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(HANSARD)

Monday, June 22, 2015

The Honourable LEO HOUSAKOS
Speaker

CONTENTS

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THE SENATE

Monday, June 22, 2015

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

Prayers.

SENATORS' STATEMENTS

MAGNA CARTA

EIGHT HUNDREDTH ANNIVERSARY

Hon. Joseph A. Day: Honourable senators, 2015 marks the eight hundredth anniversary of the Magna Carta, a document that King John was forced to sign by English barons in 1215. That's the same King John that we read about in the famous tales of Robin Hood, King John and Richard the Lionheart.

The signing of the document was a result of the King feuding with the barons, their traditional rights and the fight between them as to what rights they each had.

Following the signing, King John almost immediately complained to the Pope and protested that he had been forced to sign "this awful thing." Pope Innocent III then declared it null and void only a few months after it was signed. The Pope's declaration led to a war that ended when King John died in 1216, just a year after he had signed the Magna Carta.

After the war, the Magna Carta formed part of the peace treaty. The document was only referred to as the Magna Carta after this war. Beforehand it had been recognized as the Charter of Runnymede in reference to the place where it had been signed.

The signing of this document marked the first instance in which a king was forced to approve a list of terms drafted by his subjects. This historical event established the principle that those who rule do so only by the permission of their citizens. Moreover, this document is an affirmation that nobody is above the law — not even a king.

In most recent times the fact was well conveyed by Winston Churchill when he stated:

> . . . here is a law which is above the King and which even he must not break. This reaffirmation of a supreme law and its expression in a general charter is the great work of Magna Carta; and this alone justifies the respect in which men have held it.

Four basic principles, honourable senators, flow from the Magna Carta: One, no one is above the law; two, no one can be detained without cause for evidence; three, everyone has the right to trial by jury; and four, an interesting one, a widow cannot be forced to marry and give up her property. This is probably the first law relating to women's rights that we have a record of.

When it was first created, the Magna Carta contained 61 clauses. Today only three of those clauses remain part of English law. One defends the liberties and rights of the English church; another confirms the liberties and customs of the City of London and other cities; and the last one is probably the most famous and reads as follows:

> No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

Honourable senators, until July 26, the Museum of History is offering a unique opportunity to discover the historical context through interpretive displays and to see the Magna Carta, which is for the first time visiting Canada from the United Kingdom.

Hon. Senators: Hear, hear!

SENATE PROTECTIVE SERVICE

Hon. Victor Oh: Honourable senators, it is with great honour that I rise today to recognize the tremendous contributions of the Senate Protective Service. Last Friday, June 19, the Senate Protective Service held its nineteenth Annual Golf Tournament at the Mont Cascades Golf Club. I had the absolute pleasure to be the honorary chair of this important event, which has fundraised over $70,000 in support of the Government of Canada Workplace Charitable Campaign program and many other Canadian charities over nearly two decades.

All funds collected this year will benefit the Canadian Cancer Society, which estimates that nearly half of Canadians will develop cancer in their lifetime. Here on Parliament Hill, we all know people whose lives have been impacted by this disease, including our late speaker, the Honourable Pierre Claude Nolin. I therefore want to express my heartfelt appreciation towards the organizers and the supporters involved in this year's golf tournament, in particular Mike McDonald, Director of Corporate Security of the Senate Protective Service.

After 19 successful editions, the golf tournament comes to its final edition this year. As many of us are already aware, the House of Commons and the Senate security services have been integrated under the operational command of an RCMP-led Parliamentary Protective Service. I am certain that we will all benefit from this strong partnership, and I look forward to future editions of this event under a new banner.

To conclude, I would like to express my profound gratitude for the men and women of the Senate Protective Service, who put their lives on the line every day to serve and protect us. I thank

each of them for their service and dedication to public safety. Additionally, I would like to commend them for their efforts to raise awareness and funds for a cause that is very close to our hearts.

Thank you.

WORLD REFUGEE DAY

Hon. Mobina S. B. Jaffer: Honourable senators, this past Saturday, June 20, marked World Refugee Day. Our world now exists in a fine balance, one where displacement and uncertainty are the norm for millions. Civil wars and turmoil have displaced mothers, daughters, sons and fathers, removing them far from their homes.

Honourable senators, the separation is not simply a physical one limited to the parameters of geography. It is an emotional one — knowing that your child will not be able to take their first steps in the backyard of that home that you had struggled to pay for, earning every day, knowing you were doing it for the stability of your family, only to have your dream shattered.

Instead, as a refugee, your reality becomes one of living in a refugee camp. I have been to the camps in Turkey, where they provided some of the best camps for the Syrian refugees. I have been to camps in Darfur, where what exists is reaching at wisps by calling it a "camp."

• (1410)

Despite the circumstances of the camp and despite the new-found peace they may find that does not exist in their home country, these camps are not a home. There are over 50 million refugees in the world — 50 million people do not have a home.

Honourable senators, as we reflect on how we can better our role in supporting refugees, I urge you to remember that the end goal for refugees should not simply be a refugee camp: While they may not be able to get their first home back, they should be able to rebuild what they once had and see their child's footsteps in a new backyard, one they can proudly and safely call "home" again.

Honourable senators, it was 43 years ago that I became a refugee. It sometimes feels as if it was just yesterday. I remember those terrible days even today with clarity. But I also remember with clarity the kindness of Canadians to Somali and other communities, and to my family and me. Thank you for making me one of you.

I would like to thank Mr. and Mrs. Chrétien for their continuous friendship and love, as well as the Honourable Thomas Dohm, former Justice of the Supreme Court of British Columbia, my mentor, law partner and friend; and his wife, Faith, and children who helped us to integrate.

I want to say to all Canadians, thank you for making us proud Canadians.

ROUTINE PROCEEDINGS

JUSTICE AND ATTORNEY GENERAL

FEDERAL OMBUDSMAN FOR VICTIMS OF CRIME—GOVERNMENT RESPONSE TO 2013-14 ANNUAL REPORT TABLED

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the government response to the 2013-14 Annual Report of the Office of the Federal Ombudsman for Victims of Crime.

[*Translation*]

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[*English*]

QUESTION PERIOD

EMPLOYMENT AND SOCIAL DEVELOPMENT

UNIVERSITY TUITION FEES

Hon. Jim Munson: Honourable senators, I have a question for the government leader in the Senate. The question is from our Senate Liberal *Your Question Period* initiative, which has been successful with Canadians sending us questions every day, seeking answers from the government. This question was submitted by Ms. Maria Lisa Seminara from Barrie, Ontario, who is a university student troubled by the rising cost of tuition.

Before reading her questions, I would like to acknowledge that education, as we know, is primarily a provincial jurisdiction, but the federal government plays an important role in providing students across the country with loans and grants. The government also administers various saving mechanisms for parents, including the Registered Education Savings Plan and the Canada Learning Bond.

Mr. Leader, with that in mind I hope you can be specific in responding to Maria's concerns. She wrote:

> [I] am a full-time University student studying Psychology in Ontario. I am confused at the fact that tuition prices continue to rise while the program, curriculum, professors,

> institution and course/class variability and much more remains the same; students are the future and the high prices are crushing thousands of people's dreams and goals. I am in constant worry that I will not have enough money to go to Graduate School. I understand you are a busy person but I am reaching out here for help and to stand up for countless others in saying that tuition hikes seem to only benefit the Government. Why does tuition keep rising? Can this be stopped? What do thousands of people do if they invest thousands of dollars in school and so many years and cannot finish due to expenses? How do students benefit from tuition hikes if at all in your perspective?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): Thank you, senator, for sharing that individual's question.

As you know, our government has taken measures in support of university students and continues to do so. I would remind you that we made student loans and grants tax-exempt and introduced a textbook tax credit as well as a tax credit on tools. These are extremely important fiscal measures for post-secondary students, especially university students who have to work part time while going to school.

In addition, part-time students no longer have to pay interest on their loans while they are at school. We also increased the income threshold used to assess eligibility for grants for part-time students. In the budget, we created the Canada Apprentice Loan, which provides apprentices registered in Red Seal trades with access to interest-free loans. We have made unprecedented investments in favour of young Canadians by way of the loans and grants program. In fact, thanks to our Economic Action Plan 2015 — which we will pass today, I hope — we will help 22,000 students by expanding the Canada Student Loans and Grants program. We are eliminating in-study student income from the needs assessment process, increasing loan amounts for 87,000 students and providing increased support to more than 92,000 students by reducing the expected parental contribution under the needs assessment process.

Those are concrete measures set out in Economic Action Plan 2015. I hope that we will be voting on them this evening, and I hope that senators across the way will support these important measures for students.

In fact, the Canadian Alliance of Student Associations responded with this statement:

> We are extremely pleased to see that government is taking students' priorities seriously. . . .
>
> The total contributions are $419 million over four years. Students have not seen this kind of investment in financial aid in several years.

I believe that our government is deeply committed to supporting students, and I invite all senators to support Economic Action Plan 2015.

[*English*]

Senator Munson: I appreciate your answer, Mr. Leader. I acknowledge that there are a number of good programs, but I don't know if it will be satisfactory for Ms. Maria Lisa Seminara. The bottom line is that tuition fees are going up and hundreds of thousands of students are caught in the financial crossfire of not being able to afford to go to university and particularly get a second degree.

• (1420)

Late last year, a study from the Canadian Centre for Policy Alternatives reported that:

> . . . tuition and compulsory fees for Canadian undergraduate students will rise by almost 13% over the next four years, from $6,885 [last] fall to an estimated $7,755 in 2017-18.

And, unfortunately for Maria:

> According to the study, Ontario is the province with the highest fees and will see its tuition and other fees climb from $8,474 [last] fall to an estimated $9,483 in 2017-18.

Mr. Leader, what will your government do or continue to do to ensure that post-secondary education remains affordable for all Canadian students?

[*Translation*]

Senator Carignan: I talked about programs that support students. I also highlighted the transfers, even though education falls under provincial jurisdiction. Our government has made unprecedented transfers for social services and post-secondary education. These transfers will continue to support the provinces' efforts to fund universities and reduce the upward pressure on tuition fees as much as possible.

[*English*]

Hon. Wilfred P. Moore: My question is also for the Leader of the Government in the Senate. Leader, I'm always wary when I hear about student organizations complimenting the government on the sums that are provided in the budget for student programs because I'm always thinking that they don't want to upset anybody—we'll be able to take what we can get here and move on, so we'll flatter them and just hold on to what we've got.

You mentioned the health and social transfer. The social transfer includes funds for university education and also the transfer for social services. Is your government prepared to separate those so that we can know exactly how much is going to each province for post-secondary education?

[*Translation*]

Senator Carignan: I believe that those figures have been published. If you consult the table of transfers on the Statistics Canada website, you will easily see the changes in the different transfers.

[*English*]

Senator Moore: Thank you. I've tried to find that, leader, and I think the health transfer is clear. I think the other is still a lump sum. I will look again, but I don't think there is a clear delineation of the sums that are transferred to a province for post-secondary purposes.

In Nova Scotia, the provincial government has decided to forgo the interest on student loans. Is your government prepared to look at that kind of a program with regard to monies that it may transfer and provide for student programs?

[*Translation*]

Senator Carignan: In 2015-16, Nova Scotia will receive approximately $3 billion in transfer payments — an increase of $779 million compared to 2005-06 — and that includes $1.7 billion in equalization payments.

As I explained in response to Senator Munson's question, the amounts provided in Economic Action Plan 2015 are very substantial. According to the Canadian Alliance of Student Associations, which I quoted earlier, students have not seen this kind of government investment in several years. Our investments have been warmly and enthusiastically welcomed by students.

We invite you once again to support Economic Action Plan 2015 and vote for it when it is put to a vote in the next few hours.

[*English*]

Senator Moore: Leader, philosophically speaking, there have been papers written recently with regard to the idea of free tuition for post-secondary education, thinking that it is an investment, not an expense, but an investment in the future of our country. I think this is the case in Ireland, where students have to pay for their books and some student fees, but I believe there is no tuition charged.

Have you considered that, or has the minister responsible within your government given any thought to that? I'm not sure that it would work, but I think it's worth pursuing. It seemed to have worked in Ireland, and it's one way to address the concerns raised by Senator Munson. You, as a dad with kids in university — we've all been there — have you ever thought about that, or is it worth considering?

[*Translation*]

Senator Carignan: As you know, tuition fees fall under provincial jurisdiction. We will leave it up to the provinces to administer and set tuition fees. I would remind honourable senators that the federal government has transferred record amounts of money to the provinces in the form of equalization payments. With Economic Action Plan 2015, the government has made very significant investments. In that regard, here, once again, is what the Canadian Alliance of Student Associations had to say:

> We are extremely pleased to see that the government is taking students' priorities seriously . . . .
>
> The total contributions are $419 million over four years. Students have not seen this kind of investment in financial aid in several years.

Students and student leaders acknowledge the considerable effort our government is making. That is why I invite you, honourable senators, to support Bill C-59 in order to implement these measures.

[*English*]

PRIME MINISTER'S OFFICE

PHOTOGRAPHY CONTRACT

Hon. Jane Cordy: In February I raised the issue of the $2.3 million of taxpayers' money that was spent on photography contracts to follow around cabinet ministers. Then, in May, we learned about Employment Minister Poilievre's taxpayer-funded, partisan vanity videos that were produced with department resources, and that is taxpayers' money.

Last month, the Prime Minister made his now infamous public relations jaunt to Afghanistan, and tagging along were Minister Kenney and the Prime Minister's personal videographic crew, producing video for the Conservative Party's online video channel.

Now, on the eve of an election, the taxpayers are once again footing the bill for Conservative Party advertising as the Prime Minister interrupted NATO exercises in the Baltic Sea and requisitioned a Canadian frigate, all in the name of an election photo-op for Prime Minister Harper and Minister Kenney.

Senator Munson: Stared down Russia.

Senator Cordy: Stared down Russia, right.

How much did the operation cost to send the Prime Minister and Minister Kenney to the NATO warship in the Baltic for this photo-op, and how much did it cost to have pictures of the Prime Minister looking through binoculars, trying to see a Russian ship that was 13 kilometres away from the *Fredericton*?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): We are inching closer and closer to the election and, as the saying goes, a leopard can't change its spots. It was all well and good for those

across the aisle to begin the year by saying that they were no longer Liberal senators; however, the closer we get to voting day, the more visible the red spots are getting. Clearly, senator, you are getting ready for battle and preparing for the upcoming election campaign.

Don't worry; we have no intention of following in the footsteps of the Liberal Party. You have no credibility when it comes to calling advertising expenses into question. When we commit to spending money on advertising, at least it does actually go towards advertising and not helping our friends. In fact, people are still wondering where that $40 million went.

I've asked you a number of times whether you wanted to help us find that money.

• (1430)

Senator, our government has the utmost respect for taxpayers' money, and we require that government operations be carried out at the lowest possible cost. We will continue to take measures to increase transparency and accountability, in order to protect taxpayers' money.

[*English*]

Senator Cordy: The honourable senator is predictable in his answer. Whenever anyone asks about government waste, this is what you come back to.

The goal of the ad campaign at the time was national unity — a positive goal — but, unfortunately, the actions of a few were wrong and led to public distrust of politicians. Politicians must always conduct their work with honesty and integrity. The Liberal government at the time was intent on finding out who was guilty — unlike this government, which just brought forward legislation in Bill C-59 that retroactively absolves criminality. Prime Minister Martin appointed Justice Gomery and supported every one of his recommendations. There was full cooperation with Justice Gomery's efforts — unlike the Conservative Party and the robocall scandal investigation.

Honourable senators, this is a government that will not have an inquiry into missing and murdered indigenous women. It is unfortunate that Prime Minister Harper believes in transparency and openness for everybody but his own government. This government used public money for blatant political advertising in vanity videos. This is the money of the hard-working people of Canada.

Can you tell us how many personal photographers and videographers Prime Minister Harper and Minister Kenney brought with them to the Baltic Sea?

[*Translation*]

Senator Carignan: You obviously want to get the election campaign started with partisan attacks. The House of Commons has adjourned. You appear to have picked up where they left off with these partisan questions. I'd like to remind you that your leader, Justin Trudeau, is not ready to be Prime Minister of Canada.

[*English*]

Senator Cordy: These are not partisan questions. These are questions to find out what is happening to the money of the taxpayers of Canada.

An Hon. Senator: Hear, hear!

Senator D. Smith: Ye shall know that truth!

Senator Day: Ask about the facts.

Senator Cordy: I don't think I'll ever get the facts, Senator Day. It's all partisan spin, Senator Day.

HMCS *Fredericton* had to interrupt its NATO exercises — not only for the 20 hours that the Prime Minister and Minister Kenney were on the ship but also, honourable senators, for the time it took to prepare the frigate for the photo-op visit.

If concerns with the Russians and President Putin are as dramatic as the Prime Minister continues to say, why would he and Minister Kenney jeopardize our safety and the safety of the Baltic countries by removing the *Fredericton* and its personnel from doing their job of defending NATO countries in order to have a photo op?

[*Translation*]

Senator Carignan: Senator, your accusations are false and unfounded. Your questions make it quite clear that you are all set to jump into the election campaign. I hope you'll get up on stage with Justin Trudeau to show that you're a real Liberal, instead of hiding and claiming that you're an independent senator. It's quite obvious that you are dutifully pursuing the same line of questioning as your Liberal friends in the other place.

[*English*]

Senator Cordy: I will be part of the anybody-but-Harper campaign in Nova Scotia.

Some Hon. Senators: No!

Some Hon. Senators: Oh!

An Hon. Senator: You're going down!

Senator Cordy: The Canadian press who were attending the photo op on board the *Fredericton* were blocked from taking pictures or videos so that the Prime Minister's personal photographers and videographers could get the best shots for the Conservative ads.

Once again, you didn't answer my questions: How many personal photographers and videographers did Prime Minister Harper and Minister Kenney bring with them? What was the cost for these photo ops?

[*Translation*]

Senator Carignan: Senator, we have the utmost respect for taxpayers' money. You should focus your energy on finding the $40 million that was transferred to your buddies. Friends come first on your side.

[*English*]

PUBLIC SAFETY

SEX TOURISM

Hon. Mobina S. B. Jaffer: Honourable senators, according to the Equality Now report, at least 20.9 million adults and children are bought and sold worldwide into the commercial sex trade. In human trafficking cases, almost six in 10 survivors were identified as trafficked for purposes of sexual exploitation.

In the past few sessions, we have passed many bills on sex trafficking. My question to the Leader of the Government in the Senate is this: What is the government doing to combat sex tourism?

[*Translation*]

Hon. Claude Carignan (Leader of the Government): As you know, we passed a law against human trafficking, which you supported. We are going to continue to minimize the risk of sexual exploitation, particularly the sexual exploitation of children. We need to carry the torch and continue to play a leading role in the fight against human trafficking and sexual exploitation. We are going to continue to strongly denounce such practices.

[*English*]

Senator Jaffer: Leader, I don't know if you answered my question, but I will ask it again. Time and time again the people who work on these issues have said to us, "Embed a police officer in Thailand. Embed a police officer in the Dominican Republic. Embed a police officer in Cambodia." If you are serious about sex tourism, what are you doing?

An Hon. Senator: Hear, hear!

[*Translation*]

Senator Carignan: As I said, we passed a law against human trafficking. We are going to continue to work to combat human trafficking and sexual exploitation, particularly the sexual exploitation of children.

[*English*]

Senator Jaffer: Leader, I work with the International Justice Mission of Canada, which does great work in many places. I visited with them in Calcutta, and next week I'm going to the Dominican Republic, where they tell me that many Canadian men go to practise sex tourism. What are we doing to stop sex tourism in the Dominican Republic, where many Canadians are assaulting young girls and boys?

[*Translation*]

Senator Carignan: I repeat: we are going to continue our efforts on this issue through the legislation we passed to combat human trafficking and sexual exploitation. We also passed a law to bring in harsher sentences and penalties. We are going to continue to strongly condemn any type of sexual exploitation, particularly the sexual exploitation of women and children.

• (1440)

[*English*]

ORDERS OF THE DAY

CANADA NATIONAL PARKS ACT

BILL TO AMEND—SECOND READING

Hon. Dennis Glen Patterson moved second reading of Bill C-72, An Act to amend the Canada National Parks Act.

He said: Honourable senators, I rise to speak in favour of Bill C-72, the "Qausuittuq National Park of Canada Act," and to voice my support for the creation of Canada's forty-fifth national park on Bathurst Island in my home territory of Nunavut.

This newest addition to our world-class national park system is located in Canada's western High Arctic. At just over 11,000 square kilometres, it is our country's eleventh largest national park, slightly larger than Alberta's Jasper National Park.

The park includes the northwestern part of Bathurst Island, several of the Governor General Islands and several smaller islands west and north of Bathurst Island. To the south is Polar Bear Pass National Wildlife Area, and to the north is Seymour Island Migratory Bird Sanctuary. The Inuit community of Resolute Bay lies about 200 kilometres to the southeast.

This new national park is the result of a collaborative relationship between Parks Canada and Inuit. The name of the park was chosen through a community contest held in Resolute Bay. Qausuittuq means "place where the sun doesn't rise" in Inuktitut and, in this region, the sun stays below the horizon for several months in the winter at this latitude.

The park contains a landscape of rolling hills and plateaus, with elevations of up to 400 metres. There are striking bluffs overlooking the sea, as well as small lakes, wetlands and lowlands. Surrounded by the sea, the park includes two large marine inlets, underlain by sedentary rock, the surface showing the evidence of glaciation, with eskers, moraines and raised beaches.

At 76 degrees north latitude, Qausuittuq national park is found in one of the oldest and driest regions in the world. Some call it a polar desert. Annual precipitation is less than 130 millimetres. The park is a series of Arctic islands, surrounded by a frozen sea for much of the year, sitting on the edge of human occupation.

Despite these desert-like conditions, there is vegetation, such as purple saxifrage, which is Nunavut's territorial flower; dwarf willow; sedges; grasses; lichens; and mosses. All this provides precious food sources for wildlife and the park area supports a surprising richness of wildlife species, including polar bears, Arctic wolves, Arctic foxes, muskoxen and caribou. There are numerous types of birds, such as snowy owls, snow geese, king eiders, jaegers, red knots and other gulls and shorebirds. Qausuittuq's marine waters have ringed seals, bearded seals, walruses, bowhead whales, beluga whales and narwhals.

In short, honourable senators, for several months of the year, Qausuittuq comes alive with vegetation and wildlife. It is this oasis in the midst of a polar desert that merits its protection under the Canada National Parks Act. The land, its vegetation and wildlife have sustained the residents of the tiny community of Resolute Bay since their relocation from northern Quebec in the 1950s. They view the national park as a key means to protect the endangered Peary caribou of the area — caribou which were important to the community's early survival.

Allow me to quote a community elder who told the following to Parks Canada in 2010:

> It was early September 1953 when we were deposited at what is now the community of Resolute. It was cold and dark compared to our home in Hudson Bay. We had no idea how we would survive. We did not know what animals were there. Somehow we made it through our first winter living on seal and polar bear. We desperately missed caribou meat. In March of the second winter, 5 or 6 hunters managed to get the equipment to travel to Bathurst Island. Our escort family from Pond Inlet told us there might be caribou and how to get there. The hunters came back in about a week carrying 8 caribou! I was a child then, but remember how great it tasted and how excited the adults were. Ever since we called it "the place where you hunt caribou." Those caribou saved our lives in more ways than one. Now it is our turn to protect them.

Honourable senators, in passing Bill C-72, we will help the elders and the residents of Resolute Bay protect the Peary caribou. Qausuittuq will protect travel routes, calving grounds and wintering grounds for Peary caribou, a population that was listed as endangered under Canada's Species at Risk Act in 2011.

Bathurst Island is also considered a very significant area for muskoxen in the Queen Elizabeth Islands. Archaeological studies have found evidence of human use on Bathurst Island, dating back 4,500 years. Pre-Dorset, Dorset and Thule cultures were present in the area. Within Qausuittuq national park, there are several archeological sites relating to the late Dorset culture, circa 500 to 1,200 A.D. While Bathurst Island was inhabited from time to time over the past millennia, the area of the park was the least inhabited part of the island.

The incredible discovery in 2014 related to Sir John Franklin's ships, including the identification of the HMS *Erebus* and the recovery of the ship's bell, was a significant scientific and historical accomplishment. The Parks Canada-led discovery of the HMS *Erebus* has captivated Canadians and the entire world, while serving to highlight Canada's Arctic sovereignty and our respect for Aboriginal people's traditional knowledge.

Qausuittuq has a connection to the ill-fated Franklin. There is a cairn in Qausuittuq built by one of the search parties for Sir John Franklin's ships, HMS *Erebus* and HMS *Terror*, and their crews that disappeared in 1845. I've had the privilege of being there. It is almost 1,000 kilometres from where the wreck of the HMS *Erebus* was found last year.

While this wild, High Arctic national park is located in a remote corner of the world, I can assure that it is quite accessible from the community of Resolute. Local Inuit can provide guiding and outfitting services for the adventurous explorer, arranging access by chartered aircraft, boat, snowmobile or dog team.

It's a place that one should experience to feel the High Arctic sun and wind, and to witness the 360 degree horizons and the animals that are able to make their lives there. This time of the year, it is blessed with 24-hour daylight.

To visit Canada's newest national park is to escape from the ordinary — to experience an unworldly land and a powerful sense of timeless isolation. Spring and summer are the two seasons during which visitors will be particularly attracted to Qausuittuq national park. Visitors will have a variety of opportunities to experience the park, including camping and travelling the traditional Inuit way, supported by Inuit guides.

In spring, snow and sea ice allow for access by snowmobile or dog team from Resolute. In summer, a short flight from Resolute will bring visitors to the park, where they can hike across the tundra and camp under the midnight sun. Cruise ship passengers will also be welcome to visit the park.

Honourable senators, the development of this park will be a partnership between Parks Canada and the Inuit of Resolute. The nature of this partnership has been negotiated and defined within an Inuit Impact and Benefit Agreement signed by the Minister of the Environment, the minister responsible for Parks Canada and the president of the Qikiqtani Inuit Association in January of this year.

Qausuittuq national park will have a cooperative management committee and Parks Canada will work with Inuit in Resolute and in the Qikiqtani region of Nunavut to ensure this new national park will bring social and economic benefits to Inuit, while providing park visitors with enjoyable and enriching experiences that include learning about Inuit culture.

