



# DEBATES OF THE SENATE

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OFFICIAL REPORT  
(HANSARD)

Tuesday, June 9, 2015

The Honourable LEO HOUSAKOS  
Speaker

## CONTENTS

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

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## THE SENATE

Tuesday, June 9, 2015

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

Prayers.

### AUDITOR GENERAL

#### REPORT TO THE SENATE OF CANADA TABLED—SENATORS' EXPENSES

**The Hon. the Speaker:** Honourable senators, I ask for leave to table a document. Is leave granted?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Honourable senators, I have the honour to table, in both official languages, the report of the Auditor General of Canada, concerning his audit of the Senate.

[Translation]

### SENATORS' STATEMENTS

#### QUESTION OF PRIVILEGE

##### NOTICE

**Hon. Céline Hervieux-Payette:** Honourable senators, pursuant to rule 13-3(4) of the *Rules of the Senate*, I give notice that later this day I intend to raise a question of privilege concerning the leaks in the media regarding the Auditor General of Canada's report on Senate expenses.

According to the Speaker of the Senate's press release of June 8, 2015, this confidential information was not to be made public until around 2:05 p.m. today, but it has made the headlines in newspapers and online media and on the television news for the past six days.

The credibility of our institution is being seriously eroded in the eyes of the public, while senators' names are in the media, which is a violation of their fundamental right to the presumption of innocence. They are entitled to a fair defence.

Honourable senators, if the Senate should rule that there is a prima facie case of privilege, I would officially and publicly ask the Speaker to order an investigation into the source of these leaks and take the appropriate measures.

[English]

**Senator Plett:** Then why did you leak it?

### FIRST WORLD WAR

#### ROLE OF CANADIAN NURSING SISTERS

**Hon. Pana Merchant:** Honourable senators, last year and in 2015, Canadians have been reminded of the so-called Great War of 100 years ago.

Focused on heroes and the young men of our then young nation, we have ignored the contributions and sacrifices of Canada's women.

Women in service 100 years ago were not in the combat roles of current times. They could not even serve as clerks or in support roles, but the very brave, the dedicated, could, as posters read, serve King and country as nurses.

Three thousand Canadian nursing sisters — as they were called — served in England, France, Belgium and the Mediterranean war zone. Nurses from across Canada became prisoners of war or died, not unlike the fate of their brothers, serving our country. And at least one, Nursing Sister Creswell, of my home city Regina, was decorated for bravery by the Queen Mother.

I commend Canada's Historica Foundation for the video on YouTube that tells the story of the wartime heroism of our nursing sisters.

Their experiences were not unlike those of their countrymen.

Some were travelling on torpedoed boats, some were caught in air raids, and all were subject to lack of water, limited equipment, poor food, vermin, and the constant difficulty of keeping clean.

Of special interest to me were the challenges that Canada's nursing sisters faced in my native Greece, on the Gallipoli Peninsula. By the fall, there were 1,700 beds there in two tented hospitals. Upon arrival in Gallipoli, nurses discovered an overwhelming number of sick and wounded soldiers. It was a terribly hot summer. Safe water had to be transported from Alexandria, Egypt, and lack of sanitary conditions, with an abundance of dust and flies, accounted for as many deaths as battle wounds. Flies were probably the greatest menace.

The shortage of adequate nourishment was profoundly appalling.

At times there was nothing to eat except malted milk tablets, and most of the nursing sisters suffered through periods of dysentery, diarrhea and nausea.

Our nursing sisters also suffered from their heartbreaking experiences of not being able to do enough for the wounded soldiers.

On April 14, I met with Canada's and Australia's ambassadors in Greece, their Excellencies Robert Peck and John Griffin, in connection with their participation in the 100-year anniversary of the 1915 Gallipoli campaign and the nursing stations on Lemnos.

The great contribution of Canada's nursing sisters over time is appropriately sculptured in the grand memorial to them in the Hall of Honour, adjacent to the entrance to our Library of Parliament.

I ask honourable senators to join with me in thought as we salute the fallen.

#### FIFA WOMEN'S WORLD CUP CANADA 2015

**Hon. Betty Unger:** Honourable colleagues, I rise today to speak about a game I had hitherto little understanding of — nor love for — that being the game of soccer. However, all that has changed. I have been filled with awe, respect and admiration for our Canadian women's soccer team, as have countless numbers of Canadians across Canada.

On Saturday, June 6, the opening game of the FIFA Women's World Cup Canada, the largest and most prestigious women's sporting event in the world, was hosted by Edmonton, my hometown, and I was thrilled to be in attendance. The game took place in Commonwealth Stadium and over 53,000 enthusiastic cheering fans made this the largest crowd ever to watch a national team in any sport in Canada.

Additionally, I had the opportunity to meet many fans and dignitaries in attendance, including and, especially, Alberta's next Lieutenant-Governor, Lois Mitchell of Calgary, who will be sworn into office on Friday, June 12.

Our next Lieutenant-Governor was very interested in the Senate and was impressed with the work of our Senate committees, and she was especially interested in agriculture. So as we talked, I explained briefly the work of our Agriculture Committee and the report our chair has just tabled in the Senate regarding honeybee health, about which she had many questions. Naturally, I promised to send her a copy of the report about the importance of honeybee health. Then it was back to the game.

As the clock ticked down and it was still a 0-0 game, our fans grew restless and anxious, not wanting a disappointing draw, although that had seemed to be the certain outcome with time nearly expired. Then, an intervention of fate: a time stoppage penalty against China at the ninety-second minute proved to be the game changer for Canada. Captain Christine Sinclair scored on the penalty kick, her one hundred and fifty-fourth international goal, to win the game 1-0 for Canada.

Our soccer hero then ran back to the bench to be mobbed by her teammates, while the standing cheering crowd roared its approval.

• (1410)

In closing, Edmonton is known for its wonderful spirit of volunteerism, which was evident once again for the FIFA game. To each and every one of those volunteers, I say a heartfelt thank you, a picture-perfect ending to this beautiful, sunny day in Edmonton. Let the games begin. Go, Canada, go.

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

## ROUTINE PROCEEDINGS

### PRIVACY COMMISSIONER

#### PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT— 2014 ANNUAL REPORT TABLED

**The Hon. the Speaker *pro tempore*:** Honourable senators, I have the honour to table, in both official languages, the Annual Report of the Office of the Privacy Commissioner of Canada on the Personal Information Protection and Electronic Documents Act for the period from January 1 to December 31, 2014.

[Translation]

### CONFLICT OF INTEREST AND ETHICS COMMISSIONER

#### 2014-15 ANNUAL REPORT TABLED

**The Hon. the Speaker *pro tempore*:** Honourable senators, I have the honour to table, in both official languages, the 2014-15 annual report of the Conflict of Interest and Ethics Commissioner for the fiscal year ending March 31, 2015.

[English]

### COMMISSIONER OF LOBBYING

#### 2014-15 ANNUAL REPORT TABLED

**The Hon. the Speaker *pro tempore*:** Honourable senators, I have the honour to table, in both official languages, the Seventh Annual Report of the Office of the Commissioner of Lobbying of Canada for the fiscal year ending March 31, 2015.

[Translation]

### THE ESTIMATES, 2015-16

#### SUPPLEMENTARY ESTIMATES (A)— TWENTIETH REPORT OF NATIONAL FINANCE COMMITTEE TABLED

**Hon. Joseph A. Day:** Honourable senators, I have the honour to table, in both official languages, the twentieth report of the Standing Senate Committee on National Finance on the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2016.

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

[English]

**APPROPRIATION BILL NO. 2, 2015-16****FIRST READING**

**The Hon. the Speaker *pro tempore*** informed the Senate that a message had been received from the House of Commons with Bill C-66, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2016.

(Bill read first time.)

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

**APPROPRIATION BILL NO. 3, 2015-16****FIRST READING**

**The Hon. the Speaker *pro tempore*** informed the Senate that a message had been received from the House of Commons with Bill C-67, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2016.

(Bill read first time.)

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

**ABORIGINAL LANGUAGES OF CANADA BILL****FIRST READING**

**Hon. Serge Joyal** introduced Bill S-229, An Act for the advancement of the aboriginal languages of Canada and to recognize and respect aboriginal language rights.

(Bill read first time.)

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

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

[Translation]

**TRANSPORT AND COMMUNICATIONS**

**NOTICE OF MOTION TO AUTHORIZE  
COMMITTEE TO EXTEND DATE OF FINAL REPORT  
ON STUDY OF THE CHALLENGES FACED BY  
THE CANADIAN BROADCASTING CORPORATION  
AND DEPOSIT REPORT WITH CLERK DURING  
ADJOURNMENT OF THE SENATE**

**Hon. Dennis Dawson:** I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the order of the Senate adopted on Monday, December 9, 2013, the date for the final report of the Standing Senate Committee on Transport and Communications in relation to its study on the challenges faced by the Canadian Broadcasting Corporation in relation to the changing environment of broadcasting and communications be extended from June 30, 2015 to July 30, 2015; and

That the Standing Senate Committee on Transport and Communications be permitted, between June 22, 2015 and July 30, 2015 and notwithstanding usual practices, to deposit with the Clerk of the Senate a report, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

[English]

**ORDERS OF THE DAY**

**YUKON ENVIRONMENTAL AND  
SOCIO-ECONOMIC ASSESSMENT ACT  
NUNAVUT WATERS AND NUNAVUT  
SURFACE RIGHTS TRIBUNAL ACT**

**BILL TO AMEND—MESSAGE FROM COMMONS**

**The Hon. the Speaker *pro tempore*** informed the Senate that a message had been received from the House of Commons returning Bill S-6, An Act to amend the Yukon Environmental and Socio-economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act, and acquainting the Senate that they had passed this bill without amendment.

**CONTROLLED DRUGS AND SUBSTANCES ACT**

**BILL TO AMEND—THIRD READING—  
DEBATE SUSPENDED**

On the Order:

Resuming debate on the motion of the Honourable Senator Dagenais, seconded by the Honourable Senator Fortin-Duplessis, for the third reading of Bill C-2, An Act to amend the Controlled Drugs and Substances Act.

**Hon. Larry W. Campbell:** Honourable senators, I rise today to speak to Bill C-2 on its third reading. I don't think it's necessary for me to get into long descriptions about addiction and what it does to our communities, what it looks like and how it affects all of us, but I think you should know why this bill is harmful. It undermines the rights of people who use drugs to access life-saving and health-protecting services.

You can think what you want about these people, but the fact is that they're suffering from an addiction and deserve the same rights as any other citizen in this country. The way we are treating them is different from how anyone else with a disease is treated in this country.

Cancer — we would never, ever consider doing this for a cancer clinic. Heart — we would never consider doing this for somebody with heart problems. Yet, for some reason, addressing this issue in a health-care way seems to be the last thing on the government's mind.

• (1420)

Bill C-2 fuels misinformation about supervised consumption sites and does not recognize the well-established benefits of supervised consumption services to reduce health and social harms often associated with the use of drugs. It doesn't even mention the fact that supervised injection sites can prevent overdose-related deaths and decrease the number of HIV and hepatitis C infections. It ignores the some 18 peer-reviewed reports that have been done demonstrating that supervised consumption services are in fact beneficial for public order and safety.

It only focuses on the risks associated with illicit drug abuse, as if supervised consumption sites were exacerbating such risks when evidence clearly shows that they do the opposite.

I remember when we were fighting for Insite in Vancouver in 2002-03. There was this comment that if we opened a supervised injection site, the number of people who inject in the Lower Mainland would increase. Now, think about that. I've never used heroin, and I get up one morning and say, "Oh, wow. There's a supervised injection site in Vancouver. I think I'll start cranking."

As I said to the media, supervised injection sites cause drug addiction like flies cause garbage. It's exactly the same analogy. There is no honey-pot effect. Crime goes down around it — as does the number of people injecting out in the public, out of rainwater puddles, in the alleys, in sight of our children, in sight of our tourists, in sight of our families. Insite takes that all off the street.

Our only problem in Vancouver is that we only have one. With 800 injections a day, it's maxed out. We could easily have two or three more, which would then lower the death rate, then lower HIV and hepatitis, and stop these associated risks from being in the public.

Bill C-2 completely contradicts the spirit of the Supreme Court of Canada's 2011 decision, and this certainly shouldn't come as a surprise to anybody here. How many bills do we have to pass through here and watch them go to the Supreme Court, where they get booted out as being unconstitutional?

By touting "public safety" at the expense of public health, this bill runs counter to the court's emphasis on striking a balance between public safety and public health. By making it even more difficult to implement supervised consumption sites, Bill C-2 ignores the Supreme Court of Canada's assertion that these services are vital for the most vulnerable groups of people who use drugs and that preventing access to these services violates human rights.

Bill C-2 imposes an excessive application process that would not be imposed on other health services. There are 26 areas here that have to be looked at before you can even get this application to the minister. It's not that these are not important; it's that they are so precise that you could never open a supervised injection site anywhere in Canada, because you would always be within 400 feet of whatever, or you'd always be here or there. And, yes, there will be public opposition.

In Vancouver, there was public opposition to the premise that we should have a supervised injection site. We dealt with that. We answered the people. We talked to them. Our Chinese community did not want that centre in what we call Chinatown. I promised them that it would not be there, and it isn't.

Of course, you have to answer to public complaints. Of course you have to answer to people. You have to have consultation. This is not just "let's make an application and suddenly we have someplace where we can have supervised injections going on." It's not like that at all.

First of all, there was an idea. Senator Dagenais spoke about it. He actually agreed that we should have supervised injection sites and that they should be in big cities, and I agree with him.

I personally went to Toronto and spoke to the Toronto City Council because they were looking at having supervised injection sites. My conclusion was that they probably didn't need them, that they did not have the number of injectors that you would need to make this a viable option. So, I never considered this a silver bullet.

It disproportionately considers opinions around access to critical health services. The Canadian Police Association — I don't know; things have changed. When I was a police officer, we went out and we enforced the law. Now it seems like police officers like to make the law, decide what the law says and how it should be enforced, all without any concept of the law. The Canadian Police Association is wrong. The Canadian chiefs of police are right.

Bill C-2 effectively gives certain authorities unilateral veto power to the implementation of supervised injection sites, because an application for an exemption cannot be examined unless certain authorities have submitted a letter of opinion. The exemption process can easily be delayed or blocked. If we go out and ask these 26 different groups to send us an opinion, how long is that going to take? You know how that goes. You send it in, it goes into the mill, it gets chewed up and sent around, and no decisions are ever made.

As with any other life-saving health service, the implementation of supervised consumption services should not be dependent on whether the local government, police forces or the ministry in charge of public safety, for example, feel they're warranted. It should start from the premise that this is a health-care facility and the health-care authorities are the ones who have the expertise in how a health-care facility should be managed. Certainly, all of these other groups should have input, but they should not be able to override the concerns of the health-care authorities.

In Vancouver, that would be Coastal Health, which does all of the Lower Mainland. They are fully in support of this. They have been fully in support of it since we went and started it.

Bill C-2 creates unjustified opportunity for public opposition and discrimination against people who use drugs. As I said the last time, nobody is holding a tag day for addicts. They're not warm and fuzzy. They are not people whom you would probably invite to dinner, but that doesn't make them any less human. It doesn't mean that we should be ignoring them. It doesn't mean that we should allow them to die.

Most assuredly, honourable senators, if you pass this bill, people are going to die. That's the bottom line. People will die if you pass this bill. I want you to think about that, and I want you to think about who those people are.

Within this Senate, there are senators who have done incredible work with regard to preventing death: Senator Batters with regard to suicide; and MADD, Mothers Against Drunk Driving, with Senator LeBreton. This is just one more attempt to prevent people from dying. It's not any more complicated than that.

It's estimated that 4.1 million Canadians have injected drugs at some point in their life. Eleven per cent of people who inject drugs in Canada are HIV positive. Fifty-nine per cent of people who inject drugs have evidence of either current or past hepatitis C. Fifty-eight per cent of the estimated new HIV infections in Aboriginal people in Canada are attributable to injection drug use.

According to a study in Toronto, 54 per cent of people who inject drugs injected in a public place such as a washroom or a stairwell, and 46 per cent injected on the street or in an alley in the six months prior to being interviewed. In the summer of 2014, the Agence de la santé et des services sociaux de Montréal investigated 83 cases of severe overdoses, 25 of which were fatal.

Insite clients in Vancouver are 70 per cent less likely to share needles than those who do not use the facility. Insite may have prevented over 48 overdose deaths over a four-year period. The opening of Insite was associated with a 33 per cent increase in rates of access to long-term addiction treatment.

I would like to propose that this bill not be heard at this time and that the following amendments be considered.

[ Senator Campbell ]

• (1430)

#### MOTION IN AMENDMENT

**Hon. Larry W. Campbell:** Therefore, honourable senators, I propose:

That Bill C-2 be not read a third time, but that it be amended in clause 5,

(a) on page 8, by replacing lines 14 to 45 with the following:

“to take place at a supervised consumption site, and consideration of the application for the exemption must include the following:

(a) evidence, if any, on the impact on crime rates;

(b) the local conditions indicating a need for the site;

(c) the regulatory structure in place to support the site;

(d) the resources available to support the maintenance of the site; and

(e) expressions of community support for or opposition to the site.”;

Before you think that I've gotten incredibly literary with these, they're taken directly from the Supreme Court decision.

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

**Senator Campbell:** This is what the Supreme Court of Canada wants. The amendment continues:

(b) on page 9, by deleting lines 1 to 42;

(c) on page 10, by deleting lines 1 to 44;

(d) on page 11, by deleting lines 1 to 45;

(e) on page 12, by deleting 1 to 41;

(f) on page 13, by deleting 1 to 38; and

(g) on page 14, by replacing line 1 with the following:

“(4) The Minister may give notice of any”.

I urge you to consider this, honourable senators. I would ask that you take a deep look into your soul. Take a deep look into why we are here and realize that we are here for all Canadians, not just for those who have diseases that we think are publicly acceptable.



I would ask you to vote on this amendment and show the rest of Canada, or all of Canada, that we're here for them, for those whose rights are being abused, those whose very existence, in many cases, is being denied. I would ask you to search your heart.

Thank you.

(Debate suspended.)

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw your attention to the presence in the gallery of a parliamentary delegation led by His Excellency Dr. Ólafur R. Grímsson, President of the Republic of Iceland.

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

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

### CONTROLLED DRUGS AND SUBSTANCES ACT

#### BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Dagenais, seconded by the Honourable Senator Fortin-Duplessis, for the third reading of Bill C-2, An Act to amend the Controlled Drugs and Substances Act.

And on the motion in amendment of the Honourable Senator Campbell, seconded by the Honourable Senator Fraser, that Bill C-2 be not read a third time, but that it be amended in clause 5,

(a) on page 8, by replacing lines 14 to 45 with the following:

“to take place at a supervised consumption site, and consideration of the application for the exemption must include the following:

- (a) evidence, if any, on the impact on crime rates;
- (b) the local conditions indicating a need for the site;
- (c) the regulatory structure in place to support the site;
- (d) the resources available to support the maintenance of the site; and
- (e) expressions of community support for or opposition to the site.”;

(b) on page 9, by deleting lines 1 to 42;

(c) on page 10, by deleting lines 1 to 44;

(d) on page 11, by deleting lines 1 to 45;

(e) on page 12, by deleting 1 to 41;

(f) on page 13, by deleting 1 to 38; and

(g) on page 14, by replacing line 1 with the following:

“(4) The Minister may give notice of any”.

**The Hon. the Speaker *pro tempore*:** Honourable senators, it was moved by Senator Campbell, seconded by Honourable Senator Fraser, that Bill C-2 be not now read a third time, but that it be amended in clause 5 —

**An Hon. Senator:** Dispense!

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

**Hon. Jane Cordy:** Will the senator take a question?

**Hon. Larry W. Campbell:** Absolutely.

**Senator Cordy:** Thank you very much. You brought forward some excellent points, I thought, particularly related to the stigma of mental health, mental illness and addictions.

The Standing Senate Committee on Social Affairs, Science and Technology did a study on mental health. We tend to refer to it as the mental health and illness report, but the full title was *Mental Health, Mental Illness and Addiction*. We included addiction because many people who have addictions also have mental health issues and are self-medicating. We know that many people on the streets who are addicted also suffer from poor mental health.

We've talked a lot in this chamber about the stigma around mental illness, and yet here we are with this bill removing Insite, a place where they can go to have their injections in what we would say would be a healthier way. Yet, as you said in your speech, we would never say that we are closing a health care centre or a cancer care centre.

Do you think that what this bill is doing is causing more stigma for those who have addictions?

**Senator Campbell:** Thank you for the question.

The problem with this bill is that it's written by people who don't understand mental health, or poverty, or abuse, or drug addiction. For many of the people who are on the street right now, it's rare that you will find them suffering from just one of these. They will be mentally ill and addicted. There will be poverty and abuse and addiction; there could be all of them altogether.

