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OFFICIAL REPORT
(HANSARD)

Thursday, October 23, 2014

The Honourable NOËL A. KINSELLA
Speaker

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

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THE SENATE

Thursday, October 23, 2014

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

[*Translation*]

PRAYERS

The Hon. the Speaker: Almighty God, we beseech thee to protect our Queen and to bless the people of Canada. Guide us in our endeavours; let your spirit preside over our deliberations so that, at this time assembled, we may serve ever better the cause of peace and justice in our land and throughout the world. Amen.

FALLEN SOLDIER

SILENT TRIBUTE

The Hon. the Speaker: Honourable senators, before we begin, I would ask you to rise and observe a minute of silence in light of yesterday's events and, in particular, in memory of Corporal Nathan Cirillo, a reservist with the Argyll and Sutherland Highlanders, who was shot yesterday as he stood guard at the National War Memorial.

Honourable senators then stood in silent tribute.

CANADA

EVENTS ON PARLIAMENT HILL

Hon. Claude Carignan (Leader of the Government): Honourable senators, today our Parliament, the guardian of our democracy and our rights and freedoms, is still standing despite the dark day that the institution and its members went through yesterday.

[*English*]

First, I offer my sincere condolences to the family and friends of the soldier Nathan Frank Cirillo, member of the Hamilton-based Argyll and Sutherland Highlanders of Canada. Mr. Cirillo, as we were horrified to find out, died after being killed by an active shooter when he was guarding the National War Memorial, which honours our soldiers who fought outside Canada to protect our Canadian values. As a young, 24-year-old reservist, Mr. Cirillo was passionate about his commitment to the Armed Forces. We honour him and his dedication.

[*Translation*]

Our thoughts and prayers are also with the family and friends of Warrant Officer Patrice Vincent, who was killed earlier this week by an ISIL-inspired terrorist.

As you know, honourable senators, the same crazed gunman then burst into the Parliament of Canada and fired his weapon, not caring who was in front of him. Our security services reacted quickly, with strength and courage, thus avoiding devastating loss of life.

[*English*]

The Sergeant-at-Arms of the House of Commons, Mr. Kevin Vickers, is the one who put an end to the rampage of the individual who was hiding in the columns at the entrance of the Library of Parliament. The rest of the day was spent in fear and anxiety for the hundreds of people who go about their duties every day in Centre Block.

[*Translation*]

If there is one thing that human beings know how to do in the midst of such terrifying and intense moments, it is to stand together and help one another.

That is what we saw throughout the day yesterday. From members of the security team to parliamentarians, from MPs' and senators' staff to support workers, rank and status evaporated. Everyone was nothing more or less than a human being seeking to comfort and protect.

The whole Parliament Hill family pulled together, and the whole Canadian family stood by us in spirit.

We all witnessed small and large acts of heroism during the event.

[*English*]

This great country that is Canada will not be intimidated and muzzled by this kind of barbaric and inhuman behaviour. We have a responsibility and a right to defend our values of freedom, democracy and peacekeeping.

[*Translation*]

We stood yesterday, we stand today, and we will stand forever with pride, courage, honour and dignity. They eyes of the world were upon us yesterday because Canada is respected and loved by the vast majority of the world's countries.

Canada is known worldwide as a welcoming, peaceful, prosperous and extremely safe country. That reputation will not change because of this week's sad events. It is up to all of us, as Canadian parliamentarians, to loudly and clearly express our resolve to drive back terrorism in all its forms, wherever it may be, and to intensify our efforts and those of our national security organizations as we take all necessary measures here at home and abroad to detect and combat threats and to keep Canada safe.

We will not tolerate barbarians taking advantage of the protection afforded by our values of rights and freedom to shield themselves as they plan attacks on those very values.

In closing, on behalf of myself and the government, I would also like to thank everyone whose actions, big or small, helped us get through yesterday's ordeal safe and sound and allowed us to get home again, to the great relief of our families.

Thank you, my dear friends, and let us carry on.

Hon. Senators: Hear, hear!

[English]

Hon. James S. Cowan (Leader of the Opposition): Colleagues, I want to add my voice to that of my friend Senator Carignan.

Canadians are in shock and mourning today, the day after terrible events unprecedented in our nation's long history. Our thoughts and prayers, and those of Canadians across the country, are with the family and friends of Corporal Nathan Cirillo, killed — impossible as it is to imagine — simply for standing guard at our National War Memorial, the Tomb of the Unknown Soldier. This young father and soldier was so proud of his service in the honour guard at the memorial. From now on, the Tomb of the Unknown Soldier will be indelibly seared in our collective memory as the place where this very proud and now very well-known soldier was struck down, doing his duty.

• (1340)

What will also remain long in the collective memory of Canadians was the sight of so many of his fellow citizens rushing to this man's aid.

And then, of course, the shooter came here, to Parliament Hill, turning his attention away from the national monument honouring those who defended our country, to focus on the centre of democracy that those soldiers died to protect.

To the security forces of both the Senate and the House of Commons, and to the RCMP and members of the Ottawa regional police, I say thank you. Your courage and calm professionalism were tested and never failed for an instant. We've all seen the video of what took place in these halls. You put the safety and security of Parliament Hill and all of us who work here above your own safety. We are so proud and so deeply grateful.

It's important that the Senate is sitting today, that both houses have returned to work. I was proud yesterday to receive our Speaker's statement assuring us that we would sit as scheduled, that Canada's Parliament would not be closed because of the actions of a deranged individual.

Hon. Senators: Hear, hear.

Senator Cowan: Parliament is the people's house, and that house will not be shut down.

In the same way, we must work to ensure that Parliament remains the house of all Canadians and that it does not become a fortress on the Hill, a closed monument to the idea of an open and free democracy.

There are dangers inherent in living in a free society. The events of yesterday and in Saint-Jean-sur-Richelieu are graphic evidence of that. In the days and weeks ahead, we will hear various proposals of how best to ensure that such terrible events never again take place. But it is critically important that we never lose sight of the free and open society we are seeking to protect, that we resist the temptation to sacrifice our values in the name of the security of those values.

