen Harper has become Prime Minister there have been 18 pre-studies to date. This, honourable senators, is not a healthy trend.

Honourable senators, those are some of my comments. This is a study of the bill in principle and, in principle, I suggest to you that this bill is not an acceptable way to deal with the implementation of items out of the budget itself. I suggest to you that, on principle, we should vote this bill down, and we should have dealt with the bill in six different parts. The way we dealt with a study of the portions of the bill, we should have divided the bill.

Those are my comments on principle with respect to Bill C-31, honourable senators.

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

Some Hon. Senators: Question.

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

Senator Fraser: On division.

The Hon. the Speaker *pro tempore*: Adopted on division.

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

REFERRED TO COMMITTEE

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

(On motion of Senator Smith (*Saurel*), bill referred to Standing Senate Committee on National Finance.)

CRIMINAL CODE
NATIONAL DEFENCE ACT

BILL TO AMEND—THIRD READING

On the Order:

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

Hon. George Baker: Honourable senators, I'm not going to give a speech on the bill. There's a procedural question relating to this particular piece of legislation.

Everybody agrees with the purpose of the bill, and that is to put in place something that would prohibit the recruiting of young people into gangs.

It's a private member's bill from the House of Commons, but there's a problem with it. The problem is this, and there are, as I understand it, three bills on our Order Paper in the Senate that have the same problem. We're supposed to be the house of sober second thought, but, on those three bills, we're told that we can't amend the bills.

I can see why there is the confusion because it says here "criminal organization recruitment," which is not gang recruitment for young people.

The private member in the other place wanted to bring in a bill to stop the recruitment of young people into gangs in Toronto, Mississauga and places like that where, according to him, there is a very big problem with recruitment of youth into gangs. So he devised a bill that mirrors the anti-terrorism provisions and the criminal organization provisions. In other words, it gives the police extraordinary power to tap telephones without going through the normal procedures that you would do if you were investigating a murder, for example. It gives the police the same provisions as under the Anti-terrorism Act, in that they don't have to report the tapping of telephones, as you normally do, to the object of the tap if proceedings are not instituted, and matters such as this. So that's why it's called "criminal organization recruitment."

• (2200)

Here is the problem. We dealt with the bill in the committee. Here is the first problem that came up. The House of Commons committee heard from a witness who was the Minister of Justice for the Province of Saskatchewan.

Senator Plett: Manitoba.

Senator Baker: Manitoba. A good friend of Senator Plett's, at least on this piece of legislation; not in any other way, as he said so publicly during the hearings.

But the Minister of Justice had the Deputy Minister of Justice in the room, I noticed, coaching on the side. What they did in the House of Commons was he said that, look, the provisions of this private member's bill, it says "recruited, solicited, encouraged or invited." He said it was his legal advice from his department that you needed the word "coercion" in there. You needed the word "coerced," because he claimed that young people were being threatened, their families threatened, and so on, unless they joined a gang and stayed in the gang.

The House of Commons, after hearing this, at the end of the sitting did clause-by-clause of the bill, and the government member on the committee suggested that they had to put in the word "coerced" for young people. The NDP critic said, "Yes, we agree with that, put in the word 'coerced' for young people." That was it.

The committee didn't say on line such and such, on page such and such, in clause such and such; they just said that they would add the word "coerced," and the chair asked if everyone was in agreement and everybody said yes, and then they moved on to another section of the bill.

Well, they put the word "coercion" in the wrong place, in the wrong sentence. It is not dealing with the youth at all. So what you have is a provision that says for people over 18 years of age, it says "recruits, solicits, encourages, coerces or invites," and for those people under the age of 18, it just says "recruited, solicited, encouraged or invited" without the word "coerced" in there.

The Minister of Justice appeared before our committee in the Senate and noted this, and said this is an error; this has to be corrected. What we are concerned about are young people. The way that is worded there now, young people who were recruited under the age of 18, there is a mandatory minimum sentence in this bill, but the word "coercion" is not there; it is only for people who are over the age of 18. That is the way it reads. So he said that you have to correct it.

Then the law people of the committee noted that there was another error in the bill. The bill describes which sections of the terrorism provisions apply, but there were four consequential amendments made, and they forgot to do one of the four. In other words, the Criminal Code, if this is approved, will not have that kind of consistency. So the representative of the Department of Justice, before our committee, said that is right, it needs consistency and you have to insert that particular section. Those are two things that have to be amended in the bill.

So the witness comes before the committee and announces something that applies also to two other bills that we have on the Order Paper. He says because he is a parliamentary secretary now, he can no longer support the bill when it comes back into the House of Commons, because the House of Commons rules say if you are a parliamentary secretary, you cannot be the sponsor of a private member's bill.

The other bill that is on there in the name of the chair is sponsored by a member of the NDP who is now the deputy speaker. He is not allowed. So that can't be amended. Here we have a case where two amendments really should be made, but the House of Commons is telling us, officially — I checked this out with the Clerk of the Senate, who is very knowledgeable, and the staff. They verified what the House of Commons said, and that is that the standing orders state that parliamentary secretaries are ineligible to participate in private member's business. This would create a procedural problem because the bill continues to stand in Mr. Gill's name, but he is a parliamentary secretary and is not able to move the necessary motion to put the Senate amendments down for consideration in the House of Commons. In other words, if you amend the bill on these two necessary amendments, when it goes back to the House of Commons, it is the end of the bill. You kill the bill.

So what do we do? I have consulted several people. I have to propose the necessary amendments to the bill, obviously.

The members on the Conservative side realize that there is a problem and recommended and agreed with us having observations. The observations would state that these amendments should have been made but we can't do them. Let me quote what our standing committee says:

> The committee is also concerned that when a private member's bill is amended by the Senate, the procedures in the other place do not allow for an effective consideration of the Senate's amendments when the original sponsor of the bill is no longer in a position to move their concurrence in the House.

MOTIONS IN AMENDMENT

Hon. George Baker: Honourable senators, I don't know how we are going to deal with this, but I have to put both amendments. The amendments are seconded by Senator Campbell:

> THAT Bill C-394 be not now read a third time, but that it be amended, on page 2, by adding after line 8 the following:
>
> **"6.1 Paragraph 196.1(5)(*a*) of the Act is replaced by the following:**
>
> (*a*) an offence under section 467.11, 467.111, 467.12 or 467.13;".

Now that is the amendment that is agreed to by the Department of Justice, which agrees that that should be done for continuity in the Criminal Code.

Here is the amendment in which the word is put in the wrong place, creating a problem in that the very young people that will receive the maximum sentence, if they are coerced, then it is legal to coerce them.

> THAT Bill C-394 be not now read a third time, but that it be amended in clause 9, on page 2, by replacing line 33 with the following:
>
> "solicited, encouraged, coerced or invited is under 18".

• (2210)

The Hon. the Speaker *pro tempore*: On debate on the two amendments.

Hon. Donald Neil Plett: Thank you, Your Honour. I certainly agree with much of what Senator Baker has said tonight. As Senator Baker referred to earlier when he spoke to our leader, we will have to agree to disagree on at least part of what he has said tonight. I'm sure we will do that.

Colleagues, the proposed amendments that Senator Baker is talking about were indeed discussed at length in our committee. I wish to thank both Senators Baker and Joyal for bringing this to our attention at the time and thank them again today for the diligent manner in which they study every piece of legislation that comes through our committee.