The amazing thing is that we can actually take a look at this and see exactly when it happened. It happened when we shut down the mental institutions in British Columbia and said, “Don't worry. We will find places for you in the community and find places where you can live and be helped.” Then we gave them a bus ticket and a bottle of medication, and they climbed on the bus and came to my city.

They are at the bottom because they don't understand what is going on around them. So everybody picks on them. Everybody discriminates against them and everybody uses them. They never get better, and they are in this poverty. If you come to Vancouver and take a look at our First Nations in the downtown core, you'll see we have a huge number of people living with these conditions. This absolutely stigmatizes them more. This absolutely sends the

message out there that your disease, which is life-threatening, doesn't count because you're not as good as me. You're not as pure as me. You're a junky. That is what this bill says.

Instead of opening our arms and treating this as a health issue, which would save us millions of dollars in health care expenses, social, courts, police, family — it just goes on and on — we are restricting this. This will absolutely affect those people who are the most vulnerable.

**Hon. George Baker:** I have a point for clarification from the mover of this motion. In explaining the amendment, the mover of the motion said these were not his words but the words the Supreme Court of Canada. For clarification, is the honourable senator saying that what you are doing is removing the criteria in this present bill that some persons who appeared before the committee claimed were unconstitutional, and you are substituting for those criteria the exact list of criteria listed by the Supreme Court of Canada in their judgment, which the Government of Canada claimed they were trying to meet in their bill? Is that correct?

**Senator Campbell:** That's correct. I'm not against having this bill. I'm not against having legislation that says how we should go about it. Effectively, with my amendments all I'm doing is taking out the minutia — those 26 reasons. Those 26 reasons all fit into five. I want to make sure that when this bill goes through, we don't end up in the Supreme Court, we don't end up with it thrown away. I would like some clarification on how we do supervised injection sites.

Mayor Coderre of Montreal says he is going to open three of them. I think it's incumbent upon us to put in a framework that answers the concerns of the public, answers the concerns of the police and answers the concerns of whoever has a concern about it. If I woke up one day and found out that there was going to be a supervised injection site on my street, I would like to know about it. I would like to know who is running it. However, I would not light my hair on fire — if I had hair — because I would know that if it's coming to my street, it's because I already have a problem there. You don't put a supervised injection site where there isn't a problem. I would already know there was a problem here with injections.

Honourable senators, I would like some clarity here. I don't want it to go to the Supreme Court and have the Supreme Court say, "These 26 specific items that you have are unconstitutional. They make this unworkable; they make it impossible." I'd much rather put it into the five that cover all the 26 and allow people to have input and allow the health ministry to take a look at it and to come to a conclusion.

I'm not against Bill C-2. I'm against the way it is written and the fact that it is written by people who do not understand the problem. I've tried to help you understand it.

• (1440)

**Hon. Mobina S. B. Jaffer:** Will the senator answer another question?

[ Senator Campbell ]

**Senator Campbell:** Yes.

**Senator Jaffer:** Senator, there has been a lot of talk about the 26 questions or the 26 exemptions that any site would have to apply to have a site. Can you clarify? Does this mean that Insite has to reapply, and are these 26 exemptions something anybody can meet?

**Senator Campbell:** First, with regard to Insite, I don't know if they have to reapply, but I will tell you this: If they don't get an exemption, you can come and visit me in the jail because they are going to have to arrest me to get me from in front of that door. I'm not going to allow people to die in my city because somebody decides that that's what it is. If you had to follow all 26 of those and get compliance on all 26, it could not happen. It would not happen because, certainly, in there, there are going to be two or three that say no. All I'm saying is take away those that are definitive and put them into the five categories that the Supreme Court has clearly thought about and clearly said this is what is required and will work. Let's do that, and let's watch what happens.

Believe me, senators, I promise you; there will not be a flood of supervised injection sites coming to your town. It's not going to happen.

**Senator Plett:** One is too many.

**Senator Campbell:** One is too many — well, that's from the enlightened senator over there. That's what happens when you live in a shallow ditch. I'm tired of this. I'm really tired of this. One is not enough. Maybe, in his town, he doesn't mind people dying, but, in my town, I care about it. If he were the Christian that he says he is, he would understand that.

**Senator Jaffer:** Senator Campbell, you are talking about your city and mine. Can you tell the senators what it was like in our city before Insite was formed, and what happens to people now?

**Senator Campbell:** From 1996 to 2000, I investigated over 300 deaths a year in the city of Vancouver from overdoses. Province-wide, it was probably close to 700. It continued like that. We saw the death rate start dropping virtually immediately, and we also saw HIV and hepatitis rates drop, which was critical to us.

One life. What is one life worth? That's what we are saying. We think we've probably saved 50 over four years. I don't know, but I know it's more than one. That's all I'm saying. I'm just saying give it a chance, but it's not coming to everybody. It's not going to be coming to small towns. Senator Plett doesn't have to worry about it coming to Brandon, although they have their problems.

It requires a problem. It requires a crisis in your community for the health-care officials to take a look and figure out what is going on, and that's what it really is driven by.

**Hon. Art Eggleton:** Honourable senators, I rise to add my voice to the previous speaker and many other Canadians calling for a rethink on Bill C-2 or the so-called respect for communities act.

You will have to forgive me as, after much study and hearing much debate, I still fail to see which communities this bill aims to respect. Currently, section 56 of the Controlled Drugs and Substances Act gives the Minister of Health an opportunity to provide an exemption for safe injection sites, be it for medical or scientific purposes, or if it is otherwise in the public interest. Without this exemption, clients and staff members would be at risk of criminal prosecution for possession of illegal substances.

It is important to remember that these facilities are not supplying drugs to clients. What they do is create a safe, sterile environment to use and facilitate access to support services for those who want to quit. When things go wrong, they offer emergency medical services. They save lives.

As you are all aware, there is currently only one such facility in Canada that receives this exemption, and that is Insite in Vancouver. My colleagues who have spoken about this bill have given excellent speeches detailing the benefits that Insite has brought to Vancouver's downtown east side. Let me just go through a few of them again: 1,418 overdoses at Insite between 2004 and 2010, but, under the capable supervision of Insite staff, not one single death.

They have been able to reduce the HIV risk behaviour, such as needle sharing. There has been increase in the number of people entering into treatment for their addiction and a reduction in the number of public injections that take place in parks and stairwells and many other public places. That is even evident around the site of Insite, where injection-related litter has substantially been reduced.

Despite the public good that Insite is providing on a daily basis, Bill C-2 threatens Insite's existence and will almost certainly prevent the creation of similar sites in future. Under the terms of this bill, safe injection sites in Canada would have a number of new obstacles to overcome when applying for exemption under section 56 of the Controlled Drugs and Substances Act.

For many, the logic of attempting to prevent such proven services simply does not add up. The Supreme Court certainly didn't see the logic. In the court's landmark ruling on Insite in 2011, they said denying safe injection services would be:

... grossly disproportionate to any benefit that Canada might derive from presenting a uniform stance on the possession of narcotics.

They found that:

... Insite has been proven to save lives with no discernible negative impact on the public safety and health objectives of Canada.

That comes from the Supreme Court. That shows respect for our communities. Ultimately, the court found that closing down Insite would violate the Charter rights of those who use it.

The immediate response from the government following the ruling was they were "disappointed." Disappointed with what? That lives were saved? That they couldn't violate the Charter rights of those suffering from debilitating addictions?

I don't think the new bill, Bill C-2, is going to meet the test that the Supreme Court looked at and it will be found in violation of the Charter of Rights and the Constitution of Canada. I think we are headed for another Supreme Court hearing if this bill passes as is.

Honourable senators, under Bill C-2, facilities that wish to run a supervised consumption site must submit 26 pieces of information to the minister before the application would even be considered. Twenty-six. The Canadian Bar Association stated that:

Our concern is that Bill C-2 would actually subject applicants to such a rigorous application process and so many new conditions as to make it virtually impossible to establish new safe injection sites, or to continue operating existing sites.

As Senator Campbell has noted, no other health clinic is required to provide such an extensive list of information.

One particular point of contention I have is the provision in this bill that potential staff members at a centre must submit criminal record checks to the health minister. These criminal record checks would go back a long time, 10 years. In that connection, I understand that, just above the Insite facility, is another one called Onsite, where users can seek counselling, including peer-to-peer assistance. One of the most effective strategies in quitting any addiction is discussing this process with those who have succeeded in getting out of it themselves. Undoubtedly, many of those individuals have faced drug-related charges at some point. They were, after all, addicts themselves. So now they want to help others but will be flagged from drug-related charges from a darker past — a past, I must reiterate, that they have courageously overcome.

• (1450)

Is it this government's intention to prevent the peer-to-peer counselling that has proven so effective in overcoming addiction? Is it? Why does the minister, of all people, need this kind of private information?

Honourable senators, my colleague Senator Campbell has provided an excellent overview of the situation in his home city of Vancouver and of the good work that Insite is doing there. I'd like to tell you of the situation in my city, Toronto.

In 2013, Toronto's Medical Officer of Health released a report calling for facilities like Insite in specific areas of the city. Currently, Toronto has an impressive network of services that facilitate needle exchanges. Through these services, addicts can exchange their used needles for clean ones. The report noted that in 2010 alone there were 75,000 user visits to these services, and 1.1 million needles were distributed along with other sterile injection supplies. Again, this was in just one year.

These facilities do not operate like Insite. They cannot facilitate supervised injection. Instead, users obtain their needles and leave to find a place to inject. If they do not go to their homes or a shelter, users report that they inject in stairwells, alleyways or in public washrooms.

While the needle exchange program in Toronto has done a commendable job of providing sterile needles to help cut down on disease and death, it can do little to save the life of an addict who overdoses and dies in a stairwell, in a back alley or in a public washroom. Little can be done but to collect contaminated needles left in the grass or in stairwells around Toronto.

For this reason, the 2013 medical officer's report recommended supervised injection services at locations that already facilitate needle exchanges. Instead of collecting a clean needle and walking away, addicts would inject in an environment that protects both them and the surrounding area.

Honourable senators, as some of you may be aware I am the lead on a task force in Toronto to improve public housing. As you can rightly assume, there are addicts who live in many of these homes; as you can also correctly assume, so do many families — people with a lot of kids. Put simply, the argument that a safe injection facility will attract drug users to a community does not hold water. The drugs are already there.

The question begs to be asked: Is a child safer when their neighbour is injecting in the stairwell of their apartment building or down the street at a safe injection site? That's a logical question, isn't it?

This government wants you to believe that facilities like Insite encourage drug use and attract addicts to the communities where such services are located. Bill C-2 exists only because evidence from Insite and facilities like it around the world fly in the face of this government's view that addicts are criminals and should be treated as such.

As they cannot deny the facts based on legal or scientific grounds, they spread the misinformation that such sites will pop up, and I quote a Conservative Party petition that said, "in our backyard."

Only four days ago, the Minister of Justice said his government is focused on treating drug addicts as opposed to making "more available access to often illegal drugs." He was responding to Montreal's push to open its own supervised injection sites. Such a statement conveys a fundamental misunderstanding, misrepresentation of what these centres do.

Honourable senators, to deny these communities a tool like Insite to change this dangerous reality does not respect these communities in the least. Instead, it condemns them to the same cycle of death and disease that they have all but gotten used to. Supervised injection services get contaminated needles off the street. They provide ready support services for addicts who decide to seek help, and, most importantly, they save lives. Why in our right minds would we want to deny these services in communities that need them the most?

Yes, indeed: Respect those communities. Vote for the amendment that Senator Campbell has just put on the floor. That would make this bill reasonable. Otherwise, it should be defeated.

[ Senator Eggleton ]

**Hon. Serge Joyal:** Honourable senators, I would like to ask a question of Senator Eggleton. I apologize for not giving him the substance of my question earlier, but given that he was the Mayor of Toronto, he might be in a position to answer.

The Mayor of Montreal said in a public statement, I believe two weeks ago, with a representative of the Montreal police force responsible for addiction issues, that even though he would not receive approval from the Minister of Health as it would take too much time, he would authorize an injection site if he got approval from the provincial Minister of Health. It would mean that if the provincial government authority agrees with the opening of a site and the mayor and the police forces agree, they could circumvent the procedure that Bill C-2 proposes.

Are you aware of that?

**Senator Eggleton:** You've just made me aware of that possibility.

If all those people are in agreement, and I understand they are and why they would be in terms of what these sites can do for the city, then I think they should proceed. How the legal jurisdiction works vis-à-vis the federal government remains to be seen. I don't know the answer to that. You probably would know better than I.

**Senator Joyal:** I'm sorry I didn't have time to look into it because I was preparing another file. I tried to figure the logic of this because we are dealing with proposed amendments to the Criminal Code — this is "not nothing." The Criminal Code applies across Canada and should be implemented equally across Canada. Is it for the provincial authority responsible for prosecution to inform the Director of Public Prosecutions not to go after the presumed illegal establishment of a site where drugs are used? Perhaps that is the way to bypass the process that Bill C-2 would put in place.

**Senator Eggleton:** Well, that may be quite possible. There was another issue, but I have forgotten what it was, where the provincial government in Quebec decided it wouldn't prosecute. That would be an interesting way to test this.

There is provincial responsibility for health care and if the Minister of Health sees it as something that should proceed and with the kind support of the Mayor of Montreal, the police and others, yes, this may be something they could take on and do. In terms of the absolute final legal ramifications, maybe the federal government would back off, and I hope they will.

**Senator Jaffer:** Honourable senators, I too rise to speak to Bill C-2 and the amendments proposed by Senator Campbell.

Before I proceed, I want to thank Senator Campbell not only for being the critic on the bill but also for his special knowledge of these issues. When he speaks, I know he speaks from a base of having worked on these issues for many years. I appreciate his continued work on these issues because what he is doing is keeping my city safe.

• (1500)

Honourable senators, you have heard today from people who have been the mayors of Vancouver and Toronto and now the mayor of Montreal, who said that he is going to proceed with a safe injection site. Honourable senators, these are three very responsible people, and they are not making these allegations lightly. So I ask that when you vote on this bill you think of what Mayors Campbell, Eggleton and Coderre are saying: We need safe injection sites to keep our cities safe and to save lives.

In Canada, every life is valuable. We care for every life, and so it does not matter whose life — every life. If we care for every life, then we should heed what these three mayors are saying.

As I rise to speak on Bill C-2, safe injection sites, I want to speak to you about my home in Vancouver. Those of us who live in Vancouver know what a safe injection site has done both for the people who live in the city and for the most vulnerable people, those who have no resources.

I want to share with you a question that my then eight-year-old daughter Farzana asked me on my way to work once before the safe injection site was established. She said, “Mum, why it that gentleman cleaning his arm with dirty puddle water?” I turned around and saw a man cleaning his arm with dirty puddle water, and then he injected something in his arm. For a very long time, my daughter asked questions about what that gentleman was doing. She was puzzled and confused as to what she saw. I never was able to explain to my daughter exactly what she saw because I did not want to go into the details of what was happening. So when Insite was established, I kept thinking how many little girls would be spared what my daughter saw, because it had really affected her. For me, besides my daughter’s trauma, I just kept thinking, “This is not my Canada.” How can a Canadian man be in such a desperate situation? We Canadians have to look after not only those who are sick and have access to hospitals, but also those who are most vulnerable and have very few resources at their disposal.

Honourable senators, I can vouch for the fact that Insite, a safe injection site, has played a very important role in my city.

Bill C-2 sets out that it is the controlled drugs act of Canada’s federal drug control statute. Its purpose is to protect public health and maintain public safety. Activities with controlled substances are prohibited unless they are allowed under the Controlled Drugs and Substances Act and its regulations or authorized under the section 56 exception.

Honourable senators, I understand that approximately 10,000 section 56 exemption applications are received every year, most of which are routine activities using controlled substances, such as clinical trials, methadone treatment and university research.

In September 2011, the Supreme Court of Canada rendered a decision regarding Insite, a supervised injection site in Vancouver. The court affirmed the discretionary power of the minister to grant exemptions but stated that decisions must be made in accordance with the Canadian Charter of Rights and Freedoms and must balance public health and public safety concerns. The

court specified factors the minister must consider when assessing an application for a supervised injection site. The five factors that the court considered and that are part of Senator Campbell’s amendment are as follows: one, evidence, if any, of the impact of the site on crime rates; two, the local conditions indicating a need for the site; three, the regulatory structure in place to support the site; four, the resources available to support the maintenance of the site; and five, expressions of community support for or opposition to the site.

Honourable senators, I am not as knowledgeable on these issues as Senator Campbell is, but I am a member of the Legal and Constitutional Committee, and I would like to share with you some of the things that we discussed in the committee.

I asked Minister Blaney, the security minister, the following question:

Minister, I’ve been looking at this bill and scratching my head because I have all my working life worked in downtown Vancouver. When my children were younger, we had injection needles, everything on the ground. When I went to work, they would pick them up and I was just petrified. When this bill comes into place, I’ll have the same issues with my granddaughter because when Insite is in place, there is a safe place for people to have their injections. I believe this bill will take that safe environment away.

The Supreme Court of Canada clearly said that your discretion was not absolute; you had to look at section 7 of the Charter of Rights and Freedoms when it came to life, liberty and security of person. I believe that this bill does not address the section 7 issues that the Supreme Court of Canada set out. Can you show me where that is set out?

This was Minister Blaney’s answer:

Senator Jaffer, I thank you for your question. First, I would . . . reassure you that any legislation presented by the government is reviewed by our Department of Justice. While we cannot give it 100 per cent assurance, we are fully confident that this is constitutional and fully meets the decision that was rendered by the Supreme Court. . . .

The second question you’ve asked . . . I would ask you. You have children. I have children. What this bill is doing is saying: Do you think you should be consulted if we were to open a consumption site just in front of your house? That is what this bill is doing.

I responded to the minister to say that I have no issue with being consulted, but I want us to make sure that we are Charter-compliant.

Honourable senators, I further asked, and I won’t read it — it’s part of the committee’s record — but I asked Minister Ambrose what it will do to the hospitals in my area if Insite is closed. I asked:

Minister, where I live, we have one the hospital, St. Paul’s, that looks after heart patients for all of the Lower Mainland. If Insite does not exist, the people who

will suffer will go to St. Paul's Hospital. It's an issue of resources. Insite has saved [the provincial government] \$17 million. My concern is this: If Insite does not exist, then we will again have a great strain on St. Paul's Hospital.

Minister Ambrose's response was that these are not mutually exclusive, and if I remember correctly, she also reminded me that these were provincial issues.

Honourable senators, I don't care if they're provincial or federal issues. Those are hospitals that we use, and if the resources are strained, then all Lower Mainland people suffer.

I have thought about how I can explain to you about Insite. After a lot of reflection, I thought the way for me to do it was to share with you what Mr. Russell Maynard, Program Director of Insite, said:

I would like . . . to share with you information that doesn't get across very often. Insite is so much more than a supervised injection site. It sees about 800 visits a day from probably a core group of about 300 users. It's not a large number of people. In fact, it's quite a small number of people and we're talking about a project that is very local and community based. It is actually in its very mandate trying to address, with everything it has, making safer the communities that are struggling with addiction, which tend to be in every single urban centre in the developed world. They always end up being in the low-income areas.

I work closely — I want to emphasize closely — with the Vancouver Police Department. I meet with them regularly. I go to meetings all the time. I get invited to come and speak to new officers before they are asked to walk the beat in Downtown Eastside, so that they understand the context of the injection site and of the people who come to it.

It really isn't straightforward to understand who the people are that come to the sites. Yet the people who come to the sites are incredibly homogeneous around the world, whether you are talking about the sites in Spain, Denmark, Vancouver or Sydney, Australia. They tend to be, on average, the folks who go through our foster systems. They are children who come from disadvantaged beginnings and end up going to school and not being able to pay attention because of their life style. Then they just fall through the cracks for the rest of their lives. They end up as low-income people, who are self-medicating or using drugs for all the wrong reasons. All we try to do at Insite is (a) keep them alive, so we can get them to treatment; and (b) address any services that they need — housing, health care, and mental health.

I want to make sure that the Senate committee understands, and again, it's an emphatic number: there are 450 people a year who go straight from the floor at Insite, one project, into recovery. I'm speaking as an addictions expert — there is no other project that I'm aware of in the world that comes close to that number. Four hundred fifty people a year go from the floor of Insite into treatment.