I was very proud of the statements made last night on television and this morning again in the House of Commons by each of the leaders — the Prime Minister, Mr. Mulcair and Mr. Trudeau. As Canadians heard, criminals cannot and will not dictate to us how we act as a nation, how we govern ourselves, or how we treat each other. They cannot and they will not dictate our values.

I agree. I have always been fiercely proud to see Canadians openly walking about, enjoying and visiting Parliament Hill, for it's their Parliament, not ours. We are here on their behalf, not our own. We will have failed if we allow the actions of criminals to bar Canadians from their Parliament Hill.

There are many unanswered questions from the events of this week, and I know that all of us are determined to get answers to those questions. These are issues beyond politics, beyond partisanship, beyond partisan differences. They go to the core of our responsibility to Canadians: to keep them safe and secure while upholding the rights and freedoms that define us as Canadians. I know that together we will find that balance and that our nation will be even stronger as we face the future, united.

I want to say a final word to the Hill family who were here yesterday as the day unfolded. We should not underestimate the impact that those events have had or may have in the future on us and on all those who work on this Hill. I hope that we all keep a watchful eye and encourage those who may need it to benefit from the services available to deal with these events. We need to watch out for one another.

Hon. Senators: Hear, hear.

Hon. George J. Furey: On behalf of myself and the Chair of Internal Economy, our noted Speaker, Senator Kinsella, I would like to associate myself first with the comments of Senator Cowan and Senator Carignan. These comments are very appropriate, given the very frightening and disturbing events which occurred yesterday.

I also offer my condolences to the families of Warrant Officer Patrice Vincent and Corporal Nathan Cirillo. They have served our country with bravery and distinction. Our nation mourns for them and stands behind their families who are grieving today.

These cowardly attacks on the men and women of our Armed Forces will not be forgotten. We stand with them in the knowledge they are providing both Canadians and the world safety and security. For that, we are eternally grateful.

I want to acknowledge and thank, on behalf of the Speaker and myself, the RCMP, the Ottawa Police Service and the House of Commons security for the safeguard provided to us all. I especially want to thank the Clerk, Dr. Gary O'Brien, and Mr. Gilles Duguay, our Senate Protective Service leader, as they conducted themselves in a very calm, professional and reassuring manner. It is their dedication and professionalism that helped us all cope with the events of yesterday. I wish to thank them for their exemplary work.

Hon. Senators: Hear, hear.

Senator Furey: Honourable senators, again, on behalf of the Speaker and myself, I want to thank my colleagues for their patience and endurance during these very trying circumstances. A lot of you were held for many hours under very stressful conditions. Your grace and patience have reassured us all that no matter the challenge, we, as an institution, remain strong. I extend that thank you as well to all of the staff who found themselves in similar circumstances yesterday and conducted themselves equally with grace and patience.

But strength, colleagues, is not without its support. I want to ensure our colleagues and staff that the resources they need are here for them. We have professionals ready to assist staff and senators at any time. Even the strongest amongst us may need help at some point. If anyone should feel the need to seek assistance, please do not hesitate to reach out.

Finally, I want to reassure senators and staff, and again on behalf of Senator Kinsella and myself, that both steering and the full Internal Economy Committee continue to work to improve our security measures with the House of Commons, the RCMP, the Ottawa Police Service and the Senate Protective Service.

As we work through the events of yesterday, let me assure you that we will work continuously towards improving security plans that protect us and protect the people's house. Thank you, colleagues.

Hon. Senators: Hear, hear.

[Whereupon all honourable senators rose and sang O Canada!]

• (1350)

ROUTINE PROCEEDINGS

ADJOURNMENT

MOTION ADOPTED

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

When the Senate adjourns today, it do stand adjourned until Tuesday, October 28, 2014, at 2 p.m.

The Hon. the Speaker: Is leave granted, 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.)

[Translation]

PARLAMERICAS

MEETING OF THE BOARD OF DIRECTORS, JUNE 23, 2014—REPORT TABLED

Hon. Suzanne Fortin-Duplessis: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of ParlAmericas respecting its participation at the 34th meeting of the Board of Directors, held in Mexico City, Mexico, on June 23, 2014.

ANNUAL GATHERING OF THE GROUP OF WOMEN PARLIAMENTARIANS, JUNE 24-25, 2014—REPORT TABLED

Hon. Suzanne Fortin-Duplessis: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of ParlAmericas respecting its participation at the Annual Gathering of the Group of Women Parliamentarians, held in Mexico City, Mexico, on June 24 and 25, 2014.

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

THIRD PART, 2014 ORDINARY SESSION OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, JUNE 23-27, 2014—REPORT TABLED

Hon. Michel Rivard: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation respecting its participation at the Third Part of the 2014 Ordinary Session of the Parliamentary Assembly of the Council of Europe, held in Strasbourg, France, from June 23 to 27, 2014.

[English]

REMEMBRANCE DAY

NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, pursuant to Senate rules 5-1 and 5-6 (2), I give notice that, two days hence:

I shall call the attention of the Senate to November 11, Remembrance Day, of this the centennial year of the commencement of hostilities in the 1914-1918 Great War, that day given to the national and collective mourning of Canadians when we remember and honour the many who served and fell in the service of God, King and country, and whose incalculable sacrifice of their lives we honour in our simultaneous yet individual personal acts, wherein we together bow our heads in the unity of our individual sacred acts of prayer and remembrance at the eleventh hour of the eleventh day of the eleventh month for the many who gave of themselves; and,

To those who served in World War I, with its sacrifice, its massive mobilizations and fielding of millions of men on all sides, and to its enormous casualties and losses of life and of

our young country's noble contribution to this overseas war of 620,000 men, 10 per cent of Canada's then population, and of which those sent abroad, 60,661 fell, being 10 per cent of those abroad in the war; and to Canada's Conservative Prime Minister Robert Borden's success in obtaining Canada's representation at the 1919 Allies' Peace Conference, and his and his ministers' presence there; and to the respect he earned for Canadian contributions to the war and for Canada's control of its foreign affairs, wars and peace; and to the ever-changing relations between the Allies and the ever-changing politics at home; and to Canadians at home and abroad, most particularly the Canadian-born British Prime Minister Andrew Bonar Law and Canadian Max Aitken, known as Lord Beaverbrook, who were both active in British politics and who, in 1922, endeavoured to avoid a new war at Chanak.