The creation of the Qausuittuq national park is yet another significant accomplishment of our government in protecting our natural heritage for future generations. Since 2006, our

government has expanded the network of protected areas through a six-fold increase of Nahanni National Park Reserve and the creation of Sable Island National Park Reserve; Nááts'ihch'oh National Park Reserve; Gwaii Haanas National Marine Conservation Area Reserve and Haida Heritage Site; and the proposed Lake Superior national marine conservation area.

In closing, I urge honourable senators to support the passage of Bill C-72. *Qujannamiik*.

• (1450)

Hon. George Baker: Would the honourable senator take a question?

Senator Patterson: Of course.

Senator Baker: This bill was passed by the House of Commons. I congratulate the member for giving a complete account of what is in the bill because, as the senator knows, it passed the House of Commons, deemed to have been read the second time, deemed to have been sent to the committee, deemed to have been reported from the committee with no amendments and deemed to have been read a third time. We need to have something on the record about what the law is that we're passing.

I notice that the bill says "(5)" and it's an addition to Schedule 1 of the Canada National Parks Act being amended. Schedule 1 lists all the provinces and territories in Canada and the number of national parks. This, I presume, would be the number 5 national park in Nunavut. I'm pretty sure of that because I recall when number 4 was added, so this would be number 5.

Sometimes in those large areas covered by national parks there is a conflict with the local communities in that they are restricted in various ways by the establishment of a national park. Could the senator assure the Senate that there is no dispute that he is aware of with the local population in the designation of this very fine area that he has described as a national park, that this is being done in harmony with those who live within the boundaries of the national park, and they are happy with the possible restrictions that are placed upon them regarding hunting and so forth?

Senator Patterson: I thank the honourable senator for the question. I'm pleased to tell him that, indeed, this national park was created within the terms of the Nunavut Land Claims Agreement, which provides for the creation of national parks but also includes a provision that requires the successful conclusion of Inuit Impact and Benefit Agreements.

The Inuit of the Baffin region and the Qikiqtani Inuit Association were fully involved in the negotiation and successful conclusion of an Inuit Impact and Benefit Agreement. I think I can fairly say there was no opposition to the creation of this park. It was negotiated in full partnership with the Inuit of the Baffin region, the Qikiqtani region and especially the adjacent area of Resolute Bay.

Hon. Joan Fraser (Deputy Leader of the Opposition): I would like to thank Senator Patterson for the informative speech on this bill. He has had the very great privilege of visiting this territory. I have not. Face it, most of us have not and never will, but that doesn't mean that we don't support preserving it. On the contrary, we all know how fragile the Arctic is and how much it is in need of preservation.

I venture to guess that tourism is not yet a massive industry at Qausuittuq, but with climate change it's likely to increase. The need to ensure that it is properly done is even greater in the High Arctic than in the rest of the country because of the enormous fragility of the terrain.

This is a huge territory. The bill says it is approximately 11,008 square kilometres. That's a lot of land and it's very harsh land. Senator Patterson talked about the Arctic desert. Temperatures average -32 degrees in January and only 5 degrees in July. The miracle is that in this harsh terrain, people have lived for coming on 5,000 years, have made their mark and have survived.

I would love one day to visit the cairn Senator Patterson referred to that was erected by people searching for Sir John Franklin and his crew. I suspect I won't, but I'm glad to know it's there and it's protected.

I think it's important for all of us to support the creation of national parks like this, but I also think it's important for the Environment Committee to have a chance to look at this bill and find out if there is any little thing about it that might need a bit of adjustment.

The bill seems straightforward to me, and the important thing is that, as Senator Patterson has said, it was agreed upon by the local people.

I hope it will bring them much pleasure, much profit, much comfort, but in the meantime I do think we should refer this bill to committee as soon as possible, and I would therefore support doing so now.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Patterson, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.)

CANADA-NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION ACT

BILL TO AMEND—SECOND READING

Hon. David M. Wells moved second reading of Bill C-64, An Act to amend the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act.

He said: Honourable senators, I am pleased to take part in this important debate on Bill C-64, An Act to amend the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act. With this legislation, our government honours both a recent promise and an enduring commitment. As you will recall, it was a few short weeks ago in our Economic Action Plan 2015 that we promised to re-establish a moratorium on oil and gas activity in Georges Bank — a promise made, a promise kept. More than a mantra, that has been and continues to be the approach of our government, so this bill comes as no surprise.

Beyond the specific commitment, our government has also assured Canadians time and time again that any development of our offshore oil and gas resources would have to meet the highest standards of environmental protection. With this legislation, we honour that commitment too. Working with our provincial partner, we continue to protect this unique ecological area that supports a wide range of fish, marine mammals and corals. It is an area that supports important commercial fisheries that in 2007 were valued at over $89 million and generated more than $43.5 million in related income.

Colleagues, Georges Bank is more than simply an accident of geography. It is the author of much of our maritime history. Indeed, it may be said that this bank is directly responsible for the development of towns like Yarmouth along the Nova Scotian coast. It is a bank that, beyond a shadow of a doubt, created a livelihood and a lifestyle that is quintessentially maritime and undeniably Canadian.

At just 100 kilometres from shore, it is among the most accessible of all the fishing banks in the North Atlantic. Its singular location, where the cold Labrador current meets the warmer Gulf Stream, creates ideal conditions for the plankton and krill that nurture an entire ecosystem of marine animals.

• (1500)

Quite simply, Georges Bank is unique and one of the most biologically diverse and productive regions in the world's oceans. Teeming with cod and halibut, it has sustained a rich fishing industry for more than 400 years; but history tells us that newer fishing techniques and poor stewardship led to overfishing, not to mention damage of the sea floor coral and sponge habitats. Our government is committed to avoiding the errors of the past. To do so, it is worth revisiting that past.

You may recall that between 1976 and 1982, a number of exploratory wells were drilled on the American side of Georges Bank. However, concern over the impact on fish stocks led the Canadian and Nova Scotian governments to declare a moratorium on oil and gas activity on the Canadian side. A similar moratorium was later declared by the United States on its side of the bank.

Colleagues, the 1998 legislation that established the Canadian ban, the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, also called for a joint Canada-Nova Scotia public review panel. The role of this panel was to make recommendations to both governments prior to termination of the moratorium in the year 2000.

Its advice was to extend the moratorium to 2012. Meanwhile, in 2010, the United States extended the oil and gas moratorium on Georges Bank to 2017. Canada and Nova Scotia agreed that a policy-based moratorium lasting until December 1, 2015, would replace a previous legislated moratorium.

This extra time was used to study the impact of petroleum exploration on the fisheries. So with a December 31 deadline ahead of us, and an election due in October, we are taking action now. We are proud to work with Nova Scotia on this historic initiative.

Our government is committed to protecting environmentally sensitive areas like Georges Bank. We know that preserving the precious habitat that supports our fisheries is imperative to protecting our geographic heritage for future generations and imperative to ensuring the economic sustainability of our coastal communities.

This legislation is consistent with that approach and with our plan for responsible resource development. Through this plan, we are engaging Aboriginal groups in every aspect of resource development; strengthening offshore safety and security while enhancing prevention, preparedness and response; increasing liability for polluters in the unlikely event of an accident; enshrining the polluter-pays principle in law; and, finally, modernizing our regulatory review of major resources projects to eliminate duplication and provide investors with predictable beginning-to-end timelines.

Let me speak to that last point, on making regulation more efficient and effective. Our government's focus is not on regulations that sound good; it's on regulations that are good and sound. We have a great example of this in the Frontier and Offshore Regulatory Renewal Initiative, known as FORRI.

Senators will know that this is a collaborative effort of the Governments of Canada, Newfoundland and Labrador and Nova Scotia. Other partners include the offshore petroleum

boards of Canada and Nova Scotia, and Canada and Newfoundland and Labrador, as well as the National Energy Board.

The goal of this initiative is straightforward: to modernize the regulatory framework governing Canada's offshore oil and gas sector. Quite simply, it is about strengthening regulations and ensuring that they are performance-based regulations that get real results without the red tape. This is a necessary initiative, and I look forward to continuing to collaborate with industry and our provincial partners as we advance this work together.

Of course, a key element of our plan for responsible resource development is strengthening marine safety across the country. To do that, we are increasing surveillance inspections and safety audits and enhancing powers of enforcement. We are implementing the recommendation from the independent expert panel on tanker safety to develop response plans.

These response plans will be designed specifically for the geography, tanker traffic and environmental conditions of different areas. All these efforts under our responsible resource development complement our ongoing efforts to safeguard Canada's waters by creating marine protected areas. All told, these marine protected areas now cover over 56,000 square kilometres of Canada's oceans and Great Lakes, roughly equivalent to the area of Nova Scotia.

Canada's environmental record for offshore activities is strong. Offshore oil and gas projects proceed only if they are safe for the environment and Canadians. In re-establishing a legislative moratorium, we have listened to fisheries associations, seafood processors, environmental and non-governmental organizations, as well as First Nations.

At the same time, we have demonstrated our commitment to realizing the economic opportunities of Canada's offshore oil and gas resources, all the while ensuring the highest level of environmental protection.

This legislation will establish a moratorium on oil and gas development until 2022. It will also provide for successful extensions of up to 10 years each through joint federal-provincial ministerial notice. These notices will provide justification for extending the moratorium and will be published in the *Canada Gazette*. These notices can only be issued following a thorough review of the environmental and socio-economic impacts of oil and gas activities.

Let me expand on why we have chosen to proceed through ministerial notice rather than legislation. The reality is that the conditions requiring the protection of Georges Bank have prevailed for over 30 years. Our goal is to make any extensions of the moratorium as efficient as possible, and this is best achieved by joint ministerial notice. Such notice is also consistent with the principles of joint management under which the federal and provincial ministers act in concert to confirm decisions about oil and gas activity in Nova Scotia, also known as "fundamental decisions" in the offshore accord acts.

Following passage of this legislation, Nova Scotia has agreed to introduce its own mirror legislation amending the provincial accord act and repealing its Offshore Licencing Policy Act.

There are times when this house is asked to address issues of immediate consequence or concern. There are also times when it is required to take the longer view, beyond the next election, to act in the best interests of generations to come.

This bill calls for such a perspective. It asks us to look at the enduring health of this precious natural and national asset. I ask all senators to support this ecologically sensitive area by supporting Bill C-64. Thank you.

The Hon. the Speaker *pro tempore***:** Senator Baker, do you have a question?

Hon. George Baker: Would the honourable senator permit a question?

Senator Wells: I would welcome a question, Senator Baker.

Senator Baker: This is another bill that passed through the House of Commons. First of all, I have to congratulate the senator for his remarks in describing exactly what this bill is about. It passed the House of Commons without one word being spoken. It was deemed to have been read a second time, deemed to have been referred to a committee, deemed to have been dealt with in the committee, deemed to have come back from the committee without amendment, and deemed to have been read a third time on one vote in the House of Commons. We've got to have something on the record regarding new laws that are passed.

The United States has certainly preceded Canada in the moratorium on drilling. I have to recognize the honourable senator's knowledge in this area; he was very much involved. I'm not sure if it was the corporate world or with government as far as the Canada-Newfoundland offshore agreement was concerned. I think he served on the oversight committee in the past.

I notice that this is not a permanent moratorium or even a moratorium until December 31, 2022, but in each section of this bill it says "may jointly issue."

Could he assure the Senate that it is the intention of the government to do what he has set out in his speech and what the summary suggests, which is to create a moratorium on drilling, to continue the moratorium until December 31, 2022, that this bill will provide the mechanism to do that, and that the words "may jointly issue" are to be interpreted in that manner?

• (1510)

Senator Wells: Thank you for your question, Senator Baker. Just for clarity, I didn't serve in an oversight capacity. I was Deputy CEO of the Canada-Newfoundland Offshore Petroleum Board for two years and sat on the board for two and a half years, so I had daily activities with the offshore boards. Through

that, I also dealt quite directly with the National Energy Board, the federal Department of National Resources and the Canada-Nova Scotia Offshore Petroleum Board.

I believe that Canada's moratorium actually preceded the American moratorium, and I believe it was a policy-based — not a statutory-based — moratorium that went back to the 1970s.

So your question, if I understand it correctly, as this is being enshrined as statutory, is there any commitment that will continue beyond 2022? Is that the essence of your question?

Senator Baker: No. When one reads the bills on the face of it, word-for-word, it says:

> The Federal Minister and the Provincial Minister may jointly issue a written notice prohibiting . . . .

This is repeated; in other words, "may."

You gave an explanation of this bill as if the moratorium on drilling was going to continue until sometime in the future, whereas the actual wording says "may jointly issue a written notice prohibiting . . . ."

Senator Wells: Thank you, Senator Baker. Because the federal government can only control things in the federal jurisdiction — and I mentioned this in my speech. It was an add-in. It wasn't in the text and it was quite specific.

There are decisions in both offshore petroleum boards, to which Canada is a party, called fundamental decisions, which are decisions to either drill or withhold drilling. There are various categories that fall under the fundamental decision sign-off. That sign-off must happen by both the federal Minister of Energy and the responsible minister in the province of Newfoundland and Labrador, typically called the Minister of Energy or Minister of Natural Resources.

So by putting in this "may" aspect, we cannot presuppose what the provincial minister might do. It's provincial jurisdiction to make a decision in these 50-50 boards. So while we have a strong feeling about what the federal government will do — in fact, we're enshrining it — we can't presuppose what the provincial minister will do, even though in the case of Nova Scotia, they have asked for this legislation.

Hon. James S. Cowan (Leader of the Opposition): As Senator Baker would say, I have just a few words, and I mean that.

I thank Senator Wells for his outline of the provisions of the bill. This is an important federal-provincial initiative, in this case with respect to Canada and my province of Nova Scotia. As he said, from 1988 until 2012, there was a statutory prohibition on oil and gas exploration on a portion of Georges Bank. Then between 2012 and expiring December 31 of this year, there has been a policy moratorium. The purpose of this bill is to replace that policy moratorium with a statutory moratorium, which would last until 2022. Thereafter, as he has described, there's the possibility of joint ministerial written notices, which would extend the moratorium by notice rather than by statute in 10-year increments beyond that, following the conclusion of environmental and socio-economic impact studies.

I did take the occasion this morning to speak with officials in the province of Nova Scotia. I've been assured that they have been involved in the negotiation of this arrangement, that they support the passage of this legislation and will introduce, as Senator Wells has said, mirror legislation when the Nova Scotia legislature is recalled.

Since we are supposed to be a body of legislative oversight, legislative review, sober second thought, whatever it is you wish to call it, I thought I would pick up on the point that Senator Baker has made twice now, first in questioning Senator Patterson and then in questioning Senator Wells.

We often review what was said in the other place about the legislation we're being asked to pass. I will read you exactly what was said in the other place about this bill. This was by the Honourable Peter Van Loan, Leader of the Government in the House of Commons. This won't take very long. This was on June 19, last Friday. This was all that was said about this bill in the House of Commons:

> That, notwithstanding any Standing Order or usual practice of the House,
>
> (a) Bill C-64, An Act to amend the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, shall be deemed to have been read a second time and referred to a Committee of the Whole, deemed considered in Committee of the Whole, deemed reported without amendment, deemed concurred in at report stage and deemed read a third time and passed;

Now, that doesn't strike me — and I don't think it should strike any of us — as the way legislation should be passed in this country. I recognize the importance of this piece of legislation and I support it. But this is not how legislation should be passed.

One other act was referred to in that speech by Mr. Van Loan, and that was Bill C-72, which was sponsored by Senator Patterson a few moments ago — exactly the same words, exactly the same length of time, no discussion, no debate. The danger that I see in this is that we will refer this to our committee, which will presumably hear from an official, but I doubt whether they will hear from others who might be affected and would have a legitimate interest in the passage of legislation like this.

While I support this legislation and will do so at second reading and when it comes back from committee, I really don't think this is a proper way for us to conduct the passage and consideration of legislation in this country.

With that said, I support the bill.

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

An Hon. Senator: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Wells, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.)

CANADIAN COMMISSION ON MENTAL HEALTH AND JUSTICE BILL

NINETEENTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Frum, seconded by the Honourable Senator Dagenais, for the adoption of the nineteenth report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill S-208, An Act to establish the Canadian Commission on Mental Health and Justice, with a recommendation), presented in the Senate on April 1, 2015.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I rise to speak to the report of the Standing Senate Committee on Social Affairs, Science and Technology on my private member's bill, Bill S-208, An Act to establish the Canadian Commission on Mental Health and Justice.

As colleagues know, the committee recommended that this bill not be proceeded with further by this chamber.

I first introduced this bill two years ago, on June 12, 2013. I put it forward because it had become abundantly clear that our existing approach to mental health and criminal justice is simply not working. Increasingly, our prisons and jails are filled not with hardened criminals, but with people suffering from mental illness. Our police are not out fighting crime on our streets; they're busy answering calls related to mental illness, substance abuse and addiction.

I will not go through the statistics and the litany of problems again. They are described in my earlier speech on this bill, in the testimony that was heard by the Social Affairs Committee, and in growing numbers of reports, including — tragically — coroners' and judicial reports into the death of mentally ill inmates.

• (1520)

There is a term for what is happening, colleagues. It is called "the criminalization of mental illness." But our prisons are not hospitals, and prison guards are not mental health professionals. You don't become a police officer because you want to be responding to your fellow citizens' mental health concerns; you join a police force to stop criminals.

Most importantly, criminalizing mental illness only makes the illness worse. Our Social Affairs Committee heard that there were more than 1,000 self-inflicted injuries in prisons last year — and this rate has more than tripled in the last five years. And, of course, we've all heard the tragic stories of Canadians — too often young Canadians — with mental illness who have committed suicide while in our prisons.

This is not the kind of society that any of us wants. That is not how any of us wants our fellow citizens to be treated — to be locked away behind bars because they have an illness.

My bill was designed to find another, better way. Report after report, study after study, professionals from police officers to judges to correctional authorities to psychiatrists have all agreed we need a better, comprehensive approach — one that brings together the various governments, institutions and professionals, from both the criminal justice side and especially the health side. We need an approach that focuses on early detection, identification and treatment and that ensures that quality mental health services are available and accessible to Canadians who need it, when they need it.

Bill S-208 proposed establishing a new commission dedicated to and focused on seriously addressing these issues. I was gratified to see the welcome reception my proposal received, from stakeholders with whom I met, witnesses who came before our committee and indeed from other senators on the committee. As Senator Frum said in this chamber, "The issue in discussion was not what needs to be done, but how to best achieve these agreed goals."

I proposed creating a new Canadian commission on mental health and justice. Others, including several witnesses who appeared before the committee and the majority of senators on the Social Affairs Committee, believed the better approach would be to leave the issue in the care of the Mental Health Commission of Canada.

Colleagues, the Mental Health Commission of Canada is an organization of which all of us in this chamber are deservedly very proud. It was the direct result of the recommendations made by our Standing Senate Committee on Social Affairs, Science and Technology, the groundbreaking *Out of the Shadows at Last* report on mental health. We know that this important commission was created thanks to the Senate — an example to which many of us point as the good work that the Senate often does.

The Mental Health Commission does excellent, important work on mental health. However, I had several reservations about giving the tasks set out in my bill to the Mental Health Commission, and that is why I proposed establishing a new commission. Let me explain.

First, the Mental Health Commission was established by this government in 2007 and given a 10-year mandate expiring in 2017. Over the past several years, as the deadline came closer, several of us in this chamber asked the government leader for assurance that the government planned to renew the mandate beyond 2017, but the leader studiously declined to provide that reassurance.

However, two months ago, on April 21, 2015, the government announced in its budget that indeed the commission would be renewed for a further 10 years.

But, honourable senators can understand why, in drafting my bill back in 2013, I could not assume that the Mental Health Commission would even be in existence to take on the tasks set out in my bill.

That was one reason, but that was not the only reason.

Senator Frum suggested in her speech here on April 21 that a new organization is not needed, as the Mental Health Commission "has been addressing some of the mental health issues in the justice system and beyond." The problem, colleagues, is that while the commission has indeed done some excellent work, it has not been able to make a serious dent in the work that needs to be done in this area. It has done a few very laudable and valuable projects — but nothing along the lines of the comprehensive, active work that Bill S-208 envisaged.

That is understandable; the Mental Health Commission of Canada has a huge mandate.

I am concerned that it would be expecting too much to ask it to continue the good work it is doing in other areas and also take on the very extensive work set out in my bill. Certainly it will require significantly increased resources if it's going to be expected to do so.

My final concern was the lack of a statutory mandate for the Mental Health Commission. Right now, colleagues, its mandate is set by the government of the day. We saw that the very question of its continued existence was unsettled until quite late in its mandate — something that necessarily causes difficulties for an organization trying to plan and carry out long-term work.

These were concerns as well that were expressed by a number of witnesses before our committee. Howard Sapers, the highly respected Correctional Investigator of Canada, supported the idea of establishing a new Canadian commission on mental health and justice, saying that "a commission on mental health and justice could provide the energy and leadership to drive national reform and change."

He was also a strong advocate for enshrining the mandate of such a commission in legislation. When asked by Senator Seidman about the proposal to give the commission a statutory mandate, Mr. Sapers replied:

> You may not be surprised to know that I have an opinion about the importance of legislation and statutory authority. Certainly my office —

That's the Office of the Correctional Investigator of Canada.

> — benefits from that. It gives you stability and continuity. For example, it removes the question that the Mental Health Commission is currently facing; that is, will they exist beyond 2017? The importance of that can't be underestimated.
>
> That's not to say that bodies or organizations can't exist without statutory authority. It's also not to say that statutory authorities shouldn't be sunsetted or reviewed from time to time, but I can tell you that I find having a legislative basis for my office to be very important.

Anita Szigeti, who testified on behalf of the Criminal Lawyers' Association, also came before our committee with extensive experience in this area. She has personally represented more than 6,000 clients with serious mental disorders in a 23-year career. She told us of the Criminal Lawyers' Association's support for the formation of a national commission on mental health and justice, saying "the problems faced by mentally ill individuals in criminal justice are of epic proportions and need to be addressed comprehensively by people expert in the area."

She also advocated strongly for a statutory mandate for such an organization, saying "a legislative mandate is required to ensure meaningful results."

The majority of the committee concluded otherwise, with respect to both the need for a statutory mandate and the need for a new organization. Accordingly, the report before the chamber recommends that Bill S-208 not be proceeded with further in the Senate. The committee instead chose to urge the government to provide the Mental Health Commission of Canada with a renewed and expanded mandate to incorporate the purpose and duties set out in Bill S-208. I was pleased to see that the committee specifically referred in its observations to the need for the Mental Health Commission to be "properly resourced," as well as directed to fulfill these tasks.

Colleagues, I still believe that a statutory mandate would be the better path forward. We saw very concretely the problems with a time-limited mandate dependent on the goodwill of the government of the day. I believe that stability and clarity, as well as transparency and accountability to Parliament, which would be provided by a statutory mandate, would be very important.

Of course, while we know that the Mental Health Commission will indeed be renewed, we have yet to see its renewed mandate or have information about the resources that will be provided.

There is much that is uncertain if this chamber indeed chooses to proceed as recommended in the committee's report. What is certain is that there is much work to be done, that every day Canadians are finding themselves caught in a criminal justice system that is not equipped to deal with their problems, and that our system is being asked to fulfill a role that it is simply not designed for.

• (1530)

Canadians who are not criminals but are suffering from mental illness, and their families and friends, are paying the price with their lives for our inaction. Simply put, we should either establish the Canadian commission on mental health and justice or have the badly needed new mandate and financial resources for the Mental Health Commission put into place as quickly as possible.

Thank you, colleagues.

(On motion of Senator Martin, debate adjourned.)

GENETIC NON-DISCRIMINATION BILL

ELEVENTH REPORT OF HUMAN RIGHTS COMMITTEE—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Frum, seconded by the Honourable Senator Demers, for the adoption of the eleventh report of the Standing Senate Committee on Human Rights (Bill S-201, An Act to prohibit and prevent genetic discrimination, with amendments), presented in the Senate on February 19, 2015.

Hon. James S. Cowan (Leader of the Opposition): Can I perhaps ask the deputy leader: I had understood some weeks ago that Senator Poirier was going to speak to this item. Can you tell me when she will?

Hon. Yonah Martin (Deputy Leader of the Government): I apologize. I don't have the answer to your question, and I see that Senator Poirier is out of her chair.

Senator Cowan: Could you inquire and perhaps let me know?

Senator Martin: Yes.

(Order stands.)

[*Translation*]

STRENGTHENING CANADIANS' SECURITY AND PROMOTING HUNTING AND RECREATIONAL SHOOTING BILL

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Céline Hervieux-Payette moved second reading of Bill S-231, An Act to amend the Firearms Act, the Criminal Code and the Defence Production Act.

She said: Honourable senators, I would like to begin by putting this bill in context. It is not a response to the recently passed Bill C-42. I have been working on this for years. The research and consultations with experts that I have been carrying out with the help of my staff since last September resulted in my introducing this bill.

So far, the only thing in social media has been a single press release outlining the bill. I have received negative reactions and even some more or less threatening insults. However, never in my entire political career have I received so many compliments, including an outpouring of 3,250 "likes" in response to my article on the introduction of my bill. Never in my life have I been so liked.

That is why I want to remind you about the purpose of this bill and why it is called the "Strengthening Canadians' Security and Promoting Hunting and Recreational Shooting Act." Its purpose is threefold: first, to ensure security; second, to ensure that people who love hunting and recreational shooting have the opportunity to engage in those activities safely; third, to prohibit any firearm not used for security or for the activities I just mentioned.

Obviously, my bill is more nuanced than the summary that I just gave you. It upholds the four reasons for possessing and acquiring a firearms licence that are already set out in the legislation, namely, employment, self-defence, sport and collecting.

For example, firearm collectors will still be able to indulge their passion and keep the weapons that belonged to their grandfather or great-grandfather because, under this bill, those weapons will be rendered inoperative and people will therefore be able to display them in their dwelling houses.

This bill provides for another exception, and that is that anyone who needs to protect himself or herself will still be able to apply for an exemption to keep a firearm at their home, as is the case in the existing legislation. In other words, and given the reactions

that gun lobbyists have expressed on the Internet, I am telling you unequivocally that I am not against firearms. I want to say it a few times to make sure that everyone understands me. I am not against firearms.