What that translates to, in the most common vernacular is that we don't know of another model that is as successful at connecting people to treatment as the drug consumption route. Imagine, if you can, that you are hiding in doorways and alleys to hide your use. Then, all of a sudden, a project opens up in your community that says, "All right. We acknowledge this is an ugly and chaotic problem. Come inside and let's see what we can do." All of a sudden, on a daily basis, you are interacting with people like those who are sitting around this table. That's a profound change in your lifestyle. You are going from only interacting with addicts and other people in chaos to being in a room with people who live functional lives and whose job it is to connect you with mental health and clinical services. That's what we do, day in and day out, 365 days a year, 18 hours a day.

• (1510)

He went on to say:

I want to win over the perspectives that aren't convinced, and that is why I want to make sure that everyone in the room recognizes: There is no more powerful model in the developed world than the supervised consumption site in Vancouver the way it is designed, which is a Canadian design. Insite is unique in the realm of injection sites in that it has, for instance, a detox centre and a recovery program right above it. It's like having a walk-in clinic and then specialized services above that — like eye surgery, et cetera — where there is a continuum of care.

Honourable senators, I asked Mr. Maynard a question about the area and the worry I had before that there were needles all over. Mr. Maynard replied:

It's a bit of a grey area. . . . The bill is laid out clearly, so that's not grey. What brings the opaqueness to the answer to that question is that there have been three Supreme Court hearings on Insite. It's hard to imagine that were Insite to not meet this criteria, it wouldn't go back to court. We'd be going back in time. It's hard to imagine that we would not again see successes in the courts.

Honourable senators, I was floored when he said to us: "A total of 13 judges have looked at this, and all 13 have sided with Insite after listening to evidence for days at a time."

Clause 5 of the new bill lays out 26 obligations. These 26 obligations are going to be very onerous.

Honourable senators, we had many witnesses come to our committee and speak about this bill not being compliant with the Charter. The Canadian Drug Policy Coalition said why Bill C-2 is harmful in *An Injection of Reason*: One, "Bill C-2 fuels misinformation about supervised consumption services"; two, it "completely contradicts the spirit of the Supreme Court of Canada's 2011 decision"; three, "Bill C-2 imposes an excessive application process that would not be imposed on other health services"; four, "Bill C-2 disproportionately considers 'opinions' around access to critical health services"; and five, "Bill C-2 effectively gives certain authorities unilateral veto power to the implementation of supervised consumption services."

Can I have five minutes?

**The Hon. the Speaker:** Will honourable senators grant five more minutes to Senator Jaffer?

**Hon. Senators:** Agreed.

**Senator Jaffer:** Honourable senators, they go on talking about all the reasons why C-2 is not meeting the test that the Supreme Court of Canada has set out.

We heard from a person who is using the services and now working with the services. He pled with us to make sure that we do not close this site, because that's how he got out of the problem.

But the last thing I want to leave with you is when we heard from Ms. Donna May, a mother of an addict, and she said:

. . . my daughter passed away. . . .

I think a very important first step would be for our politicians to recognize it as a disease, listen to their constituents in the community. I know that I have knocked on many doors of our MPs, our MPPs and my councillors, and they seem to treat it as this horrid thing . . . . But the reality is it could be anybody's child. It doesn't have to start with a street drug. My daughter's addiction did not. It started with a prescription for Oxy when she fell down the basement stairs. What she found was that it quieted the voices in her head and she had an undiagnosed mental illness problem.

Honourable senators, this is a mother's plea that we have to protect the most needy in our society.

I went to see Insite with my husband. Getting into Insite is quite a challenge. When I was inside, I saw people enter in a dignified way. They were able to deal with their issues, go into detox, and they were even able to deal with eye surgery.

The day my husband and I left Insite, we were very humbled that there were Canadians who cared for the most vulnerable. I ask you today when I stand in front of you: Are we going to be counted as people who care for the most vulnerable?

Thank you.

**Hon. Yonah Martin (Deputy Leader of the Government):** Seeing that there is very little time in Senator Jaffer's five minutes that was given, I will just speak on debate.

I wasn't planning to speak to this, but as a resident of Vancouver, hearing my colleagues Senator Campbell and Senator Jaffer — as a Vancouver resident of over 40 years, I do feel compelled to say something.

I want to just say that I do have great respect for both of you and know how much you care deeply for our city, as I do. I've said this before, but you as our mayor served us very well, and I'm proud to say that. And I'm a very proud Vancouverite as I rise today.

I also want to say that all of us have such compassion for all people because we are Canadian.

Having said that, I will be supporting the bill and not supporting the amendment. I just want to say that I feel there is one perspective that — I've been listening carefully to see if the voices of these individuals are reflected in any of our debates, and I haven't heard it. So I feel it's my responsibility to rise and at least say that I am not an advocate, a champion and expert like Senator Campbell, so I didn't necessarily want to weigh in on this debate.

I've read about the four pillars approach. I worked closely with Sam Sullivan, a successor to our colleague Senator Campbell. But what I do know is I've heard anecdotal evidence, and I've spoken to the people who live in the very region of downtown Vancouver, in Chinatown by the safe injection site, who speak about what changes they have not seen and what challenges they still face.

Senator Campbell talked about how the safe injection site has taken it off the street, but that is not what I have heard from the Vancouver Chinatown Merchants Association and those who are there trying to make ends meet and work extra hours to make this very historic Chinatown, which has quite a sad history — but on this day is the second-oldest district in North America. It's a very special place.

I do work closely with certain members of that community, and the anecdotal evidence that I've heard of the challenges that they face and what they see on the streets and alleys is that it's very real for them.

• (1520)

I wanted to ask the senators opposite if they have heard from them directly, if they have sat down and met with them, because what I hear from them is not so much the kind of support but, rather, the concern and the fact that changes haven't been noticed in their very own streets and communities.

As a former educator — and there are other educators in this chamber — of 21 years, and with my husband still teaching in alternate schools in a district where he is working with kids who are fighting drug addiction issues, and as a parent, Insite has done very good work. I will say that for the record, but it has always been a very controversial place. Vancouverites are divided on this issue. The anecdotal evidence I have heard from those whom I have met and who are living in that community, as well as being a parent and a teacher and knowing what happens at the site, our great challenge is to try to educate and prevent such tragedies from happening to our own students.

The greatest word is that there is a real dilemma and a challenge in accepting such an institution.

For me, personally, I'm very torn up about this Insite that has been a part of our city for quite some time. I know the champions who have worked on it. I say that as someone who has not been a direct participant but, rather, an observer who has been at the table listening to such stakeholders, and I don't necessarily concur with everything that has been said. Based on my personal experience, I will be supporting the bill and not the amendments.

**Senator Campbell:** Has the senator looked at the 18 peer-reviewed papers regarding Insite?

**Senator Martin:** No, I have not. I did begin by saying that I am not an expert on this issue. However, as a resident of the city that has been discussed at great length and, based on the evidence through conversation and stakeholder meetings where I have heard from people who are living in that area, these are the concerns that I am simply adding to this debate today.

**Senator Campbell:** Again, the problem I have is that we get into these rumours and allegations.

**Senator Martin:** They're not rumours or allegations.

**Senator Campbell:** They are, because they're not factual. My question to you is: Do you know that Chinatown carried me in the last election?

**Senator Martin:** Pardon me?

**Senator Campbell:** I had the full support of the Chinatown Merchants Association. Did you know that?

**Senator Martin:** Yes, senator. We all supported you. That's not the point.

**The Hon. the Speaker:** Order, please. You can't have two senators have the floor at the same time. Senator Campbell, I think you appreciate this. Ask your question.

**Senator Campbell:** You should not be taking anecdotal evidence over peer-reviewed scientific evidence and this is the reason we're having this difficulty. If you took a poll of Vancouverites, the vast majority would support this.

**Senator Martin:** The anecdotal evidence I'm talking about is from the people that live there, that work there. I will simply say that for the record. I know that you were a very popular mayor. That is without doubt. I'm talking about anecdotal evidence from people that are directly impacted by the site.

**Senator Cordy:** Still anecdotal.

**Senator Jaffer:** Would the honourable senator take another question?

**Senator Martin:** Yes.

**Senator Jaffer:** Senator Martin, all three of us care for our city, so this is not about who cares more about the city. However, I have worked in that area since 1975. In fact, I have my law office in that area. I can tell you that what has happened with Insite is that the merchants do not have to get up every morning and clean up the needles like they had to before.

I'm not saying that it is perfect, but if we close Insite, then what is happening inside Insite will happen outside. How will the merchants be any better off?

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

**Senator Martin:** Question.

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

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

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

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** All those opposed to the motion please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** Clearly, the "nay" side has it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Please call in the senators.

**Senator Munson:** Your Honour, we wish to defer the vote until tomorrow.

**The Hon. the Speaker:** Pursuant to rule 9-10(2), the vote is deferred to 5:30 p.m. at the next sitting and the bells will ring at 5:15 p.m.

## TOUGHER PENALTIES FOR CHILD PREDATORS BILL

### BILL TO AMEND—THIRD READING— DEBATE ADJOURNED

**Hon. Donald Neil Plett** moved third reading of Bill C-26, An Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts.

He said: Honourable senators, I rise today to speak at third reading of Bill C-26, the tougher penalties for child predators act.

Since this bill was last debated in the chamber, it has been studied thoroughly at the Standing Senate Committee on Legal and Constitutional Affairs. We heard from criminal justice experts, victims, criminal rehabilitation advocates, child advocacy centres, law enforcement, and the list goes on. I am happy to report that the witnesses were overwhelmingly supportive of this legislation.



Colleagues, Bill C-26 acknowledges the unjust sentences we continue to see when it comes to sexual exploitation of children, either through contact sexual offences or child pornography. The Canadian public has repeatedly seen one- to two-year sentences given for the sexual assault of a child or the opportunity for the offender to serve sentences concurrently, rather than consecutively, when they have assaulted multiple children.

While many of us are reluctant to challenge the expertise of the sentencing judges in some of these cases, there is no way to rationalize the majority of sentences we have seen in child exploitation cases.

As legal counsel to Kids Internet Safety Alliance, Mr. David Butt, who testified at committee, said the following when speaking in favour of the new increases to the mandatory penalties:

Judges are trained, and there is nothing wrong with this training, to look to precedent. When they're passing a sentence, they say, "What have we done in the past?" And that's the problem. It's backward looking. You can't move forward if you do nothing but look in the rear-view mirror. We need to sometimes take a step outside that precedent-based, backward-looking system and say, "You know what? We have to step in and adjust it."

He continued:

I see, in this context, mandatory minimum sentences as a responsible way to increase the floor to recognize the inherent worth of protecting children without taking away judicial discretion entirely . . . . We need to have Parliament step in and say we want to be forward looking, we want to be visionary, and we want to do something different and better for children.

Honourable senators, I could not agree more. This is our opportunity to be forward looking when it comes to the protection of children.

Bill C-26 makes several important changes to existing legislation. First, maximum and minimum penalties for many sexual offences against a child would be increased. This includes ensuring that the maximum penalty for all hybrid child sexual offences is increased to two years less a day on summary conviction and 14 years on indictment. This bill would also make the most serious child pornography offences, making and distributing child pornography, strictly indictable with a maximum penalty of 14 years. The existing mandatory minimum penalty of one year would continue to apply. This specific reform reflects the devastating impact the making and distributing of child pornography has, particularly in a modern technological environment where images can be accessed indefinitely.

• (1530)

Penalties for breaches of supervision orders — that is prohibition orders, probation orders and peace bonds — would also be increased to ensure that those who violate conditions imposed by the courts to protect children are held to account.

Monique St. Germain, legal counsel for the Canadian Centre for Child Protection, stressed the importance of increased penalties for breaches of court-imposed conditions, stating:

When conditions are imposed upon an offender, the court takes into account the nature of the offences committed and the risk posed by the offender. The conditions are an attempt to manage that risk and protect the chance of additional victimization. The conditions are purposeful and they are extremely important to the ongoing protection of children. As such, the penalty available upon breach must be meaningful.

Colleagues, Bill C-26 would also ensure that evidence that an offence was committed while the offender was subject to a conditional sentence order, on parole or on statutory release would be considered an aggravating factor for sentencing purposes.

After hearing from victims and victims' advocates at committee, I believe the bill's most significant provision deals with the problem of judges commonly ruling that a sex offender charged with sexual offences against multiple children can serve sentences concurrently, which of course means that the offender is serving one sentence.

The new provisions mandate that courts impose consecutive sentences in two situations: first, where the offenders are sentenced at the same time for child pornography offences and contact sexual offences. This provision recognizes the increased harm caused when child pornography is involved in the commission of a contact sexual offence.

The second situation where courts would be required to impose consecutive sentences is when an offender is sentenced for contact sexual offences against multiple children at the same time.

Senators, this would finally ensure that child sexual offenders do not get sentencing discounts for offences against multiple victims. The criminal justice system must ensure that each and every victim counts and is accounted for in sentencing.

Ellen Campbell, President of the Canadian Centre for Abuse Awareness and a child victim of sexual assault herself, spoke about a case at committee which I have referenced before in this chamber. That is the case of Gordon Stuckless. He was given what is sometimes called a "sentencing discount" for the repeated rape against 24 different boys and was treated as a first-time offender when he was finally caught. He was given two years less a day in prison.

Martin Kruze, the first of Stuckless's victims to come forward, tragically committed suicide shortly after that measly sentence.

Ms. Campbell said this in the committee:

I've often thought, what would it have been like if this bill, Bill C 26, was in place when Martin came forward? He could have had some hope that something would have happened.

Colleagues, what kind of a message does this bundling of offences send to victims who are struggling with whether to come forward?

As Charles Adler contended:

Martin Kruze survived being raped countless times by Gordon Stuckless, but he did not survive being raped by the Canadian criminal justice system.

Sheldon Kennedy highlighted this as a major issue. He stated:

I think that's their biggest fear, that they're not going to be believed and that the systems don't support them to come forward. When they do come forward, they're clumped into one group and sentenced as a package deal, and I think that is shameful, very shameful.

Honourable senators, under this new provision, Gordon Stuckless would have to serve at least the mandatory minimum sentence for each of the known 24 victims. This provision sends a clear message to victims that they count, that they will be heard and that each and every one of them will be accounted for in the perpetrator's sentence.

Bill C-26 also proposes important reforms that would assist in tracking child sex offenders, including when they go abroad to commit offences against children in other countries whose legal systems are less robust than ours. For example, proposed amendments to the Sex Offender Information Registration Act would require registered child sex offenders to report absences from the country, including the location and address at which they stay. As Minister MacKay said at committee, "We don't want to be a country who exports our problems."

The bill proposes further amendments to this act which would allow information sharing between the National Sex Offender Registry officials and the Canada Border Services Agency. Registered sex offenders would be required to report passport and licence number to the registry, and registry officials would be authorized to disclose certain information on registered child sex offenders.

The CBSA would be authorized to collect travel information from registered sex offenders at a port of entry if they have been flagged by the registry officials.

Bill C-26 also proposes a new publicly accessible database of high-risk child sex offenders through the enactment of the high-risk child sex offender database act. This act would authorize the RCMP to establish and administer a national, publicly accessible database of high-risk child sex offenders who have been the subject of a public notification in a province or territory.

The importance of this was stressed at committee by several victims and child advocacy centres. Both Sheldon Kennedy and Ellen Campbell, who were victims as children, and advocates for child victims now, testified after hearing Privacy Commissioner Daniel Therrien speak. Mr. Therrien raised concerns with whether the searchable and publicly accessible database for

high-risk child sex offenders was effective policy, although he admitted that no new information would be made public after the proposed database is in effect and that this bill does not in any way violate the Privacy Act.

The major difference of opinion between Mr. Therrien and victims' advocates was whether Canadians had the right to this information. Both witnesses, after hearing Mr. Therrien's testimony, argued how critically important it is that parents and families have this information so that appropriate precautions can be taken.

As Senator McInnis said to the Privacy Commissioner:

We're not talking here, if I could put it this way, about the ordinary criminal. We're talking about a high risk child sex offender who is likely to reoffend.

... I believe that if I'm a father or a mother, I want to know who offended so that I can take the hand of my child and walk them to school, if they're in the neighbourhood, and to protect them. That's important. That's why I disagree with you.

Colleagues, for too long we have been failing our children by not treating this crime with the seriousness it deserves. As David Butt from the Kids Internet Safety Alliance suggested at committee:

When we are out of whack in our values about how we denounce crimes . . . we have to get back into equilibrium.

He used the example of a person who robs a bank without a gun for about \$8,000, which is, and I quote, "... less than a rounding error for any of the big banks." That person will get a sentence starting at five years.

• (1540)

Courts have been very good at protecting the property of strong institutions. Then he contrasts that example with one of a child's life being ruined after being molested by a trusted adult. The child then sees that adult get probation or, as Mr. Butt put it, "goes home to watch TV."

For a child who suffered that abuse, looking at a bank whose rounding error gets five years, something is out of whack. We need to continue to protect with prevention and treatment, but we also need to reflect the appropriate sentence for this kind of a devastating crime.

Honourable senators, before I conclude I want to address briefly my colleague Senator Campbell's concern, which is largely about lengthy prison sentences without adequate access to treatment as well as a link between lack of treatment and recidivism.

I will say this in response: first, as Sue O'Sullivan the Federal Ombudsmen for Victims of Crime noted, when sex offenders are in prison for a lengthier sentence they are accessing available treatment for a longer period of time. There are various programs

available through Correctional Service Canada that strive for relapse prevention with sex offenders. However, we are not dealing with a typical criminal or even a typical sex offender.

As CSC's website states, the data from the Clearwater program indicate that pedophiles, even if treated, present a greater risk to the community than other sex offenders.

I also have statistics from peer-reviewed psychiatric journals stating that about a quarter of heterosexual pedophiles and half of homosexual and bisexual pedophiles repeat offences. This is a high recidivism rate.

As Harvard's medical journal found, there is "no effective treatment" for pedophilia. Pedophilia is a sexual orientation and, as the journal, notes:

Like other sexual orientations, pedophilia is unlikely to change. The goal of treatment, therefore, is to prevent someone from acting on pedophile urges — either by decreasing sexual arousal around children or increasing the ability to manage that arousal. But neither is as effective for reducing harm as preventing access to children . . .

The Harvard medical journal concluded: "There is no cure, so the focus" must be "on protecting children."

While Senator Campbell asserts that Conservatives dislike science, in reality this approach is evidence based and reflects the proven likelihood of pedophiles to reoffend, the ineffectiveness of treatment and the devastating, long-term traumatic impact this type of crime has on victims.

I commend our government for listening to both victims' groups and experts in bringing forward this comprehensive legislation that will protect children from sexual predators. I trust that all colleagues will vote in favour of this important bill.

Thank you.

**Hon. Céline Hervieux-Payette:** I have a question.

**The Hon. the Speaker *pro tempore*:** Will you accept some questions, Senator Plett?

**Senator Plett:** Yes.

[Translation]

**Senator Hervieux-Payette:** Over the past few years, Senator Plett and I have rarely seen eye to eye on the issue of child rearing, and specifically violence against children. Now, suddenly, he is very concerned about children's health and wants everyone to be locked up for as long as possible.

Do you still support keeping section 43 in the Criminal Code, which allows parents to hit their children as a way of disciplining them?

[English]

**Senator Plett:** Let me start, first of all, senator, by saying how offensive I find that comment, that you would in any way equate spanking a child with the rape and sexual molestation of a child. There is absolutely no correlation to that, and I will not dignify that with an answer.

[Translation]

**Senator Hervieux-Payette:** I encourage you, senator, to read the Supreme Court ruling that does in fact take away parents' permission — in the case of children aged 12 and older, for reasons related to sexuality — to spank their children. Don't say there is no correlation. There is.

For the purposes of your bill, did you consider measures such as physical or chemical castration?

[English]

**Senator Plett:** I will say again that I fully support my boys disciplining their children in a loving manner. If that includes a slap on the rear end, I support that. I do not support their sexual molestation. Again, there is no correlation there at all.

Second, this bill deals with the molestation of children. It does not deal with the spanking of children. We have another bill for that.

[Translation]

**Senator Hervieux-Payette:** I encourage you to read the final report of the Truth and Reconciliation Commission. It contains one section in particular that recommends repealing section 43, because there have been too many incidents involving young Aboriginal Canadians and there is a correlation, even though you deny it. The Supreme Court recognized that when children grow up, there is a threat related to their sexuality. Moreover, the Supreme Court took away parents' authority to spank children aged 12 and older. Don't rule that out.

During your thorough study, did you look at the fact that pedophiles often come from families with a history of abuse and that these individuals themselves may have been the victims of molestation?

[English]

**Senator Plett:** No, I did not.

[Translation]

**Senator Hervieux-Payette:** I find it strange that there was no mention of the fact that this is deviant behaviour that, for the most part, relates to abuse these individuals suffered as children that they then perpetuate as adults. It is important to take action sooner, before they head down that road.

With respect to the Harvard medical journal, which states that there is no cure, do you believe that that is the case all around the world and that countries in Europe and elsewhere have never taken any steps to treat pedophiles so that these individuals can reintegrate safely into society?