ARMISTICE OF MUDANYA

NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, pursuant to Senate rules 5-1 and 5-6 (2), I give notice that, two days hence:

I shall call the attention of the Senate to November 11, Remembrance Day, of this the centennial year of the commencement of hostilities in the 1914-1918 Great War, that day given to the national and collective mourning of Canadians when we remember and honour the many who served and fell in the service of God, King and country, and whose incalculable sacrifice of their lives we honour in our simultaneous yet individual personal acts, wherein we together bow our heads in the unity of our individual sacred acts of prayer and remembrance at the eleventh hour of the eleventh day of the eleventh month for the many who gave of themselves; and,

I shall call the attention of the Senate to two great soldiers, fine human beings who fought on opposite sides of the Great War, both of whom were distinguished generals and accomplished military men, being the English General Charles Harington, the British Commander-in-Chief of the Allied Occupation Army in Constantinople, and the Turkish general, Mustafa Kemal, the Commander of the Turkish-speaking people's brave national resistance to the Sèvres Treaty's expulsion of these peoples from their lands; and to these commanders' respective troops, battle drawn and awaiting orders for the start of hostilities at Chanak in September 1922, and to fate, which joined these two men there at Chanak, and to their determination to avoid unnecessary war and bloodshed, and to their great contribution to British and world peace and to the new Republic of Turkey, and to their will not to spend their soldiers' lives in folly and to reach the honourable, the just and the true in their armistice agreed to and signed on October 11, 1922, as the Armistice of Mudanya, and to Canadian-born Andrew Bonar Law, who became Prime Minister of Britain on October 23, 1922, and his great commitment to peace.

CHANAK CRISIS

NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, pursuant to Senate rules 5-1 and 5-6 (2), I give notice that, two days hence:

I shall call the attention of the Senate to November 11, Remembrance Day, of this the centennial year of the commencement of hostilities in the 1914-1918 Great War, that day given to the national and collective mourning of Canadians when we remember and honour the many who served and fell in the service of God, King and country, and whose incalculable sacrifice of their lives we honour in our simultaneous yet individual personal acts, wherein we together bow our heads in the unity of our individual sacred acts of prayer and remembrance at the eleventh hour of the eleventh day of the eleventh month for the many who gave of themselves; and,

I shall call the attention of the Senate to the political events called the 1922 Chanak Crisis or Chanak Affair, four years after the Great War, when Canadian and British politics met in Canada's courageous stand for its own constitutional autonomy in foreign affairs, war and peace; and to Canadian Liberal Prime Minister Mackenzie King's well supported refusal to yield to British Prime Minister Lloyd George and his Colonial Secretary Winston Churchill's persistent demands for Canadian troops to fight a new war at Chanak, now called Çanakkale, a tiny Dardanelles seaport; and to this new war most unwanted by Britons and Canadians, both war weary, still mourning their fallen sons, and which looming new war was the inexorable result of Prime Minister Lloyd George's unjust, inoperative and stillborn Sèvres Treaty; Lloyd George's Peace Treaty, which began with war and this Treaty's peace terms, which would put the Turkish-speaking peoples out of their homes in ancient lands in Eastern Thrace and Anatolia; and to the Turkish-speaking people's brave and successful nationalist resistance to this injustice; and to Canada's role in the peace that avoided the unwanted war at Chanak; and to British politics, by which a single vote of the Conservative Caucus compelled Prime Minister Lloyd George and his Coalition Government's resignation; and to the ascendancy of Canadian-born British Prime Minister Bonar Law, who himself had lost two sons to the Great War and was then the most respected man in Great Britain.

PEACE MAKING

NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, pursuant to Senate rules 5-1 and 5-6 (2), I give notice that, two days hence:

I shall call the attention of the Senate to November 11, Remembrance Day, of this the centennial year of the commencement of hostilities in the 1914-1918 Great War, that day given to the national and collective mourning of Canadians when we remember and honour the many who served and fell in the service of God, King and country, and

whose incalculable sacrifice of their lives we honour in our simultaneous yet individual personal acts, wherein we together bow our heads in the unity of our individual sacred acts of prayer and remembrance at the eleventh hour of the eleventh day of the eleventh month for the many who gave of themselves; and,

I shall call the attention of the Senate to Canadians' and British peace of mind, freed from the fear and sorrow of having to face the sacrifice of their beloved sons to another war so soon again, and to the many Canadians, such as John Wesley Dafoe, the great Canadian journalist and editor of the *Manitoba Free Press*, later the *Winnipeg Free Press*, who had attended in the 1919 the Allies' Peace Conference with Prime Minister Robert Borden's Canadian delegation, and who strenuously resisted British demand for Canadian troops, and to Dafoe's outstanding accounts of Canadians' and the Canadian government's desire to live without war against people who had done them no harm, and in particular, his historic article, *The Rise of the Commonwealth Dominion Responsibility for External Affairs*; and to Canada's influence on British politics, and on the other dominions, and of Canada's firm principled and vindicated position not to send Canadian troops to Chanak; and to the profound and humane notion that the greatest act of peace must simply be to make no war.

• (1400)

ORDERS OF THE DAY

FOOD AND DRUGS ACT

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Seidman, seconded by the Honourable Senator Demers, for the third reading of Bill C-17, An Act to amend the Food and Drugs Act.