The difference between my position, as reflected in my bill, and that of some lobby groups is where to draw the line between authorized firearms and those that should be prohibited or whose use should be limited to certain locations only, such as shooting clubs. That's it for my introduction.

I will defend the philosophy underlying my bill and provide more details about it later, but one thing is certain: I am not trying to make light of or put a spin on such a sensitive topic. Not everyone can say the same, especially not some of the lobby groups, which have formed impressions and made inferences from my press release that are not at all consistent with my bill.

Before getting to the heart of the matter, I would be pleased to share some of my fondest family memories with you. As most of you probably know, I am originally from a small town called l'Assomption, north of Montreal, in Quebec, in the Lanaudière region. Its proximity to the St. Lawrence River makes l'Assomption a great place for hunters to live because you can hunt for duck there, roam through all the various forests, and even make maple syrup.

My father was one of those people who would hunt for small and big game in the underbrush or along the river banks. When I say "big game," I mean deer and moose. When it comes to hunting wildlife for its meat, such as venison, I know everything about storing, keeping, hanging, and even cooking it. If you're interested I would be glad to help you cook any rabbit, partridge, or duck you might hunt. Those are things my father said I was better at than my mother. That's not entirely true, but that is what he told me.

In the 1950s and 1960s, my father would hunt big game with a .303 Lee-Enfield rifle, a reliable weapon that came with a scope. We also had a .22, for small game, as well as the infamous 12-gauge shotgun where you really had to aim for the partridge's head or you wouldn't be eating any partridge because you would be left with a pile of pellets and feathers.

My father used these guns for sport, but also for putting excellent food on the table. Today, things are different. The animals my father brought home from the hunt were our food of choice. I don't think we could eat like that today, but I grew up eating wild game for more than half the year. I would add that fish would grace our table as a result of these adventures in the great outdoors as well. Over the decades, life became more urbanized and the utilitarian nature of firearms faded over time.

• (1540)

I am not denying the fact that some Aboriginal peoples have retained a way of life based on hunting and fishing, but overall, we are no longer living in pioneer days or even my father's time. My colleague Senator Watt has shared some caribou meat with me, and I have to say that it's delicious.

I also realize that hunting and fishing are part of Canadian culture and that outfitters, for one, help people participate in that culture. In Quebec, we have some very comfortable and pleasant ones. In fact, I would suggest that my colleagues go spend some time at one, maybe take a little vacation there in the fall during a week when we don't have to be here in the Senate.

I would like to go over some of the details of Bill S-231. I have identified six key points that will help me explain the measures in this bill, which is rational, sensible and in line with the values of most Canadians.

First of all, Bill S-231 overhauls the current firearms program by prohibiting all firearms in Canada except hunting firearms, firearms used at shooting clubs, and collectors' firearms, which receive special treatment.

Second, it redefines two of the three existing classes of firearms by making only hunting firearms legal and localizing the prohibition of restricted firearms.

Third, Bill S-231 limits the transport of circumscribed firearms to transporters — which have no interest other than providing secure transportation — thus controlling the movement of firearms in Canada.

Fourth, Bill S-231 replaces the registration certificate with an inscription certificate. You can appreciate that the terms "registration" and "registered" have been used so often that we simply thought that using the term "inscription" would eliminate some anxiety. I think that using the term "inscription" does not evoke feelings of fear.

Fifth, Bill S-231 strengthens the role of the RCMP with a statutory provision.

Sixth, Bill S-231 undoes all the provisions of Bill C-42, except for the prohibition on obtaining a licence to possess and acquire firearms following a domestic violence conviction.

Finally, I will explain how Bill S-231 will support hunting and sport shooting while helping maintain overall security.

First of all, we must change the current system in order to restrict the circulation of dangerous firearms in Canada. I am one of those people who believe that people don't kill people, guns do. Granted, that is the antithesis of the gun lobby's motto. However, unlike the gun lobby, I am not promoting an industry, or developing a market; I only want to ensure Canadians' safety. Therefore, I rely on the statistics.

Here they are. There are negative comments on social media, and some Canadians have said that gun control is pointless because very few deaths are caused by firearms in Canada. In other words, these people are using the statistics obtained as a result of previous Liberal gun control policies — and we are still feeling their positive effects — that basically were in place until 2012. You must admit, it takes some nerve to pervert the truth.

A simple comparison with our neighbours to the south brings home the stark reality. The firearm death rate in the United States, a country with very weak gun control laws, was 10.3 per 100,000 population in 2011. That amounts to 32,163 deaths in one year, according to the *National Vital Statistic Reports* from the U.S. Department of Health and Human Services. That would be the number of deaths if 20 towers, like those of the World Trade Center, were to collapse every year in the United States. There were 2,977 victims on September 11, 2001.

In Canada, firearm deaths for the same year, 2011, totalled 679, or 1.9 per 100,000 population; that's 1.9 in Canada and 10.3 in the U.S., and that was under a system that the Liberals developed.

Accordingly, to say that since we have a very low firearm death rate we can do without strict gun control would be ignorant at best, and perhaps even be misleading. In any case, this puts the lives of Canadians at risk, as demonstrated by the American example, where, in 2011, nearly four people were shot dead every hour of the day and night.

Unfortunately, honourable senators, last week, there was another massacre, this time in a church in Charleston, South Carolina. Six women and three men were killed. In other words, the easier it is for people to access firearms, the more people will die. In light of that fact, which is not an ideological position, but rather a fact of life in the United States, I thought it was important to follow through on this point.

To ensure the safety of Canadians, I developed Bill S-231 around the idea that all firearms should be prohibited except those used in sport shooting, in a controlled environment such as shooting clubs, as well as hunting firearms and those that are collectors' items. I therefore replaced the restricted firearms class with a circumscribed firearms class, and the arms in this class will be usable only in certain locations, specifically at or in shooting clubs. They must be stored at those clubs and transported by experts or specialized companies. Lastly, as I said at the beginning of my speech, I took the current reality into account in establishing some exceptions.

In other words, pursuant to the definition in the Criminal Code, all firearms are legal, except those classified as restricted or prohibited.

These types of legal definitions pose a risk to public safety in Canada, since they are catch-alls that make it possible for some very dangerous firearms to be classified in the category of unrestricted firearms. As you know, there are currently almost no conditions on unrestricted firearms.

Bill S-231 rectifies this problem by providing that all firearms are prohibited, with the exception of hunting firearms or firearms used exclusively at a shooting club. Think about it. Why would anyone have a firearm at home if not for hunting or collecting? In the case of a firearm that is part of a collection, Bill S-231 still requires the individual to make the firearm inoperative.

Based on what I hear from some opponents of Bill S-231, I can get a sense of their objectives. A number of them tell me about their so-called right to defend themselves against all kinds of attackers, ranging from a simple thief to a terrorist. The big American lobby spoke out after the massacre in Charleston and said that the gun did not kill those people; the person shooting it did.

On June 15, an online petition called on Minister Blaney to allow Canadians with appropriate firearms training to obtain an Authorization to Carry permit for the purposes of self-defence. The petition concludes with "Canada will be a safer place." That is pretty delusional. Since when is the United States, which has 32,000 gun deaths every year, safer than Canada? Canadian law does not give people the right to defend themselves with a firearm, and that is a good thing. No one should be taking justice into their own hands. As far as I know, Canada did not have a civil war, and our American neighbours still do not seem to understand that theirs ended more than a century ago.

Other gun lobbyists are simply asserting their right to own a firearm. However, in 2005, the Supreme Court of Canada clearly ruled that no one has the right to own a firearm in Canada and that the possession of a firearm is a privilege granted by the government.

I would therefore like to come back to my question, which is: Why would anyone have a firearm in their home if it is not for self-defence, if it is not suitable for hunting but for sport shooting, and if it is not part of a collection?

The answer is that the reason is not clear, it does not seem consistent with our laws and it is based on a myth about safety that is not borne out by reality.

• (1550)

This overhaul of the firearms regime brings me to the second key point of Bill S-231: the new definitions of the three categories of firearms.

Under Bill S-231, it is no longer a matter of non-restricted, restricted and prohibited firearms. Instead, firearms would be classified as hunting firearms, circumscribed firearms and prohibited firearms.

This major change to these definitions promotes a better dichotomy between firearms that can reasonably be used for hunting and thus kept at a dwelling house in accordance with the regulations that apply to them and firearms that sport shooters use at shooting clubs and that must be stored at those clubs.

What are those definitions?

A hunting firearm is defined as any firearm with a smoothbore or striated barrel that is more than 470 mm long, in other words a shotgun or rifle. Semi-automatic weapons are not included in the definition of "hunting firearm," with the exception of .22 calibre rim fire semi-automatic rifles.

The restrictive definition of hunting firearms that I included in my bill is based on information from hunters and a Canadian Firearms Safety Course instructor. In fact, one of my employees

who has a law degree took this course as he was examining the bill. Hunters and instructors alike strongly advised and even warned students not to use semi-automatic weapons for hunting because of the many accidents that have occurred.

Bill S-231 repeals the privilege of those with a possession and acquisition licence to keep at their dwelling house any centre-fire calibre semi-automatic rifles. However, Bill S-231 does not prohibit the right to use such rifles. Those who are passionate about handling these rifles and would like to continue pursuing their passion can do so at shooting ranges where these rifles are stored and where courses are generally taught.

Again, why would anyone have firearms in their home, since they are not suitable for hunting and using firearms in self-defence is not advisable except in rare circumstances under the law?

As an aside, I can see where the firearms lobby wants to take us with this: toward a U.S.-style system with easy access to firearms where it is legal to use them to protect personal property. However, no one is fooled by this. This does not serve the interests of Canadians or keep them safe. This serves only the interests of the firearms lobby for selling more firearms. What is more, they must not be selling very many because gun maker Colt filed for bankruptcy last week.

I understand that the statement Prime Minister Harper made on March 17, at the Saskatchewan Association of Rural Municipalities annual convention, is yet another nod to the firearms lobby during this pre-election period.

The Prime Minister said the following:

> My wife's from a rural area and obviously gun ownership wasn't just for the farm, but was for a certain level of security when you're a ways away from immediate police assistance.

The Prime Minister's statement in favour of armed self-defence drew a reaction from the Canadian Bar Association, which expressed grave concern about the message being sent to people. The Quebec provincial police association described the statement as "inappropriate."

Writing in *L'actualité* on March 18, 2015, Manon Cornellier analyzed the message this way:

> Only licensed peace and security officers can have a firearm for security reasons, in which case it would be loaded. Anyone else in possession of a firearm must store it securely and unloaded, with ammunition stored separately and also securely.
>
> Such conditions make it impossible for one to defend oneself against a surprise attacker. When the Prime Minister talks about security, he is indirectly encouraging armed self-defence whether he means to or not.
>
> The fact that the Conservative Party used that statement the very next day to raise funds suggests that it was not unplanned.

It is no longer a secret that the Conservative Party of Canada is in favour of firearms and provides regular guarantees to the firearms industry. What's new is that, for ideological and probably electoral reasons, it now wants to lead Canada down the slippery slope of armed self-defence, a principle in place among our neighbours to the south — perhaps not the best model with their 88 gun-related deaths per day in 2011.

I felt that my bill should protect us from that kind of problem. That's why, under Bill S-231, no firearms other than those defined as hunting firearms can be kept within a dwelling-house.

That is all I have to say about self-defence. I will be clear, honourable senators. Bill S-231 does not seek to prohibit the use of centre-fire semi-automatic rifles, but to ensure that they are only used and stored at shooting clubs.

Therefore, I am not against firearms, but I support their use in a safe manner and definitely not as weapons of self-defence.

Thus, with Bill S-231, any holder of a possession and acquisition licence will be able to acquire and own a centre-fire semi-automatic rifle and use it at a shooting club designated for that purpose. When the holder of the licence has finished his shooting practice, he will have to store his firearm at the shooting club.

The distinction between a .22 calibre rim-fire semi-automatic rifle and a centre-fire semi-automatic rifle is a vital aspect of Bill S-231.

The United Kingdom made that distinction after the terrible events in Hungerford. In 1987, a crazed gunman named Michael Ryan killed 16 people, including his own mother. Carrying a handgun and two semi-automatic rifles — a Type 56 assault rifle, which is a Chinese version of an AK-47, and an M1 Carbine — Ryan also injured 14 other people before taking his own life. According to the authorities, there was no motive for Ryan's murder spree. Another important fact is that Ryan had legal possession of all his firearms in accordance with the British laws at that time.

The following year, Prime Minister Margaret Thatcher — a woman not known for her liberalism and with whom some of you, I am sure, share a Conservative ideology — took drastic action in response to this horrible tragedy.

The Iron Lady's Conservative government completely banned all centre-fire semi-automatic firearms from the United Kingdom and restricted the use of hunting rifles to those with a maximum capacity of three shells. The only firearms that remain legal in the U.K. are semi-automatic .22 calibre rim-fire rifles.

Britain's commitment to strict firearms policies did not stop in 1988, however, because in 1996, some nine years after the Hungerford tragedy, Great Britain went through the shock of another shooting rampage.

A man named Thomas Hamilton walked into an elementary school in Dunblane, Scotland, and killed 16 children aged four and five, as well as their physical education teacher, before killing

himself. Hamilton legally owned two hunting rifles and a handgun. The handgun used in the massacre had been properly registered.

In response to the massacre, the government called on Lord William Douglas Cullen to chair a royal commission to investigate the circumstances that could have caused Hamilton to commit such an act, and, more importantly, to make recommendations to prevent such a crime from ever happening again.

In his report, Lord Cullen recommended that the government introduce tighter controls on gun ownership. In response to the Cullen report, the British government passed the Firearms (Amendment) Act 1997. Thus, the law now prohibits all civilians from owning and storing most handguns in a private dwelling in Great Britain.

• (1600)

These gun control policies have had some impressive results. In 2011, there were just 38 gun deaths in Britain, while in the same year, Canada had 153 gun deaths, although its population is less than half that of Britain. According to other 2011 data, the British homicide rate is apparently lower than Canada's, at 0.06 per 100,000 people, compared to 0.45 per 100,000 people in Canada. All of the measures taken by the United Kingdom in 1988 and 1997 prove once again that enforcing strict gun control and removing guns from homes helps lower the number of gun-related homicides. It has been proven that guns, not people, kill people, unlike what the gun lobby claims.

Bill S-231 is based on a proven model. I hear all of the criticisms of my bill. However, those that attack a proven model in favour of the American model, which is clearly a security failure, make no sense. All they do is serve the interests of an industry.

Bill S-231 replaces the existing category of restricted firearms with the category of circumscribed firearms. A circumscribed firearm is any firearm, other than a prohibited firearm, that has a barrel equal to or less than 470 millimetres, such as handguns or firearms that are capable of discharging centre-fire ammunition in a semi-automatic manner.

As the term implies, those who hold a possession and acquisition licence in such a category of firearm will only be able to use and store these weapons at a shooting club. I made sure that the term "circumscribed firearms" includes the notion of location.

Honourable senators, there is a reason why my bill classifies these weapons as circumscribed firearms. They have been used to commit thousands of murders in Canada. I am thinking of Marc Lépine, Kimveer Gill and Justin Bourque. The weapons in their arsenals all had something in common. They all complied with the provisions of the Firearms Act regarding centre-fire semi-automatic rifles.

These weapons are dangerous and are not useful for hunting. They therefore do not belong in a dwelling house. I spoke with David Lutz, Justin Bourque's lawyer, and he said much the same thing. Just a few minutes after his client was sentenced, Mr. Lutz made an impassioned plea against firearms at the entrance of the Moncton courthouse on October 31, 2014. He told the CBC that:

> Three police officers are dead in Moncton and another in Ottawa because the wrong people were in possession of firearms that should have been prohibited.

He went on to say, and I quote:

> No hunter needs a firearm like the one Bourque used. None.

Third, Bill S-231 increases control over the movement of these dangerous semi-automatic weapons. Owners of such firearms who need to move them, for example to store them at a different shooting club where they want to use them, will have to use an outside service or specialized carrier to transport them.

My office consulted a number of experts, including a former police officer. They all told us that centre-fire semi-automatic rifles are very dangerous. They stressed that there is no need to keep such a firearm in a dwelling-house. The U.S. model proves that the more firearms are circulating in a country, the higher the homicide rate is. Bill S-231 seeks to strengthen Canadians' security.

My fourth point has to do with replacing the registration certificate with an inscription certificate. To me, words have meaning. This is therefore a change in the spirit of the law. Bill S-231 acknowledges the disappearance of the Canadian firearms registry. I will not get into that. I am not happy about the disappearance of this registry — another Conservative measure to satisfy the firearms lobby — but I decided that my bill would not be about that measure so as not to sidetrack the debate on my bill. The key question is the one I asked at the beginning of my speech, namely what is the point of having a firearm at home that is not strictly meant for hunting? Consequently, I would like it if we stopped talking about registration certificates, as that evokes the idea of a registry. "Inscription certificate" is more neutral and doesn't have the same connotation as "registration certificate." I think the term "inscription certificate" is quite apt in the case of firearms, whether we are talking about hunting or being a member of a shooting club.

My fifth point is that Bill S-231 reinforces the role of the RCMP and the Commissioner of Firearms by setting out their responsibilities in the firearms classification process, which is not found in the existing legislation.

Under Bill S-231, and unlike Bill C-42, in making regulations, the Governor-in-Council will have to consider the recommendations of the Commissioner of Firearms when he uses his discretionary power to designate a hunting firearm. Furthermore, the Governor-in-Council will not have the discretionary power to designate a firearm other than a hunting firearm. That is an important addition to the existing law because, and I repeat, our laws are not explicitly clear about the role of these individuals in the classification of firearms.

Furthermore, Bill S-231, again unlike Bill C-42, does not enable the government to unilaterally decide to declassify a firearm or to overrule the RCMP, as Minister Blaney did in the committee where I worked on the Swiss Arms matter. The Conservative government once again yielded to the firearms lobby. This lobby has been fighting for years to get a number of firearms that have been deemed as dangerous by many experts and authorities onto the Canadian market.

In 2014, the Royal Canadian Mounted Police conducted an investigation after receiving complaints that these semi-automatic guns could be easily converted into automatic weapons. The RCMP therefore once again classified circumscribed firearms and Swiss Arms firearms. A number of gun lobbies were furious and pressured the Conservative government to overrule the RCMP's decision. Since the existing law does not allow for the declassification of a firearm, on March 13, 2014, Minister Blaney announced a two-year amnesty to protect owners of these firearms from the harsh penalties that his own government enacted through Bill C-10 in 2012, which seems absurd. The same minister who enacted that legislation went back on his own bill. Minister Blaney even announced the following in a press release dated February 28, 2014, and I quote:

> . . . I was troubled to learn of a decision made by unelected bureaucrats to prohibit a number of rifles imported from Switzerland.

The bureaucrats at whom he turned up his nose are the RCMP experts whose job it is to protect Canadians' safety by means of the Canadian Firearms Program. The minister concluded with this statement:

> I will also be taking steps to make sure this never happens again.

In other words, the minister does not like it when the people responsible for Canadians' safety take measures that conflict with the interests of the gun lobby. The minister therefore proposed measures in Bill C-42 to give cabinet the discretionary power to "declassify" firearms, even if that goes against the RCMP's recommendations.

The sixth point I would like to make about my bill is that I did not allow myself to be influenced by dogma or ideology when drafting it. I used facts, figures, and documented results of Canadian, American and British policies. Australia's policies are similar to England's. Where I agreed with a provision of Bill C-42, I included it in my bill. That is why Bill S-231 states that a person convicted of domestic violence can never receive a licence to possess or acquire a firearm. That same provision is in Bill C-42, and it makes perfect sense.

• (1610)

What I find shocking is that instead of showing real leadership to ensure public safety and tightening our gun controls in the wake of the tragic events at Dawson College in 2006 and Moncton in 2014, the Stephen Harper government went in the opposite direction and, unlike our British colleagues, passed less restrictive measures to govern the privilege of firearms possession.

Honourable senators, I would like to remind you that, after these terrible tragedies, the Harper government introduced Bills C-19 and C-42, the first to end the long-gun registry and the second to make it easier to obtain guns. These two pieces of legislation are contrary not only to Canadians' safety, but also to Prime Minister Margaret Thatcher's legislative intervention in 1988.

In contrast, following the 1989 Polytechnique massacre, a Liberal government tightened firearms possession and acquisition with Bill C-68. That is why we can boast that we have a lower firearms death rate. This is even an argument used today by the gun lobby. Thanks to the gun control policies of a former Liberal government, we can say that our odds of being killed by a gun are the same as the odds of being killed by lightning.

My bill is also inspired by the leadership of the Quebec government, which, after the Dawson College tragedy, introduced Bill 9, known as "Anastasia's Law" in memory of one of Kimveer Gill's victims. This bill took effect on September 1, 2008, and banned the circulation of all restricted and prohibited firearms on the grounds of designated institutions, such as schools, as well as on means of public or school transportation.

What did Stephen Harper do following those tragedies? He gave in to the gun lobby and made Canada one of the few countries in the world to loosen gun control measures.

I will conclude my explanation of the text of my bill by repeating its title: the Strengthening Canadians' Security and Promoting Hunting and Recreational Shooting Act. I will not address the issue of security any further. I have already sufficiently explained how this bill will really benefit Canadians in that regard. However, what about promoting hunting and recreational shooting?

Bill S-231 narrows the definition of hunting firearms and makes them the only firearms that can legally be in users' possession in Canada. It confirms the legitimacy of hunting, granting these firearms a privilege that no other firearms possess. It does not restore the gun registry; in other words, this bill supports hunting and hunters, and I am delighted about that.

The restrictive definition of hunting firearm that I used in my bill is based on guidance I had from hunters and an instructor with the Canadian Firearms Safety Course and on the British model. Under this bill, any firearms owned by hunters must really be prescribed for hunting. The image of hunters should therefore be enhanced in the eyes of the public, which should please the owners of all outfitting companies in Canada.

As for shooting clubs, the new classification used in my bill, specifically the new category of circumscribed firearms, will make it possible to develop a market while ensuring safety. In fact, restricting the use of semi-automatic firearms other than .22 calibre to shooting clubs and requiring them to be stored at the club will automatically increase activity at those clubs, which, with some planning, could even become gun shops or could partner with them.

In closing, I would to thank the team of Senate lawyers, legal experts, law clerks and drafters who worked so hard to make this bill a reality. They worked with my own staff to quickly rewrite a complex piece of our legislation to make it progressive, innovative and bold. This bill respects fans of hunting and sport shooting while having a real, positive impact on Canadians' safety.

I introduced this bill because I believe that a progressive vision of Canada is not only desirable but possible. This bill can be used as a starting point for any government or non-governmental organization that, tomorrow, may want to stop the Conservative government from blindly forging ahead and electioneering by constantly passing legislation to please the firearms industry.

The Conservatives are not going to make Canadians safer by relaxing controls, as they did with Bill C-19, or by making firearms more accessible, as they did with Bill C-42. Safety has only one number, and that number is S-231.

Thank you.

(On motion of Senator Martin, debate adjourned.)

[*English*]

ENHANCEMENT OF CIVILIAN REVIEW AND OVERSIGHT IN THE ROYAL CANADIAN MOUNTED POLICE BILL

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

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

On the Order:

> Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Day, for the second reading of Bill S-232, An Act to amend the Royal Canadian Mounted Police Act (Civilian Review and Oversight Council for the Royal Canadian Mounted Police and the Royal Canadian Mounted Police Ombudsperson) and to make consequential amendments to other Acts.

Hon. Grant Mitchell: Honourable senators, thank you all very much. I appreciate that. I actually have two bills to speak to. One I just have to finish a little bit, just moments, under Senate Public Bills, Second Reading, and it happens that I presented Bill S-232, which was the bill that would establish a civilian review and oversight council for the RCMP, as well as an ombudsperson. I know it will come as a surprise to my colleagues that while I am usually precise almost to the second in the way I present and speak, I managed to be maybe 30 seconds short for the 4 p.m. deadline, so I have to finish my speech on that, and I may overlap a little bit so Hansard can know where I was and where I'm going on that.

I was listing what the ombudsperson would do and, at this point in the list, the ombudsperson may summon and examine any person they like. Further, after investigation, the ombudsperson can recommend that: one, an issue be referred to an authority for future consideration; two, an act be remedied; three, an omission or delay be rectified; four, a decision be cancelled; five, that reasons be given for a decision or an action on a certain issue; six, that a practice or procedure be altered; seven, that an enactment or other rule of law be considered; and, eight, could recommend any other measure.

Further, the recommendations are not binding. If the ombudsperson feels that the matter has not been adequately dealt with, the ombudsperson may submit a report to the minister; and, finally, the ombudsperson must provide a report to Parliament once a year, a copy of which may be tabled in each house.

The third major section of this bill, after establishing the civilian review and oversight council for the RCMP, after creating an RCMP ombudsperson's position, is simply to make consequential and related amendments to other acts.

(On motion on Senator Marshall, debate adjourned.)

UNDERGROUND INFRASTRUCTURE SAFETY ENHANCEMENT BILL

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Leave having been given to revert to Other Business, Senate Public Bills, Second Reading, Order No. 4:

Hon. Grant Mitchell moved second reading of Bill S-233, An Act enacting the Underground Infrastructure Safety Enhancement Act and making consequential amendments to other Acts.

He said: Thank you very much, honourable senators. Bill S-233 is entitled officially "An Act enacting the Underground Infrastructure Safety Enhancement Act and making consequential amendments to other Acts."

Now that may sound like an innocuous bill with a relatively subdued title, but this is really an exciting bill. It truly is. My colleague Senator Tannas from Alberta, where we have probably more pipelines underground than anywhere else on the face of the earth, knows exactly what I'm talking about.

• (1620)

This bill comes from excellent work, as usual, by the Senate, this time by the Senate Energy Committee under the direction at the time of Senator David Angus. We had undertaken a three-year study of energy strategy in Canada. I think we had 250 witnesses, and we travelled to a variety of places across the country to look into the issue.

In the meetings we held at two completely geographically distinct places, not related in any way, shape or form, it's probably true that the two people who spoke to me about this issue didn't even know each other. On one occasion in Calgary, a senior executive in the oil industry said, "Do you know that there is no comprehensive legislation in Alberta for requiring that people call before they dig?" We've heard that phrase, "call before you dig," so that you don't hit something by accident when you're digging with a backhoe or, for that matter, digging to put a fence post in your backyard.