[English]

**Senator Plett:** I think the question in there was whether all journals would say the same thing as Harvard's did. I don't know, I haven't read all the journals across the world to see what they say. I was quoting Harvard's.

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

**An Hon. Senator:** Question.

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

• (1550)

### THE SENATE

#### STATUTES REPEAL ACT—MOTION TO RESOLVE THAT THE ACT AND THE PROVISIONS OF OTHER ACTS NOT BE REPEALED ADOPTED

**Hon. Yonah Martin (Deputy Leader of the Government),**  
pursuant to notice of June 3, 2015, moved:

That, pursuant to section 3 of the *Statutes Repeal Act*, S.C. 2008, c. 20, the Senate resolve that the Act and the provisions of the other Acts listed below, which have not come into force in the period since their adoption, not be repealed:

1. *Canada Grain Act*, R.S., c. G-10:

-paragraphs (d) and (e) of the definition “elevator” in section 2 and subsections 55(2) and (3);

2. *Contraventions Act*, S.C. 1992, c. 47:

-paragraph 8(1)(d), sections 9, 10 and 12 to 16, subsections 17(1) to (3), sections 18 and 19, subsection 21(1) and sections 22, 23, 25, 26, 28 to 38, 40, 41, 44 to 47, 50 to 53, 56, 57, 60 to 62, 84 (in respect of the following sections of the schedule: sections 1, 2.1, 2.2, 3, 4, 5, 7, 7.1, 9, 10, 11, 12, 14 and 16) and 85;

3. *Agreement on Internal Trade Implementation Act*, S.C. 1996, c. 17:

-sections 17 and 18;

4. *Canada Marine Act*, S.C. 1998, c. 10:

-section 140;

5. *An Act to amend the Canada Grain Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act and to repeal the Grain Futures Act*, S.C. 1998, c. 22:

-subsection 1(3) and sections 5, 9, 13 to 15, 18 to 23 and 26 to 28;

6. *Comprehensive Nuclear Test-Ban Treaty Implementation Act*, S.C. 1998, c. 32;

7. *Preclearance Act*, S.C. 1999, c. 20:

-section 37;

8. *Public Sector Pension Investment Board Act*, S.C. 1999, c. 34:

-sections 155, 157, 158 and 160, subsections 161(1) and (4) and section 168;

9. *Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12:

-sections 89 and 90, subsections 107(1) and (3) and section 109;

10. *Marine Liability Act*, S.C. 2001, c. 6:

-section 45;

11. *Yukon Act*, S.C. 2002, c. 7:

-sections 70 to 75 and 77, subsection 117(2) and sections 167, 168, 210, 211, 221, 227, 233 and 283;

12. *An Act to amend the Criminal Code (firearms) and the Firearms Act*, S.C. 2003, c. 8:

-section 23;

13. *An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts*, S.C. 2003, c. 26:

-sections 4 and 5, subsection 13(3), section 21, subsections 26(1) to (3) and sections 30, 32, 34, 36 (with respect to section 81 of the *Canadian Forces Superannuation Act*), 42 and 43;

14. *Assisted Human Reproduction Act*, S.C. 2004, c. 2:

-sections 12 and 45 to 58;

15. *Public Safety Act*, 2002, S.C. 2004, c. 15:

-sections 78 and 106;

16. *Amendments and Corrections Act*, 2003, S.C. 2004, c. 16:

-sections 10 to 17 and 25 to 27;

17. *Budget Implementation Act*, 2005, S.C. 2005, c. 30:

-Part 18 other than section 125; and

18. An Act to amend certain Acts in relation to financial institutions, S.C. 2005, c. 54:

-subsections 1(1) and 27(2), sections 29 and 102, subsections 140(1) and 166(2), sections 168 and 213, subsections 214(1) and 239(2), section 241, subsection 322(2), section 324, subsections 368(1) and 392(2) and section 394.

She said: Honourable senators, Bill S-207, which enacted the Statutes Repeal Act, was passed with unanimous support in both houses of Parliament and received Royal Assent on June 18, 2008. I believe that this was a bill sponsored by former Senator Banks. The act came into force two years later.

The purpose of the Statutes Repeal Act is to encourage the government to actively consider whether legislation that has not been brought into force within nine years or more of being enacted is still needed. Let me describe the process that it entails before I begin to explain the various items that are part of this report.

Section 2 of the Statutes Repeal Act requires that the Minister of Justice table an annual report before both houses of Parliament on any of their first five sitting days of each calendar year. Each annual report must list the acts and provisions of acts not yet in force that were assented to nine years or more before December 31 of the previous calendar year.

Under section 3 of the Statutes Repeal Act, any act or provision listed in the annual report will be repealed on December 31 of the year it was tabled, unless, before that date, they are brought into force, or one of the houses of Parliament adopts a resolution exempting them from repeal.

This is the fifth year of implementation of the Statutes Repeal Act. The fifth annual report was tabled on January 29, 2015 in the House of Commons and on February 3, 2015 in the Senate and lists one act and provisions of 18 other acts.

Honourable senators, I ask you to adopt this fifth report. The motion would adopt a resolution before December 31 of this year — well, hopefully today, after I explain — exempting one act and provisions in 17 other acts that are listed in this motion from being repealed at the end of this calendar year.

Eleven ministers have recommended the deferral of the repeal of certain legislation. These 11 are the Ministers of Aboriginal Affairs and Northern Development; Agriculture and Agri-Food; Finance; Foreign Affairs; Health; Justice; National Defence; Public Safety and Emergency Preparedness; Public Works and Government Services; and Transport; as well as the President of the Treasury Board.

I will now set out the reasons for the recommended deferrals by each of these ministers.

First, Aboriginal Affairs and Northern Development: The minister is recommending a deferral for provisions of the Yukon Act. Sections 70 to 75 of the Yukon Act will allow the Yukon government to appoint its own auditor general and cease to use

the services of Canada's Auditor General. Steps need to be taken by the Government of Yukon to establish a position of auditor general before these provisions can be brought into force.

The rest of the provisions of the Yukon Act are consequential amendments to other acts that should be brought into force when the federal Yukon Surface Rights Board Act is repealed and the Yukon legislature enacts legislation in its place. To date, the territorial legislation is not yet in place.

Second, Agriculture and Agri-food: The minister is recommending deferrals for provisions in the Canada Grain Act and in the amending act entitled, "An Act to amend the Canada Grain Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act and to repeal the Grain Futures Act."

In the 2010 federal budget, the government signalled its intent to move forward with its plans to modernize the Canada Grain Act. Targeted amendments to that act were introduced as part of the Jobs and Growth Act, 2012. In 2013, the not-in-force provisions were reviewed in light of the 2012 amendments and other changes that the grain industry considered necessary. This review culminated with the introduction of Bill C-48, the modernization of Canada's grain industry act. Bill C-48 addresses many of these not-in-force provisions, and for this reason, deferral of the repeal for these not-in-force provisions is being sought.

Next, the Minister of Finance is seeking a deferral for provisions in two acts. The first recommendation relates to several not-in-force provisions of "An Act to amend certain Acts in relation to financial institutions." These provisions relate to the forms that shareholders of financial institutions can use to vote by proxy and exempt certain communications to shareholders from the framework that governs communications about proxies. Additionally, these provisions amend the Green Shield Canada Act, a private act which incorporates Green Shield Canada, a not-for-profit provider of health and dental benefits, and which subjects Green Shield Canada to certain sections of the Insurance Companies Act.

These provisions would amend the sections which Green Shield Canada is subject to in the Insurance Companies Act. A deferral of the repeal of provisions is recommended as the Bank Act regulations relating to proxies are currently under review by the Department of Finance, and the results of this review must be considered when determining whether or not to bring these provisions into force.

The second deferral recommendation concerns sections 17 and 18 of the Agreement on Internal Trade Implementation Act. Those provisions would amend certain sections of the Interest Act to facilitate the eventual creation of regulations relating to a cost of credit disclosure harmonization initiative that was referenced in the agreement on internal trade.

Active discussions are under way at this time to renew Canada's internal trade framework. As a result, until the exact scope of that renegotiation and the implications for sections 17 and 18 of the act are known, deferral of the repeal of these provisions is recommended.

The Minister of Foreign Affairs is recommending deferrals for one act and provisions in two other acts. The first recommendation concerns the Comprehensive Nuclear Test-Ban Treaty Implementation Act. This act will be brought into force as soon as the Comprehensive Nuclear Test-Ban Treaty comes into force. However, before the treaty comes into force, it requires ratification by 44 specific states, and currently eight out of these 44 states have not yet ratified the treaty.

It is vital that the act not be repealed so that once the treaty does come into force, the act can be brought into force without delay, implementing the treaty in Canada. Furthermore, keeping this act on the statute books demonstrates Canada's commitment to the implementation of the treaty.

The second deferral concerns section 37 of the Preclearance Act. The act implements a bilateral treaty on air preclearance between Canada and the United States, and section 37 of the act would prevent a judicial review in Canada of preclearance officer decisions to refuse to preclear, admit persons or import goods into the United States. This section cannot be brought into force until the U.S. provides the same authorities to Canada, as the agreement is reciprocal.

Negotiations to update the agreement have recently concluded. A deferral of the repeal of section 37 is being sought so that the issue of bringing it into force can be considered in the context of the government's implementation of the obligations of the updated agreement.

The third deferral concerns section 106 of the Public Safety Act, 2002, which enacts the Biological and Toxin Weapons Convention Implementation Act. Deferral is recommended so that the Department of Foreign Affairs, Trade and Development may pursue consultations at the national and international level to assess the full implications of the possible repeal of the act, including any political consequences for Canada's allies and the Canadian public.

The Minister of Health is recommending a deferral for provisions of one act. The deferral recommendation is with respect to sections 12 and 45 to 58 of the Assisted Human Reproduction Act.

As a result of a 2010 Supreme Court of Canada ruling, the federal government's ability to regulate the complex and controversial area of assisted human reproduction has been significantly redefined and reduced. Therefore, this deferral request is to allow Health Canada to continue its policy assessment of how to regulate this area, an assessment which will include an examination of the impact on federal-provincial responsibility and relations.

The Department of Health will need additional time to engage interested and affected stakeholders so that it may provide meaningful options and operational considerations and develop an implementation plan.

The Minister of Justice is recommending a deferral for provisions in two acts. The first recommendation for deferral is with respect to certain provisions of the Contraventions Act. The

act provides a procedural regime for prosecuting federal offences designated as contraventions. It provides two options for implementing the regime: reliance on an autonomous federal infrastructure or reliance on existing provincial penal schemes.

• (1600)

The Minister of Justice has entered into agreements with several provinces to implement the federal contraventions regime through existing provincial penal schemes. The Department of Justice is still in negotiations with three provinces: Newfoundland and Labrador, Saskatchewan and Alberta.

Even though the Department of Justice remains determined to implement the contraventions regime throughout the country using the existing provincial penal schemes for issuing tickets in respect of federal contraventions, negotiations and progress depend largely on the priorities and capacity of the provinces. Therefore, in the event that agreements cannot be reached with the remaining three provinces, the Department of Justice may need to implement an autonomous federal infrastructure in those provinces by bringing into force the remaining not-in-force provisions of the act.

The second recommendation for deferral is with respect to provisions of the Modernization of Benefits and Obligations Act, which is a comprehensive act amending 68 federal statutes to ensure equal treatment of married and common-law couples in federal law. The coming into force of two of the remaining provisions is based on the negotiated agreement and is under discussion with the relevant First Nations governments. The other three provisions are an autonomous federal infrastructure that may need to be implemented should expected amendments in provincial and territorial law not proceed. These five provisions are needed to provide a consistent approach throughout federal legislation and would ensure equal treatment between married spouses and common-law partners under section 15 of the Canadian Charter of Rights and Freedoms.

The Minister of National Defence is recommending deferral provisions in two acts. The first deferral recommendation relates to certain not-in-force provisions of An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts. These provisions would amend the Canadian Forces Superannuation Act and relate to supplementary death benefits and elective service rules.

The Department of National Defence has begun a comprehensive analysis of the Canadian Forces Superannuation Act, including these not-in-force provisions. This analysis will lead to the development of regulations intended to add flexibility and clarity to the application of that act. The department is continuing its work developing the regulations necessary to bring these provisions into force. These regulations will add direction and clarity to the implementation of the act.

The second deferral recommendation concerns section 78 of the Public Safety Act, 2002. This section would add a new Part V.2 to the National Defence Act that would authorize certain activities to ensure the integrity of the departments and the CAF's information technology systems and the data stored on those

systems. The department and the CAF have begun examining their legislative and prerogative authorities, and for this reason, a deferral is recommended so that the department and the CAF may take the time they require to consider whether Part V.2 of the National Defence Act should be brought into force.

With respect to public safety and emergency preparedness, the Minister of Public Safety and Emergency Preparedness is recommending a deferral for section 23 of An Act to amend the Criminal Code (firearms) and the Firearms Act.

This provision amends subsection 31(2) of the Firearms Act. Currently, the act allows for a person to transfer a firearm to a public agency, including a municipality. The amendment would make it clear that where such a transfer to a municipality occurs, the Registrar of Firearms must revoke any registration certificate for that firearm. A deferral from repeal is required to allow the Department of Public Safety and Emergency Preparedness to prepare a submission with a view to bringing this provision into force.

The Minister of Public Works and Government Services is recommending a deferral with respect to Part 18 other than section 125 of the Budget Implementation Act, 2005. The provisions in question amend several provisions of the Department of Public Works and Government Services Act and give the Minister of Public Works and Government Services the exclusive authority for contracting for services and allow the Department of Public Works and Government Services to enter into contracts where sufficient funds to discharge the obligations under the contract have not been set aside.

The Minister of Public Works and Government Services is currently developing options for reforming federal procurement. A deferral is therefore recommended to allow the Department of Public Works and Government Services to complete the necessary consultations with stakeholders, data gathering and analysis to determine the merits of these provisions with regard to the ongoing federal procurement reform initiative.

The Minister of Transport is recommending deferrals concerning provisions in two acts. The first deferral is with respect to section 45 of the Marine Liability Act. Section 45 will, if it comes into force, give effect to the Hamburg Rules, which is an international convention on the carriage of goods by sea adopted by the United Nations in 1978.

The Department of Transport — may I have five more minutes?

**The Hon. the Speaker *pro tempore*:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**Senator Martin:** The Department of Transport, in consultation with interested stakeholders, is currently undertaking a thorough analysis of the complete body of law pertaining to carriage of goods by water in Canada and will be making recommendations to modernize it with a view of maintaining Canada's commitment to uniformity of international law, particularly with the law of our

major trading partners. Given that this review is not yet complete, the repeal of section 45 of the Marine Liability Act is premature and a deferral of its repeal is requested.

The second deferral request is with respect to section 140 of the Canada Marine Act. Section 140 of the Canada Marine Act would enable Canada to enter into agreements with a third party other than Marine Atlantic Inc., the current provider, to fill Canada's constitutional obligation to Newfoundland and Labrador to provide a ferry service between North Sydney, Nova Scotia, and Port aux Basques, Newfoundland and Labrador. This is sounding awfully familiar, honourable senators.

The Department of Transport would like to retain the policy flexibility afforded by section 140. Repealing this provision at this time would limit the department's ability to examine all policy options pertaining to the provision of the ferry service in the future.

The President of the Treasury Board is recommending a provision for deferral in two acts. The first deferral recommendation is with respect to certain provisions of the Public Sector Pension Investment Board Act that concern pension and related benefits for the Canadian Armed Forces. These provisions would amend the Canadian Forces Superannuation Act to permit the making of regulations, prescribing the conditions, manner and time of payment of contributions and the amount of benefits payable.

Legislation in the area of pension and related benefits is very complex, and before these provisions can be brought into force, consultations between the CAF and the Treasury Board Secretariat are required to ensure that the required regulations are developed with the appropriate degree of alignment with other pension legislation. A deferral from the repeal of these provisions will allow completion of the policy and financial work related to the provisions.

The second deferral recommendation is with respect to certain provisions of the Amendments and Corrections Act, 2003, provisions that amend the Lieutenant Governors Superannuation Act, the Salaries Act and the Supplementary Retirement Benefits Act. When these provisions are brought into force, they would provide lieutenant governors with the same pension protection with respect to disability as is currently in place for members of Parliament. These provisions should not be brought into force before the necessary regulations are prepared, and planning is under way to have the required regulations ready in time to bring the amendments into force before the end of 2015. A deferral of the repeal of these provisions is recommended in case unforeseen events or issues delay their coming into force this year.

The Statutes Repeal Act provides that any deferrals would be temporary. Any legislation for which a deferral of repeal is obtained this year will appear again in next year's annual report. Any legislation appearing in next year's annual report will be repealed on December 31, 2016, unless it is brought into force or is exempted again, by that date, for another year.

It is important that the resolution be adopted before December 31, 2015. Otherwise, the act and provisions listed in the motion will automatically be repealed at the end of this calendar year. The repeal of the act and the provisions listed in the motion could lead to inconsistency in federal legislation. The repeal of certain provisions could even result in federal-provincial-territorial stresses and blemish Canada's international reputation.

If a resolution is not adopted by December 31, 2015, federal departments would need to address the resulting legislative gaps by introducing new bills. Those bills would have to proceed through the entire legislative process, from policy formulation to Royal Assent. This would be costly and time consuming.

So in conclusion, I urge all honourable senators to support the motion and vote in favour of a resolution that the act and the provisions listed in the motion not be automatically repealed on December 31 of this year.

• (1610)

**Hon. Joan Fraser (Deputy Leader of the Opposition):** I congratulate Senator Martin and thank her again for providing these explanations. She had to gallop through a great deal of material, all technical, in a confined space of time, but I think it is very important to get the explanation on the record each year when we do these motions.

As Senator Martin observed in the case of one bill, there is a certain familiar ring to some of these proposals, and in some cases it's impossible to dispute the importance of preserving this legislation. The Nova Scotia to Newfoundland ferry is an obvious example, the Nuclear Test-Ban Treaty Implementation Act is another one, and there are quite a few that fall into that category.

There is, however, another and I think broader category where basically we're told that we need to keep these bills on the books because the department is working on it — working on the proposed improvement of whatever the issue in question is. When they go on working and working — or telling us they're working — for years and years, you begin to wonder.

I remind honourable senators that this motion is about preventing the repeal of statutes or parts of statutes that have been on the books already for 10 years. Ten years is normally considered a reasonable amount of time to work on a problem that needs to be solved.

There are a couple of new items this year, one of which in particular raises that question.

The Budget Implementation Act from 2005 has, as Senator Martin noted, a section that refers to reforming federal procurements. I don't think anybody who reads the newspapers would dispute that federal procurement systems are indeed in need of reform — but 10 years? We needed that reform some years ago. I do hope that we will not have to extend the life of this particular provision again next year, because it would be wonderful to see an actual reform of the policy.

I also have to wonder about the Assisted Human Reproduction Act. The Supreme Court of Canada ruling that made it necessary to adjust our law came down in 2010. That's five years ago. Should it really take us five years to adapt our law to comply with the Supreme Court of Canada ruling?

This is one of the consequences of Senator Banks' bill that we perhaps didn't fully understand at the time he was moving it. We tended to think old bills that haven't been used should fall off the statute books, but what we see here is this great middle category of legislation where we're promised that progress will be made and there will be an outcome one day. This at least gives us a chance to signal in this chamber that the progress may be being made, but we would like to see some actual final results of that progress.

That said, on our side we certainly do not oppose this motion. On the contrary, we're proud that it was as an initiative from our side that we find ourselves considering this motion.

Again, I thank Senator Martin for her explanations, which are important. However numbingly technical they may sound, they are important. I concur with the suggestion that the Senate approve this motion.

**Hon. Joseph A. Day:** I wonder if my honourable colleague would take a question. I had intended to ask a question of my colleague opposite, but I didn't get a chance to do so before you began to speak, so perhaps you could help me — and this through you to Senator Martin.

I can't recall; if we vote for this, then these particular provisions will not be removed, but do we have to wait another 10 years before these come back again? That's the part I couldn't remember.

**Senator Fraser:** I'm not familiar with the technicalities of all of the bills, but I can give the answer to that question, which is that, no, they'll come up again next year. So every year we have to renew the reinstatement, if you will, or the prolongation of the lives of the measures in question.

**Senator Day:** Thank you. I should have remembered that, because I sat beside Senator Banks when he was working on this piece of legislation, but somehow I had forgotten what the period was. It's every year, so some of these will start to sound familiar.

The second point that I'd like to make is a comment, and that is another one of these that I'm really hopeful the department is working on, namely, the Canadian Forces Superannuation Act. You indicated that they needed more time because it's a complex matter between Treasury Board and the Canadian Armed Forces.