I was also at the committee when the Minister of Justice for Manitoba spoke about this. We could check the record as to exactly how adamant he was that the word "coerce" needed to be in there. I think he certainly said that he thought it would be in there and that he would support an amendment. I don't think he at any point said that we should ever question the passage of this bill without that amendment.

There are a couple of oversights here regarding the word "coerce," which appears in the new offence added but not in the penalty section; that is quite correct. The senator is again correct that there was an oversight on the wiretapping provision. Section 196(5) of the Criminal Code extends the period within which individuals must be notified that their private communications have been intercepted, including all criminal organization offences. Bill C-55, which granted this extension, was passed while this bill was still being studied in the House of Commons. This should have been amended to ensure consistency with other criminal organization offences.

However, as Senator Baker has pointed out quite correctly — and this is not something that we chose to make a law here in our Senate — this bill cannot be amended here and then be amended over in the other place. This bill will die if we amend it here, so we need to make a determination as to how important this bill is.

Senator Campbell: Not very.

Senator Plett: I agreed with Senator Joyal's amendment, which Senator Baker spoke about, that we need to send a message to the other place that they need to clean up some of their rules so that something like this wouldn't happen.

But, colleagues, we had a Department of Justice official at committee, and we asked him some questions. The Department of Justice official agreed with me to say that the word "coerce" would likely be covered in the terms of "invite" or "encourage." I don't think you would coerce somebody before you had invited or encouraged them. Those words are still in the bill as they are. If you invite a 16-year-old child to join a criminal organization, that is a criminal offence punishable by a minimum mandatory sentence of six months in jail. So I don't think you would jump from doing nothing to coercing. You would probably invite and encourage somewhere in between. The justice officials agreed with that.

I asked: "Would it be fair to say that the absence of the word "coerce" in paragraph (*a*) will not create a gap in law, then, and it will depend on the facts provided by the Crown, and it will be a case-by-case assessment? Further to that, would this also be something" — and, again, I was very specific — "that could be amended quite easily down the road if we would append an observation again to our report, and we could amend this in the future?" His answer to that question was: "Yes, I agree with all of that. . . ."

So the Department of Justice official was quite clear that this could be amended down the road; it could be amended when we come back in the fall. We can immediately work towards that. We can immediately ask people in the other place to work on amending this bill.

In regard to the wiretapping issue, when Senator Baker raised this with the Justice official during clause-by-clause consideration, the Justice official acknowledged the oversight and then said:

> I would say, though, it's not necessarily the case that this would result in a gap. When one looks at 196.1 of the Criminal Code, you also have paragraph 5(*b*). That provision deals with any other "offence committed for the benefit of, at the direction of or in association with a criminal organization." The reason that provision is there is because any offence, by definition of criminal organization offence, could be the subject of a wiretap investigation in an organized crime context, so it could be drug trafficking, for example, where that's a serious offence.
>
> It's true that it would bring greater clarity, greater consistency by adding it in paragraph (*a*) but strictly speaking, paragraph (*b*) would address this new participation offence, and so the exception to the normal notice period of 90 days would still apply when investigating the participation offence.

He later assured me that the word "coerce" would easily be fixable at a later date if the government decided to introduce legislation to clean up these inconsistencies. So, again, we agree with Senators Baker and Joyal, the Minister of Justice, Andrew Swan, and the members of the Justice Department that there were some inconsistencies and they needed to be cleaned up.

I am not going to defend the people in the other place, but I will say that this is far too important a piece of legislation for us to vote against it because of some inconsistencies that can be cleaned up. This is a good bill. A lot of work has gone into it, and to amend this legislation at the risk of the bill's dying and our having no legislation — there are children, and we heard from law enforcement officers from across the country; we heard time and again how children are being invited, encouraged and, yes, coerced into joining criminal organizations; how gang members are lurking around schools and playgrounds and getting people to join these organizations, which they can never get out of later on. This is happening, senators, as we speak.

So for us to take a chance and not pass something or pass some amendments, as Senator Baker is suggesting — I know that he — well, I will not put words in his mouth. He believes that he needed to put these amendments forward, and I respect him for that, but I certainly got the impression from Senators Baker and Joyal — again, I will not put words in their mouths — that they were quite supportive of this legislation, and I believe most colleagues in this chamber are.

So I ask you, I beg you not to take a risk on this legislation, because Parm Gill cannot reintroduce this and somebody else cannot take it. We had the rules and the laws read to us, the article and clause of where it cannot be done, and Senator Baker agreed with that, that this cannot be done. This is not something we have decided wherein there is some loophole we could create in order for somebody else to take this bill at the stage it's at now and amend it over in the other place.

• (2220)

Colleagues, it doesn't matter whether you agree with Senator Baker or not. If you vote against this amendment, colleagues, you are voting against this bill.

Now, you may well say, "Well, the bill can be reintroduced later in the year." Yes, sure it can. Somebody else can come along with another private member's bill, but you are voting against this bill. You are not voting in favour of an amendment; you are voting against this legislation if you vote in favour of these amendments. Colleagues, I ask you to vote against these amendments so that this legislation can get speedy passage and so that we can protect our young children right across the country. Thank you.

Hon. James S. Cowan (Leader of the Opposition): Would Senator Plett entertain a question?

Senator Plett: Certainly.

Senator Cowan: I didn't understand until tonight the background and why it was not possible to amend it, as apparently everybody wished to do. I understand the effect of an amendment, but I understand also why Senator Baker has asked the question.

You said in your statement that officials — and I am not sure whether you were talking about the minister or officials — said that this could be fixed and this could be changed. There is a difference between saying "it could be fixed and it could be changed" and "it will be fixed and it will be changed."

I would think a logical position to take in this case is that if we agree these changes need to be made to improve the legislation and to correct inconsistencies or items that have been overlooked in the drafting of legislation, then it would be possible to obtain a commitment from the minister that he will introduce the amendments necessary to fix the problems that have been identified by your committee. Was such an undertaking sought by you? If so, what was the result of that request? If not, why not?

Senator Plett: Thank you for the question, Senator Cowan. No, it was not. I checked thoroughly, as did Senator Baker and Senator Joyal. The clerk read the rules to us. It had been explained to us by Mr. Gill that this could not be done.

Even if the minister would be agreeable, it would still have the effect that we would have to amend it now, or do something with it now, and then send it back over there and have somebody else take it. It is not that the minister can amend this, because this is private member's legislation that Mr. Gill brought forward when he was a private member. He is now a parliamentary secretary. Even if the minister agrees with us, he couldn't make this change now either. That was pointed out clearly to us. He also couldn't make that change now.

Can he agree with us that we should try to take out the inconsistencies? Absolutely he could. Certainly I think it is something that we can pursue, and I would have no objection to that. But again, the Department of Justice officials — and these were not the minister's staff, but Justice officials — clearly indicated that there wasn't a gap in either one of these but, for the sake of consistencies, this should or could be corrected. They clearly indicated that there was no gap.

So, no, Senator Cowan, I didn't do anything beyond that. I don't think anybody else did. I think we appended observations for that reason, and they were observations that I suggested. All three observations — the two that I suggested and the one that came from Senator Joyal — passed unanimously, and I think they are a clear indication that we want something done.