Then we went to Sarnia, and completely unsolicited again, a senior executive of I think it was Union Gas said, "Do you know Ontario is the only province that has legislation covering extensively and rigorously the issue of call before you dig, the only province in Canada that has complete legislation?" They had just passed that legislation and it was yet to be implemented; it's just being implemented now. This would have been a couple of years ago.

Before I go any further, I should say that it was Bob Bailey, whom Senator Runciman may well know. They might well have sat in the Ontario legislature together. He was an opposition Conservative MPP who worked during the minority government with the New Democrats and Liberals to bring in this piece of legislation, which was precedent-setting in Canada and covered something that most of us would have just taken for granted as existing across all 10 jurisdictions provincially, would have been to some extent although not broadly needed in the territories, and would have had legislation federally as well. I was absolutely surprised when these two senior executives told me that there was no such legislation all across the country in a comprehensive way.

So what would this legislation do? Essentially what call-before-you-dig legislation does is further the work of the Canadian Common Ground Alliance, which is a private sector, non-profit alliance that has been building across the country its efforts to have structured call-before-you-dig call centres — now it's becoming click before you dig because the online version is even more convenient — to enhance the process of construction without damaging underground infrastructure and without incurring the costs and dangers that that causes.

We're all aware of it at some level, but I think it was last year, if not the year before, where in Quebec there was $75 million of estimated damage due to accidents to underground infrastructure — pipelines, for example, or sewage lines, waterlines or electrical lines — when somebody dug and hit them because they didn't take the steps to find out where they were.

The last year for which I'm aware that there was a full calculation of costs in Ontario — remember, not all of this is reported or costed — there was $37 million worth of damage. We're aware of cases where people are injured or killed because of burst pipelines that didn't have to burst had the construction company — the backhoe operator, whoever it is, the contractor — called before they dug, or in the case now of Alberta where 75 per cent of the contacts are through clicking on the website. This kind of damage and this kind of danger could be vastly reduced.

So what is call before you dig? It's a configuration of a variety of things. It requires a centre to which somebody could call. Up until this legislation in Ontario, a contractor would have to call as many as 13 different entities before they dug if they were to comprehensively call every entity that owned underground infrastructure. So you need a centre where the calls can be centralized, if I can use that word.

Second, that centre has to have the membership of, ideally, all underground infrastructure owners, from municipalities, to gas and oil pipeline companies, to telephone companies, to cable companies, et cetera, so that these call centres have a database to facilitate the location of underground infrastructure once they're called. Then you have to have a process, which the Common Ground Alliance works on as well, for best practices in dealing with how the digging is done. That's all part of a piece with respect to safer digging and construction practices in this country.

The third part isn't covered in this legislation, and it is the coming together to develop best practices in digging, which is part of what the Canadian Common Ground Alliance works on.

So we picked up from these two encounters that I mentioned earlier, and my staffer Kyle Johnston took the initiative and began to get in touch with people and we began working on it.

I want to mention two people who were instrumental in this: James Tweedie and Mike Sullivan, both of whom are in senior positions and have given much of their lives, much of it voluntary time, to the Canadian Common Ground Alliance and to call centre work across the country. It's with their help and their input that we began to develop this issue, and it was specifically with their help, particularly I believe Mike Sullivan, who worked very closely with my office to develop this legislation.

What we have learned is that there is either full or partial legislation in only three provinces. British Columbia and Alberta have very partial legislation, as we understand it, and Ontario now has full legislation thanks to the efforts of Bob Bailey, who did such a remarkable job in that province.

One of the most notable and successful examples of the type of legislation that I'm talking about is Bill 8 in Ontario, which is the brainchild, as I mentioned, of Conservative MPP Bob Bailey. I met with Bob Bailey recently to further talk about this legislation, and he appeared in the study that our Environment Committee specifically completed on the issue. I want to thank the members and the chair of the Energy Committee for allowing this study to proceed and for allowing a small section of our major energy study as a first step. I think we proceeded with 15 witnesses; we completed an excellent report, and that was, again, testimony to really good work by an excellent committee.

MPP Mr. Bailey worked extremely hard to bring this together. He identified that this type of legislation would help protect the safety of front-line workers but also that it would help to improve business. I would argue that it also helps to improve social licence for building pipelines and other underground infrastructure that people worry about because it is a way of reducing the danger of digging and the accidents that can occur.

We learned a number of things during our committee study. First, the federal government is generally not part of the safety regime, with the exception of the National Energy Board, which is slowly moving towards that goal. I should say more than slowly; they are intensely concerned about this issue and they were very helpful to us as well.

The second thing is that some provinces, for a variety of reasons, have simply been unable to or haven't gotten around to setting up similar regimes. Most provinces haven't, in fact. I think it's more that it's not high on their radar, but once it's brought to their attention, if we can promote it with this piece of legislation and work at the national level, there is a real potential for it to become a higher priority.

I should mention that in the U.S. case, they had the same kind of division we have between federal and provincial jurisdictions. Most of this falls under provincial jurisdiction. There is some federal element, which is going to be covered in my bill, but in the United States they brought all the states together and they have all 50 states now in a comprehensive call-before-you-dig program and they also were a model for what we are trying to do here.

• (1630)

It is obvious that, because most of this jurisdiction for underground infrastructure falls within provincial jurisdiction, it's more difficult for the federal government, beyond moral suasion, to cause this to be a national program and to establish national standards. However, there are areas where federal jurisdiction is relevant — certainly the National Energy Board, military lands, railroads and so on — where federal jurisdiction can be applied and legislation of this kind would be relevant. We have to be very careful in the case of military bases because of national security, but certainly with respect to National Energy Board pipelines, those that cross provincial boundaries, and other federal lands and, as I say, railroads and so on.

The underground infrastructure safety enhancement act will do several things. The legislation requires the owner or operator of any underground infrastructure that is federally regulated or that is located on federal land to, first, register the infrastructure with each notification centre that serves the province in which the infrastructure is located, if such a centre exists — this will be mandatory; it is very important that it is mandatory — and, second, pay the registration fees fixed by a notification centre referred to in paragraph (a) or by the provincial legislation of the province in which the notification centre is located.

The legislation will require the owner or operator of any underground infrastructure on federal lands to provide the description and location of the infrastructure to the notification centre.

Prior to undertaking work that results in a ground disturbance, the entity doing that work must inform the notification centre in that province where the dig will take place and which infrastructure will likely be affected.

After receiving that information, the notification centre — that is, the call-before-you-dig centre — must then, within a reasonable time, have the locators mark on the ground the location of where the dig will take place, using prescribed colour codes. There are prescribed colour codes.

In addition to the owners and operators being part of a provincial notification centre, the legislation will also permit the minister to enter into certain funding agreements, should the minister choose to do so, with provinces to provide certain incentives for provinces to set up a call centre and the surrounding call centre system. The minister may also make any regulations that are necessary for carrying out the purposes and provisions of the act.

Finally, the legislation will make consequential amendments to existing legislation for the purposes of fulfilling the tenets of this act.

Of course, people will be concerned about the cost of call centres. But, in fact, on the one hand, as I've said, there is great cost in not having properly functioning call centres because accidents do occur and people do fail to call — as I said, in the Quebec case, $75 million in one year and, in the Ontario case, I mentioned a statistic of $37 million in one year. That will surely not be the extent of all the damage, because these figures do not come from within a context where everybody is required even to report damage. The damages can be much higher than that and certainly the risk is high as well.

The costs are not costs that are placed on the person digging their fence post. They are not costs that are placed on the contractor who is building the building. The costs are paid for by the owners of the underground infrastructure. They are paid for per call — sometimes less than $1 per call and sometimes slightly more than $1 per call. But that has been proven, where it's been utilized, to be more than an adequate amount of money. In fact, in the United States, where some of this is done privately and on a profit basis, they actually make money at this. In Canada, this will be a non-profit arrangement — certainly what we are proposing is — and it has, at this point, wherever it has been done, been non-profit.

Bill S-233 would provide for legislation to cover call before you dig, click before you dig, or contact before you dig in jurisdictions that are covered by federal jurisdictions where there is underground infrastructure. We hope that it will catalyze greater interest in provinces across the country, essentially the nine provinces and the three territories — less important in the territories, given their geography, but certainly the nine provinces that do not have complete legislation — so that we can get mandatory membership of underground infrastructure owners so that we can have penalties for people who fail to call or click to get in touch with a notification centre before they dig.

In this way, we can facilitate and enhance the interest of the construction industry and individuals across the country to work on developing best practices for digging so that we can make our underground infrastructure safer and we can convince Canadians that it can be and is being dealt with safely. This is breakthrough legislation where federal leadership can really make a difference. Thank you.

(On motion of Senator Martin, debate adjourned.)

STUDY ON ISSUES RELATING TO FOREIGN RELATIONS AND INTERNATIONAL TRADE GENERALLY

ELEVENTH REPORT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE ADOPTED

The Senate proceeded to consideration of the eleventh report (interim) of the Standing Senate Committee on Foreign Affairs and International Trade, entitled: *Expanding Canadian Businesses' Engagement in Foreign Markets: The Role of Federal Trade Promotion Services*, tabled in the Senate on June 17, 2015.

Hon. A. Raynell Andreychuk moved:

> That the eleventh report of the Standing Senate Committee on Foreign Affairs and International Trade entitled: *Expanding Canadian Businesses' Engagement in Foreign Markets: The Role of Federal Trade Promotion Services*, tabled in the Senate on June 17, 2015, be adopted and that, pursuant to rule 12-24(1), the Senate request a complete and detailed response from the government, with the Minister of International Trade being identified as minister responsible for responding to the report.

She said: Honourable senators, I rise to highlight some of the key points raised in the eleventh report of the Standing Senate Committee on Foreign Affairs and International Trade. The report is entitled *Expanding Canadian Businesses' Engagement in Foreign Markets: The Role of Federal Trade Promotion Services.*

It marks a slight shift in the committee's work. In recent years, we have been focused largely on countries and regions of growing significance to Canadian commercial and diplomatic interests. The present study follows on the heels, for example, of a study on the Asia-Pacific region, which I will be tabling in the coming days, and a study on North American trilateralism adopted by the Senate on Monday last week. Earlier studies examined Canadian interests in each of the BRIC countries and in Turkey.

In all of these studies, the committee has heard that effective trade promotion is critical to Canada's ongoing success as a trading nation. But what do those services consist of? How might they be improved to better respond to the changing needs of businesses? These were the questions that motivated the study encapsulated by the present report.

• (1640)

It is not a long report, but it is one of substance to millions who rely on the success of Canadian trade. As the report points out, the federal government estimates that 60 percent of Canada's gross domestic product and one in five jobs is linked to our exports.

A great deal of effort has been exerted to secure free trade agreements. These are critical for opening new opportunities and markets for Canadian businesses, but there is growing awareness that there is more involved in helping businesses succeed abroad.

As the report points out:

> . . . the Committee heard that businesses often face obstacles to trade that are unrelated to tariff barriers.

These obstacles can include: a lack of information about opportunities in foreign markets; difficulties in obtaining financing for new equipment and personnel; financial risks associated with shipping and doing business in foreign jurisdictions; and language and cultural barriers. Such obstacles and risks can discourage entrepreneurs — small and medium enterprises in particular — from pursuing international trade opportunities.

As Lorna Wright, of York University, told the committee:

> SMEs need to overcome the fear factor, if they are to succeed internationally.

Addressing some of these fears and obstacles on behalf of Canada's businesses is what our trade promotion services do.

The report summarizes the expertise and opinions of some 28 witnesses who appeared before the committee. These included representatives from business, finance, industry associations, academia, the federal government, provincial-level initiatives and Canadian Crown corporations. Their testimony reveals widespread satisfaction with Canada's trade promotion services. Yet, there is also a sense that those services can be strengthened and that new approaches to trade promotion could better meet the needs of Canadian businesses.

John Kalbfleisch, of Alpha Technologies Limited, told the committee that while:

> . . . trade commissioners . . . open up a lot of doors. . . . It would be great if there was more of a push mentality, if the trade commissioners could understand more about the businesses and their markets and how they could be successful.

The committee heard, for example, that embedding trade commissioners in business associations can make them more relevant and responsive to the needs of the private sector. Trade missions and trade shows were also highlighted as effective means to introduce businesses to foreign markets, clients, partners and opportunities. These missions are most effective if they target certain sectors and if businesses are involved in the planning. The involvement of high-level government officials, including cabinet ministers, can help signal the importance of a mission.

Effective branding is also critical for conveying signals about Canadian goods and services, but an effective "Canada Brand" should not be confused with a "Made in Canada" label.

Cam Vidler, with the Canadian Chamber of Commerce, highlighted Australia's comprehensive branding program as a successful model. He summarized the impact of the "Australia Unlimited" program in a few words:

> It's creating an identity and finding many different ways to project that identity.

A branding strategy profiling Canada's advantages as a source of high-quality products, expertise and innovation could help Canadian businesses succeed abroad.

We also heard about the challenges that Canadian companies face in their efforts to participate in global value chains. According to the Canadian Chamber of Commerce, about one fifth of the value of all goods and services exported by Canadian businesses in 2009 originated abroad, yet trade promotion services tend to favour exports over imports. A greater focus on domestic entry points to global supply chains could help bring balance to this dynamic.

The committee heard, for example, how one small- or medium-sized enterprise benefitted from a partnership between Export Development Canada and General Electric. As Rhonda Barnet of Steelworks Design Incorporated told us:

> Having been very successful providing custom equipment to this Peterborough plant here, our firm has been offered opportunities to meet buyers from other GE facilities around the world.

Businesses also highlighted the obstacles created by some of our domestic policies. For example, businesses are required to pay goods and services and harmonized sales taxes on imported goods, even when the same goods are destined for export. Businesses can request a tax refund following the re-exportation of a good not intended for domestic use, but SMEs can face cash-flow challenges while waiting for that refund to be processed. A simplification or reduction of this burden could help encourage SMEs to increase their participation in international trade.

The committee also heard about difficulties faced by employers seeking to hire through the Temporary Foreign Workers Program. Employers unable to find qualified workers in Canada are required to complete a Labour Market Impact Assessment process, but the length of time it takes to complete this process can cause companies to lose good candidates.

Financing was raised as another challenge facing businesses looking to become more active in foreign markets. An expansion abroad often requires more staff, more equipment and new types of insurance.

Witnesses repeatedly said that Export Development Canada was critical in reducing such risks, but some also noted difficulties related to staff turnover at EDC. As CanAgro Exports co-owner Sheila Kehler explained:

> The staff turnover in the underwriting department is frustrating as each new person needs time to understand our business and, as exporters, that is time that we don't have when trying to finish a deal with our customers.

Therefore, the committee believes there is need to consider means such as retention bonuses to reduce staff turnover at EDC.

Another federal Crown corporation, the Business Development Bank of Canada, was noted for its role in helping Canadian exporters to succeed. BDC is less risk-averse than traditional banks and provides many useful products, yet some SMEs with significant export potential continue to face financing gaps in their efforts to enter foreign markets. Consideration should be given to how access to financing could be further improved for such small- and medium-sized enterprises.

One of the challenges cited most frequently by witnesses concerned businesses' lack of awareness about the trade promotion services available. According to one witness, only 20 percent of Canadian exporters are aware of federal trade promotion services. The recent "Go Global" workshops were mentioned as a good way of raising awareness, but more can yet be done.

A number of witnesses called for the creation of a "concierge service" to facilitate access to federal trade promotion resources. A website pulling together all the services available and key contacts, for example, could make it easier for businesses to identify programs responding to their needs.

Finally, the committee heard about the value of peer mentorship. For many small- and medium-sized enterprises, the prospect of expanding operations internationally can be daunting. As Kati Suominen of TradeUp Capital Fund told the committee:

> For companies that have never exported, exporting is like starting a new business.

Jean Michel Laurin of Octane Strategies offered a helpful example. He proposed that trade commissioners in embassies and consulates could help pair businesses interested in a given market with Canadian companies already present in that market. This could help prospective exporters to gain confidence and avoid repeating others' mistakes.

As a trading nation, Canada needs to continue to strive to open new markets for our businesses, but we must also help them to overcome the initial risks and costs associated with exploring opportunities abroad. For SMEs in particular, federal trade promotion services are critical in helping Canadian businesses to expand their operations with confidence.

• (1650)

Appropriate knowledge, appropriate financing, helpful contacts and other support resources can help minimize the risks of entering a foreign market and maximize success. The federal government and others continue to play a critical role in ensuring such resources are available, but more can be done to make these resources more accessible and responsive to the changing needs of our businesses.

Our report offers some suggestions as to how this can be achieved. It is underpinned by one overarching perspective shared by our committee and all the witnesses who appeared before us: The more Canadian enterprises are able to compete and succeed in markets abroad, the more Canadians will share in their prosperity.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

STUDY ON POLICIES, PRACTICES, AND COLLABORATIVE EFFORTS OF CANADA BORDER SERVICES AGENCY PERTAINING TO ADMISSIBILITY TO CANADA

SIXTEENTH REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixteenth report of the Standing Senate Committee on National Security and Defence entitled: *Vigilance, Accountability and Security at Canada's Borders*, tabled in the Senate on June 18, 2015.

Hon. Daniel Lang moved the adoption of the report.

He said: honourable senators, I am pleased to rise and speak about the report from the Standing Senate Committee on National Security and Defence entitled *Vigilance, Accountability and Security at Canada's Borders*. The report was unanimously adopted at the committee and represents a year-long effort to examine and report on the policies, practices and collaborative efforts of the Canada Border Services Agency in determining admissibility of individuals to Canada and removal of inadmissible individuals.

Before I get into the substance of the report, I wish to acknowledge the work of the staff, whose contributions were invaluable, specifically our new committee clerk, Adam Thompson; the political staff, specifically my policy adviser, Naresh Raghubeer, Senator Mitchell's policy adviser, Kyle Johnston, and Senator Stewart Olsen's policy adviser, Tyler Barker; and our Library of Parliament staff, Christina Yeung, Julie Béchard and Holly Porteous.

Colleagues, with this report, your committee concluded its study on the policies, practices and collaborative efforts of the Canada Border Services Agency in determining admissibility to Canada and removal of inadmissible individuals. Your committee heard from 28 witnesses and conducted a fact-finding mission to the National Targeting Centre in Ottawa in September 2014.

Your committee found that in 2012, Canada's top 50 airports saw the enplaning and deplaning of 23,609,330 passengers from countries other than the United States, an increase of 3 per cent over the previous year and — according to my calculations — an 86 per cent increase over the 12,660,777 passengers screened in 2003.

With its 13,000 employees, which include 7,200 uniformed officers, the Canada Border Services Agency is the front-line agency responsible for administering the entry and exit of approximately 100 million travellers a year, 70 million of whom arrived through the Canada-U.S. land border.

The agency, which was established in 2003 following the terrorist attack of 2001, collects, analyzes and disseminates information and intelligence about individuals and shipments at borders, air terminals and ports. The Canada Border Services Agency also administers more than 90 statutes, regulations and international agreements and enforces the Immigration and Refugee Protection Act.

Colleagues, the Canada Border Services Agency performs a complex task for Canadians in a complex environment. They are the front line of our border security.

Your committee's report identified several policy and operational challenges facing the Canada Border Services Agency and other government departments involved in identifying admissible and inadmissible individuals to Canada. In total, your committee offers 10 recommendations.

The report states that the Canada Border Services Agency front-line Border Service Officers need access to timely, accurate and relevant information through clear information-sharing arrangements and improved coordination with other intelligence and enforcement bodies.

Your committee recommends greater accountability by requiring the Canada Border Services Agency to audio and video record all interviews with travellers or immigrants. This was a common-sense recommendation from a number of witnesses, including the Canadian Council for Refugees and the Canadian Civil Liberties Association.

The report also recommends greater accountability through the establishment of an oversight body for the Canada Border Services Agency. It also recommends an independent civilian review and complaints body where the public can direct concerns and which can review all Canada Border Services Agency activities.

Your committee was concerned about the length of time required to remove an inadmissible person, as well as the current backlog of 44,000 individuals for whom removal orders have been issued. To address these challenges, the committee recommends that the government implement entry and exit reporting for all travellers; urges the government to ensure that those individuals deemed inadmissible not gain entry to Canada in the first instance; and suggests more rigorous screening and pre-screening of those seeking to visit or immigrate to Canada.

Additionally, the committee suggests improving Citizenship and Immigration Canada's screening referral process; enhancing the use of CSIS and RCMP information for screening; and increasing also the use of face-to-face interviews.

The committee also calls on the government to collect and use biometric data for all foreign nationals arriving in Canada, subject to existing provisions in agreements with other governments and also subject to privacy and security safeguards.

Colleagues, the Canada Border Services Agency plays an important role in our security. I do note that more needs to be done to ensure greater vigilance, accountability and security at our borders through improved screening of visitors and immigrants to Canada, an entry/exit program and by using biometrics and face-to-face interviews.

I wish to emphasize that more immigration screening for students, temporary foreign workers, refugees and immigrants is required. That is why your committee recommended using video conference and, where possible, face-to-face interviews and decision making by Canadian staff.

Last October, we all know that Canadians learned that over 145 of our fellow citizens have travelled to join the jihadist terrorist cause and over 80 have returned. In an era of increased terrorist threats and more globalized travel, giving CBSA the tools to do the job we ask of them is important for Canada and for our security.

I ask all honourable senators to adopt this important report and allow the government the opportunity to respond to our recommendations.

Hon. Wilfred P. Moore: I wish to commend the chairman, Senator Lang, and his deputy chair, Senator Mitchell, for this report. It's an important one. As you know, colleagues, I have had a bill before this chamber with regard to the provision of oversight of the Canada Border Services Agency and the provision of an independent complaints hearing process, so I'm really happy to hear the recommendations of Senator Lang. I look forward to seeing what will come by way of implementation as your recommendations are canvassed by government and, hopefully, acted upon.

I commend you; thank you.

Hon. Grant Mitchell: I would like to make a few comments about this report, which I think is an excellent one. I want to congratulate the chair for his leadership in directing us through this. I second his recognition of the staff members from our respective offices, as well as from the Library of Parliament and the clerk's office, our clerk. All are excellent staffers and have done great work.

This was not an easy report to do in some senses, and I'll tell you why. It deals with a number of matters that are of very critical fundamental value to each of us as Canadians. They were alluded to by Senator Lang in his comments. One is the question of privacy, because we do call for better access for front-line Canada Border Services Agency personnel to pull information on people who might be coming into the country who we don't want to have come into the country. So privacy became an important issue.

• (1700)

Fairness and due process. When there is a question about whether somebody should come into the country, we want to be sure that these people are treated fairly — potential refugees, for example, or temporary foreign workers who perhaps might overstay their visa. Not many do — we don't know; I doubt many do, but some might.

We're very careful in Canada about due process and about fairness. So that was the sensitivity in how we dealt with this report.

Immigration, generally. This is a country of immigrants, and Border Services deal with immigration questions all the time, as did this report; it's inherent in the way that this report and this study address the issue. So immigration was a sensitive matter, and how we deal with that.

And, ultimately, just visitors. Canada is an open country where we welcome visitors. It's important to our economy that we do that. It's also an open country where we welcome immigrants. It's important to our country, its very fibre and its economy that we do that. It's immigrants who have built this country.

We had to be careful and sensitive in the way we dealt with this report, and I think we've achieved that balance due to hard work and intense debate. I applaud the members of the committee and the chair for their efforts and commitment to doing that.

I just want to emphasize the impact that Senator Moore has implicitly had in this report, because he was pushing for oversight and review processes for the Canada Border Services Agency. And we have made a recommendation about oversight and about review, as well. Remember that oversight is the more ongoing, proactive, managerial, board-of-directors type — not quite day to day, perhaps — but almost day-to-day function versus review, which is looking at problems after the fact. Both of these elements are recommended in our report, so that's excellent.

I want to say that we have recommended that all interviews with people whose ability to enter the country we might be disputing should be taped, both audio and video, so that there aren't questions about how those interviews were conducted by CBSA officers.

That's really what I wanted to emphasize.

Once again, thanks to all involved. I think it's an excellent report, and it pushes along a number of very important issues — difficult issues — but it does so very well.

Thank you.

Hon. Joseph A. Day: I just wanted to join with my colleagues in recommending this report of the Standing Senate Committee on National Security and Defence and to point that although this deals with the border security aspect, there are many different aspects to security in Canada and at the border. You'll see that complementing this in Bill C-59 with more biometrics that will be

used at the border and elsewhere — biometrics, iris scanning, fingerprints, visual photographs. This is an important piece of a much bigger product and a much bigger study that I'm hopeful and I believe the Standing Senate Committee on National Security and Defence will follow through with.

I would like to commend to honourable senators a look at this particular report as part of that bigger piece.

Thank you, honourable senators.

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

An Hon. Senator: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

STUDY ON USE OF DIGITAL CURRENCY

TWELFTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE—DEBATE SUSPENDED

The Senate proceeded to consideration of the twelfth report of the Standing Senate Committee on Banking, Trade and Commerce entitled: *Digital Currency: You Can't Flip this Coin!*, tabled in the Senate on June 18, 2015.

Hon. Irving Gerstein moved the adoption of the report.

He said: Honourable senators, it gives me great pleasure to rise today to present the twelfth report of the Standing Senate Committee on Banking, Trade and Commerce entitled *Digital Currency: You Can't Flip This Coin!*. This report is a result of hearing from 55 witnesses in Ottawa committee meetings and a fact-finding trip to New York City. Our report contains eight recommendations that we believe, if implemented, will allow the digital currency environment in Canada to foster growth and innovation, while simultaneously helping to root out illegal activity and minimizing risks to consumers.

I would like to express my sincere appreciation to all members of the committee and support staff for their thoughtful input into a most complex yet compelling topic.

As I have remarked when presenting previous Banking Committee reports, this report, in my view, demonstrates the very best of what the Senate can do in terms of producing quality, non-partisan public policy.

Honourable senators, imagine for a moment that I am holding a $20 bill in my hand, which, as you know, I cannot do in this chamber. In the other hand, I have nothing. One is a state-issued currency, and the other is a digital currency. On the one hand, they are equivalent; you can buy things with both. On the other hand, they couldn't be more different because you can't open a bank account with digital currency, and you need a computer or mobile phone to spend it.