Hon. Art Eggleton: Colleagues, given the events of yesterday and the impact it has had on all of us, it's not easy to get back to regular business and debate bills, but, of course, that's exactly what we should do. We should show that this institution is strong and that we are going to carry on doing what we have done in our history, and that is to represent the people of this country in trying to pass legislation for their benefit.

Let me also say on that that I am, as I think all of us are, very appreciative of the remarks of our leaders on both sides of this chamber and also the leadership in the House of Commons for their very wise words and counsel with respect to unity and continuing on with the business of the people of Canada.

In that vein, I turn to Bill C-17, which is here for third reading. It has come from the Social Affairs Committee after many representations were made. I should also refer to a comment that

I made at second reading on the bill, in which I said I felt it was a move in the right direction, but there were ways that we could probably improve it. When we did get down to the hearings in the Social Affairs Committee, that's exactly what we found. People came forward and said, "Yes, it is a good start. It is a move in the right direction. It's about time."

We know it's about time because at the committee for the last two years we've been studying prescription pharmaceuticals. We've been studying every aspect of them. We've put out four reports. The latest report is here on the table now; it's on the subject of unintended consequences. Through all of the studies we've done over the last couple of years, we found shortcomings in how we were keeping people safe in this country and how we were properly studying pharmaceuticals, both with clinical trials and the post-approval processes, to ensure that in fact the safety and efficacy of the drugs was maintained. We found there were more things that could have been done. Indeed, the Auditor General has been critical of some of the actions or inactions of Health Canada.

So along comes this bill, and the people who came before our committee said, "Yes, it's a move in the right direction, but it can be improved." Just about every one of them said, "Yes, there could be improvements made to the bill."

After hearing from them and having had discussions at committee, I moved at that time a couple of amendments. I said that much of this bill — and this we heard from our representation as well, our witnesses — is based on "may." The minister "may" do this or the minister "may" do that. We also know the opposite of "may do" is "may not do." It leaves it up in the air as to whether all of these things are necessarily going to be implemented in a way that makes them effective.

Now, the minister has every intention of doing that. I think she has made that very clear. Obviously, my colleagues on the other side support the minister and believe that she will do that, and I hope that's the case, but we operate on the rule of law here. It was the feeling of some of us that, in fact, we should have changed the word "may" to "shall" so that we were sure that we were going to get the openness, transparency and action that we had long been seeking.

We talk about the minister, but remember that it's Health Canada, those people who are part of the bureaucratic machinery, who will actually determine whether it works or not. We've seen some shortcomings there. At the same time, we know that it's not just in the bill, but it's in the regulations that follow the bill. The regulations are where you really give this kind of bill effect. There's another old saying that's worth remembering in that regard, and that is "the devil is in the details." Well, we don't have the details yet.

To start with, I suggested to the committee that we consider "may" being changed to "shall" in some of the sections.

By the way, the word "shall" was already there in some other sections. It was put in by the House of Commons committee on health at the request of Terence Young, the member of Parliament who has made this a major endeavour of his for some period of time and after whose daughter the informal title of the bill is named. It's named after his daughter who tragically

[Senator Cools]

passed away a number of years ago from the very kinds of problems that we see in terms of drugs being inappropriately prescribed or taken.

So we suggested that we needed to have something a little firmer. Unfortunately, the committee decided to leave it in the hands of the minister.

There was another amendment that I put that some of us on the committee agreed with. In fact, a number of these votes were very close, but still, we could see the way they were progressing in terms of the confidence that the members of the government side had in the minister to proceed in the proper fashion. That amendment was to provide some legal protection for the minister.

The pharmaceutical industry, by the way, is a very powerful industry. The revenue of the top 10 pharmaceutical companies is higher than the total revenue of the Government of Canada. This is a big industry. Big pharma is huge. Next to big oil, I don't think there's any industry bigger than big pharma.

We felt that the minister should be given some protection in law from lawsuits for using her judgment as to when a drug is having a serious impact. We were concerned that it could fetter her discretion; it could create a chilling effect if, in fact, she feels that big pharma is about to sue her. Yet, we all said, on both sides, that we expect the minister to be able to take these decisions for the benefit of the people of Canada, to protect them properly. However, if you've got a potential lawsuit coming around the corner, then you might think twice about it. That was our concern. We're not just focusing on this minister; we're focusing on any minister who might come down the road.

Right now, one of the big pharma companies is suing the Government of Canada for \$500 million for what they say is a violation of NAFTA on the basis that a court decided that approval should not be given to a certain drug they had. It shows you just how litigious these companies can be, and we've certainly seen other cases in the past.

We said, "Give the minister some protection in law so she cannot be sued for exercising reasonable judgment in a fair and reasonable fashion." However, again, the committee did not think that was necessary. But just wait; I hope the problems of lawsuits are not going to create a chilling effect, and that she'll be able to make the proper decisions.

Finally, we moved some observations, but, again, the committee did not see fit to support this in majority. We said, for example, that the regulations should be expedited. We all agreed with that, but we thought that the major one should come back for some examination by the committee. This is a committee that knows a lot about this subject because we've been studying it for two years, and I think we could give the minister good advice on this whole matter. They said they were going to have consultations. Why not a consultation with us? Anyway, that didn't pass, either.

I still hope there will be some opportunity for consultation to make sure these regulations are going to be effective. I'm not talking about every little detailed recommendation. Some of them are minor. I'm talking about the major ones, of course.

The second thing we discussed was that we've talked so much about openness and transparency. We've been looking extensively at the examples in the United States or the European Union, where we certainly have the impression — and we certainly had many witnesses tell us — that they're far more open and helpful in what they post on their websites. Their websites are far easier to understand, far better for researchers and physicians, et cetera. Another observation — not an amendment to the bill — we moved was with respect to openness and transparency. However, that one also failed to pass the committee.