Senator Cowan: I wasn't suggesting, Senator Plett, that the minister could agree to amend the bill and somehow get around this rule in the House of Commons. What I was asking was, having agreed amongst yourselves on the committee that there were inconsistencies and issues that needed to be dealt with by way of observations, why wouldn't you ask the minister to give a commitment? I understand this is something that has been done in previous parliaments. Problems have been identified and ministers have said, "Yes, that is a problem. I give you my commitment that, when we return in the fall, I will introduce a bill to fix this."

Did you ask the minister to do that? I understand you did not. Would you ask the minister to do that, and would you report back to us his response?

Senator Plett: Senator Cowan, I would be very happy to discuss it with the minister and report back, yes.

Senator Cowan: Thank you.

Senator Baker: Don't forget that there are three bills on our Order Paper that are in this predicament. We can't amend them.

The Hon. the Speaker *pro tempore***:** Senator Baker, is this a question of Senator Plett?

Senator Baker: Yes, a question. Here is my question to Senator Plett: Is it correct that we did check with the House of Commons and that they said that the sponsor of the bill could be changed by unanimous consent? They came back to us with an example of a bill, Bill C-393, an Act to amend the Patent Act, standing in the order of precedence on the Order Paper in the name of Ms. Wasylycia-Leis, former member from Winnipeg North, be allowed to stand in the name of Mr. Dewar, and that the order for second reading in reference to the standing committee be approved. By unanimous consent, the name was changed.

Could he verify that, and could he also verify that the government leader at the time in the House of Commons, the Honourable John Baird, said, "Mr. Speaker, I rise on a point of order. This should not be seen as a precedent"?

Therefore, although it can be accepted by the House of Commons, by unanimous consent, it also could be dead if unanimous consent were not approved. Do you agree that it puts us in a bit of a predicament with other bills that are on the Order Paper?

The Hon. the Speaker *pro tempore***:** Senator Plett, before you answer the question, are you asking for more time?

Senator Plett: Yes.

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

Hon. Senators: Agreed.

Senator Plett: Senator Baker, you are correct. That is what we were told. Clearly, I think that if there is one thing that all of us could agree on it is that to get unanimous consent in the other place would be more difficult than it would be to get it in here, especially in light of the fact that the bill certainly didn't get unanimous consent over there, although it was passed by a large majority. I would not want to send the bill back there with the assumption that unanimous consent might be available.

My argument would still stand in light of that, and also in light of my answer to Senator Cowan that I would be willing to talk to the minister. I would not want that, however, to then add fuel to the fact that we can talk to the minister and maybe vote on this later. This is still something that needs to be passed in this session. Thank you.

The Hon. the Speaker *pro tempore***:** Before we continue the debate on that, I may have made a mistake. Before reading the amendment, I recognized a few senators rising. I presumed this

was to ask questions of Senator Baker. Am I right? If so, I will ask the chamber to give permission to revert and let those senators who wished to ask questions of Senator Baker to put those questions. Is it agreed?

Some Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: Am I recognizing people who had risen?

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore*: My mistake. Thank you. Everybody is happy. On debate?

Some Hon. Senators: Question.

The Hon. the Speaker *pro tempore*: On the amendment: It was moved by the Honourable Senator Baker, seconded by the Honourable Senator Campbell:

> That Bill C-394 be not now read a third time, but that it be amended, on page 2, by adding after line 8 the following:
>
> **6.1 Paragraph 196.1(5)(*a*) of the Act is replaced by the following:**
>
> (*a*) an offence under section 467.11, 467.111, 467.12 or 467.13;".

The second amendment is also part of that question:

> That Bill C-394 be not now read a third time, but that it be amended in clause 9, on page 2, by replacing line 33 with the following:
>
> "solicited, encouraged, coerced or invited is under 18".

Is it your pleasure, honourable senators, to adopt the motions in amendment?

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker *pro tempore*: Those in favour of the motions, please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: Those against the motions, please say "nay."

Some Hon. Senators: Nay.

[Speaker *pro tempore*]

• (2230)

The Hon. the Speaker *pro tempore*: In my opinion, the "nays" have it.

An Hon. Senator: On division.

The Hon. the Speaker *pro tempore*: Accordingly, the motions in amendment are defeated, on division.

Now on the main motion: It was moved by the Honourable Senator Dagenais, seconded by the Honourable Senator Maltais, that this bill be read the third time.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker *pro tempore*: Those in favour of the motion please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: Those who are against the motion please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore*: In my opinion, the "yeas" have it.

An Hon. Senator: On division.

The Hon. the Speaker *pro tempore*: Adopted, on division.

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

BOARDS OF DIRECTORS MODERNIZATION BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Fraser, for the second reading of Bill S-217, An Act to modernize the composition of the boards of directors of certain corporations, financial institutions and parent Crown corporations, and in particular to ensure the balanced representation of women and men on those boards.

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I wish to participate in the debate. I'm

not quite ready to speak today, so I'd like to move the adjournment of the debate for the balance of my time.

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

Hon. Senators: Agreed.

(On motion of Senator Martin, debate adjourned.)

CANADIAN COMMISSION ON MENTAL HEALTH AND JUSTICE BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Cowan, seconded by the Honourable Senator Fraser, for the second reading of Bill S-208, An Act to establish the Canadian Commission on Mental Health and Justice.

Hon. Stephen Greene: Honourable senators, I would like to move the adjournment of the debate.

Hon. James S. Cowan (Leader of the Opposition): I introduced this bill on June 12, 2013. It was then, you will recall, that we had prorogation. I introduced it again on November 6 of last year. I spoke in February, and this is the second time.

If you're going to speak on this, can you tell me when you will speak?

Senator Greene: My notes are not quite ready. When will I speak on it? That's a very good question. It will not be before July and it will be after we come back in September.

Senator Cowan: Senator Greene, you may find this amusing, but there are a lot of people who are very interested in this bill. Are you the critic on this bill?

Senator Greene: No.

Senator Cowan: Who is?

Senator Greene: I will be happy to participate in the debate, but I am not the critic on the bill.

The Hon. the Speaker *pro tempore*: I have an adjournment motion, and I will put that question.

It is moved by the Honourable Senator Greene, seconded by the Honourable Senator MacDonald, that further debate be adjourned until the next sitting of the Senate.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore*: Adopted on division.

(On motion of Senator Greene, debate adjourned, on division.)

NATIONAL HUNTING, TRAPPING AND FISHING HERITAGE DAY BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Beyak, seconded by the Honourable Senator Wells, for the second reading of Bill C-501, An Act respecting a National Hunting, Trapping and Fishing Heritage Day.

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, I want to assure Senator Beyak, who has been waiting patiently, that I really do intend to speak to this bill before we rise for the summer, unlike Senator Greene. As she will understand, city girl that I am, to speak knowledgably about this matter takes more work for me than it would for her.

With the undertaking that I will speak to this bill before we rise for the summer, I now move the adjournment for the balance of my time.

(On motion of Senator Fraser, debate adjourned.)

CONFLICT OF INTEREST FOR SENATORS

FIFTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Committee on Conflict of Interest for Senators (amendments to the *Conflict of Interest Code for Senators*), presented in the Senate on June 13, 2014.

Hon. A. Raynell Andreychuk moved the adoption of the report.