This is an important initiative for the members of the Armed Forces, and I really do hope that we don't have this one languishing the way some of the others are.

[ Senator Martin ]



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

**Hon. Senators:** Agreed.

(Motion agreed to.)

## REFORM BILL, 2014

### BILL TO AMEND—THIRD READING— DEBATE SUSPENDED

**Hon. Scott Tannas** moved third reading of Bill C-586, An Act to amend the Canada Elections Act and the Parliament of Canada Act (candidacy and caucus reforms).

He said: Colleagues, I rise today speak to Bill C-586, An Act to amend the Canada Elections Act and the Parliament of Canada Act.

Since I gave my second reading speech, there has been even more commentary on this bill, both among senators in this chamber and in the media. We have all heard enough about the Reform Act to know what this bill is about. For that reason, I will not get into too much detail about the bill. I want to discuss the intent of the bill and some of the more controversial elements of it.

It's no secret that the power of party leaders has significantly increased over the past 50 or 60 years at the expense of individual members of Parliament. The intent of the Reform Act is to re-empower individual caucus members so that Canadians can be confident that their elected MPs are representing their constituents without being rigidly controlled by party leaders.

The question we need to ask ourselves as we review this legislation carefully is this: Will this bill accomplish the intent without any significant unintended consequences?

Senator Fraser is the critic for this bill, and I have to say she makes excellent points in her speech at second reading. However, I do take issue with a few of the points that she made.

First, Senator Fraser argued that citizens will be discouraged from engaging in politics because the increase in members' powers is effectively being traded for the power of average party members.

I don't believe this argument because I believe that citizens — and particularly those citizens that are politically engaged — understand that they elect members of Parliament specifically to represent them.

Citizens confer a certain amount of decision-making power on MPs. If MPs make decisions that do not fall in line with citizens' beliefs, then that MP does not win the riding nomination in the next election — or they are simply not re-elected.

• (1620)

Senator Fraser also made the point that blanket legislation that covers all political parties is concerning. To that I say that it is the nature of this kind of legislation. Any parliamentary reform legislation must cover all political parties to ensure that no party gains any advantage as a result.

Changing the legal requirement of party leaders to sign off on party candidates was another concern of Senator Fraser's. She explained that this change was "an illusory one" because party leaders will simply control the people who do make the decision on who is approved as a candidate.

Colleagues, I can't accept that. It's like saying that there are some people who will try to abuse the system regardless of a positive change. It's just not an adequate justification for throwing that positive change out the window.

It is a fact that no other Western democracy legally requires a party leader to approve party candidates. If this legislation passes, this will be a positive change that would bring Canada in line with other Western democracies.

Senator Fraser and others take issue with the definition of "caucus" in this bill. The only way for me to refute this conjecture is to reiterate the fact that the Senate and the House of Commons are two separate and independent chambers. To define a House of Commons caucus in a way that includes the Senate, it has been determined, would likely be unconstitutional.

Now, I will address the clause that I think senators have the biggest problem with: the 20 per cent threshold for triggering a leadership review.

Senator Fraser — and I'm sorry I keep mentioning her — and others as well have argued that this clause is destabilizing for party leaders. We all understand that party leaders have difficult decisions to make and that it is impossible for those decisions to make everyone happy. For this reason, opponents argue that this legislation will empower malcontents and the ambitious.

I have a few points to make on this. First, I would remind my colleagues that the actual threshold for a leader to be forced to step down is 50 per cent, not 20 per cent. So it is not that 20 per cent of people can overthrow a leader.

Second, I think that viewing this legislation as "empowering the malcontents" misses the point. This legislation isn't just empowering those people who have a problem with hard decisions; it's empowering all of the other MPs in the caucus as well. If the malcontents can scrape together 20 per cent of MPs to trigger the larger vote, then the 80 per cent of MPs who realize that the Prime Minister or a leader has a tough job and has to make tough decisions can clear the air and silence the critics with a vote.

On the other hand, if more than 50 per cent of MPs in a caucus believe that the Prime Minister or the leader of an opposition or the leader of a political party isn't making decisions that are in the best interest of Canadians, then there should be a mechanism for removing them. This does not mean that MPs will exercise that option every time there are disagreements in caucus. It just means that option is there for cases where the party leader is no longer acting in the best interest of Canadians.

There are times when everyone knows that a party leader needs to step down — except, seemingly, the leader himself or herself. In these situations, political parties and constituents are not in the same position that MPs are. MPs are in that moment uniquely qualified to shepherd the leader along toward the exit.

The final and perhaps most important point that I want to make about the reform act is that it is opt-in legislation. This bill is a template for how a caucus can take their unspoken, de facto rules around how their group is organized and write them down in a more transparent way.

If this legislation passes, all that a caucus has to do is vote yes or no on whether or not they want this template. If they vote no, then they can write their own rules. If they don't want to write their own rules, then they can maintain the status quo — where their rules will remain unwritten and de facto.

Given this flexibility, Bill C-586 is actually an incredibly modest attempt at bringing additional transparency to the political system. But in my view, colleagues, it's a step forward. As senators, we should welcome and support legislation that encourages even a small step towards transparency in our political system.

In closing, I want to say that I believe this legislation accomplishes its intent — to provide an optional template for writing down some of the ad hoc and unwritten rules in a more transparent way. This will grant individual MPs more power in caucus.

Surely this optional template is worth a vote in caucus at the start of every Parliament. Surely this bill is worth a vote in this chamber before we go home.

Regardless of your opinion on the quality of the template provided by this bill, surely we can all get behind the additional transparency that this bill offers to the system. Thank you, colleagues.

**Hon. Larry W. Campbell:** Would the honourable senator take a question?

I have been following this bill, probably not as closely as I should, but the question I asked myself is if we receive a bill from the other place that has the kind of support that this has across parties from the other place, except for the constitutional role that we play in having to pass a bill, why would we be messing in their nest? I don't understand what we have to do with this. It would seem to me that this is a House of Commons problem, even given that we don't have a national caucus to sit in on this side. I don't understand that.

Can you explain to me why we should be fighting this when we see such a huge outpouring across parties from the other place?

**Some Hon. Senators:** Excellent question.

**Senator Tannas:** An excellent question. I think we have a role, frankly the same role we have with all legislation that comes through here. From my perspective, one of the biggest reasons why I support this bill is precisely that. It has been driven by members of Parliament, specifically around the way in which they would like to conduct themselves, and it is overwhelmingly supported.

I'm with you, senator.

(Debate suspended.)

[ Senator Tannas ]

## THE ESTIMATES, 2015-16

### MAIN ESTIMATES—TWENTY-FIRST REPORT OF NATIONAL FINANCE COMMITTEE TABLED

Leave having been given to revert to Presenting or Tabling Reports from Committees:

**Hon. Joseph A. Day:** Honourable senators, I have the honour to table, in both official languages, the twenty-first report of the Standing Senate Committee on National Finance on the expenditures set out in the Main Estimates for the fiscal year ending March 31, 2016.

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

## REFORM BILL, 2014

### BILL TO AMEND—THIRD READING— DEBATE CONTINUED

Leave having been given to revert to Other Business, Commons Public Bills, Third Reading, Order No. 2:

On the Order:

Resuming debate on the motion of the Honourable Senator Tannas, seconded by the Honourable Senator Oh, for the third reading of Bill C-586, An Act to amend the Canada Elections Act and the Parliament of Canada Act (candidacy and caucus reforms).

**Hon. John D. Wallace:** Honourable senators, it would be customary for the critic of the bill to speak following the mover and the sponsor, but Senator Fraser has agreed that I can speak in her place —

**Senator Fraser:** Not in my place, but at this time, sure.

**Senator Wallace:** I thought that's what you were agreeing to. Thank you very much, Senator Fraser.

I rise to speak in support of Bill C-586, which was introduced in the House of Commons by Member of Parliament Michael Chong.

• (1630)

Honourable senators, we are long overdue to begin the process of renewal of our democratic institutions in Canada, and the need for this should be well recognized and appreciated in particular by the members of this Senate Chamber.

In this regard, I believe that Bill C-586, commonly referred to as the reform act, is a modest yet very significant first step forward.

What is the objective of Bill C-586? Why did Mr. Chong introduce this bill in the house in the first place?

In responding to these questions, I wish to bring to your attention the following statement contained in a letter I received from Mr. Chong, dated February 25, 2015, and I believe many of you may have received a similar letter as well.

The Reform Act is an effort to strengthen the role of elected MPs in the House of Commons. The proposals in the Reform Act would reinforce the principle of responsible government, making the executive more accountable to the legislature and ensure that party leaders are more accountable to party caucuses. Under the Reform Act party caucuses in the House of Commons would have the opportunity to determine how they will govern themselves.

So, colleagues, there are key questions to be answered. Is the reform act, Bill C-586, necessary? Is there a problem, a significant problem, within the current state of our Canadian democracy and, more particularly, within our federal democratic institutions of government that Bill C-586 seeks to address?

In this regard, I am reminded of the views expressed by Mr. Chong during his third reading speech in the house on February 3, 2015. At that time, he stated categorically that, in his opinion, members of Parliament do indeed have a problem in the House of Commons and that this problem should not be news to parliamentarians.

The fundamental problem that Mr. Chong identifies is what he refers to as the centralization of power in party leaders. He also makes it clear that he does not consider this problem to be the result of any one party or any one leader; rather, he sees it as one that, in his words, has been decades in the making.

Mr. Chong very forcefully expressed his view that now is the time for parliamentarians to take action as Canadians are becoming increasingly disillusioned with the functioning of our democratic institutions, and it is these institutions, of course, that provide the foundation for all prosperity and stability Canadian citizens enjoy within our society.

As he points out, at the heart of our democratic institutions is a series of checks and balances of power and that is why he believes Bill C-586 to be of such importance. It proposes to strengthen these checks and balances within our system of democratic government.

Simply stated, Bill C-586 proposes to rebalance power between the elected members of Parliament and their party leaders.

A criticism that has been publicly directed by some toward Bill C-586 is the inclusion of the 20 per cent threshold by which elected party caucus members could initiate a leadership review within their respective party caucuses. Colleagues, I believe this particular criticism to be a total “red herring.” I would also point out that this requirement to achieve the 20 per cent threshold was initially proposed by Mr. Chong to be 15 per cent, but after considerable discussion and debate among the members of Parliament of all parties in the house, a compromise consensus was reached at 20 per cent.

Once again I say to you that, in my opinion, criticism of this 20 per cent threshold is a “red herring” in that under Bill C-586 that threshold would not be a condition or a requirement that would forever be forced upon any or all of the federal party caucuses.

In this regard, I refer to the words of Senator Tannas, Senate sponsor of Bill C-586, during his second reading speech on April 23, 2015:

Each party caucus will have the option to either keep these rules, as set out in this bill, or to opt out of and replace these rules with their own explicit written rules.

Senator Tannas went on to say:

... the 20 per cent rule in this bill will mean more accountability by caucus leadership to caucus members. However, it is not a requirement that this rule be adopted by all parties. Rather, this legislation requires that all party caucuses vote on whether or not they will adopt this rule after every general election. If the 20 per cent rule in the bill is not adopted, then each caucus is free to propose another rule in its place. If the 20 per cent rule is rejected and no modified rule is adopted, then the status quo will be maintained.

The significant issue, colleagues, the truly significant aspect of Bill C-586 as regards party leadership, is the requirement for a secret ballot vote of a party's elected caucus members, which would require the support of the majority, that is, more than 50 per cent, of the party's elected caucus members in order to either endorse or replace their party leader.

In today's day and age, I do not believe — and it is apparent that the overwhelming majority of the present members of the House of Commons also do not believe — that it would be unreasonable by any standard to require a party leader to have the majority support of his or her elected party caucus members.

Honourable senators, I wish to remind you that at third reading in the House of Commons, 260 members of Parliament voted for Bill C-586 and only 17 voted against. I believe the bill received this overwhelming support in the house because of the critical importance of the issues it addresses and the clearly recognized need among elected members of Parliament to respond to and address these issues, as well as the tenacity, perseverance, personal credibility and political courage of Michael Chong.

Bill C-586 is the result of extensive debate, discussion, compromise and ultimate consensus reached among the overwhelming majority of NDP, Liberal and Conservative members of Parliament.

Honourable senators, of the 260 members of Parliament who voted in favour of Bill C-586 at third reading, I draw your attention to the following: Those who voted in favour included 31 Conservative cabinet ministers, including Pierre Poilievre, Minister of Democratic Reform, as well as senior ministers Joe Oliver, Lisa Raitt and Rob Nicholson. No cabinet ministers voted against.

Those who voted in favour of Bill C-586 at third reading included party house leaders Peter Van Loan, Conservative; Peter Julian, NDP; and Dominic LeBlanc, Liberal; as well as party caucus chairs Guy Lauzon, Conservative; Irene Mathysen, NDP; and Francis Scarpaleggia, Liberal; party whips Nycole Turmel, NDP; Judy Foote, Liberal — Conservative John Duncan was absent for the vote — and party leaders Thomas Mulcair, NDP; and Justin Trudeau, Liberal. Prime Minister Harper was absent for the vote.

Being from the province of New Brunswick, I would also draw to the attention of my Maritime Conservative and Liberal colleagues the fact that all Conservative, NDP and Liberal members of Parliament representing constituencies in the provinces of New Brunswick, Nova Scotia and Prince Edward Island voted in favour of Bill C-586 at third reading, with the exception of Keith Ashfield, who was not present because of illness, and Peter MacKay, who was absent at the time.

Honourable senators, first and foremost, Bill C-586 directly impacts the elected members of Parliament. The careers of members of Parliament and their ability to achieve as much success as possible in doing their jobs, in performing their roles and in fulfilling their responsibilities are highly dependent upon the choice and the performance of their party leaders.

For obvious reasons, this is far less so in the case of senators.

Also, in terms of party leadership, other avenues and opportunities do exist and are available for political party members to also be involved in the choosing of their party leader.

Once again, colleagues, I believe that Bill C-586 has gotten to this point because of, number one, the importance and significance of the issues that it addresses as regards the roles, responsibility and accountability of elected members of Parliament and their party leaders; and, number two, the perseverance and personal credibility of Michael Chong.

• (1640)

Make no mistake about it: It is Michael Chong's bill that has received overwhelming cross-party support in the House of Commons. If amended in this chamber, this will no longer be his bill, the one for which he was able to achieve such overwhelming cross-party support in the house. A Senate-amended bill in this particular case would be seen for what it is — a Senate bill that does not represent and follow the explicit desires clearly expressed by the elected members of the House of Commons.

In the current environment and considering all the discussions, debates and compromise that have taken place in the house to get Bill C-586 to this point, I strongly believe that a Senate amendment of this bill would seal its doom. I have great concern that a Senate-amended bill would not be dealt with by the House of Commons within the very limited time that remains in this parliamentary session. Furthermore, it would not receive the cross-party support of all parties within the house. Maintaining that cross-party support in this particular case is highly significant and critically important.

Honourable senators, at the heart of Bill C-586 is the beginning — and I repeat, “the beginning” — of a long overdue process of renewal of our democratic institutions. I believe we are well beyond the point of simply talking about the need for such a process. Now is the time to actually do something about it.

Honourable senators, an unamended Bill C-586 and the outstanding efforts of Michael Chong deserve our support.

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

**Hon. James S. Cowan (Leader of the Opposition):** Will Senator Wallace take a question?

**Senator Wallace:** Yes.

**Senator Cowan:** I agree with much of what the two senators have said. My concern is not so much giving more power to individual members of the elected House of Commons vis-à-vis their leadership. My concern is as a party member, and at the end I will ask you to comment on this because you are a member of a political party as well. I guess all major political parties in this country have evolved beyond the point where caucus members select and deselect their leadership. In the case of my party, not only do the party members get to vote for the leader but also party supporters, as defined, get to vote for the leader.

It seems a little odd that we would have a situation where a vast number of Canadians who are supportive of a political party get to select that leader, whatever the position of the elected members, while then you could have a minority of elected members of the House of Commons who could challenge that. My problem is not that we as senators are not included in that group. Is it not odd that we would be asked to support a bill that would give the power to a small minority of members of one house of Parliament to at best destabilize the leadership of a political leader and at worst cause that leader to fall? I would ask for your comment.

I suggest that this is more particularly relevant in the case of opposition. It's clearly not as much of an issue in the case of a government party as in the case of opposition parties. You will know as well as I of situations where caucus unrest has destabilized the leadership of a political leader chosen not by them but by members of the political party. I have that concern.

I realize that under the bill, a caucus can opt in and out, but it seems that this issue of leadership review ought more appropriately to be placed in the constitutions of the political parties than in legislation, which is in place for all parties. It's not the political parties that will opt in or out but the elected members of the House of Commons.

That's my comment. Do you have a comment on that, Senator Wallace?

**Senator Wallace:** Yes.

**The Hon. the Speaker *pro tempore*:** Senator Wallace, do you require five more minutes?

**Senator Wallace:** Yes, please.

[ Senator Wallace ]

Thank you, Senator Cowan. There is no question that as members of political parties we all have been involved in the choosing of party leaders. It's something obviously that is taken very seriously.

With this bill, I have confidence in the elected members of Parliament, who once again have their positions because their constituents have elected them. They have put them there to act responsibly and on their behalf. I'm confident that members of Parliament would exercise their abilities and rights in a reasonable way under this bill.

There are circumstances that MPs are well aware of but constituents may not be aware of that, in the best interests of the party, require action to be taken. The individuals best able to do that are the members of Parliament. They are in Ottawa and they are dealing with the issues day to day that are important to their regions. There are times when those members of Parliament, I believe, must have that ability to take action if they feel that there is a serious question about their party leader.

When I say that, I look at my colleague Senator Mockler beside me. He was affected by it more directly than I because I was not in Fredericton at the time. I remember well the final years of the Richard Hatfield government in New Brunswick. The party was in poor shape and the leader was not going to relinquish his position. It was obvious that the party would go in the wrong direction. The result of that election, as you are well aware, was 58 Liberal seats and 0 Progressive Conservative seats.

In exceptional circumstances, members of Parliament should have the ability to step up and make the difficult decisions that have to be made.

**Senator Cowan:** Honourable senator, I understand your point, but certainly the party I belong to has a mechanism in place for leadership review. I would suggest that might be a better mechanism than this bill.

I also suggest for your consideration that not all parties have equal representation across the country. My party now does not have representation in the House of Commons for a number of provinces. Who speaks for the members of the Liberal Party and supporters of the Liberal Party in that province or those provinces who were involved in the selection of that leader? It's possible under this bill for that leader to be destabilized or removed without input from them. Yet, they would be represented in the processes set out in the party constitution to deal with this very issue.

I also suggest that members of Parliament, while they represent a political party, represent the constituents in their ridings more than they represent the members of their political party in that riding.

**Senator Wallace:** Members of Parliament, as we all know, have huge responsibilities and roles to play. The expectations that the public has of their members of Parliament is very high. The rationale behind the bill is that the elected members of Parliament must have the ability to do the job they have been

elected to do. That is more than simply standing up when you are told to do so and following direction. There is that. We know that's about being part of a team.

His concern, and I agree with him, is that the balance of power and roles and responsibilities between party leaders and the elected members is not where it should be. I think it requires adjustment to get it back where it should be so that the members of Parliament have the ability to do their jobs. One aspect of that would be to have the ability, in the rare circumstance, to question the leadership of their party.

**Hon. Anne C. Cools:** I thank Senator Wallace for his statement. I wish him to know that he has fully convinced me and I shall support Michael Chong's bill. Since we only have 11 seconds, I will simply say that the honourable senator has been very convincing and persuasive and I thank him.

• (1650)

**Hon. Bob Runciman:** Honourable senators, I will make a few brief comments in support of my colleagues, Senators Wallace and Tannas, and in support of Bill C-586.

At the outset, I think it is worth noting that many senators on both sides of the aisles who have served in elected office are supporting this bill. I suspect that there are at least two reasons for this. First, perhaps and just perhaps, they are more alert to the political and reputational damage that defeat of this legislation will inflict on an institution already in crisis. Second, having held elected office they very much appreciate the need for reform and the desire from grassroots supporters for this kind of change. I can't obviously speak for others, but those are my two reasons.

The political and reputational damage to this institution is my key concern here. I have to say that I find it incomprehensible that this chamber, either through a negative vote or amendment, would consider killing legislation that provides modest democratic reform to the elected house. This legislation was supported by an overwhelming number of members of Parliament from all three parties — and this was a no-Friday afternoon voice vote. It was a standing recorded vote.