You may ask, why study digital currency? I believe American Senator Tom Carper, Chair of the United States Senate Committee on Homeland Security, said it best when he said, "Virtual currencies, perhaps most notably Bitcoin, have captured the imagination of some, struck fear among others, and confused the heck out of many of us."

In March 2014 when I spoke in this place on the order of reference to commence this study, I noted that digital currency was a timely topic and was attracting a lot of attention — attention from regulators who wonder what aspects may need regulating; from law enforcement officials who see it as a way to launder money or finance terrorism; from consumers, investors and entrepreneurs who want to use or invest in this new form of money; and from agencies and organizations whose goal is to increase financial inclusion in the developing world.

These people all want to be ahead of the curve, and today interest in digital currency is as relevant as ever. Since we began our study, New York State's Department of Financial Services has released a proposal to license digital currency firms, a number of other governments have begun to study this topic, and an increasing number of forward-looking organizations and corporations have embraced digital currency as payment for goods and services, including Simon Fraser University, which now accepts bitcoin for textbook purchases.

Colleagues, now I am sure many of you are asking yourselves, as we did of ourselves: What is digital currency? And I must admit the answer is quite complex.

To quote Senator Carper once again:

> Virtual currency can best be described as digital cash. It is generated by computers, lives on the Internet, and can be used to purchase real and digital goods across the world.

But here is where it gets a little more complicated: Digital or virtual currency, terms used interchangeably, is a very broad category. Within digital currency, there are various subcategories, one of which is crypto-currency, a major focus of our report.

Crypto-currency is a decentralized digital currency in which encryption techniques are used to regulate the generation of units of currency and to verify the transfer of funds, and it operates independently of a central authority. That brings me to bitcoin, which is the most recognizable crypto-currency among the various incarnations of encrypted digital currencies, to the point that it has become the de facto avatar for the entire sector.

• (1710)

Luis Millan, writing in *Canadian Lawyer* magazine offered the following description:

> Bitcoin, the most popular among 200 or so other virtual currencies created since 2009, is an ingenious computer code that has monetary value controlled and stored entirely by

> computers. It is essentially a peer-to-peer cash system, a form of e-money, valued in units of bitcoin divisible much like the Canadian dollar into cents. It is not, however, connected to any physical commodity, state, or central banking authority.
>
> But more importantly, bitcoin is also a payment system, a peer-to-peer network that allows for the proof and transfer of ownership without the need of a trusted third party like a bank.

We learned the peer-to-peer payments system, which allows bitcoin to operate independently of a third party, relies on something called a "public ledger." The public ledger is exactly what it sounds like — a large bulletin board that uses a technology called the "blockchain." This public ledger records all bitcoin transactions and broadcasts them to thousands of computers interacting globally to reach consensus for verification. Once a transaction is verified, it cannot be forged or altered, and there is a permanent public record.

Interestingly, throughout our study the committee heard that bitcoin, the currency, may not be the most significant invention but, rather, the more significant innovation is the bitcoin payment system. In effect, the blockchain and public ledger. Blockchain technology is now used as the basis for hundreds, if not thousands, of other "cryptocurrencies," with its underlying architecture already showing great promise to benefit users in a number of areas. For example, evidence was presented that by removing the need for third-party intervention and authorization, the costs of a bitcoin transaction are significantly less than those incurred by using credit or debit cards.

We also heard that blockchain technology can be adapted to securely and permanently register marriages, births, real estate purchases and a myriad of other transactions. We even posted our report on the blockchain last Friday.

Most fascinating, the committee heard from Rodger Voorhies, the director of Financial Services for the Poor initiative at the Bill & Melinda Gates Foundation. He indicated that over 2.5 billion people worldwide are considered unbanked. In other words, a third of people on earth lack access to bank accounts and formal financial services. However, he further explained that even in some of the poorest areas of the world, the majority of the population, although they do not have bank accounts and although they may have a tin roof over their head and no running water, they do have access to mobile phones.

Honourable senators, the implications of this fact are staggering. Think of it: The ability to make financial transactions through a mobile app can provide an opportunity for these unbanked individuals to be included in the global financial system. Digital currency technology can help spur development, create savings and even allow for the granting of credit, resulting in an improved quality of life in the developing world. This is truly staggering.

Finally, we looked at how blockchain technology can offer a secure alternative to consumers who do not wish to see their personal information fall prey to the Internet. Our committee was told that by cutting out third parties, blockchain technology can give consumers and governments a more effective level of online security. This is particularly relevant given the cyberattack on Government of Canada websites last week.

Honourable senators, I don't have to tell you there are two sides to every coin, even a bitcoin. The power offered by blockchain technology for a person to protect their identity has a flip side.

Francis Pouliot of the Bitcoin Foundation Canada stated:

> Just like the Internet, Bitcoin is a tool that can be used for noble and nefarious purposes, by saints and criminals alike.

Specifically, we heard about implications for terrorist financing and money laundering. This, of course, was of particular interest to our committee as two years ago the Banking Committee reviewed the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. To minimize these risks, the report recommends that the government require digital currency exchanges to meet the same requirements as other money services businesses —

(Debate suspended.)

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it being 5:15 p.m., I must interrupt proceedings for the ringing of the bells for the deferred votes at 5:30 p.m.

We will start with the vote on Senator Ringuette's amendment to Bill C-59. That will be followed by the vote on Senator Wells' amendment to Bill C-586 and then Senator Moore's amendment to Senator Ringuette's motion respecting the subamendment to Bill C-377.

After the votes, we will resume debate on the items in the order in which they were voted on. We will return to the item that is under debate at this time after having resumed debate on Bill C-59, Bill C-586 and Bill C-377.

Call in the senators.

• (1730)

ECONOMIC ACTION PLAN 2015 BILL, NO. 1

THIRD READING—MOTION IN AMENDMENT NEGATIVED

On the Order:

> Resuming debate on the motion of the Honourable Senator Smith (*Saurel*), seconded by the Honourable Senator Doyle, for the third reading of Bill C-59, An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures.

On the motion in amendment of the Honourable Senator Ringuette, seconded by the Honourable Senator Moore, that the bill be not now read a third time but that it be amended as follows:

That Divisions 19 and 20 be removed.

The Hon. the Speaker: The question is as follows: It was moved by the Honourable Senator Ringuette, seconded by Honourable Senator Moore:

That the bill be not now read a third time but that it be amended as follows:

That Divisions 19 and 20 be removed.

All those in favour of the motion in amendment will please rise.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker
Campbell
Chaput
Cools
Cordy
Cowan
Dawson
Day
Fraser
Furey
Hervieux-Payette
Hubley
Jaffer
Joyal
Kenny
Massicotte
Merchant
Mitchell
Moore
Munson
Ringuette
Smith (*Cobourg*)
Tardif—23

NAYS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Bellemare
Beyak
Carignan
Dagenais
Doyle
Eaton
Enverga
Frum
Gerstein
Greene
Lang
LeBreton
MacDonald
Maltais
McIntyre
Mockler
Nancy Ruth
Neufeld
Ngo
Ogilvie
Oh
Patterson
Plett
Poirier
Raine
Rivard
Runciman
Seidman
Smith (*Saurel*)
Stewart Olsen
Tannas
Marshall
Martin
McInnis
Wallace
Wells
White—40

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (1740)

REFORM BILL, 2014

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT NEGATIVED

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).

On the motion in amendment of the Honourable Senator Wells, seconded by the Honourable Senator Batters, that the bill be not now read a third time, but that it be amended in clause 4, on page 2, by adding, after line 33, the following:

"**49.21** Section 49.2 does not apply to the leader of a party.".

The Hon. the Speaker: The question is as follows: It was moved by the Honourable Senator Wells, seconded by Honourable Senator Batters:

That the bill be not now read a third time, but that it be amended in clause 4, on page 2, by adding, after line 33, the following:

"**49.21** Section 49.2 does not apply to the leader of a party.".

All those in favour of the motion in amendment will please rise.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Batters
Dagenais
Eaton
Enverga
Fraser
Frum
Housakos
MacDonald
Maltais
McInnis
Ngo
Plett
Stewart Olsen
Wells—14

NAYS
THE HONOURABLE SENATORS

Andreychuk	Martin
Ataullahjan	Massicotte
Baker	McIntyre
Bellemare	Merchant
Beyak	Mockler
Campbell	Moore
Carignan	Nancy Ruth
Chaput	Neufeld
Cools	Ogilvie
Cordy	Oh
Dawson	Patterson
Day	Poirier
Doyle	Raine
Furey	Ringuette
Gerstein	Rivard
Greene	Runciman
Hervieux-Payette	Seidman
Jaffer	Smith (*Cobourg*)
Joyal	Smith (*Saurel*)
Kenny	Tannas
Lang	Tardif
LeBreton	Wallace
Marshall	White—46

ABSTENTIONS
THE HONOURABLE SENATORS

Cowan	Mitchell
Hubley	Munson—4

INCOME TAX ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT NEGATIVED

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);

And on the motion in amendment of the Honourable Senator Bellemare, seconded by the Honourable Senator Black, that the bill be not now read a third time but that it be amended in clause 1, on page 5,

(*a*) by replacing line 34 with the following:

"poration;"; and

(*b*) by adding after line 43 the following:

"(*c*) labour organizations whose labour relations activities are not within the legislative authority of Parliament;

(*d*) labour trusts in which no labour organization whose labour relations activities are within the legislative authority of Parliament has any legal, beneficial or financial interest; and

(*e*) labour trusts that are not established or maintained in whole or in part for the benefit of a labour organization whose labour relations activities are within the legislative authority of Parliament, its members or the persons it represents.";

And on the subamendment of the Honourable Senator Cowan, seconded by the Honourable Senator Ringuette, that the motion in amendment be not now adopted but that it be amended as follows:

(*a*) by deleting the word ''and'' at the end of paragraph (a) of the amendment;

(*b*) by adding the following new paragraph (b) to the amendment:

"(*b*) by replacing line 36 with the following:

'of which are limited to the'; and"; and

(*c*) by changing the designation of current paragraph (b) to paragraph (c);

And on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Eggleton, P.C., that the subamendment be not now adopted but that pursuant to rule 12-8(1), it, together with the amendment, be referred to Committee of the Whole for consideration and report, and that the Senate resolve itself into Committee of the Whole, immediately following Question Period on the second sitting day following the adoption of this motion.

On the motion in amendment of the Honourable Senator Moore, seconded by the Honourable Senator Dawson, that the motion of the Honourable Senator Ringuette be not now adopted but that it be amended by replacing the word "second" with the word "first".

The Hon. the Speaker: The question is as follows: It was moved by the Honourable Senator Moore, seconded by Honourable Senator Dawson:

That the motion of the Honourable Senator Ringuette be not now adopted but that it be amended by replacing the word "second" with the word "first".

All those in favour of the motion in amendment will please rise.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker
Campbell
Chaput
Cools
Cordy
Cowan
Dawson
Day
Fraser
Furey
Hervieux-Payette
Hubley
Jaffer
Joyal
Kenny
Massicotte
Merchant
Mitchell
Moore
Munson
Ringuette
Smith (*Cobourg*)
Tardif—23

NAYS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Beyak
Carignan
Dagenais
Doyle
Eaton
Enverga
Frum
Gerstein
Greene
Lang
LeBreton
MacDonald
Maltais
Marshall
Martin
McInnis
McIntyre
Mockler
Nancy Ruth
Neufeld
Ngo
Ogilvie
Oh
Patterson
Plett
Poirier
Raine
Rivard
Runciman
Seidman
Smith (*Saurel*)
Stewart Olsen
Tannas
Wallace
Wells
White—39

ABSTENTIONS
THE HONOURABLE SENATOR

Bellemare—1

• (1750)

CANADA NATIONAL MARINE CONSERVATION AREAS ACT

BILL TO AMEND—FIFTEENTH REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE PRESENTED

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

Hon. Richard Neufeld, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Monday, June 22, 2015

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

FIFTEENTH REPORT

Your committee, which was referred Bill C-61, An Act to amend the Canada National Marine Conservation Areas Act, has, in obedience to the order of reference of Friday, June 19, 2015, examined the said bill and now reports the same without amendment.

Respectfully submitted,

RICHARD NEUFELD
Chair

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

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

CANADA-NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION ACT

BILL TO AMEND—SIXTEENTH REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE PRESENTED

Hon. Richard Neufeld, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Monday, June 22, 2015

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

SIXTEENTH REPORT

Your committee, which was referred Bill C-64, An Act to amend the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, has, in obedience to the order of reference of Monday, June 22, 2015, examined the said bill and now reports the same without amendment.

Respectfully submitted,

RICHARD NEUFELD
Chair

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

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

CANADA NATIONAL PARKS ACT

BILL TO AMEND—SEVENTEENTH REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE PRESENTED

Hon. Richard Neufeld, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Monday, June 22, 2015

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

SEVENTEENTH REPORT

Your committee, which was referred Bill C-72, An Act to amend the Canada National Parks Act, has, in obedience to the order of reference of Monday, June 22, 2015, examined the said bill and now reports the same without amendment.

Respectfully submitted,

RICHARD NEUFELD
Chair

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

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

ECONOMIC ACTION PLAN 2015 BILL, NO. 1

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Smith (*Saurel*), seconded by the Honourable Senator Doyle, for the third reading of Bill C-59, An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures.

Some Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Smith (*Saurel*), seconded by the Honourable Senator Doyle, that this bill be read the third time. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

REFORM BILL, 2014

BILL TO AMEND—THIRD READING

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).

Some Hon. Senators: Question.

Hon. Yonah Martin (Deputy Leader of the Government): Senator Batters wished to speak on this, and I will take the adjournment in her name.

The Hon. the Speaker: It is moved by the Honourable Senator Martin, seconded by the Honourable Senator Marshall, in the name of Senator Batters, that further debate be adjourned until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: No.

Hon. Serge Joyal: Mr. Speaker, I'm opposed to the adjournment of this debate.

The Hon. the Speaker: All those in favour of the adjournment, please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the adjournment, please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I think the "yea" side has it.

Senator Cools: No, the "yeas" don't have it.

The Hon. the Speaker: Order, please. I see a number of senators rising.

And two honourable senators having risen:

The Hon. the Speaker: Is there agreement on the bell, whips? It's a one-hour bell, senators, so the vote will be at — I'm sorry; there is no unanimity on the bell. If one senator asks for a one-hour bell, it is a one-hour bell.

Senator Marshall: It's at the discretion of the whips.

The Hon. the Speaker: It is not at the discretion of the whips; it is at the discretion of the chamber. The whips came to an agreement. The chamber has not agreed on that agreement, and thus it's automatically a one-hour bell.

The vote will be at 6:59 p.m. Call in the senators.

• (1900)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Batters
Eaton
Enverga
Frum
Plett
Seidman
Wells—7

NAYS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Baker
Bellemare
Beyak
Carignan
Chaput
Cools
Cordy
Cowan
Dawson
Day
Doyle
Fraser
Furey
Gerstein
Greene
Hervieux-Payette
Hubley
Jaffer
Joyal
Lang
LeBreton
Maltais
Marshall
Massicotte
McInnis
McIntyre
Mockler
Moore
Munson
Nancy Ruth
Neufeld
Ngo
Ogilvie
Oh
Patterson
Poirier
Raine
Ringuette
Rivard
Runciman
Smith (*Cobourg*)
Smith (*Saurel*)
Tannas
Tardif
Wallace—47

ABSTENTIONS
THE HONOURABLE SENATORS

Dagenais
MacDonald
Martin
Stewart Olsen
White—5

The Hon. the Speaker: Accordingly, the motion is defeated.

Honourable senators, it is now past six o'clock. Pursuant to rule 3-3(1), I am obliged to leave the chair until eight o'clock when we will resume, unless it is your wish, honourable senators, not to see the clock.

Hon. Senators: Not see the clock.

The Hon. the Speaker: On debate, the Honourable Senator Batters.

Hon. Denise Batters: Honourable senators, I rise to speak on third reading of Bill C-586, An Act to amend the Canada Elections Act and the Parliament of Canada Act. As you are aware, this bill suggests changing the way in which caucus leadership and membership is decided. It would give 20 per cent of the members of Parliament in a caucus the right to trigger a leadership or caucus membership vote, and if that vote were approved by more than 50 per cent of the MPs in the caucus, the caucus member or leader would be removed.

The creator of this bill, my caucus colleague Michael Chong, has tried to empower members of Parliament with this legislation. His aim is to codify caucus rules and give caucus members the power to determine their own rules for dealing with caucus and leadership issues.

Mr. Chong's goals are laudable in this respect, and I know that he has worked hard to see this legislation passed. But, unfortunately, the legislation we have before us will not achieve the democratic reform for which Mr. Chong is aiming. In fact, Bill C-586 may actually create more chaos than it solves.

It is widely acknowledged, even amongst its proponents, as weak legislation. It is almost entirely optional, contains no penalties for non-compliance, and could serve to destabilize

political parties and leadership. In my opinion, it improperly allows Parliament to legislate the internal workings of political parties, and this bill could undermine the will of tens of thousands of grassroots party members and millions in the Canadian electorate, a move which flies in the very face of the democratic ideals Bill C-586 aims to advance.

For a bill which passed the House of Commons by a wide margin, Bill C-586 has been broadly panned by critics. Journalist Dale Smith called the reform act "actively toxic to Canadian democracy." David Frum stated that Bill C-586 would "narrow MPs' accountability" and lead to the "empowering of factionalism." Stéphane Dion, former leader of the Liberal Party of Canada, said simply, "I think it's a bad bill."

Even many of the bill's proponents give it tepid support. For example, when our Senate Rules Committee studied Bill C-586, witness and former House of Commons Speaker Peter Milliken admitted, regarding Bill C-586, "It is flawed," and, "This has its flaws." He further said, "I'm not a big fan of the bill, and I don't claim that it is wonderful," and, "I'm not wildly in favour of all the details of this. I'd prefer something different but it's a start."

Not exactly a ringing endorsement, honourable senators. Yet later in that same meeting, Mr. Milliken also said: "I urge the Senate to hold its nose and adopt this bill."

That seems to be the best the bill's proponents can say about it, honourable colleagues, that even if we recognize how flawed this legislation is, we should pass it anyway.

I say that's not good enough, honourable senators, and I believe that is beneath us. We have a duty as stewards of Canadian democracy to provide sober second thought on the legislation that comes before us. The Senate has the responsibility to ensure that full consideration is given to legislation passed by the other place, and I don't agree that we must rubber stamp Bill C-586 just because.

If this legislation has significant flaws, which I believe it does, we in the Senate must do our best to ensure that they are discussed and rectified.

Chief among the problems with this bill is the fact that it is optional legislation. As a lawyer and a member of the Senate Committee on Legal and Constitutional Affairs, I can only imagine the chaos if amendments to the Criminal Code were made in a similar optional fashion as to what is proposed in Mr. Chong's bill.

Under the provisions of Bill C-586, caucuses must vote shortly after an election on whether they will choose to accept the rules laid out in this legislation regarding caucus membership and leadership, et cetera. If a caucus chooses not to abide by the thresholds laid out in Bill C-586, it can come up with some other proposal or reject the rule entirely, maintaining the status quo, in which case, what is the point, honourable senators? Why are we going through the exercise of debating this legislation that caucuses don't have to follow and for which there are no penalties for non-compliance? If the legislation is optional, why have it at all?

We might as well just leave the choices regarding caucus and party governance to those respective bodies as exists now.

Furthermore, this bill is silent on the details regarding how often caucus members can launch challenges to party leadership.

• (1910)

It is my understanding that many other jurisdictions place limitations around the frequency with which challenges to leadership may arise in order to spare the party, and in certain cases the government, unnecessary destabilization. When questioned on that deficiency at Rules Committee, Mr. Chong said, ". . . I think members of Parliament would use these powers judiciously . . . ." One would hope, honourable senators, but without defined parameters, who is to say? Surely a leader would be more effective if he or she wasn't constantly having to guard against recurring leadership challenges.

As a hypothetical, let's use the example of Patrick Brown, the federal Conservative member of Parliament who recently became the leader of the provincial Progressive Conservatives in Ontario with about 23,000 votes. He was not a provincial MPP at the time he ran for the leadership of the provincial PC Party. As such, only 5 of 28 PC caucus MPPs supported him. Had the provisions of C-586 been enacted in that scenario, 5 or 6 would have been sufficient to petition for an immediate leadership review, and 14 MPPs could have ejected him from the leadership right off the bat. Furthermore, as he did not have a seat in the legislature when he was elected leader, Mr. Brown was not yet even eligible to vote in any caucus decisions. The rules outlined in Bill C-586 could prove very chaotic in that scenario.

Further, I fear the effect that this bill could have on Canadians' engagement in the political parties that act as the engines of our political system. I have been a member of political parties for all of my adult life. In that time, I have sold thousands of political party memberships, as I'm sure many of you have, honourable senators. One of the primary benefits Canadians derive from buying a party membership for $10 or $15 is the opportunity to have a say in choosing the leader of their party and possibly a prime minister of Canada.

Tens of thousands of Canadians get involved each time this leadership process occurs in a major political party in Canada, and they take time to vote for party leaders. But this legislation would allow caucuses to take that right away and effectively nullify the will of grassroots party members. Party memberships encourage the public to be directly involved in creating policy and in choosing leaders. It is extremely healthy for our democracy to invite people to participate in the political process in those ways.

Similarly, the right to remove a leader through a vote should fall to the individuals who put him or her there, namely party members. The Canadian electorate in general provides democratic

input through the exercise of its vote during elections and feedback to and lobbying of parliamentarians between general elections.

Now, Mr. Chong and others have pointed out that in Canada, voters don't vote directly for a prime minister. Of course, that is technically true. However, studies show that a substantial number of voters vote for a party or a party leader rather than for a local candidate. Usually only about 5 per cent of voters vote based on their specific local candidate. Even the best star local candidate only moves about 10 per cent of the votes in a riding. The rest of the vote is based on the candidate's party affiliation or on his or her party leader. That is of pivotal significance, honourable senators.

My concern regarding Bill C-586 is that the will of thousands of Canadians who vote for a leader can be overturned by a handful of caucus members. Let's look at the math of some recent leadership scenarios. More than 67,000 Conservative Party of Canada members voted for our leader, Prime Minister Stephen Harper, and 5.8 million Canadians voted for him in the last federal election. If our caucus was to adopt the provisions suggested in Bill C-586, it would only take 32 MPs to trigger a leadership vote and 80 members to remove him. In the case of the Liberals, 81,000 party members voted for Justin Trudeau as party leader. It would take only 7 caucus members to trigger a leadership vote and 18 to oust him as leader.

So the provisions proposed in Bill C-586 could silence the vote of those thousands who vote for a party leader, in some cases with fewer MPs than it takes to fill a single little green parliamentary bus. With the extremely low 20 per cent threshold to trigger a vote, it is easy to see how special interest groups within a caucus, whether they be regional, moral or philosophical, could completely upend the will of thousands of voters. Mr. Chong argues that a lack of written caucus rules creates chaos. Truthfully, there will always be a certain amount of chaos where leaders do not have of the confidence of the majority of their caucus members. Many years ago, we watched this scenario play itself out over months in the example of Stockwell Day.

But it is a new world governed by the speed of technology, communication and a 24-hour news cycle, something that wasn't quite so prevalent 10 or 15 years ago. We have seen this scenario unfold more quickly in the case of Premier Alison Redford in Alberta and Premier Kathy Dunderdale in Newfoundland. In the case of NDP Premier Greg Selinger of Manitoba, he managed to cling to power, but the process to attempt to replace him got under way in short order. In any event, a lack of caucus confidence in the leader now leads relatively quickly to the leader of a party choosing to resign. One cannot lead effectively with knives in one's back, honourable senators.

My point is that caucuses essentially force their leaders out already. But I believe it is dangerous for us to codify in legislation originating in Parliament a scheme for doing so. If there is a push to change the way in which party leaders are chosen and removed, let it come organically from the political parties. I believe we should let the political parties define their own policies in that regard through consultation with their party grassroots via their regular party policy and convention processes.

Mr. Chong has pronounced that the Senate should rubber stamp this legislation. He claims that for the Senate to provide sober second thought on this matter would be an "abomination." Mr. Chong claims that this bill has nothing whatsoever to do with senators but is purely a matter concerning the members of the House of Commons. Therefore, the Senate should stick to its knitting, as the old saying goes. Never mind that Conservative senators still attend and make valuable contributions as national caucus members, meeting each week with the Prime Minister to represent the viewpoints and concerns of those in their region on federal issues.

In some circumstances, the presence of senators in a caucus may be the only way those regional voices might be heard. In our Conservative caucus, for example, our senators provide the only caucus representation from Newfoundland and Labrador. When Justin Trudeau dismissed Liberal senators from the Liberal national caucus last year, along with them went any Liberal representation in Alberta, including such valued voices as Senator Mitchell, former Alberta Leader of the Liberal Party and Leader of the Official Opposition; and Senator Tardif, who served as the Deputy Leader of the Opposition in this chamber for six and a half years. Now Alberta, which is a major economic engine of this country and holds over 4 million people, 129,000 of whom voted Liberal in the last federal election, has no voice in the federal Liberal caucus. Removing senators from their national caucus also meant that the Liberals lost 75 per cent of their New Brunswick caucus members and brought their representation in Saskatchewan down to a mere one MP.

With the exclusion of senators from the definition of "caucus" in Bill C-586, there is a risk that certain geographic regions of the country could be completely excluded from important caucus and leadership decisions.

This is the first bill that would give caucus any real power, or at least part of the caucus, as senators are not included. Not only could that have serious implications from a regional perspective, but I believe that Bill C-586 could also lead to an increase of factionalism within a caucus. This effect might be most acute when dealing with moral or conscience issues that tend to polarize caucus members and voters. Individuals are unlikely to change their minds on issues of this nature. In essence, the process might only serve to solidify the disgruntled caucus members into a bloc.

For a national political party aiming to represent the interests of Canadians from coast to coast to coast, such factionalism can prove challenging at best and unworkable at worst. In the most extreme case, the party or the government may wind up essentially held hostage to that special interest lobby group of one ideology or region in caucus.