She said: Honourable senators, I rise today to speak to the fifth report of the Standing Senate Committee on Conflict of Interest for Senators. Our report proposes a number of amendments to the *Conflict of Interest Code for Senators*.

As senators will recall, in April of this year the committee recommended, and the Senate approved, changes to the complaint and hearing process. The committee would no longer be empowered to initiate complaints, and the Senate Ethics Officer would be entirely independent of the committee in her investigation of complaints. A hearing process was established to reflect these changes and to maximize accountability,

transparency and fairness. At that time, the committee again advised that it would continue to work on proposed changes to the code, as we had for the past year.

Senators, the Senate Ethics Officer and others were asked to continue to provide suggestions. The responses were helpful and led to the proposals in this fifth report. The amendments we propose are the product of careful consideration by the committee and ongoing consultations with the Senate Ethics Officer and other senators.

The proposed amendments also build on our continuing review of the code and the reports previously adopted in this chamber. In particular, I would like to point to the third report of this committee in this session and the third report adopted in the previous session.

The code must continue to evolve to meet the changing needs of the Senate and senators and the expectations of the public we are entrusted to serve. The Senate has, since its creation, embodied high standards of conduct, concepts, practices and rules. Therefore, your committee is drawing on these to be placed in the code for more clarity, understanding and consistent application.

Our report proposes eight amendments touching on the following issues: principles, rules of conduct, disclosure in relation to trusts, disclosure in relation to deposits with a financial institution, time periods within which to provide information to the Senate Ethics Officer on errors and omissions, time periods within which to disclose to the Senate Ethics Officer any material changes to the confidential disclosure statement, time periods within which a senator must review and return his or her public disclosure statement to the SEO and the title of the code.

Presently, there are three principles enumerated in section 2 of the code. The first proposed amendment on principles would articulate a basic principle that is implied but not specifically stated in the code: that is, that senators shall give precedence to their parliamentary duties and functions over any other activity. This is in keeping with our summons to the Senate.

• (2240)

The Senate under which we all gave oath includes the following paragraph:

> And we do command you, that all difficulties and excuses whatsoever laying aside, you be and appear for the purposes aforesaid, in the Senate of Canada at all times whensoever and wheresoever Our Parliament may be in Canada convoked and holden, and this you are in no wise to omit.

The proposed amendment incorporates this obligation — to lay aside all difficulties and excuses to perform our parliamentary duties — and puts this directly into the code. In this way, the amendment may be seen as codifying existing practice, law and expectations of senators. It is also a means to bring the commitment undertaken on our summons front and centre, to serve as a guiding principle in our interpretation of the code. For this reason, this amendment has been placed as the first principle in the code. It would also be clear and present for public awareness.

The second amendment would require senators to adhere to general standards of conduct. Currently, the code is narrowly focused on avoiding conflicts of interest. We are proposing to take this a step further. The proposed amendment specifies that senators are expected to perform their parliamentary duties with dignity, integrity and honour. In this manner, it articulates senators' obligations to refrain from acting in a manner that could reflect adversely on the position of the senator or the Senate as an institution.

The third proposed amendment addresses the disclosure of trusts. It addresses a gap in the code that was drawn to our attention by the Senate Ethics Officer. The amendment requires senators to disclose to the Senate Ethics Officer any trust from which he or she could derive a direct or indirect benefit at present or in the future. This disclosure would take place in the senator's confidential disclosure and for the purposes of his or her public disclosure summaries.

The fourth proposed amendment addresses and clarifies senators' deposits in financial institutions. The current code exempts such deposits from being disclosed to the SEO. That is because such assets relate to the ordinary course of business in a senator's personal life. They could not conceivably create an apparent or real conflict of interest. Therefore, the proposed amendment responds to the SEO's suggestion that the disclosure exemption should include "cash on hand."

The next group of amendments would shorten the time period within which senators are required to provide certain types of information to the SEO. These changes are proposed in order to facilitate the SEO's work and to ensure timely disclosure.

Currently, the code prescribes a period of 60 days within which to respond to a request from the SEO for information regarding errors or omissions in a senator's confidential disclosure statement. It is proposed that this time period be reduced to 30 days.

A related amendment concerns material changes to the information contained in a senator's confidential disclosure statement. Currently, such changes must be reported within 60 days of the change. Your committee proposes to reduce that period to 30 days.

The third proposed amendment among this group concerns a senator's public disclosure summary. Currently, there is no deadline for senators to review, sign and return their public disclosure summary to the SEO following her preparation of the summary. We propose that senators be required to review and return their public disclosure summary within 30 days.

The committee considers that these proposals are not onerous, but they will continue to provide sufficient time. There is also, in the opinion of the SEO, some administrative ability to take into account extenuating circumstances. They would provide the SEO with information that she needs to administer the code in a timely and efficient manner.

The final amendment we are proposing concerns the title of our code. Its present title is *Conflict of Interest Code for Senators*. The committee believes that this title no longer accurately reflects the nature of the code as it has evolved since being introduced in 2005. The focus of the code today extends beyond conflict of interest. It seeks to uphold standards of conduct and instill ethical behaviour on senators.

This coincides with the provisions of the Parliament of Canada Act which created the office of the Senate Ethics Officer. This change gives effect to Parliament's choice of the broader concept of "ethics." Accordingly, our committee proposes to change the name of the code to "The Ethics and Conflict of Interest Code for Senators." I note the kind suggestion by Senator Cools in this regard.

I would like to underscore that this is an evolving issue of the code and that we are mindful of other codes and other expectations that are current in other codes. I would remind you that we have spent long hours as a committee looking at other codes and looking at the issues that individual senators have brought to us, that the press have commented about, and that the SEO has brought to us. We feel that these are timely and perhaps some statements that we already adhere to in terms of our integrity and dignity for ourselves and for the institution, but we believe they should be in the code for greater certainty.

I would like to, as always, thank my deputy chair, Senator Joyal, for his dedication to the committee's work, for his understanding of these issues and, in fact, for bringing some of the recommendations to the committee.

The other members of the committee — Senators Cordy, Frum and Tannas — are to be commended for their diligence through many long hours of study. They have brought unique and different perspectives from those of Senator Joyal and myself.

I think we've found common ground; therefore, the amendments we bring forward are the unanimous result of the committee's work. I won't tell you those that we couldn't bring, because we didn't come to a conclusion. We will continue to work and reflect on them.

Our fifth report would, of course, not have been possible without the support of our staff — Catherine Piccinin, our committee clerk; Michel Patrice and Michel Bédard, our parliamentary counsels; and Sebastian Spano and Eric Pelot, our Library of Parliament analysts. We are very fortunate to be supported by such a talented group of professionals who have a commitment to the Senate, who care about its work and who are dedicated to ensure that our process is fair and responsive.

Finally, I would like to thank Lyse Ricard, the Senate Ethics Officer, and her staff for their thorough examination and input into our proposals.

Honourable senators, as I stated at the outset of my comments, the code is an instrument that can serve to enhance public confidence in the work of the Senate and senators, but it is incumbent upon us to exercise our authority to make changes to the code when a need to do so has been identified. We need to adapt to the changing nature of our roles and responsibilities, and the changing expectations that Canadians have of the Senate and senators. That is why the code will continue to be evaluated by the committee, which has an oversight role.