• (1410)

Third, a number of our witnesses said they were concerned about whether or not sufficient funding was available to Health Canada to be able to do this. That is a very valid point because there are a number of things that suggest maybe that's not the case.

For example, in the 2012 federal budget, there were 275 positions cut from the health products division of Health Canada. There was some question at the committee as to whether or not that was true, but I looked it up in the performance report of Health Canada, and particularly this division, and it stands out right there. It's an easy calculation. It's in their official document that they sent to the Parliament of Canada in regard to the requirements of the fiscal framework.

The Auditor General, in another capacity here, reported that Health Canada had not met its target of 2 per cent of all clinical trials and inspected only 1.3 per cent of them. So it didn't meet its target. The Auditor General was critical of this. Furthermore, the AG also found that when inspections turned up non-compliance issues, it took Health Canada between 56 and 142 days to notify the parties of the problem. A drug is a danger to somebody's health, a danger to somebody's life, and it takes them 56 to 142 days to notify the parties of the problems, let alone whatever action needs to flow from that?

The Auditor General said he found this to be an unsatisfactory length of time to review proposed corrective measures in response to non-compliance issues. Why are these true?

He went on and said something else. Health Canada has a poor record of inspecting foreign drug manufacturing sites, conducting only 3 inspections in 2011 and 14 in 2014, while in fact hundreds are being done by the United States Food and Drug Administration.

We also heard about Ranbaxy pharmaceuticals out of India, where they pleaded guilty in 2013 to U.S. criminal charges of selling adulterated drugs or deliberately falsifying their records, and fabricating data about the drugs it made at their plants in India. There were bans taken by both the European Union and the United States, but they were still on sale in Canada. Yes, Health Canada didn't see a reason to do so. Well, subsequently, the minister came down on them, after an article appeared in *The Toronto Star*, and it appears that some action was taken, at least with respect to a Canadian pharmaceutical company that was getting some of its product done in the same country.

Nevertheless, all of these things tell me that they didn't have the resources that they needed to be able to do the job they have now. If they don't have the resources to do the job they have now, how

will they do it with all these additional requirements? They say they will save some money in the negotiations. They won't have to spend as much time in negotiations. I find that hard to believe, because I think most of the time the so-called negotiations are actually seeking out information, trying to go back and forth getting information. The actual decision-making process will be faster, but it remains to be seen whether that can be a place of considerable savings.

I think there is a very strong case to be made that they need additional resources, so I moved an observation: that the Government of Canada ensure the necessary funding be provided to Health Canada with the resources to fully implement Bill C-17 as soon as the regulations are proclaimed in effect. I didn't even address that directly to the minister; I addressed it to the government. You'd think that would be a good thing. Well, no, that didn't pass either.

Finally, there are two clauses where the minister instructs a holder of a therapeutic product — by and large the pharmaceutical companies — to conduct an assessment of the therapeutic product to which the authorization relates and provide the minister with the results of the assessment. This is in cases where it appears something is going wrong, adverse drug reaction reports or some other information indicates there may be some further examination of this matter needed in the post-clinical trial approval process. The minister can order the company to do some further study. They can compile information, conduct tests or studies, or monitor experience in respect of the therapeutic product.

That's good, except there's one problem. Don't they have a conflict of interest? They're going to report on a drug that is suspicious, that there's some suspicion about whether or not it's still safe or efficient, and now they're going to be doing that? They certainly should be providing a lot of information. They should be paying for whatever other information needs to be provided, but there needs to be some oversight.

This was an observation only. We said that perhaps the Drug Safety and Effectiveness Network, or an alternative arm's-length entity, provide oversight to ensure the proper conduct and accuracy of results of the investigation. That, unfortunately, was also defeated.

Coming back to the more positive side of things, I understand my colleagues on the other side are putting a lot of faith in the minister, and we'll hold them accountable for that. This bill is a move in the right direction. Even though I thought it could be improved upon, we are where we are in terms of the bill, just as it is. I think, just as it is, it is still worthy of our support, so I'll be supporting the bill.

The Hon. the Speaker: 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.)

[Senator Eggleton]

**CRIMINAL CODE
CANADA EVIDENCE ACT
COMPETITION ACT
MUTUAL LEGAL ASSISTANCE IN
CRIMINAL MATTERS ACT**

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Tom McInnis moved second reading of Bill C-13, An Act to amend the Criminal Code, the Canada Evidence Act, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act.

He said: Honourable senators, I want to as well associate my thoughts with those of Senator Eggleton in expressing appreciation to the leadership here on Parliament Hill in the aftermath of yesterday's events.

I also had completed my remarks on Tuesday evening and put them in my car, in my briefcase, and then I came in yesterday and of course could not get to my speech. I was going to shorten it somewhat, as it was longer than I intended. It is too late, so you will have to endure this longer speech. However, the import of the bill, honourable senators, certainly makes the entire speech worthy, and I'm sure you'll hang on every word.

I am very pleased to begin the second reading debate on Bill C-13, the protecting Canadians from online crime act, an important piece of legislation. This bill is a timely and significant piece of legislation that is aimed at ensuring Canadians can be safe, not only in their homes and in their neighbourhoods, but also when they are on line. The necessity for security with respect to online activities is becoming more apparent as our use of social media and other technologies continues to grow.

Bill C-13 is comprised of two related but distinct parts. The first part addresses a particularly vile and invasive form of cyberbullying involving the non-consensual distribution of intimate images. The second part aims to ensure that the Criminal Code and other federal legislation is keeping pace with technological changes. The bill proposes updates to offences and to the powers of police to investigate crimes committed using electronic networks or that leave electronic evidence.