For the past year or more, we've been hearing a great deal about finding ways to restore the Senate's damaged reputation; these were good ideas from good people whom I believe genuinely care about this institution. Some of those same people are now suggesting that we defeat Bill C-586. That to me is nothing short of bizarre. Killing Bill C-586 throws all those fine words out the window. What does all that talking, planning and strategizing mean if we defeat this bill? If we fail to understand the role this legislation can play in improving governance for Canadians, what it means to me is that there is a profound misunderstanding of the serious negative consequences for an already fragile institution.

Many people, who support the Senate — despite the recent turmoil — and the role it plays will see this as a betrayal and that already small cadre of Canadians who support us will shrink further.

On the second reason — the experience of elected office — I can probably speak for hours on the need for reform, but I will confine my comments to just a few observations, with a couple of examples from some of my experiences in my past life.

A few of the opponents of the bill have contended that it will dismiss the will of the grassroots. I have to say that I find that position completely at odds with my experience. I have been involved in Conservative politics since my late teens. If there is an issue that always strikes a chord with the grassroots, it's the empowerment of MPs and MPPs to better represent their constituents.

One of the reasons that I won the 1981 Progressive Conservative nomination in the riding of Leeds in Ontario was my commitment to stand up for what I and my constituents believed in. Once in office, I learned very quickly that on our own, without policies or protocols that encouraged some degree of independence, it's a very tough and lonely row to hoe.

In my case, a few months after my election, I publicly disagreed with then Premier Bill Davis' decision to buy an oil company to provide the government with, as Mr. Davis put it, "a window on the industry." That was a decision taken not only against Conservative values, but also minus any consultation with the Progressive Conservative caucus. My opposition to that decision had one cabinet minister ready to punch me out, while the Provincial Treasurer was whispering in my ear — with the emphasis on "whispering" — "Keep up the good work." I presume that he was not prepared to say it openly for fear of retribution.

In 1984, the same Premier Davis called us into an emergency caucus meeting to tell us that he, and he alone, had decided to extend full funding to the province's Catholic school system. He informed a shocked caucus that he wasn't going to allow discussion, that it was his decision to make and we were ordered by the whip to give the Premier a standing ovation when he went into the legislature a few minutes later to make the announcement.

Whatever you think of the merits of that decision, the reality is that the elected caucus was shut out of a decision that was not part of the 1981 election platform and was contrary to the position the party had taken in the previous provincial campaign. That unilateral decision ultimately contributed to the end of the 42-year reign of the Ontario Progressive Conservatives in government in Ontario. Thousands of Conservatives sat on their hands in the 1985 election, ending the careers of many long-serving and dedicated MPPs who played no part in that decision.

In a more recent example, and I've heard this from all sorts of sources, following an announcement that the Ontario Government was pulling slot machines out of horse racing tracks, the then Leader of the Opposition declared at a caucus meeting that the caucus would remain silent on the issue and that no discussion would be allowed. This was despite the fact that thousands of jobs could be lost in small towns in rural Ontario, who are core supporters of Ontario PCs.

At the federal level, we recently saw Justin Trudeau declare that anyone who holds pro-life views will be banned as a candidate for the party. That unilateral declaration prompted pro-life Liberal

MP John McKay to express concerns — comments that he was later cowed into backing away from. Of course, Mr. Trudeau and his party are now facing lawsuits based on allegations that he interfered in two Ontario nomination battles, despite his promise not to do so.

Over the years, we have seen NDP leaders rule with an iron fist when dealing with issues like the long-gun registry, compelling MPs to ignore, in some cases, the overwhelming sentiment in their ridings.

In preparing for this debate and the argument surrounding the interests of the grassroots, I took a look at what the policy platforms of Conservative parties have said in the past. I would encourage other senators to do the same. Those platforms speak to the need for free votes, the need for MPs to be accountable to the people who elect them, and other processes of needed parliamentary reform. In short, this is what Bill C-586 is all about.

When I hear senators claim that they are opposing this bill to defend the interests of the grassroots, then I can only shake my head. To believe this, you have to ignore the thousands of Canadians who have contacted our offices in recent weeks urging us to support this bill. To suggest that senators have a better understanding of the grassroots than the 260 elected members of Parliament who voted in favour of this bill is more than a little ironic.

Bill C-586 is no panacea when it comes to democratic reform. As Senator Tannas emphasized, it's a modest bill with provisions for voluntary participation by caucuses. It's a start and its passage will send out a positive signal to Canadians increasingly turned off by politics at both the federal and provincial levels. Its passage in this chamber will speak well to sober second thought in the wake of speculation that the bill might be defeated, a much-needed and welcome sign that, yes, Canadians, we are listening.

I encourage all senators to support Bill C-586 and ensure its passage prior to the summer adjournment. Thank you Mr. Speaker.

**Some Hon senators:** Hear, hear!

**Hon. Grant Mitchell:** Thank you, Senator Runciman, for a very compelling and passionate speech. Clearly, you feel this deeply and that's not lost on me and I'm sure it's not lost on our colleagues. I say to Senator Wallace and similarly to Senator Tannas — all great speeches.

One of the themes that seems to ripple through them is that a lot of the argument for support hinges on the idea that it received majority support, at least, considerable support by elected representatives.

• (1700)

Senator Runciman, Bill C-279 received majority support by elected representatives, as well. It wasn't just a voice vote; it was registered vote. Eighteen Conservative MPs and all opposition MPs voted for Bill C-279. Your leadership to this point won't even allow a vote on it.

[ Senator Runciman ]

I have two questions: First, will you push to get a vote on it, and, second, would you vote for it for the same reason?

**Senator Runciman:** I don't think that's really relevant to the comments I made with respect to Bill C-586, but I will say that we deal with each piece of legislation on its own merits, or lack thereof.

Certainly I will consider that bill. As you know, I sat through the hearings on that bill, as you did, and it certainly has its merits. I will make that consideration when the vote is called.

With respect to this legislation, it's a totally different animal, if you will. As I said in my comments, it essentially deals with the members of the House of Commons. Again, I believe we, as a body, should be supporting that legislation.

**Hon. David Smith:** I'm speaking off the cuff on this, but it's a subject I'm always very fascinated by. I want to indicate I intend to support this bill.

Why wouldn't we pass a bill about how they run their place — one that went through the Commons with the support of all three parties? I think only about 17 people didn't support it. If we had a bill go through here on how we run this place and it got vetoed over there, you can imagine the reaction that might occur in the Red Chamber.

**An Hon. Senator:** Happens all the time.

**Senator Smith:** Well, I like this bill, and I like the direction of it. I am the first to admit it is not perfect. Few things in life are. I know some people have reservations about the way leadership might be challenged and things like that, but I think it is moving in the right direction.

In recent years, being a member of Parliament — and I was one over 30 years ago — has become more robotic than ever. That's regrettable. MPs should have much more ability to say what they want, take a little different position sometimes, and on key, crucial things, you hang in for your team, but they should have more independence in figuring out what their priorities are going to be when they're in the Commons.

Virtually everything is whipped these days. In a way, it's kind of ironic that members of the mother of parliaments, the U.K. Parliament, have much more flexibility to express different points of view. That's good and healthy.

One of the things I really like over there is where you have the three line whips; in other words, there are three different categories. Yes, if something is a budget or a confidence matter, everything is out. But apart from that, members can show independence and take a bit of a different position because it's not a confidence matter, and you want to get the expression of how members of all parties really feel about things.

I think this is the right direction. We have to respect that this is them talking about how they want to get themselves organized, and all three parties supported it except for 17 people. I know it's not perfect, but it's moving in the right direction, and I will be voting for it. Thank you.

(On motion of Senator Fraser, debate adjourned.)

[Translation]

## INCOME TAX ACT

### BILL TO AMEND—THIRD READING— POINT OF ORDER—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Dagenais, seconded by the Honourable Senator Doyle, for the third reading of Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations).

**Hon. Claudette Tardif:** Honourable senators, I rise to speak to the point of order on Bill C-377. I would like to thank Senator Bellemare for raising this point of order, which I believe is entirely justified.

[English]

In my opinion, Bill C-377's provisions to provide for the reporting and public disclosure of certain financial transactions and administrative practices of labour organizations envisions a new function and purpose within the Canada Revenue Agency. As such, the terms and conditions of the Royal Recommendation that authorizes the CRA's current spending are being altered. Since a new and distinct authorization for spending is being permanently created, this will require a Royal Recommendation, which this bill is clearly lacking.

Past Speakers have ruled that legislation imposing additional functions on bodies funded by public money, if the functions are substantially different from their existing functions, requires a Royal Recommendation.

A Speaker's ruling on Bill S-204 in February 2009 specified that the procedural authorities indicate that four criteria must be considered when evaluating whether a bill requires a Royal Recommendation: first, if a clause directly appropriates money; second, if there is a provision allowing a novel expenditure not already authorized in law; third, if the bill broadens the purpose of expenditure already authorized; and, last, if a measure extends benefits or lessens qualifying conditions to receive a benefit. In all four cases, the bill would need a Royal Recommendation.

Two of the criteria apply to Bill C-377: allowing a novel expenditure not already authorized in law and broadening the purpose of expenditure already authorized.

The bill creates a new purpose for the Canada Revenue Agency in terms of a public reporting function that has no obligatory ties to taxation under the Income Tax Act. The bill would add an additional purpose by creating what the CRA characterizes as “a comprehensive system that includes electronic processing, validations, and automatic posting to the CRA Web site.”

Honourable colleagues, we must ask ourselves how Bill C-377 contributes to achieving any objectives of the Income Tax Act. Are the provisions of the bill rationally and functionally connected to the existing provisions of the Income Tax Act? The answer is no.

The Canada Revenue Agency is responsible for applying and interpreting the Income Tax Act. The primary goal of the agency, as Canada's tax administrator, is to ensure that taxpayers comply with their tax obligations and that Canada's tax base is protected.

Bill C-377 is strictly a function of publicly reporting information on one specific group of individuals — in this case, labour organizations and labour trusts. Furthermore, those reporting requirements are outside of any direct obligations that those organizations or their members have under the Income Tax Act.

When officials from the CRA appeared at the Standing Senate Committee on Banking, Trade and Commerce, they confirmed the bill was purely disclosure. Honourable colleagues, given that Bill C-377 would create an additional purpose and new program requirements that would amend the Income Tax Act and modify the purpose of the CRA and therefore result in new expenditures, the bill must be accompanied by a Royal Recommendation.

Your Honour, I wish to draw your attention to a Speaker's ruling on February 27, 1991, regarding Bill S-18, An Act to Further the Aspirations of the Aboriginal Peoples of Canada. Our Speaker at that time found that provisions imposing additional functions on bodies funded by public monies require a Royal Recommendation if the functions are substantially different from their existing functions.

As we look at the status of this bill, it is useful to recall its legislative history. The first incarnation of Bill C-377 was Bill C-317. That bill tied the reporting function of labour organizations to the enjoyment of the tax-exempt status offered them in paragraph 149(1)(k) of the Income Tax Act. Any labour organization not in compliance with the financial disclosure requirements outlined in Bill C-317 would lose its tax-exempt status.

Bill C-317 also sought to affect the tax treatment of union members if their union did not comply with those requirements by not allowing union dues to be tax-deductible.

• (1710)

Your Honour, I would draw your attention to a Speaker's ruling in the other place concerning Bill C-317, delivered on November 4, 2011. The ruling held that Bill C-317 had not respected the Standing Orders of the other place because to remove a tax exemption was to, in effect, raise taxes, which would

require a ways and means motion that bill did not have. The Speaker's ruling forced Mr. Hiebert to remove the parts of Bill C-317 that tied the reporting requirements to the enjoyment of tax exempt status by labour organizations and tax deductibility of dues by their members.

Mr. Hiebert complied with the ruling, removed the offending parts and the bill then became Bill C-377. However, after deleting these sections, the legislation no longer had any direct tie or connection to taxation or benefits provided by a labour organization or its members. A labour organization or trust that fails to comply with the requirements of Bill C-377 will not lose its tax exempt status and its members will not lose the tax deductibility on their union dues; therefore, the analogy to charities is fundamentally flawed.

As I've stated, this bill creates a totally new purpose or function by the CRA in its capacity as the administrator of the Income Tax Act. As such, it requires a Royal Recommendation. The precedents are clear.

As mentioned by our honourable colleague Senator Bellemare, who carried out extensive research on the topic, the monies required to implement this bill are enormous. This is not an ancillary expense but includes data gathering — costs that are new and outside the agency's mandate. As well, 18,300 labour organizations will be required to register with the CRA, setting up, in fact, a data registry.

The degree of detailed information this bill requires is far broader in scope than any other requirement on any other entity that is publicly disclosed by government. This creates a new and distinct function for the CRA, which therefore requires a Royal Recommendation.

It is estimated that the direct costs of implementing Bill C-377 could be as high as \$139 million and then \$38.4 million every year thereafter for maintenance. These monies were not provided for in the budget estimates of this year. Treasury Board did not provide for this extra expense. This bill needs a Royal Recommendation, which could have and should have accompanied the bill from the House of Commons.

Your Honour, let me draw your attention to a previous Speaker's ruling in the other place on October 20, 2006 regarding Bill C-286, An Act to amend the Witness Protection Program Act (protection of spouses whose life is in danger). The bill proposed to expand the Witness Protection Program to include persons whose life is in danger because of acts committed against them by their spouses. The Speaker explained that the bill proposed a protection that does not currently exist under the Witness Protection Program. In doing so, the bill proposes to carry out an entirely new function. As a new function, such an activity is not covered by the terms of any existing appropriation. New functions or activities must be accompanied by a new Royal Recommendation.

Your Honour, I draw your attention to another Speaker's ruling in the other place, this time on November 8, 2006 regarding Bill C-279, An Act to amend the DNA Identification Act (establishment of indexes). I believe the particulars on this issue have a lot of similarities to the case at hand. Bill C-279 would



have created a new purpose for the DNA Identification Act and establish new indexes in the DNA data bank, similar in context to the new database that would be created under this bill for unions.

The Speaker explained that there was an addition of a new purpose to the DNA Identification Act, which was to identify missing persons via their DNA profiles. The Speaker said in his ruling that:

Amending legislation that proposes a distinctly new purpose must be accompanied by a further royal recommendation.

Your Honour, let me conclude by saying that unlike its failed predecessor, Bill C-317, the reporting requirements and the public disclosure imposed by Bill C-377 in no way are linked to the imposition or levitation of taxes, levies or tariffs. Instead, this bill seeks to use the powers of the Income Tax Act to solely provide public information that would constitute a new function or activity. In addition, the bill clearly creates a new labour relations function of the CRA that not only does not exist presently but duplicates this function that is already happening at the Canada Industrial Relations Board, because this bill creates a new function and purpose at the CRA.

I respectfully submit to you, Your Honour, that Bill C-377 should not be allowed to proceed because it lacks the necessary Royal Recommendation.

(Debate suspended.)

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, it being 5:15 p.m., pursuant to the order adopted by the Senate on June 4, 2015, I must interrupt the proceedings for the standing vote on third reading of Bill C-51. The bells to call in senators will be sounded for 15 minutes so that the vote takes place at 5:30 p.m.

Call in the senators.

• (1730)

## ANTI-TERRORISM BILL, 2015

### BILL TO AMEND—THIRD READING

**The Hon. the Speaker:** Honourable senators, it was moved by the Honourable Senator Runciman, seconded by the Honourable Senator Boisvenu:

That Bill C-51, An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security

Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts, be read the third time.

All those in favour of the motion please rise.

Motion agreed to on the following division:

## YEAS THE HONOURABLE SENATORS

Ataullahjan  
Batters  
Bellemare  
Beyak  
Black  
Carignan  
Dagenais  
Doyle  
Eaton  
Enverga  
Fortin-Duplessis  
Frum  
Gerstein  
Greene  
Lang  
LeBreton  
MacDonald  
Maltais  
Manning  
Marshall  
Martin  
McInnis

McIntyre  
Mockler  
Nancy Ruth  
Neufeld  
Ngo  
Ogilvie  
Oh  
Patterson  
Plett  
Poirier  
Raine  
Rivard  
Runciman  
Seidman  
Smith (*Saurel*)  
Stewart Olsen  
Tannas  
Tkachuk  
Unger  
Wallace  
Wells  
White—44

## NAYS THE HONOURABLE SENATORS

Campbell  
Chaput  
Cools  
Cordy  
Cowan  
Dawson  
Day  
Downe  
Dyck  
Eggleton  
Fraser  
Furey  
Hervieux-Payette  
Hubley

Jaffer  
Joyal  
Lovelace Nicholas  
Massicotte  
McCoy  
Merchant  
Mitchell  
Moore  
Munson  
Ringuette  
Sibbeston  
Smith (*Cobourg*)  
Tardif  
Watt—28

## ABSTENTIONS THE HONOURABLE SENATORS

Nil

## INCOME TAX ACT

### BILL TO AMEND—THIRD READING—POINT OF ORDER—SPEAKER'S RULING RESERVED

On the Order:

Resuming debate on the motion of the Honourable Senator Dagenais, seconded by the Honourable Senator Doyle, for the third reading of Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations).

**Hon. Bob Runciman:** Honourable senators, I would like to present some new information to contribute to your consideration of Senator Bellemare's point of order regarding Bill C-377.

The Standing Senate Committee on Legal and Constitutional Affairs received an email from Tara Hall, the Director of Parliamentary Affairs of the Public Affairs Branch of the Canada Revenue Agency, dated May 19, 2015, the day after Senator Bellemare raised her point of order. It has a direct bearing on her argument.

In my capacity as chair of the committee I would ask for leave to table this information so it can be part of the record as you consider this matter.

The letter states that any costs associated with Bill C-377's implementation will come from the Canada Revenue Agency's existing budget: "We would like to confirm that the Agency will absorb these costs within our budget."

• (1740)

This confirms that no new appropriations are contemplated by the bill, and, therefore, a Royal Recommendation is not required. I should note that this is consistent with what the Canada Revenue Agency has said publicly on previous occasions, most recently, April 29 this year, in an article in *iPolitics*, which states:

In an email, a spokesperson outlined two possible scenarios. The first, the original figures of \$1.2 million for each of the first two years and \$800,000 a year ongoing based on a reporting population of 1,000.

The second scenario assumes, within the scope of the legislation, closer to 16,000 organizations could be affected. Though the startup costs would rise only slightly, \$2.6 million over two years, the ongoing cost to administer the program would nearly double to \$1.5 million annually.

The spokesperson also notes that if the bill becomes law, the costs associated with either scenario would come from the CRA's pre-existing budget.

The spokesperson the journalist is referring to is an official from the Canada Revenue Agency, and these figures are a long way from some suggested by Senator Bellemare, but I think the essential point is that the CRA has confirmed that it will implement this bill within its existing budget, which means the argument in favour of a Royal Recommendation is not relevant.

I would seek leave to table the letter.

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

**Hon. Senators:** Agreed.

**Hon. Yonah Martin (Deputy Leader of the Government):** Your honour, I rise to speak to Senator Bellemare's point of order of May 28, related to Bill C-377. Senator Bellemare raised a point of order suggesting that the Senate cannot consider Bill C-377 because it needs a Royal Recommendation.

Your Honour, I urge you to rule against this point of order. I draw to your attention that on December 6, 2012, the Speaker of the House of Commons, after considering a point of order on this matter, ruled that Bill C-377 did not require Royal Recommendation. Furthermore, the Speaker of the house considered some of the same issues put forward by Senator Bellemare in her remarks.

Senator Bellemare's first argument is that implementing Bill C-377 would force the Canada Revenue Agency to get new appropriations. As Senator Runciman just stated in his intervention on this point of order, the Canada Revenue Agency has stated publicly on numerous occasions that the costs associated with Bill C-377 will come from the Canada Revenue Agency's existing budget. In essence, the agency confirmed that Bill C-377 will not require any new authorizations, which means no Royal Recommendation is required.

Also, I wish to draw to your attention that the numbers given by the CRA have not changed dramatically since the 2012 decision.

Second, Senator Bellemare argues that Bill C-377 requires a Royal Recommendation because it creates a new mandate for the Canada Revenue Agency. However, in 2012, the Speaker in the House of Commons specifically ruled that Bill C-377 does not create a new mandate for the CRA and thus did not require Royal Recommendation.

Here is what the Speaker said:

In carefully reviewing this matter, it seems to the Chair that the provisions of the bill, namely the requirements for the agency to administer new filing requirements for labour organizations and making information available to the public, may result in an increased workload or operating costs but do not require spending for a new function per se. In other words, the agency, as part of its ongoing mandate, already administers filing requirements and makes information available to the public. The requirements contained in Bill C-377 can thus be said to fall within the existing spending authorization of the agency.

Your Honour, it is clear that the concern of whether Bill C-377 creates a new mandate was specifically addressed by the Speaker of the House of Commons already, and he ruled that the requirements of the bill are already part of the agency's

ongoing management. Again, there are no new facts that would make the Speaker of the House of Commons ruling now moot. The mandate of the CRA and the pith and substance of Bill C-377 have not changed since 2012.