As I've stated in the past, our code is among the best among upper chambers in Westminster parliaments. That is because we are able to identify and act, from time to time, on needed improvements. By continually strengthening the framework of our rules, we can help ensure that senators continue to act honourably and with integrity — and I underscore that senators continue to act honourably and with integrity.

By ensuring a code that is current and effective amid changing social norms and expectations, we can help maintain the Senate's ability to discharge its constitutional functions. Toward that end, I urge you, with my committee members, to support the proposed changes.

I would ask Senator Joyal, as usual, to add his very necessary comments to this motion.

• (2250)

Hon. Serge Joyal: Thank you, honourable senators. I will be very brief.

First, I remind us that this work, as Senator Andreychuk has mentioned, is a living code. It's not the gospel that has been written down where you can't change a comma or a word or a sentence. It is, to paraphrase the Supreme Court of Canada, a living tree. This is an element of our reality in which we are called to reflect continuously, and what is proposed today is, in fact, nothing substantially new. As Senator Andreychuk has mentioned, we are codifying the rules, practices and values that we all adhere to: the values of integrity, honour and dignity; the responsibility to maintain the reputation of the Senate; and the fact that we have to behave individually according to the highest standard of the title that we all bear with pride — the title of "honourable."

If we are to be called "honourable" by Canadians, it's because we behave honourably, and what is it to behave honourably? It's to behave with integrity. It's to behave with the dignity expected from somebody who has tenure — I was about to say almost life — up to the age of 75. Senators cannot be kicked out of their responsibility unless an element of the Constitution is at stake. We all know that. We learned that when we entered this chamber. So if there is such trust put on us when we enter this chamber, it's because there is an expectation in the public about the way we are going to behave individually and the way we are going to uphold the reputation and the fact that this institution is an essential part of the element without which Parliament cannot function.

I heard last week a member from the other place stating that in this chamber we have no conflict of interest code, no SEO, no rules, nobody looking upon us, and that we are, more or less, a group of people with absolutely no framework of professional behaviour. We all know that is untrue, and in fact, in the other place, they propose to abolish our budget of $91 million that Senator Day referred to earlier.

I invite all senators to read the transcript of the debate that took place in the other place last week.

There was a perception that if they abolish the budget of the Senate, they close down the room and Parliament continues to function.

An Hon. Senator: Impossible.

Senator Joyal: They have not read, of course, the Supreme Court decision, whereby if this chamber is not functioning, Parliament is not functioning. There's no legislation being adopted. You can't abolish this place by a stroke of the pen stating, "Okay, no sense to the Senate, and it's going to go down and we will be happy and be the sole chamber to legislate in Canada."

We all know that this is not the way the Parliament of Canada functions. We have an individual responsibility to maintain the dignity and the reputation of this institution, and how can we do this? It is essentially by behaving according to the responsibility that is upon us and that is recognized by the title that we all bear, which is the title of "honourable."

If we refer to a learned justice as "Mr. Honourable Justice So-and-So," it's because there is a public trust in that job, and as long as we hold that job, we are expected to maintain that trust.

There is nothing new that we are putting in the code. As Senator Andreychuk has mentioned, we are codifying what is expected from us by Canadians. So it is our responsibility to attend to the duty of this chamber.

I remember very well when I was escorted to the table and I had to swear my oath of office, that I would attend the sitting of Parliament and I would give priority to that responsibility. Of course, if we have a loved one who is facing hardship or sickness or something that is important, the *Rules of the Senate* provide that we can have a leave of absence. The *Rules of the Senate* provide that we can be absent for a certain number of days. That is provided in the Senate rules, and it doesn't change.

But what is fundamental is that we have a duty to attend to the responsibility of the Senate. We are expected to give our opinion to the legislation as much as we did tonight on various estimates bills, on amendments to the Criminal Code as Senator Plett has introduced, or on other amendments or other legislation. This is our paramount duty, and this is the duty to which we have to give precedence, and if for personal or family reasons we can't attend, well, there are the *Rules of the Senate* that provide a framework by which we are expected to give way those personal responsibilities.

But, on the whole, we have the overall responsibility of maintaining the integrity of this institution, and I think that's why it is so important that the Conflict of Interest Committee continue its work to reflect upon the experience of how, as common wisdom says, we learn from our own mistakes. I think everyone can think of what I'm thinking of when I say our common mistakes and, sometimes, our individual mistakes and how we can learn from that and improve our rules. Our rules are what make us efficient and what make us credible.

So honourable senators, I invite all of you to support those changes. We have respective caucuses on each side. We have had an open caucus, a grouping of the two sides. Anyone who has questions can always raise a question with any of the members or meet with the SEO to discuss and get counsel on any question that an individual senator might want. We never go into any personal files. I want to restate that: The committee never goes into any personal files of individual senators. We are collectively responsible, as I say, for the reputation of the institution, and this is, in my opinion, a paramount job that we tried to keep at the highest level of reputation because our individual credibility depends on that.

I want to thank all the senators in our respective caucuses who have taken part in this discussion and reflection. As Senator Andreychuk has said, we will continue that reflection on the basis of the experience. Nothing is poured in concrete and will not evolve. On the contrary, we want to be flexible and reflexive of the evolution of the situation and, as a matter of fact, be very keenly individually aware that we bear that responsibility.

To behave honourably is essentially that, namely, to be personally conscious that we have that responsibility and that we ask ourselves to make sure that we live up to that standard. That's why I think it is an important work, and all the members of the committee, be it Senator Tannas or Senator Frum or Senator Cordy and, of course, Senator Andreychuk and I, are so devoted to that responsibility because we know that we also carry your individual reputation in what we do and what we propose, and that's why we do it so conscientiously and so delicately to be sure that we are up to the level of your expectations.

Thank you, honourable senators.

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

An Hon. Senator: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

NATIONAL SECURITY AND DEFENCE

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON THE MEDICAL, SOCIAL, AND OPERATIONAL IMPACTS OF MENTAL HEALTH ISSUES AFFECTING SERVING AND RETIRED MEMBERS OF THE CANADIAN ARMED FORCES AND THE SERVICES AND BENEFITS PROVIDED TO MEMBERS AND THEIR FAMILIES—NINTH REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Wells, seconded by the Honourable Senator Black, for the adoption of the ninth report of the Standing Senate

Committee on National Security and Defence (budget—study on mental health issues affecting serving and retired members of the Canadian Armed Forces—power to hire staff and power to travel), presented in the Senate on June 5, 2014.

Hon. Daniel Lang: Honourable senators, I've been asked to provide further explanation about the purposes of this particular motion in view of the fact that we're coming to the end of the session.

• (2300)

I have spoken to the mover of the motion, Senator Dallaire, and to Senator Wells. As members of the Veterans Affairs Committee, they have both indicated it is important that we get this motion passed so that we can put a work program together over the course of the summer months.

For the record, I want to let you know that the actual amount of money that was budgeted for and agreed to by the steering committee was $63,000 to travel to Valcartier, to Winnipeg, to Deer Lodge and to Petawawa, as well as locally in Ottawa. It is important that we proceed with this, so we put the framework together so that we could get the work program together.

I know that the senator who adjourned the debate wanted more information. I hope I have provided enough for the house.

The Hon. the Speaker: Will the matter remain standing in the name of Senator Cools?