• (1420)

I would like to address both of these parts in turn, beginning with the elements of the bill that address cyberbullying. We are all aware that the issues of bullying and cyberbullying are becoming priority items for many governments around the world. Cyberbullying, the bullying of another person via electronic means, is of particular interest to Canadians. This interest is due, in no small part, to the number of teen suicides over the past few years in which cyberbullying was alleged to have played a major part. Online cyberbullying increases the speed at which statements can be made and shared with many others. Once something is posted online, it is very difficult to control its further use and dissemination. Cyberbullying appears to have a more profound impact on its victims than the traditional schoolyard bullying because of its online nature. Victims of cyberbullying also report that it is very difficult to retreat or escape from cyberbullying, given the pervasive role that telecommunications plays, especially in the lives of young people.

Currently, the Criminal Code can address most of the serious forms of cyberbullying through, for example, existing offences of criminal harassment, in section 264; uttering threats, section 264.1; or identity fraud, section 403. However, honourable senators, there is no offence in the Criminal Code that can address a new and contemptible form of cyberbullying that has emerged, which involves the distribution of sexual images without the consent of the person depicted in the image. Addressing this gap in the Criminal Code is one of the goals of Bill C-13. This new Criminal Code offence will prohibit the non-consensual distribution of intimate images. Essentially, this offence would prohibit the sharing of sexual or nude images without the consent of the person depicted.

It may be useful, honourable senators, to better understand how this behaviour typically comes about. It usually begins in a non-criminal context with the perfectly lawful consensual recording of intimate images in a private setting. These lawful images may be subsequently transmitted electronically to a partner, a practice commonly known as “sexting.” Upon breakdown of the relationship, one of the former partners might distribute those images to third parties without the consent of the person depicted in the image. It is important to note that this offence is not intended to criminalize “sexting” when it is done with consent. Rather, it is the unauthorized and non-consensual distribution of these images that is the target of this new offence.

As the Prime Minister has noted, this type of cyberbullying behaviour goes well beyond what has traditionally been thought of as bullying and should be specifically criminalized. The proposed new offence would prohibit all manner of distributing, sharing or making available an intimate image without the consent of the person depicted in that image. This is intended to capture all ways in which intimate images may be shared, including posting an image on a website or sharing via social media, email or in person, but would not capture the consensual recording or the private personal use of these images. The main element of this offence is that the sharing or distribution would be done without the consent of the person depicted in the image. The accused would have to know that the person depicted in the image did not consent to the distribution or be reckless as to whether or not the person depicted consented to the distribution.

Bill C-13 also contains a three-part definition of “intimate images” to help guide the courts in determining whether or not a particular image could be the subject of an offence. First, an intimate image would be any visual recording of a person who is nude and exposing his or her genital organs, anal region or her breasts, or is engaged in explicit sexual activity. This definition is similar to those found in the existing voyeurism and child pornography offences.

Second, the image must be one in which, at the time it was taken, there were circumstances that gave rise to a reasonable expectation of privacy. This ensures that the offence does not capture the distribution of images in which the person depicted could not reasonably have asserted a privacy interest. For example, it may be difficult for a person to assert a privacy interest over a photo of themselves walking nude down Wellington Street, just outside Parliament Hill in Ottawa.

Third, at the time of the offence, the image must be one in respect of which the person depicted retains a privacy interest. In other words, if someone posted a nude picture of themselves to a

public website and someone else subsequently shared that image, it would be unlikely that the person retains an expectation of privacy in their image.

In addition, honourable senators, the bill contains a number of amendments that would complement the proposed new offence. As a means of prevention, the court would be authorized to order a peace bond against a person who has intimate images in their possession where there are reasonable grounds to fear that the person would commit the proposed new offence. As part of the sentence for the new offence, the court would be permitted to make a prohibition order, which would limit the access of a convicted offender to the Internet or other digital network, unless this access is exercised in accordance with conditions set out by the courts.

The court would also be authorized to order non-consensually posted intimate images removed from the Internet. The existing provision that allows the court to order the removal of child pornography and voyeuristic recordings would be amended to include intimate images. In addition, the court would be authorized to order any tools used in the commission of the proposed offence, such as cellphones or computers, forfeited to the Crown. At the end of the process, the court would also be authorized to order the convicted offender to pay restitution to permit the victim to recoup expenses incurred to secure the removal from the Internet of any non-consensually posted intimate images. Finally, the Canada Evidence Act would also be amended to ensure that the spouse of a person accused of distributing intimate images would be eligible to testify for the Crown.

The bill proposes updating existing offences that are relevant to cyberbullying. For example, the offence of false messages and harassing phone calls, section 372, refers to behaviour conducted via letter or telegram, among other methods, but does not include more modern methods such as through the Internet or by smartphones. This offence is a relevant and applicable offence in the cyberbullying context, but as it is currently drafted, it may not apply to conduct committed via modern technology. This bill would update this offence to make sure that any prohibited conduct done via any form of telecommunication is captured.

Specifically, this part of the bill contains amendments to the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act to ensure that our laws are suitable for the technologically-advanced world in which we live. They are meant to modernize both offences and investigative powers to make the Criminal Code more responsive to current criminal behaviour. There is a common thread in these amendments: As their primary objective, they all provide law enforcement agencies with the tools they need to fight 21st-century crime while continuing to respect the civil liberties of Canadians.

Let me be clear by stressing that the purpose of the investigative powers amendments are not to give extensive new authority to the state to intrude on the privacy of Canadians. On the contrary, the new powers in this bill are carefully and narrowly constructed to respond to investigative challenges posed by advances in technology over the past few decades, while maintaining the privacy protections that Canadians expect. Modernized investigative tools would be especially important in

investigations into the proposed new offence of non-consensual distribution of intimate images and other offences that may be implicated in serious cases of cyberbullying. These updated tools will also assist police in the investigation of all online crimes and any crimes that involve digital evidence, for example, fraud, distribution of child pornography and various forms of cyberattacks.

• (1430)

Honourable senators, I would like to take a few moments to describe in more detail some of these important advancements for police. Take, for example, the data preservation scheme. This allows the police to preserve a specific set of computer data long enough for a police officer to get a warrant or production order from a court to lawfully access the preserved computer data.