I draw your attention also to a few specific provisions of the Income Tax Act to reinforce this point. Section 5 of the Canada Revenue Agency Act mandates the agency to support the administration and enforcement of program legislation.

Furthermore, section 220 of the Income Tax Act states:

The Minister shall administer and enforce this Act and the Commissioner of Revenue may exercise all the powers and perform the duties of the Minister under this Act. . . .

Such officers, clerks and employees as are necessary to administer and enforce this Act shall be appointed or employed in the manner authorized by law.

In essence, a Royal Recommendation is not required every time a bill creates a new charge, but only when the charge is new and distinct. It is clear that both section 5 of the Canada Revenue Agency Act and section 220 of the Income Tax Act provide for the general authorization for the provisions and requirements of Bill C-377.

Now, let me also refer to a Senate private member's bill to further illustrate this point. On October 6, 2009, Senator Ringuette introduced Bill S-241, an act to amend the Office of the Superintendent of Financial Institutions Act (credit and debit cards). The bill would have required the Superintendent of Financial Institutions to monitor and publish information relating to the use of debit and credit cards in Canada. It also required the superintendent to publish a report. Senator Ringuette proposed that a new subsection 3.1(2) be added stating that:

An additional purpose of this Act is to provide for an oversight body to monitor and make recommendations relating to the use of credit and debit cards in Canada, as provided for under section 7.2.

All of these were new requirements for the Office of the Superintendent of Financial Institutions to undertake. In his ruling on December 1, 2009, the Senate Speaker found that despite these new responsibilities and the contemplation of a new oversight body, Bill S-241 did not require a Royal Recommendation, stating:

The existing Office of the Superintendent of Financial Institutions Act has as its purpose "to ensure that financial institutions and pension plans are regulated . . . so as to contribute to public confidence in the Canadian financial system." Bill S-241 would add an additional purpose, relating to the use of credit and debit cards. This can be seen as directly relating to the act's existing purpose, since credit and debit cards are essential, indeed integral, parts of a modern financial system and the operations of financial institutions.

Bill S-241 does not contain provisions appropriating any part of the public revenue. The Superintendent of Financial Institutions already exists, supported by an office. The office is funded both by a standing appropriation and by assessments on regulated bodies. It is to this office that the new purpose would relate. It is the superintendent who would be mandated to consult with other already existing bodies.

Furthermore the Speaker stated:

The purpose to be added by Bill S-241 fits within the existing general roles and functions of the Office of the Superintendent of Financial Institutions. In light of the available information, the ruling is, therefore, that the point of order has not been established, and debate on the motion for second reading can continue.

The final argument Senator Bellemare raised was that Bill C-377 is somehow contradictory to Bill C-59, the balanced budget act. Your Honour, this argument is flawed. How Bill C-377 interacts with Bill C-59 has nothing to do with whether or not the former needs a Royal Recommendation. Balanced budget acts, in essence, require government on a yearly basis to balance their expenditures and revenues, including expenditures to fulfill the mandate and responsibilities pursuant to legislation.

A balanced budget act does not mean that legislators are precluded from passing new pieces of legislation that would add, subtract, expand or modify obligations of existing agencies and departments. Many provinces have balanced budget legislation, and they constantly pass new legislation that provides for new responsibilities and obligations.

In essence, while such legislation requires the balancing of expenses and revenues annually, individual expenditures and revenues can and do change continually. To suggest otherwise would essentially suggest that parliamentarians could not pass any new legislation once a balanced budget act comes into force.

Your Honour, Bill C-377 does not require Royal Recommendation. I ask that you rule against this point of order and that third reading of this bill proceed.

• (1750)

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Your Honour, I've now had the opportunity to consult some authorities, and I am confirmed in my view that this bill does in fact require a Royal Recommendation, for two basic reasons. There is a strong potential for this bill to be far more costly than was originally realized. Second, it creates a brand-new function, completely new, not only in the letter of the law, but in the spirit of the law for the Canada Revenue Agency.

Let me look first at costs. There have been a great many numbers tossed around. I find it interesting that the numbers that Senator Runciman quoted to us actually haven't changed from the CRA in the past three years. I don't know if they live in an inflation-free world or a new labour-settlement-free world, but

they're still using the same numbers they were using three years ago for what is now a radically different base to which the numbers would be applied.

Originally we all thought 1,000 organizations would be covered by this bill. Even the CRA now admits that it's actually more like 16,000. The Parliamentary Budget Officer, who has no axe to grind in this game, says that at a minimum 18,300 organizations would be covered by this bill, and this obviously affects the costs.

So the CRA says that if it's a thousand organizations, it would cost \$820,000 a year, ongoing costs after the system had been set up. If it's 16,000, it would be \$1.5 million ongoing. That's possible, but the fact is that the Parliamentary Budget Officer's report, although he was unable to extract from the CRA all the information that he needed, does raise the very serious possibility that the ongoing annual costs to run this system would be in excess of \$30 million a year. We're talking real money. This is not just ancillary spending.

Now, as Senator Runciman noted, the CRA says that it will cover the costs, whatever they may be, out of existing appropriations. That is not necessarily relevant, and it leads me directly to my second point.

Your Honour, it is well-established that if a bill changes or extends the function of an established agency or department, it needs a Royal Recommendation. My colleague Senator Tardif has already pointed out Speakers' rulings to you, as indeed has Senator Martin. I would reiterate the Speaker's phrase from February 24, 2009:

... a bill to broaden the purpose of an expenditure already authorized [by Parliament] will in most cases need a Royal Recommendation.

Indeed, the ruling on Bill S-241, to which Senator Martin referred, says very explicitly that in that case a Royal Recommendation was not needed because the purpose of the bill fit within the existing general roles and functions of the established agency. But the key thing is: Are we changing the function of the agency?

Erskine May, in the twenty-fourth edition on page 746, says:

If there is any doubt on the matter and it appears that the new proposal may entail an extension of previously enacted purposes of expenditure or an increase in the expenditure potentially liable to be incurred in pursuit of such a purpose, a money resolution . . . .

— the British way of saying Royal Recommendation —

. . . will be required.

Again, that's on page 746. On page 750, Erskine May says:

When a bill contains a provision extending the purposes of expenditure already authorized by statute (for example, by adding to the functions of an existing government agency or publicly funded body. . . . that provision will normally require authorization by money resolution.

Beauchesne says, in the sixth edition, citation 596:

. . . the communication, to which the Royal Recommendation is attached, must be treated as laying down once for all —

This would refer to the Royal Recommendation for the general appropriations to run the Canada Revenue Agency.

. . . the communication, to which the Royal Recommendation is attached, must be treated as laying down once for all. . . . not only the amount of the charge, but also its objects, purposes, conditions and qualifications. . . . an amendment infringes the financial initiative of the Crown not only if it increases the amount but also if it extends the objects and purposes . . . .

— of the initial appropriation.

O'Brien and Bosc say on page 834:

. . . a royal recommendation is required not only in the case where money is being appropriated, but also in the case where the authorization to spend for a specific purpose . . . .

— gathering of income taxes —

. . . is significantly altered. Without a royal recommendation, a bill that either increases the amount of an appropriation, or extends its objects, purposes, conditions and qualifications is inadmissible on the grounds that it infringes on the Crown's financial initiative.

— unless you get a Royal Recommendation.

So is this bill in fact changing the CRA's mandate and function? In my view, indubitably.

We all know, colleagues, that both the Income Tax Act and the Taxpayer Bill of Rights are founded upon the promise that Canadians' tax returns are confidential. The Taxpayer Bill of Rights says Canadians have the right to privacy and confidentiality.

Section 241 of the Income Tax Act says:

Except as authorized by this section . . . .

— and that mostly refers to criminal proceedings —

. . . no official or other representative of a government entity shall. . . . knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;

That seems clear to me. In fact, it's so clear that in order to get around this, Bill C-377 actually contains a clause that says despite that section of the Income Tax Act, the information from labour

unions that Bill C-377 would require shall be made available to the public by the minister, including publication on the departmental Internet site. There are not many ways to be more public than that.

Well, I suggest to you, colleagues, that requiring that information to be made public — on the Internet no less, in detail — turns that foundational principle of confidentiality upside down. If there is a clearer example of changing the purpose and function of an existing agency, I don't know what it is.

And I would remind you, colleagues, that the information that is to be made public is incredibly detailed. It goes into not only pay but bonuses and gifts. It requires detailed information per individual, not only of employees but of contractors. If you hold the photocopier toner contract for a labour union and it's worth more than \$5,000 a year, you have to tell the CRA, and the union has to tell the CRA, and the CRA has to tell the public not just how much money you got but anything else you got, and how much time you have spent on non-labour relations activities such as political activity.

• (1800)

Since when is the government's taxation agency allowed to publish data about individual Canadians' political activities? That again surely is a complete reversal of the foundational principles, objectives and mandate of the CRA.

This is not, in fact, a bill about taxes, as the CRA itself has admitted. It's about disclosure.

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

**Senator Fraser:** I have one more point to make, Your Honour, and that has to do with remedies.

**The Hon. the Speaker:** Honourable senators, it is now six o'clock. Pursuant to rule 3-31, I'm obligated to leave the chair until eight o'clock, when we will resume — unless it is your wish, honourable senators, to not see the clock.

**Some Hon. Senators:** Not see the clock.

**Senator Fraser:** Forgive me, Your Honour. I was carried away and not looking at the clock.

The question now is what to do.

Your Honour, you could rule that the bill is simply out of order and should be dropped. You could decide that we could, as has been done in the past, wait until a Royal Recommendation is provided. That could be done. Or you could — and I find this would actually be preferable — suggest that the bill would be acceptable if we amended it to insert a section to say that this bill will take effect only when the relevant expenditures have been recommended by the Governor General and appropriated by

Parliament. That has been done in the past. It has been a very convenient and scrupulous way to attack procedurally dubious pieces of legislation, and precedents do exist.

Therefore, Your Honour, I urge that you rule that in its present form, the bill is not in order because it does require a Royal Recommendation, but that remedies do exist.

[Translation]

**Hon. Jean-Guy Dagenais:** Honourable senators, I would also like to speak to this point of order.

Senator Bellemare gave three reasons why Bill C-377 should receive a Royal Recommendation. First, she said that by amending the Income Tax Act, Bill C-377 would require the Canada Revenue Agency to undertake major information gathering activities.

Information gathering does not fall under the Canada Revenue Agency's ongoing mandate, which is to collect taxes and protect fiscal integrity.

My response is that according to the ruling made by the Speaker of the House of Commons on December 6, 2012:

The Canada Revenue Agency already has the mandate to administer various tax and benefits regimes and to manage a broad range of other programs and activities.

More specifically, section 5 of the Canada Revenue Agency Act mandates the agency to support the administration and enforcement of program legislation.

The Speaker in the other place went on to say, and I quote:

In other words, the agency, as part of its ongoing mandate, already administers filing requirements and makes information available to the public.

Brian McCauley, Assistant Commissioner, Legislative Policy and Regulatory Affairs Branch at the Canada Revenue Agency, said the following when he appeared before Standing Senate Committee on Banking, Trade and Commerce on May 23, 2013, and I quote:

Our understanding is that the bill is to provide information that is available to the public. There are other provisions in the Income Tax Act where we are required to do that . . . .

Senator Bellemare said, and I quote:

Bill C-377 requires a Royal Recommendation, since the information gathering activities have no tax implications.

She continued:

This does not constitute an extension of the CRA activities that apply to charities, which do have tax implications.

However, at the meeting of the Banking Committee mentioned earlier, Ted Gallivan, the Director General of the Business Returns Directorate of the Assessment and Benefit Services Branch at the Canada Revenue Agency said, and I quote:

We are considering the focus of this measure as disclosure, not for income tax administration purposes or tax assessment purposes. In the last five years, we have done three measures: one on softwood lumber, one for partnership information return and the third for selected listed financial institutions. All three were done in my area, and we did them in the range of \$2 million in terms of the IT setup.

Honourable colleagues, Canada Revenue Agency representatives believe that Bill C-377 falls under their mandate. Senator Bellemare said that changes have occurred since the Speaker of the House of Commons issued his ruling in December 2012. I must disagree.

As for whether this bill falls under the Canada Revenue Agency's existing mandate, I must say that no change has been made to the mandate of the Canada Revenue Agency or the substance of Bill C-377. As a result, the Speaker's ruling still applies.

Senator Bellemare's second point pertains to the cost of implementing the bill, which, according to her, could be as high as \$139 million in the first year and then \$38.4 million annually thereafter.

Mr. Speaker, I'm not sure how Senator Bellemare came up with those figures, but the Canada Revenue Agency's figures are quite different. The agency has said several times — and just reiterated this publicly — that the cost of implementing this bill would be \$1.2 million a year for the first two years and \$800,000 annually thereafter in the case of 1,000 organizations. What is more, it would cost \$2.6 million a year for the first two years and \$1.5 million annually thereafter for 16,000 organizations.

Senator Bellemare also indicated that if the measures in the bill are implemented, labour organizations will have to increase union dues in order to comply with the new legislation. That is pure speculation and, quite frankly, if labour organizations did that, then that would just be a reflection of their mismanagement.

According to the Department of Finance, roughly \$860 million in union dues was deducted from tax returns in 2012. That is a lot of money. If governments can find a way to shuffle money around in order to respond to new needs, then unions can do the same.

Honourable senators, I find that argument to be rather odd. According to the union representatives, complying with the new legislation would not result in extra costs. The union leaders said that they are already providing their members with comprehensive reports on all their expenses. If that is true, then the requirements in Bill C-377 pertaining to that same information should not represent an extra burden.

Honourable senators, the most important point in this argument is that the Canada Revenue Agency has already confirmed that Bill C-377's implementation will be covered by its existing budget.

Finally, according to Senator Bellemare there is a link between the Federal Balanced Budget Act and the costs associated with Bill C-377. I invite her to reread my arguments concerning the costs, and I would point out that if the CRA says that it can implement the new legislative measures with its existing budget, that means that the budget will remain balanced and that the bill will not affect the Federal Balanced Budget Act.

I also question a point of order based on a bill that has not yet been passed by Parliament. Mr. Speaker, in light of what we have heard today, I urge you to rule against this point of order and allow us to proceed immediately to third reading of Bill C-377.

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

**Hon. Diane Bellemare:** Mr. Speaker, I urge you to require a Royal Recommendation or we will be contravening section 7 of the Financial Administration Act and the Policy on Management, Resources and Results Structures, which came into effect on February 23, 2010.

• (1810)

Honourable senators, you know that managing funds has changed a lot since 1867. I'm sure you know that the Standing Senate Committee on National Finance studies this in detail and that the Treasury Board has a very rigorous approach to managing funds. Every year, each department and agency has to submit its program alignment architecture, which is an inventory of all of the programs it undertakes. These programs are depicted in their logical relationship to each other and to the strategic outcomes they contribute to.

The program alignment architecture is the initial document for the establishment of the management, resources and results structure. In other words, honourable senators, every department has to present its programs, which are related to its core mission. For each program, the departments have to list the funds and human resources they need.

The Treasury Board has to adopt this program alignment architecture, which is connected to the strategic outcomes. These outcomes are clear, precise objectives related to the department's mission. Furthermore, no major change can be made to the program alignment architecture without going through the Treasury Board. In this context, Bill C-377 creates a new strategic outcome for the Canada Revenue Agency, thereby requiring it to seek approval from the Treasury Board because it will not have the funds it needs to carry out the measures in Bill C-377.

Honourable senators, I would add that, in the context of this bill, Peter Milliken issued a ruling in 2007 which has been used by the Speaker of the House of Commons, Andrew Scheer: the mere fact of carrying out an activity such as information gathering does not mean that the agency does not need a Royal Recommendation. A department's activities must be related to the strategic outcomes. This was set out in the policy I was talking about earlier.

All of a department's activities are internal operations or processes that use inputs to produce outputs that are strategic outcomes. The Treasury Board gives the examples of training, research, construction, negotiation, investigation and surveys as inputs, activities that, in and of themselves, have nothing to do with an organization's mandate. These inputs do not define the agency's actual mandate. The agency has a clear mandate to manage taxes and maintain fiscal integrity.

Honourable senators, if you look at the Canada Revenue Agency's Report on Plans and Priorities, you will see all of the strategic outcomes listed with the associated programs. Nowhere does it mention the accountability of labour organizations.

The charities sub-program falls under the taxpayer and business assistance program and is designed to help taxpayers determine whether they can donate to a given charity, because it issues tax receipts. None of the other programs, with the associated strategic outcomes, have an accountability component.

Honourable senators, I ask you to require a Royal Recommendation. In this case it is necessary, since the department or agency in question will not be in compliance with the law and will not be able to create a sub-program for a strategic outcome that does not exist. This agency will have to obtain the Treasury Board's approval for the necessary funds. I won't insist on the potential costs of Bill C-377. My colleagues have spoken about this and there have been a number of debates on this topic. That is not the issue. The issue is whether Bill C-377 fits within the Canada Revenue Agency's mandate, and it does not. This bill does not correspond to any of this agency's strategic outcomes or programs that would have been approved by the Treasury Board.

The agency will therefore have to go to the Treasury Board to get approval for a new program alignment architecture. A minister will have to look after that, since an administrative measure will not be sufficient. That is what I wanted to say.

**The Hon. the Speaker:** I thank all of the senators who participated in the debate. I've heard enough arguments to come to a decision in the coming days.

[English]

## CANADIAN HUMAN RIGHTS ACT CRIMINAL CODE

### BILL TO AMEND—TWENTY-FOURTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE—MOTION IN AMENDMENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Batters, for the adoption of the twenty-fourth report of the Standing Senate Committee on Legal and

Constitutional Affairs (Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity), with amendments), presented in the Senate on February 26, 2015;

And on the motion in amendment of the Honourable Senator Mitchell, seconded by the Honourable Senator Dyck, that the twenty-fourth Report of the Standing Senate Committee on Legal and Constitutional Affairs be not now adopted, but that it be amended by deleting amendment No. 3.

**Hon. Denise Batters:** Honourable senators, I rise today to speak to Senator Mitchell's amendment to Bill C-279, which would amend the report on this legislation duly passed by our Senate Legal and Constitutional Affairs Committee.

The committee's report contains an amendment proposed by Senator Plett which would allow for the restriction of the use of single-sex federal facilities for the purpose of protecting individuals in a vulnerable situation. Senator Mitchell is now asking you to overturn Senator Plett's amendment, one which was duly passed by a majority of senators on the Legal and Constitutional Affairs Committee.

Senator Mitchell has complained that Bill C-279 is being delayed through the committee's proposed amendments. What he glosses over, though, of course, is that the Senate Liberal members voted with Conservative members to make two of those groups of amendments, and those unanimously agreed-to amendments would mean that Bill C-279 must be returned to the House of Commons anyway, whether Senator Plett's amendment on sex-specific facilities passes or not.

The amendments passed unanimously in our committee report concerned a couple of notable issues. First, we removed the definition of "gender identity" included in the bill. Lawyer Michael Crystal, who testified before our committee in favour of this bill, nevertheless charged that the definition of gender identity in the bill is, in his words, broad, incomplete and unnecessary. Furthermore, Crystal argued that human rights legislation tends to shy away from definitions in part because to define one ground of discrimination would necessarily exclude others that don't fall within the limits of that strict definition.

It is also worth noting that of the at least five Canadian provinces and territories that protect gender identity under law, none of those jurisdictions defines the term in legislation. The Senate Liberals on the committee all supported the amendment removing the definition of gender identity in the bill.

The Liberal senators on the committee also supported a coordinating amendment regarding Bill C-13, the federal government's recently passed cyberbullying legislation. Bill C-13 included sex under the list of characteristics protected under the hate crime provisions of the Criminal Code. However, because Bill C-13 passed through Parliament first and the ground of sex was not included in this NDP private member's bill, Bill C-279, passing Bill C-279 as it is would reverse this important change. Therefore, it was necessary to amend Bill C-279 in order to

include sex as similarly protected from hate speech and crimes in the Criminal Code. Otherwise, women would not be protected from these despicable acts of hate. This is quite obviously an unintended consequence, but it does have important ramifications.

What we have, then, is a piece of legislation that is already destined to return to the other place because it contains a couple of significant problems. Therefore, it is disingenuous for Senator Mitchell to allege that Conservatives are delaying this legislation, when in fact he and members of his caucus have recognized and agreed that Bill C-279 must be returned to the House of Commons for further consideration. Furthermore, as Senator Plett has already pointed out, no Liberal member of our Senate Committee on Legal and Constitutional Affairs appended any observations to the committee report on this matter when given an opportunity. Instead, Senator Mitchell has chosen to slow this legislation down by proposing this report amendment to remove Senator Plett's amendment, which was already voted on and passed by a majority of the Legal and Constitutional Affairs Committee.