Honourable senators, while I certainly appreciate the aims of Mr. Chong and his fellow proponents for greater democratic reform, the legislation before us misses the mark. The provisions of Bill C-586 are either too broad or too optional to be effective or sufficiently restrictive to potentially destabilize party leadership and governance. Either way, this legislation runs the risk of disenfranchising or at least overriding the thousands of Canadian grassroots political party members and millions of voters on which our democracy depends.

MOTION IN AMENDMENT

Hon. Denise Batters: Therefore, honourable senators, I propose the following amendments:

That Bill C-586 be not now read a third time, but that it be amended in clause 4,

(*a*) on page 2,

(i) by deleting lines 21 to 24,

(ii) by replacing lines 25 and 26 with the following:

"**49.2** A member of the House of Commons may only be expelled from the caucus of a party if",

(iii) by replacing line 29 with the following:

"of the caucus who are members of the House of Commons requesting that the member's", and

(iv) by replacing lines 32 and 33 with the following:

"by secret ballot by a majority of the members of the caucus who are members of the House of Commons.";

(*b*) on page 3,

(i) by replacing line 4 with the following:

"members of the caucus who are members of the House of Commons requesting the",

(ii) by replacing line 8 with the following:

"ballot of the members of that caucus who are members of the House of Commons who",

(iii) by replacing line 17, in the French version, with the following:

"membres du groupe parlementaire présents lors",

(iv) by replacing line 22, in the French version, with the following:

"20 % des membres du groupe parlementaire,",

(v) by replacing line 25, in the French version, with the following:

"secret, par la majorité des membres du groupe",

(vi) by replacing line 35 with the following:

"review signed by a majority of the members", and

(vii) by replacing lines 37 to 39 with the following:

"the caucus, the chair shall order that a leadership review be conducted within 24 months of the receipt of the notice."; and

(*c*) on page 4,

(i) by deleting lines 1 to 7,

(ii) by replacing lines 9 to 11 with the following:

"resignation of the leader of a party, the chair of the caucus shall order that a secret ballot vote be taken among the members of the caucus to appoint a person to serve as the interim leader of the party until a new leader has been duly elected by the party.",

(iii) by replacing line 22, in the French version, with the following:

"membres, la tenue d'un scrutin distinct sur",

(iv) by replacing lines 25 to 29 with the following:

"respect of the caucus; and

(*c*) whether section 49.6 is to apply in respect of the caucus.",

(v) by replacing line 38, in the French version, with the following:

"(3) Les votes de chaque membre du groupe parlementaire sont consi-",

(vi) by replacing line 39 with the following:

"paragraphs (1)(*a*) to (*c*) apply only if a majority", and

(vii) by replacing line 43, in the French version, with the following:

"membres du groupe parlementaire.".

• (1920)

Hon. George Baker: Would the senator permit a question?

Senator Batters: Yes.

Senator Baker: These amendments, if we continue on much longer with this, will have the effect of defeating the legislation. So I ask the senator, given the fact that 260 members of the House of Commons —

An Hon. Senator: 267.

Senator Baker: — 267, the honourable senator says, well, about that number — voted for this — all-party support, mostly Conservative Party support. Yes, the Green Party voted against it, quite a few NDP and Liberals, but not very many Conservatives.

The Hon. the Speaker: The time for Senator Batters has elapsed. Would you request five more minutes?

Senator Batters: I think my five minutes are even up.

Senator Baker: I will be very short. How does the honourable senator answer the question, 260 members of the House of Commons voted for this over a long period of time, watering down the legislation, only 17 voting against? As she says, well, it is optional. Well, if it's so optional, why the big objection to it?

An Hon. Senator: Hear, hear.

Senator Baker: If it's optional, it's a suggestion being made. Every Parliament under the Westminster gallery — Britain, Australia, New Zealand — has these rules passed in their caucus. This is just a suggestion. I know the law on this. It's a suggestion that a caucus can take it or leave it or change it, and it's there to prevent the continuation of the 100 per cent party vote that you see in the House of Commons regardless of what the question is. Everybody for or against in each political party and members not getting things in their riding, perhaps being under the threat of no signature from the party leader in order to run in the next election. That's what this suggestion is set up to correct.

How do you answer the logic of it, that we should not be interfering with something that's so unanimously passed in the House of Commons and only affecting the Commons?

Senator Batters: I think I quite well set out how this impacts the Senate and, more importantly, how it impacts millions of Canadians. First of all, tens of thousands of Canadians who went to places like Moose Jaw and Regina, Saskatchewan, and went and voted for those party leaders, 68,000 of which voted for Stephen Harper; 81,000 of which voted for Justin Trudeau; and then 5.8 million Canadians went and voted for Stephen Harper and the Conservative Party in 2011.

If this bill is, as you say, optional, why not pass it? I say if it's optional, why pass it? It's such a strange concept.

Also, addressing your comment about other jurisdictions, what we heard testimony about from many learned perspectives at the Rules Committee was that other jurisdictions passed these types of things as party policy, not as government or legislative rules.

Senator Baker: Which we don't have, and that is the problem, isn't it? Westminster has it. It's 15 per cent of the caucus in Westminster that can trigger it. Australia has it, and it's gone up to 75 per cent there with the recent activity. New Zealand has it as well.

What's so wrong about a suggestion in this bill by 260 members of the House of Commons that they would like to have that choice? It's nice to set it out in legislation, but it's only a choice that they can take. What's wrong with giving them a choice to democratize the House of Commons?

Senator Batters: Senator Baker, I prefer to give Canadians a choice. I prefer to give those party members who take out their $10 or $15 membership and go down to their school or church hall and vote for their party leader; and then, the same people who go to every polling location across this country in the realm of millions of voters in an election and vote for their Prime Minister of Canada.

Regarding your question about the optional nature of it, you're the deputy chair of the Senate Legal and Constitutional Affairs Committee. You sit with me there every week. Do we ever have criminal justice legislation that comes before us that is optional? You can potentially offend this legislation and get sent to jail? It doesn't make any sense, and we shouldn't allow it here.

Hon. Linda Frum: Senator Batters, will you accept a question? I want to follow up on something that Senator Baker said. He made a point that we've heard so often in this debate: that this is a bill that only affects the House of Commons.

If I proposed a Senate bill that said henceforth Senate seats would be hereditary and the Senate voted for it, would we be able to argue at that point that this bill passed the Senate, it only affects the Senate, it's only about the Senate, and therefore only senators should have a say in the matter?

Some Hon. Senators: Good point.

Senator Batters: Excellent question, and that exactly proves the point. We are a bicameral system in Canada. Nothing gets passed in our bicameral system unless the House of Commons votes for it and the Senate votes for it. We've had many cases where there are particular bills that might have more impact on one house or the other, but that is our system. That is what we need in order to have a properly functioning democracy.

Hon. David M. Wells: Honourable senators, it's clear that this bill has a lot of division on all sides. I've never seen so many abstentions and so many "for" and "against," even within the caucus that I belong to. That gives me great concern that this bill is not widely supported.

Of course, I've heard anecdotally on the other side that it's not widely supported, despite the fact that it was voted 260 to 17.

Of course many of the proponents of this bill say, "Well, it has the will of the house. You should respect the will of the house." If that's the case, every bill that comes here for our review has the will of the house or it wouldn't end up here.

Senator Plett: Bill C-377.

Senator Wells: I would say it's important for my colleagues to know, and of course they do know. I've been here a shorter time than just about anyone, except for Senator Tannas who came a month after I did, so what do I know? I would say that amendments serve a useful purpose even in the dying days of a session. So we shouldn't necessarily look at this bill as, "Well, if we propose amendments then it will kill the bill." If this legislation is so good for Canadians and so good democracy, then let the amendment stand and let new legislation that comes forth, that former Speaker Milliken suggested, take the amendments that we consider in this chamber as an important addendum or consideration to put to any new legislation.

• (1930)

Hon. Donald Neil Plett: Senator Wells, would you accept a question?

Senator Wells: Yes, Senator Plett.

Senator Plett: Senator Wells, in your brief comments you did address this, but Senator Baker was quite adamant that 260 people voted in favour of something in the other place. By my count there are 308 members of Parliament, so 48 did not support this. Senator Baker thinks that that is the magic number, I suppose, because Bill C-377 of course was also widely supported in the other place, probably not 260 to 48, but nevertheless by a vast majority.

Senator Baker wants this to come to a vote and he wants to pass this particular bill. Would you not agree, Senator Wells, that if we do that and let this come to a vote, as we should and as I said in my speech, that we should not allow all bills, including C-377, to come to a vote as quickly as possible?

Senator Wells: Thank you for your question, Senator Plett. Of course we're here to make decisions. One particular issue that I've had with many of my colleagues is the whole question of abstentions. We are given this position, until we are 75, so we can make decisions and don't have to be backed into a corner by special interest groups or fear of reprisal. That's why we're here until we are 75; it's the only reason we are here until we are 75. We are here to make decisions, and I think all bills should come to a decision point.

Hon. Bob Runciman: I have a question for Senators Wells, Batters and Plett. They talk with fine words about democracy and doing the right thing. I think the vote earlier today was 46 to 14. So clearly, I say that they are not being very democratic with respect to their approach to this. If they really believed the words that they are delivering tonight, then let us have a vote tonight.

Some Hon. Senators: Hear, hear!

Some Hon. Senators: Question!

Hon. David P. Smith: I will be voting against this motion in amendment. It's designed to torpedo what I regard as a real fresh wind coming into this place that brings reform. It gives more independence to members so they are not all robots and whipped on everything. That's what has been happening throughout other countries within the Commonwealth, and Canada just hasn't responded.

One of the ironies is that the mother of all Parliaments, the U.K. Parliament, allows three-line whips and things like that, where you have some independence as a member. On many things you can get up and say whatever you want and vote however you want. It's only on matters of whether or not the government stands or can fall.

This is refreshing. This is new. This is what we need and I am for it.

Some Hon. Senators: Hear, hear!

Hon. Anne C. Cools: Honourable senators, I rise to speak to the amendment to Bill C-586. I would like to correct what seems to me a wrong or erroneous opinion about senators in respect to reviewing certain bills. It may not be known to many newer senators here, but it has always been a practice that when senators are debating and considering bills that have come from the House of Commons, respecting the redrawing of riding boundaries and constituencies — in the old days we called it gerrymandering — in the review of those kinds of bills there has always been a sense of Senate deference to the House of Commons because invariably those boundaries and those constituencies were entirely the interest of the members of House of Commons.

Respectfully, I would like to inform Senator Batters that this chamber has a lot of traditions that would do her well to study and to understand. Senators have always accepted the fact that in respect to the election of this country, the House of Commons—

Some Hon. Senators: Oh, oh.

The Hon. the Speaker: Order!

Senator Cools, you can make your point in a vigorous fashion without having to point to your colleagues in an aggressive fashion. I know you are a little more benevolent than that.

Senator Cools: Honourable senators, these motions, these amendments have been wilfully kept for weeks to ensure that Michael Chong's Bill C-586 will die. I don't think that is fair play. This has been done wilfully. I sat in the Rules Committee on June 2, three weeks ago. There, senators indicated that they were letting the bill pass, be adopted in the Rules Committee, so that it could be defeated here in the chamber. Senator Wells gave ample warning that he was planning and had planned to move amendments to Bill C-586 just three days ago. He chose to hold these amendments until after the House of Commons adjourned for the summer.

Honourable senators, I do not believe for a moment that all senators are not all aware of the circumstances around this fact about which I am speaking. I have no problem with what

Michael Chong said about rubber-stamping. Maybe he was a little youthful and anxious. I can understand and forgive that. I think that he made a valiant effort on this bill. This chamber has always been respectful of the Commons in regard to matters that touch the elections of members. We senators have never had any doubt whatsoever about that.

Honourable senators, I wish to correct Senator Batters' misunderstanding about that, if I could. In any event, colleagues, there is a strong will in this place for this breath of fresh air that Senator Smith has talked about. Some of us have served in caucuses for many years. Some of us know the reality of caucus life. It is not as noble Senator Batters puts it. Senator Batters said that the Prime Minister is not an elected position; but she described that as a technicality. Well, I have news for all of us; it is the caucus and the members of the House of Commons who determine who the Prime Minister is. Let us not fool ourselves about that. That is the law.

Honourable senators, I am supporting this bill and I urge all senators to vote now on this Bill C-586.

Some Hon. Senators: Hear, hear!

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

Hon. Senators: Question.

The Hon. the Speaker: The question is on the motion in amendment moved by Senator Batters, seconded by Senator Wells, that Bill C-586 be not now read a third time, but that it be amended in clause 4 — shall I dispense?

Some Hon. Senators: Dispense.

The Hon. the Speaker: All of those in favour of the motion in amendment will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion in amendment will please say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Is there agreement on the bell, whips?

Some Hon. Senators: Now!

The Hon. the Speaker: All those in favour of the motion will please rise.

• (1940)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Batters	Housakos
Dagenais	Ngo
Eaton	Oh
Enverga	Plett
Fraser	Stewart Olsen
Frum	Wells—12

NAYS
THE HONOURABLE SENATORS

Andreychuk	McIntyre
Baker	Merchant
Bellemare	Mockler
Beyak	Moore
Carignan	Nancy Ruth
Chaput	Neufeld
Cools	Ogilvie
Cordy	Patterson
Dawson	Poirier
Day	Raine
Doyle	Ringuette
Greene	Rivard
Hervieux-Payette	Runciman
Jaffer	Seidman
Joyal	Smith (*Cobourg*)
Lang	Smith (*Saurel*)
LeBreton	Tannas
Marshall	Tardif
Martin	Wallace—39
McInnis	

ABSTENTIONS
THE HONOURABLE SENATORS

Cowan	Munson
Hubley	White—5
MacDonald	

Some Hon. Senators: Question.

Hon. Serge Joyal: I move that the question be now put.

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

Some Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Tannas, seconded by the Honourable Senator Oh, that this bill be read the third time. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: All those in favour please say "yea."

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

Some Hon. Senators: Now!

Senator Marshall: Now.

The Hon. the Speaker: All those in favour of the motion please rise.

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

YEAS
THE HONOURABLE SENATORS

Andreychuk	Martin
Baker	McIntyre
Bellemare	Merchant
Beyak	Mockler
Carignan	Moore
Chaput	Nancy Ruth
Cools	Neufeld
Cordy	Patterson
Dawson	Poirier
Day	Raine
Doyle	Ringuette
Greene	Rivard
Hervieux-Payette	Runciman
Jaffer	Seidman
Joyal	Smith (*Cobourg*)
Lang	Smith (*Saurel*)
LeBreton	Tannas
Maltais	Tardif
Marshall	Wallace—38

NAYS
THE HONOURABLE SENATORS

Batters	McInnis
Dagenais	Ngo
Eaton	Oh
Enverga	Plett
Fraser	Stewart Olsen
Frum	Wells
Housakos	White—14

ABSTENTIONS
THE HONOURABLE SENATORS

Cowan	MacDonald
Hubley	Munson—4

• (1950)

INCOME TAX ACT

BILL TO AMEND—THIRD READING—MOTIONS IN AMENDMENT, MOTION IN SUBAMENDMENT AND MOTION—DEBATE CONTINUED

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);

And on the motion in amendment of the Honourable Senator Bellemare, seconded by the Honourable Senator Black, that the bill be not now read a third time but that it be amended in clause 1, on page 5,

(*a*) by replacing line 34 with the following:

"poration;"; and

(*b*) by adding after line 43 the following:

"(*c*) labour organizations whose labour relations activities are not within the legislative authority of Parliament;

(*d*) labour trusts in which no labour organization whose labour relations activities are within the legislative authority of Parliament has any legal, beneficial or financial interest; and

(*e*) labour trusts that are not established or maintained in whole or in part for the benefit of a labour organization whose labour relations activities are within the legislative authority of Parliament, its members or the persons it represents.";

> And on the subamendment of the Honourable Senator Cowan, seconded by the Honourable Senator Ringuette, that the motion in amendment be not now adopted but that it be amended as follows:
>
> (*a*) by deleting the word ''and'' at the end of paragraph (a) of the amendment;
>
> (*b*) by adding the following new paragraph (b) to the amendment:
>
> "(*b*) by replacing line 36 with the following:
>
> 'of which are limited to the'; and"; and
>
> (*c*) by changing the designation of current paragraph (b) to paragraph (c);
>
> And on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Eggleton, P.C., that the subamendment be not now adopted but that pursuant to rule 12-8(1), it, together with the amendment, be referred to Committee of the Whole for consideration and report, and that the Senate resolve itself into Committee of the Whole, immediately following Question Period on the second sitting day following the adoption of this motion.

Some Hon. Senators: Question!

Hon. Jane Cordy: Honourable senators, I support the amendments of Senator Bellemare, Senator Cowan and Senator Ringuette.

Under the Constitution Act, the regulation of labour unions falls exclusively under provincial jurisdiction, so I am puzzled as to why the Senate would consider, let alone support, a bill that would intrude on provincial matters. However, here we go again with Bill C-377, a bill that clearly intrudes on provincial jurisdiction to regulate labour.

This time the bill is being pushed through the Senate by the Conservative majority — without amendment or acknowledgement of the unconstitutionality of the bill. This was not the case when the same bill was tabled in this chamber in the last session of Parliament. At that time, the Conservative majority in the Senate saw the wisdom to amend the bill. However, Parliament was prorogued and the bill and the amendments died on the Order Paper before the other place had the opportunity to debate and approve the amended bill.

The bill was reintroduced in this session in its original form, without the amendments that had been passed in the Senate, which shows no respect —

Senator Munson: Your Honour, I'm having a difficult time hearing our main speaker. There are a lot of conversations taking place.

The Hon. the Speaker: Honourable senators, let's try to keep the conversations down to a minimum so we can hear the debate going on.

Senator Cordy: The bill was reintroduced in this session in its original form without the amendments passed in the Senate, which shows no respect for the decision that was made by this chamber. This government ignored the will of one of the two Houses of Parliament to take a second crack to ram this government bill, posing as a private member's bill, through the Senate.

Nothing has changed with this bill. It is still a bad piece of legislation and, as Senator Ringuette said:

> . . . it is still unconstitutional. . . it will be very costly to taxpayers; it puts Canadian workers in danger, especially those who protect us; and finally, it still creates an indefensible imbalance in employee-employer relationships.

As this bill is unchanged from when it was first introduced in 2011, all the concerns Canadians had with the bill are then, unfortunately, still very relevant today. Danny Cavanagh from Nova Scotia wrote that:

> Bill C-377 aims to force labour organizations to disclose a significant amount of financial and sensitive information. This bill does not mention that unions are democratic organizations and already disclose their financial statements to members who request it. This bill will create a mountain of bureaucratic red tape and approximately 25,000 organizations must submit details of all financial transactions over $5,000. . . . This bill is extremely expensive, estimates vary between $10.6 million and $150 million for the establishment of the registry.

Gary Vermeir, who is the business agent for a small local of film industry technicians in Atlantic Canada, wrote to me and said:

> Our members live the precarious life of a freelancer, never knowing from year to the next what productions will set up shop on the East Coast. Because they can't count on continuous work, they rely on their union to coordinate their retirement funds, their medical plan and their training. Our elected union executive does everything it can to ensure that our members' dues, retirement, training and medical funds are spent at judiciously as we can. We resent the Harper government suggesting that our hard-working volunteer board members are doing anything untoward. Our books are audited regularly, and are presented to our members at regular member meetings.

As Brad Smith, Executive Director of Mainland Nova Scotia Building Trades Council, wrote in his letter to the clerk of the Standing Senate Committee on Legal and Constitutional Affairs in his request to appear as a witness before that committee:

> This legislation unfairly singles out trade unions and imposes unprecedented reporting requirements. The Bill's constitutional validity has been questioned by many, and the Building Trades see Bill C-377 as completely discriminatory and unjust.

By the way, Mr. Smith was not allowed to appear as a witness despite the fact that he represents 11,000 members in Nova Scotia.

Honourable senators, I agree with Mr. Smith that Bill C-377 is an unjust and discriminatory bill. This government proclaims that they support this bill under the guise of "transparency." There has never been a government less interested in transparency than this one. This bill is nothing more than a blatant attack on labour unions who they view as their enemy. This is a government with no interest in working with those with differing opinions to find a middle ground. This is a government that seeks to destroy those who do not agree with everything they do.

In an appearance before a meeting of the Standing Senate Committee on Legal and Constitutional Affairs, the Privacy Commissioner of Canada, Daniel Therrien, raised this question:

> I must say that I am particularly troubled by the fact that Bill C-377 proposes to associate the name of specific individuals with political activities. These activities are clearly of a sensitive nature. Why require this disclosure when other schemes adopted in the name of accountability to taxpayers do not?

That is a very good question, honourable senators.

Is the hope that Bill C-377 will cripple organized labour in Canada with unprecedented disclosure and reporting of members' private information? Many smaller organizations simply will not be able to perform such an undertaking.

As Marcel, the president of a small local of the International Alliance of Theatrical Stage Employees in Nova Scotia, wrote:

> My local does not have any full-time staff. We are a volunteer board. The burden this bill places on us is quite simply unmanageable.
>
> The idea that this reporting is a benefit to the members because it forces transparency is nothing but misdirection on the part of the Conservatives. The Trade Union Act of Nova Scotia already deals with financial transparency.
>
> Truly, besides being an obvious attack on Labour, I am concerned with the privacy of members or their spouses accessing our medical/life insurance.

While larger organizations will adapt to the new rules, this legislation will effectively put organized labour organizations at a severe and unjust disadvantage when it comes to negotiating and protection of their members' livelihoods. This bill isn't about transparency for this government, it's all about power. The federal government is tipping the balance of power unjustly and unfairly in favour of employers with this unconstitutional bill. Let's not forget this: The federal government is one of Canada's largest employers.

In an appearance before the Standing Senate Committee on Legal and Constitutional Affairs, the Honourable Kelly Regan, MLA, Minister of Labour and Advanced Education, Government of Nova Scotia, expressed the same concerns:

> The bill requires that unions, not employers, must disclose details of all expenditures over $5,000 to the Canada Revenue Agency. The salaries and benefits of union employees who earn more than $100,000 must also be disclosed. It also requires that unions provide a detailed breakdown of expenditures on political and lobbying activities. They must publicly post that information on CRA's website. These kinds of expenditures can include payment to legal firms, settlement costs associated with grievances, or advertising costs. This could potentially give employers an unfair advantage at the negotiating table.
>
> For all intents and purposes, it provides a window through which anyone can see the financial strength or weakness of a union or labour organization. For some smaller union locals — and there are many here in Nova Scotia — this could virtually expose their finances, as they probably only have a few transactions. If a grievance has been settled for only one member, posting financial statements for that would reveal that information and it would essentially violate that member's personal privacy.
>
> The Province of Nova Scotia is concerned about the one-sided nature of this legislation, that it requires only one of the parties on the labour scene to disclose very detailed information that could be used against them. We'd like to see issues around basic fairness addressed.

• (2000)

Honourable senators, it is not only small labour organizations that will become a target of this bill. In a letter to the Standing Senate Committee on Legal and Constitutional Affairs, Nancy MacCready-Williams, CEO of Doctors Nova Scotia, wrote this about their concerns:

> DNS has been advised that the Bill as it is presently worded, may define "labour organization" broadly enough to bring DNS and other Provincial/Territorial Medical Associations (PTMA's) within its ambit. [. . .] The Bill as currently drafted will impose extremely onerous reporting requirements on our organization with no apparent benefit or objective being served. We are already transparent and accountable to our members and to the public. We communicate our activities and disclose our financial statements to members at least annually and we are in full compliance with all legislative and regulatory requirements in Nova Scotia. Yet this Bill would inadvertently impose new reporting requirements, as detailed below, which will cause us to redirect resources away from other priorities. This is a cause for great concern. DNS is an organization responsible to work collaboratively with government to improve and shape the health care system.

Bill C-377 will require the reporting and disclosure of any disbursement that exceeds $5,000 and any salary over $100,000. The disclosure must include the name and address of the payer and payee, description and purpose of the transaction, and amounts. There is also a real fear that much more private information of labour organization members will also be put out there for everyone to see.

As Brad Smith of the Mainland Nova Scotia Building Trades Council wrote:

> The legislation raises questions regarding the disclosure of detailed financial information, including salaries, contracts, loans, investments, and spending on organizing, collective bargaining, education and training;
>
> The Bill would also require the reporting of pension and medical benefit information, and therefore the disclosure of members' sensitive personal medical and financial information. [. . .] This information would appear online in a searchable database on the Canada Revenue Agency website. This would violate the privacy of thousands and is unacceptable. We believe that the internal administration of a union is a matter between the union and its members and not the general public.

In an appearance before the Standing Senate Committee on Legal and Constitutional Affairs, Privacy Commissioner of Canada Daniel Therrien weighed in on the issue of privacy:

> . . . the public naming of individual payers and payees associated with transactions having a cumulative value over $5,000 is also, I believe, disproportionately intrusive from the privacy perspective . . . .

When Bill C-377 was before the House of Commons Standing Committee on Finance last session, then-Privacy Commissioner of Canada Jennifer Stoddart said in respect to a question on November 7, 2012:

> . . . I think that requiring the names of all individuals earning or receiving more than $5,000, as well as the amounts they receive, to be published on a website, is a serious breach of privacy.

As Senator Ringuette said in her speech:

> The Canadian Privacy Act specifies that to disclose private information publicly one needs consent of the individual whose private information would be disclosed and/or posted. In order to abide by the privacy legislation, the unions, the director of the Canada Revenue Agency and the minister would all have to get the individual consent for the information to be disclosed publicly. If not, any of them and/or all of them would be subject to court challenges under the Privacy Act.

Honourable senators, the requirement of all this data collection to be disclosed on a public website is interesting coming from the party that did away with the long-form census because it disclosed too much personal information. I guess collecting personal information in order to craft effective positive government policies and legislation can be sacrificed as intrusive, but, honourable senators, it appears that the gathering of personal information to keep organized labour under the thumb of this government is essential.

How will this information be collected, documented, stored, filed and published? Organized labour organizations will be burdened financially to report this information, and then the Canadian taxpayer will foot the bill to have the Canadian Revenue Agency manage and maintain this massive amount of data, and cumbersome database and website.

Honourable senators, this will not be cheap nor will this be an insignificant amount of information at the fingertips of the CRA. Senator Bellemare spoke clearly about this in the Senate.

Senator Segal said in this chamber in 2013:

> As a taxpayer and as a Conservative, I oppose that kind of increase in any government's power or expenditures.