What is envisaged in this bill is not like the data retention schemes found in European countries. This bill would not ask Internet service providers to collect everyone's information and keep it indefinitely; rather, it would require a person or business that is not the target of the investigation to preserve a particular set of computer data related to a particular offence.

As I mentioned, this can be thought of as a "do not delete" order; it would require a person to preserve information that is already in their possession for a limited period of time. This would be up to 21 days in the case of a domestic preservation demand and 90 days in the case of a foreign preservation demand or a judicially-authorized preservation order.

This power will facilitate the investigation of offences where much of the evidence is in electronic form — for example, the proposed new offence of non-consensual distribution of intimate images. In an era where crucial evidence can be deleted, often inadvertently, in the blink of an eye and with one keystroke, police really do need this power.

The data preservation scheme includes a number of important safeguards. For example, once a preservation demand or order has expired, the individual in question is required to delete all of the information they preserved unless retaining it is a part of their normal business practices. This will help ensure that data preservation intrudes only minimally on privacy.

This bill would also enhance the privacy safeguards for investigative powers which, due to the advances in technology, have become more privacy-invasive over time. When the tracking warrant was first introduced into the Criminal Code back in 1993, it had an accuracy of about a couple of hundred metres, or a city block. And because of this, tracking also routinely required actual physical surveillance. Today, GPS technology that exists in most smartphones and cars can locate the position of a phone or a car to within one metre. This legislation reflects these technological advancements and their potential impacts on privacy by raising the judicial threshold for obtaining a tracking warrant used to track a person.

The bill proposes that before issuing a warrant to track a person, a judge would have to be satisfied that police have reasonable grounds to believe that an offence has been committed and that the evidence would assist in the investigation. The existing tracking warrant requires only that a judge be satisfied

based on a reasonable suspicion. This is an important step toward safeguarding individual privacy and an important response to the ways technology has changed investigations.

Ensuring that police are provided with the appropriate and precise tools to obtain evidence is a privacy safeguard in and of itself. This is a consistent theme in the part of this bill that deals with investigative powers. It is an approach we refer to as "privacy with precision." It guards against the unintended erosion of privacy protections that occur when police are forced to use inappropriate and broad tools because that is all that is available to them.

Senators, I don't think this has been that painful so far. I'm just about finished. I'm just checking to make sure you're all listening.

To illustrate by way of analogy, using a general production order to obtain transmission data would be like using a sledgehammer to drive a nail. It is overkill and it requires police to jump through additional hoops, authorizing them to obtain information they may not need.

To put it in real terms, police may want to know whether a potential suspect emailed a victim. A production order for transmission data, if it becomes law, would provide them with enough information to determine whether or not the communication actually took place. If police were to use the existing general production order — the one that's there now — not only would they be entitled to transmission data but they would also be entitled to receive the contents of those communications. And to add insult to injury, this would be true even if it turns out that the former potential suspect did not communicate with the victim at all.

I would like to repeat because I believe it bears repeating that all of the amendments to the police powers have been made with this in mind: provide police with appropriate tools to investigate crime in the Internet age while minimizing the privacy impacts on Canadians.

Honourable senators, what I have come to understand of this entire issue is this: No one individual or group has the silver bullet solution as to how to rectify the many hurtful problems resulting from cyberbullying. With this new age of electronic technology has come a massive problem, the solution to which will include many partners.

The report of the Standing Senate Committee on Human Rights chaired by Senator Jaffer is a worthwhile read for anyone who is interested in this subject. Their report was called *Cyberbullying Hurts: Respect for Rights in the Digital Age*, issued in December 2012. It stated what is required:

... a "whole community approach" to cyberbullying ... including: children, parents and other adults, teachers, school administrators, politicians, business leaders, social service providers and other experts.

The committee went on to call for the development of something that I think is extremely important, and I understand it is in play in Manitoba, a school code of conduct, which is something I think we all should recommend to our respective provinces and have some input into ourselves.

Finally, any effort to combat cyberbullying necessitates a modernization of the Criminal Code and consequential amendments to other legislation, which is precisely what we are doing.

Honourable senators, I am pleased to be able to assist in delivering on the government's promise to address cyberbullying. I strongly believe this package of reforms represents a comprehensive approach to the issue, and I encourage all senators to support this legislation.

Thank you very much.

Hon. Joan Fraser (Deputy Leader of the Opposition): I thank Senator McInnis for his kind reference to the Human Rights Committee's really excellent report, and I move the adjournment of the debate in the name of Senator Jaffer.

(On motion of Senator Fraser, for Senator Jaffer, debate adjourned.)

• (1440)

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

COMMITTEE AUTHORIZED TO REFER PAPERS
AND EVIDENCE FROM STUDY ON BILL S-10
DURING FIRST SESSION OF THE FORTY-FIRST
PARLIAMENT TO CURRENT STUDY ON BILL C-6

On the Order:

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

That the papers and evidence received and taken and work accomplished by the Standing Senate Committee on Foreign Affairs and International Trade during its study of Bill S-10, An Act to implement the Convention on Cluster Munitions, during the First Session of the Forty-first Parliament, be referred to the committee for the purposes of its study of Bill C-6, An Act to implement the Convention on Cluster Munitions, during the current session.

Hon. A. Raynell Andreychuk: Honourable senators, this motion was put forward so that, as we had the first bill before us and we had certain members in the committee, and while the record is public, we thought it would be in keeping with past practices that we actually ask for a motion to apply that evidence. It was in no way intended to shorten or curtail the full study of this bill. In fact, all witnesses that were put forward have been invited to attend the committee. Some have chosen to simply say they've already testified elsewhere and that we should read their evidence there. Some are out of the country. However, the majority of witnesses, if they wish to come, have been given a place and we intend to proceed with them.

We thought it would be more efficient to bring the evidence directly to the attention of the committee, particularly for the members who were not there the first time around. I think by reading it they will get the nuances of the various arguments, both pro and con. I would ask that the evidence be applied.

Senator Fraser: Question.