Senator Lang: I would like to call the question on this, if I could, Your Honour.

Hon. Yonah Martin (Deputy Leader of the Government): If I may clarify, when I spoke to Senator Cools about this, on that day there was a bit of confusion as to how this was being moved, but she said to me that she had adjourned it because she wanted to know if Senator Dallaire had anything to say. She expressed to me that she did support this, but she adjourned it in her name in case Senator Dallaire wanted to speak.

Hon. Jane Cordy: Your Honour, I certainly agree with the comments made by the Chair of the Defence Committee. I agree that this is an important study, but I find it unusual; the debate is adjourned in the name of Senator Cools and I think that, in fairness, we should allow the debate to stay in her name so that she can speak for herself, even though I agree wholeheartedly with the comments of the chair of the committee. It is important just as a courtesy. One more day wouldn't make that much of a difference.

Hon. Roméo Antonius Dallaire: I take note of what Senator Martin has indicated and am a bit surprised as to why even Senator Cools would need my comments on this because I chaired the meeting and Senator Wells was the deputy, so, of course, we are on net with that. Furthermore, the fact is that tomorrow I will be here only for a very short period of time as I am flying out to Minneapolis and it is my last day; I won't be able to answer Senator Cools. If she adjourns it because she wants to talk to me, we are in a bit of a quandary here.

I do not know what your procedures are in this regard. However, I can say that the details of that proposed study have been worked on by me for nearly a year and that the content has been worked on in regard to the funding for nearly three months. Everything that we are asking for there is at a strict minimum. It is essential, crucial, that the committee visit those five sites in order to provide depth to the study.

That is the response I would have given Senator Cools had she been here, and my full support to the report. With that said, I leave it to the higher authorities amongst us to see how you can sort this out.

The Hon. the Speaker: Honourable senators, it is a matter of practice, and our practice has always been that an item that is standing in the name of a senator that is not spoken to and another member of this honourable house wishes to speak, and that senator does speak, the matter reverts as adjourned in the name of that senator for one day. I think, honourable senators, that we can return to this matter tomorrow. The answer has been provided that was sought by the Honourable Senator Lang.

The matter will stand in the name of Senator Cools until tomorrow.

(On motion of Senator Cools, debate adjourned.)

THE SENATE

MOTION TO AWARD HONOURARY CITIZENSHIP TO MS. ASIA BIBI—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Joyal, P.C.:

That, the Senate of Canada calls on the Government of Pakistan to immediately release Ms. Asia Bibi, a Christian woman who is being arbitrarily detained due to her religious beliefs;

That, the Senate of Canada declare its intention to request that Ms. Asia Bibi be granted Honourary Canadian Citizenship, and declare its intention to request that Canada grant her and her family asylum, if she so requests; and

That a message be sent to the House of Commons requesting that House to unite with the Senate for the above purpose.

Hon. Céline Hervieux-Payette: Senator Greene, this is a motion under your name. I don't know how many you have, but this person is in jail and is threatened to be killed. We have taken a lot

of time and we have already passed a motion like that, so I'm asking you, when will you speak to this?

Hon. Stephen Greene: I will speak soon.

(Order stands.)

HEALTH CARE ACCORD

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Callbeck, calling the attention of the Senate to the growing need for the federal government to collaborate with provincial and territorial governments and other stakeholders in order to ensure the sustainability of the Canadian health care system, and to lead in the negotiation of a new Health Accord to take effect at the expiration of the 2004 10-Year Plan to Strengthen Health Care.

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, I am proceeding in my research on this item, colleagues, but it is very late and I know we all want to hear Senator Dallaire, so I would ask you to allow me to adjourn for the balance of my time.

(On motion of Senator Fraser, debate adjourned.)

GENETIC NON-DISCRIMINATION BILL

MOTION TO WITHDRAW BILL FROM LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE AND REFER TO HUMAN RIGHTS COMMITTEE ADOPTED

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of May 27, 2014, moved:

> That Bill S-201, An Act to prohibit and prevent genetic discrimination, which was referred to the Standing Senate Committee on Legal and Constitutional Affairs, be withdrawn from the said Committee and referred to the Standing Senate Committee on Human Rights.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (2310)

RWANDA
CENTRAL AFRICAN REPUBLIC

INQUIRY—DEBATE ADJOURNED

Hon. Roméo Antonius Dallaire rose pursuant to notice of June 5, 2014:

> That he will call the attention of the Senate to the clear and present links between the genocide in Rwanda and the crisis in the Central African Republic today.

He said: Honourable senators, may I first say a few words? I would like to use a reference from a book I have been referring to every now and again. It is a book called *The Wicked Wit of Winston Churchill*. I would like to start by reading a couple of passages rapidly to set the tone for what I am about to speak of in this motion.

The first ditty is:

> When, in 1960, a reporter from the London Evening Standard asked Churchill what he thought about the recent prediction that by the year 2000 women would be ruling the world, he muttered gloomily in reply, "They still will, will they?"

A second question at a dinner was:

> The question 'If you could not be who you are, who would you like to be?' was making the round of the dinner table; eventually it was Churchill's turn, and everybody waited expectantly to hear what the great former wartime prime minister would say. 'If I could not be who I am, I would most like to be . . .' he paused for effect, then, turning to [his wife] Clementine: 'Mrs. Churchill's second husband.'

The last one, if I may, is for entertainment at eleven o'clock at night — I am sure that is what you are looking for. Considering the world and its occupants, Churchill once mused:

> I wonder what God thinks of the things His creatures have invented. Really, it is surprising He has allowed it — but then I suppose He has so many things to think of, not only us, but all His worlds. I wouldn't have His job for anything. Mine is hard enough, but His is much more difficult. And He can't even resign.

Colleagues, this is my last speech as I resign from this august body. I thank you for your patience as I would like to bring a link and use this moment to speak to an inquiry that I hope will attract your attention and even, I hope, debate.

Before I do that, I would like to indicate that earlier on I thanked you and my staff for the work they have done. My chief of staff — who I have known now for nearly 40 years as she was at the military college and was my secretary then — has been instrumental in me being able to produce a lot of work. However, I would also like to thank some people who I consider to have been mentors in this institution. If I omit others, I hope you will forgive me, but let me mention just a few.

The first one is Senator Joyal, who has been very helpful in guiding me, providing me with input. I must say that reading his book was instrumental in me trying to understand the complexities of our role. I would argue that even after nine years, there are certain areas where I think I am still very much an apprentice. Although he doesn't like the term, without this "Bible" I think it is very difficult to even have the debate on the future of the Senate.

I would like to thank Senator Nolin, as an honorary colonel and a colleague with whom I have exchanged information over numerous discussions in committee, the Defence Committee in particular.

I would like to thank the Speaker, Senator Kinsella, who has been generous in guiding me and responding to some of my requests, and particularly for helping us commemorate the 11 officers who went through the genocide and receiving us in his quarters in April — the twentieth anniversary. Many of us were finally able to bring closure for having lived that experience.

I thank Senator Colin Kenny for telling me that I had a lot to learn and reminding me of that regularly. He is not here to receive that. I watched how he created the committee and what he had been doing. I realized that times had been difficult. When I was asked originally to join the Defence Committee while he was chair, I said, "No, the committee can't handle two generals." I opted to wait out, and I did so.