• (1820)

If we weren't involved in debating Senator Mitchell's amendment today, we might be on third reading right now. Honourable colleagues, I hope you will join me in voting to defeat Senator Mitchell's amendment asking you to overturn the will of the Senate Legal and Constitutional Affairs Committee.

(On motion of Senator Martin, debate adjourned.)

## RAILWAY SAFETY ACT

### BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

**Hon. Donald Neil Plett** moved second reading of Bill C-627, An Act to amend the Railway Safety Act (safety of persons and property).

He said: Thank you, colleagues. I will be brief. Colleagues, as we continue our study on improving rail safety, it is a privilege to speak today in support of Bill C-627, an Act to amend the Railway Safety Act, as it reflects our government's commitment to making our country a model of world-class safety.

This legislation proposes amendments to the Railway Safety Act to provide persons and property with greater protection from railway operations.

The bill's sponsor, the member from Winnipeg South Centre, Joyce Bateman, has demonstrated personal commitment to ensuring the safety of families and communities in her riding and throughout Canada. Canadians share her concern.

We know that the Lac-Mégantic tragedy and other rail accidents have made Canadians much more aware of the number of trains passing through their communities and the often hazardous nature of their cargoes.

In explaining how she came to propose her bill, Ms. Bateman told the other place about an incident in her riding where a woman in a wheelchair became stuck at a grade crossing. Fortunately, she was rescued by a passerby. As a result of this experience, the member is proposing changes to the Railway Safety Act, through Bill C-627, that are focused on protecting people and property from railway accidents, such as those that occur on railway tracks and at grade crossings.

Specifically, the bill does two things. First, it proposes amendments to provide express language to emphasize that certain authorities are also to be exercised to protect the safety of persons and property.

Second, it proposes a new power for the Minister of Transport to issue orders in the case of significant threat to persons, property or the environment.

To review the proposed amendments quickly, the bill proposes to amend the Railway Safety Act by providing the minister with express authority to disregard objections received to proposed railway work if the work is in the public interest; expanding railway safety inspectors' authority to restrict a railway's operations when their operations pose a threat to safety to include when the threat impacts the safety of persons or property; and creating a new ministerial order that will allow the minister to require a company to take necessary corrective measures if railway operations pose a significant threat to persons, property or the environment. Lastly, a ministerial order issued in response to a significant safety threat would remain in effect while under review by the Transportation Appeal Tribunal of Canada.

This last amendment ensures that if the Minister of Transport issues an order and it is appealed, the action required by the order must be carried out and not stalled pending the appeal's outcome. In other words, the review may proceed, but the order remains in effect and must be carried out.

While these amendments may seem minor, their potential for improving rail safety should not be underestimated.

The bill clarifies and enhances the ability of the Minister of Transport and Transport Canada officials to conduct oversight and enforcement of safety on Canada's federal railways. It makes it clear that safe railway operations in the Railway Safety Act include the safety of persons and property.

Bill C-627 complements the government's bill, Bill C-52, an Act to amend the Canada Transportation Act and the Railway Safety Act, as both align with the objectives of the Railway Safety Act.

Specifically, in Bill C-52, new powers are given to the railway safety inspector to serve notice or notice and order to the person or company whose railway operations are affected by a threat. But in this case, the language indicates that a threat is limited to a threat to railway operations.

In Bill C-627, the safety inspector is able to serve notice or notice and order if the railway operations are affected by a threat to railway operations or a threat to the safety of persons or property.



Also, in Bill C-52, it is indicated that the minister may issue an order requiring a company, road authority or municipality to take corrective measures, follow any procedure or stop any activity where the minister considers it necessary in the interest of safe railway operations.

The bill we have before us gives the minister an additional new power to order corrective measures in the case of a significant threat to the safety of persons, property or the environment.

We have the Minister of Transport's assurance that the government supports the bill, and honourable senators should note that there are coming-into-force harmonizing provisions in Bill C-52, should they both receive Royal Assent.

I urge my honourable colleagues to give the minister and rail safety inspectors the power they need to make Canada's rail system the safest in the world. I encourage you all to vote in favour of Bill C-627, an important element in our government's overall strategy to improve rail safety.

(On motion of Senator Eggleton, debate adjourned.)

### **RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT**

MOTION TO AUTHORIZE COMMITTEE TO  
STUDY CHANGES TO SENATE'S RULES AND  
PRACTICES THAT WILL HELP ENSURE SENATE  
PROCEEDINGS INVOLVING DISCIPLINE OF  
SENATORS AND OTHERS FOLLOW STANDARDS  
OF DUE PROCESS—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator McCoy, seconded by the Honourable Senator Rivest:

That the Standing Committee on Rules, Procedures and the Rights of Parliament be authorized to examine and report on changes to the Senate's Rules and practices that, while recognizing the independence of parliamentary bodies, will help ensure that Senate proceedings involving the discipline of senators and other individuals follow standards of due process and are generally in keeping with other rights, notably those normally protected by the *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms*; and

That the committee submit its final report to the Senate no later than November 30, 2014.

**Hon. Stephen Greene:** I wish to adjourn this item for the balance of my time.

(On motion of Senator Greene, debate adjourned.)

• (1830)

[Translation]

### **QUESTION OF PRIVILEGE**

#### **SPEAKER'S RULING**

**Hon. Céline Hervieux-Payette:** Honourable senators, I wish to raise a question of privilege, something I've never done before in all of my years of service to Canadians.

The situation facing our institution is very serious, for it is already under attack by various media, public figures and political parties.

Although the Auditor General's report on Senate expenses wasn't supposed to be made public until today, around 2:05 p.m., according to the Speaker of the Senate's news release of June 8, 2015, a number of leaks meant that confidential information under embargo made the headlines in newspapers, online media and televised newscasts. These revelations have been growing over the past six days and include many details, such as the names of the senators allegedly involved, the sums of money allegedly challenged by the Auditor General and the list of senators whose files will reportedly be referred to the Royal Canadian Mounted Police.

These leaks violate all senators' fundamental right to the presumption of innocence and due process. Furthermore, the leaks are causing unprecedented harm to our venerable institution, preventing it from functioning properly and undermining its credibility.

Clearly, some senators, regardless of who they are or their party affiliation, felt trapped and forced into silence by the obligation to refrain from commenting on the Auditor General's report until it was made public, even though their names had already been fed to the media and those who would cry wolf.

This situation is especially serious because it undermines an institution that has constitutional legitimacy, plays a vitally important role in the lives of Canadians and has contributed so much, without getting the recognition it deserves.

The Senate will have to turn things around, which will require that we fully understand what happened and find out who was responsible for these leaks, because I feel that at the very least this constitutes an obstruction to the work of a parliamentarian, if not contempt of Parliament.

According to Joseph Maingot, in his work entitled *Parliamentary Privilege in Canada*:

The invasion of the privacy of a Member of the Senate or of the House of Commons within the precincts of Parliament by any person also constitutes a *prima facie* question of privilege. This includes the interception of a private communication on the precincts.

Allow me to remind you, honourable senators, that in January, the Subcommittee on Parliamentary Privilege of the Standing Committee on Rules, Procedures, and the Rights of Parliament published a report entitled *A Matter of Privilege: A Discussion Paper on Canadian Parliamentary Privilege in the 21st Century*.

According to the report:

There is no precise definition as to the categories of offenses which might constitute a breach of privilege or contempt that might prompt Parliament to consider a charge and impose a sanction. While this lack of precision has been accepted in the past, in an era of rights and the rule of law, it is increasingly problematic.

The committee goes on to specify the following in its report:

It goes without saying that parliamentarians must be able to function in a climate free from obstruction, interference, and intimidation in order to serve effectively. However, it is worthwhile to distinguish between forms of physical obstruction — such as traffic barriers, security cordons and picket lines, and non-physical obstruction, such as damaging a member's reputation. Both types can raise questions of privilege.

With respect to disciplinary measures, the report states the following:

Disciplinary powers are typically exercised against members and non-members to deal with contempts against Parliament, or acts that interfere with Parliament's operations. It is essential for Parliament to have the power to sanction contempts to enable it to discharge its responsibilities. Its power to discipline its members is generally unquestioned, and is manifest in many ways.

Honourable senators, the four criteria that must be met for my question of privilege to be accorded priority are listed in rule 13-2(1).

The second and third criteria stipulate that the question of privilege must be a matter that "directly concerns the privileges of the Senate, any of its committees or any Senator" and that it must be raised to "correct a grave and serious breach."

As I explained, this breach is historically grave and directly concerns the privileges of our institution and those of individual senators.

The last criterion states that the remedy must be one "for which no other parliamentary process is readily available."

Honourable senators, there is no other process that would enable us to understand and sanction the source of these leaks, particularly considering that we are in the final weeks of this Parliament.

Finally, the first criterion states that the question of privilege must be "raised at the earliest opportunity."

[ Senator Hervieux-Payette ]

As you know, the Auditor General's report was sent to the Speaker of the Senate last Thursday, and today, Tuesday, is truly my earliest opportunity to raise this question of privilege.

In conclusion, honourable senators, the fact that a confidential report was leaked, leaving senators feeling trapped without the opportunity to explain themselves for almost six days, discredits our institution and the reputation and work of all senators to an unprecedented degree.

Should Your Honour find that a prima facie case of privilege has been established, I am prepared to move a motion to establish an independent inquiry into these leaks.

**Hon. Claude Carignan (Leader of the Government):** Would Senator Hervieux-Payette accept a question?

**Senator Hervieux-Payette:** Yes.

**Senator Carignan:** I was one of the first victims of this leak last Thursday. The Speaker, the Leader of the Opposition and I heard that leaked information alleged that we were mentioned in the report, which caused me a great deal of embarrassment.

Setting aside your question of privilege, do you believe that we can identify the direct source of the leak of these elements of the report?

**Senator Hervieux-Payette:** Listen, I also saw the photos on the front page of *The Globe and Mail*, and like you, the Speaker and Senator Cowan, I was not very pleased.

I believe that we need to be diligent, not wait too long to investigate and take the necessary steps that the Speaker will recommend. However, it is important to get to the bottom of this. In view of the small number of people who received the report last Thursday, there is certainly an inquiry to be carried out and a report to be presented to the Senate.

**The Hon. the Speaker:** Do any other senators wish to speak to the question of privilege?

[English]

I rule that a prima facie case has been established.

[Translation]

#### MOTION TO REFER TO RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT COMMITTEE

**Hon. Céline Hervieux-Payette:** Honourable senators, pursuant to rule 13-6(1), I move:

That this case of privilege, relating to the leaks of the Auditor General's report on the audit of the Senate, be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament for an independent inquiry to be ordered and a report publicly released without delay.

[English]

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

• (1840)

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### COMMITTEE AUTHORIZED TO MEET DURING ADJOURNMENT OF THE SENATE

**Hon. Kelvin Kenneth Ogilvie,** pursuant to notice of June 2, 2015, moved:

That, pursuant to rule 12-18(2)(b)(i), the Standing Senate Committee on Social Affairs, Science and Technology be authorized to sit between Tuesday, August 4, 2015 and Friday, August 28, 2015, inclusive, even though the Senate may then be adjourned for a period exceeding one week.

He said: Honourable colleagues, the background to this motion is that the Standing Senate Committee on Social Affairs, Science and Technology will complete its study on obesity this month, we certainly hope. This motion is simply to give us the opportunity to hold a meeting of the committee in August to approve a report that would be introduced in the Senate.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

### COMMITTEE AUTHORIZED TO DEPOSIT REPORT ON STUDY OF THE INCREASING INCIDENCE OF OBESITY WITH CLERK DURING ADJOURNMENT OF THE SENATE

**Hon. Kelvin Kenneth Ogilvie,** pursuant to notice of June 2, 2015, moved:

That the Standing Senate Committee on Social Affairs, Science, and Technology be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate a report relating to its study of the increasing incidence of obesity in Canada, between August 7 and September 4, 2015, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

He said: Honourable colleagues, this simply gives us the opportunity to introduce a completed report into the Senate.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

## HUMAN RIGHTS

### COMMITTEE AUTHORIZED TO DEPOSIT REPORT ON STUDY OF INTERNATIONAL MECHANISMS TOWARD IMPROVING COOPERATION IN THE SETTLEMENT OF CROSS-BORDER FAMILY DISPUTES WITH CLERK DURING ADJOURNMENT OF THE SENATE

**Hon. Mobina S. B. Jaffer,** pursuant to notice of June 3, 2015, moved:

That the Standing Senate Committee on Human Rights be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate a report relating to its study of the Hague Abduction Convention, between June 29, 2015 and September 4, 2015, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

She said: Honourable senators, the Human Rights Committee has looked at this report. The committee has approved it, but some graphic work needs to be done. Communications advises us, and my exact numbers may not be correct, that 12 or 13 reports will be released in June. They are not going to be able to help us, so we have to wait until the final preparation is done. That's the reason we are asking for the report to be tabled, while the Senate is not sitting.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF THE INCREASING INCIDENCE OF OBESITY

**Hon. Kelvin Kenneth Ogilvie,** pursuant to notice of June 4, 2015, moved:

That notwithstanding the Order of the Senate adopted on Wednesday, February 26, 2014, the date for the final report of the Standing Senate Committee on Social Affairs, Science and Technology on the increasing incidence of obesity in Canada be extended from June 30, 2015 to September 30, 2015.

He said: Honourable senators, this motion will extend the authority of the committee to conduct its study beyond the period covered by the previous two motions.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

(The Senate adjourned until Wednesday, June 10, 2015, at 1:30 p.m.)

## CONTENTS

Tuesday, June 9, 2015

	PAGE		PAGE
<b>Auditor General</b>		<b>Controlled Drugs and Substances Act (Bill C-2)</b>	
Report to the Senate of Canada Tabled—		Bill to Amend—Third Reading—Debate Suspended.	
Senators' Expenses . . . . .	3572	Hon. Larry W. Campbell . . . . .	3575
		Motion in Amendment.	
		Hon. Larry W. Campbell . . . . .	3576
<b>SENATORS' STATEMENTS</b>		<b>Visitors in the Gallery</b>	
		The Hon. the Speaker. . . . .	3577
<b>Question of Privilege</b>		<b>Controlled Drugs and Substances Act (Bill C-2)</b>	
Notice.		Bill to Amend—Third Reading—Motion in	
Hon. Céline Hervieux-Payette . . . . .	3572	Amendment—Vote Deferred.	
<b>First World War</b>		Hon. Jane Cordy . . . . .	3577
Role of Canadian Nursing Sisters.		Hon. Larry W. Campbell . . . . .	3577
Hon. Pana Merchant . . . . .	3572	Hon. George Baker . . . . .	3578
<b>FIFA Women's World Cup Canada 2015</b>		Hon. Mobina S. B. Jaffer . . . . .	3578
Hon. Betty Unger. . . . .	3573	Hon. Art Eggleton . . . . .	3578
		Hon. Serge Joyal . . . . .	3580
		Hon. Yonah Martin . . . . .	3583
<b>ROUTINE PROCEEDINGS</b>		<b>Tougher Penalties for Child Predators Bill (Bill C-26)</b>	
<b>Privacy Commissioner</b>		Bill to Amend—Third Reading—Debate Adjourned.	
Personal Information Protection and Electronic		Hon. Donald Neil Plett. . . . .	3584
Documents Act—2014 Annual Report Tabled. . . . .	3573	Hon. Céline Hervieux-Payette . . . . .	3587
<b>Conflict of Interest and Ethics Commissioner</b>		<b>The Senate</b>	
2014-15 Annual Report Tabled . . . . .	3573	Statutes Repeal Act—Motion to Resolve that the Act and	
<b>Commissioner of Lobbying</b>		the Provisions of Other Acts not be Repealed Adopted.	
2014-15 Annual Report Tabled . . . . .	3573	Hon. Yonah Martin . . . . .	3588
<b>The Estimates, 2015-16</b>		Hon. Joan Fraser . . . . .	3592
Supplementary Estimates (A)—Twentieth Report		Hon. Joseph A. Day. . . . .	3592
of National Finance Committee Tabled.		<b>Reform Bill, 2014 (Bill C-586)</b>	
Hon. Joseph A. Day. . . . .	3573	Bill to Amend—Third Reading—Debate Suspended.	
<b>Appropriation Bill No. 2, 2015-16 (Bill C-66)</b>		Hon. Scott Tannas . . . . .	3593
First Reading. . . . .	3574	Hon. Larry W. Campbell . . . . .	3594
<b>Appropriation Bill No. 3, 2015-16 (Bill C-67)</b>		<b>The Estimates, 2015-16</b>	
First Reading. . . . .	3574	Main Estimates—Twenty-First Report of National	
<b>Aboriginal Languages of Canada Bill (Bill S-229)</b>		Finance Committee Tabled.	
First Reading.		Hon. Joseph A. Day. . . . .	3594
Hon. Serge Joyal . . . . .	3574	<b>Reform Bill, 2014 (Bill C-586)</b>	
<b>Transport and Communications</b>		Bill to Amend—Third Reading—Debate Continued.	
Notice of Motion to Authorize Committee to Extend Date		Hon. John D. Wallace . . . . .	3594
of Final Report on Study of the Challenges Faced by the		Hon. James S. Cowan. . . . .	3596
Canadian Broadcasting Corporation and Deposit Report		Hon. Anne C. Cools. . . . .	3597
with Clerk During Adjournment of the Senate.		Hon. Bob Runciman . . . . .	3597
Hon. Dennis Dawson . . . . .	3574	Hon. Grant Mitchell. . . . .	3598
		Hon. David Smith . . . . .	3599
<b>ORDERS OF THE DAY</b>		<b>Income Tax Act (Bill C-377)</b>	
<b>Yukon Environmental and Socio-economic Assessment Act</b>		Bill to Amend—Third Reading—Point of Order—	
<b>Nunavut Waters and Nunavut Surface Rights Tribunal Act</b>		Debate Suspended.	
(Bill S-6)		Hon. Claudette Tardif . . . . .	3599
Bill to Amend—Message from Commons . . . . .	3574	<b>Business of the Senate</b>	
		The Hon. the Speaker. . . . .	3601
		<b>Anti-terrorism Bill, 2015 (Bill C-51)</b>	
		Bill to Amend—Third Reading . . . . .	3601
		<b>Income Tax Act (Bill C-377)</b>	
		Bill to Amend—Third Reading—Point of Order—	
		Speaker's Ruling Reserved.	
		Hon. Bob Runciman . . . . .	3602
		Hon. Yonah Martin . . . . .	3602
		Hon. Joan Fraser . . . . .	3603
		Hon. Jean-Guy Dagenais . . . . .	3605
		Hon. Diane Bellemare. . . . .	3606

	PAGE
<b>Canadian Human Rights Act</b>	
<b>Criminal Code (Bill C-279)</b>	
Bill to Amend—Twenty-Fourth Report of Legal and Constitutional Affairs Committee—Motion in Amendment—Debate Continued.	
Hon. Denise Batters . . . . .	3607
<b>Railway Safety Act (Bill C-627)</b>	
Bill to Amend—Second Reading—Debate Adjourned.	
Hon. Donald Neil Plett . . . . .	3608
<b>Rules, Procedures and the Rights of Parliament</b>	
Motion to Authorize Committee to Study Changes to Senate's Rules and Practices that will Help Ensure Senate Proceedings Involving Discipline of Senators and Others follow Standards of Due Process—Debate Continued.	
Hon. Stephen Greene . . . . .	3609
<b>Question of Privilege</b>	
Speaker's Ruling.	
Hon. Céline Hervieux-Payette . . . . .	3609
Hon. Claude Carignan . . . . .	3610
The Hon. the Speaker. . . . .	3610

	PAGE
Motion to Refer to Rules, Procedures and the Rights of Parliament Committee.	
Hon. Céline Hervieux-Payette . . . . .	3610
<b>Social Affairs, Science and Technology</b>	
Committee Authorized to Meet During Adjournment of the Senate.	
Hon. Kelvin Kenneth Ogilvie . . . . .	3611
Committee Authorized to Deposit Report on Study of the Increasing Incidence of Obesity with Clerk During Adjournment of the Senate.	
Hon. Kelvin Kenneth Ogilvie . . . . .	3611
<b>Human Rights</b>	
Committee Authorized to Deposit Report on Study of International Mechanisms toward Improving Cooperation in the Settlement of Cross-Border Family Disputes with Clerk During Adjournment of the Senate.	
Hon. Mobina S. B. Jaffer . . . . .	3611
<b>Social Affairs, Science and Technology</b>	
Committee Authorized to Extend Date of Final Report on Study of the Increasing Incidence of Obesity.	
Hon. Kelvin Kenneth Ogilvie . . . . .	3611

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