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

Hon. Senators: Agreed.

(Motion agreed to.)

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

SIXTH REPORT OF COMMITTEE—
DEBATE ADJOURNED

Leave having been given to revert to Other Business, Reports of Committees, Other, Order No. 2:

The Senate proceeded to consideration of the sixth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (Amendments to the *Rules of the Senate*), presented in the Senate on October 21, 2014.

Hon. Vernon White moved the adoption of the report.

He said: Honourable senators, I'm pleased to rise today to speak to the sixth report of the Standing Committee on Rules, Procedures and the Rights of Parliament. This report is a follow-up to earlier decisions of the Senate that resulted in amendments to the Conflict of Interest Code for Senators, now renamed Ethics and Conflict of Interest Code for Senators. Consequential changes the committee recommended are as follows.

First, we recommend changes to the rules to reflect the new name for the Ethics and Conflict of Interest Code for Senators, including the changing of the name of the Conflict of Interest Committee.

Second, references to the code have been updated to ensure they reflect the version of the code that is currently in force, and some language adjusted to reflect terms used in the code.

Third, the report reflects the prohibition found in subsection 51(5) of the code on the senator voting if he or she is the subject of a report of the Ethics and Conflict of Interest Committee. Let me note that this point was the subject of quite extensive and very useful discussion in the committee. We recognize that the change was required to ensure that the rules and the code are in sync, but some senators have concerns relating specifically to this and therefore felt it would be opportune for the Ethics and Conflict of Interest Committee to consider reviewing the point. The transcripts of the Rules Committee debate will certainly be a helpful place to start and will be referred to that committee.

Finally, the rules would make it clear that a report of the Ethics and Conflict of Interest Committee can be referred back to the committee and also deal with situations in which a former senator is the object of a report of that committee.

Honourable senators, I commend the report to you for your consideration.

(On motion of Senator Cools, debate adjourned.)

THE SENATE

MOTION TO AWARD HONOURARY CITIZENSHIP TO MS. ASIA BIBI—DEBATE CONTINUED

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. Stephen Greene: Mr. Speaker, my notes aren't ready and this motion is at day 14. I would like to reserve the topic for the balance of my time.

(On motion of Senator Greene, debate adjourned.)

BANKING, TRADE AND COMMERCE

MOTION TO AUTHORIZE COMMITTEE TO STUDY TRADE BETWEEN THE UNITED STATES AND CANADA AND ADHERENCE TO LAWS AND PRINCIPLES OF ALL TRADE AGREEMENTS—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Tardif:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and report on trade between the United States and Canada and the adherence to the laws and principles of all trade agreements, with particular focus on spent fowl and chicken imports, including:

- (a) the application of tariffs and quotas on classifications that include blends, food preparation, kits, and sets, as well as the potential for these products to circumvent the law and principle of trade agreements, in particular import quotas;
- (b) the regulations regarding import tariffs and quotas as established by the Department of Finance;
- (c) the interpretation and application of those rules and regulations by the Canadian Border Services Agency;

(d) the monitoring of products defined as blends, food preparation, kits, and sets; and

(e) the reciprocity of US regulations regarding similar Canadian imports;

That the committee provide recommendations for regulatory and legislative actions to ensure fairness for Canadians in the system; and

That the committee submit its final report to the Senate no later than June 27, 2014, and retain all powers necessary to publicize its findings for 180 days after the tabling of the final report.

Hon. Stephen Greene: Mr. Speaker, I would make the same comment: My notes aren't ready and I'd like to adjourn the debate for the balance of my time.

(On motion of Senator Greene, debate adjourned.)

THE SENATE

LEGISLATIVE ROLE—INQUIRY— DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Nolin, calling the attention of the Senate to its legislative role.

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, like the other inquiries that Senator Nolin has introduced, we've heard many, many good statements. I will be working on this, but, if I may, I would adjourn this in my name at this time.

(On motion of Senator Martin, debate adjourned.)

• (1450)

[*Translation*]

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO STUDY INTERNATIONAL MARKET ACCESS PRIORITIES FOR THE CANADIAN AGRICULTURAL AND AGRI-FOOD SECTOR

Hon. Percy Mockler, pursuant to notice of October 21, 2014, moved:

That the Standing Senate Committee on Agriculture and Forestry be authorized to examine and report on international market access priorities for the Canadian agricultural and agri-food sector. The study will focus on:

- (a) the expectations and concerns of stakeholders from the Canadian agriculture and agri-food sector;
- (b) sustainable improvements to the production capabilities of the supply chain;

- (c) diversity, food security and traceability; and
- (d) the competitiveness and profitability of Canada's agriculture and agri-food sector (including producers and processors).

That the Committee submit its final report to the Senate no later than December 31, 2015 and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

He said: Honourable senators, I have nothing to add. I would like to move the adoption of the motion unless there are any questions.

Hon. Joan Fraser (Deputy Leader of the Opposition): Senator Mockler indicated that he would take questions. As always, I would like to know a little more about what will be required, particularly with regard to Senate resources, budgetary or otherwise. For example, is there any travel planned to study international markets?

Senator Mockler: Thank you, Senator Fraser, for that excellent question.

First of all, we do not intend to travel during this fiscal year. If we do need to travel, we will do so in 2015-16.

Second, we do not need any resources other than what the committee has now. Nonetheless, we are going to make sure that witnesses are able to travel to testify before the committee here in Ottawa.

Thank you.

(Motion agreed to.)

[*English*]

BUSINESS OF THE SENATE

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, before I move my motion, I just want to be associated with all the remarks that were made today in regard to the events of yesterday and the heroism, the camaraderie, the support that we all witnessed. I thank all honourable senators for being a part of today's sitting and that we were able to sit and stand for Canadians and for us together.

Thank you very much. I hope you will have a restful weekend.

Hon. Senators: Hear, hear.

(The Senate adjourned until Tuesday, October 28, 2014, at 2 p.m.)

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