I would like to thank Senator Plett, who was not always easy, but he was honest, committed and wanted the best possible. He expected a strong debate in order to achieve it, and what this institution looks for is a strong, intellectually rigorous debate between opponents — not enemies — in order to make us produce the best possible legislation for the people.

I would like to thank Senator Lang also for assuming the chair, guiding us and moving things along, and turning into quite a friend on the other side. I also wish to thank Senator White for giving me some insights into the police world as we looked at the RCMP.

I would like, if I may, not only to thank my leader and deputy leaders over the years, but I want to thank my senior at military college, a year ahead of me, who harassed me and nearly got me booted out. He didn't succeed and so I decided to follow him in here. That is Senator Joe Day.

The five years of college did provide some positive results, one of which is that you are still here and I am leaving.

Colleagues, I am abusing your time; forgive me for that, but I thought I would mention these few words to some of my colleagues.

I wanted to bring to your attention a subject that I consider a reality. Some consider it simply a news item. It is another one amongst some of the sadder news items that go on, but those of us who have been in the field and have been in the midst of some of these conflicts, these are not news items; these are reality. We relive them. We can hear the women screaming as they are raped. We can hear the kids screaming for having lost their parents and dying of hunger. We can hear the projectiles — the rounds, the artillery, the mortars. We can hear the sound of machetes going into the flesh of human beings and listening to people as they attempt to survive, and if not, at least die with dignity in the field. We smell what is out there. We still smell it. What goes on in these conflict zones is not foreign and should never be foreign to a great nation like ours.

We are one of the 11 most powerful nations in the world. We are not sixty-ninth or seventieth. There are 193 nations in the world and we are part of the 11 most powerful. We didn't necessarily want it. We gained it by creating a democracy that is one of the most stable in the world, and soon we will be commemorating the one hundred and fiftieth anniversary of it. We won it because the youth of this nation, the young people of this nation, crossed the pond nearly 100 years ago and fought, bled and died and won victory that permitted us to be recognized not as a colonial cousin, which is one of the most comments ever brought to me, but as a nation state. We paid it in blood as was required in that concept. That was Vimy Ridge.

Three years from now, we will have that incredible year with the one hundred and fiftieth anniversary of the country and the hundredth anniversary of us becoming not only a democracy but a nation state. It will be upon us and my question is: What is the plan? What are we going to provide Canadians? What is the vision for us in this very complex and ambiguous era in which we've stumbled into? So far, I think that all I am seeing is commemorating with big chocolate cakes and maybe a few centennial rinks, but we are worthy of far more than that. I do hope we will produce something that will give that intellectual guidance and focus for this great nation to maximize its potential, which it has not done since World War II. We have not shot above our strength since World War II. We have pushed the limits of a nation like ours as a middle power — and that's fine — but we haven't overstepped it. We haven't pushed all of our potential.

• (2320)

The last time we did was in World War II. That was 70 years ago, when we had a million women and men in uniform. Even then, as we were pushing that, not one Canadian general or admiral sat at any of the strategic decision bodies of World War II — not one. We were considered a tactical military capability, with a million in the field. So we were tactical.

Since then, we have been building our ability to be not only operational but strategic. That is the arena in which we should be playing. We are a leading middle power in the world, and we have a responsibility to be strategic, to commit strategically and to

consider the visions, options and risks, strategically, as a grand nation of the world and a nation to which some look up to. They look up to us because of our work ethic, because we master technology, because we believe in human rights — it is in our fundamental laws — and they look up to us because we don't seek to subjugate anybody else.

That said, we are still on a horrible learning curve with our First Nations, and there are areas of enormous risk. More and more of those disenfranchised native youth will become, ultimately, a potential security risk in our nation if we don't attempt to diffuse that potential proactively.

So, if we are thinking strategically, then we should be moving in a strategic sense.

Some have asked me why I chose June 17 as my date of departure. I wish to bring that up today by going back further than CNN, and that is 20 years ago. I will read, if I may, from the text that we prepared:

[*Translation*]

> In June 1994, exactly 20 years ago, the Rwandan genocide was finally winding down. The Rwandan Patriotic Front was clamping down even harder on the interim Hutu government, which was allocating most of its resources to killing civilians instead of defending them. The perpetrators of the genocide were losing their determination. However, just when it seemed as though the massacres would stop, they started up again, as a result of outside intervention.

It was June 17, 1994. I have told this story before. A French politician named Bernard Kouchner came to visit my office at UNAMIR headquarters. Many honourable senators will recall that he was one of the founders of Doctors Without Borders and, more recently, he was France's foreign affairs minister. At the time, he was accompanied by an emissary from President Mitterrand. That afternoon, the two envoys told me that, in the interests of humanity, France would head a Franco-African coalition to intervene in Rwanda under UN Chapter VII, to put an end to the genocide and provide humanitarian assistance. In order to do so, they planned on creating a safe zone in the western part of the country. The genocide had been going on for over two and a half months. At that point, we estimated that over 500,000 people had been killed, nearly 800,000 had been injured, and there were 3.9 million displaced persons and refugees. They were a bit late.

Mr. Kouchner wanted my support but, without hesitation, I told him that was out of the question. How could he not see how wrong this plan was? Was he forgetting that France had been a colonial power in the region and that this history had huge implications? After all, their francophone allies in the Habyarimana regime were the architects of the massacre.

I believed that France, under the guise of humanitarian aid, actually wanted the Hutu government forces to hold part of the country, which was in France's interests. Whatever the country's intentions, there is no doubt that what was called Operation Turquoise was catastrophically ineffective.

First, when the media controlled by the Rwandan government began to announce that France would send soldiers, genocide perpetrators in Kigali thought that the French troops were coming to save them. Buoyed by that news, they resumed their killing with a vengeance, going so far as to follow survivors into churches and public buildings. Who knows how many innocent people were killed.

The announcement that the French were going to intervene also motivated the government forces to speed up their retreat to the west, where they followed some 2.5 million Rwandans. This huge group of people who were fleeing on foot was frequently attacked by Interahamwe militia, young people between the ages of 15 and 20, who killed not only Tutsis but anyone who did not have an ID card, because people's ethnicity was indicated on their ID. Let us hope that we never have this type of government ID card in our country because one never knows what they can be used for in times of crisis.

The most disastrous consequence of Operation Turquoise may have been the protection afforded to many of the people responsible for the genocide. It allowed them to take refuge in neighbouring countries, including the Congo, in Kivu province. The result was the militarization of refugee camps in what is now known as the Congo. That started the war that is still going on today in the African Great Lakes region.

I cannot imagine a greater tragedy than the Rwandan genocide, but this conflict, which has resulted in over 5.5 million deaths in the Congo, continues to worsen. That is because of our ineffectiveness in Rwanda. The conflict that occurred in one country destabilized a region.

Now that all of that has been said, let's get back to the interesting part: why June 17? Why end this chapter of my life, my career as senator, on this day in particular? The decision that France made during the Rwandan genocide, a decision that was shared with me 20 years ago today, is still, for me — and for others here and in the other chamber, I hope — proof that middle powers, like Canada, have a role to play in resolving conflicts and preventing atrocities.

Far too often, former colonial powers or superpowers like the United States are the ones leading the interventions. However, we know from experience that their history makes the missions less effective. They have strategic interests in the region or patronage ties with the regimes and opposition groups, not to mention that their history has usually been heavily marked by interference in the country's domestic affairs.