Honourable senators, I must thank Senator Ringuette for the commendable work that she has done in raising the many issues with this bill. It is truly a bad piece of legislation and damaging to labour relations in Canada. Senator Ringuette has continued the fight on this issue since the bill first came to the Senate in 2012. Since that time, the Senate found fit to amend the bill in the last session. Unfortunately, in the current session, it appears the Conservative majority in this place has decided to turn its back on those amendments and help push through this new "old" bill without the amendments. I am disappointed but, frankly, not surprised.

I was hopeful when this bill was introduced that we would honour our past commitment to amend the bill and not bend to the opinion of Thomas Mulcair and be nothing more than a rubber-stamp to all legislation passed in the House of Commons. Even though Mr. Mulcair has turned his back on organized labour in Canada, and the Conservative majority in the Senate will continue to push this damaging piece of legislation through, I will stand with my colleagues on this side and vote against Bill C-377.

I was disappointed that Senator Moore's amendment to Senator Ringuette's motion was defeated today, but in retrospect, perhaps we are being too ambitious. As we all know, more than 50 individuals and organizations, including CUPE, Canada's largest union, requested but were denied an opportunity to appear before our Legal Affairs Committee on Bill C-377.

The purpose of Senator Ringuette's motion is to give these organizations and individuals an opportunity to appear before us in Committee of the Whole to present evidence. Senator Moore's amendment would have had the Senate resolve itself into Committee of the Whole the day following the adoption of Senator Ringuette's motion. Although the intention was to show that we wanted to move to public hearings as quickly as possible, it would have made it very difficult for those potential witnesses to appear on such short notice.

Could I have five more minutes, please?

The Hon. the Speaker: Will honourable senators allow Senator Cordy five more minutes?

Hon. Senators: Agreed.

Senator Cordy: Consequently, instead of giving them less time to prepare and organize themselves, we should be giving them more time.

MOTION IN AMENDMENT

Hon. Jane Cordy: Therefore, honourable senators, I move:

> That this motion be not now adopted but that it be amended by replacing the word "second" with the word "third."

Thank you, honourable senators.

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

Some Hon. Senators: Question.

Some Hon. Senators: No.

The Hon. the Speaker: On debate.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise to support Senator Cordy's amendment, and I also want to thank Senator Cordy for her well-thought-out remarks.

At this time, I also want to thank Senator Ringuette and Senator Cowan for their untiring work on this bill. They have worked for many hours and months — in fact, for years — on this bill, and I want to thank them for their persistence.

[*Translation*]

Honourable senators, I rise to speak at third reading stage of Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations).

• (2010)

The bill's summary reads as follows:

> This enactment amends the *Income Tax Act* to require that labour organizations provide financial information to the Minister for public disclosure.

As we are at third reading stage, I will take this opportunity to examine the bill through the lens of the Constitution. When the Committee on Legal and Constitutional Affairs studied this bill, a number of witnesses expressed their concerns about the constitutionality of the draft bill. More specifically, they were concerned that the bill was not constitutional for two reasons: first, it violates sections 91 and 92 of the Constitution Act, 1867; and second, it violates the 1982 Canadian Charter of Rights and Freedoms.

Doctrine, jurisprudence and expert testimony clearly indicate that this bill is unconstitutional. Let me explain. As I just mentioned, the first problem with this bill has to do with sections 91 and 92 of the Constitution Act, 1867. Part VI of the Constitution Act explicitly sets out the distribution of legislative powers and the respective jurisdictions of each parliament. Thus, the Parliament of Canada has the exclusive authority to pass legislation under section 91, while the provincial legislatures have the exclusive authority to pass legislation under section 92. In order to determine whether a bill has been passed by the appropriate parliament, the Supreme Court of Canada developed the test of true character.

[*English*]

Honourable senators, according to Peter Hogg:

> The pith and substance doctrine comes into play in determining the validity or constitutionality of a statute on federal grounds. It is concerned with the characterization of the challenged law by identifying its dominant or most important characteristic, or its leading feature, also sometimes referred to as the "matter" of the challenged law, keeping in mind that statutes can often have more than one feature or aspect.

In the matter of a Reference by the Governor in Council concerning the proposed Canadian Securities Act, the Supreme Court of Canada stated:

> To determine the constitutional validity of legislation from a division of powers perspective, the pith and substance analysis requires the courts to look at the purpose and effects of the law. The inquiry then turns to whether the legislation falls under the head of power said to support it. If the pith and substance of the legislation is classified as falling under a head of power assigned to the adopting level of government, the legislation is valid.

[*Translation*]

The question here is about the pith and substance of the bill, or the intention in passing it. We must apply that test to the facts. I would like to share with you some expert testimony on the matter.

[*English*]

According to the Barreau du Québec:

> A rather more serious problem is posed by the purpose of the bill, since it is intended to provide oversight of labour organizations across Canada. Such an intention falls within the ambit of labour relations, jurisdiction over which has been conferred on the provinces through case law interpreting subsection 92(13) of the *Constitution Act, 1867*, since the famous decision of the Judicial Committee of the Privy Council in 1925.
>
> Labour relations are deemed to be under the exclusive jurisdiction of the provinces . . . . As the Supreme Court of Canada noted in *Northern Telecom v. Communications Workers:*
>
> > (1) Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule.

The Service Employees' International Union added:

> In our respectful view, this Bill, in spite of its title, is not income tax legislation. In pith and substance, in purpose and effect, it is labour legislation. . . . Bill C-377 is an intrusion into provincial jurisdiction over labour relations, developed without provincial consultation or consent.

[*Translation*]

The message is clear. This bill will not pass the constitutionality test with respect to pith and substance because it was not passed by the appropriate government. Specifically, Bill C-377 falls under section 92(13) of the Constitution Act, which is an exclusively provincial area of jurisdiction. This is not income tax legislation; it is labour legislation.

The second problem with this bill has to do with the Canadian Charter of Rights and Freedoms. As you know, the Charter protects the rights and freedoms of Canadians. In particular, it protects them from this kind of bill.

First, section 2(*b*) of the Charter reads as follows:

> Everyone has the following fundamental freedoms:
>
> (*b*) freedom of thought, belief, opinion and expressions, including freedom of the press and other media of communication;

Second, section 2(*d*) of the Charter reads as follows:

> Everyone has the following fundamental freedoms:
>
> (*d*) freedom of association.

I would like to share some of the comments we heard in committee about that.

[*English*]

The Canadian Federation of Nurses said:

> . . . C-377 will:
>
> Substantially interfere with the freedom of expression and freedom of association rights protected under sections 2(b) and 2(d) of the *Canadian Charter of Rights and Freedoms*, being part 1 of the *Constitution Act of 1982*.

On that matter, the Association of Labour Lawyers stated:

> There is no justification for compelling information about the political speech of unions and their members to be made publically available on a government website.

[*Translation*]

The committee also heard from the Canadian Bar Association, which expressed its doubts as to the bill's constitutionality. It stated, and I quote:

[*English*]

> Subsections 149.01(3)(b) . . . may contain disclosure requirements counter to the *Charter of Rights and Freedom's* protection of freedom of expression under s. 2(b) and freedom of association under s. 2(d).

[*Translation*]

> The Bill interferes with the internal administration and operations of a union, which the constitutionally protected freedom of association precludes, unless the government interference qualifies as a reasonable limitation upon associational rights. It is unclear from the Bill what the justification is for these infringements.

[*English*]

They also stated:

> There is certainly a rationale for making information about how the union spends money available to the union members themselves, but such information is already available to those members through provincial labour legislation.

According to the Alberta Union of Provincial Employees:

> If this Bill is somehow able to survive a jurisdictional challenge, unions across Canada are sure to challenge the constitutionality of this legislation on the basis that it seriously interferes with the *Charter* right to freedom of association by impeding the ability of unions to pursue collective action in a fair way.
>
> The Supreme Court of Canada in a series of recent cases has affirmed that the freedom to associate protected by section 2(d) of the Charter is broad and ought to be interpreted in a generous and purposive manner.
>
> Moreover, it is clear that section 2(d) grants constitutional protection to the process of collective bargaining.
>
> The Supreme Court of Canada has confirmed that if the government substantially interferes with the ability of labour union members to engage in collective bargaining, a breach of section 2(d) will be found.
>
> The purpose of this protection is to ensure relative equality of bargaining power between employers and employees, and this balance can be disrupted in a variety of different ways.

• (2020)

[*Translation*]

The Fédération autonome de l'enseignement also shared some concerns about the constitutionality of the bill, and I quote:

> Freedom of association is enshrined in subsection 2(*d*) of the Canadian Charter of Rights and Freedoms and article 3 of Quebec's Charter of Human Rights and Freedoms. It is implicit in the exercise of this freedom that there should be no impediments to the internal management and decision-making of labour organizations. By requiring the public disclosure of strategic information, however, the federal government is interfering in the activities of labour organizations by requiring them to make specific information public and imposing upon them the form that such disclosure must take. This unique requirement, it must be pointed out, has the effect of weakening labour organizations in their relations with employers and impeding freedom of association by requiring labour organizations to disclose to the public all of their activities and expenditures.

Honourable senators, that statement was clear. Bill C-377 will not meet the constitutional test of the Canadian Charter of Rights and Freedoms. Once again, the Supreme Court of Canada will examine the constitutionality of a Harper government bill and taxpayers will, once again, end up with a huge bill.

Honourable senators, I would like to remind this chamber that, pursuant to subsection 52(1) of the Constitution Act, 1982, the Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect. Parliament must therefore comply with this provision when it passes a law. It only ends up costing Canadian taxpayers money when the government ignores the experts, ignores the facts, ignores the doctrine and ignores the jurisprudence. These costs are irresponsible and unfair.

I'd like to conclude my speech by reading some excerpts from a letter from the Honourable Francine Landry, the Minister of Post-Secondary Education, Training and Labour in New Brunswick, who provided an excellent summary of the bill, and I quote:

> In response to the revival of Bill C-377, *An Act to Amend the Income Tax Act (requirements for labour organizations)*, the Government of New Brunswick wishes to reiterate its concerns regarding the Bill.
>
> The Government of New Brunswick is concerned by the financial disclosure requirements proposed in Bill C-377 because, in our opinion, the internal administration of union business is primarily a matter between the union and its members. The issue of union financial disclosure is addressed in New Brunswick's *Industrial Relations Act* which includes financial accountability provisions to ensure fiscal transparency by organized labour to its members. Under these provisions, union members may request a copy of audited financial statements confirming appropriate management and administration of union funds. The Labour and Employment Board has authority to enforce the provisions if necessary . . .

[*English*]

The Hon. the Speaker *pro tempore***:** Senator Jaffer, would you like more time?

Senator Jaffer: May I have five more minutes?

Hon. Senators: Agreed.

[*Translation*]

Senator Jaffer: Thank you.

> . . . New Brunswick data demonstrates that no complaints have been filed with the Board in the last six years and very few have ever been brought for adjudication. This confirms that existing protections available in New Brunswick's legislation meet the expectations of union members. It also suggests that the democratic principles operating within union structures are responsive and effective in meeting standards of accountability and transparency demanded by union members.
>
> The regulation of labour law, including governance of trade unions, is an area of provincial jurisdiction. It has been well-settled since the Privy Council decision in *Snider* (1925), that jurisdiction over labour relations rests with the provinces. Bill C-377 focuses on imposing reporting obligations on unions, rather than managing federal taxation. As noted above, New Brunswick already effectively legislates the subject-matter proposed under Bill C-377.
>
> We consulted with public and private sector unions in New Brunswick and all respondents expressed concerns about the potential implications of Bill C-377. These concerns include:
>
> Impact on key constitutional rights:
>
> privacy rights . . .;
>
> Charter rights . . . .
>
> Significant administrative and financial burden to generate the comprehensive reports required by the Bill, particularly for small locals. . . .

As the Minister responsible for labour in the province, and in light of the concerns highlighted above, it is my strong recommendation that this Bill not proceed.

[*English*]

Honourable senators, together we can defeat this bill because this bill does not belong within our jurisdiction. This is a provincial matter. Thank you.

(On motion of Senator D. Smith, debate adjourned.)

ADJOURNMENT

NOTICE OF MOTION

Leave having been given to revert to Government Notices of Motions:

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, pursuant to rule 5-5 (g), I give notice that, at the next sitting of the Senate, I will move:

> That when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Thursday, June 25, 2015 at 1:30 p.m.

STUDY ON USE OF DIGITAL CURRENCY

TWELFTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ADOPTED

Resuming debate on the twelfth report of the Standing Senate Committee on Banking, Trade and Commerce entitled: *Digital Currency: You Can't Flip this Coin!*, tabled in the Senate on June 18, 2015.

Hon. Scott Tannas: Senator Gerstein had an appointment outside the Senate and asked if I could finish his speech for him.

• (2030)

Honourable senators, when Senator Gerstein left off, he was talking about a witness we had who said that bitcoin could be a tool used for nefarious purposes.

> To minimize these risks, the report recommends that the government require digital currency exchanges to meet the same requirements as other money services businesses. The exchanges, the so-called on- and off-ramps where customers convert state-issued currency into digital currency and vice versa, should comply with Canada's anti-money laundering and anti-terrorist financing regime.
>
> Other challenges we learned about are a lack of bank access for digital currency companies, tax evasion and the price volatility of crypto-currency. In our report we deal with these issues as well and offer suggestions on how to mitigate some of the inherent risks that come with these new currencies and payment systems.
>
> The consequence of this risk of criminality means a certain amount of regulation is needed. However, balance is something almost all witnesses stressed, and the committee is of a like mind.
>
> We recognize that these new technologies may have other innovative and as yet unimagined applications and are at a delicate stage in their development. Accordingly, the committee has concluded that the best strategy for dealing with digital currencies is to tread carefully when contemplating regulations so as not to stifle innovation.
>
> After 14 months of study and consideration, we believe that the best way to move forward is to continue to monitor the digital currency sector while government organizations, such as the Canada Revenue Agency; FINTRAC, which is the Financial Transactions and Reports Analysis Centre of Canada; and police services learn to navigate and use the blockchain technology.
>
> To sum up, the Standing Senate Committee on Banking, Trade and Commerce is of the unanimous view that digital currency and associated technologies demand only a regulatory light touch, almost a hands-off approach, to allow the digital currency sector to thrive. Our goal as legislators should be to ensure that Canada's economic, technological and legal environment is conducive and not restrictive to innovation in this field.
>
> Honourable senators, to paraphrase Prime Minister Mackenzie King's June 1942 speech, in Parliament today with regard to digital currency, the Banking Committee is saying not necessarily regulation but regulation as necessary.

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

Some Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

LIGHTHOUSES AS IRREPLACEABLE SYMBOLS OF MARITIME HERITAGE

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Munson, calling the attention of the Senate to lighthouses as irreplaceable symbols of Canada's maritime heritage and monuments that enrich communities and the landscape of this country.

Hon. Michael L. MacDonald: Honourable senators, I wish to speak today to the inquiry before us calling for the attention of the Senate to the importance of lighthouses as irreplaceable

symbols of Canada's maritime heritage and monuments that enrich communities and the landscape of this country. My remarks will be brief, but this is an important inquiry on a topical issue, and I commend Senator Munson for calling this matter to the attention of the Senate.

Canada is certainly a maritime nation, although when a country is over 3,000 miles wide and spans a continent where a large percentage of the country does not live on the coastline, it is sometimes easy to overlook this fact.

Honourable senators will recall earlier this year we commemorated the fiftieth anniversary of the maple leaf flag. It replaced the Canadian Red Ensign, which served as our flag for almost 98 years. The original Red Ensign was the British merchant flag that flew off the stern of Canadian ships that sailed all over the world. Since the 18th century, it was a familiar sight on the Great Lakes, the St. Lawrence River and along the Atlantic seaboard, as well as Vancouver and Victoria on the Pacific coast. This merchant flag became synonymous with Canada, and the simple addition of the Canadian Coat of Arms created our first flag.

Our first national flag was not a foreign imposition or a deliberative government initiative or a decision by committee but a by-product of Canada's maritime heritage, a heritage that is best preserved and represented today in the over 900 lighthouses that dot our landscape.

According to Fisheries and Oceans Canada, light structures that are defined as "navigational aids" meet the broader definition of lighthouse. Canada has about 250 "postcard" lighthouses, some of which are already protected as heritage sites. All provinces, except Alberta and Saskatchewan, have true lighthouses. Nova Scotia has the most, with 160; Ontario, with 104; New Brunswick, 78; Newfoundland, 72; Quebec, 59; Prince Edward Island, 56; British Columbia, 52; and Manitoba has two lighthouses.

It would also be mistaken to assume that all the great lighthouses are on the coastline. There are beautiful structures throughout the Great Lakes, such as the Point Clark and Cove Island lighthouses, just two of the six magnificent imperial towers constructed before Confederation, all of which remain standing.

These lighthouses are also monuments that capture an era and a way of life, and they represent a substantial cultural and architectural inventory.

We are all familiar with the story of the Canadian railroad and how John A. tied the country together with this greatest engineering feat of the 19th century. But the greatest 19th century engineering feat before Confederation is still enjoyed every day in this very city. The Rideau Canal and locks system, built by Colonel John By, was a tremendous achievement in its day, although by the time it was completed, the development of the railroads had made it redundant. Built for military and commercial purposes, it had little or no impact on either.

But talks to abandon or even remove it in later years were ignored, and today it is a UNESCO World Heritage Site. It is a great adornment to the Nation's Capital, a living, working symbol of our past. This city would have been much diminished if the Rideau Canal hadn't been properly preserved and maintained. Civilized people today look on with sadness and anger when we witness those in some parts of the world that deliberately destroy ancient sites and monuments, and we regret our inability to do anything about it.

While we can still commit to maintain Canada's cultural and architectural heritage, in the case of our lighthouses, we have also reached the point where we have to address the issue right now.

Times have changed. With the advent of modern technology such as GPS, the traditional function of lighthouses as an essential guide for mariners is in transition. In May of 2010, the Department of Fisheries and Oceans declared over 900 active and inactive lighthouses across Canada surplus to its needs. DFO says it's not in the heritage business, and that is administratively true. Of course, that is not to say that these lighthouses could no longer serve a purpose or that they should be left to crumble.

Lighthouses are iconic and hold a great attraction for people of all ages. I have seen it all my life. Adults are drawn to them. Children love them. Many have considerable commercial or tourism potential, not only as monuments, but also repurposed as museums or interactive community centres, to name just two examples.

• (2040)

Many of these structures are modest in size and easily maintained, but quite a few are huge monoliths occupying magnificent settings. Think of the many Roman towers that survive throughout Europe, how they enrich the landscape and how they help preserve the history of another era for all to see and appreciate. The great Canadian lighthouses are our Roman towers and must be preserved for future generations of Canadians to experience and enjoy.

The Government of Canada, aware of the changing circumstances surrounding the future of these lighthouses, addressed this new reality in 2010 with the introduction of the Heritage Lighthouse Protection Act, which provided that these properties could be transferred to new owners as long as they are maintained. The act has provided a mechanism for Canadians to participate in the nomination and preservation of heritage lighthouses.

Through the act, the Government of Canada has afforded lighthouses protection in four ways. First, it provides for a selection process, a two-year public petition period, for the designation of heritage lighthouses. This nomination process ended on May 29, 2015, and the results should be known in the coming months.

Second, the act prohibits the unauthorized alteration or disposition of designated heritage lighthouses. Third, the act ensures they are reasonably maintained. Finally, the act facilitates the sale or transfer of heritage lighthouses in order to fulfill an ongoing public purpose with continued long-term protection.

According to the Parks Canada website, 348 lighthouses were petitioned for heritage designation, 92 in Nova Scotia alone. Given the volume of response, it is clear that Canadians want to ensure that these historical monuments are maintained. I look forward to Parks Canada's recommendations and I implore the department to come to a fair and reasoned determination. I believe that Canadians expect nothing less.

In the past few decades, preservation societies have worked to save some of Canada's lighthouses on the grounds that these structures, like railway stations and grain elevators, have special significance to Canadians and played an important role in our history.

I would be remiss if I did not commend the exceptional work undertaken by the Nova Scotia Lighthouse Preservation Society, the NSLPS, for their relentless work pursuing the protection of our province's coastal treasures. Through their efforts, the NSLPS helps to ensure that the historical and sentimental value of Nova Scotia's lighthouses is recognized, while striving to attain the protection and preservation these monuments truly merit.

This month the NSLPS, in conjunction with the National Trust for Canada, launched an initiative called "This Lighthouse Matters," which encourages the public to privately contribute to the fundraising needed to assist in the maintenance of our lighthouses. As stated on their website:

> . . . non-profit community groups are the most suitable to preserve lighthouses because these are the people whose ancestors kept the lights and who care deeply about them. They are the most likely to develop the sites in a sensitive and appropriate manner."

It is my hope that the process implemented by the Heritage Lighthouse Protection Act will allow for the safekeeping of many of these historic structures for generations to come, and I look forward to Parks Canada's final determination on heritage designation.

The Government of Canada is also being proactive in terms of funding. For example, Sambro Island light, near Halifax Harbour, is the oldest surviving functioning lighthouse in North America, but it is in rough shape. I was pleased to hear of the federal government's commitment of $1.5 million for its restoration announced just last month.

While we welcome this financial support, it admittedly is an ad hoc response to a unique circumstance and there remain many more large structures that will require government involvement to ensure their sustainability. The Heritage Lighthouse Protection Act represents merely the first step in what I hope will be a comprehensively managed approach to this issue, because many lighthouses require solutions crafted to their unique circumstances.

I can think of no better example than the one with which I am most familiar — the lighthouse in my hometown of Louisbourg. The original structure was built at Lighthouse Point in 1734 — the first lighthouse built in Canada and the second in North America — providing safe passage for warships and supply vessels entering the harbour. Destroyed by fire in 1736, it was rebuilt and operated until levelled by British batteries in 1758, during the second siege of Louisbourg. The third lighthouse burned in 1922.

The striking concrete octagonal lighthouse today is surrounded by the archeologically excavated foundations of its three predecessors. But while Lighthouse Point itself is a national historic site, the present-day lighthouse is managed by DFO and has been declared surplus. Parks Canada presently has 11 lighthouses it administers, none of which will be declared surplus. Louisbourg Lighthouse could easily and permanently be maintained by Parks Canada, and I encourage the government to consider this easily achieved solution in the near future.

The government has taken some encouraging first steps to secure the future of our lighthouse heritage in this country, but these are only the first steps and much remains to be done. Governments, stakeholders, societies and communities must all work closely together in the upcoming months and years to make sure the proper decisions are made on every structure.

Canada will celebrate its one hundred and fiftieth anniversary in 2017. When Canada celebrates its two hundred and fiftieth anniversary in 2117, let's make sure that our descendants can look at our generation and thank us for having the foresight to do the intelligent and responsible thing in preserving our heritage for Canadians of the 22nd century.

(On motion of Senator Cowan, debate adjourned.)

SUPPORTING INFORMAL CAREGIVERS OF PERSONS WITH DEMENTIA

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Andreychuk calling the attention of the Senate to the challenges confronting a large and growing number of Canadians who provide care to relatives and friends living with dementia.

Hon. Rose-May Poirier: I adjourn the debate in my name.

(On motion of Senator Poirier, debate adjourned.)

COMPREHENSIVE AUDIT OF AUDITOR GENERAL

INQUIRY—DEBATE ADJOURNED

Hon. Anne C. Cools rose pursuant to notice of June 2, 2015:

That she will call the attention of the Senate to;

(*a*) our 1988 Senate National Finance Committee study of the Auditor General of Canada; and, to then incumbent Kenneth Dye's February 3 testimony, wherein he described parliament as his "client," but also said, ". . ., our office views itself as a servant of Parliament"; and, to his explanation of the *comprehensive audit*, the term used by the June 6, 2013 Senate government motion, inviting the auditor general to audit exam senators; and, to the Auditor General's term, "performance audit," that describes this same audit of senators; and,

(*b*) to the learned research and scholarship on the auditor general's role and its incursion into the political, policy spheres; and, to Carleton University's Professor Sharon Sutherland's January 28, 1988, testimony before our National Finance Committee; and, to the abandonment by auditors general of their traditional audit role as quantitative bean counters; and, to their movement into the policy and advice spheres, the inexorable consequence of the then new 1977 *Auditor General Act,* the political result of then Auditor General James Macdonell's, successful public media campaign to that end; and,

(*c*) to the political fact that this Act enlarged this auditor's powers to add a new unknown power to judge and opine on the "value for money" of government expenditures; and, to these judgments which, not amenable to arithmetic measurement and quantification, will inevitably be flawed, because by human nature, such judgments will tend to be social, political and qualitative in character, which judgments, so totally liable to human subjectivity and selectivity, cannot be sound measures to form sound conclusions on government spending; and,

(*d*) to the fact that such auditors' opinions, politicized as they are, having of necessity become public policy opinions, will undermine the constitutional fact that public policy is the exclusive domain of politics, governments and parliaments; and, to *Auditor General Act* "value for money" section 7.(2)(d), which says:

> 7.(2) Each report of the Auditor General under subsection (1) shall call attention to anything that he considers to be of significance and of a nature that should be brought to the attention of the House of Commons, including any cases which he has observed that . . .
>
> (*d*) money has been expended without due regard to economy or efficiency;

and,

(*e*) to the fact that Mr. Macdonell's 1977 *Auditor General Act* wholly altered audit of the public finance; and, to this then new audit role's drift away from the appropriation audit, towards the regulation of government, and now even the houses of parliament, with the result that, in the public mind, the auditors general have become a check on politicians, parliamentarians and senators; and, to this auditor general's new role in social and political control, with all its unfortunate results; and, to the *Canadian Comprehensive Auditing Foundation*, founded, financed, and operated by Auditor General Macdonell's office; and, to its famous paper, *Comprehensive Auditing — An Overview*, which, at page 6, states that:

> Although the primary function of auditors is to add credibility to financial information, recent developments seem to indicate a growing trend towards viewing them in a broader context as agents of social control, ...