That was certainly the case with France and Rwanda, but it is definitely not the only example. That is why Canada still has a role to play; it simply needs to reclaim its position as a leader in resolving international conflicts and preventing atrocities. Canada is not currently fulfilling that role.

[*English*]

What we do have, however, is a proud tradition of championing human rights and peace around the world. Indeed, Canadians played a key role in the creation of the Charter of the United Nations; the Universal Declaration of Human Rights; the

International Criminal Court; the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction; and the Responsibility to Protect. We more or less invented modern peacekeeping.

• (2330)

We have exceptional armed forces, made up of bright and courageous young men and women — veterans nearly to the man and woman. We have a talented and dedicated diplomatic corps. We have development people and other whole-of-government agencies prepared to deploy and whose ingenuity is invaluable in today's increasingly complex and ambiguous operations.

We have a vibrant civil society that won't stop banging at the door even after we've changed the locks. Indeed, we have many tools we can deploy in our engagement with the world. We most definitely have a citizenry that takes pride in all of the above.

In recent years, however, things have changed. Today we have 43 peacekeepers deployed out of a possible 110,000 peacekeepers worldwide. Today we have to dance around the words "responsibility to protect" and the International Criminal Court, and even the term "child soldiers" to protect out of fear of having to actually maybe turn our alleged principled foreign policy into principled action.

Today we point to the humanitarian aid dollars we've given, which are never enough, and proclaim we've done our part. Today we have more sabre-rattling and less credibility; more expressions of concern and less contingency planning; more endless consultation with allies, or so we are told, and less real action being taken; and more empty calls for respect for human rights and less actual engagement with the violators.

I have said this before, but I cannot stress it enough: If we are to overcome the challenges facing the world today, we need transcendent leadership with the deepest conviction and the most honourable of intentions. In other words, we need statesmanship. There is a dearth of statesmanship, of taking risk, demonstrating flexibility, innovation and humility. The question is: When will Canada finally answer the call again?

In my view, there is no more pressing and more appropriate place to start than with the Central African Republic. As has been well documented in the media and spoken to in this chamber, there is an ongoing humanitarian crisis in the CAR that bears a strong resemblance to the catastrophe that played out in Rwanda 20 years ago. Thousands have been targeted and killed by roaming gangs on the basis of their religious identity. Hundreds of thousands have been displaced, many of whom fled beyond borders as refugees. Entire families have been wiped out, with women repeatedly victims of sexual violence. Rape is an instrument of war.

The primary weapon in that conflict are thousands of children, some as young as 11, forcibly recruited as child soldiers and indoctrinated to fuel the cycle of violence. It was reported by the outgoing High Commissioner on Human Rights that the situation is as gruesome and horrific as any in the world today.

Again, in this case, we have a scenario where the former colonial power is leading the international response. That's the worst gang to have in the field within that context. However, in September a UN peacekeeping mission is set to be deployed, which represents a significant opportunity for new leadership to come forward.

Simply put, Canada needs to be there on the ground, standing side by side with courageous African troops already deployed, notably, in fact, the Rwandans, who are putting themselves in harm's way to save lives and who are taking casualties at times. What's more, our troops, police and civilian personnel can make the difference. They know the languages, they know the place, they know the people, and they know the culture; and there are several reasons why we should be there, as called upon by so many countries asking why we are not there.

First, the interim president has already specifically identified Canada as a country that can make a significant contribution toward peace and reconciliation, given our proud tradition of multiculturalism.

Second, our troops are well trained, experienced and professional, not to mention bilingual, so they can make a significant contribution both in terms of direct operations and through the training of others in the mission-critical issues. We have, thanks to this government, the strategic lift to sustain forces in the middle of Africa where there are no ports. We have the logistic capability to provide the assets needed so they don't run out of ammunition, food or medical supplies. We have the command and control capability that other nations do not have to bring a force together and make it effective. We have the planning skills to do the contingency planning and to be able to use the forces effectively on the ground. We have the leadership in our general officer corps that has acquired the ability to work within that complexity and ambiguity over the years and is prepared to serve.

Of vital importance in that regard is training specific to the challenge posed by the massive presence of child soldiers in the CAR. Where our troops go in, they would not only need to know how to face and neutralize child soldiers, but also how to ensure that the kids are not recruited by armed groups to begin with, and that we don't use lethal force because they are considered in the doctrines of the military as simply belligerents.

We have skills that we can use and train others in to avoid the destruction of these youths and, in fact, to neutralize their capability. This expertise, part of it is part of the work I'm doing, is being deployed in Somalia, Mali and Libya. We are looking at deploying capabilities and training in the CAR; but we're alone.

Third, with religious freedom being the stated whole-of-government priority for our government, Canada should be among the first nations to line up to contribute ground forces and other support in the U.S. peacekeeping effort. In the CAR, Muslims and Christians are being targeted regularly on the basis of their religion; and there have been multiple warnings of mass ethno-religious cleansing and genocide.

Yes, the recruitment of child soldiers is a warning that those who do that are prepared to go to any length of exactions in order

to achieve their aims, including mass destruction of human life and, ultimately, even genocide.

We haven't asked the Office of Religious Freedom to provide the funding and expertise to local groups and religious leaders who are seeking to promote inter-religious dialogue and reconciliation on the ground.

This past April at the International Conference on Genocide Prevention in Brussels, I saw our foreign minister. I also saw him last week in London at an international conference on the sexual abuse of women in conflict, where he was the only minister out of 132 ministers there who had the guts to chair a meeting of 90 minutes with other ministers to provide a free-wheeling innovative debate. I applaud him for that and he did it very well. However, he said in Brussels:

> As leaders, this is our time. Let us not look back when it's too late, and wonder if we really did enough

I certainly agree with that. However, the only way we can avoid such an outcome is if Canada and other nations proceed to implement all relevant aspects of the responsibility to protect doctrine in the Central African Republic. Let me be clear: This does not just refer to the UN Peacekeeping Mission under Chapter VII. Indeed, we should consider reinforcing the African Union under Chapter VIII: sanctions to those supporting the armed group; apply the optional protocol on child rights, which holds us accountable to those who recruit and use child soldiers as weapons of war; give us the authority to intervene; and provide extensive development support to help the country rebuild its security sector, its schools, its economy and its judicial system.

Honourable senators, it is only through comprehensive action that we will have a chance to look back and say that we did enough to reverse this one, because the last time we didn't. However, our responsibilities do not end with the missions abroad. Indeed, we have related duties at home that we must carry out to the fullest extent. If Canada were to send troops and other personnel into conflict zones, such as the Central African Republic, we would have to ensure absolutely that we provide them and their families with the proper care after they return home, for you cannot return from those conflicts without being affected. This includes care not only of the physical injuries but those of the psychological variety, which have a lasting and potentially deadly impact. PTSD can be a terminal injury.

• (2340)

Honourable senators, as you can see, all these issues are interconnected. As I transition into the next phase of my life, I will be devoting considerable attention to each in my ongoing work and I look forward to meeting you on whatever occasion you're prepared to have me as a witness.

Thank you very much.

Hon. Senators: Hear, hear!

(On motion of Senator Jaffer, debate adjourned.)

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

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