She said: Honourable senators, for years I had served on the Senate National Finance Committee, called the Estimates Committee. This committee is always chaired by an opposition senator. As deputy chairman, always a government senator, I sponsored the government's estimates in committee and their appropriation and supply bills here in the Senate through the annual supply cycles. When I came to the Senate in 1984, senators knew the then-new 1977 Auditor General Act. Many were still smarting from the political turmoil of Auditors General Henderson, Macdonell and Dye, and their well-publicized campaigns. This act's sections 7(2)(*c*) and 7(2)(*d*), gave the auditor new powers to judge economy, efficiency, effectiveness and value for money in government spending. Senators knew that these are qualitative and subjective judgments that properly belong to Parliament's two houses and government. Not quantitative, these judgments are not for Auditors General nor accountants. All of us knew that these new powers were big trouble.

Honourable senators, in 1985, in the Federal Court of Canada, Auditor General Kenneth Dye brought a lawsuit against Prime Minister Mulroney's government. In the case *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*, Auditor General Dye sought access to confidential cabinet papers for the Trudeau government's purchase of Petrofina. He won in the court of first instance, but lost in the Federal Court of Appeal. On appeal of that decision to the Supreme Court of Canada, he lost. On August 10, 1989, the Supreme Court ruled against him and his access to cabinet papers.

In 1988, while studying the Main Estimates, our National Finance Committee studied the Auditor General's role in the national finance. We heard witnesses, including Auditor General Kenneth Dye and Professor Sharon Sutherland, of Carleton University's School of Public Administration.

Auditor General Dye had difficulty explaining the still then unclear term "comprehensive audit," which term is not in the act. Yet Government Leader Senator LeBreton's June 6, 2013, government motion, that brought Auditor General Ferguson to audit all senators, ordered him "to conduct a comprehensive audit of Senate expenses . . . ." She did not explain this rare, unclear phrase. The Auditor General's website FAQ on our Senate audit answered a question on the Senate's audit type thus:

> We are conducting a performance audit.

• (2050)

The term "comprehensive audit" is now in disuse. As senators, we did not know what a "performance audit" was, but we did know, senators, that our audit was a forensic audit.

Honourable senators, Professor Sutherland's January 28, 1988 testimony at our committee was stunning. Chairman Senator Fernand Leblanc told of her 1986 article published in *Canadian Public Administration*, Vol.29, number 1. It was called, "The politics of audit: the federal Office of the Auditor General in comparative perspective." He noted her conclusion, headed "The political consequences of the new audit role." These consequences are many and large, and include the auditor's weakening of our House of Commons Public Accounts Committee, which had been the engine to drive the House of Commons' "control of the public purse." She boldly states the problem, at page 118 of the committee proceedings:

> The argument of the paper is that the AG's move into the advice stream, as opposed to the traditional duties of an auditor, constitutes his Office as a force in policy-making, a factor that cannot be reconciled with responsible and representative government.

She concluded:

> . . . the 1977 legislation should be rewritten so that the OAG would once more work from the base of a replicable, objective financial audit, reporting as broadly as it would wish.

Honourable senators, one must wonder what the auditor's work base is? The Senate must do a serious review of the role of the Auditor General and audit in Canada's public accounts, and this officer's occupancy in the political, public policy stream. I shall read a revealing exchange between Auditor Dye and senators in our committee on February 3, 1988. The issue was federal transportation services and transport across the Northumberland Strait to Prince Edward Island. Nova Scotia Senator John Stewart asked a question on audit and government policy. I read at page 22:16 of the committee proceedings of that day. I want to share this with senators so that senators now can have some insight into what we were seeing and hearing that day:

> **Senator Stewart (Antigonish-Guysborough):** . . . We know that there is a constitutional requirement that the Government of Canada provide a reliable year-round service across the Northumberland Strait to Prince Edward Island. Up until now the Government of Canada has performed this requirement by providing a ferry service. Is the policy in this case . . . , that there shall be a reliable year-round service, or is the policy that that service shall be performed by ferries? . . .
>
> . . . I would like to know what the policy is here. Is the policy that there shall be a service or is it the question of the means?
>
> **Mr. Dye:** Mr. Chairman, if I understand the arrangements regarding the crossing of the Northumberland Strait, Senator Stewart is telling us that there is a constitutional requirement that there be a method of getting back and forth. Certainly this office is not going to examine issues on the Constitution. . . . The next question is how should government fulfil its responsibilities? Years ago the government decided to have ferry crossings . . . . I cannot see any reason why my office would get into that question. The existing service is not run by the Government of Canada, nor by a crown corporation of which I am the auditor. I do not think we would touch that.
>
> **Senator Stewart (Antigonish-Guysborough):** That is the policy level that you are talking about.
>
> **Mr. Dye:** Let us hypothetically suggest that there might be a change in the crossing and it becomes a tunnel or a bridge. The government . . . . sets a new way of fulfilling its constitutional requirement and decides to build a tunnel. The Parliament . . . is asked for funds to build an alternative way of getting back and forth. Parliament then allocates X number of dollars and sets about building the tunnel. I would say that we would undertake an audit of the construction process — the capital project. It would be a significant expenditure of public funds, and we would audit the process. Part of that process would be to look at all of the alternatives.
>
> **Senator Stewart (Antigonish-Guysborough):** In other words, you would look at the possibility of remaining with the ferry service?
>
> **Mr. Dye:** We would determine whether or not those who had made the decision had looked at alternatives. But I would never get into the question of policy . . . .
>
> **Senator Kelly:** With respect, you have. If the government has said that it is going to build a tunnel, having weighed the alternatives, it is up to the government to arrive at a policy. If you are going to reach behind that policy decision, then you are getting back to what you said you would not do. You are going to say, "Come on, cabinet, this is what you have decided, but we want to know why you decided it . . . ?" So you are, in fact, leading yourself into the very thing I do not think you have any business doing. You are going to second-guess policy decisions that emerge out of cabinet . . . .

Mr. Dye: . . . I am trying to find a way to express it in different terms so we will get back to this nice relationship that we were enjoying before. I believe that it is my job to inform Parliament that the government of the day has exhibited due regard to economy when it is getting into a major capital project.

Senator Kelly: Once the capital project is decided upon? In other words, it will build the best and most economical tunnel. It has decided on a tunnel. That is not what you are saying. You are saying that you will go behind that and find out why it did not think of a bridge. Why did it not think of an airlift? Why did it not stay with the ferries?

Mr. Dye: Mr. Chairman, when you get to that level of looking at auditing of policy, or looking at auditing the implementation of a policy, which is what I am doing, it will be pretty obvious to us by public record that Parliament was informed in the discussions that the government of the day had and, indeed, considered helicopters, rocket ships, time machines and all other alternatives available . . . . A bridge, a tunnel or continuing ferry service are the obvious alternatives. However, it may build an aerial tramway. I do not know the answers, but presumably the reasonable alternatives will be so publicly known that we would not waste our time on that.

Senator Kelly: Nor should you. I think we are coming back together again.

Mr. Dye: Good. That is my objective.

Senator Kelly: A wise and . . . intelligent opposition, as this government certainly has, would be asking all those questions . . . . However, you and I agreed at the opening . . . that the auditor starts once the policy is decided and goes forward from there. You scared me a moment ago when you said that you want to know if the cabinet had considered all alternatives. I think that is reaching further than you and I earlier agreed you should.

Mr. Dye: Had an obvious option been completely ignored, and I am speculating here — I wonder whether or not we would think it important to say to Parliament that despite the obvious merits of an alternative, it was not considered, and then go on to audit whatever it was. I am not sure what we would do in that regard, but it would have to be very obvious.

The Chairman: It is a very thin line.

Senator Kelly: Yes, and Mr. Dye clearly has one very hefty foot on both sides of the line.

Mr. Dye: I am trying to be very careful not to go over that line.

The Chairman: If the population, in their referendum, have asked for a tunnel, then that would be built. The government would proceed to build a tunnel, whether or not it is more expensive than another alternative. Will you have to find out if the population made the right decision?

Mr. Dye: No. In that case I would be engaging in the political process and we would stay away from that.

Senator Stewart (Antigonish-Guysborough): Surely, Mr. Chairman, if a government were to go ahead with, . . ., a tunnel, it would be incumbent upon the Auditor General, given the Act, to compare the actual cost of that construction with the projected cost of continuing the existing mode of performing the policy, which is laid out in a constitutional document. You would have to compare the selected option with the existing mode of performing the service.

Mr. Dye: Senator Stewart raises an interesting question. I am trying to speculate on what my response might be. If the legislation directed the government . . . to build a tunnel and the legislation said that that tunnel shall perform comparative services at comparative cost to existing means, but in a more modern way, I think we would be obliged to go back and make that comparison because the legislation said one has to understand the comparison of which way is best. But it is unlikely legislation would ever say anything like that. I suspect the legislation would simply say "Go and build a tunnel; here is the money." Therefore we would audit the building of a tunnel and not question whether it should be a tunnel or a time machine.

The Chairman: And you would audit how the contracts were tendered.

Mr. Dye: Indeed.

Senator Stewart (Antigonish-Guysborough): But that is the old-fashioned auditing procedure and not very modern.

Senator Stewart said it all.

Honourable senators, Mr. Dye was ill at ease. His knowledge of parliament and its appropriation lexicon was sparse. He said parliament was his "client." He said, at page 22:14 of the committee proceedings:

> . . . , our office views itself as a servant of Parliament.

I asked him how his master, Parliament, could be the "client" of its Auditor General servant. He continued:

> Now, with the additional mandate presented to my office in 1977, a third element was brought in of "value for money" auditing. . . .

He said, at page 22:6 of the committee proceedings:

> Legislative auditing exists to help legislators maintain control of the public purse.

• (2100)

These are strange words from the officer who displaced, actually replaced, the influence of the Public Accounts Committee in the national finance. That day, I learned little about "value for money" audit, less about the public accounts, and nil about the appropriation audit. Lee Berthiaume writes about the 1977 Act in his June 13 *Ottawa Citizen* piece, headed, "Shining the spotlight into darker corners of state." On the Auditor General's role, he quotes Professor Sharon Sutherland:

> The 'seismic shift' that created the modern Office of the Auditor General gave the organization more than money and ubiquity; it brought with it political power, . . .
>
> The OAG vision of its own pre-eminence in the House of Commons as Government's regulator seems even to overtake the role of the opposition parties.

It was clear to all of us here in the Senate that the Auditor General's Senate audit was politics. It was not about audit.

Honourable senators, the Canadian Comprehensive Auditing Foundation was founded, financed, and run by Auditor General Macdonell. On his 1980 retirement, he became its chairman. Its famous paper, *Comprehensive Auditing - An Overview*, authored by him, informs of this auditor's new role, at page 6:

> Although the primary function of auditors is to add credibility to financial information, recent developments seem to indicate a growing trend towards viewing them in a broader context as agents of social control, ...

This "agent of social control" role is clear. This officer's self-given role to define and redefine Senate rules has created absurdity in his Report of the Auditor General of Canada to the Senate of Canada. His Senate audit, as the Government's business, is a fatal compromise to his independence. His $24 million report's recommendations reveal much.

The Hon. the Speaker *pro tempore***:** Would the honourable senator like more time?

Senator Cools: Yes, I would, please.

Hon. Senators: Agreed.

Senator Cools: Lee Berthiaume is prescient in this auditor's unhappy audit regrets on senators' "questionable spending," In his June 13 *Ottawa Citizen* article, "Auditing MPs a waste: ex-AG," he wrote, at page A12:

> Ferguson said he was "not happy" with the audit's price tag, given that it uncovered only $1 million in questionable spending.

I repeat he was "'not happy' with the audit's price tag, given that it uncovered only $1 million in questionable spending." Evidently, he was hoping for much more "questionable spending." "Questionable" is his created word, not tested fact. "Questionable" is his selective, subjective opinion, perhaps induced by his biased wish for more "questionable spending." He has inflicted incalculable pain and suffering on some splendid and fine senators. In my view, his wish for more "questionable spending" renders his audit of senators wholly suspect.

Honourable senators, the Auditor General Act and its officer both need to be reviewed in its principles, practices and statute. I think in the new session, we should look at a very serious review of that.

I thank colleagues for their attention.

(On motion of Senator Cools, for Senator McCoy, debate adjourned.)

PROPER ROLE OF THE AUDITOR GENERAL

INQUIRY—DEBATE ADJOURNED

Hon. Anne C. Cools rose pursuant to notice of June 3, 2015:

> That she will call the attention of the Senate to:
>
> (*a*) the statutory officer, the Auditor General of Canada, and his powers and duties granted by the current *Auditor General Act*; and, to our 1878 statute, *An Act to provide for the better Auditing of the Public Accounts,* which Act created the new auditor general as an independent officer, absolutely and completely separate from government, to be beyond and outside government influence, favour, and disfavour; and,
>
> (*b*) to the powers of the auditor general, by the *Auditor General Act* section 13.(4), by which section he is a commissioner under the *Inquiries Act,* Part I; and, to his powers to compel and obtain information that he needs for his audit, and to the fact that these powers have no application to senators; and, to section 13.(4) that states:
>
> > The Auditor General may examine any person on oath on any matter pertaining to any account subject to audit by him and for the purposes of any such examination the Auditor General may exercise all the powers of a commissioner under Part I of the *Inquiries Act*.
>
> (*c*) to the February 16, 2011, 9 page paper, *The Accountability of Agents of Parliament*, and its accompanying 5-line letter, signed by seven office holders, who describe themselves as "agents of parliament," in preference to the term "officers of parliament," when in fact these office holders are neither; and,

(*d*) to the 1988 Senate National Finance Committee's Eighteenth Report on its consideration of the Main Estimates, and also on its study on the role of the auditor general pursuant to the then still new 1977 *Auditor General Act*; and, to this Report, which concluded that the auditor general's role is not to judge the merits of public policy; and,

(*e*) to Carleton University Professor Sharon Sutherland's article, *The Office of the Auditor General of Canada: Watching the Watchdog*, which examined the auditor general's value-for-money audit, which article is chapter 6 in the 1981 book, *How Ottawa Spends Your Tax Dollars* edited by Bruce Doern.

She said: Honourable senators, the Senate Government Leader's government motion, moved as government business here, made the Auditor General's Senate audit government business. Adopted in a government whipped vote, this motion became an order of the Senate. This government business set the Auditor General to audit senators. But Canada's Auditor General has no business in the government's business, especially when that government's business is their forced audit of senators. This auditor was the government's man in this audit. Unlike the Senate, the Auditor General was not created by the Constitution Act 1867, but by a simple 1878 statute of this Parliament, An Act to provide for the better Auditing of the Public Accounts. This made the Auditor General a statutory officer, meaning that his powers are solely those in the statute. This new officer was a parliamentary creature, in contrast to a Queen's creature, created by Her without statute. Most officers predate our 1867 Act. The receiver general, Attorney General, the Solicitor General, judges and copious others are all Crown creatures, unlike the statutory Auditor General.

Honourable senators, on April 4, 1878, in the House of Commons debate on this bill to better audit the public accounts, Charles Tupper, in his exchange with Finance Minister Cartwright, said, at page 1701 Commons Debates:

> . . . you are professing to give the public the security of an independent Parliamentary officer.

Charles Tupper added, at page 1702:

> . . . they ought not to lose sight of the fact that they were dealing with a somewhat new question. They were appointing a Parliamentary officer in contradistinction to an executive officer. The whole scope of this legislation was to give Parliament control in the contradistinction to the Government . . . . , so that the officer appointed as auditor might be independent of the Government of the day, so that he might act without being controlled, . . .

Members had wanted the House's control, not the government's control, of this new independent Auditor General of the public accounts. They wished this auditor to be beyond government control. Edward Blake spoke, at page 1701:

> He wished to secure a parliamentary officer, who should have hands with which to do his work, free, to some extent, from the control of the Government of the day.

These men intended that the Auditor General be an officer, by Parliament's own statute, as distinct from a prerogative officer, solely of the Queen's royal powers. They thought that their house's "control of the public purse" would be best served by this. Our 1878 Act was drawn from the British 1866 Exchequer and Audit Departments Act.

Honourable senators, for decades, our Privy Council Office described the Auditor General as a "parliamentary officer," as had Edward Blake. With the 1920 statutory creation of the Chief Electoral Officer, they also described him thus. En passant, the Chief Electoral Officer replaced the Clerk of the Crown in Chancery, who had charge of elections to the House of Commons. Later, with more statutory officers, the term "parliamentary officers" gave way to "officers of Parliament." This term is wrongly used for seven to twelve officers. The term "officers of Parliament" has no Parliament pedigree or usage. Our parliamentary books of authorities yield no use of the phrase "officers of Parliament." They use "officers of the houses," whom they list by the house to which they are appointed and attached, such as the Senate Clerk. Parliament is the Senate, the House of Commons and Queen. Other than Throne Speeches, Royal Assents, et cetera, Parliament never acts as a unity. Parliament has no officers. Its three independent parts, as separate entities, each jealously exercises its own powers, with its own officers, such as the Clerk of the House of Commons. The two houses' officers are separately appointed to and separately attached to each house by Governor General's Commissions.

• (2110)

If you take a look at the commissions of our Clerk of the Senate or even the Black Rod, you would see their attachment to the Senate.

The Governor General also has his own officers. Our Senate Clerk is styled the Clerk of the Senate and the Clerk of the Parliaments; not Clerk of Parliament but Clerk of the Parliaments. When the Governor General and the two houses are in parliament assembled, the Senate Clerk is the Clerk to that parliament, so designated anciently. The House of Commons Clerk is the Under Clerk of the Parliaments. The king's words, "I shall summon a parliament," were famous. Headed by a monarch, a parliament is the assembly of the sovereign, and the three estates. Jowitt's *Dictionary of English Law*, Volume 2, defines "parliament," at page 1298, as:

> . . . consisting of the sovereign, and the three estates of the realm, *i.e*., the lords spiritual and temporal called the House of Lords . . ., and the persons elected by the people called the House of Commons . . . .

Obviously, elected to the House of Commons by the people, in the principle of representation by population born of the electoral franchise and suffrage, granted by Her Majesty.

Honourable senators, seven statutory officers recently restyled themselves from "officers of parliament" to "agents of parliament." I note their February 16, 2011, five-line letter and its nine-page paper, "The Accountability of Agents of Parliament," addressed to some MPs and to Speaker Peter Milliken, who was

the then Chair of the Advisory Panel on the Funding and Oversight of Officers of Parliament. The Senate was excluded. Not on letterhead, this letter was signed by seven officers, self-described as "agents of parliament." They were, Auditor General Sheila Fraser, the Chief Electoral Officer, and the five Commissioners of Lobbying, Information, Privacy, Official Languages, and Public Sector Integrity. Their letter read:

> The Agents of Parliament have held recent meetings to discuss the ways that their accountability can be highlighted and enhanced. We are pleased to provide you with the attached paper which discusses the results of our discussions.
>
> We would like to meet with you to discuss the paper and other perspectives that you may have about our accountability. We will contact your offices to arrange a time to meet to discuss these matters further.

Their paper said, at page 1, and note this carefully, colleagues:

> We are using the term "Agents of Parliament" . . . . This is the term that is used by government. It has been suggested that the term "Officers of Parliament" may be confusing, as it is also used to describe other officers that serve Parliament, including the Sergeant at Arms, the Usher of the Black Rod, and the Parliamentary Librarian.

Interestingly, the Black Rod is the personal attendant of the Queen, who serves in the Senate.

These seven officers claim a power to style themselves as they wish, without any authority from parliament, though they claim to be parliament's agents. But the problem is that the law of agency does not apply to them. Nor are they officers of Parliament, because parliament has no officers. The two houses and the Queen have officers.

Honourable senators, the Auditor General of Canada is no officer of parliament because there is no such animal. In 1988, our Senate Finance Committee studied the Auditor General's role and the 1977 Auditor General Act. Our committee heard the Auditor General, the Comptroller General of Canada, the Canadian Institute of Chartered Accountants and the Canadian Comprehensive Auditing Foundation. Our Eighteenth Report said, at page 24:11 of the committee proceedings:

> While this Act says nothing about the policy role of the Auditor General, there is a clear understanding that his office does not judge the merits of policy. Mr. Dye was categorical that auditing government policy is the responsibility and prerogative of Parliament only.

It also said, at page 24:8 of the committee proceedings:

> The third general issue was the limits to the responsibilities of the Auditor General of Canada in value-for-money auditing. While the Auditor General Act, 1977 clearly gives him responsibility to report to House of Commons on value-for-money, and hopefully one day to all of Parliament, there is common agreement that this does not include a review of the merits of policy. But there is no common agreement as to where the setting of policy ends and the administration of it begins.

Colleagues, senators were concerned about the auditor's invasion of public policy. Our National Finance Committee agreed that the Auditor General could not and should not audit government policy.

Honourable senators, the Canadian Comprehensive Auditing Foundation was founded by Auditor General Macdonell and funded from his Auditor General budget. On retirement in 1980, he became its chairman, serving until his 1983 death.

This foundation testified at our committee, as did Carleton University Professor Sharon Sutherland. In Bruce Doern's 1981 book, *How Ottawa Spends Your Tax Dollars*, Professor Sutherland's Chapter 6 is titled "The Office of the Auditor General of Canada: Watching the Watchdog." She wrote, at page 220:

> There is a certain lack of subtlety in the revolutionary value-for-money ranks of the Office which allows them to believe that they, alone, are fully independent of government and therefore know how to achieve objectivity. They tend too often to take their views of the world, which are as subjective and value-laden as those of any other mortals, for the "truth," and think their job is to make their value position stick throughout the walk of public life and government. . . .
>
> This same world view sends the Office in two directions at once in its relationship with the new Foundation for Comprehensive Audit, created by Mr. Macdonell. On the one hand, the Office staff costs out every service and good provided to the new Foundation's headquarters. . . . On the other hand, the Office includes in its 1980-81 Estimates 110,000 dollars, and in its 1981-82 Estimates 290,000 dollars to fund the Foundation, . . .

Honourable senators, the control of the public purse took no note that public monies were spent on the Auditor General's brainchild foundation as though it were a public service. This new Macdonell entity showed this auditor's power to use public funds for his new, public-funded foundation. Clearly, the Auditor General had shed its 1878 concept as verifier of the public accounts and departmental spending as voted in the appropriation acts and laid out so carefully by vote in the schedules. These new comprehensive audits and their frolics in public policy grounds were easier than the boring, pedigree audit called the appropriation audit. This had been the gold standard by which each appropriation vote had its own number and its own account, all voted and adopted in the Appropriation Acts' schedules. Each appropriation vote account was audit-examined to verify its appropriation purpose. Currently, audit functions

have reached beyond certifying and verifying the public accounts. Audit has invaded politics. Lee Berthiaume writes about this shift in his June 13 *Ottawa Citizen* piece headed, "Shining the spotlight into darker corners of state." He wrote, at page A12:

> Some have complained that with more power and public standing, some auditors general have become political players, even de facto opposition leaders. Critics argue this can result in an unelected official having significant influence on — or even at times replacing — the decision-making role of an elected government.

This writer points to the problem that needs serious study by this Senate.

Honourable senators, now to the Auditor General's powers to acquire information from his auditees. At first, senators were concerned rightly that by the Auditor General Act section 13(4), the Auditor General might coerce them to this end. This section says:

> 13(4) The Auditor General may examine any person on oath on any matter pertaining to any account subject to audit by him and for the purposes of any such examination the Auditor General may exercise all the powers of a commissioner under Part I of the Inquiries Act.

This section, like the whole act, does not apply to senators. Our Senate audit was wholly outside of this Auditor General Act. This auditor has no power to coerce or compel senators in audit exam. Further, this act's section 18.2, headed "Immunities," which shields Auditors General from lawsuits from auditees, also does not apply to senators. Senators who have been damaged or defamed or destroyed by the Auditor General may prosecute legal actions against him.

Honourable senators, the most unfair section of the *Report of the Auditor General of Canada to the Senate of Canada* was his Appendix A, "Files recommended for referral to other authorities." A police referral for criminalization is no part of a report or of a recommendation. It is a sinister judgment of senators absent due process. This report's appendix willfully tramples and condemns some splendid senators. I shall note one, Senator Sharon Carstairs, former Senate government leader and one of the great women of this country. Her ground-breaking work in palliative care and also her work for the world's detained parliamentarians are legend. That these senators were singled out unfairly for police investigation without being heard, without due process, and without natural justice, tells all we need to know. This report's finding 3, about Senator Carstairs, states, at page 43:

> We found that the Senator spent extended periods of time in Ottawa. Accordingly, we determined that the Senator's primary residence was in Ottawa. We also found that, when the Senator travelled to Winnipeg, she regularly rented a vehicle at her own expense.

• (2120)

This statement is not even viable or credible. How can a finding be made before a senator has been heard in due process? I question the validity of these findings. No finding of fact is fair absent the affected senators' opportunity to defend and answer in due process. Further, this auditor's finding is not a fact. It is his own private opinion, on a question in which he has no say. He is not the judge of any senator's residency status. The Senate alone determines senators' primary residence and the status of residence. The Auditor General has no power to make such "determinations." Senator Carstairs' worthy and sturdy response is much like her.

The Hon. the Speaker *pro tempore***:** Would you like five more minutes?

Senator Cools: Yes, I do.

Hon. Senators: Agreed.

Senator Cools: Senator Carstairs is one of Canada's great human beings, as I said before.

Under the auditor's heading, "The former Senator's comments," she wrote partly, at page 43:

> The audit states that my primary residence was not Winnipeg. All my documentation would indicate otherwise. I owned a home until June 1, 2011 and farmland property until 2012. I voted provincially and federally in Manitoba. I paid taxes provincially and federally in Manitoba. My health care card, my driver's licence, vehicle registration and my bank accounts were all in Manitoba. This complied with the recommendations of the Law Clerk of the Senate.

Colleagues, remember, we all went through that process and produced those documents as proof of primary residence.

Honourable senators, this dubious appendix was not fair or worthy of senators. This audit and this report, in my view, are questionable. I was saddened that this report became a tool of calumny against the character and reputation of many fine individuals who served here in this institution faithfully, and who performed and conducted themselves nobly in public service for years. I repeat, the auditor's role is not to acquit or condemn, not to advise or correct, but merely to verify and certify the accounts of Canada, of which the Senate accounts are no part.

Colleagues, in closing, I say the role of Auditors General, and their damaging frolics in the public policy and public opinion spheres, demands a serious review, as does this Senate audit, which is totally forbidden by the Auditor General Act.

I thank colleagues for their attention.

(On motion of Senator Cools, for Senator McCoy, debate adjourned.)

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

CONTENTS

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